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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

CENTRE FOR HUMAN RIGHTS AND OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 019/2018

JUDGMENT

5 FEBRUARY 2025

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The Court composed of: Modibo SACKO, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, and Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"),[1] Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In accordance with Rule 9(4)(d) of the Rules, Justice Tujilane R. CHIZUMILA, recused herself.

In the Matter of:

Centre for Human Rights (CHR), Institute for Human Rights and Development in Africa (IHRDA) and Legal and Human Rights Centre (LHRC)

Represented by:

i. Prof Frans VILJOEN, Director, Centre for Human Rights, University of Pretoria;
ii. Mr Michael Gyan NYARKO, Deputy Executive Director, Institute for Human Rights and Development in Africa;
iii. Mr Fulgence MASSAWE, Director of Advocacy and Reforms, Legal and Human Rights Centre and
iv. Dr Chipo Irene RUSHWAYA, Senior Legal Officer, Institute for Human Rights and Development in Africa.

Versus

UNITED REPUBLIC OF TANZANIA

[1] Rule 8(2), Rules of Court, 2 June 2010.

Represented by:

i. Dr Ally POSSI, Solicitor General, Office of the Solicitor General;
ii. Ms Alice MTULO, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Mark MULWAMBO, Ag. Director, Civil Litigation, Principal State Attorney, Office of the Solicitor General;
iv. Mr Hangi M. CHANG'A, Assistant Director Human Rights and Election Petition, Office of the Solicitor General;
v. Ms Vivian METHOD, Principal State Attorney, Office of the Solicitor General;
vi. Ms Narindwa SEKIMANGA, State Attorney, Office of the Solicitor General; and
vii. Mr Daniel NYAKIHA, State Attorney, Office of the Solicitor General.

I. THE PARTIES

1. The Centre for Human Rights, University of Pretoria (hereinafter referred to as "CHR") is on the one hand, an academic department of the Faculty of Law, University of Pretoria, and on the other hand, a non-governmental organisation (hereinafter referred to as "NGO"). The CHR was granted observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "Commission") on 10 December 1993.[2]

2. The Institute for Human Rights and Development in Africa (hereinafter referred to as "IHRDA"), is a "Pan-African NGO" based in Banjul, The Gambia. The IHRDA was granted observer status before the Commission on 15 November 1999.[3]

[2] Granted observer status at the 14th Ordinary Session of the African Commission on Human and Peoples' Rights (1 – 10 December 1993).
[3] Granted observer status at the 26th Ordinary Session of the African Commission on Human and Peoples' Rights (1 – 15 November 1999).

3. The Legal and Human Rights Centre (hereinafter referred to as "LHRC") is an NGO based in Dar es Salaam, United Republic of Tanzania. It was granted observer status before the Commission on 6 November 2000.[4]

4. The three afore-mentioned institutions are hereinafter referred to as "the Applicants". They allege violation of several rights of persons with albinism (hereinafter referred to as "PWA") within the territory of the United Republic of Tanzania.

5. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect one year after its deposit, in this case, on 22 November 2020.[5]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

6. The Applicants assert that, the population of PWA in the Respondent State is estimated to be more than 200,000 and this is considered to be one of

[4] Granted observer status at the 28th Ordinary Session of the African Commission on Human and Peoples' Rights (23 October – 6 November 2000).
[5] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

the highest rates per country in the world, at 1 in 1429 people. It is submitted that throughout history, PWA in the Respondent State's territory have endured persecution and humiliation, resulting in mutilations and killings.

7. The Applicants aver that the substratum of the attacks on PWA is particularly located in tribal beliefs and practices, some of which characterize children born with albinism as a curse. Therefore, killing of the children was perceived as an act of cleansing the community of the curse. Other beliefs related to PWA are that:[6] They are ghosts, thus they never die; having sexual intercourse with a woman with albinism can cure AIDS; body parts of PWA can be magically used to generate wealth, and, when a child is born with albinism, it is the mother's fault.

8. Furthermore, the Applicants assert that as a general practice, the assailants of PWA target their body parts when they are alive, desecrate the graves of those who are deceased, dismember their bodies and steal the parts, mainly for witchcraft purposes. The Applicants submit that, robbery of body parts in the Respondent State's territory have been reported along with outright human trafficking of PWA.

9. The Applicants aver that from the year 2000 to June 2016, the total number of deaths in the Respondent State's territory was 76, whilst the number of survivors of attacks and kidnappings were 69. According to the Applicants, as PWA are a minority population, such high numbers are indicative of a serious and widespread threat to their existence.

10. It is also the Applicants' assertion that most PWA have meagre job prospects. This situation forces them to take up menial jobs which further expose them to ultraviolet radiation from the sun, making them susceptible to skin cancer. The Applicants aver that with these conditions, most PWA in the Respondent State's territory have difficulties accessing essential social services.

