African Court and Commission Jurisprudence

A Selection of Cases Relating to the Rights of Individuals in the Criminal Justice System

(up to September 2021)

CLEARY GOTTLIEB

Cornell Law School
Cornell Center on the Death Penalty Worldwide

In Memoriam

This guide is dedicated to the memory of Katia Pritchard.

Katia co-edited this guide alongside Professor Sandra Babcock at the Cornell Center on the Death Penalty Worldwide, leading a team of volunteers at Cleary Gottlieb in preparing this work of legal research. The publication of this guide for the World Congress Against the Death Penalty in 2022 is to commemorate Katia's outstanding contribution to the African Human Rights community.

Katia was exceptionally committed to pro bono work throughout her career. For over four years, Katia worked as part of a team to represent a vulnerable woman on death row in Tanzania alongside Cornell Law School and the charity Reprieve. In 2020, the client was removed from death row.

Katia's pro bono work also included providing immigration support to clients in the United States who had been evacuated from Afghanistan, volunteering regularly at a free legal advice clinic in London to support victims of domestic violence, and offering corporate advice to refugees in the United Kingdom aspiring to start their own businesses.

Katia was an incredibly bright lawyer and a wonderful colleague.
She is missed dearly by all those who had the privilege of working with her.

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I. Introduction

Foreword to African Court and Commission Jurisprudence

Since our founding in 2002, the Pan African Lawyers Union (PALU) has been at the forefront of advocating for a united, just and prosperous Africa, built on the rule of law and good governance. As part of this mission, we continue to engage in advocating for human and peoples' rights, whether that be at a continental level – such as by working as lead Consultant on the development of the Action and Implementation Plan for the Human and Peoples' Rights Decade in Africa – or at an individual level – including by litigating before The African Court on Human and Peoples' Rights to uphold individuals' rights under the African Charter on Human and Peoples' Rights (the "**Charter**"). I am therefore pleased to introduce this *African Court and Commission Jurisprudence* – a collaboration between Cleary Gottlieb Steen & Hamilton LLP and Cornell Law School – as an invaluable resource to assist in the continued efforts in advocating for the protection of human and peoples' rights in Africa.

This guide is intended to assist researchers and practitioners alike by consolidating the key jurisprudence in respect of the provisions of the Charter relevant to capital case litigation. Although this guide is focused largely on cases relevant to the plight of prisoners and criminal defendants, it would be relevant for those involved in other categories of rights violations as well. The hope is that users will find this an efficient and effective guide in providing insight and useful summaries of the key jurisprudence.

We understand the importance of information and knowledge exchange in our pursuit to strengthen the standards of adherence to the just rule of law and good governance in Africa. By providing the relevant information in a consolidated and easily-accessible manner, we hope that the guide will empower more researchers and practitioners to continue to advocate for a strong legal system in Africa that upholds and protects human and peoples' rights.

Donald Deya, Chief Executive Officer at Pan African Lawyers Union

The Charter, the Commission and the Court

The central document of the human rights system in Africa is the African Charter on Human and Peoples' Rights (the "**Charter**"). The Charter, which came into force on October 21, 1986, represents a decades-long effort to develop a regional instrument to promote and protect human rights and fundamental freedoms in a way that is compatible with the African philosophy of law. The Charter codifies the civil, political, economic, social and cultural rights and duties of individuals, as well as the rights of peoples, to combine the specific experiences of African cultures with universally recognized human rights standards.

There are two regional bodies that operate to protect human rights in Africa and interpret the Charter. The first is the African Commission on Human and Peoples' Rights (the "**Commission**"), a quasi-judicial body whose role is to oversee and advise on a wide range of issues relating to the Charter. The Commission accepts Communications from individuals, groups, non-governmental organizations, and states concerning alleged violations of fundamental rights. Its recommendations are non-binding, yet the Commission plays a significant role in enforcing the provisions of the Charter not least through its ability to refer cases to The African Court on Human and Peoples' Rights (the "**Court**").

The Court is the second regional body tasked to protect human rights in Africa and interpret the Charter. Established in 2004 by the Protocol to the Charter, the Court possesses unprecedented international legal authority to protect human rights in Africa. With both advisory and contentious jurisdiction concerning the interpretation and application of the Charter, the role of the Court is to enhance the protective mandate of the Commission by ensuring compliance with the Charter, as well as other international human rights instruments, through binding and enforceable judicial decisions.

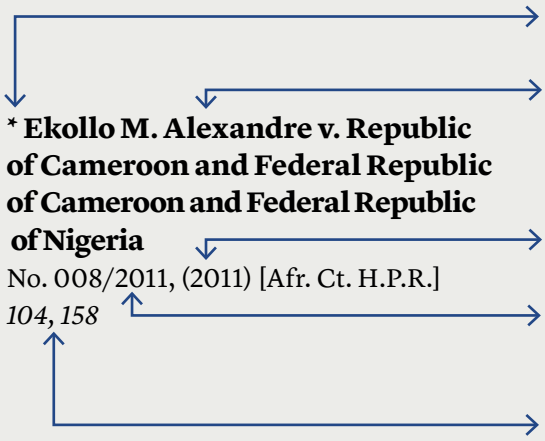
How to Use This Guide

This guide was written as a collaboration between Cleary Gottlieb Steen & Hamilton LLP and Cornell Law School Center on the Death Penalty Worldwide to review and consolidate the key developments of the first 33 years of jurisprudence stemming from the provisions of the Charter relevant to capital case litigation. Although we have focused largely on cases relevant to the plight of prisoners and criminal defendants, the guide is relevant for researchers and practitioners involved in other categories of rights violations as well. The guide is divided into two main sections: one on the substantive rights under the Charter and one on the procedure of the Court, including matters such as challenges to jurisdiction and the admissibility of cases.

The section on the substantive rights under the Charter is subdivided into chapters – one for every article of the Charter corresponding to a substantive right. In each chapter, excerpts from significant cases of the Court and communications of the Commission relating to the relevant article are set out, ordered chronologically by the date of the decision or communication. The intention is to provide an overview of the main cases relating to each article of the Charter and a summary of the most important points arising from those cases.

All cases and communications featured in the guide are set out in the Index of Cases and Communications on pages 8-14. Cases relating to the death penalty are marked with an asterisk to assist those working on matters relating specifically to the death penalty. Finally, at the back of the guide there are summaries of the facts, outcomes and topics cited from each case covered in the guide in order to provide readers additional context and overview when carrying out research.

Understanding the Index of Cases



*: **Denotes a death penalty case**

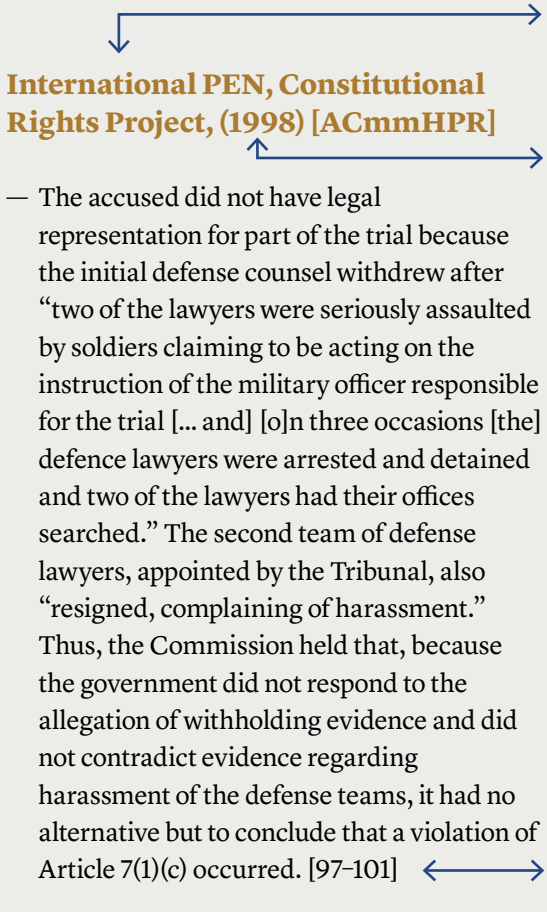
Ekollo M. Alexandre v. Republic of Cameroon and Federal Republic of Cameroon and Federal Republic of Nigeria: **Case Title**

(2011): **Year the decision was handed down**

No. 008/2011: **Number of the application to the African Court**

104, 158: **Pages where the case is cited in the Guide**

Understanding the case summaries



International PEN, Constitutional Rights Project: **Case Title**

(1998): **Year the decision was handed down**

[97–101]: **Paragraphs of the judgment cited/ summarised**

About the Authors

Cleary Gottlieb is a pioneer in globalizing the legal profession. Since 1946, our lawyers and staff have worked across practices, industries, jurisdictions and continents to provide clients with straightforward, actionable approaches to their most complex legal and business challenges, whether domestic or international.

Central to our ethos is a commitment to pro bono work. Our pro bono practice focusing on the death penalty is broad in scope, from researching legislation to representing individuals and advocating for the reversal of death row convictions across multiple jurisdictions. This guide is part of a longstanding partnership between Cleary Gottlieb and the Cornell Center on the Death Penalty Worldwide, during which we have collaborated on various death penalty projects across Africa. In 2017, the collaboration between the Cornell Center on the Death Penalty Worldwide and Cleary Gottlieb in the fair resentencing of nine indigent individuals in Malawi, as well as in developing international legal norms protecting vulnerable persons from the application of the death penalty, was recognized by The American Lawyer as Global Pro Bono Dispute of the Year. Cleary Gottlieb continues to assist Cornell Law School in its vital international death penalty work. For further information on Cleary Gottlieb's pro bono practice, please visit: **https://www.clearygottlieb.com/practice-landing/pro-bono**.

The Cornell Center on the Death Penalty Worldwide provides transparent data on death penalty laws and practices around the world; publishes reports and manuals on issues of practical relevance to lawyers, judges, and policymakers; trains lawyers in best practices; and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty, and their research has informed legal reform and public policy in countries around the world. The Center has gained a reputation for providing comparative legal analysis of the application of the death penalty, as well as for its one-of-a-kind Makwanyane Institute for capital defenders. Center staff and associated faculty continue to defend persons facing the death penalty around the world, with a combined caseload of dozens of death row prisoners. Students play a major role in our advocacy efforts through Professor Babcock's International Human Rights Clinic. Generations of Cornell undergraduates and law students have contributed to our research, training and individual case representation.

Acknowledgements

The Cornell Center on the Death Penalty Worldwide would like to say a special thank you to the researchers at Cornell University (Joshua Howard, Hannah Jung, Huinie Pan, Ji Hyun Rhim, Dena Rubanowitz and Tayler Woelcke) and the editors (Zohra Ahmed and Sandra Babcock) for their contributions to this Guide.

Cleary Gottlieb would also like to acknowledge the work on this guide carried out by Louie Ka Chun, Goksu Kalayci, Cameron Murphy, Axel Nordlöf, Byron Spring and the editor Katia Pritchard.

Please note this document is for informational purposes only

The information contained in this Guide has been prepared by Cornell University in collaboration with volunteer lawyers, trainee solicitors and summer associates at Cleary Gottlieb Steen & Hamilton LLP ("**Cleary Gottlieb**") as a work of legal research.

This Guide is intended to provide general information. The information in this Guide does not constitute, is not offered as, and must not be relied or acted upon as, legal advice, and the receipt or review of this Guide does not create an attorney-client relationship between Cleary Gottlieb, Cornell University or any other parties who participated in the preparation of this Guide and any reader. Neither Cleary Gottlieb, Cornell University, nor any other parties who participated in the preparation of this Guide are lawyers qualified in the countries subject to the jurisdiction of the African Court or the African Commission. Readers should seek specialist legal advice taken from legal counsel qualified in the relevant jurisdiction in relation to specific circumstances before taking any action with respect to the matters addressed in this Guide.

Whilst we endeavour to ensure that the information within this Guide is correct, no warranty, express or implied, is given as to its accuracy. It does not purport to be complete or exhaustive or to apply to any particular factual or legal circumstances. Neither Cleary Gottlieb nor Cornell University accepts any liability for error or omission, including changes in the law since the research was completed in September 2021.

II. Index of Cases

The * at the beginning of the title of the case designates a death penalty case

III. Rights Under The Charter

A. Article 7: Right to a Fair Trial/Access to Courts

> *"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; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.*
>
> *2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."*

1. Right to a Defense (Including Right to Legal Counsel, Right to Present Evidence, etc.)

International PEN, Constitutional Rights Project, (1998) [ACmmHPR]

— The accused did not have legal representation for part of the trial because the initial defense counsel withdrew after "two of the lawyers were seriously assaulted by soldiers claiming to be acting on the instruction of the military officer responsible for the trial [... and] [o]n three occasions [the] defence lawyers were arrested and detained and two of the lawyers had their offices searched." The second team of defense lawyers, appointed by the Tribunal, also "resigned, complaining of harassment." Thus, the Commission held that, because the government did not respond to the allegation of withholding evidence and did not contradict evidence regarding harassment of the defense teams, it had no alternative but to conclude that a violation of Article 7(1)(c) occurred. [97–101]

Centre for Free Speech v. Nigeria, (1999) [ACmmHPR]

— The jurisdiction of the national courts was ousted by the Treason and Treasonable Offences (Special Military Tribunal) Decree. As such, the Commission found that local remedies in this instance were non-existent or ineffective. [10-11]

— The Commission held the denial of the right of the convicted persons to access their lawyers, or to be given the opportunity to be represented and defended by lawyers of their own choice at the trial, is in contravention of Article 7(1)(c) of the Charter. [13]

— The arraignment, trial and conviction by a Special Military Tribunal, which included some serving military officers, presided over by a serving military officer, was a violation of the provisions of Article 7 of the Charter and Principle 5 of the UN Basic Principles. [15]

— It could not be said that the trial and conviction of the four journalists by a Special Military tribunal presided over by a serving military officer who is also a member of the PRC, the body empowered to confirm the sentence, took place under conditions which genuinely afforded the full guarantees of fair hearing. This also violated Article 26. [17]

— The Commission concluded that violations of Articles 6 and 7(1)(a) and (c) and 26 had occurred.

Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The Commission stated that "[f]urthermore, these individuals are being held incommunicado with no access to lawyers, doctors, friends or family. Preventing a detainee access to his lawyer clearly violates Article 7(1)(c) which provides for the 'right to defence, including the right to be defended by a counsel of his choice.'" [29]

— The Commission held that "the detention of individuals without charge or trial is a clear violation" of Article 7(1)(a) and (d). [28]

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— The Commission held that "[t]he right to freely choose one's counsel is essential to the assurance of a fair trial. To give the tribunal the power to veto the choice of counsel of defendants is an unacceptable infringement of this right. There should be an objective system for licensing advocates, so that qualified advocates cannot be barred from appearing in particular cases. It is essential that the national bar be an independent body which regulates legal practitioners, and that the tribunals themselves not adopt this role, which will infringe the right to defence." [64]

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The Commission stated that "[t]he complainants have alleged that the accused were not permitted to choose their own counsel. This is a question of fact. The government has not responded to this case specifically, neither has it contradicted this accusation. Therefore, in accordance with its established practice...the Commission must take the word of the complainant as proven and thus finds a violation of Article 7(1)(c)." [24]

Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi, (2000) [ACmmHPR]

— The Commission held that "the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations." [28]

— According to the Commission, the judge should have upheld the prayer of the accused for adjournment of the case, "in view of the irreversible character of the penalty involved." [29]

— The Commission held that by refusing to accede to the request for adjournment, the domestic Court of Appeal violated the right to equal treatment, one of the fundamental principles of the right to fair trial. "This was all the more imperative considering that during the 20th August 1997 hearing [the judge] had upheld the arguments of the prosecutor who had refused to proceed with his pleading claiming that he needed time to study the written plea presented by counsel for the accused." [29]

— The Commission stated that the right to legal assistance is fundamental to a fair trial, and "[m]ore so where the interest of justice demand it [...] considering the gravity of the allegations brought against the accused and the nature of the penalty faced [...] it was in the interest of justice for [the accused] to have the benefit of the assistance of a lawyer at each stage of the case." [30]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— Article 7(1)(c) of the Charter was violated according to the Commission because the applicants "either had no access or had restricted access to lawyers, and [the lawyers] had insufficient time to prepare the defence of their clients." [96]

— The Commission held that "the right to defence should also be interpreted as including the right to understand the charges being brought against oneself." As such, the Commission found a violation of Article 7(1)(c) of the Charter where the trials were conducted in Arabic, despite the fact that only three of the twenty-one accused persons spoke fluent Arabic. "This means that the 18 others did not have the right to defend themselves." [97]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— Article 7(1)(c) of the Charter was violated according to the Commission when the applicant "was not allowed access to his lawyer, neither was he given the opportunity to be represented and defended by a lawyer of his own choice at the trial. Rather, he was assigned a military lawyer by the tribunal." [55] The Commission further held that the denial of the applicant's right to "communicate in confidence with counsel of their choice" constituted a violation of Article 7. [56]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— The applicant's lawyer was not allowed to contact his clients or appear before the court. The Commission held this to be a violation of Article 7.

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— "Given the generalized fear perpetrated by constant bombing, violence, burning of houses and evictions, victims were forced to leave their normal places of residence. Under these circumstances, it would be an affront to common sense and justice to expect the victims to bring their plights to the courts of the respondent state." [182]

— "The forced evictions, burning of houses, bombardments and violence perpetrated against the victims made access to competent national organs illusory and impractical. To this extent, the respondent state was found to have violated Article 7." [185]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— For the months before trial, victims were not allowed to contact legal counsel. Once they received counsel, victims were denied to opportunity to consult with counsel privately. [134]

— The Commission held that "Article 7 is explicit that the right is to counsel of the detainee or defendant's choice. It comprises the right to timely and confidential consultations with that counsel. Where the accused either had no access, or only restricted or delayed access, to lawyers, the African Commission has found a violation of Article 7(1)(c)." [209]

— The local court allowed (and relied heavily upon) evidence obtained under torture in finding the victims guilty. The Commission found that this was a violation of Article 7.

— "Furthermore, in interpreting Article 7 of the African Charter, the African Commission has stated that 'any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing.' In Malawi African Association v. Mauritania, this Commission has held that 'any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion.'" [212]

— The burden of proof was on the state to show that the confession was not achieved by coercion. [216]

— "Accordingly, once a victim raises doubt as to whether particular evidence has been procured by torture or ill-treatment, the evidence in question should not be admissible, unless the State is able to show that there is no risk of torture or ill-treatment. Moreover, where a confession is obtained in the absence of certain procedural guarantees against such abuse, for example during incommunicado detention, it should not be admitted as evidence." [218]

Groupe de Travail sur les Dossiers Judiciaires Stratégiques v. Democratic Republic of Congo, (2015) [ACmmHPR]

— The Commission held that the state had a responsibility to provide a defense for someone who could not afford it or arrange for it themselves. [82] The state had a burden to prove they provided counsel. [83-84]

— There was no evidence supporting the state's claim that they did provide counsel, so the Commission held that Congo had violated Article 7.

— "Even assuming that these provisions are available, their accessibility alone cannot guarantee that the victims in this particular Communication actually received judicial assistance. On this issue, the Commission recalls that where the burden of proof lies with the State to discharge an obligation, it is not enough to indicate the measures taken to that effect. The issue is to show the relevance of such measures and to prove in what manner they satisfied the specific requirement of the Complainant, namely the right of accused persons to judicial assistance. [...] In this case, the respondent state could not prove that the persons identified as victims of this Communication did actually receive judicial assistance. In these circumstances, the Commission notes that the provisions of Article 7(1)(c) of the Charter have not been complied with." [84]

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

— The Commission held that "[t]he victims were denied habeas corpus, thereby preventing them from having the opportunity of inquiring into the lawfulness of their detention. They were only brought before a judge almost one year after their arrest. The Commission agrees with the Complainants that given the large number of arrested persons and the inherent risk that there were no sufficient grounds for the arrest and detention of at least some of the persons, it was all the more critical to bring all arrested individuals before a judge within the shortest possible time." [88]

— "The victims were not given access to a lawyer until the 26 February 2006; that is for more than nine months after they were arrested. The Commission considers that not having access to Counsel for such a long period of time while in detention impeded the ability of the victims to adequately assure their defence, and constitutes a violation of Article 7(1)(c) of the Charter." [90]

Interights and Ditshwanelo v. Republic of Botswana, (2016) [ACmmHPR]

— The Commission held that "[s]ince no evidence has been provided in the present case to show that the *pro deo* counsel allocated to [the applicant] was young or inexperienced and therefore lacked the requisite skills, resources and commitment to defend him, resulting in the breach of his fair trial guarantees the Commission finds that the Complainants have failed to prove its case against the respondent state in this respect." [75]

James Wanjara and Others v. United Republic of Tanzania, (2020) [Afr. Ct. H.P.R.]

— The applicants alleged that the respondent state violated their rights under Article 7(c) by failing to provide them with legal representation during the domestic proceedings. [63]

— "The Court reiterates that an individual charged with a criminal offence is entitled to free legal assistance even if he/she does not specifically request for the same provided that the interests of justice so demand." [68]

— The Court did find that the applicants' right to free legal assistance was violated. [70]

— The Court noted that the applicants were charged with a serious offence carrying a severe punishment with minimum sentence of thirty years' imprisonment.

— In addition, the respondent state did not adduce any evidence to challenge the contention that the Applicants were lay and indigent, without legal knowledge and technical legal skills to properly conduct their case in person during the original trial as well as during the appeal before the Court of Appeal. [69]

African Commission on Human and Peoples' Rights v. Libya, (2016) [Afr. Ct. H.P.R.]

— The Court held the government of Libya liable for violating Article 7 of the African Charter due to Gaddafi's lack of access to counsel while in isolation and due to his inability to communicate with the outside world. [86-97]

Jean-Marie Atangana Mebara v. Cameroon, (2016) [ACmmHPR]

— Denying a suspect's legal representatives access to his case file is a violation of the right to a defense. [105]

— Notifying a suspect of a new charge at a crucial stage of the proceedings, in the absence of his legal representatives, is a violation of the right to a defense. [104]

Mhina Zuberi v United Republic of Tanzania (2016) [Afr. Ct. H.P.R.]

— "The Court further notes that although Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal aid, it has consistently determined that this Article, interpreted in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR"), establishes the right to free legal assistance where a person is charged with a serious criminal offence, and cannot afford to pay for legal representation and where the interest of justice so requires. The interest of justice includes where the Applicant is indigent, the offence is serious and the penalty provided by the law is severe." [61]

— "Given that the applicant was charged with a serious offence and that the applicant's indigence is not contested by the respondent state, the Court is of the view that the interest of justice required that the applicant should have been provided with free legal assistance, regardless of whether he requested for such assistance or not." [63]

— The Court considered the fact that the applicant was destitute and that he was charged with a serious offence which carried a heavy penalty, being a minimum of thirty years in prison.

— Having found that the applicant's right to free legal assistance was violated, the Court held that there was a presumption that the applicant suffered moral prejudice. [106]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held that the respondent state violated the applicant's right to defense under Article 7(1)(c) of the Charter.

— The state failed to inform the applicant of his right to be assisted by counsel at the time of his arrest. [122]

— The state failed to afford the applicant a lawyer automatically and free of charge. [145] The respondent state did not assign the applicant a lawyer until two months after his arrest. The Court held that not having access to a lawyer for a long period after arrest affects the victims'

ability to effectively defend themselves and constitutes a violation of Article 7(1)(c) of the Charter. [120–121]

— The Court found that the police and judicial authorities did not act with due diligence to communicate in due time to the applicant all the elements of the charge (i.e., withholding evidence from the applicant). [161]

Mussa Zanzibar v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court rejected the applicant's submissions relating to inappropriate treatment of evidence, holding that there was no basis for interfering with the findings of the municipal courts. However, despite the Applicant not specifically having pleaded this, the Court found a violation of his right under Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, on the basis that he had not been provided with the benefit of free legal assistance during proceedings, and awarded 300,000 Tanzanian Shillings as fair compensation.

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held the respondent was under an obligation to provide the applicants with free legal advice or at least inform them of their right to free legal advice, when it became clear that they were no longer represented. "It does not matter whether the case is at the pre-trial, trial or appeals stage. The applicants are entitled to free legal advice at all stages of the proceedings." [181]

— Free legal advice is a right and must be enjoyed whether requested by the accused or not. The applicants were under no obligation to apply for free legal advice to the respondent for it to provide the same, but the respondent was under an obligation to ensure they were represented. [182]

— The Court concluded that the applicants were entitled to free legal advice and need not have requested it. Even though the respondent was aware that the applicants' counsel had abandoned them, the respondent proceeded with the case and eventually convicted them without counsel. [184]

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— "The relevant section of Article 7(1) of the Charter provides that: "Every individual shall have the right to have his cause heard...." This Article may be interpreted in light of the provisions of Article 14(1) of the Covenant which provides that: 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....' It is evident from the above two provisions, read together, that everyone has the right to a fair trial." [63–65]

— "The records of proceedings at national level show that the Applicant was caught red-handed committing armed robbery. The Court also notes that the national courts heard the Applicant as well as three eye witnesses, in addition to the victim; and that all declared having seen the Applicant in the act of committing the offence. It is also evident from the judgement of the Court of Appeal that it examined all the pleadings by the Applicant before upholding the decision rendered by the lower courts. The Court recalls that its role in regard to evaluation of the evidence on which the conviction by the national judge was grounded is limited to determining whether, generally, the manner in which the latter evaluated such evidence is in conformity with the relevant provisions of applicable international human rights instruments. In view of the foregoing, the Court finds that the evidence of the national courts has been evaluated in conformity with the requirements of fair trial within the meaning of Article 7 of the Charter." [66–69]

Ingabire Victoire Umuhoza v. Rwanda, (2017) [Afr. Ct. H.P.R.]

— The Court held that the right to defense includes principles such as choice of counsel, access to witnesses, the right to examine and cross-examine witnesses, opportunity for counsel to express themselves and opportunity for counsel to consult with their clients. [98]

— The applicant's right to defense under Article 7(1)(c) of the Charter was violated: the High Court Judge refused to allow the applicant's counsel to put questions to the co-accused; the defense witness was subjected to threats and intimidation; documents, which were seized in a search conducted in prison without the applicant's knowledge, were used against her without her having a chance to examine them. [98]

— The Court held that "questioning of a witness by [authorities] over the testimony he/she has given in the [court]... is not a conduct consistent with standards that aim to promote a fair trial. Such actions may have an intimidating effect on witnesses' willingness and disposition to cooperate and adduce evidence against the respondent state. This is especially so for witnesses in detention or already serving prison sentences." [99] However, in this case, the Court concluded that "as the questioning [of the witness] happened after the witness had given testimony in Court . . . this did not violate the right to defence of the applicant." [99]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court held that the applicants must meet two cumulative conditions to be eligible for the right of free legal assistance under Article 7(1)(c): indigence and the interests of justice. [104]

— In assessing these conditions, the Court considers several factors, including (i) the seriousness of the crime, (ii) the severity of the potential sentence; (iii) the complexity of the case; (iv) the social and personal situation of the defendant and, in cases of appeal, the substance of the appeal (whether it contains a contention that requires legal knowledge or skill), and the nature of the "entirety of the proceedings," for example, whether there are considerable disagreements on points of law or fact in the judgments of lower courts. [105]

— In this case, the Court found that the conditions were met, as the applicants were indigent convicted prisoners serving a sentence of 30 years' imprisonment for the crime of aggravated robbery, and the case contained complex and factual questions requiring legal knowledge and technical pleading skills that lay individuals like the applicants lacked. The Court concluded that the failure of the respondent state to provide the applicants with free legal aid in the Court of Appeal was a violation of their right to defense under Article 7(1)(c) of the Charter. [108–112]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Under the right to defense, an applicant is "entitled to take part in all proceedings, and to adduce his arguments and evidence," although the applicant may waive this right. The Court found that the right to defense was not violated where the applicant either took part in the proceedings or waived his right to do so, and where a reconstituted record of proceedings—as opposed to the original record—was used and the applicant could not provide any evidence that it had been wholly or partly falsified. [81–86]

— Whereas, in every procedure, original documents constitute crucial and precious evidence in the determination of a case, such that the non-existence of such documents can cast serious doubt on the fairness of the case, the fact remains that it is possible to reconstitute the whole record or parts thereof. In the absence of any evidence that the reconstituted record of proceedings has been wholly or partly falsified, the Court dismissed the applicant's claims and held that the procedure before the High Court was not vitiated as alleged by the applicant. [84–86]

— The applicant was accused of an offense punishable by a heavy sentence of 30 years' imprisonment, and it was in the interest of justice to provide him with free legal advice. This was made even more necessary by the fact that the applicant claimed to be a layman in law and was also unable to pay for the legal representation. As the respondent state failed to inform the applicant that he could request and be provided with legal aid, the Court held the respondent state was in violation of Article 7(1)(c). [93–95]

— Under the local law applicable to the offense, the minimum sentence for armed robbery or robbery with violence was 30 years' imprisonment. Therefore, the respondent state did not violate Article 7(2) of the Charter as the applicant's conviction and sentence to 30 years' imprisonment was in accordance with the law. [98–99]

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— An individual charged with a criminal offense is automatically entitled to free legal advice, even without the individual having to request it, where the interests of justice so require, and in particular, if he is indigent, if the offense is serious and if the penalty provided by the law is severe. Given that the applicant was convicted of a serious crime, that is, rape, which carries a severe punishment of 30 years, there is no doubt that the interests of justice would warrant free legal aid where the applicant did not have the means to engage his own legal counsel. The fact that he did not request it does not exonerate the respondent state from its responsibility to offer free legal aid. The Court held that the respondent state violated Article 7(1)(c). [85–87]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Charter does not "expressly prescribe the right to free legal assistance." [77] The Court, however, in its previous jurisprudence stated that "free legal aid is a right intrinsic to the right to a fair trial, particularly, the right to defence guaranteed in Article 7 (1) (c) of the Charter." [78] "The Court also held that an individual charged with a criminal offence is automatically entitled to the right of free legal aid, even without the individual having requested for it." This is particularly true "if he is indigent, the offence is serious and the penalty provided by the law is severe." [78]

— "Given that the Applicant was convicted of serious crimes, that is, armed robbery and unlawful wounding, carrying a severe punishment of [31 years'] imprisonment...there is no doubt that the interest of justice would warrant free legal aid provided that the Applicant did not have the required means to recruit his own legal counsel." [79]

— Based on these circumstances, the Court found that the applicant should have been afforded free legal aid. "The fact that he did not request for it is irrelevant and does not shun the responsibility of the respondent state to offer free legal aid." [79]

Minani Evarist v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The respondent state argued that it should be given a margin of discretion in the implementation of the right to legal aid, emphasizing the non-absolute nature of the right to legal aid and the lack of financial means and inadequate number of lawyers to offer legal aid to all persons charged with crimes. [70]

— The Court found that even though Article 7 guarantees the right to defense, including the right to be assisted by counsel of one's choice, the Charter does not expressly provide for the right to free legal assistance. However, if the applicant is indigent, the offense is serious and the penalty provided by the law is severe, the applicant is automatically entitled to the right of free legal aid. The margin of discretion is not relevant where the conditions for the compulsory grant of legal aid are fulfilled. [70]

— In this case, the Court held that since the applicant was convicted of a serious crime

carrying a severe punishment of 30 years, there is no doubt that the interests of justice would warrant free legal aid provided that the applicant did not have the means to pay for the services of a lawyer. [67–70]

— The fact that an applicant did not request free legal aid does not exonerate the respondent state from its responsibility to provide it and does not constitute a failure to exhaust all domestically available remedies. [35–36]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court notes that all material evidence affecting "an accused person's defense should be considered and reasons for its exclusion provided. This is because their liberty is at stake." In this case, the Court holds that, because the outcome of the impotence test would determine whether the first applicant could have committed the crime, the Respondent's failure to offer such test has violated his right under Article 7(1) (c) of the Charter. [115–117]

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court was of the view that this undue delay in providing the applicants with the witness statements affected the applicants' right to prepare their defense, which constituted a violation of Article 7(1)(c) of the Charter. [78]

— In criminal matters, Article 7(1)(c) of the Charter requires that accused persons "should be promptly informed of the evidence that will be tendered to support the charges against them, whether testimonial or in other forms to enable them prepare [sic] their defense in this regard." [76]

— "The denial of access to some of the Prosecution's witness's statements and the delay in providing them with some witness statements was a violation of Article 7(1)(c) of the Charter by the respondent state." [79]

— The Court found that by failing to provide the applicants with a lawyer to represent them in the proceedings, the respondent state violated the applicants' right to defense. [87]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that the applicant was entitled to legal aid and he need not have requested it. [123]

— "In the instant case, the relevant factors that the Court finds should have been borne in mind in the determination of the provision of legal aid to the Applicant, are, the gravity of the offences that the Applicant was facing, the minimum sentence the offence carries as specified under the Minimum Sentences Act and his being unrepresented." [124]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court noted that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal assistance. However, the provision is interpreted in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR). Taken together, the right to defense includes the right to be provided with free legal assistance. [75]

— The court noted that an individual charged with a criminal offense is entitled to free legal assistance without having to request it, provided that the interests of justice so require, such as where an accused is indigent and is charged with a serious offense which carries a severe penalty. [77]

— The Court explained that "an individual charged with a criminal offence is entitled to the right to free legal assistance without having requested for it, provided that the interests of justice so require. This will be the case where an accused is indigent and is charged with a serious

offence which carries a severe penalty." Here, the Court found that the applicants were entitled to free legal assistance because the punishment was severe, the applicants were indigent, laymen and without legal knowledge and skill to properly defend their case. [77–78]

— The applicants were charged with a serious offense, robbery with violence, which carried a severe punishment of thirty (30) years' imprisonment. In addition, the respondent state did not adduce any evidence to challenge the contention that the applicants were lay and indigent, without legal knowledge and technical legal skills to properly defend their case in the course of their trial and appellate proceedings. [78]

— The applicants did not need to show that the non-provision of legal assistance occasioned some disadvantage to them in the course of their trial and appeals at the district and appellate courts of The United Republic of Tanzania. [79]

— In view of the above, the Court found that the respondent state violated Article 7(1)(c) of the Charter. [81]

— Although Article 7 of the Charter does not expressly provide for the right to be informed of one's right to counsel, Article 14(3)(d) of the International Covenant for Civil and Political Rights (ICCPR) requires that, in criminal cases, any accused shall be informed of his right to legal representation. The authorities owed a positive obligation to proactively inform the accused individuals of their right to legal representation at the earliest time. [86]

— The respondent state did not dispute the applicants' allegation that they were not informed of their right to counsel at the time or prior to their trial. The Court also found nothing on the record showing that this was done by the authorities of the respondent state. The Court therefore found that the failure of the respondent state to inform the applicants of their right to legal representation violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of ICCPR. [87-88]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that the respondent state violated Article 7(1)(c) of the Charter, reiterating its previous holding that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal advice but, interpreted in light of Article 14(3)(d) of the ICCPR, establishes the right to free legal advice where a person is charged with a serious criminal offense, who cannot afford to pay for legal representation and where the interest of justice so requires. The Court underlined that "the interest of justice is required in particular, if the applicant is indigent, the offence is serious and the penalty provided by the law is severe." Given that the applicant was charged with a serious offense, armed robbery, carrying a minimum punishment of thirty years' imprisonment, the interest of justice required that the applicant should have been provided with free legal aid irrespective of whether he requested it. [81–82]

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

— The Court held that the applicant was deprived of the opportunity to be fully informed of the proceedings and of the charges levelled against him as the applicant did not receive the file and his lawyers were refused on-site consultation. [162]

* Evodius Rutechura & Theobard Nestory v. The United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

— * Evodius Rutechura was one of two individuals involved in burglary of the house of Erodia Jason in Mwanza in 2003, during which Erodia's daughter Arodia was shot dead. Rutechura was convicted of murder and sentenced to death by hanging at the High Court in Mwanza, Tanzania, in 2008.

— Mr. Rutechura filed an appeal a few weeks later to the Court of Appeal in Mwanza, which was heard and dismissed in 2010. He filed an application for review of this judgement in 2012,

but withdrew this application in 2015, applying instead for an extension of time which was denied. Another application was filed in 2016 for the court to quash his conviction and imprisonment; release him from custody and grant him reparations.

— Mr. Rutechura alleged that the State violated Articles 7(1) and 7(1)(c) of the Charter by dismissing his application for review outside time; failing to provide him with free legal representation; and failing to evaluate the evidence properly. The Court dismissed all three of these allegations stating that: "the important consideration is whether the accused was given effective legal representation rather than whether he or she was allowed to be represented by a lawyer of their own choosing." [73]

2. Sufficiency of Evidence/Presumption of Innocence

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission found that Article 7(1)(b) of the Charter was violated because "the presiding judge declared that the refusal of the accused persons to defend themselves was tantamount to an admission of guilt." [95]

Interights et al. (on behalf of Mariette Sonjaleen Bosch) v. Botswana, (2003) [ACmmHPR]

— According to the Commission "the issue is whether the misdirection by the trial judge in regard to the onus of proof was so fatal as to negate the right to fair trial in the circumstances of this case. Simply put, does a misdirection per se vitiate the holding of a fair trial in violation of Article 7 of the African Charter and of necessity leads to the quashing of a conviction with capital consequences." [22]

— The Commission determined that (where the trial judge placed the burden on the defendant to prove she was not guilty) this misdirection did not vitiate the verdict of guilt. The Commission determined that "the rule that a misdirection will vitiate a verdict of guilt only where such misdirection either on its own or cumulatively is or are of such a nature as to result in a failure of justice." The Commission further found that "where a court is satisfied that despite any misdirection or irregularity in the conduct of the trial the conviction was safe, the court would uphold such conviction." [24]

— The Commission upheld the conviction, drawing from decisions taken in the European Court of Justice on Article 6(2) of the European Convention on Human Rights (which provided for the presumption of innocence) finding that "if the lower court has not respected the principle of presumption of innocence, but the higher court in its decision has eliminated the consequences of this vice in the previous proceedings, there has been no breach of [the principle of presumption of innocence]". [27]

— The Commission declined to review the validity of the evidence used to convict the defendant, finding that "it is for the courts of State Parties and not for the [African] Commission to evaluate the facts in a particular case and unless it is shown that the courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice, the Commission cannot substitute the decision of the courts with that of its own." [29]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— "[T]he African Commission condemns the fact that State officers carried out the publicity aimed at declaring the suspects guilty of an offence before a competent court establishes their guilt. Accordingly, the negative publicity by the government violates the right to be presumed innocent, guaranteed by Article 7(1)(b) of the African Charter." [56]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— The Commission agreed that the Proclamation setting up the Special Prosecutor Office itself presumed the complainants' guilt, thereby violating the principle of presumption of innocence (the relevant provision in the Proclamation is at para 133). [186]

— No guilt should be presumed until a charge has been proved beyond reasonable doubt. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial. The African Commission found a violation of the right to be presumed innocent based on a state's negative pre-trial publicity (see *Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v Nigeria and Media Rights Agenda/Nigeria*). [190]

— In *Law Office of Ghazi Suleiman/ Sudan*, the Commission found a violation of Article 7(1)(b) for the following reasons: (a) high-ranking government officials and investigators had publicly asserted the defendant's guilt; (b) government-orchestrated publicity stated that the defendants were behind a coup attempt against the state; and (c) Sudan did not conceal its bias against the defendants, showing open hostility towards the victims by declaring that "those responsible for the bombings will be executed." As Sudan had publicly pre-judged the defendants before a proper court had established their guilt, a violation of Article 4 was found. [191]

— The Commission's principles and guidelines state that "public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect." [192]

— The Commission concluded that statements made by the respondent state at the pre-trial and trial period demonstrate the government's hostility and bias towards the victims. [192]

— The existence of a growing suspicion of a person in the course of the criminal proceeding is not per se contrary to the principle of presumption of innocence. Neither is the fact that such mounting suspicion justifies the adoption of safeguards, such as pre-trial incarceration. However, these must be implemented with the discretion and circumspection necessary to respect the presumption of innocence. [194]

Jean-Marie Atangana Mebara v. Cameroon, (2016) [ACmmHPR]

— The terms "theft," "embezzlement" and "are not innocent" used by persons representing government authorities denote a presumption of guilt, when the subject of the communication is still awaiting a final judgement, is a violation of the right to be presumed innocent. [103]

Ingabire Victoire Umuhoza v. Rwanda, (2017) [Afr. Ct. H.P.R.]

— The Court noted that "presumption of innocence is a fundamental human right." [82] "The essence of the right to presumption of innocence lies in its prescription that any suspect in a criminal trial is considered innocent throughout all the phases of the proceedings, from preliminary investigation to the delivery of judgment, and until his guilt is legally established." [84] In this case, the Court did not find a violation of this right because the applicant did not adduce evidence to that effect.

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Even if the applicant had given up on calling his witnesses, the fact remains that witnesses did not cease to be necessary in the course of the trial, to ensure equality before the law. It was necessary for the respondent state's judicial authorities to be more proactive, in particular, in ascertaining whether the applicant no longer intended to call his witnesses either because he did not actually want them to appear on his behalf or because he did not have the means to obtain their attendance. The respondent state has violated

the applicant's right to defense under Article 7(1)(c) of the Charter by failing to ensure the appearance of his witnesses. [65–67]

— The Court emphasized the need to obtain clarification on issues or situations likely to impact the decision of the judges. In this case, there were contradictions between the statements given by the witnesses, all of whom are relatives of the victim. Coupled with the fact that the accused was not assisted by counsel, it would have been desirable for the prosecuting authorities to exercise greater effort in terms of due diligence to corroborate the victim's statements and clarify the circumstances of the crime. The Court held the applicant's right to a fair trial provided for in Article 7 of the Charter had been violated, as the victim's and prosecution witnesses' statements were not corroborated, and the circumstances of the crime were not clarified. [77]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— "The Court underscores that domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings." [65]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that the errors relating to "the value of the property, proof that the offence of armed robbery occurred, the authenticity of the Police Form 3 issued to the alleged victim of the armed robbery and the causal connection between the Applicant and the allegedly recently stolen goods" do not necessarily lead to the denial of the applicant's right to a fair trial. [131]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— On the allegation that the evidence relied upon to convict the applicant was defective, the Court reiterated its position that it does not have the power to evaluate matters of evidence that were settled in national courts, but it had the power to determine whether the assessment of the evidence in the national courts complies with relevant provisions of international human rights instruments. [61–63]

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

— The Court noted that "respect for the presumption of innocence is binding not only on the criminal judge but also on all other judicial, quasi-judicial and administrative authorities." [192] In this case, high level political and administrative authorities made public statements in relation to the applicant prior to the domestic court's judgment, which had the effect of creating in the mind of the public suspicions regarding the applicant's guilt. As such, the Court found that Article 7(1)(b) of the Charter was violated. [194]

— However, the Court held that Article 7(1)(b) was not violated on the basis that the applicant's acquittal was on the benefit of doubt, as there were no ambiguity in terms of the judgment of the domestic court. The Court noted that "this would only be the case if the terms of the acquittal decision on the benefit of doubt leaves room to believe that the person being discharged is guilty." [195-196]

3. Right of Defendants to Present Evidence

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Even if the applicant had given up on calling his witnesses, the fact remains that witnesses did not cease to be necessary in the course of the

trial, to ensure equality before the law. It was necessary for the respondent state's judicial authorities to be more proactive, in particular, in ascertaining whether the applicant no longer intended to call his witnesses either because he did not actually want them to appear on his behalf or because he did not have the means to obtain their attendance. The respondent state has violated the applicant's right to defense under Article 7(1)(c) of the Charter by failing to ensure the appearance of his witnesses. [65–67]

— The Court emphasized the need to obtain clarification on issues or situations likely to impact the decision of the judges. In this case, there were contradictions between the statements given by the witnesses, all of whom are relatives of the victim. Coupled with the fact that the accused was not assisted by counsel, it would have been desirable for the prosecuting authorities to exercise greater effort in terms of due diligence to corroborate the victim's statements and clarify the circumstances of the crime. The Court held the applicant's right to a fair trial provided for in Article 7 of the Charter had been violated, as the victim's and prosecution witnesses' statements were not corroborated, and the circumstances of the crime were not clarified. [77]

4. Right to Be Tried Within a Reasonable Time (Extended Pretrial Detention), Right to Be Notified of Charges, and Right of Access to Courts

Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi, (1995) [ACmmHPR]

— The Commission found that the Government of Malawi violated Articles 7(1)(a) and (1)(d) of the Charter because the first applicant "was detained indefinitely without trial." [9]

— The Commission also found that the second and third applicants were "tried before the Southern Region Traditional Court without being defended by a counsel. This constitutes a violation of Article 7(1)(c) of the Charter." [10]

William A Courson v. Equatorial Guinea, (1997) [ACmmHPR]

— The Commission held that Article 7(1)(c) of the Charter would be violated if the accused were not "informed of the charges against him, as well as the evidence of the said charges," and this included "all sorts of elements required to prepare his defence." [21]

— The Commission could not conclude that Article 7(1)(c) was violated given the circumstantial nature of the evidence. Further, the Commission noted that it "deplores the silence maintained by the parties in spite of its repeated request for information relating to the exhaustion of local remedies and other procedural aspects of the case. It is the view that such a lack of co operation does not help the Commission to have a clear and precise understanding of the case brought before it." [23]

Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, RADDHO, Organisation nationale des droits de l'Homme au Sénégal and Association malienne des droits de l'Homme v. Angola, (1997) [ACmmHPR]

— The Commission held that Article 7(1)(a) of the Charter was violated because the victims "did not have the opportunity to challenge the matter before the competent jurisdictions which should have ruled on their detention, as well as on the regularity and legality of the decision to expel them by the Angolan government." [19]

Constitutional Rights Project v. Nigeria, (1999) [ACmmHPR]

— The Commission stated that "[i]n a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimize the negative effects on the life of a person who, after all, may be innocent." [19]

— The Commission found that when "nearly two years can pass without even charges being filed is an unreasonable delay," and as such Article 7(1)(d) of the Charter was violated. [20]

Rights International v. Nigeria, (1999) [ACmmHPR]

— "That except for the five minutes discussion Mr. Wiwa had with his grandfather, he was not allowed access to his relatives or to counsel, and was neither informed of the nature of the offence nor the reasons for his arrest and detention, in violation of Article 7(1)(c) of the Charter," held the Commission. [28]

Huri-Laws v. Nigeria, (2000) [ACmmHPR]

— "The Complainant states that up to the date of filing this communication no reason has been given for the victims' arrest and detention, nor have any charges been pressed against them [...] The failure and/or negligence of the security agents of the respondent state to scrupulously comply with these requirements is therefore a violation of the right to fair trial as guaranteed under the African Charter," held the Commission [43–44]

— Not allowing prisoners to challenge their detention and failing to promptly bring victims before a judge was held by the Commission to be a violation of Article 7.

