

**African Court on Human and Peoples' Rights**

**In the Matter of**

**Nzigiyimana Zabron**

**V.**

**United Republic of Tanzania**

**Application No. 051/2016**

**Declaration appended to the Judgment of 4 June 2024**

1. I agree with the majority of the Bench on the operative part of the judgment that is the subject of this Declaration as regards most of the allegations examined. I nevertheless pen this Declaration as I am not convinced by the Court's holding regarding the right to be assisted by an interpreter.
2. The facts, as recounted by the Applicant, show that Mr Nzigiyimana Zabron, a Burundi national whose mother tongue is Kirundi, allegedly had his right to a fair trial violated because he was not provided an interpreter during his arrest and trial, as Kiswahili, a language he neither spoke nor understood, was used.
3. In its defence, the Respondent State alleged that an interpreter was present at the hearing and interpreted from English into Kiswahili and vice versa.
4. Article 7(1) (c) of the Charter clearly provides that every individual "shall have for the right to defence, including the right to be defended by counsel of his choice". The right to a defence is widely recognised as "all the prerogatives available to a person to defend himself in a legal proceeding". The rights deriving therefrom are therefore justiciable at the investigation, pre-trial and trial stages.

5. Although the Court held that the aforementioned provisions of the Charter do not expressly provide for the right to be assisted by an interpreter (see paragraph 102 of the *Zabron v. Tanzania* judgment), it would appear that the drafters of the Charter intended “the right to defence” to be understood as an umbrella term encompassing all mechanisms likely to ensure that, at all stages of the proceedings, the accused is understood by his interlocutors and vice versa.
6. It follows that the generic right to a fair trial guaranteed by Article 7(1) of the Charter, read in conjunction with the “right to defence” enunciated in Article 7(1)(c) in particular, does provide for the right to an interpreter, even if the latter is not expressly mentioned. This interpretation is based on the principle that all applicants can choose either to defend themselves or to seek legal representation.
7. In the instant case, the Applicant could therefore have requested for the assistance of an interpreter or expected the trial or appeal court to appoint one, if it so deemed necessary, on account of the Applicant’s situation, as he was not a national of the country where he was standing trial.
8. In paragraph 102 of the judgment that is the subject of this Declaration, the Court references Article 14(3)(c) of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”), which expressly provides for the right to be assisted by an interpreter.
9. However, it is clear from a reading of this article that the legislator first places an obligation on the judge to apprise the accused, in a language he understands and in a detailed manner, of the nature and grounds of the charge and, if he does not know the language used by the court, to provide him with the assistance of an interpreter free of charge.
10. It therefore follows from the relevant provisions of the ICCPR that it is the primary obligation of judicial system actors, in this case the judges of the Respondent State’s domestic courts, to communicate with the Applicant in

his native language or in a language he understands and speaks, i.e. Kirundi. This obligation also applies to the appointment of an interpreter. However, at no point does it emerge from the submissions of the Respondent State that the judges of domestic courts sought to comply with that requirement. It is regrettable that at no stage during the consideration of the case did the majority of the Court attempt to remedy this failure.

11. The first obligation requires that, at all stages of the proceedings, those dealing with the accused must, on their own initiative, ensure that the latter understands the language in which the proceedings are conducted and, if this is not the case, afford him the right to be assisted by an interpreter.
12. The Court held, at paragraph 106 of the judgment that the allegation was unfounded, in particular on the grounds that the Applicant was provided legal representation and that the need for an interpreter was not communicated to the domestic court.
13. In my opinion, it is imperative that the Court clarify in its case law how the right to be assisted by an interpreter is to be implemented and enjoyed. It is important for the accused to know that he is entitled to the assistance of an interpreter and for him to be formally apprised of the same. This information must be provided in a language he understands.
14. It seems logical and consistent that, in guaranteeing the enjoyment of rights, in particular procedural rights, the Court should ensure that the right to be assisted by an interpreter is expressly communicated in the same way as the right to be assisted by a lawyer.
15. It also emerges from paragraph 106 of the judgment that the Court considered the fact that the Applicant was provided interpretation from English into Swahili and vice versa, and the fact that he had lived in Tanzania for several years before his imprisonment, as near-irrefutable proof that the Applicant understood Kiswahili.

16. In my opinion, such an inference runs counter to the right of all applicants to be assisted by an interpreter based on the mere fact that the language used by the judicial institutions of their country of detention is not their mother tongue.
17. It is essential to remember that the right to be assisted by an interpreter seeks to ensure that the accused understands not only the charges against him but also the statements of investigators and judges. The fact that the accused resides as a refugee in the country of trial and the duration of such residency cannot constitute sufficient and decisive proof that he understands a foreign language. We note, for example, that the Court, in taking into account the residency factor, lost sight of the technical, legal and judicial nature of the communications required in proceedings before a court.
18. It is worth pointing out that in the absence of an interpreter and, therefore, of a sufficient understanding of the proceedings, the accused, as applicant before this Court, has the opportunity to make informed choices in his answers to the questions put to him, which may have a positive or negative influence on the proceedings as a whole.
19. Moreover, even supposing that the accused, as the Applicant in the present case, may have had a rudimentary knowledge of the language of the proceedings, this cannot in any way constitute an impediment to, or a substitute for the enjoyment of the right to be assisted by an interpreter so that the proceedings are explained to him in a language that he sufficiently understands. Only such a guarantee can ensure adequate enjoyment of the rights of defence, even in cases where the accused is represented by a lawyer who is supposed to understand the language used in court. In this respect, the Court's reasoning in paragraph 106 of the judgment is hardly convincing.
20. There is no doubt that the right to a fair trial includes "the right to participate in the hearing", which requires that the accused be able to understand the proceedings and to discuss with his lawyer of any issues he deems useful to

raise for the purposes of his defence. The assistance of an interpreter is therefore so essential that it cannot be relegated to the relationship between the accused and his lawyer, but must be extended to the relationship between the accused and the trial judges.

21. In conclusion, it seems crucial to point out that, as guarantors of the rights of the accused and of procedural fairness, both domestic and international courts must ensure that the courts comply with their obligation to ascertain, in consultation with the accused, whether the latter requires the assistance of an interpreter, and to ensure that the absence of an interpreter does not prejudice the accused's full participation in the proceedings and, above all, to take note of it. This requirement should be scrupulously guaranteed in situations where the accused is a foreigner.

Judge Chafika Bensaoula



Done at Arusha, this Fourth Day of June in the year Two Thousand and Twenty-Four, the French text being authoritative.