Movement burkinabé des droits de l'Homme et des peuples v. Burkina Faso, (2001) [ACmmHPR]

— The request made by the complainant had not been met as the Supreme Court, where his case was filed 15 years ago, had not passed verdict. There was also no reason with a basis in law that was given to justify the delay in considering the case. This was accordingly considered a violation of Article 7(1)(d) by the Commission. [40]

Liesbeth Zegveld & Mussie Ephrem v. Eritrea, (2003) [ACmmHPR]

— The Commission held that "the lawfulness and necessity of holding someone in custody must be determined by a court or other appropriate judicial authority. The decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. Therefore, persons suspected of committing any crime must be promptly charged with legitimate criminal offences and the State should initiate legal proceedings that should comply with fair trial standards as stipulated by the African Commission in its Resolution on the Right to Recourse and Fair Trial and elaborated upon in its Guidelines on the Right to Fair Trial and Legal Assistance in Africa." [56]

— The Commission found that there was a violation of the applicants' rights to liberty and recourse to fair trial under Article 7 because the applicants have been "held in secret detention without any access to the courts, lawyers or family." [57]

Odjouoriby Cossi Paul v. Benin, (2004) [ACmmHPR]

— The complainant in this case had filed an appeal to the Appeal Court of Cotonou on September 19, 1995. The opponent in that case filed a cross-appeal in reply to the principal appeal. Neither party had received a judgment before the filing of the instant case on April 8, 1997, and judgment was still pending by the time the Commission released this communication on June 4, 2004. The Commission held that the case before the Appeal Court had been unduly

prolonged and that this was "contrary to the spirit and the letter" of Article 7.1(d). [25–28]

Article 19 v. Eritrea, (2007) [ACmmHPR]

— The Commission held that "[h]olding the victims incommunicado for over three years demonstrates a prima facie violation of due process of the law and in particular, Article 7 of the African Charter. By not taking any action to remedy the situation more than twelve months after the African Commission had been seized of the communication goes to demonstrate that the State has equally failed to demonstrate that domestic remedies are available and effective." [76]

— "The fact that the detainees are being held incommunicado also merits further consideration in terms of international human rights law. The United Nations Human Rights Committee has directed that States should make provisions against incommunicado detention, which can amount to a violation of Article 7 (torture and cruel treatment and punishment) of the International Covenant on Civil and Political Rights, to which Eritrea has acceded." [101]

— "The Commission holds that there has been a violation of Article 7(1)(c), since the detainees have been allowed no access to legal representation, contrary to the right to be defended by counsel which is protected by that provision of the Charter." [103]

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— "The Complainants were held in several Angolan detention centres, including Canfunfu, Saurimo and Kisangili. They were held there arbitrarily as they knew of no laws forbidding their residence and work in Angola prior to their arrest, and that during their detention they were afforded no explanations as to their arrest and detention and no the opportunity to speak to a lawyer or go before a judge." [57]

— The Commission held it to be "a clear violation of Article 7(1)(a)." [58]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— "The victims were detained for three years before their trial finally started in 1994. Their trial dragged on for more than 13 years before a final judgment was reached in 2007. The pre-trial detention of the victims and their long, continuous detention, even after they were charged, essentially meant substituting pre-trial detention for their punishment. The African Commission agreed that their long, preventive custody lost its purpose as an instrument to serve the interests of sound administration of justice. The prolonged imprisonment without conviction of the victims for a period of about 16 years violated their right to be presumed innocent. As held by the Inter-American Court, the deprivation of a person's liberty for a disproportionate time is the same as serving a sentence in advance of the judgment." [209]

— The Commission drew from the Inter-American Commission case *Dayra María Levoyer Jiménez v. Ecuador*, which stated that depriving the petitioner of her liberty for a period that exceeded one half the maximum penalty established for the offence is a violation of the principle of presumption of innocence. The Inter-American Commission concluded that the imposition of preventive detention for an indefinite period was tantamount to anticipating the punishment and reiterated that the "universally accepted general principles of law prohibit anticipating the punishment before sentencing." [208]

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

— "The victims were denied habeas corpus, thereby preventing them from having the opportunity of inquiring into the lawfulness of their detention. They were only brought before a judge almost one year after their arrest. The Commission agrees with the Complainants that

given the large number of arrested persons and the inherent risk that there were no sufficient grounds for the arrest and detention of at least some of the persons, it was all the more critical to bring all arrested individuals before a judge within the shortest possible time." [88]

— "The victims were not given access to a lawyer until the 26 February 2006; that is for more than nine months after they were arrested. The Commission considers that not having access to Counsel for such a long period of time while in detention impeded the ability of the victims to adequately assure their defence, and constitutes a violation of Article 7(1)(c) of the Charter." [90]

Jean-Marie Atangana Mebara v. Cameroon (2016), [ACmmHPR]

— In seven years of pre-trial detention, the Complainant was served six remand warrants, four separation orders and four committal orders without any of the successive charges being different from those of the initial indictment. [115]

— The Commission found that being detained beyond the maximum statutory detention period, combined with a lack of diligent measures justifying the relevance of the successive extensions obtained, represented a violation of Article 7(1)(d) of the Charter. [110]

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— According to case law from the European Court of Human Rights, "complexity can be, among other factors, due to: (i) the nature of the facts that are to be established, (ii) the number of accused persons and witnesses, (iii) international elements, (iv) the application joinder of the case to other cases, and (v) the intervention of other persons in the procedure. Therefore, a more complex case may justify longer proceedings." [139]

— The fact that there were ten accused persons does not make the case automatically complex. The decision to wait to link the applicants to other cases pending in another court whose proceedings were outside the control of the respondent state meant putting the rights and personal liberty of the applicants at the mercy of a foreign jurisdiction. The decision to then continue with the applicants case after failing to secure extradition of the 'other suspects' demonstrates that it was possible to separate the cases and prosecute them individually. The delay had therefore nothing to do with the complexity of the case and was as such unjustified. [144]

— The Court concluded that "the time was unreasonable not because of the complexity of the case, nor the action of the applicants, but ... because of the lack of due diligence on the part of the national judicial authorities. The Court cannot condone the respondent state's action of putting the case on ice for a period of almost two years on the grounds that the authorities were still investigating the matter or because they were waiting for the extradition of co-accused from another foreign jurisdiction. The Court found the respondent in breach of Article 7(l)(d) of the Charter, which guarantees the right to be tried within a reasonable time." [155]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— "The Court considers that the principle laid down in Alex Thomas v. The United Republic of Tanzania equally applies in this case in that the right of applicants to pursue possible redress available in the domestic system was affected by the delay in providing them with copies of the judgment. The Court accordingly considers that the failure of the respondent to provide the applicants with copies of the judgment of the Court of Appeal for almost two years, without adducing any justification, is an inordinate delay. The Court also holds that the delay certainly affected the right of the applicants to request for review within the time specified under the domestic law. ln view of the above, the Court finds that the unjustified delay of two years to deliver the copies of the judgment to the applicants violated their right to be heard under Article 7(1) of the Charter." [119–121]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Where applicants were informed of the charges against them four days after they were arrested, this is qualified as prompt notification because of the unique circumstances of the case. Here, the accused were accused of "the rape of children of tender age" and there was a possible need for further investigations. [80]

Lucien Ikili Rashidi v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court noted that where the applicant merely exercises his rights by amending the application and calling for the judges' recusals, the respondent state cannot then sanction him by contending that the applicant caused part of the delay. [105]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court listed several factors it considers when assessing the time period's reasonableness, including the matter's complexity, the parties' behavior, and the judicial authorities' behavior "who bear a duty of due diligence in circumstances where severe penalties appl[y]." [64]

— The Court first found that the case was not complex because the issues had been decided twice before, and the Court of Appeal dismissed the application for "lack of merit because it did not meet the required criteria warranting review." [67]

— Next the Court looked to who was responsible for the delay. It noted that the respondent state took "no substantial step" in completing the review while the applicants failed to provide a copy of their application for review. [69]

— The Court therefore found that the national court could not have decided the application without the applicants providing the file, and therefore the relevant delay was only two years out of an initial four years. Based on the case's severity, the Court found it reasonable that it took about two years to complete the review process. [73]

— The Court found that a two-year review process by the Court of Appeal of The United Republic of Tanzania "cannot be said to be unreasonable in a case involving murder punishable by death, where the Court of Appeal required sufficient time for an ultimate ruling, and bearing in mind scheduling constraints in the domestic judicial system." [72] As such, the Court found that Article 7(1)(d) of the Charter was not violated.

5. Right to Fair Trial

Civil Liberties Organisation (in respect of the Nigerian Bar Association) v. Nigeria, (1995) [ACmmHPR]

— The Commission found that a law prohibiting anyone from bringing legal proceedings against the exercise of the powers of Nigerian Bar Association's governing body (which included financial and disciplinary matters) was in violation of Article 7(1) of the Charter. The Commission held that "[t]he prohibition on litigation against these powers infringes the right to appeal to national organs," and contravenes the right that every individual shall have the right to have his cause heard. [14]

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— Communications 47/90 and 100/93 addressed to the Commission alleged unfair trials. The Commission accepted the facts of these allegations as true due to the nonresponse of

the Government of Zaire. Accordingly, it held that the Government of Zaire's actions violated Article 7 of the African Charter.

— "Article 7 of the African Charter protects the rights to life. Communication 47/90, in addition to alleged arbitrary arrests, arbitrary detention and torture, alleges extrajudicial executions which are in violation of Article 7." [43]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— "In its Resolution on the Right to Recourse Procedure and Fair Trial, the Commission had, in expounding on the guarantees of the right to fair trial under the Charter observed thus:... the right to fair trial includes, among other things, the following: (b) Persons who are arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them; The failure and/or negligence of the security agents who arrested the convicted person to comply with these requirements is therefore a violation of the right to fair trial as guaranteed under Article 7 of the Charter." [43–44]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia (2011) [ACmmHPR]

— "The African Commission observed that 'no circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial.'" [238]

— The right to a fair trial is dependent on the existence of certain conditions, includ[ing] the right to an impartial hearing, trial within a reasonable time and the presumption of innocence. [240]

Mr Mamboleo M. Itundamilamba v. Democratic Republic of Congo, (2013) [ACmmHPR]

— The failure by the complainant and the respondent state to produce the disputed decision by the Congolese Supreme Court did not mean any of the parties' right to have their submissions examined should be prevented or that the Commission is prevented from ruling on the alleged violations. [111]

— The burden of proof rests primarily with the alleging party, but it shifts in this case to the respondent state, or is at least equally shared between the parties, since the Commission subsequently requested the respondent state to produce the copy of the judgment in dispute. [129]

— The complainant was deprived of the opportunity to produce his file. In addition, the complainant's right to defense was restricted as he was not notified of the filings issued by the other side as required under the rules of the Congolese Supreme Court. [127]

* Evodius Rutechura Theobard Nestory v. The United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

— The Court held that the applicant's rights had not been violated: (1) the manner in which the application for leave to file for review out of time was handled in the national courts did not disclose any manifest error or miscarriage of justice and the Tanzanian Court of Appeal had dismissed his application in, accordance with its rules, because it did not demonstrate prospects of success; (2) there was no evidence that the applicant had not been effectively represented by the lawyers provided for him by Tanzania; and (3) the manner of the evaluation of evidence by the Court of Appeal was proper, the national courts having followed the procedures prescribed by the applicable laws.

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court stressed that "justice must not only be done but must be seen to be done." The Court held that "the national judge, before further consideration of the case, should have pushed for further investigations on the issue of conflict of interest [between the prosecutor and the applicant], asking the applicant to substantiate and prove his allegations; and then make a formal decision on the issue. As the judge did not take any of these actions, but merely chose to proceed with the trial, the Court holds that the respondent state has violated the right of the applicant to a fair trial under Article 7 of the Charter." [111]

— The Court held that the conviction of the applicant "based on the testimony of a single individual and riddled with inconsistencies, did not meet the requirements of a fair hearing under Article 7 of the Charter." [185]

— The Court stated that "[w]here an alibi is established with certainty, it can be decisive on the determination of the guilt of the accused," especially when in this case, "the indictment of the applicant relied on the statements of a single witness, and that no identification parade was conducted." [191] The Court further held that "[i]mplicit in the right to a fair trial is the need for a defence grounded on possible alibi to be thoroughly examined and possibly set aside, prior to a guilty verdict." [192] As the police and judicial authorities in this case have not taken seriously the alibi argument advanced by the applicant, despite the alibi being raised at the time of the police investigation and in the course of the trial, their actions constituted a violation of Article 7.

— The Court noted that "the Charter is silent on the principle of publicity of court decisions in relation to the right to a fair trial under its Article 7." [222] Despite that, the Court opined that "the question as to whether the judgment was delivered in public should be determined with some flexibility and not too formally." [224] The Court further held that "publicity of a judgment is assured as long as it is rendered in a premises or open area; provided the public is notified of the place and the latter can have free access to the same." [225] In this case, as it was not indicated that the Judge's chamber in which the hearing took place was not open and accessible to the public, and there was no allegation that the public has not been notified. On the contrary, "the delivery of court decisions in judges' chambers is a common practice due to insufficient space, and it can therefore be assumed that the public is aware of this practice." [226] As such, the Court held that "the fact that the delivery of the Judgment sentencing the applicant took place in the chamber of a Judge is not, in itself, a violation of his right to a fair trial." [227]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court finds the rejection of applicants' alibi dose not occasion a miscarriage of justice because the High Court and the Court of Appeal specifically addressed the alibi defense and rejected it after weighing it against the testimony of the witnesses. [105]

— On this claim, the Court explained that "[g] eneral statement to the effect that this right has been violated are not enough. More substantiation is required." [123]

— The Court notes that "Applicants have not provided sufficient evidence as to the alleged bias and to the possible implications of the alleged violations on the Trial Court's judgment." Accordingly, the Court finds that the applicant cannot prove the alleged violation. [124-125]

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The applicants submitted that the charges against them were not proved to the standard required in a criminal trial since no weapon was discover or tendered, and the owner of the

Bureau de Change where the robbery took place was never called to testify. [88]

— The Court noted that domestic courts had found that there was evidence to prove beyond reasonable doubt that the applicants committed the crime they were charged with despite the fact that the weapon alleged to have been used to commit the crime was not tendered in evidence, and the owner of the Bureau de Change did not testify. Additionally, the applicants did not provide sufficient evidence to show that the procedures followed by the domestic courts in addressing the issue of the weapon used to commit the crime and the testimony of owner of the Bureau du Change violated their right to a fair trial with respect to the standard of proof and therefore found that there was no violation of the applicants' rights to a fair trial in this regard. [94–95]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— "Article 7(1)(c) of the Charter and Article 14(3)(d) of the ICCPR [require] that the Applicant be present to defend himself." [91]

— The right to defend oneself implies "an accused's presence at each stage of the proceedings." [96]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that the United Republic of Tanzania's "automatic and mechanical application" of the death penalty pursuant to Section 197 of the Tanzanian Penal Code "does not permit a convicted person to present mitigating evidence and therefore applies to all convicts without regard to the circumstances in which the offence was committed." [108–109]

— The Court further held that the mandatory imposition takes away the discretion "which must inhere in every independent tribunal..., especially how proportionality should apply between the facts and the penalty to be imposed." [109]

— The Court found that the respondent state's Penal Code "does not uphold fairness and due process as guaranteed under Article 7(1) of the Charter" [111] and "constitutes an arbitrary deprivation of the right to life" [114] in violation of Article 4 of the Charter.

Mussa Zanzibar v. The United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

— Mussa Zanzibar was serving a thirty year prison sentence in Butimba Prison after being convicted of rape, having been charged in 2011 in the District Court of Chato. He filed two appeals to the High Court of Bukoba in 2012 and 2014, both of which were dismissed. He filed another appeal, this time to the Court of Appeal of Tanzania in 2016.

— This final appeal had three allegations that he claimed violated his right to a fair trial: (1) the District Court's conviction was based on the evidence provided by a single witness without the court satisfying itself that this witness was telling the truth; (2) the District Court did not resolve contradictions and inconsistencies in the prosecution evidence; and (3) the District Court did not warn itself of the need for evidence beyond reasonable doubt before convicting him. [5]

— The respondent state objected to the Court's jurisdiction over the Application in accordance with Article 3 of the Protocol, but the Court determined that it had material, personal, territorial and temporal jurisdiction to review the Application.

— The Court dismissed Mr. Zanzibar's claims, saying that it did not have basis to interfere in the findings of the municipal court, and therefore it's assessment of the evidence was adequate. The Court found that the District Court did violate Article 7 because it did not offer Mr. Zanzibar free legal assistance. [73]

— Owing to the violation of Article 7 read together with Article 14(3) of the ICCPR through the failure to provide free legal assistance, the Court compensated Mr. Zanzibar with TZS 300,000. His request for release, however, was dismissed.

6. Right to Be Tried by an Impartial Court or Tribunal

Constitutional Rights Project (in respect of Wahab Akamu, G. Adega and others) v. Nigeria, (1995) [ACmmHPR]

— The Commission recommended that the Government of Nigeria free the Complainants, where jurisdiction for the trial had been "transferred from the normal courts to a tribunal chiefly composed of persons belonging to the executive branch of government, the same branch that passed [the law allowing for the tribunal], whose members do not necessarily possess any legal expertise." [14]

— "Article 7(1)(d) of the African Charters requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack, of impartiality. It thus violates Article 7(1)(d)." [14]

International PEN, Constitutional Rights Project, (1998) [ACmmHPR]

— The Commission held that "[r]emoving cases from the jurisdiction of the ordinary courts and placing them before an extension of the executive branch necessarily compromises their impartiality, which is required by the African Charter." [86]

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— The Commission held that because the special courts were controlled by the executive, they were not impartial. "The government confirms the situation alleged by the Complainants in respect of the composition of the Special Courts. National legislation permits the President, his deputies and senior military officers to appoint these courts to consist of 'three military officers or any other persons of integrity and competence.' The composition alone creates the impression, or indicates the reality, of lack of impartiality, and as a consequence, violates Article 7(1)(d) The government has a duty to provide the structures necessary for the exercise of this right. By providing for courts whose impartiality is not guaranteed, it has violated Article 26." [68]

— "The government does not contest the allegation of dismissal of over one hundred judges who were opposed to the formation of special courts and military tribunals. To deprive courts of the personnel qualified to ensure that they operate impartially thus denies the right to individuals to have their case heard by such bodies. Such actions by the government against the judiciary constitute violations of Articles 7(1)(d) and 26 of the Charter." [69]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held Article 7 to be violated because the presiding court was comprised of one senior military officer and two assessors, both military men. "Withdrawing criminal procedure from the competence of the courts established within the judicial order and conferring onto an extension of the executive necessarily compromises the impartiality of the Courts, to which the African Charter refers." [98]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— The Commission "considers the arraignment, trial and conviction of [the applicant], a civilian, by a Special Military Tribunal, presided over by serving military officers, who are still subject to military commands, without more, prejudicial to the basic principles of fair hearing guaranteed by Article 7 of the Charter." [61] The Commission further stated that the military courts "should not, in any circumstances whatsoever, have jurisdiction over civilians. Similarly, special tribunals should not try offences that fall within the jurisdiction of regular courts." [62]

Sir Dawda K. Jawara v. Gambia (The), (2000) [ACmmHPR]

— The Commission held that the powers granted to the Minister of Interior, which allowed for the detainment of anyone without trial for up to six months and for extending the period ad infinitum, was a violation of Article 7(1)(d) of the Charter. This is because the powers "are analogous to that of a court," and "the victims will be at the mercy of the Minister," which contravenes the right to be tried by an impartial court or tribunal. [61]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— The Commission held that "[t]his composition of the military court alone is evidence of impartiality [sic]. Civilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial. Likewise, depriving the court of qualified staff to ensure its impartiality is detrimental to the right to have one's cause heard by competent organs." [64]

Lawyers for Human Rights v. Swaziland, (2005) [ACmmHPR]

— "The acts of vesting judicial power in the King or ousting the jurisdiction of the courts on certain matters in themselves do not only constitute a violation of the right to fair trial as guaranteed in Article 7 of the Charter, but also tend to undermine the independence of the judiciary." [54]

Kevin Mgwanga Gunme et al v. Cameroon, (2009) [ACmmHPR]

— The Commission, finding a violation of Article 7(1)(b), considered that, as previously stated, "trial by military courts does not per se constitute a violation of the right to be tried by a competent organ. What poses [a] problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military. The accused persons were not military personnel. The offences alleged to have been committed were quite capable of being tried by normal courts, within the jurisdictional areas the offences were allegedly committed." [127–128]

Marcel Wetsh'okonda Koso and others v. Democratic Republic of the Congo, (2009) [ACmmHPR]

— The Commission, re-iterating established case law, considered that the trial of both civilians and militaries by a military tribunal presided over by a military officer on matters of a civilian nature constituted an infringement of the requirements of fair justice and the independence of tribunals under Articles 7.a, 7.b, 7.d and 26. [87]

— "According to the African Commission, the independence of a court refers to the independence of the court vis-à-vis the Executive. This implies the consideration of the mode of designation of its members, the duration of their mandate, the existence of protection against external pressures and the issue of real or perceived independence: as the saying goes "justice must not only be done: it must be seen to be done." The obligation to be independent is one and the same as the obligation to be impartial. Impartiality may be perceived in a subjective and objective manner. In a subjective manner, the impartiality of a judge is gauged by his internal inclinations. Since it is impossible to infer from this inclination objectively, it was simpler to conclude that subjective impartiality be assumed until proven otherwise. However, appearances cannot be ignored while gauging the impartiality of a jurisdiction. The obligation of having a jurisdiction established by law, capable of passing a judgement cannot be clearly disassociated from the above. The ability of a court to rule depends on the competence of the court to hear a case, and also depends on the caliber of its members. [...] The requirement of a fair trial presupposes that the parties to the suit

are able to present their respective cases without prejudice to either party. The flaws of a trial can be detected where a certain number of elements combined together have not been respected viz. the right to equality of means and the need for dissenting views. The requirements of a fair trial also presupposes that the courts are able to allow persons subject to trial to review the ruling passed. The principle of a two-tier court system is recognized by all. In the present case, there is a discriminatory justice system in the same that Article 5 applies differently depending on the persons concerned." [79–82]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The special courts utilized in this case were created by the executive branch. Judges were appointed at the discretion of the executive, and the President had the power to suspend cases and to give final approval on court rulings and the power to change a ruling or order a retrial. Cases were removed from ordinary court and placed under the jurisdiction of these special courts. The Commission found that this special court violated Article 7.

— "[T]he African Commission is of the view that the degree of control which the President of the Republic exercises over the composition, conduct and outcome of proceedings before the State Security Court is antithetical to the notion of an independent and impartial judicial process." [200]

— "Therefore, the African Commission notes that in all cases, the independence of a court must be judged in relation to the degree of independence of the judiciary vis-à-vis the executive. This implies the consideration of the manner in which its members are appointed, the duration of their mandate, the existence of protection against external pressures and the issue of real or perceived independence: as the saying goes, 'justice must not only be done: it must be seen to be done.'" [206]

— The Commission held that the state had the burden of proving its national court was independent and capable of giving an impartial ruling. [208]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— The complexity of a case should not debar domestic courts from acting with due diligence in dealing with a case on the merits. It is the responsibilities of the states' party to the African Charter to organize their judiciary in such a way that the right guaranteed in Article 7(1)(d) of the Charter can be effectively enjoyed. [235]

— In *Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso*, the African Commission found that 15 years without a decision on the relief sought or the fate of the people concerned or any action at all on the case amounted to a denial of justice and a violation of the right to an impartial trial within a reasonable time. In *Annette Pagnoulle (on behalf of Abdoulaye Mazou)/ Cameroon* the Commission found Article 7(1)(d) had been violated as the victim did not have a judgment on his case which was before the Supreme Court for two years, and he was not given any reason for the delay. [235]

— Where there is unacceptable duration, it is the obligation of the respondent state to adduce specific reasons for the delay. The respondent state has to prove that the case is complex enough to justify the delay. A mere affirmation that the delay was not excessive, as in the instant case, is not sufficient. Even if the respondent state did not intend to delay the proceedings, the Commission would still review the prejudice the delay had caused the defendant. [237]

Ingabire Victoire Umuhoza v. Rwanda, (2017) [Afr. Ct. H.P.R.]

— The Court held that the impartiality of a trial can be assessed by considering "1. that the position of the judicial officer allows him or her to play a crucial role in the proceedings; 2. the judicial officer may have expressed an opinion which would influence the decision-making; 3. the judicial official would have to rule on an action taken in a prior capacity," as provided in the African Commission's Principles and Guidelines on the Right to a Fair Trial. [103]

— The impartiality of a trial will be compromised when, as provided in the Guidelines, "1. a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party; 2. a judicial official secretly participated in the investigation of a case; 3. a judicial official has some connection with the case or a party to the case; or 4. a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body." [104] The Court further held that a trial will not be deemed compromised if the applicant did not prove, with evidence from trial, any of these factors.

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— "The applicants alleged that the changing of the Magistrate denied them a chance to be heard and that therefore they did not have a fair trial." [97]

— The court found no violation of the applicants' rights to be tried by an impartial court because the applicants did not prove whether the Magistrates were biased, whether the evidence admitted by the Second Magistrate was prejudicial to their case or how the Magistrates failed to properly apply their discretion by proceeding with the matter rather than hearing it afresh. [104–105]

7. Right to an Interpreter

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that Article 7(1)(a) was violated because access to counsel was restricted or denied entirely, and any lawyers who were able to help had insufficient time to prepare the defense of their clients. [96]

— A violation of Article 7(1)(c) also occurred when the trials were conducted in Arabic, with only three of the twenty-one accused persons speaking fluent Arabic. "This means that the 18 others did not have the right to defend themselves," the Commission stated. [97]

Kevin Mgwanga Gunme et al v. Cameroon, (2009) [ACmmHPR]

— "The Commission states that it is a prerequisite of the right to a fair trial, for a person to be tried in a language he understands, otherwise the right to defense is clearly hampered. A person put in such a situation cannot adequately prepare his defense, since he would not understand what he is being accused of, nor would he apprehend the legal arguments mounted against him. The Commission recognizes that the respondent state is a bilingual country. Its institutions including the judiciary can use either French or English. However since not all the citizens are fluent in both languages, it is the State's duty to make sure that, when a trial is conducted in a language that the accused does not speak, he/she is provided with the assistance of an interpreter. Failing to do that amounts to a violation of the right to a fair trial." [129–130]

8. Right to Have a Cause Heard

Civil Liberties Organisation v. Nigeria, (1995) [ACmmHPR]

— The Commission held that "[t]he ousting of jurisdiction of the courts of Nigeria over any decree enacted in the past ten years, and those to be subsequently enacted, constitutes an attack of incalculable proportions on Article 7. The complaint refers to a few examples of decrees which violate human rights but which are now beyond review by the courts. An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed" [14]

Organisation mondiale contre la torture, Association Internationale des juristes democrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme v. Rwanda, (1996) [ACmmHPR]

— The Rwandan Government expelled Burundi Refugees without giving them a legal forum to challenge the expulsion. The Commission held this was a violation of Article 7.

Amnesty International v. Zambia, (1999) [ACmmHPR]

— Before the domestic courts, counsel for Zambia had argued that first of the applicants had been "accepted" by the Malawi immigration authorities. It was the view of the Commission that, "[w]hatever may have been the "legal" basis for such "acceptance," Malawi courts have ruled that [the defendants] were not citizens of Malawi. In addition, unlawful deportation could not be said to obliterate their rights in Zambia." [45]

— The Commission considered the prominent business and political status of the second applicant and determined that if the government had wished to act against him they could easily have done so. The Commission further stated that the fact that government did not take action could not justify the arbitrary nature of the arrest and deportation of the second applicant. He was entitled to have his case heard in the Courts of Zambia. [46]

Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria, (1999) [ACmmHPR]

— The Commission held that Article 7(1)(a) has been violated because of the ability of the executive to nullify litigation in progress. The Commission noted that abrupt nullification of ongoing litigation discourages litigation and puts the citizens into a vulnerable position given the absence of protection of individual rights. [33]

Constitutional Rights Project v. Nigeria, (1999) [ACmmHPR]

— The Commission stated that "[t]he Review Panel cannot be considered a competent national organ. Since it appears that the right to file for habeas corpus is also closed to the accused individuals, they have been denied their rights under Article 7(1)(a)." [20]

Women's Legal Aid Center (on behalf of Moto) v. The United Republic of Tanzania, (2004) [ACmmHPR]

— The Commission found that dismissing the appeal without giving the applicant the opportunity to be heard and without considering the consequences that may have on her claim to property and child custody did not conform with the requirements of the African Charter and the principles of natural justice. [44]

— The Commission found that "[t]he combined reading of Order IX Rule 8 and Rule 9 (1) of the United Republic of Tanzania's Civil Procedure Code 1966, clearly shows that the dismissal of a suit by the High Court is not unassailable." Where a plaintiff fails to appear before court, as long as that plaintiff can show sufficient cause

for non-appearance, the court should allow the case to proceed. [39-41]

— "The High Court may exercise discretion, on a case by case basis, in deciding whether the cause shown before it to have the dismissal set aside is sufficient or not." [41]

— The role of the African Commission is not to delve into the interpretation of local laws. "Yet, the effect of their application, should it run contrary to the natural justice principle underlying Article 7(1)(a) of the African Charter, can be a proper subject before the African Commission." [43]

Zimbabwe Human Rights NGO Forum v. Republic of Zimbabwe, (2006) [ACmmHPR]

— "This Commission is of the opinion that by passing the Clemency Order No. 1 of 2000, prohibiting prosecution and setting free perpetrators of "politically motivated crimes," including alleged offences such as abductions, forced imprisonment, arson, destruction of property, kidnappings and other human rights violations, the State did not only encourage impunity but effectively foreclosed any available avenue for the alleged abuses to be investigated, and prevented victims of crimes and alleged human rights violations from seeking effective remedy and compensation." [211]

— "The protection afforded by Article 7 is not limited to the protection of the rights of arrested and detained persons but encompasses the right of every individual to access the relevant judicial bodies competent to have their causes heard and be granted adequate relief. If there appears to be any possibility of an alleged victim succeeding at a hearing, the applicant should be given the benefit of the doubt and allowed to have their matter heard. Adopting laws such as the Clemency Order No. 1 of 2000, that have the effect of eroding this opportunity, renders the victims helpless and deprives them of justice." [213]

Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa v. Zimbabwe, (2008) [ACmmHPR]

— The Commission held that Article 7 protections extend to civil suits including election petitions. "It should be noted that even though the matter before the Commission is a civil matter, the principles enshrined under 7(1) still apply in the consideration of this matter, that is, the principles to have one's cause heard and the principle to have one's matter decided within a reasonable time." [130]

— The time challenge focused on when the court issued the final judgement, not when it first heard the case. The Commission rejected the claim, the enabling regulation for the judicial panel established a six month timeline which the panel met and which was reasonable, so the Commission did not find a violation of Article 7(1)(d). [135]

Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe, (2009) [ACmmHPR]

— "The right to have one's cause heard requires that the victims have unfettered access to competent jurisdiction to hear their case. A tribunal which is competent in law to hear a case must have been given that power by law: it has jurisdiction over the subject matter and the person, and the trial is being conducted within any applicable time limit prescribed by law. Where the competent authorities put obstacles on the way which prevents victims from accessing the competent tribunals, they would be held liable. These are the issues which must be borne out [sic] by the evidence to warrant the Commission's findings of a violation. In the present communication, it is clear that the respondent state did not want the victim to be heard in the Supreme Court. To ensure that this happened, the respondent state deported him out of the country before the date scheduled for the hearing, thus effectively preventing him

from being heard. Admittedly, the victim could still have proceeded against the respondent state from wherever he was deported to, but by suddenly deporting him the respondent state frustrated the judicial process that had been initiated. To this extent, the respondent state is found to have violated Article 7.1.a of the African Charter." [106-108]

— "Regarding the allegations concerning the violation of Article 7.1.b, the Commission finds that the deportation was effected in disregard of several High Court orders. The Immigration officers refused, or failed to produce Mr Meldrum as was ordered by the Court. By doing so they denied him the right to be heard by a competent and impartial tribunal. Instead they acted under the Immigration Act without affording him an opportunity to defend himself. The actions of the respondent state amounted to a conclusion that Mr Meldrum was guilty of the allegations against him, contrary to the presumption of innocence. The Commission finds that the conduct of the respondent state amounted to a violation of Article 7.1.b as alleged by the Complainants." [109]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— The victim had not been convicted by a court of law, but had been expelled from the respondent state by an order of an executive organ – the President of Botswana relying on a domestic legislation which gives him powers to declare a person as a prohibited immigrant without giving any reason. [165]

— Where authorities put obstacles in the way which prevent victims from accessing the competent tribunals or which oust the jurisdiction of judicial organs to hear alleged violations of human rights, it denies victims of human rights violations the right to have their causes heard. [169]

— The victim was not prevented from accessing the courts. Both the High Court and the Court of Appeal of the respondent state heard his case but ruled that the Botswana Immigration Act did not allow the courts to review the decision of the President. In other words, the Act ousted the jurisdiction of the courts to entertain the matter. [172]

— "[A]n ouster clause, be it through a military decree or an Act of Parliament, has the same effect of preventing national judicial organs from entertaining alleged human rights violations, thus denying victims of human rights abuses the right to have their causes heard. [173]

— While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of the Charter, to foreclose any avenue of appeal to competent national organs violates Article 7(1)(a) of the African Charter (*Constitutional Rights Project v Nigeria*). [173]

— The right to a fair trial, which includes the right to have one's cause heard, to be informed of reasons and to seek appropriate remedy, is an absolute right that cannot be derogated from in any circumstance, including for the public interest. [175]

— Where a government has reason to believe that a citizen or a non-national legally within its territory poses a threat to national security, it should bring evidence before the courts against the person. Not doing so may lead to the possibility of abuse where individuals can be detained or expelled on mere suspicion of being security threats. [177]

— It is dangerous for the protection of human rights for the executive branch of the government to operate without such checks as the judiciary can usually perform. This is especially true in this case where there is a law which gives too broad a power to the executive and prohibits courts from checking the use of such broad powers. [178]

— While the victim was able to access judicial organs to have his cause heard, the ouster of the judiciary made that access illusory. Therefore, as far as the victim's case is concerned, there was no competent national judicial organ within

the respondent state, which was competent in law to hear the case, that has been given that power by law and has jurisdiction over the subject matter and the person. In the present case, the High Court and the Court of Appeal have not been given that power and consequently do not have jurisdiction over the subject matter." [179]

— The sections of the Botswana Immigration Act which prohibit a review of the President's decision by all judicial organs not only violate Article 7(1)(a) but also threatens the independence of the judiciary guaranteed under Article 26. [180]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The Commission noted that "the concerns needs and interests of victims can only be addressed in judicial proceedings when these proceedings are impartial, taking into consideration facts and appropriate laws. The primary concern should therefore be to ensure that victims of human rights violations are redressed accordingly by giving them an opportunity to appeal decisions from other judicial bodies." [219]

— "Particularly, the appeal mechanism must be premised on the recognition that the right to appeal is a fundamental right under international law in which all victims are entitled to. Failing to allow victims to appeal decisions is contrary to the guiding principles and spirit of the African Charter and other international and regional instruments." [220]

— The victims in the present case appealed to the PPO and, following the result, appealed to the Appeal Chamber which dismissed their appeal and upheld the decision of the PPO. Therefore, "the victims had the opportunity to be heard by the Appeal Chamber and therefore cannot claim that their right to appeal under Article 7 of the African Charter was violated. Furthermore, their appeal was also entertained by the PPO even though the result was not satisfactory to them." [221]

— "The issue of the appeal process being impartial or independent in itself, and as a result, showing the lack of impartiality and independence of the Appeal Chamber and the PPO does not fall within the ambit of Article 7 and 26 of the African Charter." [222]

— The complainants did not substantiate the extent to which both institutions, or give enough reasons to support the allegations that both institutions were not impartial and independent. "Thus, in the absence of any information, substantiated by relevant evidence to support the allegations, the Commission cannot conclude that both institutions lacked impartiality and independence." [224]

— The complainants also alleged that the victims did not have an impartial and objective investigation. Though the Commission agreed with the complainants' submissions that the investigation carried out by the PPO was not impartial and jeopardized the victims' right to an effective remedy, the Commission concluded that the impartiality of the investigative process should be separated from the allegations related to Article 7(1)(a) and 26 of the African Charter. Even though a lack of impartiality of the investigations amounted to a violation of the victims' right to effective remedies, it cannot be classified as a violation of the victims' rights under Articles 7(1)(a) and 26 of the African Charter, which form the basis of the current analysis. [231, 234]

— There is no violation of Article 7(1)(a) of the African Charter for the mere reason that the victims had an opportunity to appeal their claims in the Appeal Chamber. [238]

Dino Noca v. Democratic Republic of the Congo, (2012) [ACmmHPR]

— Anyone who feels that his rights have been violated has the right to bring his case before the relevant national courts. Thus, the position or status of the victim or those of the alleged perpetrator do not matter. This means that any person whose rights have been violated, including by persons acting in their official

capacity, should be entitled to an effective remedy before a competent and impartial judicial body and enjoy the right to have his case heard without any discrimination. The states which are party to the African Charter have a duty to ensure that the judicial organs are accessible to all and that all parties have the opportunity to present their defense in a fair manner. [187-188]

— The Commission stated it believed that when the authorities put impediments in the way to prevent victims from having access to competent courts, they deprive victims of their right to have their case heard. [192]

— The protection afforded by Article 7 is not limited to the protection of the rights of persons arrested and detained but includes the right of everyone to have access to relevant judicial bodies with jurisdiction to hear their case and grant them adequate compensation (*Zimbabwe Human Rights NGO Forum vs. Republic of Zimbabwe*). [193]

— A decision cannot have legitimacy when both sides have not been heard with due respect for the principle of equality of arms. [198]

Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court considered several aspects of the right to have one's cause heard by competent national courts: (i) duration of the proceedings in the local courts; (ii) the role of the prosecutor in the judicial system of the respondent state; (iii) the issue of withdrawal of an investigating magistrate; (iv) the issue of a witness failing to appear; (v) the involvement of parties in the civil suit; and (vi) the question of the despatch with which the respondent state guaranteed this right in the instant case. [119]

— The Court held in the instant case respectively with regards to each issue: (i) given its conclusion that the procedure in the local courts had been unduly prolonged, the case was not addressed within reasonable time [120]; (ii) it could not be said that the institution of a prosecutor was in itself and by its nature contrary to Article 7, as long as the existence of such institution did not affect the independence of the jurisdiction [125]; (iii) there was no such withdrawal [131]; (iv) the allegation was unfounded [135]; (v) when looking at whether a hearing of the civil parties was fair, what was relevant was that the hearings actually took place before a magistrate, even if towards the end of the procedure, and on the absence of adversarial procedure between the suspect and the civil parties, it was on the national judge to determine whether this was necessary and useful based on the specific circumstance of the case [139-140]; and (vi) a review of the case revealed that there had been discrepancies and laxities in the treatment of the matter by the local courts in (a) the unreasonable duration of the proceedings and lack of prompt dispatch by the state required to ensure the effectiveness of the remedies, (b) the failure by the authorities to explore alternative areas of investigation, (c) the late hearing of the action in respect of damages, and (d) the failure by the respondent state to pursue further investigation after the order to terminate proceedings against the accused, when no suspect had been placed on trial and found guilty and abandonment of the search for the murderers. [152-155]

— In view of all the above, the Court held that the respondent state had not acted with due diligence in seeking out, prosecuting and placing on trial those responsible for the murders and had therefore violated the rights of the applicants to have their case heard by competent national courts under Article 7. [156]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— "The Court considers that the principle laid down in Alex Thomas v. The United Republic of Tanzania equally applies in this case in that the right of applicants to pursue possible redress available in the domestic system was

affected by the delay in providing them with copies of the judgment. The Court accordingly considers that the failure of the respondent to provide the applicants with copies of the judgment of the Court of Appeal for almost two years, without adducing any justification, is an inordinate delay. The Court also holds that the delay certainly affected the right of the applicants to request for review within the time specified under the domestic law. In view of the above, the Court finds that the unjustified delay of two years to deliver the copies of the judgment to the applicants violated their right to be heard under Article 7 (1) of the Charter." [119-121]

Anudo Ochieng Anudo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— "The court, in any case, holds that even if, in the silence of the aforementioned immigration law, the Applicant had, under a general principle of law, the right to seize a national court, but the fact that he had been arrested and then expelled immediately to Kenya, did not afford him the possibility of exercising such a remedy. Besides, when he later found refuge in the no-man's land, it was very difficult for him to exercise this remedy." [114]

— "The Court finds in conclusion that, by declaring the Applicant an 'illegal immigrant' thereby denying him Tanzanian nationality, which he has, until then enjoyed, without the possibility of an appeal before a national court, the respondent state violated his right to have his cause heard by a judge within the meaning of Articles (1) (a), (b) and (c) of the ICCPR." [115]

Werema Wangoko Werema and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court held that the right to have one's cause heard "does not cease to exist after the completion of appellate proceedings. In circumstances where there are cogent reasons to believe that the findings of the trial or appellate courts are no longer valid, the right to be heard requires that a mechanism to review such findings should be put in place. This is the case if there is new evidence which would potentially lead the trial or appellate court to reverse its decision or make substantially different findings." [69]

— Article 7 of the Charter was not violated in this case because the new evidence, a letter from the Commission for Human Rights and Good Governance (a governmental organ in the United Republic of Tanzania), was on the basis of a preliminary investigation rather than a full investigation into the matter. As such, the Court held that it was "not in a position to conclude that there would have been a substantially different outcome in the decisions of the domestic courts, had this letter been available during the trial and appellate proceedings." [73]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court observed that Article 7(1) of the Charter can be "read in light of Article 14 of the International Covenant on Civil and Political Rights, which deals with the said rights in a greater detail." Therefore, the Court found that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The Court also noted that it should "ensure that the evaluation of facts and evidence by domestic courts was not manifestly arbitrary or did not result in a miscarriage of justice to the detriment of the Applicant." [78, 80]

— Therefore, the Court held that the applicants' right to a fair trial was not violated because the domestic court "examined all evidence tendered and found [the witnesses] credible." Furthermore, the Court pointed out that the applicants did not "refer to any provision in Tanzanian domestic law" supporting their arguments. [81]

— The Court denied the applicants' claim that having different judges for the preliminary hearing and the trial did not violate the right to be heard by a competent court. The Court pointed to Section 192 of the Tanzanian Criminal Procedure Act, stating that the law does not require the same judge to preside over both the preliminary hearing and the trial. [90, 91]

9. Right to an Appeal

Constitutional Rights Project (in respect of Zamani Lakwot and six others) v. Nigeria, (1995) [ACmmHPR]

— The Commission ruled that the special tribunals violated Article 7(1)(a) of the African Charter due to the Civil Disturbances Act, which prevented the accused from appealing their sentences or accessing any judicial remedy. The lack of effective defense counsel (since defense counsel had to withdraw during the trial due to harassment) violated Article 7(1)(c). Also, the fact that the tribunal was composed of one judge and four members of the armed forces (part of the executive branch, which passed the decree constituting the tribunal) meant that the tribunal failed to satisfy the requirements of impartiality under Article 7(1)(d) of the African Charter.

— "While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of [Articles 4 and 6] rights, to foreclose any avenue of appeal to 'competent national organs' in criminal cases bearing such penalties clearly violates Article 7(1)(a) of the African Charter, and increases the risk that even severe violations may go unredressed." [11]

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The respondent state conceded that apart from the special tribunals there is no means of appeal to the regular courts. The Commission restated its previous decisions that "special tribunals violated the Charter because their judges were specially appointed for each case by the executive branch, and would include on the panel at least one, and often a majority, of military or law enforcement officers, in addition to a sitting or retired judge." [21] The Commission held that "the system of executive confirmation, as opposed to appeal, provided for in the institution of special tribunals, violate[d] Article 7(1)(a)." [22]

— This is the case even if the domestic courts are overburdened, in which case "the Commission recommends that the government consider allocating more resources to them. The setting up of a parallel system has the danger of undermining the court system and creates the likelihood of unequal application of the laws." [23]

* Forum of Conscience v. Sierra Leone, (2000) [ACmmHPR]

— The Commission held, despite the purely military nature of the trial, that "the denial of the victim's right of appeal to competent national organs in a serious offence as this [sic] falls short of the requirement of the respect for fair trial standards expected of such courts." [18] As such, the Commission found a violation of Article 7(1)(a).

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that the right to an appeal afforded by Article 7 has been violated because the national courts did not follow proper appellate procedure – "From all indications, the Court of Appeal simply confirmed the sentences without considering all the elements of fact and law. Such a practice cannot be considered a genuine appeal procedure. For an appeal to be effective, the appellate jurisdiction must, objectively and impartially, consider both the elements of fact and law that are brought before it. Since this

approach was not followed in the cases under consideration, the Commission considers, consequently, that there was a violation of Article 7(1)(a) of the Charter." [94]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— The Commission found a violation of Article 7(1)(a) of the Charter because "the decision of the tribunal that tried and convicted [the applicant] is not subject to appeal, but to confirmation by the Provisional Ruling Council, the composition of which is clearly partisan." [46]

Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, (2001) [ACmmHPR]

— The death sentence was issued by a Special Military Tribunal whose Chairman was a member of the Provisional Ruling Council ("PRC"). The Commission held that "[t]he decision of the tribunal is not subject to appeal, but confirmation by the PRC, the members of which are exclusively members of the armed forces." [7]

— Article 7 was violated according to the Commission because the PRC "arrogates to itself the role of Complainant, prosecutor and judge in its own cause," [32], foreclosing any avenue of appeal to a "competent national organ" for a "re-examination of the facts presented in the lower court." [34]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— According to the Commission, "the fact that the decisions of the military court are not subject to appeal and that civilians are brought to a military court constitutes a de jure procedural irregularity. Additionally, to prevent the submission of an appeal to competent national courts violates Article 7(1)(a) and increases the risk of not redressing the procedural defects." [53]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— In this case, victims could not appeal the ruling. The State argued that all judicial decisions were reviewable by the President and subject to Presidential approval, so there was an appeal process. The Commission held this violated Article 7.

— "The African Commission therefore reiterates that the essence of a higher tribunal is that, it affords the victims the opportunity to have their case re-examined on both law and facts by a judicial body. In this way the decision of the court below can be tested. The omission of the opportunity of such an appeal therefore greatly deprives the victims of due process". [203]

Groupe de Travail sur les Dossiers Judiciaires Stratégiques v. Democratic Republic of Congo, (2015) [ACmmHPR]

— "The Commission has already concluded that the sentencing of minors to the capital punishment by a Military Court is a violation of their right to life guaranteed by Article 4 of the Charter in cross review with other international obligations binding the Democratic Republic of Congo. The Commission notes that the parties are in agreement on the right of appeal in this present Communication, and also on the fact that the decisions of the Military Court cannot be opposed nor appealed against. It is obvious that the victims did not have the opportunity to access an alternative remedy before the competent national courts whereas the provisions of Article 7(1)(a) of the Charter provide them such a right.

On this issue, the respondent state reiterates the possibility of a presidential pardon. As indicated above, the Commission considers that this pardon cannot be viewed as a jurisdictional remedy as it depends on the goodwill of the President of the Republic. The respondent state further submits that the Military Court was abolished by Law No. 023/2002 of 18 November 2002 and replaced by military

jurisdictions that conform to the principle of second appeal. However, this abolition, from the perspective of the Commission, does not also make up for the past violations actually suffered by the victims." [79-80]

— The Commission found a violation of Article 7(1)(a) since the juveniles had not had the opportunity to appeal their sentence to competent national courts in access or an alternative remedy. The possibility of applying for a presidential pardon does not satisfy the right of appeal.

— The Commission reiterated the importance of the right to appeal under Article 7(1)(a): "[i]n the absence of the right to remedy and appeal, the other rights under the Charter would be sheer illusion and vain proclamations." [78]

Mgosi Mwita Makungu v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The applicant claims that his right to have his cause heard, including the right to appeal, was violated when the respondent state failed to supply him with certified true copies of the records of proceedings and judgments of the two cases in which he was convicted by the District Court of Bunda. The applicant alleges that it is due to this failure that for more than twenty (20) years, he has been unable to file appeals against the decisions of the District Court of Bunda. The applicant maintains that this failure is a violation of his right under Article 7(1)(a) of the Charter. [54]

— "The Court therefore finds that by failing to provide the applicant with certified true copies of the records of proceedings and judgments in Criminal Case No. 244 of 1995 and Criminal Case No. 278 of 1995 heard at the District Court of Bunda, the respondent state has violated the applicant's right to appeal as provided under Article 7(1)(a) of the Charter." [65]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The African Commission has found that "the undue prolongation of the case at the appellate level is contrary to the letter and spirit of Article 7(1)(d) of the African Charter." [103]

— The European Court of Human Rights "has laid out three elements which should be taken into account to establish the fairness of the time incurred in judicial proceedings. These are: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities." [104]

— The Court has found that there was an inordinate delay in the hearing of the applicant's appeal by the Court of Appeal: a period of eight (8) years and three (3) months. The Respondent's contention that the delays were caused by the applicant was rejected by the Court. The Respondent was the source of the delay when it failed to provide the applicant with the record of proceedings he needed to pursue his appeal. [106-110]

10. Right to Reliable Identification Procedures

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— According to the Court, the respondent state violated applicants' right to a fair trial under Article 7 when it convicted applicants on the basis of an identification parade, which was conducted in a manner contrary to the Charter or other international human rights standards. [83-89]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court notes that "when visual identification is used as evidence to convict a person, all circumstances of possible mistakes should be ruled out...[T]he identity of the suspect should be established with certitude." [68] "This demands that visual identification should be corroborated by other circumstantial evidence and must be part of a coherent and consistent account of the scene of the crime." [68]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court ruled that domestic courts are in the best position to evaluate the probative value of identification evidence. Domestic courts enjoy wide discretion in this matter. The only circumstances under which the African Court will intervene are when not doing so will result in a miscarriage of justice. [89]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court also reiterated its prior position that when visual or voice identification is used as evidence to convict a person, all circumstances of possible mistakes should be ruled out and the identity of the suspect should be established with certitude. This demands that the identification should be corroborated by other circumstantial evidence and must be part of a coherent and consistent account of the scene of the crime. In the instant case, whether positive visual identification by three prosecution witnesses, who were at the scene of the crime and knew the applicant before the commission of the crime, was enough to properly identify the applicant as the assailant so as to warrant his conviction were all details that concern particularities of evidence, the assessment of which must be left to the national courts. [64-66]

11. Right to Equality of Arms

Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi, (2000) [ACmmHPR]

— According to the Commission, the right to equal treatment includes: (1) both the defense and the public prosecutor shall have equal opportunity to prepare and present their pleas and indictment during the trial. They should argue their cases on equal footing; and (2) equal treatment of all accused persons by jurisdictions charged with trying them. i.e., when objective facts are alike, the response of the judiciary should be similar. [27]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held that Article 7 of the Charter was violated: "by failing to further its investigations on the alibi defence raised by

the applicant, and by relying on only the evidence adduced by the prosecution, the national Judge violated the principle of equality of arms between the Parties in matters of evidence, which is absolutely vital for justice." [193]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court holds that denying applicants' access to the Prosecution's witness's statements and an opportunity to cross-examine material witnesses violates the principle of equality of arms. The Court found a violation of Article 7(1)(c) of the Charter by the respondent state. [99-100]

12. Prohibition on Retroactivity/No Ex-Post Facto Laws

Civil Liberties Organisation (in respect of the Nigerian Bar Association) v. Nigeria, (1995) [ACmmHPR]

— Retrospective applicability of the laws was held by the Commission to violate Article 7(2). [13]

Amnesty International v. Zambia, (1999) [ACmmHPR]

— The first applicant was in possession of a Zambian national registration certificate and a passport. For many years, he freely used these without challenge. Immediately following the verdict of the Supreme Court, he voluntarily presented himself to the police but he was forcibly deported. This meant that he was denied the opportunity to pursue the option of applying for citizenship by naturalization under the Zambia Citizenship Act 1975. [43]

— The Commission reviewed the history of the case, in which the Zambian government had argued that the first applicant had obtained documents of registration and a passport by making false claims about his place of birth, the unstated implication being that the chances of his obtaining naturalization were negligible. In fact, the domestic court did not say that the first applicant was an illegal immigrant. It simply disputed his claims to being Zambian by birth. It was not proved, therefore, that the first applicant was in Zambia illegally. [43]

— The Commission determined that Zambia had contravened Article 7 of the Charter, "in that [the first applicant] was not allowed to pursue the administrative measures, which were opened to him in terms of the [Zambian Citizenship Act 1975]." The Commission further determined that Zambia was in breach of Article 7.2 of the Charter, as Banda's residence and status in Zambia had been accepted. He had made a contribution to the politics of the country. [44]

Sir Dawda K. Jawara v. Gambia (The), (2000) [ACmmHPR]

— The Commission held that the retrospective applicability of The Economic Crimes (Specified Offences) Decree was a serious violation of Article 7(2) as the citizens of a country have a right to be "fully aware of the state of the law under which they are living." [63]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court found that the 30-year sentence was provided by law based on a 1994 amendment to the Minimum Sentence Act of 1972, which introduced a mandatory minimum sentence of 30 years in cases of armed robbery and robbery with violence. [98–99]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— Thirty years has been the minimum punishment applicable for the offense of armed robbery in the Tanzania since 1994 pursuant to section 5(b) of the Minimum Sentences Act of 1972, as amended by the 1994 Written Laws. Therefore, the applicants were convicted on the basis of legislation which was in force on the date of commission of the crime, that is, December 31, 2001, and the punishment imposed on them was also prescribed in a law which was enacted prior to the commission of the crime. Therefore, it was not retroactively applied.

— Consequently, the Court found that there was no violation of the right to a fair trial because the legislation on which the sentences were based, the Minimum Sentences Act of 1972, was in force on the date of the commission of the crime. [66–69]

13. No double jeopardy

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— Under Article 6 of the Charter, the Court found that it was inappropriate, unjust and, thus, arbitrary to re-arrest an individual and file new charges based on the same facts without justification after he has been acquitted of a particular crime by a court of law. [137-139]

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

— The Court noted that "although the Charter does not contain any specific provision on the principle of "non bis in idem," this constitutes a general principle of law as reiterated by Article 14(7) of ICCPR [International Covenant on Civil and Political Rights]." [178] In deciding whether the principle of non bis in idem is violated, the Court will take into account the factual and legal aspects of the matter. [179]

— The Court found that Article 14(7) of ICCPR has been violated because the second court adjudicated on the same facts and complaints that involve the same parties, despite the first judgment having already become definitive in accordance with the extant laws and procedures of the respondent state. [180-183]

14. Right to a Public Trial

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— The right to a public hearing is not included in the charter, but the Commission holds that there is a general right to a public hearing unless there is a compelling reason for the court to hold a hearing privately.

— In this case, there was no compelling reason, so Nigeria's failure to make court proceedings public was a violation of Article 7.

15. Relevance of ICCPR to Violations of African Charter

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court will interpret Article 7(1)(c) of the Charter in light of the provisions of Article 14(3)(d) of the ICCPR if the Respondent has acceded to the ICCPR. [88]

— Article 14(3)(d) of the ICCPR guarantees the following: First, persons accused of crime "are entitled to be present during their trial." Second, they are entitled to defend themselves, "whether in person or through legal assistance of their own choosing." Third, they are entitled to "legal assistance whenever the interests of justice so require, and without...[cost], if they do not have sufficient means to pay for it." [90]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court noted that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal assistance. However, the provision is interpreted in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR). Taken together, the right to defense includes the right to be provided with free legal assistance. [75]

— The court noted that an individual charged with a criminal offense is entitled to free legal assistance without having to request it, provided that the interests of justice so require, such as where an accused is indigent and is charged with a serious offense which carries a severe penalty. [77]

— The applicants were charged with a serious offense, robbery with violence, which carried a severe punishment of thirty (30) years' imprisonment. In addition, the respondent state did not adduce any evidence to challenge the contention that the applicants were lay and indigent, without legal knowledge and technical legal skills to properly defend their case in the course of their trial and appellate proceedings. [78]

— The applicants did not need to show that the non-provision of legal assistance occasioned some disadvantage to them in the course of their trial and appeals at the district and appellate courts of Tanzania.[79]

— In view of the above, the Court found that the respondent state violated Article 7(1)(c) of the Charter. [81]

— Although Article 7 of the Charter does not expressly provide for the right to be informed of one's right to counsel, Article 14(3)(d) of the International Covenant for Civil and Political Rights (ICCPR) requires that, in criminal cases, any accused shall be informed of his right to legal representation. The authorities owed a positive obligation to proactively inform the accused individuals of their right to legal representation at the earliest time. [86]

— The respondent state did not dispute the applicants' allegation that they were not informed of their right to counsel at the time or prior to their trial. The Court also found nothing on the record showing that this was done by the authorities of the respondent state. The Court therefore found that the failure of the respondent state to inform the applicants of their right to legal representation violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of ICCPR. [87-88]

B. Article 4: Right to Life

"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."

Curtis Francis Doebbler v. Sudan, (2009) [ACmmHPR]

— The Commission has not established any cases of imprisonment, arrest and forcible repatriation and no concrete evidence has been presented to the Commission to the effect that such cases, if any, were linked to the promulgation and implementation of the cessation clause. [163]

— The figures provided by the respondent state of refugees who repatriated voluntarily prior to and after the cessation clause, as well as those who were granted further protection or alternative solutions to repatriation, were not refuted. As such, the Commission concluded that Articles 4, 5 and 6 of the Charter have not been violated. [163]

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Republic of Zimbabwe, (2012) [ACmmHPR]

— There is no clear provision in the African Charter that defines the concepts of wrongful death; however, the Commission drew from international law on human and peoples' rights, specifically the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Principles). According to the Principles, extrajudicial summary and arbitrary executions shall "not be carried out under any circumstances including, but not limited to situations of internal armed conflict, excessive use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such a person, and situations in which deaths occur in custody." Therefore, the situations of wrongful killings, summary executions or extrajudicial killings which the African Commission can examine include all acts and omissions of state agents that constitute a violation of the general recognition to the right to life embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter. [95-97]

— In deciding whether the use of force is proportional and necessary, the Commission considered the following: Did the deceased persons offer armed resistance or otherwise jeopardize the lives of others? Were less extreme measures by the law enforcement officials not sufficient to restrain or apprehend the deceased persons? Was the use of firearms motivated by a situation of "self-defense of the law enforcement officials effecting the arrest or in the defense of other citizens against the imminent threat of death or serious injury?" [115]

— Proportionality requires that the rights of the person threatened are measured against those of the deceased persons in an objective way, in the light of the prevailing circumstances at the time when the final decision on the use of lethal force is made. The potential taking of life is placed on one side of the scale and the protection of life on the other. [116]

— Firearms may be used only in "self-defense or in the defense of others against the imminent threat of death or serious injury." It is clear and not in dispute that the lives of the police officers who fired the gunshots were not threatened in any way at the time lethal force was used. It is not the fact that someone suspected of having

committed a crime stands to be arrested that justifies the use of firearms but rather the immediate danger that this person poses to life. The deceased did not pose any immediate danger to life. [117]

— The deceased was not armed and thus did not pose any immediate threat to the safety of the police officers or any other member of the public. Thus, a lower level of force would have been sufficient to restrain or apprehend. [119]

— Only under closely prescribed conditions may lethal (or deadly) force be used by the police. The police have the power to use lethal force only as an exception, motivated by a situation of "self-defense or in the defense of others against the imminent threat of death or serious injury." Outside this situation, such power disappears. The sanctity of life requires that lives should not be taken in the interest of the common good, e.g., the shooting of a fleeing suspect in order to promote the general respect of the law. [120]

— The use of lethal force by police officers of the respondent state was not within the bounds of the closely prescribed conditions under which lethal force may be used. Life should not be taken by the state, and any action that seeks to fall in the narrow confines of exceptions to this rule requires strong motivation. [121]

— While life may not be sacrificed to protect other values, under closely defined circumstances one life may be taken as a last resort in order to protect another life or lives. The use of lethal force in the case of two of the deceased was not done as an act of last resort to protect lives. Therefore, the use of lethal force by the police was not justified. [122]

— Individuals should have an effective remedy when their rights are violated, and the state must provide reparations for its own violations. States must ensure that victims' families are able to enforce their right to compensation through judicial remedies where necessary. [127]

— According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, remedies for gross violations of international human rights law include the victims' right to adequate, effective and prompt reparation for harm suffered. [129]

— A state shall provide reparation to victims for acts or omissions which can be attributed to the state and which constitute gross violations of international human rights law. Full and effective reparation should be provided to victims of violations of international human rights law, which includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. [130]

— The respondent state is not responsible for human rights violations carried out by members of its national army acting in their private capacity per se, but the respondent state is bound to duly investigate, prosecute the assailants and compensate the victims. [133]

— An illegal act which violates human rights and which initially is not directly imputable to the state, for example because it is an act of a private person, can lead to international responsibility of the state, not because of the act itself but because of the lack of due diligence to prevent the violation or respond to it (*Velásquez Rodríguez v Honduras (1988) IACtHR (Ser. C) No. 4*), para. 172). [133]

— The African Commission held the respondent state responsible, as it failed to properly respond to the death of one of the deceased, because of the lack of due diligence and the incapacity of the respondent state to satisfactorily compensate the close relations of the deceased in as far as the current laws of the respondent state allow. [134]

— The respondent state has an obligation to prevent the wrongful deaths of its citizens. The respondent state has to ensure that its organs respect the life of persons within its jurisdiction. The African Commission concluded that the respondent state failed in its obligation to respect and ensure the right to life of the deceased. [139]

1. Mandatory Death Penalty

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The Commission found that the death penalty under Egyptian Penal Code "is effectively mandated by law for certain categories of offences, with the President empowered to decide not to apply that sentence if he so decides. This is at odds with the requirements of right to life, as reflected in international legal practice." [230]

— However, the Commission held that Egypt did not violate Article 4 without much further elaboration.

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

— The Commission held that Article 4 of the Charter would be breached if the "imposition of death sentence is disproportionate to the gravity of the offence committed," but "imposition of the death penalty to the 'most serious crimes' would not constitute a violation" of Article 4. [202] The Commission interpreted 'most serious crimes' "in the most restrictive and exceptional manner possible" and that the death penalty should only be considered in cases where the crime is intentional, and results in lethal or extremely grave consequences. [203] The Commission identified murder as one of the 'most serious crimes' but did not identify as such economic crimes, nonviolent or victimless offenses, or drug related offenses. [204]

Interights and Ditshwanelo v. Republic of Botswana, (2016) [ACmmHPR]

— The Commission will pay close attention to the internal practices in the jurisdiction. As such, the Commission held in this case that "[f]rom the totality of the submissions before the Commission, there is nothing to suggest that the imposition of the death penalty in Botswana is mandatory and therefore arbitrary. Accordingly, the Commission dismisses the arguments of the Complainants regarding the issue of extenuating circumstance and personal circumstances as discussed above." [78]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court notes that when analyzing the death penalty's legality, it must decide "whether its imposition constitutes an arbitrary deprivation of the right to life." The Court added that the "prohibition of the death sentence in international law is still not absolute" despite "a global trend towards the abolition of the death penalty, including the adoption of the Second Option Protocol to the International Covenant on Civil and Political Rights." [96]

— The Court then noted three criteria it considers when determining a death sentence's arbitrariness: first, that the sentence be provided for by law; second, that a competent court imposes it; and third, that it abides by due process. [104]

— Regarding the due process factor, the Court referred to the United Nations Human Rights Committee which has concluded that "mandatory capital punishment deprives the complainant of the most fundamental right, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case." [102]

— It also looked to the Inter-American Court of Human Rights, finding that this court limited countries who had not yet abolished the death penalty. Such limitations include ensuring the capital trial abides by "certain procedural requirements" and making "certain considerations involving the person of the defendant." [103]

— Here, regarding the three criteria, the Court found that the mandatory death penalty is provided for by Tanzanian law, specifically Section 197 of the Tanzanian Penal Code, which

has an "automatic and mechanical application… in cases of murder." [108]. Second, the Court noted that a competent court imposed the death sentence and that the applicants did not contest this point. [105–06]

— The Court then found that the mandatory death sentence violated the applicants' due process rights. The Court first explained that based on a "joint reading of Articles 1, 7(1), and 26 of the Charter, due process not only encompass[es] procedural rights, strictly speaking, such as the rights to have one's cause heard, to appeal, and to defence but also extends to the sentencing process." Therefore, the Court held that the domestic court must have full discretion to determine matters of fact and law. [107]

— The Court then referred to the mandatory death penalty and explained that it does not allow "a convicted person to present mitigating evidence and therefore applies to all convicts without regard to the circumstances in which the offence was committed." It added that this process denies courts any discretion and prevents them from considering "specific and crucial circumstances such as the participation of each individual offender in the crime." [108–09]

2. Execution after unfair trial violates Article 4

International PEN, Constitutional Rights Project, (1998) [ACmmHPR]

— "Given that the trial which ordered the executions itself violated Article 7, any subsequent implementation of sentences renders the resulting deprivation of life arbitrary and in violation of Article 4" according to the Commission. [103]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— "[T]he Commission is of the view that the executions that followed the [unlawful] trial constitute a violation of Article 4." [120]

3. No Death Penalty for juveniles

Groupe de Travail sur les Dossiers Judiciaires Stratégiques v. Democratic Republic of Congo, (2015) [ACmmHPR]

— "[T]he Commission notes that many international obligations, to which the Democratic Republic of Congo has committed itself, prohibit the imposition of the death penalty on children. We cannot refer to this subject without mentioning the fundamental standard on this matter which is Article 6(5) of the International Covenant on Civil and Political Rights expressed in the following terms 'a death sentence *cannot* be imposed for crimes committed by individuals who are below 18 years.' Even if it were to be assumed that the concept of arbitrariness would maintain an open window on the limitation of the right to life protected by Article 4 of the Charter, one actually realizes that the provisions of Article 6 of the Covenant, among others, exclude persons who are less than 18 years from the limitation of the right to life, even legally, from the imposition of the death penalty." [71]

— "A similar protection is guaranteed by Article 37(9) of the United Nations Convention on the Rights of the Child which stipulates that 'Neither capital punishment nor life imprisonment without the possibility of release shall be handed down for offences committed by persons below 18 years.' It is needless to strive for the interpretation in order to observe that the very act of imposing such sentences against juveniles constitutes an arbitrary interference in the right to life and the integrity of these persons, an act which is prohibited by Article 4 of the African Charter." [71]

— "In this particular instance, the State does not dispute the fact that the death penalty was actually handed down to the victims even though they were juveniles. Even though the State shows proof that the capital punishments were subsequently commuted to lesser penalties, the fact is that this measure will not change the established reality of a violation of a right to life by the imposition of this penalty. [...] the Commission recalls that the adoption of alternative measures sequel to the violation cannot be used as an excuse by the State. Based on these considerations, the Commission concludes that Article 4 of the Charter was violated." [72]

4. Right to clemency

Interights and Ditshwanelo v. Republic of Botswana, (2016) [ACmmHPR]

— The applicant argued in the communication to the Commission that the clemency procedure, even though it involves the Clemency Committee, "is arbitrary since it is purely a preserve of the Executive exercised by the President and not subject to a judicial review process." [79]

— The Commission affirmed its position that "even though 'the doctrine of clemency is universally recognised [it] does not preclude the African Commission from making a determination on it, especially if it believed that its use has been abused to the extent that human rights as contained in the African Charter have been violated'. (Zimbabwe Human Rights NGO Forum v. Republic of Zimbabwe, Communication 245/2002 paras 190, 212)." [80]

— However, the Commission held that the "non-existence of a judicial review process is also not a violation of the Charter since clemency procedures are prerogative powers exercised on behalf of the State." [81]

5. Right to Life implicated by conditions that deprive petitioner of security/safety

Kazeem Aminu v. Nigeria, (2000) [ACmmHPR]

— Here, the Commission considered whether living in constant fear for one's life was covered by Article 4 of the Charter. "The Complainant alleged that the series of arrests and detention suffered by his client, and his subsequent going into hiding is in violation of his right to life under Article 4 of the Charter. The Commission notes that the Complainant's client (victim) is still alive but in hiding for fear of his life. It would be a narrow interpretation to this right to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect for one's life and the dignity of his person, which this article guarantees would be protected in a state of constant fear and/or threats, as experienced by Mr Kazeem Aminu." [17-18]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that denying people food and medical attention, subjecting them to torture to the point of death, and engaging in various arbitrary executions will constitute a violation of Article 4 of the Charter. [120]

Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, (2001), [ACmmHPR]

— The Commission found "wide spread

terrorization [sic] and killings" of the Ogoni people and that the "pollution and environmental degradation [was brought] to a level humanly unacceptable." The survival of the Ogoni people was dependent on the quality of their land and farms which were also destroyed by the Nigerian government. The combination of these factors led the Commission to conclude that the Ogoni people's Article 4 rights had been violated. [67]

Democratic Republic of Congo v. Burundi, Rwanda, Uganda, (2003) [ACmmHPR]

— The Commission held that "killings, massacres, rapes, mutilations and other grave human rights abuses committed while the respondent states' armed forces were still in effective occupation of the eastern provinces of the Complainant State" constituted flagrant violations of Article 4, since such acts violated the guarantees of respect for life and integrity of one's person and prohibits the arbitrary deprivation of rights. [79-80]

6. Government's obligation to investigate/punish extrajudicial killings

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— The United Nations Special Rapporteur provided evidence that prisoners were executed after summary and arbitrary trials and that unarmed civilians were also victims of extra-judicial executions. [48]

— The Commission held that "[i]nvestigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered." [51] The Commission further stated that "in cases of human rights violations, the burden of proof rests on the government (citations omitted). If the government provides no evidence to contradict an allegation of human rights violation made against it, the Commission will take it as proven, or at least probable or plausible ... that there was a violation of Article 4." [52]

— The Commission found that in this case, the Government's investigations "[fell] short of what is required to prevent and punish extra-judicial executions." Therefore, there was a violation of Article 4 of the Charter. [51]

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— The Commission held that the state has dual legal obligations to respect the right to life by: (a) not violating that right itself and (b) protecting the right to life by protecting persons within its jurisdiction from non-state actors. [148]

— For the state to effectively discharge its responsibility, it is not enough to investigate. The Commission stated that the investigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings must be made public and prosecutions initiated in accordance with the information uncovered. [150]

— The Commission found that (i) the investigation into the alleged abuses, (ii) the mechanisms the state purported to put in place to prevent further abuse, and (iii) the remedies for the victims were not up to international standards and failed to meet the test of effective official investigations under international human rights law. As such, the Commission held that the lack of effective investigations in cases of arbitrary killings and extra-judicial executions amounted to a violation of Article 4. [150, 153]

C. Article 5: Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment

> *"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."*

1. Methods of Execution, failure to notify of execution date

Interights et al. (on behalf of Mariette Sonjaleen Bosch) v. Botswana, (2003) [ACmmHPR]

— The Commission did not opine on the defendant's Reasonable Notice of Execution claim but did "observe that a justice system must have a human face in matters of execution of death sentences by affording a condemned person an opportunity to 'arrange his affairs, to be visited by members of his intimate family before he dies, and to receive spiritual advice and comfort to enable him to compose himself as best he can, to face his ultimate ordeal.'" [41]

Interights and Ditshwanelo v. Republic of Botswana, (2016) [ACmmHPR]

— "The above case explains a general reality that happens during hangings. The conclusion by the sitting judge that the whole process is 'sordid and debasing' and that it is 'generally brutalizing' is telling. The Commission therefore finds that in line with the description of the Tanzanian High Court about hanging as a method of execution in Africa that hanging causes excessive suffering and is not strictly necessary; therefore, it constitutes a violation of Article 5 of the African Charter." [87]

— "The Commission holds that the failure by the prison authorities of the respondent state to inform the family and the lawyers of Mr Ping, of the date, the hour, the place of the execution as well as the exact place of the burial, violates Article 5 of the African Charter, and by their conduct, have failed to respect the human dignity of both the family and the prisoner, which further violates Article 5." [96]

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

— The Commission reiterated its previous holding that "the death penalty should only be imposed after a full consideration of not only the circumstances of the individual offence, but also the circumstances of the individual offender." [164]

— The Commission determined that "the carrying out of a death sentence using a particular method of execution may amount to cruel inhuman or degrading treatment or punishment if the suffering caused in execution of the sentence is excessive and goes beyond that is strictly necessary" [167], but declined to find that the use of hanging inherently violated Article 5. The Commission did opine that the "execution of a death

sentence by hanging may not be compatible with respect for the inherent dignity of the individual and the duty to minimize unnecessary suffering, because it is a notoriously slow and painful means of execution." [169] In particular, the Commission articulated that if there is a lack of "appropriate attention to the weight of the person condemned," "hanging can result either in slow and painful strangulation, because the neck is not immediately broken by the drop, or, at the other extreme, in the separation of the head from the body." [169] In this case, the Commission found that the applicant has "not demonstrated that the execution would be, or was, carried out without due attention to the weight of the condemned," and, therefore, there has been no violation of Article 5 of the Charter. [170]

— The Commission expanded upon its earlier finding in Interights and held that "the fact that the [applicant] and his family members were never given the important opportunity to have closure with the dignity of their last farewells as inhuman treatment. Since the respondent state did not give any justifications [the Commission found] that the failure to give notice of the date and time of execution of the [applicant] amounts to cruel, inhuman and degrading punishment and treatment and therefore a violation of Article 5" of the Charter. [177]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court explained that when the death penalty is allowed, the execution methods "must exclude suffering or involve the least suffering possible." The Court then determined that hanging is "inherently degrading." Therefore, "having found that the mandatory imposition of the death sentence violates the right to life due to its arbitrary nature [the Court found that], as the method of implementation of that sentence, hanging inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment." [118–19]

2. Prison/Jail Conditions

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— Communication 25/89 alleged severe forms of torture of fifteen people by a military unit at Kinsuka. When several people protested their treatment, they were detained and held indefinitely. Communication 100/93 alleged torture, executions, arrests, detention, unfair trials and restrictions on freedom of association and freedom of the press. The Commission accepted the facts of these allegations as true due to the nonresponse of the Government of Zaire. Accordingly, it held that the Government of Zaire's actions violated Article 5 of the Charter.

— "Article 5 of the [Charter] prohibits torture and inhuman or degrading treatment. The torture of fifteen persons by a military unit at Kinsuka, near the Zaire River, as alleged in Communication 25/89, constitutes a violation of this article." [41]

Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi, (1995) [ACmmHPR]

— The Commission held the Government of Malawi liable for violating Article 5 of the Charter, noting the "excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to adequate medical care" in support of its holding. [7]

Organisation mondiale contre la torture, Association Internationale des juristes democrates, Commission internationale des juristes, Union interafricaine des droits de I'Homme v. Rwanda, (1996) [ACmmHPR]

— The Commission held that the inhumane conditions Tutsi prisoners were kept in were a violation of Article 5. However, the Commission did not explicitly describe the conditions in question.

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— According to the Commission "[a]ll of the alleged acts of physical abuses, if they occurred, constitute violations of Article 5. Additionally, holding an individual without permitting him or her to have any contact with his or her family, and refusing to inform the family whether the individual is being held and his whereabouts is inhuman treatment of both the detainee and the family concerned." [54]

— "Since the acts of torture alleged have not been refuted or explained by the government, the Commission finds that such acts illustrate, jointly and severally, government responsibility for violations of the provisions of Article 5 of the African Charter." [57]

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The Commission held that Article 5 was violated because the government did not contest allegations that they deprived complainants of the right to see their families, deprived them of light, provided insufficient food and did not grant access to medicine or medical care. [27]

Huri-Laws v. Nigeria, (2000) [ACmmHPR]

— The Commission held inhumane conditions and torture to be a violation of Article 5.

— "The treatment meted out to the victim in this case constitutes a breach of the provision of Article 5 of the Charter and the relevant international human rights instruments cited above. Also the denial of medical attention under health threatening conditions and access with the outside world do not fall into the province of 'the respect of the dignity inherent in a human being and to the recognition of his legal status', nor is it in line with the requirement of Principles 1 and 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This, therefore, is a breach of Article 5 of the Charter." [41]

John D. Ouko v. Kenya, (2000) [ACmmHPR]

— The Commission found that Article 5 of the Charter was violated due to the conditions of the applicant's detention: the detention facility left the lights on throughout his ten months detention; he was denied bathroom facilities throughout his period of detention; and he was subjected to both physical and mental torture. [22-23]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission found that, and the government did not produce any argument to counter the allegations that "the prisoners were not fed; they were kept in chains and locked up in overpopulated cells lacking hygiene and access to medical care; some were burnt or buried in sand and left to die a slow death; electrical shocks were administered to their genital organs and they had weights tied on to them; their heads were plunged into water to the point of provoking suffocation; pepper was smeared on their eyes and some were permanently kept in small, dark (or underground) cells which got very cold at night." [116] The Commission found that "taken together or in isolation," these acts evidenced "widespread utilisation of torture and of cruel, inhuman and degrading forms of treatment" in breach of Article 5 of the Charter. [118]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— The Commission held that "the term 'cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental." [71] In this case, the Commission found that there was a violation of Article 5 of the Charter as the applicant was "chained to the floor day and night," for "a total period of 147 days, he was not allowed to take his bath," and "kept in solitary confinement." [70]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— While detained for two months, victims were tortured and deprived of their rights. They were not allowed contact with their families, and their families were not told they were being detained.

— "Considering that the acts of torture have been recognised by the respondent state, even though it did not specify whether legal action was taken against those who committed them, the African Commission considers that these acts illustrate the government's violation of the provisions of Article 5 of the African Charter." [47]

Liesbeth Zegveld & Mussie Ephrem v. Eritrea, (2003) [ACmmHPR]

— The Commission held that "[i]ncommunicado detention is a gross human rights violation that can lead to other violations such as torture or ill-treatment or interrogation without due process safeguards. Of itself, prolonged incommunicado detention and/or solitary confinement could be held to be a form of cruel, inhuman or degrading punishment and treatment." [55]

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— "The complaint alleges that guards frequently beat the Gambians and extorted money from them. Food was not regularly provided and medical attention was not readily available, despite repeated requests. Complainants were transported between detention centres in overcrowded cargo planes and lorries. The detention centre in Saurimo had no roof or walls and Complainants were exposed to the elements of weather for five consecutive days. At the Cafunfu detention center, bathroom facilities consisted solely of two buckets for over five hundred detainees, and these were located in the same one room where all detainees were compelled to eat and sleep. This, for the African Commission, is clearly a violation of Article 5 of the African Charter since such a treatment cannot be called anything but degrading and inhuman." [51]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The Commission noted that "[i]t is a well established principle of international human rights law, that when a person is injured in detention or while under the control of security forces, there is a strong presumption that the person was subjected to torture or ill-treatment." [168] Under such circumstance, "the burden now shifts to the respondent state to convince this Commission that the allegations of torture raised by the Complainants is unfounded." [169]

— The Commission found that "Article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment. This includes not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her against his or her will or conscience." [190]

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

— The Commission noted that it had previously "set out the elements that constitute torture, namely, that severe pain or suffering has to have been inflicted; for a specific purpose, such as to

obtain information, as punishment or to intimidate, or for any reason based on discrimination; by or at the instigation of or with the consent or acquiescence of state authorities." [70]

— "The Commission considers that the term 'cruel, inhuman or degrading treatment or punishment' is to be interpreted so as to extend to the widest possible protection against abuse, whether physical or mental. As outlined in the Commission's Robben Island Guidelines, States Parties are under an obligation to put in place certain procedural safeguards in order to prevent detainees from being subjected to abuse." [75]

African Commission on Human and Peoples' Rights v. Libya, (2016) [Afr. Ct. H.P.R.]

— The Court held the government of Libya liable for violating Article 7 of the African Charter due to Gaddafi's lack of access to counsel while in isolation and due to his inability to communicate with the outside world. [86-97]

Prof. Lèon Mugesera v. Republic of Rwanda, (2017) [Afr. Ct. H.P.R.]

— The applicant alleged that he had been detained under deplorable conditions, had undergone all forms of torture and had only limited access to his family, without medical or appropriate treatment and without access to counsel.

— 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". [80]

— The Court noted that the various letters from the applicant, such as to his lawyer and to the prison director, demonstrate his difficulties in accessing medical care and his requests to communicate with the lawyers representing him before this Court. [87-89]

— The Court found that the situation was of extreme urgency and did require Provisional Measures to be issued to avoid irreparable harm to the Applicant.

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that "the Applicant has not proved that the delay in the hearing of his appeal is tantamount to torture" because he has not proved that "the delay caused him severe mental or physical pain which was intentionally inflicted for a particular purpose." Additionally, the Court noted that "he is serving a prison sentence pursuant to lawful sanctions imposed on him." [145]

— The Court was of the view that "the delay does not per se, constitute cruel, inhuman or degrading punishment and treatment, even if it may have caused the Applicant mental anguish." [146]

3. Right not to be tortured; burden of proof when petitioner alleges torture

Curtis Francis Doebbler v. Sudan, (2003) [ACmmHPR]

— The Commission held "there is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the [African] Charter and contrary to the very nature of this human rights treaty." [42]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— Case law has established the scope of inhuman and degrading treatment, which is not limited to only physical and psychological suffering. In

International Pen and Others v Nigeria, it was taken to include actions which humiliate the individual or force him or her to act against his will or conscience. [187]

— The prohibition of torture, cruel, inhuman or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses. [188]

— Being a party to the African Charter, the respondent state has an obligation to prohibit inhuman and degrading treatment under Article 5 of the Charter. [207]

Armand Guehi v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court noted that the prohibition of cruel, inhuman and degrading treatment is absolute. The Court restated that "in circumstances where the applicants are in custody and unable to prove their allegations because the means to verify the same are likely to be in control of the State, the burden of proof will shift to the respondent state as long as the applicants make a prima facie case of violation." [132]

— The Court held that there was a violation of Article 5 of the Charter based on the applicant's prima facie evidence that there was a deprivation of food. The burden then shifted to the respondent state to prove the contrary, but the State has failed to do so.

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The applicant is required to first submit prima facie evidence to support his allegations of torture. Once the applicant has met his/her burden, the Court shifts "the burden of proof to the respondent state." [73]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court interprets the term "torture" in accordance with the African Commission's Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, which refers to Article 1 of the United Nations Convention Against Torture. [144]

4. Death Row Phenomenon

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

— The Commission rejected the claim that the time elapsed between the applicant's arrest and his actual execution constituted cruel, inhuman or degrading punishment. The Commission determined that "the computation of time as far as the delays in executing the sentence is concern[ed], will only start to run from the time the High Court passed the death sentence [in 1998] and not from when the victim was first arrested in 1993." The Commission further placed partial blame on the applicant for the delay in execution, stating that "[t]he evidence before the African Commission indicates that the ensuing delay in carrying out the death sentence was because the [applicant] had petitioned the Court of Appeal. The [applicant] was partly responsible for these delays and was exercising his rights to appeal." [173] The applicant was executed in 2003.

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court held that hanging is "inherently degrading." [119] Further, it stated that, "having found that the mandatory imposition of the death sentence violates the right to life due to its arbitrary nature, this Court finds that, as the method of implementation of that sentence, hanging inevitably encroaches upon

dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment." [119] As such, the Court held that Article 5 of the Charter was violated.

5. Consideration of Mitigating Circumstances

Interights et al. (on behalf of Mariette Sonjaleen Bosch) v. Botswana, (2003) [ACmmHPR]

— The Commission rejected the claim that the imposition of the death penalty was disproportionate to the gravity of the crime, finding that extenuating and mitigating circumstances did not exist in the case. The Commission found that the defendant's claims effectively stated that "capacity for redemption or reformation" was an extenuating circumstance. In rejecting the defendant's claim, the Commission explained that "the facts or circumstances must be directly related to, or connected with, the criminal conduct in question. The court is only concerned with facts which lessen the seriousness or culpability of that particular criminal conduct," and that "[i]t is the state of mind of the offender at the time of the commission of the offence that is a relevant consideration otherwise offenders would use any personal circumstance totally unrelated to the conduct complained of to escape punishment." [32, 33, 35]

— The Commission set out a test for determining whether extenuating circumstances exist: "a. Whether there were at the time of the commission of the crime facts or circumstances which could have influenced the accused's state of mind or mental faculties and could serve to constitute extenuation; b. Whether such facts or circumstances, in their cumulative effect, probably did influence the accused's state of mind in doing what s/he did; and c. Whether this influence was of such a nature as to reduce what he did." [34]

— The Commission highlighted the evidence of "considerable effort and careful planning," on the part of the defendant, and found that "while the African Commission acknowledges that the seriousness or gruesome nature of an offence does not necessarily exclude the possibility of extenuation, it cannot be disputed that the nature of the offence cannot be disregarded when determining the extenuating circumstances." [36, 37]

D. Article 6: Right to Liberty and Freedom from Arbitrary Detention

> *"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."*

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— Communication 25/89 alleged indefinite detention of protestors against the use of torture, while Communication 56/91 alleged arbitrary arrests of Jehovah's Witnesses due to their religious beliefs. In addition, Communication 100/93 alleged torture, executions, arrests, detention, unfair trials and restrictions on freedom of association and freedom of the press. The Commission accepted the facts of these allegations as true due to the nonresponse of the Government of Zaire. Accordingly, it held that the Government of Zaire's actions, as alleged in the three communications, violated Article 6 of the African Charter.

— "Article 6 of the African Charter guarantees the right to liberty and security of person. The indefinite detention of those who protested against torture, as described in communication 25/89, violates Article 6." [42]

Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi, (1995) [ACmmHPR]

— According to the Commission "[t]he massive and arbitrary arrests of office workers, trade unionists, Roman Catholic bishops and students violated [Article 6] [...] Mr Banda was not allowed recourse to the national courts to challenge the violation of his fundamental right to liberty as guaranteed by Article 6 of the African Charter and the constitution of Malawi." [8-9]

Organisation mondiale contre la torture, Association Internationale des juristes democrates, Commission internationale des juristes, Union interafricaine des droits de l'Homme v. Rwanda, (1996) [ACmmHPR]

— The Commission held that arresting and detaining citizens based on ethnicity was a violation of Article 6.

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— The Commission held that Article 6 of the Charter "must be interpreted in such a way as to permit arrests only in the exercise of powers normally granted to the security forces in a democratic society." [59] As the decree in question "allows for individuals to be arrested for vague reasons, and upon suspicion, not proven acts," the Commission found that Article 6 of the Charter was violated.

Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— According to the Commission "[d]eprivation of the right to habeas corpus alone does not automatically violate Article 6 [...] the question thus becomes whether the right to habeas

corpus, as it has developed in common law systems, is a necessary corollary to the protection of Article 6 and whether its suspension thus violates this Article." [24-25]

— Article 6 was violated because individuals were detained without charge or trial. The harm caused by this violation was compounded by the deprivation of habeas corpus. [28, 31]

Constitutional Rights Project v. Nigeria, (1999) [ACmmHPR]

— Nigeria's State Security Act provided for indefinite, non-judicial detention by a panel of executive branch officials as mentioned in the Commission communication.

— "Even if the required reviews of detention as provided for by the Act are being held, the Panel which conducts the review cannot be said to meet judicial standards as the majority of its members are appointed by the President (the Executive) and the other three are also representatives of the executive branch. The Panel does not have to justify the continued detention of individuals, but only issue orders in the case of release." [15]

Constitutional Rights Project v. Nigeria, (2000) [ACmmHPR]

— The Commission held that the detainment of people "without having charges brought against them and without the possibility of bail" for a period of three years "constitute[d] an arbitrary deprivation of their liberty and thus violate[d] Article 6 [of the Charter]." [55]

Kazeem Aminu v. Nigeria, (2000) [ACmmHPR]

— "In the instant case, the Commission finds the above situation where the complainant's client is constantly arrested and detained, without charge and any recourse to the courts for redress arbitrary and in contravention of Article 6 of the Charter." [21]

Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso (2001) [ACmmHPR]

— "The disappearances of persons suspected or accused of plotting against the instituted authorities, including Mr. Guillaume Sessouma and a medical student, Dabo Boukary, arrested in May 1990 by the presidential guard and who have not been seen since then constitute a violation of [Article 6]." [44]

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— Victims were held in prison without being formally charged with a crime. The Commission "stressed particularly that the respondent state does not dispute that the victims were arrested without being charged. This is a prima facie violation of the right not to be illegally detained as provided for by Article 6 of the African Charter." [50]

— The Commission held that the allegations of arrests, detentions and threats in an attempt to stifle Mr. Suleiman's role as a human rights campaigner constituted a violation of Article 6 of the Charter. [53]

Liesbeth Zegveld & Mussie Ephrem v. Eritrea, (2003) [ACmmHPR]

— The Commission stressed that "the lawfulness and necessity of holding someone in custody must be determined by a court or other appropriate judicial authority. The decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any

event, detention should not continue beyond the period for which the State can provide appropriate justification. Therefore, persons suspected of committing any crime must be promptly charged with legitimate criminal offences and the State should initiate legal proceedings that should comply with fair trial standards…" [56]

— The Commission found that Article 6 of the Charter was violated as the respondent state "did not provide the Commission with any details regarding the specific laws under which the [applicants] were detained but instead generally states that their detention is in 'consonance with the existing criminal code… and other relevant national and international instruments'." [57]

Article 19 v. Eritrea, (2007) [ACmmHPR]

— The Commission held that "[t]he lawfulness of Eritrea's actions must therefore be considered against the Charter and other norms of international law, rather than by reference to its own domestic laws alone." [92]

— "Arbitrariness' is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law… remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances…remand in custody must also be necessary in all the circumstances." [93]

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— The Commission held that Article 6 of the Charter was violated as the respondent state failed to prove that the manner of arrest and subsequent expulsion from Angola was not arbitrary. The Commission found with the applicant that "at no point were any of the victims shown a warrant or any other document relating to the charges under which the arrests were being carried out." [55]

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— The Commission found that "the respondent state, in spite all the information regarding the physical abuse the victims were enduring, has not demonstrated that it took appropriate measures to protect the physical integrity of its citizens from abuse either by official authorities or other citizens/third parties. By failing to take steps to protect the victims, the respondent state violated Article 6 of the African Charter." [179]

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

— "The Commission considers that arresting a large number of individuals as was the case in the present communication, in disregard of domestic legislation and without taking any measures to ascertain the likelihood of individual wrongdoing amounts to arbitrary arrest in contravention of the Charter." [80]

— "Detaining the victims for a period of twelve months before bringing charges against them was therefore not only unlawful under Sudanese legislation, but also contravened the standards laid down by the Commission." [83]

African Commission on Human and Peoples' Rights v. Libya, (2016) [Afr. Ct. H.P.R.]

— The Court held the government of Libya liable for violating Article 6 of the African Charter due to Gaddafi's detention in isolation. [78–85]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court dismissed the allegation that the applicants were detained for four days in a police cell without food and access to the external environment on the grounds of lack of evidence.

— "The Court notes that it 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. By their nature, some human rights violations relating to cases of incommunicado detention and enforced disappearances are shrouded with secrecy and are usually committed outside the shadow of law and public sight. The victims of human rights may thus be practically unable to prove their allegations as the means to verify their allegation are likely to be controlled by the State. In such circumstances, neither party is alone in bearing the burden of proof and the determination of the burden of proof depends on 'the type of facts which it is necessary to establish for the purposes of the decision of the case.' It is therefore for this Court to evaluate all the circumstances of the case with a view to establishing the facts." [142-143]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court found that the restriction on liberty is duly provided by law, as provided under Section 148(5)(a)(i) of Tanzania's Criminal Procedure Act. "However, the Court reiterates that it is not enough for a restriction to be provided by law; the restriction must have a legitimate aim and the reasons for the restriction must serve a public or general interest." [65] Under Tanzania's Criminal Procedure Act, the restriction aims to preserve public security, protect the rights of others, avoid possible repetition of the offense and ensure the appearance of the accused, thus the restriction on liberty is underpinned by legitimate objectives. The Court held the applicant's detention pending trial was not without reasonable grounds, and the refusal to grant him bail does not constitute a violation of his right to liberty. [64-68]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that an undue delay does not necessarily result in "a violation of the right to liberty and security of the person." In order to establish an Article 6 violation, the applicant needs to demonstrate "a flagrant denial of justice." [150]

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— Article 6 deals with prolonged detention without trial, where such detention is considered arbitrary. A person who is charged with an offense "should be brought promptly before a judge or other judicial officers and should be tried within a reasonable time or released". "A person who is charged with an offense also has the right to access a court and to challenge the lawfulness of his or her detention." [119]

— The applicants alleged that, by revoking their passports, the respondent state had violated their right to liberty. They made general statements regarding the alleged violation of their rights to liberty and did not provide evidence to establish the respondent state had arbitrarily deprived them of their liberty. "[It] does not suffice to make such general claims, rather, there should be a demonstration of how the rights have been violated." [120]

E. Article 3: Right to be Equal Before the Law

"1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law."

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— The Commission held that "[e]qual protection of the law under Article 3(2) relates to the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts both in procedures and in the substance of the law." [45] Therefore, "[i]n order for [an applicant] to establish a successful claim under Article 3(2) of the Charter... it must show that, the respondent state had not given the victims the same treatment it accorded to the others. Or that, the respondent state had accorded favourable treatment to others in the same position as the victims." [47]

— In this case, the Commission found that the applicant "has not demonstrated the extent to which the victims in the present communication were treated differently from the other nationals arrested and detained under the same conditions," and therefore did not find a violation of Article 3(2). [48]

Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe, (2009) [ACmmHPR]

— "The most fundamental meaning of equality before the law under Article 3.1 of the Charter is the right by all to equal treatment under similar conditions. The right to equality before the law means that individuals legally within the jurisdiction of a State should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. Its meaning is the right to have the same procedures and principles applied under the same conditions. The principle that all persons are equal before the law means that existing laws must be applied in the same manner to those subject to them. The right to equality before the law does not refer to the content of legislation, but rather exclusively to its enforcement. It means that judges and administration officials may not act arbitrarily in enforcing laws. Factual patterns that are objectively equal must be treated equally. Thus, it is expected that if the law requires that all those who publish offensive articles against the government be brought before a judge for questioning, and if found guilty, sentenced or pay a fine, this law should apply to all those subjected to it, including nationals and non-nationals alike. In the present communication, that does not seem to be the case, because the victim is a non-national, the respondent state chose not to treat him as it would have treated nationals. It is very unlikely and impractical that if a Zimbabwean had published the same article the victim published, he/she would have been treated the same way. In the opinion of the Commission therefore, the respondent state violated Article 3.1 of the Charter." [96–98]

— "Equal protection of the law under Article 3.2 on the other hand, means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or class of persons in like circumstances in their lives, liberty, property and in their pursuit of

happiness. It simply means that similarly situated persons must receive similar treatment under the law. [...] In order for a party therefore to establish a successful claim under Article 3.2 of the Charter, it should show that the respondent state had not given the Complainant the same treatment it accorded to the others. Or that, therespondent state had accorded favorable treatment to others in the same position as the Complainant. In the present communication, the Commission notes that the respondent state treated the victim in a manner which denied him the opportunity to seek protection of the courts. Due process which was key to ensuring remedy to the deportation, and therefore the protection of the rights of the victim were denied through the arbitrary actions of the respondent state. The African Commission therefore finds that the respondent state violated Article 3.2 of the African Charter." [99-102]

— The Commission held that the "most fundamental meaning of equality before the law provided for under Article 3(1) of the Charter is the right by all to have the same procedures and principles applied under the same conditions." [156]

— "In order for a party to establish a successful claim under Article 3 of the Charter, it should show that, the respondent state has not given the Complainant the same treatment it accorded to the others in a similar situation. Or that, the respondent state had accorded favourable treatment to others in the same position as the Complainant." [158]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The respondent state submitted that the security agencies took all the necessary security measures to provide the victims with the necessary level of protection. The respondent state did not specify whether such levels of protection were effective or satisfactory for the victims. It was also unclear whether the security measures taken more broadly in connection with the demonstrations also benefitted the men at the scenes of the demonstrations. The Commission stated that it was not sufficient to say necessary measures were taken as it was unclear how effective those measures were. [178]

— Freedom from discrimination is also an aspect of the principles of equality before the law and equal protection of the law under Article 3 because both present a legal and material status of equality and non-discrimination. [179]

Dino Noca v. Democratic Republic of the Congo, (2012) [ACmmHPR]

— This right entails access to equal opportunity in the preparation and presentation of arguments. Both parties must be able to defend their case before the court on an equal footing. [201]

— Equal protection by law refers to the right of everyone to have equal access to courts of justice and to be treated the same way by the courts, in relation to both procedures and the essence of the law. It is akin to the right to due process of law but applies in particular to equal treatment as an element of fundamental equity (*Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa vs. Republic of Zimbabwe, para 104*). [202]

Mr Mamboleo M. Itundamilamba v. Democratic Republic of Congo, (2013) [ACmmHPR]

— The Congolese Supreme Court failed to give the complainant the same treatment as his adversary. The rejection for a four-month deferral during a force majeure event (war) and the prohibition of the production of the complainant's case file placed the complainant in a position of imbalance. [100]

— The failure to strictly enforce equality before the law must necessarilybe justified. The reasoning provided by the respondent state that it could not prolong the proceedings before it to await the termination of an event whose end was uncertain was not sufficient. [101-102]

— The Congolese Supreme Court failed to deliberate on the complainant's case by the time the case was seized by the Commission, which was several years after it was first brought. As such, the decision not to defer the case for four months was made clearly to ensure the complainant was disadvantaged. [103]

— The Commission concluded that the domestic court had unduly prolonged the procedure and, by failing to provide adequate reasons for the differential treatment of the complainant before the law, had demonstrated that the complainant was in a position of inequality which was tantamount to a denial of justice. The respondent state failed to prove to the Commission that the imbalance suffered by the complainant was justified by any reason so compelling as to warrant the undermining of the complainant's rights. [104 – 105]

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

— The Commission expounded upon the purpose and meaning of Article 3's protection against discrimination saying that, while "it is akin to the right to due process of law, it applies particularly to equal treatment as an element of fundamental fairness. It is a guarantee that no person or class of persons shall be denied the same protection of the laws that is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property." [159]

Shukrani Mango & others v. The United Republic of Tanzania, (2015) [Afr. Ct. H.P.R.]

— The applicants alleged that the respondent state was guilty of discrimination in the manner in which it exercised the prerogative of mercy and that this was contrary to, among others, guarantee of non-discrimination in Article 2 and the right to equality in Article 3 of the Charter. [8]

— For the group of five convicted of murder, the Court held that the application was inadmissible in so far as it alleged violation of the applicants' rights by reason of the exercise of the prerogative of mercy since the applicants could have filed a constitutional petition challenging the manner in which the prerogative was being exercised. [51]

Hamad Mohamed Lyambaka v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The applicant alleged that approach by court violated his fundamental right of being heard in the court of law as required by Article 3(2) of the charter. [5]

— The application was filed within five (5) years, eleven (11) months, and twenty-seven (27) days from the Court of Appeal's decision. The Court declared application as inadmissible due to the application not being filed within a reasonable time after exhausting local remedies within the meaning of Article 55(6) of the charter. [45-51]

* Oscar Josiah v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The applicant alleged that the Court of Appeal did not evaluate inconsistencies in witness statements and was misdirected in its dismissal of the second ground of the appeal. It is alleged that the contradictions and inconsistencies in witness statements went to the route of the matter. The Court found that the manner in which the Court of Appeal examined the applicant's founds of appeal relating to evidence did not occasion a miscarriage of justice to him. As such, the Court found no evidence that the applicant was treated differently, as compared to other persons who were in a situation similar to his. Accordingly, the Court dismissed the applicant's claim that his rights under Article 3(1) and (2) of the Charter were violated.

Alfred Agbesi Woyome v. Republic of Ghana, (2017) [Afr. Ct. H.P.R.]

— The Court clarified that Article 3 of the Protocol requires only ratification and not domestication; the claims were based on alleged violations of the Charter; the fact that the respondent state has procedures on addressing human rights issues at national level does not preclude the Court from exercising material jurisdiction and that the Court is empowered to examine judicial decisions, or acts, of any State or organs of the State where human rights violations have been alleged, including instances involving constitutional issues, to ensure they comply with the Charter and other ratified human rights instruments.

— The Court held that the Applicant had not demonstrated or substantiated how he has been discriminated against, treated differently or unequally based on Articles 2 and 3 of the Charter. The Court found that the respondent state has not violated these provisions. [138-139]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Whoever makes an allegation has the burden of providing evidence proving the allegation. The Court held the applicant failed to provide evidence that persons in the same or similar situation as himself had been treated differently. In the absence of evidence by the applicant as to any differential treatment, the Court found the respondent state had not violated the applicant's right to equality before the law and equal protection of the law. [72-73]

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found no evidence on record and the applicant failed to demonstrate how he was treated differently, compared to others in a situation similar to his, to support his claim that his right to equal protection of the law or equality before the law had been violated. Therefore, the Court determined that there was no violation of Article 3 because "the Court of Appeal's assessment was neither manifestly erroneous, nor did it occasion a miscarriage of justice to the Applicant." [74]

F. Article 1: Duty to Recognize Rights, Duties and Freedoms

"The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them."

Lawyers for Human Rights v. Swaziland, (2005) [ACmmHPR]

— The Commission found that, by ratifying the Charter without at the same time taking appropriate measures to bring domestic laws in conformity with it, the respondent state's actions defeated the very object and spirit of the Charter and thus violated Article 1 thereof. [51]

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— The Commission held that, if a respondent state "fails to ensure respect of the rights contained in the [Charter], this constitutes a violation of the [Charter] even if the State or its agents were not the perpetrators of the violation." The Commission found that Article 1 was violated as the respondent state failed to adopt measures to promote and protect human rights in the expelling of foreigners from Angola. [83]

— The Commission emphasized that "there is nothing in the African Charter that requires Member States of the African Union to guarantee for non-nationals an absolute right to enter and/or reside in their territories," and "may deny entry to or withdraw residence permits from non-nationals for various reasons including national security, public policy or public health." However, "the affected individuals should be allowed to challenge the order/decision to expel them before competent authorities, or have their cases reviewed, and have access to legal counsel, among others. Such procedural safeguards aim at making sure that non-nationals enjoy the equal protection of the law in their country of residence, ensure that their daily lives are not arbitrarily interfered with, and that they are not sent back/deported/expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death, among others." [84]

Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon, (2009) [ACmmHPR]

— "According to the permanent jurisprudence of the Commission, Article 1 imposes restrictions on the authority of the State Institutions in relation to the recognized rights. This Article places on the State Parties the positive obligation of preventing and punishing the violation by private individuals of the rights prescribed by the Charter. Thus any illegal act carried out by an individual against the rights guaranteed and not directly attributable to the State can constitute, as had been indicated earlier, a cause of international responsibility of the State, not because it has itself committed the act in question, but because it has failed to exercise the conscientiousness required to prevent it from happening and for not having been able to take the appropriate measures to pay compensation for the prejudice suffered by the victims. In this context of prevention, the State should carry out investigations so as to detect the various risks of violence and take the necessary preventive measures. The problem here does not concern so much the acts violating the rights but rather of knowing whether the State took the tangible measures

to prevent the imminent risks of perpetration of the said acts. It is not a question of inculpating the State for its lack of conscientiousness regarding any act perpetrated in relation to the guaranteed rights but of knowing whether the State, considering the imminent risks of serious violations, used due diligence that was required." [89-90]

— The Commission clarified the nature and scope of Article 1, particularly the question of whether Article 1 of the Charter imposes "an obligation of diligence or an obligation of result vis-à-vis the States parties to the said Charter." [84] It considered that "Article 1 of the African Charter imposes on the States Parties the obligation of using the necessary diligence to implement the provisions prescribed by the Charter since the said diligence has to evolve in relation to the time, space and circumstances, and has to be followed by practical action on the ground in order to produce concrete results. Thus, [...] the Governments have the responsibility of protecting their citizens not only through appropriate legislation and its effective enforcement but also by protecting them against injurious acts which can be perpetrated by third parties. In fact, in the Commission's view, it is an obligation of RESULT that Article 1 of the African Charter imposes on the States Parties. In effect, each State has the obligation of guaranteeing the protection of the human rights written in the Charter by adopting not only the means that the Charter itself prescribes, in particular "all the necessary legislative measures for this purpose but in addition measures of their choice that the Charter called for by Article 1 and it therefore defined as one of result. In accordance with its traditional commitment to protect the rights guaranteed by the Charter, the State Party is obliged to ensure the effective protection of human rights throughout its territory. If this obligation were that of an obligation of diligence the guaranteeing of human rights would be the object of legal insecurity liable to release the State Parties to the human rights protection instruments from any responsibility of effective protection. It is in taking into account the compelling nature of the protection of human rights that the human rights instruments set up control institutions to ensure that the obligations ensuing from these instruments are effectively implemented." [110-112]

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— Article 1 of the African Charter imposes a general obligation on all state parties to recognize the rights enshrined therein and requires them to adopt measures to give effect to those rights. As such, any finding of violation of those rights constitutes a violation of Article 1. The Commission found there was a violation of Articles 4, 5, 6, 7(1), 14, 16, 18(1) and 22. [227]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— The respondent state showed its commitment to the Charter by ratifying it in 1986. In ratifying the Charter, the respondent state did not and has still not made reservations of any kind. Therefore, it is obliged to respect, protect and fulfil all the provisions of the Charter without any exceptions. During ratification, if its intention was not to be bound by the Charter as a whole, then it should have refrained from ratifying the Charter, or it should have withdrawn following the proper procedures. If the state did not want to be bound by certain provisions of the Charter, it should have formally made its reservations during ratification. In the absence of any of these actions, the legal presumption is that it is bound by the Charter and is expected to comply with the provisions of the same. [231]

— "The African Charter was drafted and acceded to voluntarily by African states wishing to ensure the respect of human rights on this continent. Once ratified, states parties to the Charter are legally bound by its provisions. A state not wishing to abide by the African Charter might have refrained from ratification" (*International Pen and Others v Nigeria*). The state's argument that the drafters of the Charter did not intend the latter to be a binding

document cannot stand, because had African leaders not intended the Charter to be legally binding, they could have adopted a declaration under which international law is generally not a legally binding document. [232]

— The fact that a state is monist or dualist cannot be used as an excuse for not complying with its treaty obligations. [236]

— International customary law and treaty law can be applied by state courts where there is no conflict with existing state law, even in the absence of implementing legislation. It is also a well-established principle in international law that a state cannot invoke its domestic laws to avoid its international obligations. The fact that the provisions of the Charter are not domesticated into the laws of Botswana does not bar the Commission from assessing the compatibility of Botswanan laws and executive actions with the provisions of the Charter. [237-240]

— If a state party to the Charter fails to recognize the provisions of the African Charter, there is no doubt that it is in violation of Article 1. [241]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— A violation of any provision of the Charter automatically means a violation of Article 1. [272]

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Republic of Zimbabwe, (2012) [ACmmHPR]

— A violation of any provision of the Charter automatically means a violation of Article 1. [140]

— The existing legislation (at the time of the submissions) in the respondent state was contrary to the spirit of Article 1 as it did not ensure the provisional compensatory damages that gave just satisfaction to victims of wrongful death, particularly to close family and relatives who are bereaved because of such deaths. [143]

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

— The Commission has reached the conclusion that the respondent state's agents failed to protect the victims from being subjected to torture and other forms of ill-treatment; and failed to respect their right to liberty, as well as their right to a fair trial. The respondent state also failed to investigate allegations of wrongdoing by its agents and took no measures to afford an adequate remedy to the victims. The failure to put in place an adequate legislative framework to protect the physical integrity of individuals within its jurisdiction also constitutes a failure on the part of the respondent state to uphold its obligations under Article 1 of the Charter. [92]

Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court found that the respondent state violated Article 1 on the grounds that it failed in its obligation to take measures, other than legislative, to ensure respect for the rights of the applicants' cause to be heard by competent national courts, as it had not shown due diligence to seek out, investigate, prosecute and put to trail the murderers (as considered by the Court in its assessment of the state's violation of Article 7). [198-199]

African Commision on Human and Peoples' Rights v. Kenya, (2017) [Afr. Ct. H.P.R.]

— The Court held that there is a violation of Article 1 where other Articles of the Charter have been violated, because by violating the relevant charters, the state in question has failed to adopt legislation that protects the rights enshrined in the Charter.

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court found that the respondent state has violated Article 6 and Article 7 of the Charter and thus concluded that the violation of these rights also simultaneously violated Article 1 of the Charter requiring the respondent to respect and ensure respect for the rights guaranteed to its citizens. [160]

Amiri Ramadhani v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court found that the respondent state violated Article 7(1)(c) of the Charter by failing to provide the applicant with legal assistance. The court reiterated its finding in Arex Thomas v. The United Republic of Tanzania, that: "when the Court finds that any of the rights, duties and freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated." [77]

Armand Guehi v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court reiterated that "if it finds that any of the rights in the Charter is curtailed, violated or not achieved, then Article 1 is violated." [149]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— When the Court finds that any of the rights, duties and freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated. [135]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court held that "whenever a substantive right of the Charter is violated due to the respondent state's failure to meet these obligations, Article 1 will be found to be violated." Here, the Court found substantive violations of Article 4 of the Charter based on the mandatory death penalty and a consequential violation of Article 5 of the Charter for execution of that sentence by hanging. [124–25]

Open Society Justice Initiative (On Behalf Of Pius Njawe Noumeni) v. Cameroon, (2019) [AcmmHPR]

— The Commission found that by failing to take the necessary legislative and other measures to guarantee the right to freedom of expression, freedom from discrimination and the right to property, the respondent state was in violation of Article 1 of the Charter, which requires States to give effect to the rights, duties, and freedoms enshrined in the Charter. [202]

G. Article 2: Right to Enjoy Rights Without Discrimination

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

Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, RADDHO, Organisation nationale des droits de l'Homme au Sénégal and Association malienne des droits de l'Homme v. Angola, (1997) [ACmmHPR]

— The Commission held that "Article 2 of the Charter emphatically stipulates that 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.' This text obligates States Parties to ensure that persons living on their territory, are they their nationals or non-nationals enjoy the rights guaranteed in the Charter. In this case, the victim's rights to equality before the law were trampled on because of their origin." [18]

Amnesty International v. Zambia, (1999) [ACmmHPR]

— The Commission held that "[b]y forcibly expelling the two victims from Zambia, the State has violated their right to enjoyment of all the rights enshrined in the African Charter. This article imposes an obligation on the Zambian Government to secure the rights protected in the African Charter to all persons within their jurisdiction irrespective of political or any other opinion. This obligation was reaffirmed by the Commission in Rencontre africaine pour la défense des droits de l'Homme/Zambia (Communication 71/92). The arbitrary removal of one's citizenship in the case of one of the applicants cannot be justified." [52]

Democratic Republic of Congo v. Burundi, Rwanda, Uganda, (2003) [ACmmHPR]

— According to the Commission, "killings, massacres, rapes, mutilations and other grave human rights abuses committed while the respondent states' armed forces were still in effective occupation of the eastern provinces of the Complainant State" constituted flagrant violations of Article 2, since such acts were directed against victims by virtue of national origin. [79-80]

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

— The Commission held that a "state's right to expel individuals is not absolute and it is subject to certain restraints," one of those restraints being a bar against discrimination based on national origin. [79]

— The Commission further noted that "the simultaneous expulsion of nationals of many countries does not negate the charge of discrimination." [79]

Mouvement ivoirien de droits de l'Homme (MIDH) v. Cote d'Ivoire, (2008) [ACmmHPR]

— "[...] the Commission considers that the provisions of Article 26 of the Law 98-750 are in violation of Articles 2 and 14 of the African Charter on Human and Peoples' Rights and notes that the argument that its effects are said to be limited to a certain number of persons and only concerns a very small minority of Africans is irrelevant from the legal point of view and therefore cannot stand. On the other hand, such an interpretation confirms the violation of Article 2 of the African Charter which guarantees the enjoyment of rights and freedoms without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status. Furthermore, the Commission considers that the application of Article 26, paragraphs 1 and 2 of the Law 98-750 would give rise to the expropriation of their land from a category of the population, on the sole basis of their origin; whereas, it observes that the Ivorian Government, in its remarks on the merits, does not advance any argument linked to the "public need" or to "the general interest of the community" which could exceptionally justify a violation to the right to property as guaranteed by the Charter, specifically in its Article 14." [78]

Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon, (2009) [ACmmHPR]

— The Commission considered that "the provisions of Article 2 of the African Charter have been violated because the victims were enjoying their rights and freedoms when they were attacked. Such attacks which infringed their rights and freedoms were made possible because the State of Cameroon failed to fulfill its obligation to protect which is incumbent upon the State." [126]

Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe, (2009) [ACmmHPR]

— The Commission considered that the respondent state had violated Article 3: it was not very clear why the victim was deported, and, given the circumstances, it could only be concluded that he was deported because he was a non-national. [93]

— "Discrimination can be defined as any act which aims at distinction, exclusion, restriction or preference which is based on any ground, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms." [91]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— "The test to establish whether there has been discrimination is well documented. A violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) there is no proportionality between the aim sought and the means employed." [219]

— Discrimination on the bases of political opinion is a prohibited ground of discrimination under the Charter. [221]

— "[H]ad he victim not expressed a political opinion which criticized the Government, he would not have been deported from the country. Had he written an article which support[ed] presidential succession in Botswana, he would not have been subjected to the treatment he received from the authorities and courts. Therefore, it could be concluded that the only reason the victim was expelled was because he had a different political opinion on the way

presidential succession should take place in Botswana. [It appeared] he was treated differently from people who support the way presidential succession is taking place in Botswana." Therefore, the Commission concluded that the victim was treated differently because of his political opinion. [223]

— While the Commission accepted the possibility of justifiable and positive discrimination, including different treatment of persons for national security reasons, the respondent state failed to demonstrate how the victim's action threatened national security. [224]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The submissions demonstrated that the victims were exclusively women, they were not protected from the perpetrators and other unidentified actors during the demonstrations and the violations were perpetuated on the victims because of their gender. As such, the onus shifted to the respondent state to provide that there was no differential treatment given to both male and female protesters on the scene. However, there is no evidence in the submissions of the respondent state showing that male protesters at the scene were also stripped naked and sexually harassed. [137 – 138]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia (2011) [ACmmHPR]

— "If the government provides no evidence to contradict an allegation of human rights violation made against it, the Commission will take it as proven, or at the least probable or plausible." [178]

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

— The Commission held that "for there to be a violation of Article 2 of the African Charter, it must be shown that the victim of the alleged violation has been deprived of the enjoyment of a Charter Right on the basis of his/her race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." [158]

* Oscar Josiah v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The applicant alleged that the Court of Appeal did not evaluate inconsistencies in witness statements and was misdirected in its dismissal of the second ground of the appeal. [7]

— It is alleged that the contradictions and inconsistencies in the witness statements went to the root of the matter. [47]

— The Court found that the manner in which the Court of Appeal examined the applicant's grounds of appeal relating to evidence did not occasion a miscarriage of justice to him. [60]

— As such, the Court found no evidence that the applicant was treated differently, as compared to other persons who were in a situation similar to his. Accordingly, the Court dismissed the applicant's claim that his rights under Article 3(1) and (2) of the Charter were violated. [73-74]

The African Commission on Human and Peoples' Rights v. Kenya, (2017) [Afr. Ct. H.P.R.]

— According to the Court the "scope of the right to non-discrimination extends beyond the right to equal treatment by the law and also has a practical dimension in that individuals should in fact be able to enjoy the rights enshrined in the Charter without distinction of any kind relating to their race, colour, sex, religion, political opinion, national extraction or social origin, or any other status. The expression 'any other status' under Article 2 encompasses those cases of discrimination, which could not have been foreseen during the

adoption of the Charter. In determining whether a ground falls under this category, the Court shall take into account the general sprit of the Charter." [138]

— "A distinction or differential treatment becomes discrimination, and hence, contrary to Article 2, when it does not have objective and reasonable justification and, in the circumstances where it is not necessary and proportional." [139]

— Kenya violated Article 2 by refusing to recognize the Ogieks as a Tribe and thus refusing to grant them the legal rights given to tribes.

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— "The principle of non-discrimination strictly forbids...[different] treatment among persons existing in similar contexts on the basis of one or more of the prohibited grounds listed under Article 2." [89]

— In this case, "the Applicant...asserts that the Court of Appeal violated his right to [be] [free] from discrimination. The Applicant does not indicate the kind of discriminatory treatment that he was subjected to in comparison to persons who were in the same situation as he was, nor does he specify the ground(s) prohibited under Article 2 of the Charter on which basis he was discriminated. The mere allegation that the Court of Appeal did not properly examine the evidence supporting his conviction is not sufficient to find a violation of his right not to be discriminated [against]." [90]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court denied the applicant's claim that the refusal to grant him bail was discriminatory under Article 3(2). Here, the Court explained that the applicant failed to "adduce evidence that those in the same or similar situation as he was, have been treated differently." [69–71].

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that there was no violation of the right to non-discrimination under Article 2 as the applicant "neither explains the circumstances of his differential treatment nor provides evidence to substantiate his allegation." The Court explained that "general statements to the effect that a right has been violated are not enough. More substantiation is required." [79]

Open Society Justice Initiative (On Behalf of Pius Njawe Noumeni v.Cameroon, (2019) [AcmmHPR]

— The Commision found it reasonable to conclude that the broadcasters had been discriminated against for their political opinions in violation of Article 2 of the African Charter. [191-192]

— The Commission reiterated its test in *Kenneth Good v Botswana* (Communications 313/05} to determine whether a violation of the right to non-discrimination has occurred, whereby "a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) if there is no proportionality between the aim sought and the means employed." [183]

— The Commission concluded that all of these factors were met given that the respondent state failed to submit evidence refuting the complainant's submissions indicating that the Minister of Communication allocates broadcasting frequencies in a way that is politically motivated, or an objective justification for the differential treatment. [184-186]

H. Article 8: Freedom of Religion

"Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms."

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— "Another matter is the application of Shari'a law. There is no controversy as to Shari'a being based upon the interpretation of Islam, the Muslim religion. When Sudanese tribunals apply Shari'a, they must do so in accordance with the other obligations undertaken by the State of Sudan. Trials must always accord with international fair-trial standards. Also, it is fundamentally unjust that religious laws should be applied against non-adherents of the religion. Tribunals that apply only Shari'a are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they so wish." [73]

— According to the Commission, religious persecution and attempts to force non-Muslims to convert to Islam is a violation of Article 8. [74]

— "Other allegations refer to the oppression of Christian civilians and religious leaders and the expulsion of missionaries. It is alleged that non-Muslims suffer persecution in the form of denial of work, food aid and education. A serious allegation is that of unequal food distribution in prisons, subjecting Christian prisoners to blackmail in order obtain food. These attacks on individuals on account of their religious persuasion considerably restrict their ability to practice freely the religion to which they subscribe. The government provides no evidence or justifications that would mitigate this conclusion. Accordingly, the Commission holds a violation of Article 8." [76]

I. Article 16: Right to Health

"1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick."

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that there was a violation of Article 16 of the Charter as the respondent state was "directly responsible" for the deterioration of the general state of health of the prisoners due to the lack of sufficient medical attention, food, blankets and adequate hygiene. [122] The Commission stated that "[t]he State's responsibility in the event of detention is even more evident to the extent that detention centers are its exclusive preserve, hence the physical integrity and welfare of detainees is the responsibility of competent public authorities." [122]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— Article 16(1) states that every individual has a right to enjoy the best attainable state of physical and mental health. The facts demonstrate that the victims were physically and emotionally traumatized as a result of sexual violence and assaults on their person. The trauma and injuries sustained affected their physical, psychological and mental health, which was clearly a violation of Article 16(1). [258, 265]

— Article 16(2) provides that states party to the present Charter shall take all necessary measures to protect the health of citizens and ensure that they receive medical attention when they are sick. All the victims received medical attention after they were assaulted, meaning that the respondent state fulfilled its obligation to ensure that the victims received medical attention after the injuries sustained. [266]

J. Article 18: Right to a Family

"1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.

2. The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."

Amnesty International v. Zambia, (1999) [ACmmHPR]

— "The forcible expulsion of [the two applicants] by the Zambian government has forcibly broken up the family unit which is the core of society thereby failing in its duties to protect and assist the family as stipulated in Articles 18(1) and 18(2) of the Charter [...] The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community." [59]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that Article 18(1) was violated, as people were held "in solitary confinement both before and during the trial... which is, on top of it all, arbitrary," and such confinement was held to be "depriving them of their right to a family life." [124]

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR].

— "The respondent state and its agents, the Janjaweed militia, forcefully evicted the victims from their homes, some family members were killed, others fled to different places, inside and outside the territory of the respondent state. This kind of scenario threatens the very foundation of the family and renders the enjoyment of the right to family life difficult. By not ensuring protection to the victims, and allowing its forces or third parties to infringe on the rights of the victims, the respondent state was held to have violated Article 18(1) of the African Charter." [216]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— The Charter imposes a positive obligation on the state towards the family. The state is obliged to assist the family towards meeting its needs and interests and to protect the same institution from abuse of any kind by its own officials and organs and by third parties. In exercising the positive obligations, the state exercises a negative obligation which is to refrain from violating the rights and interests of the family. [212]

— "The sudden deportation of the victim with no justification, with the knowledge that he would be separated from his minor daughter who was living with him, runs counter to the protection states are required to give to the family under Article 18. There is nothing to justify the deportation or that demonstrated the respondent state took measures to provide a safety net to the daughter after the deportation of the victim. The hasty manner in which the deportation was carried out means adequate arrangements could not be made for the victim's daughter. The victim was given only 56 hours to make his own arrangements for his departure. For a person who has legally stayed in the country for 15 years, 56 hours is clearly inadequate to make sufficient family arrangements, especially for a female minor who has no other relative in the country." [213]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The African Commission concluded that the words used ("slut" and "whore") are not usually used against persons of the male gender and are generally meant to degrade and destroy the integrity of women who refuse to abide by traditional religious, and even social, norms. [143]

— The victims were subjected to acts of sexual harassment and physical violence that can only be directed to women, for instance, breasts fondling and touching or attempting to touch "private and sensitive parts." There is no doubt that the victims were targeted in this manner due to their gender. [144]

— No discrimination will exist if the difference in treatment has a legitimate purpose which is not contrary to justice, to reason or to the nature of things. The African Commission concluded that the treatment was neither legitimate nor justifiable because there is no reasonable cause behind the discrimination that was inflicted upon the victims. [146, 149]

— The type of violence used during the demonstrations was perpetrated based solely on the sex of the persons present in the scene of the demonstration. In other words, the violence was gender-specific and discriminatory by extension. [153]

— A state may be in violation of the African Charter for acts of non-state actors if it is complicit in the violations alleged, has sufficient control over those actors or fails to investigate those violations. Failure to investigate effectively, with an outcome that will bring the perpetrators to justice, shows lack of commitment to take appropriate action by the state. [156, 163]

Prof. Lèon Mugesera v. Republic of Rwanda, (2017) [Afr. Cr. H.P.R]

— The applicant alleged that he had been detained under deplorable conditions, had undergone all forms of torture and had only limited access to his family, without medical or appropriate treatment and without access to counsel.

— The applicant submitted that the Court must order the respondent state to take interim provisional measures in order to prevent or stop the perpetration of serious and irreparable damage that he suffered. These comprised: violation of the right of access to his counsel, inhuman and degrading treatment, violation of the right of access to his medical treatment, and violation of the right of access to his relatives.

— The Court ordered the respondent state to allow the applicant to be visited by his family members and to communicate with them.

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court reiterates that "[g]eneral statement to the effect that the right has been violated are not enough. More substantiation is required." [131]

— In this case, the applicants have not specified "how and in what circumstances the alleged violations occurred." [130] Accordingly, their allegations have been dismissed. [132]

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The applicants did not demonstrate how the respondent state's actions or omissions had an adverse impact on the needs and interests of their families or how those prevented them from fully benefitting from the filial and social interaction necessary for the maintenance of a healthy family life. [126]

K. Article 26: Duty to Guarantee Independence of Courts

> *"States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter."*

Civil Liberties Organisation v. Nigeria, (1995) [ACmmHPR]

— The Commission stated that the difference between Article 7 and Article 26 is that "[w]hile Article 7 focuses on the individual's right to be heard, Article 26 speaks of the institutions which are essential to give meaning and content to that right. This Article clearly envisions the protection of the courts which have traditionally been the bastion of protection of the individual's rights against the abuses of State power." [15]

— The Commission held that the Decree in question, which specifies that no decree promulgated after December 1983 can be examined in any Nigerian Court, amounts to a violation of Article 26 as it ousts the courts' jurisdiction.

Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The Commission held that Article 26 of the Charter was violated because the government refused to release a detainee despite the order for his release on bail that was made by the Court of Appeal: "[f]ailing to recognize a grant of bail by the Court of Appeal militates against the independence of the judiciary." [30]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission held that Article 26 of the Charter was violated because the established "section responsible for matters relating to state security within the Special Tribunal" was headed by "a senior military officer who is not required to have legal training." The Commission further stated that "[w]ithdrawing criminal procedure from the competence of the courts established within the judicial order and conferring onto an extension of the executive necessarily compromises the impartiality of the courts." [98]

Sir Dawda K. Jawara v. Gambia (The), (2000) [ACmmHPR]

— The Commission held that Article 26 of the Charter was violated because the Gambian military government was "ousting the competence of the ordinary courts to handle human rights cases, and ignoring court judgments." [74]

Lawyers for Human Rights v. Swaziland, (2005) [ACmmHPR]

— "Clearly, retaining a law which vests all judicial powers in the Head of State with possibility of hiring and firing judges directly threatens the independence and security of judges and the judiciary as a whole. The Proclamation of 1973, to the extent that it allows the Head of State to

dismiss judges and exercise judicial power is in violation of Article 26 of the African Charter." [58]

Kevin Mgwanga Gunme et al v. Cameroon, (2009) [ACmmHPR]

— "The Commission states that the doctrine of separation of powers requires the three pillars of the state to exercise powers independently. The executive branch must be seen to be separate from the judiciary, and parliament. Likewise in order to guarantee its independence, the judiciary, must be seen to be independent from the executive and parliament. The admission by the respondent state that the President of the Republic, and the Minister responsible for Justice are the Chairperson and Vice Chairperson of the Higher Judicial Council respectively is manifest proof that the judiciary is not independent. The composition of the Higher Judicial Council by other members is not likely to provide the necessary 'checks and balance' against the Chairperson, who happens to be the President of the Republic. The allegations by the Complainants in this regard are therefore substantiated. The Commission does not hesitate to find the respondent state in violation of Article 26." [211-212]

Marcel Wetsh'okonda Koso and others v. Democratic Republic of the Congo, (2009) [ACmmHPR]

— The Commission, re-iterating established case law, considered that the trial of both civilians and military personnel by a military tribunal presided over by a military officer on matters of a civilian nature constituted an infringement of the requirements of fair justice and the independence of tribunals under Articles 7.a, 7.b, 7.d and 26.

— "According to the African Commission, the independence of a court refers to the independence of the court vis-à-vis the Executive. This implies the consideration of the mode of designation of its members, the duration of their mandate, the existence of protection against external pressures and the issue of real or perceived independence: as the saying goes 'justice must not only be done: it must be seen to be done.' The obligation to be independent is one and the same as the obligation to be impartial. Impartiality may be perceived in a subjective and objective manner. In a subjective manner, the impartiality of a judge is gauged by his internal inclinations. Since it is impossible to infer from this inclination objectively, it was simpler to conclude that subjective impartiality be assumed until proven otherwise. However, appearances cannot be ignored while gauging the impartiality of a jurisdiction. The obligation of having a jurisdiction established by law, capable of passing a judgement cannot be clearly disassociated from the above. The ability of a court to rule depends on the competence of the court to hear a case, and also depends on the caliber of its members. [...] The requirement of a fair trial presupposes that the parties to the suit are able to present their respective cases without prejudice to either party. The flaws of a trial can be detected where a certain number of elements combined together have not been respected viz. the right to equality of means and the need for dissenting views. The requirements of a fair trial also presupposes that the courts are able to allow persons subject to trial to review the ruling passed. The principle of a two-tier court system is recognized by all. In the present case, there is a discriminatory justice system in the same that Article 5 applies differently depending on the persons concerned." [79–82]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— The sections of the Botswana Immigration Act which prohibits a review of the President's decision by all judicial organs not only violate Article 7(1)(a) but also threatens the independence of the judiciary guaranteed under Article 26. [180]

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The Commission noted that "the concerns, needs and interests of victims can only be addressed in judicial proceedings when these proceedings are impartial, taking into consideration facts and appropriate laws. The primary concern should therefore be to ensure that victims of human rights violations are redressed accordingly by giving them an opportunity to appeal decisions from other judicial bodies." [219]

— "Particularly, the appeal mechanism must be premised on the recognition that the right to appeal is a fundamental right under international law, which all victims are entitled to. Failing to allow victims to appeal decisions is contrary to the guiding principles and spirit of the African Charter and other international and regional instruments." [220]

— The victims in the present case appealed to the PPO and, following the result, appealed to the Appeal Chamber which dismissed their appeal and upheld the decision of the PPO. Therefore, "the victims had the opportunity to be heard by the Appeal Chamber and therefore cannot claim that their right to appeal under Article 7 of the African Charter was violated. Furthermore, their appeal was also entertained by the PPO even though the result was not satisfactory to them." [221]

— "The issue of the appeal process being impartial or independent in itself, and as a result, showing the lack of impartiality and independence of the Appeal Chamber and the PPO does not fall within the ambit of Article 7 and 26 of the African Charter." [222]

— The complainants also alleged that the victims did not have an impartial and objective investigation. Though the Commission agreed with the complainants' submissions that the investigation carried out by the PPO was not impartial and jeopardized the victims' right to an effective remedy, the Commission concluded that the impartiality of the investigative process should be separated from the allegations related to Article 7(1)(a) and 26 of the African Charter. Even though a lack of impartiality of the investigations amounted to a violation of the victims' right to effective remedies, it cannot be classified as a violation of the victims' rights under Articles 7(1)(a) and 26 of the African Charter, which form the basis of the current analysis. [231, 234]

— The second limb of Article 26 imposes a duty on the respondent state "to provide the structures and mechanisms necessary for the exercise of the right to fair trial. " [235] The respondents state's submissions are only in respect of the reasons why the perpetrators could not be prosecuted; it does not provide any information about mechanisms that were put in place after the incidences to afford protection and redress to the victims and even to prevent future occurrences of such violations." [237]

IV. Procedure

A. Jurisdiction of African Court

1. Generally

Michelot Yogogombaye v. Republic of Senegal, (2009) [Afr. Ct. H.P.R.]

— For the Court to hear a case brought by an individual against a state, "there must be compliance with, inter alia, Article 5(3) and Article 34(6) of the Protocol." [31]

— Article 5(3) provides "[t]he Court may entitle... individuals to institute cases directly before it, in accordance with Article 34(6) of the Protocol." [32]

— Article 34(6) mandates "the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3)" of the Protocol and "[t]he Court shall not receive any petition under Article 5(3) involving a State Party which has not made such a declaration." [33]

— Therefore, the respondent State must make a "special designation authorizing such a case to be brought before the Court." [34] The Court had the Chairperson of the African Union Commission forward a copy of the State parties who made the declaration, which did not include Senegal. [36] Therefore, the Court held they did not have jurisdiction.

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— In response to a challenge on the existence of the Commission, the Commission stated that it was established by the African Charter and operates within the Organisation of African Unity (OAU). The OAU was responsible for funding and staffing the Commission. When the OAU ceased to exist under the Constitutive Act, all assets and liabilities of the OAU were transferred to the African Union (AU). In its decision on the Interim Period, the Assembly of the African Union decided that the African Commission on Human and Peoples' Rights shall henceforth operate within the framework of the AU. In addition, the AU assumed the same responsibilities towards to Commission as previously borne by the OAU. The Commission added that, unlike some other international human rights systems where the substantive rights and their monitoring bodies are dealt within two complementary but different instruments, in the African system, the same instrument, the African Charter, makes provisions for substantive rights and organizes their monitoring mechanism. Under the Charter, therefore, state parties are not given the option of recognizing the substantive rights without accepting the jurisdiction of the African Commission, which was established to promote and protect those rights. Therefore, the Commission concluded that the termination of the OAU Charter and subsequent dissolution of the OAU does not affect its existence. The Commission is still in existence and performs its activities within the framework of the AU. [72–79]

Association Juristes d'Afrique pour la Bonne Gouvernance v. Republic of Cote D'Ivoire, (2011) [Afr. Ct. H.P.R.]

— The Court referenced Article 5(3), which states "[t]he Court may entitle relevant non governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34 (6) of this Protocol." [4]

— The Court noted that it is clear from Article 5(3) and Article 34(6) that "any non-governmental organization that submits a complaint directly to the Court under Article 34(6) of the Protocol must have observer status before the African Commission and Human and Peoples' Rights." [5]

— The Court was informed by the Secretariat of the African Commission that the applicant, an NGO, does not have observer status with the Commission, and therefore the Court lacks jurisdiction to receive the application submitted by the applicant. [7, 9]

Daniel Amare and Mulugeta Amare v. Republic of Mozambique and Mozambique Airlines, (2011) [Afr. Ct. H.P.R.]

— "Article 5(3) of the Protocol provides that the Court may entitle individuals to institute cases directly before it in accordance with Article 34(6) of the Protocol, which Article in turn provides, inter alia, that 'The Court shall not receive cases under Article 5(3) involving a State Party which has not made a declaration accepting the competence of the Court to receive such cases.'" [7]

— "As this is an application brought by individuals, and the Republic of Mozambique has not deposited the declaration under Article 34(6) of the Protocol, the Court concludes that manifestly, it does not have the jurisdiction to hear to application." [8]

— The Court transferred the case to the African Commission under Article 6(3) "in light of the allegations made in the application." [9]

* Ekollo M. Alexandre v. Republic of Cameroon and Federal Republic of Cameroon and Federal Republic of Nigeria, (2011) [Afr. Ct. H.P.R.]

— Respondent states Cameroon and Nigeria did not make Article 34(6) declarations nor has Cameroon even ratified the Protocol. [5, 6]

— The Court noted that Article 34(6) provides, "At the time of ratification of the Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a State Party which has not made such a declaration." [8]

— These provisions "allow for the Court to be seized directly by an individual only when a respondent state has made the declaration authorizing such seizure." [9]

— Therefore, the Court "manifestly lacks jurisdiction to receive the application filed by [applicant] against Cameroon and Nigeria." [10]

— The Court deemed the case appropriate to transfer to the Commission under Article 6(3) of the Protocol. [11]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— The Commission noted that "neither the African Charter nor the Rules of Procedure of the Commission make provisions on the *locus standi* of the parties before it. The Commission has however... adopted the *actio popularis* principle allowing everyone the legal interest and capacity to file a communication for its consideration." As such, non-victim individuals, groups and NGOs are permitted to submit communications to the Commission. [61]

— "The author of a communication need not be the victim nor related to the victim(s) of the human rights violations alleged." [62]

— "The person or NGO filing the communication need not be a national nor be registered in the territory of the respondent state. There is no requirement of "citizenship" for the authorship of a communication. Any interested individual or organization can bring a communication on behalf of a victim and such individual or organization need not be a citizen or be registered within a state party to the African Charter." [64]

Delta International Investments S.A, Mr and Mrs A.G.L De Lange v. Republic of South Africa, (2012) [Afr. Ct. H.P.R.]

— The Court observed that "in terms of Article 5(3) of the Protocol, it 'may entitle relevant Non-Governmental organizations (NGOs) with

observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol.'" [4]

— Article 34(6) provides that "the State shall make a declaration accepting the competence of the Court to receive cases under article 5(3)" of the Protocol. [5]

— Legal Counsel of the African Union Commission informed the Registrar that South African had not made such a declaration. The Court therefore held "it is evident that the Court manifestly lacks jurisdiction to receive the Application submitted...." [7, 9]

Lohe Issa Konaté v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court notes that "even if the respondent state raises no objections; it is still required to satisfy itself, *propio motu*, that it has the jurisdiction *ratione personae, ratione materiae, ratione temporis* and *ratione loci*, to hear the Application." [30]

Fidéle Mulindahabi v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The Court found that it had personal, temporal and territorial jurisdiction because the respondent state is a party to the Protocol; the alleged violations were continuous as the applicant was still imprisoned, and the facts of the matter occurred in the respondent state's territory. [25]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court noted that "its jurisdiction is an issue of law which it has to determine on its own regardless of whether or not the issue is raised by the parties in a case." If a party cited provisions that are not applicable, it is of no consequence because the Court will "rule according to the law and is in a position to ground its jurisdiction on the appropriate provisions." [32]

— The Court has jurisdiction ratione personae (concerns a party to the Charter), ratione temporis (violations have been committed within the period of the Charter's application) and ratione loci (violations have been committed on the territory of the respondent state):

- **ratione personae**: the United Republic of Tanzania made the requisite declaration under Article 34(6) of the Protocol;
- **ratione temporis**: since the alleged violations are continuous in nature, the applicant has remained convicted on grounds which he believes are flawed by irregularities;
- **ratione loci**: in as much as the facts of the case occurred on the territory of a State Party to the Protocol, i.e., the respondent state. [35–36]

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— "[T]he Applicant contends that this Court has jurisdiction as long as there are allegations of violation of human rights. The Court reiterates its position that it is not an appeal court with respect to the decisions rendered by the national courts. However, as it underscored in its Judgment in *Alex Thomas v. The United Republic of Tanzania* [handed down in 2015] and *Mohamed Abubakari v. The United Republic of Tanzania*, this does not preclude it from ascertaining whether the procedures before national courts are in accordance with the international standards set out in the Charter or other applicable human rights instruments. Be that as it may, the Applicant alleges violation of the rights guaranteed by the Charter." [27–30].

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— If the application brought before the Court raises allegations of violation of human rights guaranteed by the Charter or any other relevant human rights instrument ratified by the States concerned, the Court will have material jurisdiction to hear the case. [25–27]

— The Court found that it had personal, temporal and territorial jurisdiction because the respondent state is a party to the Protocol; the alleged violations were continuous as the applicant was still imprisoned, and the facts of the matter occurred in the respondent state's territory. [29]

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— This Court "is not an appeal court with respect to decisions rendered by national courts. However, this does not preclude the Court from examining whether the procedures before national courts are in accordance with international standards set out in the Charter or other applicable human rights instruments to which the respondent state is party." In this case, the Court had jurisdiction to determine whether the domestic courts' proceedings have been conducted in accordance with the international standards set out in the Charter. [28]

— The Court's jurisdiction extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol to the Charter and any other relevant Human Rights instrument ratified by the States concerned, and this is what the applicant alleged had been violated. [29]

George Maili Kemboge v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court is not an appeal court with respect to decisions rendered by national courts. However, this does not preclude it from examining whether the procedures before national courts are in accordance with international standards set out in the Charter or other applicable human rights instruments to which the respondent state is party. [19]

— The applicant alleged violations of his rights protected by the Charter, thus the Court has jurisdiction to determine whether the domestic courts' proceedings that formed the basis of his application had been conducted in accordance with international standards set out in the Charter. [20]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court acknowledged that it does not have appellate jurisdiction over national courts, but "it retains the power to assess the propriety of related proceedings with international human rights standards." The Court ruled that it has jurisdiction because it will assess "whether the manner in which domestic courts handled [the applicants'] case was in line with international standards..." [24–25]

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that it had personal, temporal and territorial jurisdiction because the respondent state is a party to the Protocol; the alleged violations were continuous as the applicant was still imprisoned, and the facts of the matter occurred in the respondent state's territory. [28]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court will have "material jurisdiction if the application brought before it raises allegations of violation of human rights." [18]

— The Court found that it had personal, temporal and territorial jurisdiction because the respondent state is a party to the Protocol; the alleged violations were continuous as the applicant was still imprisoned, and the facts of the matter occurred in the respondent state's territory. [22]

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The Court noted that "Article 5(3) of the Protocol read together with Article 34(6)... provides for access to the Court for individuals regardless of their status and the nature of the crimes they are alleged to have committed or to have been convicted of." [25] As such, the respondent state's argument—that it would be a travesty of justice for the Court to allow the applicants to file matters before the Court as they were convicted in Rwanda for genocide related crimes, crimes relating to national security and had absconded from Rwanda after their convictions and were, therefore, fugitives from justice—was dismissed.

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that it was not being asked to sit as a court of first instance because the applicant alleged "violations of provisions of international instruments to which the respondent state is a party." [24]

— The Court explained that "while it does not have appellate jurisdiction in relation to domestic courts, the Court retains the power to assess the propriety of domestic proceedings in the light of a State's international commitments." [29] Here, the Court found it had jurisdiction because it was "examining a State's compliance with its international obligations [which] does not amount to the Court sitting as an appellate court." [31]

2. Ratione Materiae

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

— Violations fall into the scope of material jurisdiction as they concern the Charter, Protocol and other international human rights instruments. [85]

— From the record, the Respondent has ratified the Protocol and made the declaration under Article 34(6) thereof, thus the Court can consider applications from individuals and NGOs brought against it; the first 31 applicants have observer status before the Commission, therefore, the Court has jurisdiction ratione personae. [86]

Peter Joseph Chacha v. The United Republic of Tanzania, (2014) [Afr. Ct. H.P.R.]

— If the applicant has only cited national or constitutional law, "the Court will look for corresponding articles in the Charter or any other human rights instrument, and base its decision thereon." [113]

— So long as the substance of a complaint is related to the violations of human and peoples' rights that are contained in the Charter, the complaint need not specify which specific rights from the Charter were violated. Failure to cite a specific provision will not divest the Court of jurisdiction. [114, 118, 122]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held that it has jurisdiction as long as "the rights alleged to be violated are protected by the Charter or any other human rights instrument ratified by the respondent state." [31]

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court overruled the "objection that its jurisdiction had not been invoked simply because the applicants only cited ongoing cases against them within the national judicial system and have not mentioned the Protocol, the Charter or any other relevant human rights instruments ratified by the respondent state. " [57]

— "It is not necessary that specific provisions of the Charter be mentioned in the application; it suffices that the rights allegedly violated are guaranteed by the Charter or any other instrument to which the respondent state is party." [58]

— As long as the application to the Court relates to States which are party to the Protocol, it is of no matter that the case generally contains allegations against other States not party to the protocol, in this case Kenya and Mozambique. [61-63]

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court decided jurisdiction is permissible when the court is reviewing whether the domestic court used procedures "in accordance with the international standards set out in the Charter or other applicable human rights instruments." [28]

Ingabire Victoire Umuhoza v. Rwanda, (2017) [Afr. Ct. H.P.R.]

— Though the Court is not an appellate court, it can still opine on whether the procedures used at the domestic level are in accordance with the international standards set out in the Charter. [54]

— The Court has jurisdiction over "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." [56]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court observed that "it does not have jurisdiction to examine the constitutionality of domestic legislation. However, the Court can examine the extent to which such legislation violates the provisions of the Charter or other international human rights instrument ratified by the respondent state. Doing so would not require [the] Court so sit as a Supreme Court of Appeal because the Court is not applying 'the same law as the Tanzanian national courts, that is, Tanzanian law.' The Court rather applies exclusively 'the provisions of the Charter and any other relevant human rights instrument ratified by the respondent state concerned.'" [39]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court noted that even if "the Applicant's allegations essentially relate to the way in which the domestic courts of the respondent state evaluated the evidence," "this does not preclude the Court from making a determination on the allegations." [35]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— This Court reiterated its position that it is not an appellate court reviewing decisions rendered by national courts. Nonetheless, the Court is not precluded from "examining whether the procedures before national courts are in accordance with international standards set out in the Charter or other applicable human rights instruments to which the respondent state is a Party." [35]

— The Court noted that "since the Application alleges violations of provisions of some of the international instruments to which the

respondent state is a Party, it has material jurisdiction." [36]

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court held that the fact that "it is not an appellate court with respect to decisions rendered by national courts... does not preclude it from examining whether the procedures before national courts are in accordance with international standards set out in the Charter or other applicable human rights instruments to which the respondent state is a party." [31]

— The Court noted that while the Universal Declaration of Human Rights is not an international human rights instrument that is subject to ratification by States, it has previously held in the Matter of Anudo Ochieng Anudo v. Tanzania that the Declaration has been "recognised as forming part of Customary lnternational Law." As such, the Court is enjoined to interpret and apply it. [33]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that "as long as the rights allegedly violated are protected by the Charter or any other human rights instrument ratified by the State concerned, the Court will have jurisdiction over the matter." [45]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court explained that it has material jurisdiction if the applicants allege "violations of rights protected in the Charter or any other relevant international instrument to which the respondent state is a party." Here, the Court found that it has material jurisdiction because the applicants allege violations of Articles 4, 5 and 7 of the Charter. [29–31]

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court will have jurisdiction as long as the applicant alleges violations of human rights protected under the Charter or other human rights instrument to which the respondent state is a party. [24]

— While the Court is not an appellate body, it does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instrument ratified by the state concerned. [25]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court dismissed the objection to its jurisdiction on the grounds that it was being requested to sit as an appellate Court on the basis that, even if it was not an appellate body with respect to decisions of national courts, this did not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned. [26]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court explained that "it has material jurisdiction if the Application brought before it raises allegations of violation of human rights; and for it to exercise its jurisdiction, it suffices that the subject of the Application relates to the rights guaranteed by the Charter or any other relevant human rights instrument ratified by the state concerned." The Court found that it has material jurisdiction because the applicant alleged human rights violations under Articles 1, 2, 3, 4, 5, 6 and 7 of the Charter. [18–19]

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The respondent state alleged that the applicant, by challenging the constitutionality of the sentence and claiming that it was in violation of Article 13(6) of its Constitution, was inviting the Court to address a matter that had never been considered in the domestic courts and, therefore, invited the Court to sit as a court of first instance. [20]

— The Court stated that it had "consistently held that, so long as an applicant alleges violations of rights protected in the Charter or any other international instrument to which the respondent state is a party, it possesses jurisdiction." For example, in Armand Guehi v. The United Republic of Tanzania the Court stated: "...with respect to whether it is called to act as court of first instance [the Court is of the view] that, by virtue of Article 3 of the Protocol, it has material jurisdiction so long as the application alleges violations of provisions of international instruments to which the respondent state is a party." [24]

— Since the applicant alleged a violation of the Charter, to which the respondent state is a party, the Court would not be sitting as a court of first instance in adjudicating on the applicant's allegations. [25]

— The Court reiterated that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. As established by the Court's jurisprudence, examining a state's compliance with its international obligations does not amount to the Court sitting as an appellate court (as held in Kenedy Ivan v. The United Republic of Tanzania). The Court, therefore, dismissed the respondent state's objection in this regard. [31]

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

— The Court held that it had jurisdiction to adjudicate human rights violations which may lead to reparation of damages of commercial and political nature. Violations of human rights may "lead to diverse prejudices for the victim which include economic, financial, material and moral or other forms of damages. Damages are therefore a consequence of the violation of a right and the nature of such damages does not determine the material jurisdiction of the Court." [41]

3. Ratione Temporis

Kevin Mgwanga Gunme et al v. Cameroon, (2009) [ACmmHPR]

— "The Commission has through its jurisprudence established the principle that violations that occurred prior to the entry into force of the Charter, in respect of a State party, shall be deemed to be within the jurisdiction rationae temporis of the Commission, if they continue, after the entry into force of the Charter. The effects of such violations may themselves constitute violations under the Charter. In other words, this principle presupposes the failure by the State party to adopt measures, as required by Article 1 of the Africa Charter to redress the violations and their effects, hence failing to respect, and guarantee the rights." [96]

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

— Any matter can be brought before the Court, even if the conduct complained of occurred before the Protocol had come into operation, so long as it occurred after the respondent states' ratification of the Charter.

— "At the time the Protocol was ratified by the Respondent and when it came into operation in respect of the Respondent, the alleged violation was continuing and is still continuing: independent candidates are still not allowed to stand for the position of President or to contest Parliamentary and Local Government elections. Furthermore, the alleged violations continued beyond the time the Respondent made the declaration in terms of Article 34(6) of the Protocol." [84]

Peter Joseph Chacha v. The United Republic of Tanzania, (2014) [Afr. Ct. H.P.R.]

— The Court held that even if a state did not make the declaration required for jurisdiction under Article 34(6) of the Protocol until after the human rights violations being charged occurred, the continued violation of human rights provides sufficient grounds for rationae temporis. [126]

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— While the alleged violations occurred before the filing of the special declaration by the respondent state, the violations were continuing after this date which constituted continuous violations, which gave the court the jurisdiction to hear the matter. [66]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court has temporal jurisdiction because the alleged violations are "continuous in nature, in that the applicant remains convicted and is serving a sentence of thirty (30) years' imprisonment on grounds which he believes are marred by irregularities." [37]

B. Admissibility (Article 56 of the Charter)

"Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

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

2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,

3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,

4. Are not based exclusively on news discriminated through the mass media,

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

6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and

7. Do not deal with cases which have been settled by these 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 present Charter."

1. Generally

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— Communications should not be based exclusively on news disseminated through the mass media. The present communications are supported by UN Reports as well as reports and press releases of international human rights organizations. These communications are not based exclusively on mass media reports. The Darfur crisis has attracted wide international media attention. It would be impractical to separate allegations contained in the communications from the media reports on the conflict and the alleged violations. The Commission cited a prior case, where it held that "while it would be dangerous to rely exclusively on news disseminated from the mass media, it would be equally damaging if the Commission were to reject a communication because some aspects of it are based on news disseminated through the mass media. The issue therefore should not be whether the information was taken from the media, but whether the information is correct." [92–93]

— A matter shall be considered settled within the context of Article 56(7) of the African Charter, if it was settled by any of the UN human rights treaty bodies or any other international adjudication mechanism, with a human rights

mandate. The respondent state must demonstrate to the Commission the nature of remedies or relief granted by the international mechanism, such as to render the complaints res judicata, and the African Commission's intervention unnecessary. United Nations Security Council, the Human Rights Council (and its predecessor, the Commission on Human Rights) and other UN organs and agencies "are not the mechanisms envisaged under Article 56(7). The mechanisms envisaged under Article 56(7) of the Charter must be capable of granting declaratory or compensatory relief to victims, not mere political resolutions and declarations." [105]

Frente para a Libertação do Estado de Cabinda v. Angola, (2013) [ACmmHPR]

— In the face of the state's failure to address the complaint filed against it, the African Commission has no option but to proceed with its consideration of the Communication in accordance with its Rules of Procedure. [40]

— The Commission notes further that in the event that a state fails to submit its observations on admissibility within sixty (60) days from receipt of the complainant's submission, the Commission is authorized to proceed to make a decision on the admissibility of the Communication. [97]

Mohamed Abubakari v. The United Republic of Tanzania (2016) [Afr. Ct. H.P.R.]

— According to Rule 39 of the 'Rules of Court', "the Court shall conduct preliminary examination [...] of the admissibility of the Application in accordance with Articles 50 and 56 of the Charter, and Rule 40 of these Rules." [38]

Ramadhani Issa Malengo v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court determined that its temporal and territorial jurisdiction were confirmed given that the Applicant's alleged violations happened after the ratification of the Charter by the respondent state which guarantees the rights that were allegedly violated and the alleged violations are yet to be repaired, also because the alleged violations took place in the respondent state's territory. [24]

Dexter Eddie Johnson v. Republic of Ghana, (2019) [Afr. Ct. H.P.R.]

— Rule 40(7) of Rules of Court/Article 56(7) of the Charter states that applications shall be considered if they "do not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provision of the present Charter." [34]

— The Court notes that "the notion of 'settlement' implies the convergence of three major conditions: (i) the identity of the parties; (ii) identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the initial case; and (iii) the existence of a first decision on the merits." [48]

— The Court held that "what is crucial is that there must be a decision by a body or institution that is legally mandated to consider the dispute at international level." [51] The fact that the respondent state may not have opted to follow/implement that decision, or the fact that the decision was not classified as binding, does not mean that the matter has not been considered and consequently settled.

— Although the official report ("Views") of the United Nations Human Rights Committee ("HRC") were "based on the ICCPR and not on the Charter of the United Nations or the Constitutive Act of the African Union, or the

provisions of the Charter, the principles contained in the provisions of the ICCPR that the HRC gave its Views on are identical to the principles provided for in the provisions of the Charter." [52]

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The seven applicants were properly identifiable in accordance with Article 56(1) of the Charter and Rule 40(1). The reference to 'other Rwandans' in the application does not negate this fact as they are not before this Court and are not part of the application. [42, 43]

Article 56(2) Are compatible with the Charter of the Organization of African Unity or with the present Charter

— A number of the applicants were convicted of several acts which are against the principles set out in Article 4(o) of the Constitutive Act (formerly, the Constitutive Act of the African Union) and therefore do not meet the requirements in Article 56(2) of the Charter. Alleged convictions include threatening state security, sectarianism, setting up a criminal gang, desertion from the military, genocide, conspiracy to commit genocide, complicity in genocide, direct and public incitement to commit genocide crimes against humanity. [44, 47]

— Even though it is alleged the applicants have been convicted of crimes which touch on some of the principles in Article 4(o) of the Constitutive Act, the Court considered that the provision in Article 56(2) of the Charter addresses the nature of the application and not the applicant's status. The prayer for reinstatement of passports did not require the Court to make a decision that would undermine the principles laid down in Article 4 of the Constitutive Act or any part thereof. On the contrary, it would be in accordance with the Court's obligation to protect the rights allegedly violated as it is required to do in accordance with Article 3(h) of the Constitutive Act. [48]

Article 56(3) Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity

— Mere complaints, perceptions and opinions of an applicant, on the state and its institutions in the circumstances did not amount to disparaging language. [52]

— For language to be considered disparaging or insulting, it must be "aimed at unlawfully and intentionally violating the dignity, reputation and integrity of a judicial official or body" and must seek to "pollute the minds of the public." A communication alleging human rights violations by its very nature should be expected to contain allegations that reflect negatively on the state and its institutions. The Court must make sure that the ordinary meaning of the words used is not in themselves disparaging. The language used by the complainant must unequivocally demonstrate the intention of the complainant to bring the state and its institution into disrepute. [53]

— The language used by the applicants to express their perceptions about the judiciary in Rwanda, considered in its ordinary meaning, is not in itself disparaging. [54]

— The respondent states itself failed to demonstrate how the applicants' language was aimed at unlawfully and intentionally violating the integrity of the judiciary and polluting the minds of the public. [55]

2. Indicate Authors (Article 56(1))

Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia and Interights (on behalf of Pan African Movement and Inter African Group) v. Eritrea, (2003) [ACmmHPR]

— The African Commission noted that "in terms of Article 56 (1) of the African Charter, it is enough if the said complaint bears... the name of one of the Organisation's representatives." [33] A complaint cannot be declared inadmissible on the basis of Article 56 (1) simply because it failed to name all of the Organisations' representatives. [31, 33]

Lohe Issa Konaté v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court notes that, a spelling error in the title of the Application, though related to the identity of the applicant or the respondent state, cannot be deemed to constitute a ground for the inadmissibility of the Application. [46]

— In this case, the Court finds such error does not render the case inadmissible because (1) the decision in dispute clearly stems from the courts of respondent state; and (2) the respondent state has filed a Response to the Application and even complied with interim measures required by the Court. [47–48]

3. Compatible with Charter (Article 56(2))

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Republic of Zimbabwe, (2012) [ACmmHPR]

— The complainant is seeking a declaration from the Commission to the effect that Zimbabwean law does not provide for adequate remedies, reparations or just satisfaction for a violation of the right to life enshrined in Article 4. The facts also suggest that the respondent state's compensation regime for victims who lose their lives as a result of actions caused by state officials is inadequate and does not provide effective relief and thus a violation of the African Charter. These facts raise a prima facie case for human rights violations that warrants consideration by the African Commission. [48–49]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that although the Application makes no reference to any provisions of the African Charter, as long as the Application contains facts which relate to human and people's rights protected under the Charter, the requirements of compatibility under Article 56(2) have been met. [50–52]

4. Exhaustion of Domestic Remedies

Constitutional Rights Project (in respect of Zamani Lakwot and six others) v. Nigeria, (1995) [ACmmHPR]

— The Commission found that in this case, it would be "improper to insist on the [applicant] seeking remedies from a source which does not operate impartially and have no obligation to decide according to legal principles." The remedy in question is "a discretionary, extraordinary remedy of a non-judicial nature," which allows the "Armed Forces Ruling Council to confirm the penalties of the Tribunal." As such, "the Commission is of the opinion that the remedy available is not of a nature that requires exhaustion" according to Article 56(5) of the Charter. [8–9]

Rencontre africaine pour la defense des droits de l'Homme v. Republic of Zambia, (1997) [ACmmHPR]

— The Commission held that if the State argues that the communication must be declared inadmissible because the local remedies have not been exhausted, the State then has the burden of demonstrating the existence of such remedies. [12] These local remedies must constitute an effective and adequate remedy in respect to the complaints.

William A Courson v. Equatorial Guinea, (1997) [ACmmHPR]

— The Commission stated that since the applicant has been pardoned by Equatorial Guinea, it is unlikely that the domestic court would hear the case, since "this would only be a purely theoretical exercise." Thus, the local remedies have effectively been exhausted. [15–16]

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

— "The Commission has drawn a distinction between cases in which the complaint deals with violations against victims identified or named and those cases of serious and massive violations in which it may be impossible for the Complainants to identify all the victims." [30]

— "In a case of violations against identified victims, the Commission demands the exhaustion of all internal remedies, if any, if they are of a judicial nature, are effective and are not subordinated to the discretionary power of public authorities. The Commission is of the view that this provision must be applied concomitantly with Article 7, which establishes and protects the right to fair trial." [31]

— "The Commission has stated that one of the justifications for this requirement is that a government should be aware of a human rights violation in order to have the chance to remedy such violation, thus protecting its reputation which would inevitably be tarnished by being called to plead its case before an international body." [32]

— Although the victims in this case did not exhaust all local legal remedies, the Commission holds that local remedies were exhausted because "the Government of Sudan has not been unaware of the serious human rights situation existing in that country. For nearly a decade the domestic situation has focused national and international attention on Sudan. Many of the alleged violations are directly connected to the new national laws in force in the country in the period covered by these communications. Even where no legal action has been brought by the alleged victims at the domestic level, the government has been sufficiently aware to the extent that it can be presumed to know the situation prevailing within its own territory as well as the content of its international obligations." [33]

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The Commission held that Nigeria's "ouster" clauses prevented ordinary courts from taking up cases placed before the special tribunals and from entertaining any appeals from the decisions of the special tribunals. The Commission repeatedly found that these clauses rendered local remedies non-existent, ineffective or illegal. Therefore, the communication was held to be admissible. [13–14]

Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria, (1999) [ACmmHPR]

— The Commission held that "because there is no legal basis to challenge government action under these decrees," for the ouster clauses prevented the ordinary courts from taking up cases placed before the special tribunals, "it is reasonable to presume that domestic remedies will not only be prolonged but are certain to yield no results." As such, the communication was held to be admissible. [31]

Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi, (2000) [ACmmHPR]

— The Commission held that domestic remedies had clearly been duly exhausted as per Article 56(5). The respondent state argued that there were many local remedies, including "le recours dans l'interest de la loi," revision and plea for pardon. [21–22]

— However, "the [applicant] could only benefit from the first two remedies at the initiative of the Ministry of Justice and also as a result of discovery of new facts that may lead to reopening the file. "With regard to the plea for pardon, it is not a judicial remedy but serves to affect the execution of a sentence." Thus, the communication was still admissible. [23]

John D. Ouko v. Kenya, (2000) [ACmmHPR]

— The Commission found the communication admissible "based on the principle of constructive exhaustion of local remedies" because the applicant was "unable to pursue any domestic remedy following his flight to the [DRC] for fear of his life, and his subsequent recognition as a refugee by the Office of the [UNHCR]." [19]

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The Commission stated that Article 56(5) should not be "applied literally to those cases in which it is 'neither practicable nor desirable' for the [applicants] or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims." [85]

— In this case, the Commission found the communications admissible due to "[t]he gravity of the human rights situation in Mauritania and the great number of victims involved [rendering] the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process is 'unduly prolonged.' In addition, the amnesty law adopted by the Mauritanian parliament rendered obsolete all internal remedies." [85]

Sir Dawda K. Jawara v. Gambia (The), (2000) [ACmmHPR]

— "The applicants in cases Nos. ACHPR/60/91, ACHPR/87/93, ACHPR/101/93 and ACHPR/129/94 had their communications declared admissible by the Commission because the competence of the ordinary courts had been ousted either by decrees or the establishment of special tribunals." [33]

— "The Complainant in this case had been overthrown by the military, he was tried in absentia, former Ministers and Members of Parliament of his government have been detained and there was terror and fear for lives in the country. It would be an affront to common sense and logic to require the Complainant to return to his country to exhaust local remedies." [36]

— "According to the established case law of the Commission, a remedy that has no prospect of success does not constitute an effective remedy." [38]

Curtis Francis Doebbler v. Sudan, (2003) [ACmmHPR]

— The Commission held that in order to exhaust the local remedies "one needs to have access to those remedies but if victims have no legal representation it would be difficult to access domestic remedies." In this case, the victim's legal representative was denied a visa by the respondent state and therefore could not attend the initial trial. The Commission therefore declared this case admissible. [24–27].

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

— The Commission held that the existence of a domestic remedy must be "sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness." [32].

— In the present case, Mr. Suleiman was consistently harassed, threatened and imprisoned and, as such, domestic remedies were considered unavailable to him. In addition, the National Security Act of 1994, under which the government security officials were empowered to harass and arrest Mr. Suleiman, stated that "no legal action or appeal is provided for against any decision issued under this law." Finally, the state of emergency in Sudan made it even harder to exhaust local remedies. A combination of these factors made accessing domestic remedies *de facto* impossible for Mr. Suleiman and the Commission therefore held that this condition had been satisfied. [33–37].

Liesbeth Zegveld & Mussie Ephrem v. Eritrea, (2003) [ACmmHPR]

— The Commission echoed the sentiment of the Inter-American Court of Human Rights that "where a party raises non-exhaustion of local remedies because of the unavailability of due process in the State, the burden of proof will shift to 'the State claiming non-exhaustion and it has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.'" The Commission further stated that "domestic remedies must be available, effective and sufficient; a domestic remedy is considered available if the petitioner can pursue it without impediment, it is effective if it offers a prospect of success and it is sufficient if it is capable of redressing the complaint." [36–37]

— In this case, the Commission found that "the respondent state does not afford due process of law for protection of the rights that have been alleged to be violated; the detainees have been denied access to the remedies under domestic law and have thus been prevented from exhausting them." [40] As such, the communication was admissible.

Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea, (2004) [ACmmHPR]

— The Commission held that any attempt by Sierra Leonean refugees to seek local remedies would be futile as: (i) "the persistent threat of further persecution from [Guinean] officials has fostered an ongoing situation in which refugees are in constant danger of reprisals and punishment;" (ii) there would be a large number of potential plaintiffs as Guinea hosted nearly 300,000 refugees from Sierra Leone; and (iii) "exhausting local remedies would require Sierra Leonean victims to return to Guinea, the country in which they suffered persecution." [33–36].

Antonie Bissangou v. Congo, (2006) [ACmmHPR]

— The Commission found that the complainant had duly exhausted all local remedies: "The Commission supports the position of the European Court according to which even the inability of the respondent state to pay could not justify the refusal by the Minister to execute a final judgment. Furthermore, the Commission considers that the appeal provided for in Article 402 of the Administrative Procedure Code does not constitute a legal remedy which can be used by the complainant. The [African] Commission reiterates that local remedies, if any, should be legal, effective and not subject to the discretionary powers of the public Authorities. Concerning the appeal for annulment provided for in Article 410 of the Administrative Procedure Code, the [African] Commission is not convinced that it would have allowed the Complainant to gain satisfaction. Even a ruling by the Supreme Court setting aside the unjustified decision of the Minister would have given the Complainant the power to demand

the execution of his judgment without however providing him with any means to enforce this ruling. Under these circumstances, the [African] Commission considers this remedy as ineffective." [60–61]

Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon, (2009) [ACmmHPR]

— The Commission considered that "the State Parties have an obligation to administer, on their territory, clear and diligent justice in order to give satisfaction to the complainants in the shortest possible time, in conformity with the relevant provisions of the African Charter and with the directives and principles of the right to a fair hearing in Africa." [67]

— The Commission noted that this had not been the case with the Administrative Chamber of the Supreme Court of the respondent state, which for five years had not provided any reaction to the complainants, in spite of several appeals by the latter. Moreover, the Commission noted that "an ad hoc institution meant to solve the problem amicably at the national level, has shown its limitations in failing to produce any Report after twelve years of existence." Therefore, the Commission considered that such remedy was neither effective nor satisfactory, and the requirement that local remedies be exhausted was not applicable to make the Communication inadmissible.

Curtis Francis Doebbler v. Sudan (2009) [ACmmHPR]

— The Commission stated that, even if certain domestic remedies were available, it was not reasonable to expect refugees to seize the Sudanese Courts, given their extreme vulnerability and state of deprivation, their fear of being deported and their lack of adequate means to seek legal representation. In addition, the Commission noted the refugees' legal representatives were repeatedly denied entry into the country by the respondent state's authorities. [116]

— Even though the refugees could have challenged the decision to repatriate them before the respondent state's Administrative Courts or appealed to the respondent state's Supreme Court, the Commission noted that where the violations involve many victims, it becomes neither practical nor desirable for the complainants or the victims to pursue such internal remedies in every case of violation of human rights. [117]

Purohit and Moore v. Gambia (The), (2009) [ACmmHPR]

— The Commission looked at "whether [...] the existent remedies are realistic" for the particular category of persons affected. [37] Even though there are domestic avenues for redress, they are only available "if you can afford it." [36] Therefore, in this case, as the "remedies... are not realistic for this category of people," it is "therefore not effective," and the court found the communication admissible. [38]

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

— The African Commission has often stated that a local remedy must be available, effective and sufficient. All three criteria must be present for the local remedy envisaged in Article 56(5) to be considered worthy of pursuing. The Commission cannot hold the requirement of exhaustion of local remedies to apply literally in cases where it is impractical or undesirable for the complaint[s] to seize the domestic courts in the case of each individual complaint. This is the case where there are a large number of individual victims. The Commission found that there were no remedies and therefore the criteria under Article 56(5) does not apply to the Complainants. [97, 99, 101, 102]

Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe, (2009) [ACmmHPR]

— The Commission found that the principle of constructive exhaustion of domestic remedies was applicable in this case: "the remedy... namely the application pending in the Supreme Court, was considered by the respondent state's immigration officials, as 'trivial' and of no legal consequence. The respondent state had notice of the pending application in the Supreme Court, and yet effected the deportation. It actively participated in impeding the victim from accessing the remedy." [54]

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

— The exhaustion of local remedies relates to remedies sought from the courts of a judicial nature. Such a judicial remedy shall be effective and shall not be subordinated to the discretionary power of public authorities. It is not necessary, for the sake of meeting the condition of Article 56(5), to seek "remedies from a source which does not operate impartially and ha[s] no obligation to decide according to legal principles." [88]

— The Commission added that the presidential review identified as a local remedy which had not been pursued by the complainant was not of a judicial nature and is subject to the discretionary power of the President of Botswana, the very authority that ordered the expulsion of the victim. The Commission concluded that such a remedy is not effective and the complainant is not obliged to utilize it.

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [Afr. Ct. H.P.R.]

— The decision of the PPO not to prosecute and the confirmation of that decision following the victims' appeal is sufficient evidence that local remedies have been exhausted. [65]

— The respondent state's submission on the temporary halt of inquiry procedures cannot justify the reason why the victims should be left without any recourse until a potential reopening of a matter, following new evidence. Eighteen months have passed since the alleged violations, and the probability of the inquiry being re-opened are slim since evidence has already been gathered and examined. [66]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— The fact that the Complainants have not sufficiently demonstrated why they could not exhaust domestic remedies does not mean such remedies are available, effective and sufficient. The African Commission can infer from the circumstances surrounding the case and determine whether such remedies are in fact available, and if they are, whether they are effective and sufficient. [110]

— The exception to the rule on the exhaustion of domestic remedies applies where the domestic situation of the state does not afford due process of law for the protection of the right or rights that have allegedly been violated, which appears to be the case here. The victims cannot access the courts to claim protection of their rights, either because they have been displaced, or because they are being harassed, intimidated and persecuted; the prevalence of violence in the region makes any attempt at exhausting local remedies by the victims an affront to common sense, good conscience and justice. [111–112]

— A government should have been given notice of human rights violations in order to have the opportunity to remedy such violation, before being called to account by an international tribunal. The respondent state has had ample time and notice of the alleged violation to at least create a conducive environment for the enjoyment of the rights by the victims. As such, the state was properly informed and therefore expected to have taken appropriate steps to remedy the violations alleged. The fact that the

state did not effectively deal with the alleged human rights violations means that domestic remedies were either not available, or if they were, not effective or sufficient to redress the violations alleged. [113]

— The Charter states that a claim has been settled if it has been dealt with by the human rights treaty bodies or the Charter bodies of the United Nations system. The UN treaty bodies include inter alia the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC) and the Committee on Migrant Workers (CMW). The Charter bodies are those created under UN Charter and include the Human Rights Council (HRC) and Special procedures of the Human Rights Council, in particular, the 1503 procedure and the Sub-Commission for the Promotion and Protection of Human Rights. A claim is only settled when the treaty or Charter body dealing with the matter has taken a decision which addresses the concerns, including the relief being sought by the complainant. It is not enough for the matter to simply be discussed by these bodies. [114–117]

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Republic of Zimbabwe, (2012) [ACmmHPR]

— "The relatives of the deceased persons were unable to sue for adequate compensation for the wrongful deaths since that remedy is not recognized under Zimbabwean law." As such, "there are no available domestic remedies for the complainant to exhaust." [52-53]

Frente para a Libertação do Estado de Cabinda v. Angola, (2013) [ACmmHPR]

— This requirement is based on the principle that "the respondent state must first have an opportunity to redress by its own means within the framework of its own domestic legal system, the wrong alleged to have been done to the individual." [43]

— This requirement of the exhaustion of local remedies "does not mean that complainants are required to exhaust any local remedy which is found to be, as a practical matter, unavailable or ineffective." In determining compliance with this requirement, there are three major criteria that should be considered; that is: the local remedy must be available, effective and sufficient. [44]

— In *Sir Dawda K Jawara v The Gambia*, the African Commission reasoned that "the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of generalized fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him." [49]

— The fact that the complainant had no legal standing before the Angolan courts, that most of its members live abroad and are considered terrorists by the government, leads to the conclusion that the chances of the complainant exhausting local remedies have been practically rendered impossible by fear of prosecution. [51]

Mr Mamboleo M. Itundamilamba v. Democratic Republic of Congo, (2013) [ACmmHPR]

— Exhausting local remedies means that the author of the communication, and not the victim, obtains a final decision from the highest body in the court hierarchy of the judicial system of the respondent state. The Commission gives preference to remedies sought from the judiciary as opposed to those sought from administrative authorities or executive bodies.[49]

— To have been exhausted, local remedies should necessarily be available, sufficient and effective.

A remedy is considered available if the petitioner can pursue it without impediment; it is effective if it is capable of redressing the complaint and it is sufficient if it offers a prospect of success. [50]

— It is up to the party who declares non-exhaustion of local remedies to prove that local remedies are available, sufficient and effective. [51]

— Although the case was pending at the time it came before the Commission, the case was before the highest court whose decisions are final. By the time the complainant brought the matter before the Commission, the case had been pending before the Supreme Court for four years. As such, the Commission found that all remedies had therefore been exhausted. [52]

— In determining whether proceedings were unduly prolonged by the national courts, the Commission will consider the time from the date the procedure was seized by the local court until the date seized by the Commission and the time from the date the procedure was seized by the local court until the date of the Commission's decision. A period of four (4) years had passed between the date of seizure by the Congolese courts to the date of seizure of the Commission. In addition, from the date the Commission seized of the matter up to the time it delivered its decision, a further three-year period had elapsed and the respondent state did not provide any information as to the outcome of the proceedings. As such, the Commission concluded that, even if domestic remedies are available, the process was unduly prolonged. Such a delay does meet the requirements of efficiency and sufficiency of remedies. [53-57]

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

— "In the circumstances, the Court accepts that there was no need for the 1st Applicants to go through the same local judicial process the outcome of which was known. The parliamentary process, which the respondent states should also be exhausted is a political process and is not an available, effective and sufficient remedy because it is not freely accessible to each and every individual; it is discretionary and may be abandoned anytime; moreover, the outcome thereof depends on the will of the majority. No matter how democratic the parliamentary process will be, it cannot be equated to an independent judicial process for the vindication of the rights under the Charter. In conclusion, we find that the Applicants have exhausted local remedies as is envisaged by Article 6(2) of the Protocol read together with Article 56(5) of the Charter." [82.3]

Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court found that the individual applicants had not exhausted their local remedies, as they had decided not to pursue an appeal. The Court considered that such appeal, which the individual applicants should have access to, would have been effective remedy under Article 56(5).

— However, the Court reminded that there is an exception to the Article 56(5) exhaustion of local remedies rule where "it is obvious that this [remedy] procedure is unduly prolonged" and went on to analyse such exception.

— On the assessment of the disputed concept of "remedy procedure," the Court stated: "Whereas for the respondent state, the length of the procedure should be determined in terms of the single remedy which was not utilised, for the Applicants, it should be judged in terms of the entirety of the procedure conducted at national level." The Court stated that the unduly prolonged nature of a procedure as addressed in Article 56(5) applies to local remedies in their entirety "as utilised or likely to be utilised by those concerned." It considered the wording of such Article clear as not containing any provision limiting the criteria for unduly prolonged procedure solely to remedies which have not yet been utilised. [88–90]

— The Court also stated that "determination as to whether the duration of the procedure in respect of local remedies has been normal or abnormal should be carried out on a case-by-case basis depending on the circumstances of each case." [92] The Court went on to consider the facts of the case and assessed that in total the local remedies procedure lasted nearly eight years. In light of this, the Court considered that the procedure was unduly prolonged in terms of Article 56(5), and the applicants therefore no longer needed to exhaust the other local remedies. [104–106]

Lohe Issa Konaté v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

— The Court notes that in addition to "unduly prolonged procedure," [77] as an exception to the requirement of exhaustion of local remedies, the Court will consider the criteria of "availability, effectiveness and sufficiency" [77]. "[A] remedy is available if it can be pursued by the Applicant without any impediment" [96]; a remedy is effective "if it offers prospects of success," [108] a remedy is satisfactory when it "is capable of redressing the complaint." [108]

— In this case, the applicant sought to overturn the law. The appeal under domestic law that was available to the applicant does not allow for such a remedy. The applicant is only entitled to a remedy if there is an incorrect application or interpretation of law. Additionally, the Constitutional Council is not made available for individuals to challenge legislation. In such circumstances, the Court finds that the legal system of respondent state does not afford the applicant in the present matter any effective and sufficient remedies. [108–113]

Peter Joseph Chacha v. The United Republic of Tanzania, (2014) [Afr. Ct. H.P.R.]

— In cases where an applicant has had his case dismissed, struck out or withdrawn at or by a mid-level court, the Court will not deem local remedies exhausted, and the cases will not be admissible. [141–142]

— When the applicant has filed seven applications with the state court, and the total time to deal with each application is five years, the proceedings will not be deemed unduly prolonged, and will not satisfy the exception for exhaustion of local remedies. [148]

— The applicant did not file an appeal with the Court of Appeal in Tanzania because he thought the "result would be the same" as it was with the High Court. This is not a sufficient reason for the Court to find that the Court of Appeals would not have given the applicant a sufficient remedy. Therefore, the Court found no exception to the exhaustion of local remedy requirement. [152]

Actions pour la protection des Droits de l'Homme (APDH) v. Republic of Cote d'Ivoire, (2016) [Afr. Ct. H.P.R.]

— The Court re-affirmed its established jurisprudence that "in the application of the rule governing exhaustion of local remedies, the following three conditions must be met, namely: availability, effectiveness and sufficiency of the remedies." [93]

Fidéle Mulindahabi v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The Court found that the applicant did not exhaust local remedies because he did not seek redress in the national courts and thus the petition was inadmissible. The Court determined that it was insufficient that the applicant "contacted the highest political and administrative authorities in the State, including the police, the public prosecution, the Ministry of transport, the Ministry of Internal security, the Ministry of Justice, the parliament, the senate, the President, the National Commission for Human Rights and Civil Society to find a solution to his problem…" The Court continued, stating that the applicant must exhaust local remedies "unless it is obvious that these remedies are unavailable, ineffective, insufficient or that the procedures therein are unduly prolonged." [32–35]

— The Court explained that the Applicant provided no supporting evidence and "general statements... are not enough." [28–32]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held that the applicants must exhaust all *ordinary* remedies. Constitutional remedy before the High Court and the Application for review before the Court of Appeal are not remedies that the applicant must exhaust within the meaning of Article 56(5) of the Charter. [60–77]

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— Although the applicants, by their own admission, did not exhaust all local remedies, the Court found that the application fell within the exception under Article 56(5) which provides that applications to the Court shall "be filed after exhausting local remedies, if any, unless it is obvious that this procedure (local remedies) is unduly prolonged." [87]

— If there is a justifiable reason for prolonging a case, it cannot be termed "undue;" for example, where a country is caught in a civil strife or war, which may impact on the functioning of the judiciary, or where the delay is partly caused by the victim, his family or his representatives. The African Commission noted that while it has not developed a standard for determining what is "unduly prolonged," it can be guided by the circumstances of each case and by the common law doctrine of a "reasonable man's test." [91–92]

— It has been almost ten years since proceedings against the applicants began and the respondent state has failed to bring finality to the matter. The respondent state's arguments that the delay has been occasioned by applications made by the applicants for stay of proceedings could not stand as it was the duty of the courts of the respondent state to bring finality to the matter. In addition, there was no indication that the respondent state's courts granted any of the applications to stay proceedings. [94]

— Requiring the applicants to institute a constitutional petition or a review was unacceptable as these were extra-ordinary remedies that the applicants needed not resort to. [95]

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— Tanzanian domestic remedies will be deemed exhausted by the Court, despite the applicant not filing a constitutional petition, when the applicant has appealed his case to the Court of Appeal of Tanzania. Furthermore, the applicant does not have to apply for additional review by the Court of Appeal of Tanzania after the Court has heard the applicant's case. These remedies are considered "extraordinary remedies which applicants are not obliged to exhaust before filing their Applications in this Court." [44]

— In response to the Respondent's allegation that the Applicant did not file his application in a reasonable time, "The Court notes that Article 56(6) of the Charter does not set a deadline within which applications should be filed. Rule 40 (6) of the Rules which reproduces the substance of Article 56(6) of the Charter, only speaks of a "reasonable time from the date 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 the local remedies were exhausted on 27 March 2009, being the date on which the Court of Appeal delivered its judgment. It however also notes that as at that date, the Respondent had not deposited the declaration accepting the jurisdiction of the Court to receive cases from individuals as per Article 34 (6) of the Protocol. The Court therefore holds that it would not be reasonable to regard the time frame for seizure of the Court as running from the date prior to the deposit of the said declaration, that is, 29 March 2010." [48–50].

Ingabire Victoire Umuhoza v. Rwanda, (2017) [Afr. Ct. H.P.R.]

— The Court held that a defendant need not file an application for review with a domestic tribunal when the application "would not constitute an effective and efficient remedy." [73]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The requirement of exhaustion of local remedies is applicable only with respect to ordinary, available and efficient judicial remedies but not extraordinary or nonjudicial remedies the Court held. ln this regard, the respondent alleges that the applicants could have filed a constitutional petition to the High Court before they bring their matter to this Court. On this issue, this Court has held that the said constitutional review is "not common, that it is not granted as of a right and that it can be exercised only exceptionally [...] and is available as extraordinary remedy" in the respondent state, thus, the applicant was not required to pursue it. In the same vein, it was not necessary for the applicants in the instant Application to approach the High Court to seek constitutional redress for the violations of their rights because such remedy was extraordinary. [56]

Amiri Ramadhani v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— If the remedy in the domestic (Tanzanian) judicial system is an extraordinary remedy, then the applicant is not required to exhaust those remedies to have been considered to have exhausted all domestic remedies held the Court. [39]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Violations alleged by the applicant form part of "a bundle of rights and guarantees" which relate to his appeal in the "domestic procedures." This "bundle of the rights and guarantees" was part of the issues in this case. The Court held that the domestic courts had ample opportunity to address the applicant's allegations even without him having raised them explicitly. When alleged violations of the right to a fair trial form part of the applicant's pleadings before domestic courts, the applicant is not required to have raised them separately to show proof of exhaustion of local remedies. [40–43]

— Constitutional petition is an extra-ordinary remedy which applicants are not required to exhaust before seizing this Court.

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— It is of no matter that the applicant did not raise the legal aid issue during domestic proceedings but chose to bring it before this Court for the first time. The Court stressed that legal aid forms part of the "bundle of rights and guarantees" in respect of the right to a fair trial, which is the basis and substance of the applicant's appeal. The domestic judicial authorities had ample opportunity to address that allegation even without the applicant having raised it explicitly. [42–43]

— A constitutional petition is an extra-ordinary remedy which applicants are not required to exhaust before seizing this Court.

George Maili Kemboge v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Filing a constitutional petition is an extra-ordinary remedy that the applicant is not required to exhaust. [33]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— ln the instant case, the Court noted the Applicant went through "the required criminal trial process up to the Court of Appeal, which is the highest Court in the respondent state, before bringing his Application to this Court. The Court therefore finds that the Applicant has

exhausted the local remedies available in the respondent state's judicial system." [48]

Mariam Kouma & Another v. Republic of Mali, (2018) [Afr. Ct. H.P.R.]

— "[T]o determine whether or not the duration of a procedure is reasonable, it must take into account the circumstances of the case and of the procedure; and as such the 'determination as to whether the duration of the procedure in respect of local remedies has been normal or abnormal should be carried out on a case-by-case basis depending on the circumstances of each case.'" [37]

— "[T]he Court's analysis takes into account, in particular, the complexity of the case or the related procedure, the behaviour of the Parties themselves and that of the judicial authorities to determine if the latter 'has been passive or clearly negligent.'" [38]

— "[A]s it could be seen from the evidence on file, the defence brief in particular, that the Applicants themselves contributed in delaying the procedure because at the hearing of 20 February, 2014, their Counsel prayed the Court to reserve the rights of the civil parties; and besides, the Applicants had not produced the final medical report concerning Mariam Kouma. The Applicants did not contest this fact." [44]

— "The court holds that the expeditiousness of a procedure requires the necessary cooperation of the Parties in the trial to avoid undue delay... [T]he Court notes that the time that elapsed between 24 March, 2014, and 1 July, 2016, the date on which the case was brought to it, corresponds to the period when the Court was awaiting the Applicants' medical evidence so as to assess the harm and quantify the reparation ... [T]he Court holds that the Applicants have contributed to the delay in the proceedings they allege are unduly prolonged. They should have helped to speed up the proceedings by producing early enough, the evidence for reparation of the damages they are claiming." [45–47].

Mgosi Mwita Makungu v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The applicant states that he has been unsuccessful in his attempts to ensure that his basic rights, as provided for under Articles 12 to 29, under Part III of the Constitution of the United Republic of Tanzania, are respected because of the unaffordable costs of filing constitutional petitions at the High Court of Tanzania (a remedy the court has already identified it is not necessary to exhaust). [39]

Minani Evarist v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The filing of a constitutional petition for violation of the applicant's rights in the Tanzanian judicial system is an extraordinary remedy that an applicant is not required to exhaust prior to seizing the Court. [34]

— The applicant did not apply for legal aid before the domestic courts and the respondent state therefore argued that his claim in respect of not getting access to legal aid was inadmissible because the applicant had failed to exhaust all local remedies.

— The Court found that the domestic judicial authorities had ample opportunity to address the allegation even without the applicant having raised it explicitly. The alleged violation of the applicant's rights occurred in the course of the domestic judicial proceedings and formed part of the "bundle of rights and guarantees" relating to the right to a fair trial which was the basis of the applicant's appeals. The Court held that it would therefore be unreasonable to require the applicant to file a new application before the domestic courts to seek redress for these claims. [31, 35-36]

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court calculates the lapse of time from the date of dismissal of Application's petition for

Review rather than when the Court of Appeal issued its judgment. The petition for Review by the Court of Appeal is an extraordinary remedy that is available after the Court of Appeal issues its ordinary judgment; The Court ruled the Applicants "should not be penalised for choosing to pursue a Review of this [appeal]." [58]

— The Court considered several factors when reaching its decision regarding exhaustion. First, the Court noted the Applicants were "lay, indigent and incarcerated" and unrepresented. Second, the Applicants encountered delays when they tried to access court records. Third, they had attempted to use extraordinary remedies by filing an Application for Review of the Court of Appeal's Decision. Based on these three factors, the Court found sufficient justification for permitting the Applicant to go forward. The Court ruled "the Applicants filed the Application one (1) year, three (3) months and twenty-one (21) days after the Court of Appeal's decision on the request for review." [61]

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The denial of legal assistance, prolonged detention in police custody and illegality and harshness of the sentence imposed on the applicants, according to the Court, constitute part of the "bundle of rights and guarantees" related to a fair trial which were not required to have been specifically raised at the domestic level [...] to have exhausted local remedies with respect to these claims. [46]

Werema Wangoko Werema and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court again stressed that the "remedies that should be exhausted must be ordinary judicial remedies." Court reiterated that "in the Tanzanian judicial system, the procedure for review of the Court of Appeal's judgments is an extraordinary remedy and applicants are not required to exhaust this remedy before seizing this Court." [40]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court finds that "the remedies that need to be exhausted are ordinary remedies." [64] The Court rejected Respondent's argument that the Applicant should have filed a Constitutional Petition, because the Applicant's appeal was already dismissed by the highest Court of Tanzania. [65]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court explained that the Applicants are not required to raise each procedural violation in the national courts, so long as they form "part of a bundle of rights and guarantees, which formed the basis of the proceedings before the High Court and the Court of Appeal," thereby giving the national courts an opportunity to address the purported violations. [41–43]

Collectif des Anciens Travailleurs du Laboratoire ALS v. Mali, (2019) [Afr. Ct. H.P.R.]

— The Court found that the applicants had not exhausted local remedies. The Court noted that "the applicants filed a criminal complaint with the respondent state's Office of the Attorney General on 1 February 2012, but until 1 July 2016, the date of the filing of their application to this Court, their criminal complaint did not give rise to any decision. The applicants could have seized the investigating judge to avoid the

alleged delay in the Attorney General's handling of the complaint. Having failed to pursue this remedy, the applicants were not justified in submitting that the domestic proceedings were unduly prolonged." [37]

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The rule of exhaustion of local remedies reinforces the primacy of domestic courts. It is aimed at providing states the opportunity to deal with human rights violations before the international human rights body is called upon to determine the responsibility of the state for such violations. [35]

— The Applicant is "only required to exhaust ordinary judicial remedies" and a "constitutional petition and application for review of a judgment of the Court of Appeal in the Tanzanian judicial system are extraordinary remedies that an Applicant is not required to exhaust prior to seizing this Court." [36]

— Filing an appeal before the Court of Appeal of Tanzania, the highest judicial organ of the respondent state, provided the state with the opportunity to redress the alleged violations. [37]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The applicant is only required to exhaust ordinary judicial remedies. [35]

— The remedies of constitutional petition and review in the Tanzanian judicial system are extraordinary remedies that an applicant is not required to exhaust prior to seizing this Court. [35]

— The allegations which have been raised for the first time before the Court form part of the "bundle of rights and guarantees" that are related to their appeals before the domestic authorities. The domestic authorities had ample opportunities to redress them even though the applicants did not raise them explicitly. It would be unreasonable to require the applicants to lodge a new application before the domestic courts to seek relief for these claims. The applicants should thus be deemed to have exhausted local remedies with respect to these allegations. [37]

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— Where it is impracticable or undesirable for a complainant to seize the domestic courts, the complainant will not be required to exhaust local remedies. The complainant in Gabriel Shumba v. Zimbabwe had been charged with organising, planning or conspiring to overthrow the government through unconstitutional means and thereafter fled Zimbabwe in fear for his life after he was allegedly tortured by the respondent state's agents. [68, 69]

— If the applicant cannot turn to the judiciary of his country because of the generalised fear for his life (or lives of his relatives); local remedies would be considered to be unavailable (Jawara v. The Gambia). [70]

— The complainant could not avail himself of the same remedy due to the principle of constructive exhaustion of local remedies, by virtue of being outside the country, due to the fear for his life. Therefore, even though in theory the domestic remedies were available, they were not effective, and could not be pursued without much impediment. [71]

— The Court in Lohe Issa Konatd v. Burkina held that "a remedy can be considered to be available or accessible when it may be used by the applicant without impediment." [72]

— The applicants faced charges of serious crimes and fled the respondent state's territory. They indicated that they fear for their security. Furthermore, all the applicants are outside the respondent state's territory and their travel documents have been invalidated without formal notification. It is reasonable that the applicants would be apprehensive about their security and fear for their lives. The serious

nature of the crimes they have allegedly committed may have also resulted in difficulties in procuring counsel to file a claim on their behalf before the domestic courts regarding the invalidation of their passport. In these circumstances, the Court found that the local remedies were not available for the applicants to utilise. [73]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court reiterated its prior position that the remedies of constitutional petition and review in the Tanzanian judicial system are extraordinary remedies that the applicant is not required to exhaust prior to seizing this Court. [42]

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court stated that a constitutional petition, which the respondent state argued should have been filed by the applicant following the dismissal of his appeal by the Court of Appeal of Tanzania, is an extraordinary remedy that an applicant is not required to exhaust prior to seizing the Court (Alex Thomas v. Tanzania (Merits)). [45]

— The Court found that the Applicant exhausted local remedies by appealing to the High Court and the Court of Appeal, and because the Applicant alleged violations which "the domestic authorities had ample opportunity to redress even though the Applicant did not raise them explicitly." [43–46]

Lucien Ikili Rashidi v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court reiterated that "remedies to be exhausted [...] must be available not only in law but also made available to the applicant. Where a remedy exists but is not accessible to the applicant, the said remedy will be considered as exhausted." [43]

— In this case, the Notice of Prohibited Immigration issued to the applicant made it impossible for the applicant to access the appeal remedy. Thus, while the remedy of appeal did exist, the applicant was unable to utilize it. As such, the Court deemed that local remedies have been exhausted.

Mulindahabi Fidèle v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

— The Court found that the applicant's attempt to resolve his problem with the highest political and administrative authorities in the State (including the police, the Public Prosecution, the Ministry of Transport, the Ministry of Internal Security, the Ministry of Justice, the Parliament, the Senate, the President and the National Commission for Human Rights and Civil Society) cannot be regarded as exhausting domestic remedies, as they must be "ordinary judicial remedies." [32]

— The applicant's submission that he had not exhausted domestic remedies because the time limit for filing a case before national jurisdictions elapsed upon the completion of the proceedings before the administrative and political authorities was dismissed by the Court. The Court found that whilst the applicant did seek to settle the dispute before the administrative and political authorities, "there was nothing preventing him from exercising both judicial and non-judicial remedies at the same time, and should therefore have exercised the requisite judicial remedies so as to exhaust the local remedies." [35]

Ramadhani Issa Malengo v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— "The applicant did not provide proof that he tried to exhaust the local judicial remedies; he only stated that he petitioned the Chief Justice for him to provide a solution. Petitioning the Chief Justice is not a judicial but administrative remedy. Moreover, the applicant did not aver that the remedies to be exhausted were unavailable, ineffective or insufficient and

there is nothing on record to support such a finding." [41]

— The applicant raised the issue of false imprisonment as "malicious prosecution" in line with his submission of defamation in the High Court, and thus it was submitted not as a human rights violation but as a civil law matter. [42]

— The Court therefore held that the applicant had not exhausted local remedies and thus failed to comply with Rule 40(5) of the Rules. The application was inadmissible. [43]

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

— The Court held that in determining whether an applicant has exhausted all local remedies, the Court must take into account whether the remedies are "sufficient, accessible and effective." [98] The Court noted that "it does not suffice for the remedy to exist just to satisfy the rule." [109]

— Here, the Court found local remedies to be inaccessible and ineffective. First, the applicant was in a state of confusion as he was not served notice of the appeal and in fact had received an attestation that precluded any appeal against the original judgment. [113] Second, the applicants did file two appeals in the administrative courts (another local remedy), which did not generate any court decision in time, "contributing to fueling the mistrust or suspicion over the effectiveness of the justice system." [114]

5. Reasonable Filing Time (Article 56 (6))

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

— "The Court agrees with the applicants that there has not been an inordinate delay in filing the applications; because after the judgment of the Court of Appeal, the Applicants were entitled to wait for the reaction of Parliament to the judgment. In the circumstances, the period of about three hundred and sixty (360) days, which is about one year from the date of the judgment of the Court of Appeal until the applications were filed was not unreasonably long." [83]

* Chananja Luchagula v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The applicant was sentenced to the death penalty after being convicted for murder on 31 May 2001. At the time of filing the application, he was awaiting execution.

— The applicant alleged that the judgment of the Court of Appeal was procured in err against the applicant where the court had evaluated the evidence of the prosecution side widely. The Court held that the application had not been filed within a reasonable. The Court reasoned that the applicant had not justified the filing of their application six (6) years, three (3) months and fifteen (15) days after exhaustion of local remedies as he had simply stated that he was "indigent" and subject to restrictions, without any evidence to justify how this affected the delay in filing his application before the Court. [59-61]

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— The Court held that the reasonableness of the timeline for referrals depends on the circumstances of each case and must be assessed on case-by-case basis, as Article 56(6) of the Charter does not specify any period within which recourse to the Court should intervene. [91]

— The Court further stated that the fact that "the applicant is in prison; the fact that he is indigent; that he is not able to pay a lawyer; the fact that he did not have the free assistance of a lawyer since 14 July 1997; that he is illiterate; the fact that he could not be aware of the existence of this Court because of its relatively recent establishment; all these circumstances justify some flexibility in assessing the reasonableness of the timeline for seizure of the Court." [92]

— In this case, the Court found that three years, three months and ten days "is reasonable within the meaning of Article 56(6) of the Charter." [93]

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

— Four months is a reasonable period of time to wait to file with the Court. [101]

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— Five years, one month and twelve days was held by the Court not to be an unreasonable amount of time to wait to file with the Court when the defendant was indigent, incarcerated and illiterate, did not have access to a lawyer through the national proceedings and was not aware of the Court. [54]

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court found that a three years and two months period was reasonable given that "he is also lay, incarcerated and indigent person without the benefit of legal education and legal assistance until this Court assigned PALU to provide him with pro bono legal representation services." [68]

Amiri Ramadhani v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Five years, one month, one week and six days was held by the Court not to be an unreasonable amount of time to wait to file with the Court when the defendant was indigent, incarcerated, did not have access to a lawyer and was not aware of the Court. [49–50]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The applicant was self-represented and could not afford the services of a counsel. The applicant's circumstances were found to be comparable to those of Christopher Jonas v. The United Republic of Tanzania. The applicant, having been in detention since 1997 right up to the date of seizure, might not have been aware of the existence of this Court. The Court held in conclusion that two years and eight months is reasonable in terms of Article 56(6) of the Charter. [40-43]

— The Court held that the Applicant filed the petition within a reasonable time period where two years and eight months had elapsed; the Applicant had represented himself due to indigence, and the Applicant had been imprisoned since 1997 making it possible he was unaware of the Court's existence. [47–51].

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The question is whether the period that elapsed between the exhaustion of local remedies and the time within which the applicant seized the Court, is reasonable within the meaning of Rule 40(6) of the Rules. The Court noted the reasonableness of the time depends on the circumstances of each case and must be assessed on a case-by-case basis.

— The applicant is a layman in matters of law, indigent and incarcerated without the benefit of legal counsel or legal assistance. The Court held that these circumstances sufficiently justified the filing of the application one year and thirteen days after the Court of Appeal' decision. [49] [51–52]

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— "The Court notes that Article 56 (6) of the Charter does not indicate a precise timeline in which an Application shall be filed before the Court." [52]

— "[T]he Applicant is a lay, indigent and incarcerated person without the benefit of legal education or assistance. These circumstances make it plausible that the Applicant may not have been aware of the Court's existence and how to access it." [55] "In view of these circumstances, the Court is of the opinion that the filing of this Application two (2) years and eleven (11) months after the exhaustion of local remedies is a reasonable time." [56]

Mariam Kouma & Another v. Republic of Mali, (2018) [Afr. Ct. H.P.R.]

— The time that elapsed corresponded to the period when the court was awaiting the applicant's medical evidence so as to assess the harm and quantify the reparation. [46]

— The Court held that the applicant contributed to the delay in the proceedings which they alleged were unduly prolonged. The applicant should have helped to speed up the proceedings by producing, early in the proceedings, the evidence for reparation of the damages they were claiming. [47]

— The Court therefore dismissed the applicant's contention that local proceedings were unduly prolonged. [48]

Mgosi Mwita Makungu v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court notes that following its finding that local remedies were not available to the applicant to exhaust, the issue of compliance with Article 56(6) of the Charter as restated in Rule 40(6) of the Rules on the filing of an application within a reasonable time following the exhaustion of local remedies becomes moot. [49]

Minani Evarist v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Because the applicant was a lay, indigent and incarcerated person without counsel or legal assistance, who attempted to use extraordinary measures such as the application for review of the decisions against him in local courts, the Court held that filing an application with the Court after three years, seven months and twenty-four days following the latest decision against him in a local court was justified. [45]

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— Four years, eight months, and 30 days was held by the Court to not be an unreasonable amount of time to wait to file with the Court when the defendant was not aware of the Court and so should not be penalised for attempting to use an extraordinary remedy, that is, the Application for Review of the Court of Appeal's Judgment. [55]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— Reasonableness will depend on the particular circumstances of each case and should be determined on a case by case basis. In this case, the Court finds three (3) years and five (5) months a reasonable amount of time because (1) the Applicant was ill, indigent and incarcerated; (2) there was delay in providing him with the court records; (3) he demonstrated his diligence by using extraordinary measures. [73-74]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— To determine whether the time period is reasonable, the Court listed several factors that may be considered, including whether the Applicants had tried to exhaust further remedies, were laymen, indigent or incarcerated. The Court also noted that the Applicants filed a petition for review of the decision in the Court of Appeal and because the

petition is a "legal entitlement, the Applicants cannot be penalised for exercising that remedy, and the time spent in pursing [sic] it should be taken into account while assessing reasonableness under Article 56(6) of the Charter." Therefore, the Court held that the two year and four-day elapse was reasonable based on the time the Applicants spent waiting for the appeal, and that they were lay, indigent and incarcerated persons. [49–54]

Dexter Eddie Johnson v. Republic of Ghana, (2019) [Afr. Ct. H.P.R.]

— The majority opinion found the application to have been filed within a reasonable time after the exhaustion of local remedies. The Court did not give grounds as to why six years and two months in this case was reasonable.

— Judge Achour, dissenting, found that a request for presidential pardon, recourse to an international, universal or regional judicial or non-judicial body cannot constitute a local remedy that the applicant must first exhaust, and therefore cannot be considered as a starting point for the calculation of the time limit for bringing an application before the African Court. Dissenting Judgment: [16 – 17]

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— Article 56(6) of the Charter does not specify a time frame within which a case must be filed before the Court. It simply mentions a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the beginning of the time limit within which it shall be seized by the matter. [44]

— The reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis. [45]

— The applicant was in prison and his movement and access to information about the existence of the Court was restricted. The applicant had applied to use the review procedure of the Court of Appeal of Tanzania and the application was still pending when he filled the application to the Court. Two years, four months and ten days after local remedies were exhausted was held to be reasonable. [47]

— The Court held that the Applicant filed the petition within a reasonable time period where two years and four months had elapsed while the Applicant was imprisoned with restricted movements and lack of access to information about the Court. Furthermore, the Applicant's petition before the Court of Appeal was still pending, thus the Court found that the Applicant "should not be penalised for the time he spent awaiting the determination of his application for review of the Court of Appeal's judgment." [44–49]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis. [45]

— The date the Court of Appeal of Tanzania delivered its judgement should be the date from which a reasonable time limit as envisaged under Rule 40(6) and Article 56(6) of the Charter should begin. [46]

— The applicants pursued the review procedure in the Court of Appeal of Tanzania after their appeal was dismissed from the same court. They filed an application for review before the Court of Appeal of Tanzania on April 19, 2011, which was dismissed on March 20, 2015. This is an extraordinary remedy. The fact that the applicants attempted to exhaust the review procedure should not be used to their detriment and should accordingly be taken as a factor in the determination of a reasonable time limit. The applicants filed their application three months after the dismissal of their application for review at the Court of Appeal of Tanzania on March 20, 2015. [48-49]

— The Court noted that the applicants were lay, incarcerated and without the benefit of free legal assistance. [50]

— Given the above circumstances, the Court held that the delay of four years and two months and twenty-three (23) days taken to file the application before this Court, after the judgment of the Court of Appeal, was reasonable. [51]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that the Applicants filed their petition within a reasonable time frame, even though four years and two months elapsed, because they were laymen, incarcerated and without free legal assistance. The Court also noted that the Applicants filed their petition with the African Court three months after the Court of Appeal dismissed their petition and, therefore, the fact that "the Applicants attempted to exhaust the review procedure should not be used to their detriment..." despite it being an extraordinary remedy. [47–52]

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court dismissed the objection relating to the non-compliance with the requirement of filing the application within a reasonable time on the basis that the time spent by the applicant in attempting to exhaust the extraordinary remedy of pursuing the review procedure should be taken into account when assessing the reasonableness of time according to Article 56(6) of the Charter. [52-54]

— "From the record, the applicant was in prison, restricted in his movements and with limited access to information; he is indigent and unable to pay for a lawyer. The applicant also did not have free assistance of a lawyer throughout his initial trial and appeals; and was not aware of the existence of this Court before filing the application. Ultimately, the above mentioned circumstances delayed the applicant in filing his claim to this Court. Thus, the Court finds that the four years and thirty six days taken to file the application before this Court is reasonable." [53]

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— It was the respondent state's case that the period of five (5) years and six (6) months that the applicant took to file his application, after the Court of Appeal of Tanzania delivered its judgment, was unreasonable within the meaning of Rule 40(6). In support of its argument, the respondent state referred to the decision of the African Commission on Human and Peoples' Rights in Michael Majuru v. Republic of Zimbabwe. [47]

— Article 56(6) of the Charter does not set a limit for the filing of cases before it. Rule 40(6) of the Rules simply refers to 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..." without prescribing any specific period of time. [49]

— The reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should be determined on a case by case basis. [50]

— In Amiri Ramadhani v. The United Republic of Tanzania and Christopher Jonas v. The United Republic of Tanzania, the Court held that the period of five (5) years and one (1) month was reasonable owing to the circumstances of the applicants. In these cases, the Court took into consideration the fact that the applicants were imprisoned, restricted in their movements and with limited access to information; they were lay, indigent, did not have the assistance of a lawyer in their trials at the domestic court, were illiterate and were not aware of the existence of the Court. Again, in Werema Wangoko and Another v. The United Republic of Tanzania, the Court decided that the applicants, having used the review procedure, were entitled to wait for the review judgment to be delivered and that

this justified the filing of their application five (5) years and five (5) months after exhaustion of local remedies. [52]

— In Godfred Anthony and another v. The United Republic of Tanzania, however, the Court held that a period of five (5) years and four (4) months was an unreasonable lapse of time before the filing of an application. The Court reasoned that while the applicants were incarcerated and therefore restricted in their movements, they had not asserted or provided any proof that they are illiterate, lay or had no knowledge of the existence of the Court. The Court concluded that while it has always considered the personal circumstances of applicants in assessing the reasonableness of the lapse of time before the filing of an application, the applicants had failed to provide it with material on the basis of which it could conclude that the period of time was reasonable. [53]

— The applicant in the present case had legal representation in pursuing his appeals both before the High Court and the Court of Appeal in Tanzania. In the absence of any clear and compelling justification for the lapse of five (5) years and six (6) months before the filing of the application, the Court held that the application was not filed within a reasonable time. [55]

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— To determine whether the Applicant filed within a reasonable time period, the Court announced a non-exhaustive list of circumstances that it considers, including: imprisonment, self representation, indigence, illiteracy, lack of awareness of the Court's existence and intimidation and fear surrounding the use of reprisals or extraordinary measures. [50]

— The Court found that the Applicant did not file his petition in a reasonable time period where the Applicant did not provide "a compelling justification" for the lapse of five years and six months even though he was "an indigent incarcerated person operating without legal assistance or legal representation." [53–56]

Lucien Ikili Rashidi v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court stated that "in circumstances where there is uncertainty as to whether the time is reasonable, determining factors may include the applicant's situation." [55]

— In this case, the Court took into account the fact that the applicant was deported within a week of the High Court judgment, and so lacked the proximity necessary to follow up on his requests to the domestic authorities. It held that the period of one year is reasonable in these circumstances.

Ramadhani Issa Malengo v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— "It is incumbent on the Court to first satisfy itself that local remedies have been exhausted before determining the requirement of filing within a reasonable time after exhaustion of the said remedies. This is because an adverse finding as to the exhaustion of local remedies would render the exercise of determining whether the application was filed within a reasonable time superfluous." [38]

6. Settlement (Article 56 (7))

Gombert Jean-Claude Roger v. Republic of Côte d'Ivoire, (2018) [Afr. Ct. H.P.R.]

— "[T]he notion of 'settlement' implies the convergence of three major conditions: (1) the identity of the parties; (2) identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the initial case; and (3) the existence of a first decision on the merits." [45]

C. Evidence (Article 26 of the Protocol)

> *"1. The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case.*
>
> *2. The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence."*

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— Communications 47/90 and 100/93 alleged unfair trials. The Commission accepted the facts of these allegations as true due to the nonresponse of the Government of Zaire. Accordingly, it held that the Government of Zaire's actions violated Article 7 of the Charter.

Centre for Free Speech v. Nigeria, (1999) [ACmmHPR]

— Where allegations of human rights violations go uncontested by the government concerned, particularly after repeated notifications or request for information on the case, the Commission must decide on the facts provided by the complainant and treat those facts as given. The Commission finds itself compelled to adopt the position that the facts alleged by the complainant are true. The Commission concludes that the violations of Articles 6 and 7(1)(a) and (c) and 26 occurred in this case. [17]

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

— The state failed to defend itself against the claim that it failed to presume the defendant was innocent until proven guilty. Based on this lack of defense, the Commission found the state had violated Article 7.

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— "The African Commission has in many of its decisions held that facts uncontested by the respondent state shall be considered as established." [189]

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

— If the government provides no evidence to contradict an allegation of human rights violation made against it, the Commission will take it as proven, or at the least probable or plausible. [178]

Peter Joseph Chacha v. The United Republic of Tanzania, (2014) [Afr. Ct. H.P.R.]

— When an expert is called by one party, the other party objects, and the Court does not consider the expert necessary, the Court will "dispense with the expert." [90]

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— A document submitted after the public hearing, if qualified as "fresh arguments" [80], will be disregarded by the Court and not affect the decision of the Court on the merits of the Application. [79–80]

D. Interpretations of Judgment

1. Admissibility

Interpretation of the Judgment of 20 November 2015, Alex Thomas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court stated that under Rule 66(1) and (2) of the Rules of the Court, application for interpretation of a Judgment can be declared admissible only when it fulfills three conditions: "its objective must be to facilitate the execution of the Judgment; it must be filed within twelve months following the date of the delivery of the Judgment unless the Court, 'in the interest of justice, decides otherwise;' and it must clearly state the point or points of the operative provision of the Judgment on which interpretation is required." [21]

— In this case, the application was filed two months after the 12-month period. However, the Court "considered the circumstances of the matter and decided to allow the application" on the basis that it is in the interest of justice, without elaboration on the specific circumstances. [25]

2. Generally

Interpretation of the Judgment of 20 November 2015, Alex Thomas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— Reopening a case when the applicant has been in prison for 21 years, or more than half the prison sentence, is not an "appropriate measure" after fair trial violations have been found because of the amount of time additional trial procedures will take. [33–34]

— The Court's use of the term "all appropriate measures" is meant to give the state room for interpretation in deciding which measures will eliminate the effects of violations established by the Court.

Interpretation of the Judgment of June 3, 2016, Mohamed Abubakari v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— The Court intended that option to "take all appropriate measures" to remedy the violation is open for the respondent state "for evaluation to enable it to identify and activate all the measure that would enable it to eliminate the effects of the violations." [35]

— The Court clarified that where fair trial violations have been established but reopening the defense case is inappropriate, ""all appropriate measures" includes the release of the Applicant and any other measure that would help erase the consequences of the violations established, restore the pre-existing situation and re-establish the rights of the Applicant." [39] In this case, reopening the case was held not to be a just measure as the applicant had "already spent nineteen years in prison, more than half of the prison sentence, and given that a fresh judicial procedure could be long." [34]

3. Right to a Fair Trial

Interpretation of Judgment of June 3, 2016 – Mohamed Abubakari v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

— Article 27(1) of the Protocol provides that: "if the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation." As has been stated above, the most appropriate form of remedy for violation of the right to a fair trial is to act in such a way that the victim finds him/herself in the situation that he/she would have been had the violation found not been committed. "To attain this objective, the United Republic of Tanzania has two options: it should either reopen the case in compliance with the rules of a fair trial or take all appropriate measures to ensure that the Applicant finds himself in the situation preceding the violations." [32–33]

— As regards the first option, the Court is of the view that reopening the case would not be a just measure, in as much as the Applicant has already spent nineteen (19) years in prison, more than a half of the prison sentence, and given that a fresh judicial procedure could be long. Accordingly, the Court has excluded such a measure. [34]

— The Court clarifies that the expression "all appropriate measures" includes the release of the Applicant and any other measure that would help erase the consequences of the violations established, restore the pre-existing situation and re-establish the rights of the Applicant. The Court further clarifies that the expression "remedy all violations established" should mean to "erase the effects of the violations established" through adoption of the measures indicated in the preceding paragraph. [38–39]

E. Default Judgment (Rule 55)

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— The Commission decided to accept the facts alleged in each of the communications as true due to the lack of a substantive response from the Government of Zaire.

— "In the present case, there has been no substantive response from the Government of Zaire, despite the numerous notifications of the communications sent by the African Commission. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the Complainant and treat those facts as given." [40]

African Commission on Human and Peoples' Rights v. Libya, (2016) [Afr. Ct. H.P.R.]

— Libya did not appear before the Court and did not provide submissions to defend its case, so the Court ruled in favor of the African Commission in a default judgment. [39–43]

F. Reparations

1. Case Analysis

Alex Thomas v. The United Republic of Tanzania (Reparation), (2015) [Afr. Ct. H.P.R.]

Compensation for Material Damage

In terms of material prejudice, there must be "a causal link between the...violation and the prejudice caused." The burden of proof falls on the Applicant. [14]

"It is not enough to show that the respondent state has violated a provision of the Charter." [25] The Applicant must prove the extent and amount of damage to receive indemnification. "In principle, the existence of a violation of the Charter is not sufficient per se, to establish a material damage." [25]

Compensation for Moral Damages

With regard to moral damages, the Applicant need not to prove "[the] causal link between the alleged violation and the prejudice caused...presumptions are made in favour of the Applicant." Once the violation is established, "the burden of proof shifts [automatically] to the respondent state." [14]

"The Court notes that, moral prejudice is that which results from the suffering, anguish and changes in the living conditions for the victim and his family." [37]

The Court will assess the amount of the award for moral prejudice by applying broad principle of fairness and taking into account the circumstances of the case. [40]

"It is apparent that the issue as to whether a given person may be considered as one of the closest relatives entitled to reparation has to be determined on a case by-case basis, depending on the specific circumstances of each case." [49]

"[S]pouses, children and parents may claim the status of indirect victims." [50] "[S]pouses should produce marriage certificates or any equivalent proof, children are to produce their birth certificates or any other equivalent evidence to show proof of their affiliation and parents must produce an attestation of paternity or maternity or any other equivalent proof." [51] In this case, the Court determined that Applicant's wife had not suffered moral prejudice, because she was already remarried and not in contact with the Applicant "since the year 2000 when his first appeal was dismissed by the High Court" [52] Additionally, the Court rejected the Applicant's son suffered moral prejudice, because the Applicant "last saw his son in the year 2002 and does not know his whereabouts." [53]

The Court finds that the Applicant's mother and two sisters endured emotional anguish when their relative's rights were violated. The Court verified the veracity of their relationships by referring to their identity cards and affidavits. [56]

Compensation for Legal Fees

"[R]eparation may include payment of legal fees and other expenses incurred in the course of international proceedings. The Applicant must provide justification for the amounts claimed." [77]

"The Court notes that PALU represented the Applicant on a pro bono basis under the Court's current legal aid scheme." [81] "[T]he reimbursement of lawyers' fees" [80] was therefore rejected. [81]

Costs

"The reparation payable to victims of human rights violation can also include reimbursement of the transport fares" and travel expenses incurred by the Applicant's legal team. [87]

Measures of Satisfaction

Although "a judgment, per se, can constitute a sufficient form of reparation," [74] the Court can, "*suo motu*, order further measures of satisfaction as it deems fit." [74]

"[W]ith a view to enhancing implementation of the judgment" [74], the Court finds that "the publication of the judgment on merits and this judgment on reparations on the websites of the Judiciary and the Ministry of Constitutional and Legal Affairs... for at least one (1) year...is an appropriate additional measure of satisfaction." [74]

Measures Deemed Appropriate to Ensure the Non-Repetition of the Violations

"[W]hile guarantees of non-repetition generally apply in cases of systemic violations, these remedies would also be relevant in individual cases where the violations will not cease, are likely to reoccur or are structural in nature." [68]

"The Legal Aid Bill was enacted by the respondent state's Parliament...and published in the Official Gazette....The Court notes that this is a remedy which guarantees non-repetition of failure to provide legal aid to indigent litigants." [69]

In this case, "the Court does not deem it necessary to issue an order regarding non-repetition of the violations of the Applicant's rights" because there is no possibility that the Applicant will ever suffer such violations again. [69]

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

— The African Commission held that in cases of violations of fair trial rights, the victims should be afforded the possibility of a retrial. [27]

John D. Ouko v. Kenya, (2000) [ACmmHPR]

— The African Commission found Kenya responsible for a violation of Article 12 of the African Charter and urged "the Government of the Republic of Kenya to facilitate the safe return of the Complainant to the Republic of Kenya, if he so wishes." The complainant in this case was forced to flee the country due to his political opinions.

Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

— The African Commission considered a variety of joined communications related to the human rights situation in Mauritania between 1986 and 1992, which concerned the arbitrary arrest and detention of hundreds of black Mauritanians, and the death of more than 300 in detention. In addition, around 50,000 people were expelled from Mauritania to neighbouring Senegal, including Mauritanian citizens whose identity cards were destroyed by Mauritanian authorities and who were subsequently denied the right to return as they could not prove their Mauritanian citizenship.

— In response to these events, the African Commission called on Mauritania to, *inter alia*, "take diligent measures to replace the national identity documents of those Mauritanian citizens, which were taken from them at the time of their expulsion and ensure their return without delay to Mauritania."

— The African Commission found that the confiscation and looting of the property of black Mauritanians and the expropriation of their land and houses consistuted a violation of Article 14 of the African Charter. [128] This triggered an obligation to restore unlawfully obtained and expropriated property as well as restitution of 'belongings looted' from the victims.

Curtis Francis Doebbler v. Sudan, (2003), [ACmmHPR]

— The Commission held that in relation to a Sudanese law that allowed the punishment of lashing to be inflicted on an individual to be incompatible with international human rights law, and, as such, the penalty should be abolished.

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR].

— The African Commission held that a State in violation of rights enshrined in the African Charter should "take measures to ensure that the victims of human rights abuses are given effective remedies, including restitution and compensation." [229]

Purohit and Moore v. Gambia (The), (2009) [ACmmHPR]

— The African Commission requested that The Gambia take measures to repeal and develop a new mental health legislative regime after finding it in violation of Article 5 of the Charter in regards to the detention of mentally ill patients.

Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

— The African Commission expressly called on the Government of Egypt to, *inter alia*, release the victims after finding that the victims were imprisoned following an unfair trial in violation of Article 7 of the Charter. [223]

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

— The Court explained that moral damages are awarded not to replace any economic loss but are supposed to help remedy the suffering that the victim and the victim's family went through, as well as "non-material changes in the living conditions of the victim, if alive, and the family." [34]. The Court refused to award moral damages in this case as the applicant failed to produce any evidence to support their claim. [37]

— The Court explained that when a state is found responsible for a human rights violation, the costs incurred in seeking justice are an appropriate reparation consideration. In this case, however, the Court refused to award lawyer's fees. The Court found that the burden for proving these costs was on the applicant party, and unless the applicant can prove that these costs are accurate and justifiable, the court will either not award lawyers' fees, or it will award less than what the applicants requested. [39–41]

— The Court ordered the respondent state to not repeat past violations by changing their laws to come into compliance with the African Charter. [43]

Lohe Issa Konaté v. Burkina Faso, (2014) [Afr. Cr. H.P.R.]

— The Court awarded compensation for loss of income based on the applicant's inability to sell his weekly newspaper whilst incarcerated. The Court considered evidence that the applicant submitted to support his claim for loss of income including reports of earlier income, historical costs of production, and historical pricing. [39–40]

— The Court also considered the loss of physical belongings and equipment when awarding compensation. The Court required the amount being claimed to be well documented. As there was no support offered for the amount claimed, the Court refused to award compensation. [45–47]

— The applicant requested compensation for travel expenses, visitation bribes, medication for the applicant because of prison conditions, and the cost of moving the applicant to a better ventilated space in the prison. [28] The Court granted compensation requests for documented travel expenses and medical expenses that could be verified with receipts, but it declined to reimburse the applicant for the bribes, which the Court explained were "not required by law." [48–49]

— When the Court granted the applicant's request for medical expenses, the Court

recognized that the applicant had not requested the full cost of the medical expenses that could be calculated based on the receipts. The Court, however, explained it could not grant damages beyond the requested amount and limited its grant to what was requested. Because the Court did not penalize the applicant for asking for more than they could demonstrate, it is likely better to ask for too much than too little. [50]

Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso, (2015) [Afr. Ct. H.P.R.]

— The Court required documentation to show that a person was a close family member when determining whether or not the victim's immediate family can be awarded moral damages. For a spouse, this would be a marriage certificate and life certificate, whilst for the children this would be their birth certificates. [54]

— There is no standard definition for who qualifies as the "one of the closest relatives entitled to reparation" and the Court makes this decision on a case-by-case basis. [49]

— As the Court recognized a human rights violation had occurred, it presumed that there was a causal link between this violation and any moral harm suffered, without requiring the applicant to make an affirmative showing. [55]

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

— The Court noted that Article 27(1) of the Protocol requires the Court to remedy any violation by providing adequate reparation or fair compensation. The Court found that the Applicant's right to legal aid was violated, but this did not affect the outcome of his trial nor did it cause any non-pecuniary prejudice to the Applicant. Therefore, the Court awarded the Applicant TZS 300,000 as fair compensation. [103–07]

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court stated that "for reparations to be granted, the respondent state should first be internationally responsible of the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the full damage suffered. Finally, the Applicant bears the onus to justify the claims made." [133]

— The Court further held that "with respect to non-material damage, that prejudice is assumed in cases of human rights violations, and quantum assessment must be undertaken in fairness and looking at the circumstances of the case." [136]

— In this case, the applicants' prayers for material loss were all dismissed for lack of evidence adduced by the applicants. In considering non-material loss, the Court took into account the fact that in the eight years between sentencing and the present hearing, the applicants "lived a life of uncertainty in the awareness that they could at any point in time be executed. Such waiting and its length not only prolonged but also aggravated the Applicants' anxiety." [148] As such, the Court found that the applicants "endured moral and psychological suffering and decides to grant them moral damages in the sum of Tanzanian Shillings Four Million each." [150]

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

— The Court found that the violations of Article 7 "caused moral prejudice to the Applicants" because "they were not informed of their right to Counsel and that they did not get legal assistance in the course of their trial…caus[ing] them some moral damage as a result of their lack of knowledge of court procedures and technical skills to defend themselves." The

Court therefore awarded TZS 300,000 as fair compensation. [93–95]

— The Court explained that an applicant could be released "only in specific and compelling circumstances… includ[ing] if an Applicant sufficiently demonstrates or the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice." The Court found here that the Article 7 violations did not constitute a miscarriage of justice requiring the Applicants' release. [96–97]

— An order of release can only be ordered in specific and compelling circumstances, e.g., "if an applicant sufficiently demonstrated or the Court by itself established from its findings that the applicant's arrest or conviction is based entirely on arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice." [96]

— Without minimizing the violations of Article 7(1)(c) occasioned by the respondent state, the Court's held that the nature of the violations in the particular context of this case did not reveal any circumstance which would make their continued imprisonment a miscarriage of justice or arbitrary. Nor have the applicants demonstrated the existence of other specific or compelling reasons to warrant an order for release. [97]

V. Template Application for Reparations to the African Court

A. Introduction

1. Introduce the parties.

2. Explain the subject of the application (Reparations).

3. Establish the foundation of the claim.

— Set out a brief summary for the Court that includes what violations occurred.

— Include a brief summary of any annexed information.

4. Lay out the right to reparations.

— Article 27(1) of the Protocol on the Establishment of the African Court on Human and Peoples' Rights says 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."

— Include relevant case law (see REPARATIONS above for further details on the relevant cases).

B. Compensation

1. Establish a Causal Link

— The parties must establish a causal link between the wrongful act and the alleged prejudice. The Court will only consider damages resulting from identified wrongful acts, but they will consider both material and moral damages.

— Make sure the application clearly identifies both the resulting harm and how the human rights violation brought about this harm. Explain the link clearly, particularly when asserting material harms.

- Material harm will require extensive documentation.

— The Court has concluded that when a human rights violation occurs, there is a presumption that a moral harm has occurred, and in such circumstances no proof is required.

- The Court will determine how much money to award the applicants. When the respondent state has not contested the amount a family requests as compensation, the Court has awarded the full amount requested.

2. Who was affected?

— This is only an issue when the parties involved are beneficiaries or family members claiming reparations, rather than the actual victim. Beneficiaries and family members must provide documentation to prove that they are who they say they are.

- Spouses should include: Marriage certificate and life certificate (or equivalent).
- Children should include: Birth certificate (or equivalent) and life certificate.
- Parents should include: Attestation of paternity or maternity and life certificate (or equivalent).

— The Court has explained that those who can recover are not necessarily limited to that of the first-line heirs of a deceased person under national law. Rather, the Court will make this determination on a case-by-case basis. As such, it would help to explain the relationship between the victim and the family member applying for reparations in the application, particularly when the family member applicant is not an immediate relative.

3. Material Damages (Documentary Evidence)

— The African Court is very particular about awarding material damages. Whatever documentation a family has available to demonstrate material damages should be offered to the Court. The Court requires evidence of the alleged damages and the prejudice suffered.

- This includes: receipts, past business accounting to demonstrate expected profits, support for causal links between loss of property and the human rights violation.
- Similarly, if applying for lawyers' fees, proving a billing record would help support the requested compensation.

— This information might be hard to track down. The Court will not reward material damages without documentation, however, so tracking this information down is of paramount importance. If there is an alternate way to establish this information, such as by providing bus fare information, the Court might find that acceptable.

C. Measures Deemed Appropriate to Ensure the Non-Repetition of Violations

— The Court seems fairly open to granting applicants' requests to ensure the non-repetition of violations. The African Court has looked to examples from the African Commission as well as other human rights courts, so citing to one of these sources would be a helpful way to add support to a request.

VI. Factual Summaries of Cases

A. African Court on Human and Peoples' Rights

* Marcel Wetsh'okonda Koso and others v. Democratic Republic of the Congo, (2009) [ACmmHPR]

Factual Summary

— The complainants allege that they placed an order for the supply of 3.5 cubic metres of petrol at ELF (a petroleum company), but Ngimbi Nkiama was arrested by policemen who are said to have discovered a supply of six drums in surplus following his collection of 40 drums of fuel instead of the 34 drums of fuel he initially ordered.

— Ngimbi Nkiama was arrested and sent to the Conseil National de Sécurite quarters together with four co-accused persons. They were arraigned before the Military Court of DRC for "partaking, during war time, in the committing of acts of sabotage" by the diversion of 70 drums of gas-oil and of 40 drums of gas-oil belonging to the Congolese Armed Forces.

— The Military Court comprising five judges (among whom there would be only one trained jurist) tried Ngimbi Nkiama and the co-accused and sentenced them to a capital punishment, a "decree on a ground without the least justification" and the right to file an appeal against the decree; the decisions of the Military Court being not reviewable.

Topics Cited

— Articles 7(a) and 26

Michelot Yogogombaye v. Republic of Senegal, (2009) [Afr. Ct. H.P.R.]

Factual Summary

— First judgment of the African Court: Applicant initiated proceedings against Senegal, seeking an order to prevent Senegalese authorities from prosecuting their former President, Hissein Habré. Applicant sought to establish the Court's jurisdiction over the case by claiming that Senegal, as a member of the African Union and party to the Protocol on the establishment of the African Court, had filed a declaration pursuant to Article 34(6) of the Protocol, which allowed the Court to hear human rights petition by individuals. Issue as to whether Senegal submitted an Article 34(6) declaration.

Topics Cited

— Jurisdiction (Ratione Personae)

Association Juristes d'Afrique pour la Bonne Gouvernance v. Republic of Cote D'Ivoire, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant submitted a complaint against the Republic of Cote d'Ivoire for violation of Articles 2, 4, 5 and 6 of the African Charter.

Topics Cited

— Jurisdiction (Ratione Personae)

Convention Nationale des Syndicats du Secteur Education (CONASYSED) v. The Republic of Gabon, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant seized the Court with a petition again Gabon for violations of trade union rights enshrined in the Universal Declaration of Human Rights and Articles 10 and 15 of the African Charter.

Topics Cited

— Jurisdiction (Ratione Personae)

Convention Nationale des Syndicats du Secteur Education (CONASYSED) v. The Republic of Gabon, (2011) [Afr. Ct. H.P.R.]

— The Court found that Applicant NGO did not have observer status before the Commission under Articles 5(3) and 34(6). Additionally, the Republic of Gabon has not made the declaration required under Article 34(6). Therefore, the Court "manifestly lacks jurisdiction to receive the Application submitted by [Applicant] against the [State]." [10, 11]

Daniel Amare and Mulugeta Amare v. Republic of Mozambique and Mozambique Airlines, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicants (2) allege that having procured the requisite documents, they sought to travel to Maputo, Mozambique, via Nairobi, Kenya. The connecting flight from Nairobi instead landed in Pemba, Mozambique, where Applicants were stranded for 26 days. Applicants allege, inter alia, they were tortured and robbed, and their documents were confiscated. Applicants were deported to Dar-Es-Salaam, Tanzania, who transferred them to Pemba. Mozambique Immigration Officials then repatriated Applicants back to Ethiopia. Applicants contend that acts of Mozambique Airline and Immigration Officials are illegal and request a refund of robbed money.

Topics Cited

— Jurisdiction (Ratione Personae)

Efoua Mbozo'o Samuel v. Pan African Parliament, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant alleged breach of paragraph 4 of his contract of employment and of Article 13(a) and (b) of the OAU Staff Regulations and improper refusal to renew his contract and to regrade him.

Topics Cited

— Jurisdiction (Rationae Materiae)

* Ekollo M. Alexandre v. Republic of Cameroon and Federal Republic of Cameroon and Federal Republic of Nigeria, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant alleges violation of Articles 3, 5, 6, 7 and 13(3) of the African Charter. [Note: No other facts—unsure if death penalty case.]

Topics Cited

— Jurisdiction (Ratione Personae)

Soufiane Ababou v. Peoples' Democratic Republic of Algeria, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant lodged a complaint against Algeria regarding his forceful conscription into the Algerian army.

Topics Cited

— Jurisdiction (Ratione Personae); Admissibility (Article 56)

Youssef Ababou v. Kingdom of Morocco, (2011) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant alleges the Kingdom of Morocco has refused, and continues to refuse, to issue him his documents, including a national identity card and passport.

Topics Cited

— Jurisdiction (Ratione Personae)

Amir Adam Timan v. The Republic of The Sudan, (2012) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant filed a case on behalf of his client, a Sudanese national and native of Darfur, currently residing in the Democratic Republic of Congo, who was accused of the Sudanese Government of being a member of an opposing force to the legitimate Government of Sudan. Applicant alleged violations of Articles 12(1), 2, 3, 4 and 13 of the International Convention on Civil and Political Rights.

Topics Cited

— Jurisdiction (Ratione Personae)

Delta International Investments S.A, Mr and Mrs A.G.L De Lange v. Republic of South Africa, (2012) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant brought allegations of alleged torture and violation of his rights to dignity, property, information, privacy and against discrimination contrary to the South African Constitution and the African Charter.

Topics Cited

— Jurisdiction (Ratione Personae)

Emmanuel Joseph Uko and Others v. Republic of South Africa, (2012) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant brought petition against South Africa for violations of articles 2, 3, 4, 5, 6, 7, 10, 11, 18 and 19 of the African Charter, as well as provisions of the African Charter on the Rights and Welfare of the Child, and Articles 7, 10, 12, 13, 14, 17, 19, 23, 24 and 26 of the Internal Covenant of Civil and Political Rights.

Topics Cited

— Jurisdiction (Ratione Personae)

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants alleged that amendments to the Tanzanian constitution, which required any candidate for presidential, parliamentary and local government elections to be a member of, and be sponsored by, a political party, violated its citizens rights of freedom of association, the right to participate in public/governmental affairs, and the right against discrimination. Appeals against the amendments were ultimately dismissed by the Court of Appeal of the United Republic of Tanzania.

Topics Cited

— Jurisdiction (Ratione Temporis)

Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, (2013) [Afr. Ct. H.P.R.]

Factual Summary

— This case was jointly decided with Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. The United Republic of Tanzania, Nos. 009&011/2011 [Afr. Ct. H.P.R.].

— This case was about civil and political rights. The Court jointly addresses claims made by both Applicants, Tanganyika Law Society and Legal and Human Rights Centre (009) ("first Applicant") and Reverend Christopher R. Mtikila (011) ("second Applicant"), against Tanzania for instituting Constitutional amendments that require candidates in Presidential, Parliamentary and Local Government elections to "belong or be sponsored by a registered political party."

— By limiting their ability to run independently, Applicants allege Tanzania violated their "right of freedom of association, the right to participate in public/governmental affairs and the right against discrimination." They further Allege that Tanzania violated rule of law by "initiating a constitutional review process to settle an issue pending before the courts of Tanzania." Specifically, they allege violations of Articles 2, 10 and 13(1) of the Charter and Articles 3 and 25 of the International Covenant on Civil and Political Rights (ICCPR) and Article 21(1) of the Universal Declaration of Human Rights (UDHR).

Topics Cited

— Admissibility (Exhaustion of Domestic Remedies (Article 56 (5)); Reasonable Filing Time (Article 56 (6)); Jurisdiction (Ratione Materiae), (Ratione Temporis), (Ratione Personae); Right to Enjoy Rights Without Discrimination (Article 2); Right to be Equal Before the Law (Article 3); Freedom of Association (Article 10); Rights to Participate Freely in Government (Article 13).

Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

Factual Summary

— The case concerned the murder of Norbert Zongo, an investigative journalist and director of a weekly Burkinabe magazine, his younger brother and two work colleagues, who were found burnt in a car in Burkina Faso in 1998 in suspicious circumstances. The applicants (the families of Zongo, his colleagues, and an NGO) alleged that the murders of Zongo and his colleagues were not a random act of violence, but were instead related to their investigations into various political, economic, and social scandals in Burkina Faso during that period, including relating to certain high-level figures of the Burkinabe government.

— The applicants claimed that Burkina Faso's officials had not only failed to properly investigate the murders, but also deliberately stymied the investigation, leading to a failure to bring those responsible for the deaths to justice. They alleged violations of various international human rights instruments to which the state was party, including violations of Article 1, 3, 4, 7 and 9 of the Charter.

Topics Cited

— Admissibility (Article 56) (Exhaustion of Domestic Remedies); Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to be Equal Before the Law (Article 3); Right to a Fair Trial/Access to Courts (Right to Have a Cause Heard) (Article 7)

Lohe Issa Konate v. Burkina Faso, (2014) [Afr. Ct. H.P.R.]

Factual Summary

— This case concerns the right to free expression. The State filed charges against the Applicant for defamation, public insult and contempt of Court, after he published articles. The domestic courts decided against the Applicant. Following this decision, the Applicant filed his Application to this Court alleging notably the violation of his right to freedom of expression.

Topics Cited

— Jurisdiction (General); Admissibility (Indicate Authors Art. 56(1); Compatible with the Charter Article 56(2); Exhaustion of Domestic Remedies Article 56(5))

Peter Joseph Chacha v. The United Republic of Tanzania, (2014) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant's wife was detained on an alleged robbery in his absence. On the same day, the applicant alleged that his properties were seized by the police without a certificate of seizure or a search warrant.

— When the applicant subsequently went to the police station in search of his wife, he was detained and eventually charged with several counts of conspiracy, robbery, murder, armed robbery, rape and kidnapping as detailed in the claim.

— The applicant remained in custody pending trial from October 20, 2007 to May 13, 2013.

Topics Cited

— Jurisdiction of the African Court (Ratione Materiae & Ratione Temporis); Admissibility (Exhaustion of Domestic Remedies) (Article 56); Evidence (Article 26 Protocol)

Alex Thomas v. The United Republic of Tanzania, (2015) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted to 30 years in prison for the offenses of robbery with violence and armed robbery.

— The applicant alleged the following: the respondent state's lack of jurisdiction over the crime, as the alleged robbery occurred in Kenya; the respondent state's lack of evidence to prove the applicant's guilt beyond a reasonable doubt; and the respondent state's alleged failure to provide the applicant with a defense attorney and delays during criminal proceedings before the courts of the respondent state.

— The Court found a violation of the applicant's right to a fair trial on the ground that the applicant should have been provided with free legal assistance in his trials because he was accused of a serious crime which carried a minimum heavy custodial sentence.

Topics Cited

— Jurisdiction (Ratione Materiae); Admissibility (Compatible with the Charter Article 56(2); Exhaustion of Domestic Remedies Article 56(5); Reasonable Filing Time Article 56(6)); Duty to Recognize Right (Article 1); Right to be Equal Before the Law (Article 3); Right to be Free from Torture (Undue Delay Article 5); Right to Liberty and Security (Article 6) Right to a Fair Trial (Right to be Tried within a Reasonable Time Article 7(1)(d); Right to a Defense Article 7(1)(c), Article 14(3)(d) of the ICCPR; Right to Fair Trial Article 7(1)(c)); Evidence Article 26 of the Protocol; Interpretation (Torture)

Femi Falana v. African Commission on Human and Peoples' Rights, (2015) [Afr. Ct. H.P.R.]

Factual Summary

— Femi Falana, the applicant and the Senior Advocate of Nigeria, filed an application against the Commission, both in his personal capacity and on behalf of the victims of alleged human rights violations in Burundi.

— The applicant alleged that the Commission had failed to respond to a communication concerning ongoing human rights violations in Burundi, and had failed to refer the matter to the Court.

— As the Commission is not a party to the Charter, the Court held that it did not have jurisdiction to hear and rule on the case. Further, the applicant had no standing to bring the application. Therefore the application was dismissed.

Topics Cited

— Jurisdiction of African Court

James Wanjara and Others v. United Republic of Tanzania, (2020) [Afr. Ct. H.P.R.]

Factual Summary

— Mr. James Wanjara, Jumanne Kaseja, Chrispian Kilosa, Mawazo Selemani and Cosmas Pius (the applicants) are nationals of the United Republic of Tanzania (the respondent state). At the time of filing the application, the applicants were serving a 30years sentence after having been convicted of armed robbery and unlawfully causing grievous harm.

— The applicants alleged that the respondent state violated their rights under Article 7(c) by failing to provide them with legal representation during the domestic proceedings.

— The Court did find that the applicants' right to free legal assistance was violated.

— The Court noted that the applicants were charged with a serious offence carrying a severe punishment with minimum sentence of thirty years' imprisonment.

— In addition, the respondent state did not adduce any evidence to challenge the contention that the Applicants were lay and indigent, without legal knowledge and technical legal skills to properly conduct their case in person during the original trial as well as during the appeal before the Court of Appeal.

— The Court held that the interests of justice warranted that the applicants should have been provided with free legal assistance during their trial before the District Court and also during their second appeal before the Court of Appeal.

Topics Cited

— Right to Fair Trial (Right to a Defense, including Right to Legal Counsel) (Article 7).

Shukrani Mango & others v. United Republic of Tanzania, (2015) [Afr. Ct. H.P.R.]

Factual Summary

— In this case, seven (7) applicants jointly filed a case before the Court. Five of the applicants (Ally Hussein Mwinyi, Juma Zuberi Abasi, Julius Joshua Masanja, Michael Jairos, Azizi Athuman Buyogela) had been convicted of murder and sentenced to death but subsequently their sentences were commuted to life imprisonment. Two of the applicants (Shukrani Masegenya Mango and Samwel M Mtakibidya) had been convicted of armed robbery and sentenced to thirty (30) years imprisonment.

— The applicants alleged that the respondent state was guilty of discrimination in the manner in which it exercised the prerogative of mercy and that this was contrary to, among

others, guarantee of non-discrimination in Article 2 and the right to equality in Article 3 of the Charter.

— For the group of five convicted of murmajalfder, the Court held that the application was inadmissible in so far as it alleged violation of the applicants' rights by reason of the exercise of the prerogative of mercy since the applicants could have filed a constitutional petition challenging the manner in which the prerogative was being exercised.

— The Court found the application from the latter group of two admissible as the challenges to their sentences fell under the umbrella of fair trial rights.

Topics Cited

— Right to be Equal Before the Law (Article 3).

Actions pour la protection des Droits de l'Homme (APDH) v. Republic of Cote d'Ivoire, (2016) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant, an NGO, claimed that the newly adopted law providing for the composition, organization, duties and functioning of the Independent Electoral Commission (IEC) of Cote d'Ivoire violated the state's obligation to establish an independent and impartial electoral body, as well as the right to equality before the law and the right to equal protection before the law under Article 3 of the Charter and other statutory instruments.

Topics Cited

— Admissibility (Article 56) (Exhaustion of Domestic Remedies); Right to be Equal Before the Law (Article 3)

African Commission on Human and Peoples' Rights v. Libya, (2016) [Afr. Ct. H.P.R.]

Factual Summary

— The second son of Muammar Gaddafi, Saif Al-Islam Gaddafi, was imprisoned in Libya under threat of execution. He was not given access to a lawyer; his detention facility's location was unknown; and the Commission was concerned that his life was at risk. Accordingly, the Commission issued provisional measures to stop harm to Gaddafi and filed a case with the African Court.

— It was alleged that Libya's conduct violated Articles 6 and 7 of the Charter, as well as that they failed to comply with the Order for Provisional Measures issued by the Court on March 15, 2013.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Prison/Jail Conditions) (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial/Access to Courts (Right to a Defense (Including Right to Legal Counsel, Right to Present Evidence, etc.)) (Article 7); Procedure (Default Judgment) (Rule 55)

* Chananja Luchagula v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was sentenced to the death penalty after being convicted for murder on 31 May 2001. At the time of filing the application, he was awaiting execution. Since then he has been released from prison following a Presidential Pardon on 9 December 2017.

— The applicant alleged that state violated his right to freedom from discrimination, right to

equality and equal protection of the law, the right to life and integrity of his person, right to dignity and freedom from torture and inhuman and degrading treatments, right to a fair trial and right to equality of people guaranteed under Article 2, 3(1) and Article 5.

— The Court held held that the application had not been filed within a reasonable time and thus declared application inadmissible.

Topics Cited

— Reasonable Filing Time (Article 56(6)).

* Evodius Rutechura Theobard Nestory v. United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

Factual Summary

— Having been sentenced to death for committing murder, the Applicant alleged that the respondent state violated his rights under Articles 7(1) and 7(1)(c) of the Charter : (1) by dismissing his application for review outside time, (2) by failing to provide him with free legal representation of his choice, and (2) by failing to properly assess the evidence relied upon to convict him.

— On a procedural level, the court asserted that it had jurisdiction, noting that it is empowered to determine whether proceedings in the national courts are in conformity with human rights instruments ratified by the State concerned, that the Applicant had seized the highest judicial organ of the respondent state, and that the time it had taken the Applicant to bring the application, 5 years and 6 months, was not unreasonable, given the restricted movement and limited access to information on the death-row.

— However, the court held that the Applicant's rights had not been violated: (1) the manner in which the application for leave to file for review out of time was handled in the national courts did not disclose any manifest error or miscarriage of justice and the Court of Appeal had dismissed his application in, accordance with its rules, because it did not demonstrate prospects of success; (2) there was no evidence that the Applicant had not been effectively represented by the lawyers provided for him by the State; and (3) the manner of the evaluation of evidence by the Court of Appeal was proper, the national courts having followed the procedures prescribed by the applicable laws.

— One justice noted the desirability for the respondent state to gradually develop its law towards the abolition of the death penalty in line with developing international practice.

Topics Cited

— Right to a Fair Trial (Article 7(1)).

Fidéle Mulindahabi v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicant alleges that the respondent state unjustly impounded his vehicle. The State then returned the vehicle, but later confiscated it again and sold it at an auction. The Applicant asserts that the State made up charges against him to justify the vehicle's confiscation. The Applicant complained to the President of the Republic and was later imprisoned for allegedly insulting and defaming the President.

Topics Cited

— Admissibility (Article 56).

Hamad Mohamed Lyambaka v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant Hamad Mohamed Lyambaka was charged with the offence of Armed Robbery and sentenced to thirty (30) years in prison. In

addition, he was charged with the offence of Rape and sentenced to life imprisonment.

— He alleged that the judgment of Court of Appeal on 16th March 2007 was procured by err against the applicant where the court had not evaluated the evidence of the prosecution side widely. It was alleged that court did not sufficiently evaluate the evidence presented by the prosecution.

— The application was filed within five (5) years, eleven (11) months, and twenty-seven (27) days from the Court of Appeal's decision. The Court declared application as inadmissible due to the application not being filed within a reasonable time after exhausting local remedies within the meaning of Article 55(6) of the charter.

Topics Cited

— Right to be Equal Before the Law (Article 3).

Mhina Zuberi v The United Republic of Tanzania (2016) [Afr. Ct. H.P.R.]

Factual Summary

— Mr. Mhina Zuberi is a national of the United Republic of Tanzania (the respondent state). At the time of the application, the applicant was serving a sentence of 30years imprisonment after having been convicted and sentenced for the offence of rape.

— The applicant alleged violations related to his right to a fair trial: first, that he was not represented by a counsel before domestic courts; second, that he was deprived of his right to call his witnesses; and lastly, that there were errors of fact and law in the assessment of the evidence used for his conviction.

— The Court held that the respondent state violated the applicant's rights to a fair trial under Article 7(1)(c) of the Charter, by failing to provide him with free legal assistance.

— The Court considered the fact that the applicant was destitute and that he was charged with a serious offence which carried a heavy penalty, being a minimum of thirty years in prison.

— Having found that the applicant's right to free legal assistance was violated, the Court held that there was a presumption that the applicant suffered moral prejudice, and awarded the applicant the sum of Tanzanian Shillings Three Hundred Thousand as fair compensation.

Topics Cited

— Right to a Fair Trial (Article 7).

Mohamed Abubakari v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was arrested and sentenced to a 30-year term of imprisonment for the offense of armed robbery.

— The written submissions and oral pleadings outline several complaints regarding the manner in which the applicant was detained, tried and convicted by the Tanzanian police and judicial authorities.

— The applicant alleged that he was detained in inadequate facilities upon arrest and convicted on an indictment lacking evidence and marred by irregularities. The applicant further alleged that he was denied access to legal assistance during his prosecution and that the respondent state's state attorney was personally biased. In addition, it was alleged that the applicant's 30-year sentence was not applicable under Tanzanian law at the relevant time.

Topics Cited

— Right to Fair Trial (Generally and Right to Equality of Arms) (Article 7); Jurisdiction of the African Court (Generally and Ratione Materiae); Admissibility (General and

Exhaustion of Domestic Remedies) (Article 56 Charter); Reasonable Filing Time (Article 56(6)); Interpretations of Judgment (Generally)

Mussa Zanzibar v. United Republic of Tanzania, (2016) [Afr. Ct. H.P.R]

Factual Summary

— The Applicant had been convicted of rape and was, at the time of the application, serving a thirty years prison sentence.

— He alleged: (1) that the trial court erred in convicting him on the basis of the evidence of a single witness without satisfying itself that the witness was telling the truth; (2) second, that the trial court erred by failing to resolve the contradictions and inconsistencies in the prosecution evidence; and (3) that the trial court failed to warn itself of the need for evidence beyond reasonable doubt before convicting him.

— The court rejected the Applicant's submissions relating to inappropriate treatment of evidence, holding that there was no basis for interfering with the findings of the municipal courts. However, despite the Applicant not specifically having pleaded this, the court found a violation of his right under Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, on the basis that he had not been provided with the benefit of free legal assistance during proceedings, and awarded 300,000 Tanzanian Shillings as fair compensation.

Topics Cited

— Right to Defense (including Right to Legal Counsel) (Article 7(1)(c)).

* Oscar Josiah v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— Mr. Oscar Josiah, who is a convict on a death row, alleged violations of his rights to equality before the law and equal protection of the law, and to a fair trial as provided for in Article 3 (1) and (2), and Article 7 of the African Charter on Human and Peoples' Rights (the Charter), respectively. The applicant also submitted that such violations ought to be rectified pursuant to Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol).

— On alleged errors relating to the assessment of evidence, after examining the record on file, the Court held that the manner in which the Court of Appeal examined the applicant's grounds of appeal relating to evidence did not occasion a miscarriage of justice to him.

— On the right of defence, the Court observed that the applicant had defence counsel at the trial and appellate proceedings, he was able to testify and call witnesses, and the Court of Appeal addressed all his grounds of appeal, as submitted by his defence counsel. The Court also noted that theaApplicant did not indicate how the respondent state violated his right to defence and therefore, dismissed his allegation for lack of substantiation.

— The Court took note that the manner in which the Court of Appeal assessed evidence did not disclose any infringement on the applicant's rights to equality before the law and to equal protection of the law. As such, the Court found no evidence that the applicant was treated differently, as compared to other persons who were in a situation similar to his. Accordingly, the Court dismissed the applicant's claim that his rights under Article 3(1) and (2) of the Charter were violated.

Topics Cited

— Right to be Equal Before the Law (Article 3); Right to Enjoy Rights without Discrimination.

Wilfred Onyango Nganyi & 9 Others v. The United Republic of Tanzania, (2016) [Afr. Ct. H.P.R.] (Judgment & Reparations)

Factual Summary

— The applicants allege they were unlawfully kidnapped and arrested by Mozambican police in collaboration with Kenyan and Tanzanian police forces under a false report made by a lady, Maimouna Salimo, for being linked to dangerous elements of the Kenyan military forces and Kenyan administration police. They were handcuffed and forcibly transported to Tanzania where they were severely beaten with heavy sticks and metal rods and tortured by use of electric shocks from a special torture police squad. They were eventually charged for a range of serious criminal offenses, for which the trials have been unduly and inordinately delayed and riddled with multiple violations of various rights. Two charges were withdrawn, following which three applicants were released and five were convicted of conspiracy to commit an offense and armed robbery and sentenced to 30 years in prison. They are currently serving their sentence at Ukonga Central Prison at Dar-es-Salaam. Two died in detention during the course of the trial.

Topics Cited

— Right to a Defense (Article 7); Right to be tried within a reasonable time (Article 7); Jurisdiction (Ratione Materiae; Ratione Temporis); Admissibility (Exhaustion of Domestic Remedies; Reasonable Filing Time) (Article 56 (6))

African Commision on Human and Peoples' Rights v. Kenya, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— The Ogiek Community was evicted from the Mau Forest, their ancestral home, by the Kenyan government. Kenya cited environmental concerns to justify the eviction, but the Ogiek sent a communication to the Commission arguing that the land had cultural and religious value and the Ogiek had a right to be there. The Commission ordered Kenya to suspend the eviction notice, but Kenya refused to respond, so the Commission seized the Court.

Topics Cited

— Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to Enjoy Rights Without Discrimination (Article 2), and Articles 4, 8, 14, 17, 21, and 22 of the Charter

Alfred Agbesi Woyome v. Republic of Ghana, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— Mr. Alfred Agbesii Woyome (the applicant) alleged that, through the judgment of the Review Bench of its Supreme Court, the respondent state (Republic of Ghana) violated his rights under the African Charter on Human and Peoples' Rights, specifically: Right to non-discrimination (Article 2); Right to equality before the law and equal protection of the law (Article 3); and Right to have one's cause heard (Article 7). The judgment of the Review Bench of the Supreme Court of the respondent state concerned payments related to rehabilitation and construction of stadia for the hosting of the 2008 Edition of the Africa Cup on Nations.

— In response the Court clarified that Article 3 of the Protocol requires only ratification and not domestication; the claims were based on alleged violations of the Charter; the fact that the respondent state has procedures on addressing human rights issues at national level does not preclude the Court from exercising material jurisdiction and that the Court is empowered to examine judicial decisions, or acts, of any State or organs of the State where human rights violations have been alleged, including instances involving constitutional issues, to ensure they comply

with the Charter and other ratified human rights instruments.

— The Court held that the applicant had not demonstrated or substantiated how he has been discriminated against, treated differently or unequally based on Articles 2 and 3 of the Charter. The Court found that the respondent state has not violated these provisions.

Topics Cited

— Right to be Equal Before the Law (Article 3).

Christopher Jonas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— Mr Christopher Jonas, a national of Tanzania, is currently serving a 30-year custodial sentence (and 12 strokes by cane) at the Ukonga Prison in Dar-es-Salaam, United Republic of Tanzania, for armed robbery—hitting the victim in the face with a machete while stealing money and other valuables from him. He claimed that he had been charged and wrongly convicted for armed robbery. He was denied the right to information, and he did not have the benefit of counsel or legal assistance throughout his trial. The Court finds that the evidence of the national courts has been evaluated in conformity with the requirements of fair trial within the meaning of Article 7 of the Charter. The Court holds that Tanzania should have offered him, *proprio motu* and free of charge, the services of a lawyer throughout the judicial procedure. Having failed to do so, the Respondent violated Article 7(1)(c) of the Charter.

Topics Cited

— Jurisdiction (Ratione Materiae; Ratione Temporis; Ratione Personae; Ratione Loci); Admissibility (Exhaustion of Domestic Remedies Article 56(5); Reasonable Filing Time Article 56(6)); Right to a Fair Trial (Right to Fair Trial (Article 7(1)(a); Right to a Defense (Article 7(1)(c); Right to Reliable Identification Procedures; Right to Enjoy Rights without Discrimination (Article 2); Right to be Equal Before the Law (Article 3).

Christopher Jonas v. The United Republic of Tanzania, (2017)

Factual Summary

— Applicant and another party were jointly charged with stealing money and items of value on October 1, 2002. Both parties were alleged to have used violence during the robbery including injuring the victim's face with a machete. Both were sentenced to 30 years in prison and twelve strokes of the cane, with the other party being sentences in absentia.

— Applicant alleged that he had been wrongly convicted for armed robbery, that there were procedural irregularities in his trial (he was not given access to necessary information or to a lawyer of his choice and the court relied on illegal/unverified evidence) and that the 30-year sentence awarded to him was higher than the statutory maximum of 15 years, which could be awarded for the crime he was convicted for under the criminal law in force at the time.

— The Court held that Tanzania violated Article 7 in failing to provide free legal aid to the Applicant but declined to interfere with the Applicant's ongoing sentence since all the other claims made were dismissed.

Topics Cited

— Admissibility (Exhaustion of Local Remedies & Reasonable Filing Time) (Article 56); Right to a Fair Trial (Right to a Defence) (Article 7).

Ingabire Victoire Umuhoza v. Rwanda, (2017)

Factual Summary

— The applicant was the leader of a political party known as Forces Democratiques Unifiees. She

wanted to register the party in compliance with Rwandan law on political parties in order to enable the applicant to develop the political party at the national level in preparation for future elections.

— Charges were brought against her by the judicial police. She was accused of the crimes of spreading the ideology of genocide, aiding and abetting terrorism, sectarianism and divisionism, undermining the internal security of a state, spreading rumours that may incite the population against political authorities and mount the citizens against one another, and the establishment of an armed branch of a rebel movement.

— The Court held that Rwanda violated Article 7(1)(c) of the Charter because the applicant and her counsel were not told of items seized from her person used against her in the domestic courts and were not allowed to question her co-accused during court proceedings. Further, Rwanda violated Article 9(2) of the Charter because a conviction and sentence for her statements was not necessary in a democratic society, and in any case not proportionate to the legitimate purposes sought by conviction and sentencing.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7)

Interpretation of Judgment of June 3, 2016 - Mohamed Abubakari v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— The Court ruled that Tanzania violated Article 7 of the Charter and Article 14 of the Covenant as regards the Applicant's rights to defend himself and have the benefit of a Counsel at the time of his arrest; to obtain free legal assistance during the judicial proceedings; to be promptly given the documents in the records to enable him to defend himself; his defense was based on the fact that the Prosecutor before the District Court had a conflict of interest with the victim of the armed robbery, to be considered by the Judge; not to be convicted solely on the basis of the inconsistent testimony of a single witness in the absence of any identification.

— The Court ordered the respondent state to take all appropriate measures within a reasonable time frame to remedy all violations established, excluding a reopening of the trial, and to inform the Court of the measure so taken within six (6) months from the date of this Judgment. The Court ruled that by the expression that Tanzania must take "all appropriate measures," the Court was referring to the release of Mohamed or any other measure that would help erase the consequences of the violations established, restore the pre-existing situation and re establish his rights.

Topics Cited

— Jurisdiction (Ratione Materiae; Ratione Temporis; Ratione Personae; Ratione Loci); Admissibility (Exhaustion of Domestic Remedies Article 56(5); Reasonable Filing Time Article 56(6)); Right to a Fair Trial (Right to Fair Trial (Article 7(1)(a); Right to a Defense (Article 7(1)(c)); Right to Reliable Identification Procedures; Right to Enjoy Rights without Discrimination (Article 2); Right to be Equal Before the Law (Article 3)

Kennedy Owino Onyachi & Charles John Mwanini Njoka v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants, citizens of the Republic of Kenya, were convicted prisoners who are currently serving a sentence of thirty (30) years' imprisonment for the crime of aggravated robbery in the Republic of Tanzania.

— They complained that, after being detained and acquitted a first time of armed robbery

— charges, they were re-arrested and remained in the Police cells with no food and were denied communication with anyone when they were arraigned before Court on what they claimed were "trumped up and fabricated charges" that had already been heard and from which they had already been acquitted. On the basis of this, they alleged a violation of their basic rights and deprivation of their liberty by the Republic of Kenya.

— The applicants further alleged that they were deprived of their right of Appeal as the Kenyan and Tanzanian Police transported them to Tanzania before they appealed to the Kenyan High Court, and that they were served copies of the judgment of the Court of Appeal affirming their conviction almost two years after the dismissal of their appeal.

Topics Cited

— Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to Fair Trial/Access to Courts (Right to a Defense & Right to Reliable Identification Procedures & No Double Jeopardy) (Article 7); Jurisdiction (Ratione Materiae); Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time) (Article 56)

Prof. Lèon Mugesera v. Republic of Rwanda, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— Mr. Leon Mugesera (the applicant) is a national of the Republic of Rwanda (the respondent state). At the time of the application, the applicant was held in custody at Nyanza Prison in Rwanda.

— The application is based on the alleged injustice the applicant claims to have suffered during the entire procedure before the High Court Chamber for International Crimes and before the Supreme Court of Rwanda between 2012 and 2016. He alleged that he had been detained under deplorable conditions, had undergone all forms of torture and had only limited access to his family, without medical or appropriate treatment and without access to counsel.

— The Court ordered the respondent state to allow the applicant access to his lawyers; to be visited by his family members and to communicate with them; to have access to all medical care required, and to refrain from any action that may affect the Applicant's physical and mental integrity; lastly, to report back to the Court in fifteen days from its Order on the measures implemented.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Family (Article 18). Artile 7

Amiri Ramadhani v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicant was convicted of armed robbery, attempted suicide and causing grievous harm in 1998 and sentenced to concurrent sentences of 30, 7, and 2 years for these offenses respectively. His appeals were dismissed.

— The Applicant argued that he should be discharged from his sentence since courts relied on illegal/unverified evidence to convict him and failed to provide him with free legal aid. He also argued that the sentences awarded to him were excessive.

— The Court held that there were no procedural irregularities in the conviction and that the sentences were proportionate to the crimes committed. It only held that Tanzania had failed to provide the Applicant with free legal aid, but declined to discharge him from his sentence.

Topics Cited

— Duty to Recognise Rights, Duties and Freedoms (Article 1), Admissibility (Article 56)

Anaclet Paulo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— On November 27, 1997, the Applicant was convicted of armed robbery with violence and sentenced to 30 years' imprisonment after breaking into a residence, tying up the homeowners and stealing TZS 800,000. He represented himself during the trial.

— On June 6, 2003, the Applicant appealed to the High Court of Mwanza where a hearing was held without the Applicant and without the original case file. He then appealed to the Court of Appeal which never received the file. The High Court dismissed Applicant's request for a time extension to refile before the Court of Appeal.

Topics Cited

— Jurisdiction; Admissibility (Article 56); Right to Freedom from Discrimination (Article 2); Right to Equality before the Law and Equal Protection of the Law (Article 3(1), (2)); Right to Personal Liberty and Protection from Arbitrary Arrest (Article 6); Right to a Fair Trial (Articles 7(1)(a), (c); 7(2)).

Anudo Ochieng Anudo v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— Applicant, a Tanzanian national, was stripped of his Tanzanian nationality and deported to Kenya without a hearing. The Court held the State violated, *inter alia*, his right to have his cause heard by a judge.

Topics Cited

— Right to have cause heard (Article 7(1))

*Armand Guehi v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted of murdering his wife and was sentenced to death by the High Court of Tanzania. The applicant's appeal to the Court of Appeal was dismissed. The applicant then filed a motion for review to the Court of Appeal regarding its previous decision to dismiss the appeal. Whilst the motion for review was awaiting hearing in the Court of Appeal, the applicant filed this application to the Court, alleging human rights violations in the course of the proceedings in Tanzania.

Topics Cited

— Death Penalty; Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Prison/Jail Conditions) (Article 5); Duty to Recognize Rights, Duties and Freedoms (Article 1).

Diocles William v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted of raping a 12-year old child and sentenced to 30 years' imprisonment and 12 strokes of the cane. The applicant filed an appeal against the judgment before the High Court contesting the credibility of the prosecution witnesses, the consistency of the testimonies and the administration of the corporal punishment, but the appeal was dismissed. The applicant lodged an appeal before the Court of Appeal which was dismissed as being baseless.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7); Right to Enjoy Rights Without Discrimination (Article 2); Right to be Equal Before the Law (Article 3)

George Maili Kemboge v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted for the rape of a 15-year old girl and sentenced to 30 years' imprisonment, 12 strokes of the cane and payment of a fine of TZS 500,000. The case was appealed to the High Court and subsequently the Court of Appeal, both of which upheld the conviction. The applicant alleged the Court of Appeal failed to consider two of the three grounds of appeal and therefore violated his right to equal protection under the law provided under Article 3(2).

Topics Cited

— Equal protection of the law (Article 3); Right to health (Article 16)

Gombert Jean-Claude Roger v. Republic of Côte d'Ivoire, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— This case arises out of a dispute between two private companies. Applicant Gombert brought the case as Chairman and CEO of the company. The Court dismissed for inadmissibility because Applicant had previously filed with the Court Community of Justice, ECOWAS, and that court had dismissed the application relying on the principles of the Charter.

Topics Cited

— Admissibility (Article 56(7) and Rule 40(7))

Kijiji Isiaga v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicant Kijiji Isaiga, accompanied by two accomplices, burst into the residence with a gun and machete. They attacked the children in the residence and took one million Tanzanian Shillings (about USD 450) by force. The Applicant is currently serving a term of thirty (30) years' imprisonment and twelve (12) strokes of the cane following his conviction for the crimes of inflicting bodily harm and aggravated robbery. The Court of Appeal of Tanzania (the highest court in Tanzania) upheld his conviction and sentence. In his Application, the Applicant alleges that the local Courts based their decisions on weak evidence.

Topics Cited

— Jurisdiction (Ratione Materiae; Ratione Temporis; Ratione Personae; Ratione Loci); Admissibility (Exhaustion of Domestic Remedies Article 56(5); Reasonable Filing Time Article 56(6)); Right to a Fair Trial (Right to Fair Trial (Article 7(1)(a); Right to a Defense (Article 7(1)(c)); Right to Reliable Identification Procedures; Right to Enjoy Rights without Discrimination (Article 2); Right to be Equal Before the Law (Article 3).

Mariam Kouma & Another v. Republic of Mali, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— A dispute arose over an agreement between the applicant and Boussourou Coulibaly concerning the purchase of a monkey. Coulibaly asked the applicant to take back her monkey and return his money. She refused, causing him to attack her with a machete. Coulibaly was charged with the offense of inflicting simple bodily harm, with the Court reserving ruling on damages. The applicant alleged that classifying the acts of Coulibaly as

assault rather than attempted murder with premeditation resulted in the violation of her fundamental rights.

Topics Cited

— Admissibility (Exhaustion of Domestic Remedies; Reasonable Filing Time) (Article 56(6))

Mgosi Mwita Makungu v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant, Mr. Mgosi Mwita Makungu, was convicted of the offenses of robbery with violence and armed robbery, and is currently serving a total of 30 years' imprisonment for the two convictions.

— The claim arises from the respondent state's alleged failure to provide the applicant with certified true copies of the records of proceedings and judgments against him. Without these, the Claimant has been unable to file an appeal against his conviction for 20 years.

— The Court ordered the respondent state to release the applicant from prison and provide him with the certified true copies of the records of proceedings and judgments of the two criminal cases, within 30 days of the notification of the Judgment

Topics Cited

— Right to a Fair Trial (Right to an Appeal) (Article 7); Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time) (Article 56)

Minani Evarist v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant, Mr. Minani Evarist, was convicted of rape and sentenced to a 30-year prison term on March 30, 2006, which he is currently serving at Butimba Central Prison in Mwanza. The applicant's appeals against this sentence at the Tanzanian High Court and Court of Appeal were dismissed and an application for review before the Court of Appeal filed August 19, 2014, was still outstanding at the time of the hearing.

— The applicant argued that his rights to have his cause heard by a court of law per Article 3(2) of the Charter had been breached because the Court of Appeal had not considered all the grounds of his defense.

— Further, the applicant argued that since he was not afforded legal representation during his trial there was a breach of Article 7(1) of the Charter.

Topics Cited

— Right to a Defense (Article 7); Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time (Article 56)

Nguza Viking & Johnson Nguza v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicants, Nguza Viking and Johnson Nguza (Nguza Viking's biological son), were arrested on October 12, 2003, and were charged with 10 counts of rape and 11 counts of sodomy four days later. The 10 alleged victims were all children between six and eight years old. After a full trial, the Court convicted the Applicants and sentenced them to serve a term of life imprisonment. The Applicants alleged they were tortured and denied a fair trial.

Topics Cited

— Jurisdiction (Ratione Materiae); Admissibility (Exhaustion of Domestic Remedies Article 56(5)); Right to be Free from Torture (Burden of Proof Article 5); Right to a Fair Trial (Right to be Tried within a Reasonable Time Article 7(1)(d); Right to Reliable Identification Procedures; Right to Equality of Arms Article 7(1)(c); Right to a Defense Article 7(1)(c); Right to a Family (Article 18).

Thobias Mango and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants were arrested and detained for an alleged armed robbery and received a sentence of 30 years each. They alleged that the respondent state violated their rights following the arrest, including that it didn't follow the standards for visual identification in such cases, that they were denied medical treatment and witness statements, and that the sentence given out did not exist under the Penal Code of Tanzania at the time.

— The claimants allege that the respondent violated Articles 3, 7, 19 and 28 of the Charter.

Topics Cited

— Right to a Fair Trial/Access to Courts (Right to a Defense (Including Right to Legal Counsel, Right to Present Evidence, etc.)) (Article 7); Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time) (Article 56)

Werema Wangoko Werema and Another v. The United Republic of Tanzania, (2018) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants were sentenced to 30 years' imprisonment and 12 strokes of the cane each for an armed robbery in Tanzania. The Court did not find any violation of the applicants' fundamental rights by Tanzania.

Topics Cited

— Admissibility (Exhaustion of Domestic Remedies) (Article 56); Right to a Fair Trial (Right to Have a Cause Heard) (Article 7)

Alex Thomas v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicant, who was convicted of armed robbery and sentenced to 30 years in prison, filed an Application before the Court alleging that his rights to a fair trial had been violated because he was not provided with a defense attorney; there were delays during criminal proceedings; the Tanzanian courts lacked jurisdiction to try him as the alleged robbery occurred in Kenya; his right to be heard had been violated as the Trial court proceeded to hear the case in his absence, as he was hospitalized at the time of trial; and because the prosecution did not prove their case against him beyond reasonable doubt (there were inconsistencies in the prosecution evidence, in particular the witness testimonies regarding the property actually stolen and its value, as well as whether or not the Applicant attacked the complainants with a gun).

Topics Cited

— Jurisdiction (Ratione Materiae); Admissibility (Article 56(2); Exhaustion of Domestic Remedies Article 56(5); Reasonable Filing Time Article 56(6)); Duty to Recognize Right (Article 1); Right to be Equal Before the Law (Article 3); Right to be Free from Torture (Undue Delay Article 5); Right to Liberty and Security (Article 6); Right to a Fair Trial (Right to be Tried within a Reasonable Time Article 7(1)(d)); Right to a Defense Article 7(1)(c), Article 14(3)(d) of the ICCPR; Right to Fair Trial Article 7(1)(c)); Evidence Article 26 of the Protocol; Interpretation (Torture).

* Ally Rajabu and Others v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The Applicants were arrested for murder in Mruma Village, in the Mwanga District. On November 25, 2011, the High Court of Tanzania found the Applicants guilty of murder and sentenced them to death. The Applicants appealed to the Court of Appeal, which dismissed their appeal on March 22, 2013. On March 24, 2013, the Applicants filed an application for review before the Court of Appeal. The application was still pending when the Applicants filed a petition before the African Court on March 26, 2015.

Topics Cited

— Jurisdiction (Material Jurisdiction); Right to be tried within a reasonable time (Article 7(1)); Admissibility (Article 56); Right to a Fair Trial (Article 7); Right to Life (Article 4); Right to Dignity (Article 5)

Collectif des Anciens Travailleurs du Laboratoire ALS v. Mali, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants were an informal group of one hundred thirteen (113) out of one hundred thirty five (135) former workers of the Australian Laboratory Services (ALS), a limited liability company, all domiciled in Mali.

— The applicants seized the Prosecutor General of the Republic of Mali denouncing lead contamination. Over a year later, having received no information from the State Prosecutor on the progress made in the application from the State Prosecutor, they concluded that that procedure was unduly prolonged by the judicial authorities of the respondent state and, accordingly, they decided to seize the African Court with the matter. They alleged that the undue delay in the examination of the case constitutes a violation of their rights under Article 7(1).

— The Court found the claim inadmissible on the grounds that the applicants had not exhausted their local remedies.

Topics Cited

— Exhaustion of Local Remedies.

Dexter Eddie Johnson v. Republic of Ghana, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted of murder and sentenced to the mandatory death sentence in Ghana. His appeals to both the Court of Appeal and Supreme Court in Ghana were dismissed. The applicant then submitted a communication to the United Nations Human Rights Committee ("HRC"), which published its report that found Ghana to have violated the ICCPR.

Topics Cited

— Admissibility (Reasonable Filing Time) (Article 56)

Dismas Bunyerere v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— On November 14, 2006, the District Court of Sengerema in Mwanza convicted the Applicant for armed robbery of two fishermen and sentenced him to 30 years' imprisonment. The applicant alleged the Court of Appeal of Tanzania, in dismissing his appeal, failed to disregard fundamental evidence of the prosecution regarding his identification and erroneously upheld the doctrine of recent possession. The applicant alleged that this led to a conviction of a more serious crime instead of

the lesser crime of theft. The applicant alleged this failure violated his right to equality before the law and to equal protection of the law.

Topics Cited

— Jurisdiction (Material Jurisdiction); Admissibility (Article 56); Right to Freedom from Discrimination (Article 2); and Right to Equality before the Law and Equal Protection of the Law (Article 3); Right to a Fair Trial (Article 7).

Jibu Amir (alias Mussa) & Another v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants were convicted of armed robbery and theft of cash amounting to 1.2 million Tanzanian shillings and were sentenced to thirty (30) years' imprisonment. The applicants alleged (i) the length of the sentence imposed was illegal as the law provided for a maximum sentence of fifteen (15) years for the crime committed, (ii) the respondent state failed to provide the applicants with free legal advice, and (iii) that they were denied the right to be informed of their right to counsel.

Topics Cited

— Jurisdiction (Ratione Materiae; Ratione Temporis; Ratione Personae; Ratione Loci); Admissibility (Exhaustion of Domestic Remedies; Reasonable Filing Time) (Article 56(6)); Right to a Defense (Article 7(1)(c)); Prohibition on Retroactivity/No Ex-Post Facto Laws (Article 7(2)).

Kennedy Gihana and Others v. Republic of Rwanda, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicants' passports were invalidated by the respondent state without notice and without the opportunity to appeal against the invalidation. The applicants alleged this invalidation of their passports rendered them stateless and had a significant impact on fundamental human rights, namely, the right to: (i) participation in political life; (ii) freedom of movement; (iii) citizenship; (iv) liberty; (v) family life; and (vi) work.

Topics Cited

— Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Family (Article 18); Jurisdiction (Ratione Materiae; Ratione Temporis; Ratione Personae; Ratione Loci); Admissibility (Article 56(1), (2), (3), and (6))

Kennedy Ivan v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was convicted of the offense of armed robbery and sentenced to 30 years' imprisonment. He alleged violations of the right to a fair trial as provided under Article 7 of the African Charter on Human and Peoples' Rights (the Charter) on the grounds that he was found guilty on evidence that was not properly evaluated; that the magistrate who heard his case failed to call his witnesses upon his request; and that he was not given free legal assistance during his trials.

— The Court found a violation of the applicant's right to a fair trial on the grounds that the applicant should have been provided with free legal assistance in his trials because he was accused of a serious crime which carried a minimum heavy custodial sentence.

Topics Cited

— Jurisdiction Ratione Materiae; Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time) (Article 56); Right to a Fair Trial (Right to a Defense & Right to Reliable Identification Procedures) (Article 7).

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was a prisoner serving a sentence for robbery with violence. The applicant filed an appeal before the High Court of Tanzania, who dismissed his appeal and enhanced his sentence from twenty (20) years to thirty (30) years, and ordered him to be caned twelve (12) strokes. The applicant alleged that the respondent state had violated his rights by unlawfully imprisoning him for a nonexistent offense, subjecting him to a punishment that violated his fundamental rights, and denying him the right to legal representation. The applicant further alleged that the sentence imposed was unconstitutional in terms of Article 13(6)(c) of the Tanzanian Constitution.

Topics Cited

— Jurisdiction (Ratione Materiae); Admissibility (Exhaustion of Domestic Remedies; Reasonable Filing Time) (Article 56(6))

Livinus Daudi Manyuka v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— On November 4, 1999, the District Court at Mbinga, Ruvuma Region, convicted the Applicant of robbery with violence and sentenced him to twenty years' imprisonment. The applicant then appealed to the High Court at Songea. The High Court quashed the District Court's sentence and enhanced it to a term of 30 years' imprisonment and 12 strokes of the cane.

— The African Court dismissed the petition finding it was inadmissible because the Applicant failed to file within a reasonable time period.

Topics Cited

— Jurisdiction (Material Jurisdiction); Admissibility (Article 56).

Lucien Ikili Rashidi v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant is a national of the Democratic Republic of Congo, currently living in Burundi. Applicant, his wife and his children were arrested, detained and deported for allegedly residing illegally in Tanzania.

Topics Cited

— Right to a Fair Trial (Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal) (Article 7); Admissibility (Exhaustion of Domestic Remedies & Reasonable Filing Time) (Article 56).

Ramadhani Issa Malengo v. The United Republic of Tanzania, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant entered into a contract in which he was to sell tobacco in return for a loan of TZS 1,390,000. The Court of Appeal found in favor of the applicant that there was a breach of contract, and remitted the case back to the High Court for assessment of damages.

— Dissatisfied with the sum of damages, the applicant filed an application to the Court of Appeal, but this application was dismissed. Subsequently, the applicant filed an application to the Court alleging that the decision violated his right to a fair trial, and that the respondent state violated his right to liberty and security because he was held against his will without justification at a police station in 1997.

— The respondent state raised an objection on the jurisdiction of the Court, and the admissibility of the application. The application was declared inadmissible due to failure to exhaust local remedies.

Topics Cited

— Jurisdiction of the African Court; Admissibility (Article 56 of the Charter).

Sébastien Germain Ajavon v. Republic of Benin, (2019) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant was acquitted from cocaine trafficking charges by the Court of first instance. The applicant then requested, and obtained, from the Court of first instance an attestation that no appeal or complaint has been filed against his acquittal. However, he was later charged again with cocaine trafficking by a newly established court, and no notice was served on him regarding this charge.

Topics Cited

— Jurisdiction (Ratione Materiae); Admissibility (Exhaustion of Domestic Remedies) (Article 56); Right to a Fair Trial (Right to Defence; No Double Jeopardy; Presumed Innocence) (Article 7).

* Evodius Rutechura & Theobard Nestory v. The United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

Factual Summary

— * Evodius Rutechura was one of two individuals involved in burglary of the house of Erodia Jason in Mwanza in 2003, during which Erodia's daughter Arodia was shot dead. Rutechura was convicted of murder and sentenced to death by hanging at the High Court in Mwanza, Tanzania, in 2008.

— Mr. Rutechura filed an appeal a few weeks later to the Court of Appeal in Mwanza, which was heard and dismissed in 2010. He filed an application for review of this judgement in 2012, but withdrew this application in 2015, applying instead for an extension of time which was denied. Another application was filed in 2016 for the court to quash his conviction and imprisonment; release him from custody and grant him reparations.

— Mr. Rutechura alleged that the State violated Articles 7(1) and 7(1)(c) of the Charter by dismissing his application for review outside time; failing to provide him with free legal representation; and failing to evaluate the evidence properly. The Court dismissed all three of these allegations.

— The respondent state also claimed that the application was inadmissible because the applicant took an unreasonable time, that is, five (5) years and six (6) months to bring his claim to the Court. The Court dismissed this objection on the grounds that the applicant was on death-row, restricted in movement, with limited access to information, and had twice sought a review of his conviction and sentence.

Topics Cited

— Articles 7, 3, 27, 6, 56 of the Charter.

Other Points of Interest

— Justice Blaise Tchikaya discussed the respondent state's need to move towards the abolition of the death penalty in a separate position.

Mussa Zanzibar v. The United Republic of Tanzania, (2021) [Afr. Ct. H.P.R.]

Factual Summary

— Mussa Zanzibar was serving a thirty year prison sentence in Butimba Prison after being convicted of rape, having been charged in 2011 in the District Court of Chato. He filed two appeals to the High Court of Bukoba in 2012

and 2014, both of which were dismissed. He filed another appeal, this time to the Court of Appeal of Tanzania in 2016.

— This final appeal had three allegations that he claimed violated his right to a fair trial: (1) the District Court's conviction was based on the evidence provided by a single witness without the court satisfying itself that this witness was telling the truth; (2) the District Court did not resolve contradictions and inconsistencies in the prosecution evidence; and (3) the District Court did not warn itself of the need for evidence beyond reasonable doubt before convicting him.

— The respondent state objected to the Court's jurisdiction over the Application in accordance with Article 3 of the Protocol, but the Court determined that it had material, personal, territorial and temporal jurisdiction to review the Application.

— The Court dismissed Mr. Zanzibar's claims, saying that it did not have basis to interfere in the findings of the municipal court, and therefore it's assessment of the evidence was adequate.

— The Court did, however, find the District Court having violated Article 7 because it did not offer Mr. Zanzibar free legal assistance.

— Owing to the violation of Article 7 read together with Article 14(3) of the ICCPR through the failure to provide free legal assistance, the Court compensated Mr. Zanzibar with TZS 300,000. His request for release, however, was dismissed.

Topics Cited

— Articles 7, 27 of the Charter; Article 14(3) of the International Covenant on Civil and Political Rights.

B. African Commission on Human and Peoples' Rights

Civil Liberties Organisation (in respect of the Nigerian Bar Association) v. Nigeria, (1995) [ACmmHPR]

Factual Summary

— This communication challenges the establishment of the Body of Benchers, a new governing body of the Nigerian Bar Association. Of the body's 128 members, 31 are Bar Association nominees, and the remaining are members of the government. It is supposed to prescribe and collect some practice fees. It makes challenging its actions before any Nigerian court an offense and operates retrospectively.

— The Commission struck down the law that established the Body of Benchers because it applies retroactively, interferes with Nigerian Lawyers' freedom of association and the prohibition on litigation contained in the impugned law violates Article 7 of the Charter.

Topics Cited

— Right to a Fair Trial (Generally & Prohibition on Retroactivity) (Article 7)

Civil Liberties Organisation v. Nigeria, (1995) [ACmmHPR]

Factual Summary

— Civil Liberties Organisation filed a communication alleging the various decrees promulgated by the Nigerian government violated the Charter. Specifically, the decrees in question (i) suspended the Constitution but also specified that no decree promulgated after December 1983 can be examined in any Nigerian Court; and (ii) dissolved political parties, ousted the jurisdiction of the courts, and specifically nullified any domestic effect of the African Charter. Civil Liberties Organisation claimed that decrees violated Articles 7(1) and 26 of the Charter.

— The Commission found that the decrees violated Article 7(1) and 26.

— The Commission also found that notwithstanding one of the decrees, which repealed the Nigerian domestic act that implements the Charter, the Charter remained in force in Nigeria as if it had never been revoked.

Topics Cited

— Right to a Fair Trial (Article 7); Duty to Guarantee Independence of Courts (Article 26)

* Constitutional Rights Project (in respect of Wahab Akamu, G. Adega and others) v. Nigeria, (1995) [ACmmHPR]

Factual Summary

— The applicants were sentenced to death under the Robbery and Firearms (Special provision) Decree No. 5 of 1984. The provision created special tribunals, with power to give sentences, which could not be subject to judicial appeal.

— The applicants claimed that the government tortured them in order to extract confessions from them while they were in custody. The applicants were convicted and sentenced to death by the tribunal in 1991.

— The Commission found that the foreclosure of any avenue to appeal to competent national organs in criminal cases bearing death penalty and the special tribunal's potential lack of

impartiality, as it is composed of persons belonging to the executive branch of government, violated Article 7(1) of the Charter. The Commission recommended Nigeria to free the applicants.

Topics Cited

— Death Penalty; Right to a Fair Trial (Article 7)

* Constitutional Rights Project (in respect of Zamani Lakwot and six others) v. Nigeria, (1995) [ACmmHPR]

Factual Summary

— The applicants were sentenced to death by a special tribunal decree, the Civil Disturbances Act, in Nigeria. The decree did not allow for any appeal of the decisions of the special tribunal. Allegedly, the accused were harassed and their counsel forced to withdraw during the trial, after which they were sentenced to death for homicide, unlawful assembly, and breach of the peace.

— The Constitutional Rights Project appealed on behalf of the seven accused men to the African Commission, which ruled that the tribunal's proceedings without a defense counsel and without the right of judicial review violated Article 7(1) of the Charter.

Topics Cited

— Death Penalty (General); Right to a Fair Trial (Article 7)

Curtis Francis Doebbler v. Sudan, (2003), [ACmmHPR]

Factual Summary

— The complainant alleged violation of Article 5 of the Charter.

— On 13th June 1999, the complainant alleged that the eight students (Hanan Said Ahmed Osman, Sahar Ebrahim Khairy Ebrahim, Manal Mohammed Ahamed Osman, Omeima Hassan Osman, Rehab Hassan Abdelmajid, Huda Mohammed Bukhari, Noha Ali Khalifa and Nafissa Farah Awad) held a picnic along the banks of the river. Although under the law no permission is necessary for such a picnic, the students nevertheless sought permission and got it from the local authorities.

— After some hours, security agents and policeman accosted the students, beating some of them and arresting others. They were alleged to have violated 'public order' contrary to Article 152 of the Criminal Law of 1991 because they were not properly dressed or acting in a manner considered being immoral.

— The acts alleged to constitute these offences were kissing, wearing trousers, dancing with men, crossing legs with men, sitting with boy and sitting and talking with boys.

— All eight students were sentenced to fines and between 25 and 40 lashes.

— Complainant pointed out that the instrument used to inflict the lashes was not clean and no doctor was present. Therefore, it was alleged that the punishment of lashings were disproportionate and humiliating.

— The African Commission held that there is no right for individuals to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the Charter and contrary to the very nature of the human rights treaty.

— The Commission found that the Republic of Sudan violated Article 5 and requests them to:

- Immediately amend the Criminal Law of 1991, in conformity with its obligations under the Charter
- Abolish the penalty of lashes
- Take appropriate measures to ensure compensation of the victims.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5).

Curtis Francis Doebbler v. Sudan, (2009) [ACmmHPR]

Factual Summary

— The applicant alleges violations of Articles 4, 5, 6, 12(3), (4) and (5) of the African Charter on Human and Peoples' Rights (African Charter).

— The applicant represents 14,000 Ethiopia refugees who fled Ethipoia prior to 1991 during the Mengitsu regime.

— The applicant alleges that the current Government in Ethiopia was formed by officials of the Tigrayan People's Liberation Front (TPLF) party, who were allies with the the Ethiopian People's Revolutionary Party (EPRF) during the struggle against the Mengistu regime. The supporters of the EPRP are allegedly the main target of repression by the Ethiopian government throughout the country.

— The applicant alleges that in September 1999, the Government of Sudan signed an agreement with the UNHCR to invoke the Cessation Clauses (Article 1(C) (5)) of the 1951 UN Convention Relating to the Status of Refugees) with effect from 1 March 2000.

— The applicant alleges that by this agreement, Ethiopian refugees in Sudan would lose their right to work or receive any social assistance as a way of coercing them into forced repatriation back to Ethiopia.

— The Commission finds that the Communication was filed in anticipation of a violation, which did not happen in actual fact after the implementation of the cessation clause set in motion.

— The applicant's allegation that Article 12 of the African Charter was violated has also not been proved.

— The African Commission finds that the allegations concerning violations of Articles 4, 5, 6, 7, and 12 (3), (4), and (5) of the African Charter have not been proved.

Topics Cited

— Right to Life (Article 4); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal) (Article 7)

* Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. DRC, (1995) [ACmmHPR]

— Note: This case is actually against Zaire, not DRC. However, it is listed as DRC on the African Commission's website, so it should be cited that way.

Factual Summary

— Four complaints were brought against the respondent state alleging multiple human rights violations.

— Communication 25/89 (17 March 1989) alleged torture and indefinite imprisonment without trial by the members of a military unit of the respondent state.

— Communication 47/90 (16 October 1990) alleged arbitrary arrest and detainment, torture, extra judicial execution, unfair trials, restrictions on the right to association and peaceful assembly, and suppression of freedom of the press.

— Communication 56/91 (27 March 1991) alleged arbitrary arrests, appropriation of private

property (belonging to the church of the Jehovah's Witnesses of Zaire), and violation of the right to education.

— Communication 100/93 (20 March 1993) alleged torture, executions, unfair trials and restrictions on freedom of association and freedom of the press.

— The respondent state failed to respond to the allegations, in spite of the numerous opportunities given to it by the Commission to do so. The Commission proceeded on the basis of the facts provided, finding violations of Articles 4, 5, 6, 7, 8, 16, and 17 of the African Charter.

Topics Cited

— Right to Dignity (Article 5); Right to Liberty and Security of Person (Article 6); Right to a Fair Trial (Article 7); Default Judgment (Rule 55); Duty to Guarantee the Independence of the Judiciary (Article 26); Death Penalty (General)

* Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa) v. Malawi, (1995) [ACmmHPR]

Factual Summary

— Two cases were consolidated: (1) Aleke Banda (criminal case), (2) Orton and Vera Chirwa (death penalty case). Aleke Banda, the father-in-law of Achuthan, was held for 12 years without trial in Malawi. His appeal was consolidated with Amnesty International's petition on behalf of Orton and Vera Chirwa, who were sentenced to death in a Malawi court after (allegedly) being abducted from Zambia, where they were living in exile. Amnesty International also alleged torture in prison. The African Commission held that the government of Malawi violated Articles 4, 5, 6, and 7 of the African Charter.

— Communication 64/92 alleged that Aleke Banda had been imprisoned for 12 years without being charged or having a trial. Krishna Acuthan, Banda's son-in-law, met with several government officials in Malawi, who mentioned that there was no case pending against Banda.

— Communications 68/92 and 78/92 alleged that Orton and Vera Chirwa, prominent political figures in Malawi, were abducted from Zambia, accused of treason at a trial held without access to counsel, and sentenced to be executed. The sentences were commuted to life imprisonment, but the Chirwas were held in solitary confinement and received inadequate food and medical care.

Topics Cited

— Death Penalty (General); Right to Life (Article 4); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal) (Article 7)

Organisation mondiale contre la torture, Association Internationale des juristes democrates, Commission internationale des juristes, Union interafricaine des droits de I'Homme v. Rwanda, (1996) [ACmmHPR]

Factual Summary

— This Communication combines four complaints relating to events that occurred during the Rwandan Civil War 1990 - 1994: (1) a submission made on behalf of a group of Burundi refugees deported from Rwanda; (2) a complaint of arbitrary arrests and summary executions across Rwanda; (3) a complaint concerning unlawful detention of citizens and widespread massacres; (4) further complaints of widespread massacres, extrajudicial executions and arbitrary arrests of citizens belonging to the Tutsi ethnic group.

Topics Cited

— Right to a Fair Trial (Right to Have a Cause Heard) (Article 7), Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Prison/Jail Conditions) (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6)

Rencontre africaine pour la defense des droits de l'Homme v. Republic of Zambia, (1997) [ACmmHPR]

Factual Summary

— 517 West Africans were deported from Zambia on the grounds of being in Zambia illegally. Most had been subject to administrative detention for more than two months. Deportees lost all the material possessions they had in Zambia, and many were also separated from their Zambian families.

Topics Cited

— Exhaustion of Domestic Remedies (Article 56)

Union interafricaine des droits de l'Homme, Fédération internationale des ligues des droits de l'Homme, RADDHO, Organisation nationale des droits de l'Homme au Sénégal and Association malienne des droits de l'Homme v. Angola, (1997) [ACmmHPR]

Factual Summary

— The applicants complained to the Commission that acts of brutality, followed by the rounding up and expulsion of West African nationals from the territory of Angola, were violations of Articles 2, 5, 7, and 12 of the Charter.

Topics Cited

— Right to Enjoy Rights Without Discrimination (Article 2); Right to a Fair Trial/Access to Courts (Right to be Tried Within a Reasonable Time (Extended Pretrial Detention), Right to be Notified of Charges, and Right of Access to Courts) (Article 7)

William A Courson v. Equatorial Guinea, (1997) [ACmmHPR]

Factual Summary

— The applicant was arrested on March 6, 1995 on charges of attempting to overthrow the Government of Equatorial Guinea and high treason. He was sentenced to imprisonment rather than the death penalty "as an act of lenience" by the Court [1]. The applicant alleged that, from the time of his arrest until his trial, he was denied the right to consult with his defense counsel and was not permitted to examine the evidence against him.

— The applicant was eventually pardoned, but the applicant asked the Commission to pay damages to compensate him for the period for which he was detained.

— The Government maintained that the applicant's accusations were based on "unfounded information." It asserted that human rights were fully protected by the country's constitution and that the applicant was assisted by three "great" lawyers during his trial. [5-7]

Topics Cited

— Exhaustion of Domestic Remedies (Article 56); Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal (Article 7); Right of Access to Courts (Article 7)

International PEN, Constitutional Rights Project, (1998) [ACmmHPR]

Factual Summary

— Kenule Beeson Saro-Wiwa, a writer and Ogoni activist, president of the Movement for the Survival of the Ogoni People (MOSOP), and

others were arrested after four other Ogoni leaders were murdered. The murders took place following a riot that broke out during a MOSOP meeting. Saro-Wiwa and others were arrested in May of 1994, but were not charged until January or 1995. Saro-Wiwa and others were charged with "incit[ing] members of MOSOP to murder four rival Ogoni leaders."

— Saro-Wiwa alleged that he was held without charge or bail, placed in leg irons and handcuffs for several days, and severely beaten. Saro-Wiwa and others were denied access to legal counsel prior to their trials. The trial occurred before a tribunal constituted under the civil Disturbances Act, which contained an "ouster clause," restricting judicial appeals. Evidence was provided to the Commission indicating that, leading up to and during the trial, Saro Wiwa's defense counsel was harassed, Saro-Wiwa was forced to find new counsel based on the harassment, witnesses were bribed, and the tribunal members were biased.

— "[T]he defence was denied access to the evidence on which the prosecution was based and that files and documents which were required by the accused for their defence were removed from their residences and offices when they were searched by security forces on different occasions during the trial."

— Saro-Wiwa and eight others were sentenced to death by the tribunal. Emergency requests to postpone the executions were filed, but the defendants were executed ten days after the trial.

— The Court Found that a violation had occurred

Topics Cited

— Death Penalty (General); Arbitrary Deprivation of Life (Article 4); Right to a Defense, Presumption of Innocence and Right to be Tried Within a Reasonable Time by an Impartial Court of Tribunal (Article 7)

Amnesty International and Others v. Sudan, (1999) [ACmmHPR]

Factual Summary

— After a coup in Sudan, the government arrested, detained, and tortured members of opposition groups without giving an official reason. Some of those arrested were subjected to extra-judicial killings.

— Once they were formally accused, in relation to the coup, they were tried by a special court created by the President, who chose the judges and dismissed any who disagreed with him. Detainees were allowed lawyers, but only to consult with. Their lawyers could not speak for them in court. Twenty-eight army officers were executed without a trial and the complaint claims the military massacred villagers, but faced no repercussions for the act. Finally, the communication claimed that Christian citizens were persecuted and forced to convert to Islam.

— The court found that Sudan violated Article 4, 5, 6, 7, 8, 9 and 10 in perpetrating these acts.

Topics Cited

— Right to Life (Government's Obligation to Punish Extra Judicial Killings) (Article 4); Right to Dignity and Freedom from Torture (Prison/ Jail Conditions) (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial/Access to Courts (Right to a Defense, Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal (Article 7); Freedom of Religion (Article 8); Admissibility (Exhaustion of Local Remedies) (Article 56)

Amnesty International v. Zambia, (1999) [ACmmHPR]

Factual Summary

— The Communication was submitted by Amnesty International on behalf of William

Banda and John Chinula. Both were prominent political figures in Zambia who were deported to Malawi following the success of the MMD party in the elections of 1991. Banda had been drugged, blindfolded and driven to Malawi where he was left in a police station. Chinula had been taken to the airport, sedated and awoke in a police station in Malawi. The Commission found that there had been a violation of Articles 2, 7(1)(a), 8, 9(2), 10, 18(1), and 18(2) of the Charter.

Topics Cited

— Right to a Fair Trial (Prohibition on Retroactivity/No Ex-Post Facto Laws & Right to Have a Cause Heard) (Article 7)

Interpretation of the Judgment of 20 November 2015, Alex Thomas v. The United Republic of Tanzania, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— The applicant alleged that the trial and Appellate courts wrongfully convicted him because, the Respondent's court lacked jurisdiction to him as the alleged robbery occurred in Kenya.

— The Court ruled that Tanzania violated Articles 1 and 7(1) (a), (c), and (d), as regards to the Applicant's rights to defend himself; to obtain free legal assistance during the judicial proceedings; to be able to make a rejoinder to the prosecution's statement during the hearing of his appeal.

— The Court ordered the respondent state to take all necessary measures within a reasonable time frame to remedy all violations established, excluding a reopening of the trial, and to inform the Court of the measure so taken within six (6) months from the date of this Judgment. The Court ruled that by the expression that Tanzania must take "all necessary measures," the Court was referring to the release of Alex or any other measure that would help erase the consequences of the violations established, restore the pre-existing situation and re establish his rights.

— The Court further clarifies that the expression" remedy all violations found" should therefore mean to" erase the effects of the violations established" through adoption of the measures indicated in the preceding paragraph.

Topics Cited

— Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to a Defense (Article 7).

Centre for Free Speech v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— The applicant alleged the unlawful arrest, detention, trial and conviction of four Nigerian journalists, by a Military Tribunal presided over by one Patrick Aziza. The journalists were convicted for reporting stories on the alleged 1995 coup attempt in their various newspapers and magazines. The journalists were tried in secret and were not allowed access to counsel of their choice. The journalists were sentenced to various terms of imprisonment. The convicted journalists could not appeal against their sentences as various Decrees promulgated by the Military Regime ousted the jurisdiction of regular courts from hearing appeals on cases decided by a Military Tribunal.

— The Commission found that local remedies were non-existent or ineffective due to the jurisdiction of the courts being ousted by Treason and Treasonable Offences (Special Military Tribunal) Decree.

Topics Cited

— Right to a Defense (Article 7); Evidence (Article 26 of the Protocol)

Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— Civilians and retired military personnel were arrested in connection with an alleged plot to overthrow the Federal Military Government of Nigeria. They were tried by a Special Military Tribunal, which allowed no appeal of the judgment. The trials were conducted in secret and with no opportunity for the accused to state their defense. The suspects were not made aware of the charges against them until their trial and had no access to lawyers or their families. The suspects were defended by military lawyers, who were appointed to defend them by the Federal Military Government. Thirteen civilians were convicted and sentenced to life imprisonment, which was later reduced to fifteen years.

— The applicants alleged (i) inhuman and degrading conditions of imprisonment (including the deprivation of light, insufficient food, and the lack of access to medicine or medical care); (ii) that the suspects were not permitted to choose their own counsel; and (iii) that the suspects were denied the right to appeal.

— The Commission found violations of Articles 5 and 7 of the Charter.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Punishment (Article 5); Right to a Fair Trial (Article 7)

Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— Nigeria issued a decree prohibiting any court in Nigeria from issuing writs of habeas corpus, or prerogative orders for any person detained under Decree No. 2 of 1984, which allows for indefinite, incommunicado detention of Nigerian citizens. The applicants claimed that the decrees were applied to detain without trial several human rights and pro-democracy activists and opposition politicians in Nigeria and therefore violated Articles 5, 6, 7 and 18 of the Charter.

— The applicants argued that they had been subjected to torture; that they were detained in dirty, hidden (sometimes underground) security cells; that they were denied access to medical care, to their families and lawyers; and that they were not permitted access to journals, newspapers and books.

— The Commission held that Nigeria violated Articles 5, 6, 7, 18 and 26 of the Charter.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Article 7); Right to a Family Life (Article 18); Duty to Guarantee the Independence of the Judiciary (Article 26)

Constitutional Rights Project v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— The plaintiffs were arrested in 1995 by the respondent state police and were accused of serious offenses including armed robbery and the kidnapping of children.

— The plaintiffs were detained under a Nigerian law that allowed pretrial detention for up to three months without charge, and which barred the courts from issuing writs of habeas corpus (Decree No. 2 of 1984). The plaintiffs were subsequently held without being charged or tried for more than two years.

— The Commission found Nigeria in violation of Articles 6, and 7(1)(a) and (d) of the Charter.

Topics Cited

— Arbitrary Detention (Article 6); Right to Have a Cause Heard (Article 7) and Right to be Tried within Reasonable time (Article 7)

Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— Three communications were launched before the African Commission relating to decrees issued in 1994 by the military government of Nigeria.

— The communications alleged that, through these decrees, the respondent state restrained and restricted the right of Nigerians to receive information and to express and disseminate their opinions. The complaint also alleged that the government violated the proprietary rights of owners of newspaper companies. Certain newspapers were restricted from publishing, and the offices of these publications were occupied by armed forces in defiance of court orders.

— Further, the communications alleged that pro-democracy activists were targeted by the respondent state. Six individuals were arrested and detained, five of whom were held without charge. Armed gangs were sent to the homes of activists. The gangs broke into the houses, destroyed property and attacked the alleged victims.

— The Commission found that the respondent state's actions were a violation of Articles 5, 6, 7(1)(a), 9(1) and (2) and 14 of the Charter.

Topics Cited

— Right to Have a Cause Heard (Article 7); Admissibility (Article 56)

Rights International v. Nigeria, (1999) [ACmmHPR]

Factual Summary

— The applicant was a Nigerian student who alleged that he was arrested, arbitrarily detained, and subsequently tortured at a military detention camp. The applicant further alleged that he was detained without legal counsel and without being informed of the charges against him.

— Having been granted bail, the applicant fled to the United States where he was granted refugee status and brought this action alleging various violations of the Charter.

Topics Cited

— Right to a Fair Trial (Right to be Tried Within a Reasonable Time) (Article 7)

* Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi, (2000) [ACmmHPR]

Factual Summary

— Mr. Bwampamye was sentenced to death after being convicted for inciting the population to commit crimes and setting up barricades, organized as an attack geared towards provoking massacres.

— After multiple adjournments, on the date of the hearing, the complainants assert that defense counsel was unable to attend due to ill health, but the Chamber decided to still hear the prosecution, compelling the accused to defend himself without the assistance of counsel. At the end of the day, he was sentenced to death.

— The Burundi Supreme Court had already held that the complainant had received legal assistance since his lawyer had submitted a written defense statement before the hearing.

— The Commission differed from the Burundi Supreme Court and held that there was a violation of Article 7(1)(c) of the African Charter in this case.

Topics Cited

— Right to a Fair Trial (Right to a Defence & Right to Equality of Arms); Admissibility (Exhaustion of Local Remedies) (Article 56); Death Penalty (General)

* Forum of Conscience v. Sierra Leone, (2000) [ACmmHPR]

Factual Summary

— The complaint is submitted by a Sierra Leonian Human Rights NGO on behalf of 24 soldiers who were executed on October 19, 1998. The complainant alleges that the 24 soldiers were tried and sentenced to death by a Court Martial for their alleged roles in the coup that overthrew the elected Government of President Tijan Kabah.

— The communication alleges that the trial was flawed in law and in violation of Sierra Leone's obligation under the African Charter. It is also alleged that the Court Martial, which tried and convicted the above mentioned victims, allowed no right of appeal against conviction or sentence to a higher tribunal and therefore in breach of Article 7(1) of the African Charter.

— The complainant contends that the public execution of the 24 soldiers on October 19, 1998, after being denied right of appeal to a higher tribunal also amounts to an arbitrary deprivation of the right to life contrary to Article 4 of the African Charter. The Complainant alleges violation of articles 1, 4, and 7 (1) (a) and 7(1)(d) of the African Charter.

Topics Cited

— Articles 1, 4, 7(1)(a), and 7(1)(d)

Huri-Laws v. Nigeria, (2000) [ACmmHPR]

Factual Summary

— The Complaint alleges that the Nigerian Government has been mistreating the Civil Liberties Organisation (CLO) by arresting and detaining members without a warrant and raiding and searching the CLO offices without a warrant.

— One CLO lawyer was detained in a dirty cell under inhumane conditions and denied access to his lawyer, his family or journals, newspapers and books. He was tortured and was never told what the charges against him were.

— A CLO board member was also detained by the government and was held without charge or trial. He was not allowed to see a lawyer, his family or a doctor. Other staff members were briefly arrested and underwent "horrendous interrogation proceedings."

— After their release, these staff members were made to report on a daily basis to the government security agency, the State Security Services, where they underwent more interrogations.

— The Commission foud that Nigeria violated Articles 5, 7, 10, 12 and 14 of the Charter.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7); Right to Dignity and to be Free from Torture and CIDT (Article 5)

John D. Ouko v. Kenya, (2000) [ACmmHPR]

Factual Summary

— The applicant claimed to have been forced to flee Kenya due to his political opinions. These include demands for a Judicial Commission of Inquiry

into the murder of the applicant's late uncle; the applicant's condemnation of the government, which entailed claims of corruption, nepotism and tribalism; and criticisms regarding the government's alleged involvement in the murder of a university student.

— Claiming to be a Student's Union leader at the University of Nairobi, the applicant was arrested and detained for a period of 10 months without trial. Detained in a location described as being "notorious basement cells of the Secret Service Department headquarters in Nairobi," the claimant described being mentally and physically tortured during his detainment.

— The Commission found the respondent state to be in violation of Articles 5 and 6.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman or Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Admissibility (Exhaustion of Domestic Remedies)

Kazeem Aminu v. Nigeria, (2000) [ACmmHPR]

Factual Summary

— The applicant alleged that he was arbitrarily arrested, detained and tortured by Nigerian government authorities for his political inclinations. He alleged violations of Articles 3, 4, 6, and 10.

— The Commission was unable to substantiate reports of being tortured but held that "the rampant arrests and detention of [the applicant] by the Nigerian security officials, which eventually led to his going into hiding for fear of his life has deprived him of his right to equal protection of the law guaranteed under Article 3 of the Charter."

— While not alleging an Article 7 violation, the court held that government decrees promulgated by the military regime barred the courts from redressing the applicant's claims and that the lack of indictment and opportunity to be heard violated Article 6.

Topics Cited

— Right to Life (implicated by conditions that deprive petitioner of security/safety) (Article 4); Right to Liberty and Freedom from Arbitrary Detention (Article 6)

* Malawi Africa Association and Others v. Mauritania, (2000) [ACmmHPR]

Factual Summary

— Six communications jointly alleged the existence of slavery and institutionalized racial discrimination perpetrated by the ruling Moor community against the Mauritian black population.

— It was alleged that during the Mauritania-Senegal border crisis 1989–1990, black Mauritians faced daily persecution and the confiscation of their land and other property.

— The communications also alleged the arrest of black Mauritians without trial, as well as thousands of deaths in detention, many as a result of torture; others were executed in extra judicial killings.

Topics Cited

— Right to a Fair Trial (Right to a Defense; Right to Presumed Innocence; Right to be Tried by an Impartial Court or Tribunal; Right to an Interpreter; Right to an Appeal) (Article 7); Right to Life (Execution After Unfair Trial) (Article 4); Right to Life Implicated by Conditions that Deprive Petitioner of Safety (Article 4); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Health (Article 16); Right to a Family Life (Article 18); Duty to Guarantee Independence of Courts (Article 26); Admissibility (Exhaustion of Domestic Remedies) (Article 56)

Media Rights Agenda v. Nigeria, (2000) [ACmmHPR]

Factual Summary

— An editor of a newspaper in Nigeria was arrested by armed soldiers without being informed of his arrest or shown a warrant of arrest. The editor was held without charges before he was arraigned before a Special Military Tribunal.

— Throughout his incarceration, the editor was not allowed access to his lawyer, doctor or family members. After a secret trial, the editor was found guilty of concealment of treason and sentenced to life imprison.

— The Complaint alleges that this charge is connected to news stories published by the editor regarding a military coup.

Topics Cited

— Right to a Fair Trial (Right to a Defense; Right to be Tried by an Impartial Court or Tribunal; Right to Have a Cause Heard; Right to an Appeal; Right to a Public Trial) (Article 7); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Admissibility (Exhaustion of Domestic Remedies) (Article 56); Evidence (Article 26 Protocol)

* Sir Dawda K. Jawara v. Gambia (The), (2000) [ACmmHPR]

Factual Summary

— The applicant, a former head of state of The Gambia, claimed that after the 1994 military coup that overthrew his government, there was a blatant abuse of power. This included the abolition of the Bill of Rights contained in the 1970 Gambian Constitution by Military Decree No. 30/31, the banning of political parties and Ministers of the former government from taking part in any political activity, restrictions on freedom of expression, movement and religion, and the killing of two former Ministers through a death penalty instated by Decree No. 52. Additionally, he alleged restrictions on communication, retroactive imposition of legislation, the killing of 50 soldiers, and the detention of 6 soldiers without proper trial following Decree No. 3 of July 1994.

Topics Cited

— Right to a Fair Trial/Access to Courts (Right to be Tried by an Impartial Court or Tribunal & Prohibition on Retroactivity/No Ex-Post Facto Laws) (Article 7); Duty to Guarantee Independence of Courts (Article 26); Procedure (Admissibility: Exhaustion of Domestic Remedies) (Article 56)

* Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, (2001) [ACmmHPR]

Factual Summary

— Four soldiers and an academic were sentenced to death by a Nigerian military tribunal for participating in an alleged coup plot. The applicants alleged violations of Articles 4, 5, 6 and 7 of the Charter, holding that (a) they were not given a choice of counsel but were assigned junior military lawyers; (b) there were no avenues for appeal or to seek judicial review under the Military Panel of Inquiry and subsequent Special Military Tribunal; (c) the trial was held in secret; and (d) the military tribunal was a per se violation. The Commission only found violation of Article 7.

— The Commission held that "the assignment of military counsel to the accused persons, despite their objections, and especially in a criminal proceeding which carries the ultimate punishment, a breach of Article 7(1)(c) of the Charter." [31]

— Death penalty cases also require the right to appeal to a court of higher jurisdiction. The Commission found that the Nigerian government did not meet the "exception circumstances" test to hold a death penalty hearing in secret. The Commission rejected the applicants' claim that military tribunals are per se violations of the Charter, but found in the specific case that the military tribunal was not adequately independent.

Topics Cited

— Death Penalty; Right to Life (Article 4); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Article 7)

— The Complainant claims that Burkina Faso has violated Articles 3, 4, 5, 6, 7, 8, 9(2), 10, 11, 12 and 13(2) of the African Charter on Human and Peoples' Rights.

Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso, (2001) [Afr. Ct. H.P.R.]

Factual Summary

— The complaint relates to the violations taking place during late 1980s–1990s and requests Burkina Faso to: explain the fate of the student Dabo Boukary, shot during protests; disclose the conclusions of the inquiry on the assassination of Mr. Clement Oumarou Ouedraogo; take measures that can help find a legal solution to all these human rights violation cases; compensate the victims of such violations.

Topics Cited

— Articles 3, 4, 5, 6, 7, 8, 9(2), 10, 11, 12 and 13(2)

Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, (2001) [ACmmHPR]

Factual Summary

— The dispute dealt with the conduct of the government of Nigeria with respect to the Ogoni people through the State oil company and Nigerian forces, in the context of the exploration for oil in the Niger Delta. The conduct included causing environmental degradation and health problems from exploration activities, withholding information on the dangers of the operation, failure to consult the local communities, and destruction of several Ogoni villages in response to non-violent protest, the murder of unarmed villagers and destruction of the Ogoni food sources.

— The Commission noted at the outset that there are four expectations of states with respect to rights under the African Charter—to respect, protect, promote and fulfill rights. The Commission also noted that while the Nigerian government had the right to produce oil, it had to do so in a manner that ensured compliance with the Charter.

— The Commission found that Articles 16 and 24 of the Charter had been violated by Nigeria's failure to *inter alia* permit independent scientific monitoring, and providing information to exposed communities on hazardous materials, which was exacerbated by security forces of the government engaged in conduct in violation of the rights of the Ogonis by attacking, burning and destroying several Ogoni villages and homes.

— The Commission also found that Article 21 of the Charter had been violated by the Government of Nigeria's participation in the destruction of Ogoni land, by giving the green-light to the extraction of oil in the area.

— The Commission also found that the Charter implicitly contained a right to adequate

housing (as part of Articles 14, 16 and 18(1) of the Charter) and a right to food (as part of Article 4, 16 and 22). The conduct of the Nigerian Government was found to violate both of these rights. The Commission also noted that the killings of the Ogoni violated Article 4 of the Charter.

Topics Cited

— Right to Health (Article 16); Right to a General Satisfactory Environment (Article 24); Right to Wealth and Natural Resources (Article 21); Right to Property (Article 14); Right to a Family (Article 18(1)); Right to Economic Social and Cultural Development (Article 22); Right to Life (Article 4)

Democratic Republic of Congo v. Burundi, Rwanda, Uganda, (2003) [ACmmHPR]

Factual Summary

— The communication was filed by the Democratic Republic of Congo (DRC) against the Republics of Burundi, Rwanda and Uganda alleging mass violations of human rights committed by their armed forces in Congolese provinces since August 2, 1998.

— These violations include murder, rape, the spread of STDs, decimation of the indigenous population of certain areas, and systematic looting of natural resources.

— The Commission found Burundi, Rwanda and Uganda in breach of the Charter, and urged the respondent states to act in a manner consistent with the Charters of the UN, the OAU, the African Charter, the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States and other applicable international principles of law, by withdrawing their troops.

Topics Cited

— Right to Life (Article 4); Right to Enjoy Rights Without Discrimination (Article 2)

Interights (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia and Interights (on behalf of Pan African Movement and Inter African Group) v. Eritrea, (2003) [ACmmHPR]

Factual Summary

— The complaint alleged that thousands of people of Eritrean origin were forcibly deported, arrested, tortured, and deprived of property by Ethiopia. Similarly, people of Ethiopian origin were forcibly deported, arrested, tortured, and deprived of property by Eritrea in times of armed conflict between these two States.

Topics Cited

— Admissibility Art. 56(1)

* Interights et al. (on behalf of Mariette Sonjaleen Bosch) v. Botswana, (2003) [ACmmHPR]

Factual Summary

— Mrs. Bosch was convicted of the murder of Maria Magdalena Wolmarans by the High Court of Botswana in 1999 and sentenced to death. Her appeal to the Court of Appeal of Botswana was dismissed.

— The applicant, a human rights organization, alleged that the judge who convicted Mrs. Bosch wrongly directed himself that the burden of proof was on the accused to prove that someone else was responsible for the killing.

— The applicant further alleged that Mrs. Bosch's right to life has been violated by the imposition of a death penalty for a crime where there were extenuating circumstances and that execution

by hanging amounted to inhuman treatment as it exposed the victim to unnecessary suffering, degradation and humiliation.

— The Commission was not of the opinion that Botswana had breached any Article of the Charter.

Topics Cited

— Death Penalty (Extenuating Circumstances; Reasonable Notice of Execution); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to a Fair Trial/Access to Courts (Article 7)

Law Office of Ghazi Suleiman v. Sudan, (2003) [ACmmHPR]

Factual Summary

— The decision concerned two communications. One alleged that three people were arrested and detained by the Sudanese government on suspicion of terrorist activities, subjected to torture while detained and unable to speak with their attorneys. The other communication alleged that 26 other people were being tried by military court for terrorist activities, and the court did not follow the required procedures for a fair trial, and, when the 26 victims requested that particular lawyers represented them before the court, that request was denied. In addition, the decisions of the military court could not be appealed, as the victims were pardoned in 1999, with the condition that they not appeal the case.

— The Commission found that the respondent state violated Articles 5, 6 and 7 of the Charter.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Articles 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Right to a Defense & Presumed Innocent/ Sufficiency of the Evidence & Right to be Tried by an Impartial Court or Tribunal & Right to an Appeal) (Article 7).

Liesbeth Zegveld & Mussie Ephrem v. Eritrea, (2003) [ACmmHPR]

Factual Summary

— The applicants, eleven former Eritrean government officials, alleged that they were illegally arrested in September 2001.

— The eleven individuals were part of a group of fifteen senior officials of the People's Front for Democracy and Justice (PFDJ) who had been openly critical of the Eritrean government's policies. In May 2001, they wrote an open letter to ruling party members criticizing the government for acting in an "illegal and unconstitutional" manner.

— The Eritrean government responded that the individuals had been detained for "crimes against the nation's security and sovereignty." The applicants alleged that their request for habeus corpus to the Minister of Justice of Eritrea—to guarantee none of the individuals would be mistreated and to provide them with access to lawyers of their choice—received no response from the authorities.

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Right to be Tried Within a Reasonable Time by an Impartial Court or Tribunal) (Article 7); Admissibility (Exhaustion of Domestic Remedies) (Article 56).

Garreth Anver Prince v. South Africa, (2004) [ACmmHPR]

Factual Summary

— The complainant alleges that, despite his completion of the academic requirements for admission as an attorney in terms of the Attorney's Act 53 of 1979, and despite his

willingness to register for a contract of community service for a period of one year, which is a requirement under local law, the Law Society of the Cape of Good Hope declined to register his contract of community service.

— The complainant alleges that the Law Society's refusal to register him was based on his disclosure, made in his application with the Law Society, that he had two previous convictions for possession of cannabis under section 4(b) of the Drugs and Drug Trafficking Act and his expressed intention to continue using cannabis. The complainant stated that the use of cannabis was inspired and required by his Rastafari religion. The Law Society held that such a person was not a fit and proper person to be admitted as an attorney.

— The complainant alleges that reasoning and meditation are essential elements of the religion. The use of cannabis is central to these essential practices of the religion that serve as a form of communion. He alleges that the use of cannabis was believed to open one's mind and helped Rastafari gain access to the inspiration provided by Jah Rastafari, the Living God. He further alleges that the use of cannabis in the Rastafari religion was the most sacred act surrounded by very strict discipline and elaborate protocol. The use of the herb, as it is commonly known, is to create unity and assist in establishing the eternal relationship with the Creator.

— The complainant alleges violations of Articles 5, 8, 15 and 17(2) of the African Charter.

Topics Cited

— Articles 5, 8, 15, and 17(2) of the African Charter

Interights, Institute for Human Rights and Development in Africa, and Association mauritanienne des droits de l'Homme v. Mauritania, (2004) [ACmmHPR]

Factual Summary

— The complaint was submitted on behalf of the Secretary General of Union des forces démocratiques/Ere nouvelle, a political party. The complainants alleged that the party was dissolved by the Prime Minister, and its assets were seized following the actions of the leaders of the party, which were considered damaging to the interest of the country. It was further alleged that a few weeks later, the authorities arrested several leaders of the party who had participated in a demonstration against the measure.

— The Court found that dissolution of the party was not proportional to the nature of the breaches and offenses committed by the political party and therefore found Mauritania in violation of Article 10 of the Charter.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7)

Odjouoriby Cossi Paul v. Benin, (2004) [ACmmHPR]

Factual Summary

— [The] complainant is a national of Benin who alleges violation of his rights by the judiciary of his country. It is alleged that the Appeal Court of Cotonou refused to restore his rights in a case pending before the court since 1995 that sets him up against Mr. Akitobi Honoré, whom he accuses of having despoiled him of his real estate property with the complicity of some judges.

— The complainant considers that the attitude of the Appeal Court constitutes a denial of justice.

Topics Cited

— Articles 7 and 14

Women's Legal Aid Center (on behalf of Moto) v. The United Republic of Tanzania, (2004) [ACmmHPR]

Factual Summary

— The complaint was filed by Women's Legal Aid Centre, Tanzania, on behalf of Sophia Moto, an unemployed Tanzanian woman of 40 years of age.

— Moto alleged that she petitioned to the High Court of Tanzania in 1997 for the dissolution of her marriage, division of matrimonial assets and damages from an illicit cohabitation. She claimed that the High Court dismissed her appeal on the grounds of her non-appearance on the date set for the hearing, and when she applied to the same High Court for a review of that decision, it overruled the application and she was therefore barred from appealing against the decision to the Court of Appeal of Tanzania.

— Moto claimed that the High Court dismissed her appeal without having issued a summons or notice informing her of the date for the hearing of the appeal, which violated her rights to a fair trial and hearing. The Court found that the Government of Tanzania had violated Article 7(1) of the Charter.

Topics Cited

— Right to a Fair Trial (Right to Have a Cause Heard) (Article 7)

Lawyers for Human Rights v. Swaziland, (2005) [ACmmHPR]

Factual Summary

— On April 12, 1973, King Sobhuza I issued the King's Proclamation to the Nation No. 12 of 1973, whereby he declared that he had assumed supreme power in the Kingdom of Swaziland and that all legislative, executive and judicial power was vested in him. In addition, he repealed the democratic Constitution of Swaziland that was enacted in 1968.

— It is alleged that the King's Proclamation resulted in the loss of the protections afforded to the Swazi people under the Constitution's Bill of Rights, which effectively incorporated the rights ensured by the African Charter.

— According to the complaint, the provisions of the Proclamation outlawing political parties violate the Swazi people's freedom of association, expression and assembly, thereby diminishing the rights, duties and freedoms of the Swazi people that are enshrined in the Charter.

— It is alleged that the Swazi people do not possess effective judicial remedies because the King retains the power to overturn all court decisions, thereby removing any meaningful legal avenue for redress.

Topics Cited

— Articles 1, 7, 10, 11, 13 and 26

Antonie Bissangou v. Congo, (2006) [ACmmHPR]

Factual Summary

— On March 14, 1995, the Complainant brought a case against the Republic of Congo and the Municipal Office of Brazzaville before the Court of First Instance of Brazzaville to obtain the recognition of the responsibility of the Congolese Republic, as well as reparation for the damage caused to his personal property and real estate following barbaric acts carried out by soldiers, armed bands and uncontrolled elements of the Congolese National Police Force during the socio-political upheavals in 1993.

— On February 18, 1997, the civil division of the Court of First Instance passed a ruling ordering the Congolese Republic and the Municipal Office of Brazzaville to pay the

following amounts:
Principal amount for all the damage caused: 180,000,000 FCFA;
Damages: 15,000,000 FCFA;
Amount representing legal costs: 7,000 FCFA; and
Total amount: 195,037,000 FCFA.

— The Minister of Economy, Finance and Budget refused to execute the ruling for no apparent reason. The Complainant alleges the violation of Articles 2, 3 and 21(2) of the African Charter. The Complainant is asking the African Commission to recommend to the Republic of Congo that Brazzaville comply with the ruling which has been passed on behalf of the Congolese people, and to comply at the same time with the provisions of the Charter to which it is signatory.

Topics Cited

— Articles 2, 3 and 21(2) of the Charter

Zimbabwe Human Rights NGO Forum v. Republic of Zimbabwe, (2006) [ACmmHPR]

Factual Summary

— The applicants were Zimbabwe Human Rights NGO Forum, a coalition of twelve Zimbabwean NGO human rights groups.

— In February 2000, Zimbabwe held a Constitutional Referendum in which the majority of the population voted against a new draft of the Government Constitution. Following the referendum, there was political violence.

— The applicants alleged that, during the period after the referendum, supporters and members of the incumbent ruling party, ZANU PF, engaged in intimidation and acts of political violence—including torture, murder, rape and kidnapping—in order to stifle support for opposition parties. The applicants submitted that these acts constituted a violation of Articles 1, 2, 3, 4, 5, 6, 9, 10, 11 and 13 of the Charter.

Topics Cited

— Right to Have a Cause Heard (Article 7(7)); Right to Clemency (Article 4(4))

Article 19 v. Eritrea, (2007) [ACmmHPR]

Factual Summary

— The plaintiffs, eighteen journalists, alleged that they were detained incommunicado without trial as part of a national crackdown on the entire private press.

— In response to a contention that the detained journalists had failed to exhaust local remedies, the Commission held that this requirement was satisfied because domestic remedies were not available – the journalists were being detained without access to communication and the State had ample time and notice of the alleged violation to appoint counsel.

— The Communication found that Eritrea had violated Articles 1, 5, 6, 7(1), 9 and 18. It urged Eritrea to release the journalists, provide them with a speedy and fair trial, give them access to their families and legal counsel and pay them compensation.

Topics Cited

— Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial (Right to a Defence & Right to be Tried Within a Reasonable Time) (Article 7)

Institute for Human Rights and Development in Africa v. Angola, (2008) [ACmmHPR]

Factual Summary

— The claim was brought by the applicant on behalf of 14 Gambians who had been legally residing and working in Angola. The claim arose from their arrest and deportation.

— The applicant alleged that the government of Angola put into effect a campaign with the objective of deporting foreigners from Angola, especially from diamond mining areas. It was further alleged that the detention camps where they were kept were unfit for human habitation.

— According to the Complainant, although the victims had work permits and relevant documents to engage in mining activities in Angola, they were arrested on the mere grounds that foreign nationals were not allowed to engage in mining activities in the country.

— The Commission came to the view that Angola had violated Articles 2, 5, 6, 7, 12, 14 and 15 of the Charter.

Topics Cited

— Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to Enjoy Rights Without Discrimination (Article 2); Right to be Equal Before the Law (Article 3); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to a Fair Trial/Access to Courts (Article 7).

Mouvement ivoirien de droits de l'Homme (MIDH) v. Cote d'Ivoire, (2008) [ACmmHPR]

Factual Summary

— The Communication against the Republic of Côte d'Ivoire in which MIDH alleges that the Constitution of Côte d'Ivoire, adopted by a minority of citizens during the Constitutional Referendum of July 23, 2000, contained provisions that are discriminatory to some citizens of Côte d'Ivoire, prohibiting them from performing political functions.

— The Communication alleges that the provisions granting immunities to some persons, particularly the members of the National Committee for Public Security (CNSP), the military executive organ that ruled the country during the military transition period (from December 24, 1999, to October 24, 2000), as well as the authors of the coup d'état of December 24, 1999, were discriminatory.

Topics Cited

— Articles 2, 3 and 13

Kevin Mgwanga Gunme et al v. Cameroon, (2009) [ACmmHPR]

Factual Summary

— The case concerned violations suffered by the people of Southern Cameroon that emanated from the UN plebiscite of February 11, 1961, that determined the political future of Southern Cameroon.

— The main points in this case were whether the people of Southern Cameroon had a right to self determination, whether Cameroon had violated other human and peoples' rights as recognized in the African Charter on Human and Peoples' Rights in the context of discrimination against the people of Southern Cameroon, and whether the composition of the Higher Judicial Council violated the independence of the judiciary.

Topics Cited

— Articles 2, 3, 4, 5, 6, 7.1, 9, 12.1, 12.2, 12.3, 13.1, 13.2, 14, 16, 18.1, 22, 23.1 and 24

Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development in Africa v. Zimbabwe, (2008) [ACmmHPR]

Factual Summary

— During the 2000 Zimbabwe General Election, the results of 40 constituencies were contested, and the High Court was petitioned to invalidate the results. The Movement for Democratic Change (MDC), the main opposition party, filed petitions to invalidate results in 38

constituencies, with the ZANU (PF), the ruling party, and the Zimbabwe Union of Democrats (ZUD) filing the remaining two petitions.

— The applicants alleged that, in an attempt to prevent the filing of petitions, the President of the Republic of Zimbabwe passed a regulation giving him a wide variety of powers in order to alter electoral laws as he saw fit. A further reason for this action, they alleged, was to eliminate the jurisdiction of the courts from entertaining election petitions. According to the applicants, the Electoral Act (Modification) No. 3 Notice of 2000 Statutory Instrument 318/2000 (Annexure 1), passed by the President, had the effect of legalizing the outcome of the 2000 General Election and in turn ousted the jurisdiction of the courts from hearing the petitions.

— The Supreme Court initially ruled in the MDC's favor on the matter, stating that the President's regulation "effectively deprived" the applicants' rights to "unimpeded access to the courts." [4] Yet, the applicants alleged that the Supreme Court failed to provide any "meaningful redress to the 109 petitioners" after this judgment. The applicants also alleged that further election petitions made to the High Court were dismissed and appeals made to the Supreme Court regarding these dismissals had not been resolved. The applicants submitted that the failure to expedite the administration of justice violated articles 1, 2, 3, 7(1)(a), 7(1)(d), 13(1) and 26 of the Charter.

Topics Cited

— Right to Have a Cause Heard (Article 7(7)); Duty to Recognize Rights, Duties and Freedoms (Article 1)

Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon, (2009) [ACmmHPR]

Factual Summary

— Two NGOs initiated the communication. The complainants contend that on October 23, 1992, in reaction to the confirmation of the presidential election victory by Paul Biya, the members of the opposition party attacked the symbols of the state and the militants of the party who won the elections, destroying their property and belongings, attacking them physically and causing damage to the tune of 800 million CFA francs.

— In consequence, the Cameroonian authorities arrested certain individuals presumed to be responsible for these events and set up a committee responsible for the compensation of the victims, but they did not come to any decision.

— Eventually, on March 13, 1998, the victims of the Bamenda events brought an appeal for responsibility against the Cameroonian State to the Administrative Chamber of the Supreme Court. The appeal in question had been recorded on the April 22, 1998, under the number 835/97–98.

— On July 16, 1998, the Government of Cameroon reacted, requesting the Supreme Court to declare the victims' submission inadmissible and, since then, the proceedings have been blocked in spite of all the efforts made by the counsels of the complainants. Complainants allege the violation of Articles 1, 2, 4, 7 and 14 of the African Charter by the Republic of Cameroon.

Topics Cited

— Articles 1, 2, 4, 7 and 14 of the Charter

Purohit and Moore v. Gambia (The), (2009) [ACmmHPR]

Factual Summary

— Complainants alleged that the Lunatics Detention Act (LDA) does not provide a definition as to who a lunatic is, and there are no provisions and requirements establishing safeguards during the diagnosis, certification and detention of the patient.

— The Communication was decided on the basis of the treatment of patients under the LDA.

Topics Cited

— Exhaustion of Domestic Remedies (Article 56)

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, (2009) [ACmmHPR]

Factual Summary

— The applicants alleged that Sudan was responsible for mass killings, forced displacement of a population, and the destruction of public facilities and properties. Moreover, they further alleged that Sudan was involved in arming and recruiting the Janjaweed and Murhaleen, who were responsible for burning down property and forcible evictions.

— All of these actions were said to violate the Charter, in particular, Articles 2, 3, 4, 5, 6, 7(1), 9, 12(1), (2), (3), 13(1) and (2).

Topics Cited

— Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Methods of Execution, failure to notify of execution date) (Article 5); Right to Liberty and Security (Article 6)

Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Republic of Zimbabwe, (2009) [ACmmHPR]

Factual Summary

— By 1999, Associated Newspapers Zimbabwe's (ANZ) The Daily News had become the largest selling newspaper independent of government control in Zimbabwe. In 2002, the applicants stated that a new media law—the Access to Information and Protection of Privacy Act (AIPPA), enacted by the Republic of Zimbabwe, purported to prohibit "mass media services" from operating until they had registered with the Media and Information Commission (MIC). [3]

— On September 11, 2003, the Supreme Court ruled that by not registering with the MIC, the ANZ had openly defied the law and as such were operating outside the law.

— Following the Supreme Court decision, The Daily News was forcibly closed on September 12, 2003, ANZ assets were seized and several ANZ officials were arrested, while others were threatened with arrest and criminal charges. The applicants alleged that these actions violated Articles 3, 7, 9 , 14 and 15 of the Charter.

Topics Cited

— Right to Have a Cause Heard (7(7)); Right to Be Equal Before the Law (Article 3)

Kenneth Good v. Republic of Botswana, (2010) [ACmmHPR]

Factual Summary

— In February 2005, Kenneth Good, an Australian teaching at the University of Botswana, co authored a newspaper article that criticized the nature of political succession in Botswana. Later that month, the President of Botswana declared Good an "undesirable inhabitant of, or visitor

to, Botswana" under section 7(f) of the Botswana Immigration Act.

— Good was given no reasons for this decision, and there was no process by which he was able to challenge the decision administratively. Good approached the High Court, which ruled that the President's exercise of his powers under section 7(f) was not reviewable. On the day the High Court issued its judgment, Good was deported from Botswana. Good then appealed to the Court of Appeal, which also dismissed his argument, holding that "the president, in making such declarations, is empowered to act in what he considers to be the best interest of the country, without judicial oversight." Good subsequently approached the Commission, seeking a declaration that section 7(f) and the provisions which allowed the President to refuse to give reasons for a deportation were inconsistent with the Charter.

Topics Cited

— Article 7(1)(a)

*Egyptian Initiative for Personal Rights and Interights v. Egypt, (2011) [ACmmHPR]

Factual Summary

— In 2004, three bombings took place in Egypt, killing 34 people and injuring others. The respondent state took a large number of people into custody. Further bombings and arrests occurred in 2005.

— The Complainants alleged that the victims were (i) taken into custody and tortured in order to force a confession that they were involved with the bombings; (ii) held incommunicado for a long period of time without access to family or a lawyer; (iii) denied due process as guaranteed under the Charter; and (iv) denied necessary medical attention.

— In November 2006, the victims were sentenced to death by hanging based on the confessions made while they were being tortured.

— The Commission held that there was a violation of Articles 5 and 7, but not of Article 4, and called on the respondent state not to implement the death penalty, to release the victims and to adequately compensate the victims.

Topics Cited

— Right to a Defense (Article 7); Right to be Tried by an Impartial Court or Tribunal (Article 7); Right to Life (Article 4); Right Not to be Tortured (Article 5); Evidence (Article 26).

* Groupe de Travail sur les Dossiers Judiciaires Stratégiques v. Democratic Republic of Congo, (2015) [ACmmHPR]

Factual Summary

— The complaint was filed by a group of lawyers belonging to the Groupe de Travail sur les Dossiers Judiciaires Stratégiques (Working Group on Strategic Legal Cases) on behalf of six people who were sentenced to death by a military court in the Democratic Republic of Congo. One of the convicted people was presumed to have been killed immediately after his sentence was handed down, but the other five had their sentences commuted to life imprisonment. Those sentenced were minors who were child soldiers accused of criminal conspiracy, robbery and murder.

— The applicants alleged that the above facts were in violation of Articles 1,3,4 and 7 of the Charter. The Commission held that imposing the death penalty on minors was a violation of the Charter, but many of the other claims were based on human rights documents the State was a party to. The Commission held it could not rule on other agreements (specifically the Convention on the Rights of the Child).

Topics Cited

— Death Penalty (General); Right to a Fair Trial (Article 7); Right to Life (Article 4); Duty to Recognize Rights, Duties and Freedoms (Article 1)

Haregewoin Gabre-Selassie and IHRDA (on behalf of former Dergue Officials) v. Ethiopia, (2011) [ACmmHPR]

Factual Summary

— Following the overthrow of the former Government of Ethiopia by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), some officials of the Dergue Government surrendered to the EPRDF in Addis Ababa on May 28, 1991.

— More than a year after they surrendered and were detained, a Proclamation labeling the former Dergue Officials as "fascistic" was passed by the EPRDF Government and further accused them of committing "heinous and horrendous criminal acts." Thus, the Dergue Officials were condemned in the Proclamation even before they were formally charged.

— They were also kept in pre-trial detention for more than three years before they were charged. The proceedings against the Dergue Officials dragged on for more than 15 years after their arrest and detention. They were denied habeas corpus (right to be heard) throughout the trial at the national level.

Topics Cited

— Obligations of Member States (Article 1); Right to Freedom of Expression from Discrimination (Article 2); Right to Equality before the Law and Equal Protection of the law (Article 3); Prohibition of Torture and Cruel, Inhuman and Degrading Treatment (Article 5); Right to Personal Liberty and Protection from Arbitrary Arrest (Article 6); Right to Fair Trial (Article 7); Duty to Promote Human Rights (Article 25); Duty to Guarantee Independence of Courts (Article 26)

Dino Noca v. Democratic Republic of the Congo, (2012) [ACmmHPR]

Factual Summary

— The Complainant alleges that a building subject of the dispute was the property of the late Lucio Noca. He emphasizes that the Complainant's rights to the building were covered by a title deed under the legislation of the Republic of Zaire, now the DRC. The Complainant alleges that pursuant to a state-adopted ordinance relating to abandoned or undeveloped properties law, properties covered by this law were ceded to Congolese nationals, and the relevant title deeds were nullified.

— To circumvent the application of the said law, the late Lucio Noca entrusted the management of his building to the State-owned National Insurance Company (SONAS), which had the competence to manage real estate belonging to non-resident expatriates.

— In spite of this, the building was declared abandoned and allocated to Kafwa Kasongo. The Complainant alleges that, following an appeal made by SONAS to the competent authority against this ruling declaring it abandoned property, the latter won the case. The appeal filed by SONAS was initially ignored by the Head of Lands Department in Bukavu City. Without waiting for the authentication of the document, the Head of the Lands Department issued a registration certificate to Mr. Kafwa Kasongo on June 9, 1984.

— The complainant therefore concludes that the Head of the Regional Department of Lands had acted knowingly and intentionally refused to wait for the reaction of his superior.

— The Complainant submits that in the light of the above-mentioned facts, the respondent state has violated Articles 3, 7 and 14 of the African Charter.

Topics Cited

— Articles 3, 7 and 14

Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Republic of Zimbabwe, (2018) [ACmmHPR]

Factual Summary

— The Complaint is filed on behalf of Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (the Victims) and relates to allegations of wrongful killings through the use of excessive force and unjust compensation for the death of four persons in Zimbabwe.

Topics Cited

— Articles 1 and 4

Mr Mamboleo M. Itundamilamba v. Democratic Republic of Congo, (2013) [ACmmHPR]

Factual Summary

— The Complainant alleges to have unsuccessfully sought from the Pharmakina Company payment of fees for services rendered in connection with the retrocession from the estate of plantations that had, at the time, been transferred to Congolese nationals.

— Pharmakina Company acknowledges to have been rendered the said services, but alleges to have already settled the claim. The Complainant further states that after the failure of negotiations for an amicable settlement, he brought the dispute before the Bar Council in Bukavu and to the National Bar Council in Kinshasa. The Bar Council rendered an award ordering Pharmakina Company to pay the Complainant the sum of 500,000 U.S. dollars.

— The Complainant submits that up to April 20, 2005, when the case was brought before the African Commission, almost four years after the appeal was filed, the Congolese Supreme Court had still not made any ruling on the matter.

Topics Cited

— Articles 3 and 7(1)(a) and (c)

* Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana, (2013) [ACmmHPR]

Factual Summary

— Mr. Lehlohonolo Bernard Kobedi (Mr. Kobedi) was convicted of and sentenced to death by the High Court of Botswana for the murder of a Sergeant of the Police force of Botswana. The Police Sergeant died as a result of a bullet wound received during a manhunt for Mr. Kobedi, who had escaped from police custody. Mr. Kobedi maintained that he did not fire the weapon that inflicted the wound, and that it had, in fact, been another police officer who had shot him from his AK 47 firearm, and further that the Police Sergeant's death was a result of gross medical mismanagement by the hospital and medical staff that treated him. Mr. Kobedi's complaint alleged that he was denied the opportunity to present crucial evidence refuting the ballistic and medical evidence presented against him. Mr. Kobedi was executed by hanging before the African Commission could initiate an appeal. It was claimed that his death row sentence was unduly long—over a decade—and that his medical ailment would have made the execution even more agonizing.

— It was also alleged that Botswana's compulsory death sentence for murder where no extenuating circumstances were shown violated Articles 2, 3, 4, 5 and 7 of the Charter.

Topics Cited

— Right to Enjoy Rights Without Discrimination (Article 2); Right to be Equal Before the Law (Article 3); Right to Life (Mandatory Death Penalty) (Article 4); Right to Dignity and to be Free from Torture and Cruel, Inhuman and Degrading Treatment (Methods of Execution, failure to notify of execution date & Death Row Phenomenon) (Article 5)

Abdel Hadi, Ali Radi & Others v. Republic of Sudan, (2014) [ACmmHPR]

Factual Summary

— The plaintiffs were Sudanese nationals who alleged that they were subject to collective arbitrary detention and torture for more than nine months while living in a camp for internally displaced persons.

— The Commission suggested that the denial of a process for a competent court to hear a petition of habeas corpus is a per se violation of Article 7(1)(d) and that the government's failure to present any information substantiating the reasons for arrest was a violation of Article 7(1).

— The Commission also held that denying the victims access to a lawyer for more than nine months impeded the ability of the victims to assert their defense and was a violation of Article 7(1)(c).

Topics Cited

— Duty to Recognise Rights, Duties and Freedoms (Articles 1); Right to Dignity (Prison/Jail Conditions, Right not to be Tortured) (Article 5); Right to Liberty and Freedom from Arbitrary Detention (Article 6); Right to a Fair Trial/ Access to Courts (Right to a Defence, Right to be Tried within a Reasonable Period of Time) (Article 7).

* Interights and Ditshwanelo v. Republic of Botswana, (2016) [ACmmHPR

Factual Summary

— Mr. Oteng Modisane Ping was convicted and sentenced to the death penalty for murder by the High Court of Botswana. His subsequent appeals were dismissed by Court of the [sic] Appeal of Botswana, the highest judicial authority. After an appeal for clemency was declined, Mr. Ping was executed. The complaint was brought by human rights organizations, alleging that the victim was not given the requisite minimum of 24 hours' notice prior to his execution, contrary to the Prison Act of Botswana, and that the imposition of the death penalty in Botswana and carrying out the death penalty by hanging, constitutes a violation of the right to life and cruel, inhuman and degrading punishment.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7); Right to Respect for Life (Article 4); Cruel, Inhuman or Degrading Treatment (Article 5)

Jean-Marie Atangana Mebara v. Cameroon (2016) [ACmmHPR]

Factual Summary

— The complainant submits that between 1997 and 2007 when he occupied several ministerial posts in the Government of Cameroon, he received and implemented instructions for which he was accused of embezzlement. After being held in custody on August 1, 2008 by the judicial police in Yaoundé, he was handed over to the State Counselof the Yaoundé High Courton 6 August 2008. On the same day, he was charged, detained and imprisoned at the Yaoundé Central Prison.

— The complainant was indicted on five counts, including the embezzlement or attempted embezzlement, in collaboration with other

individuals, of huge sums of money in connection with the purchase of a presidential plane and other related transactions. The Complainant submits that he first appeared before a judge in June 2009, after close to a year following his detention. The complainant further submits that on September 30, 2009, the examining magistrate brought a sixth charge against him for misappropriation of public funds and issued a new remand warrant.

— He avers that as a result of this warrant, his detention was extended to March 20, 2011, whereas the statutory detention period was due to expire on February 6, 2010, in accordance with the Cameroonian criminal law which provides for a maximum pre-trial detention period of eighteen (18) months. At the complainant's request, the Investigation Chamber of the Court of Appeal quashed the sixth charge and issued an order on December 3, 2009, for further investigation.

— The complainant also submits that his petition filed on May 9, 2012, for an annulment of the indictmenthad elicited no response on June 26, 2012, the date the Commission was seized of the matter.

Topics Cited

— Right to a Fair Trial/Access to Courts (Article 7)

The African Commission on Human and Peoples' Rights v. Kenya, (2017) [Afr. Ct. H.P.R.]

Factual Summary

— The Application is in respect of the Ogiek of the Mau Forest. It alleges that the Ogiek are an indigenous minority ethnic group in Kenya comprising of about 20,000 members, about 15,000 of whom inhabit the greater Mau Forest complex, a land mass of about 400,000 hectares straddling about seven administrative districts. According to the Applicant, in October 2009, through the Kenya Forestry Service, the Kenyan Government issued a 30-day eviction notice to the Ogiek and other settlers of the Mau Forest, demanding that they move out of the forest on the grounds that the forest constituted a reserved water catchment zone and was in any event part and parcel of government land under Section 4 of the Government's Land Act. According to the Applicants, the Government contends that this decision is informed by the State's attempt to conserve the forest which is a water catchment area.

— The Application further contends that the decision of the Kenyan Government will have far reaching implications on the political, social and economic survival of the Ogiek Community.

Topics Cited

— Articles 1, 2, 4, and 17 (2) and (3)

Open Society Justice Initiative (On Behalf of Pius Njawe Noumeni) / Cameroon, (2019) [AcmmHPR]

Factual Summary

— This was an application by The Open Society Justice Initiative (OSJI) which brought this case on behalf of Pius Njawe Noumeni, a journalist, media rights activist, and head of the Groupe Le Messager, alleging that Cameroon's failure to license the radio station, Cameroonian Radio Freedom FM, amounted to an arbitrary denial of a broadcasting license, arbitrary deprivation of property, and discrimination based on political opinion [4-9].

— Cameroon's Minister of Communication did not explicitly reject the application, but refused to authorize it or reach a decision within the mandatory six-month period. [9-13]. While the application was pending, the station bought radio equipment and announced in its newspaper that it would begin broadcasting despite not having a license. [6, 9].

— Thus, officials seized Freedom FM's studios and equipment, and brought criminal charges against Le Messager and Njawe Noumeni for operating without a license. [10-11, 18].

— The Commision found it reasonable to conclude that the broadcasters had been discriminated against for its political opinions in violation of Article 2 (right to non-discrimination) of the African Charter. [191-92].

— The Commission reiterated its test in *Kenneth Good v Botswana* to determine whether a violation of the right to non-discrimination has occurred, whereby "a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; and c) if there is no proportionality between the aim sought and the means employed." [183].

— The Commission concluded that all of these factors were met given that the respondent state failed to submit evidence refuting the complainant's submissions indicating that the Minister of Communication allocates broadcasting frequencies in a way that is politically motivated, or an objective justification for the differential treatment. *See id*. at paras. [184-86]

— Further, the Commission held that the power to unilaterally ban a radio station and to request the army to seal the premises of such a station is not provided by law [para 200.] Therefore, the Commission concluded that Cameroon violated Article 14 (right to property). [201].

— The Commission also found that by failing to take the necessary legislative and other measures to guarantee the right to freedom of expression, freedom from discrimination and the right to property, the respondent state was in violation of Article 1 of the Charter, which requires States to give effect to the rights, duties, and freedoms enshrined in the Charter. [202]

Topics Cited

— Duty to Recognize Rights, Duties and Freedoms (Article 1); Right to Enjoy Rights Without Discrimination (Article 2)

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