[6] Under the Same Sun 'Children with Albinism in Africa: Murder, Mutilation and Violence' (2012) 15.

11. According to the Applicants, nearly 70% of the victims of mutilations and killings of PWA, are children, as they are seen as easy targets and also considered to have innocent souls more suitable for magical purposes of wealth generation. It is the Applicants' contention that children as young as seven months old, have been killed or mutilated in order for the perpetrators to extract their body parts.

B. Alleged violations

12. The Applicants allege violation of the following:

    i. The right to life protected under Article 4 of the Charter;
    ii. The prohibition against torture, degrading and inhumane treatment under Article 5 of the Charter, Article 7 of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"), Article 16 of the African Charter on the Rights and Welfare of the Child (hereinafter referred to as "Children's Charter");
    iii. The prohibition of sale, trafficking and abduction of children under Article 29 of the Children's Charter;
    iv. The right to dignity protected under Article 5 of the Charter;
    v. The right to non-discrimination protected under Article 2 of the Charter; and
    vi. The right to an effective remedy guaranteed under Article 7 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. The Application was filed on 26 July 2018 and served on the Respondent State on 5 September 2018. The Court extended the Respondent State's time to file its Response on 14 November 2018, 17 December 2018 and 12 March 2019 but it did not file its Response within the deadlines.

14. Pleadings were closed on 30 June 2022 and the Parties were duly notified.

15. On 20 November 2023, Ms. Muluka Miti-Drummond, Ms. Sarah L. Bosha and Ms. Ikponwosa Ero, Independent Experts on the Enjoyment of Human Rights by PWA requested to intervene as *amici curiae*. On 22 March 2024, the Court granted them leave to intervene as *amici curiae* directing them to file their brief within 30 days of receipt of the notice.

16. On 16 May 2024, the Parties were notified that the Application had been set down for a public hearing on 5 June 2024 and with the same notice, the programme for the public hearing was forwarded to them.

17. On 31 May 2024, at the request of the Respondent State, the Court ordered the reopening of pleadings and granted the Respondent State 45 days to file its Response. On 22 August 2024, the Respondent State filed its Response, which was transmitted on 23 August 2024 to the Applicants, for their Reply within 15 days and to the *amici curiae* for information purpose.

18. On 10 and 11 September 2024, the Court held a public hearing in the matter, which was attended by the Applicants, the Respondent State, *amici curiae* and their representatives. During the public hearing, the Parties raised the following preliminary objections: (a) objection to the *amici curiae* presenting witnesses, (b) objection to the Respondent State presenting witnesses and (c) objection to the Respondent State's witness no. 3.

19. In addressing the objection raised by the Respondent State relating to the *amici curiae* presenting witnesses, the Court held that the *amici* had already submitted their observations in writing and thus did not need to corroborate the same through witnesses and thus granted the Respondent State's prayer.

20. In addressing the objection raised by the Applicants relating to the Respondent State presenting witnesses, the Court held that that, even though the Respondent State had submitted its list of witnesses belatedly, presenting them would not prejudice the Applicants. The Court thus

dismissed the objection and allowed the Respondent State to present its witnesses.

21. In addressing the objection raised by the Applicants relating to the Respondent State calling of witness no. 3 – Professor Mavura Daudi to testify, the Court held that since the witness had not submitted his affidavit in advance as directed by the Court, he would not be allowed to testify. The Court consequently granted the prayer of the Applicants.

22. On 17 September 2024, the Parties were granted seven days to file evidence and submissions which they had presented orally during the public hearing.

23. On 24 September 2024, the Registry sent copies of the Verbatim Record of the hearing for the Parties to make editorial corrections, if any, within 15 days of receipt, but the Parties did not make any corrections.

24. Pleadings were closed on 7 October 2024 and the Parties as well as the *amici curiae* were notified thereof.

IV. PRAYERS OF THE PARTIES

25. With regards to the merits, the Applicants pray the Court to find that the Respondent State has violated the rights stated in paragraph 12.

26. With regards to reparations, the Applicants pray the Court to order the Respondent State to:

    i. Adopt a comprehensive national strategy so as to eliminate attacks against PWA;
    ii. Diligently investigate and prosecute perpetrators of attacks against PWA;

iii. Reform its criminal law to classify crimes against PWA as hate crimes with enhanced penalties;
iv. Assemble a committee of government officials, civil society representatives, PWA or their representatives to identify victims of attacks, compensate them according to the extent of their injuries and provide them with rehabilitation measures;
v. Provide adequate housing to the families of PWA who have had to flee their homes as a result of attacks on them or their children;
vi. Ensure that children affected by attacks against PWA are provided special educational and vocational assistance programs;
vii. Ensure that holding centres for children with albinism are conducive for growth and development and plan for long term reintegration with their families;
viii. Carry out nation-wide sensitization of the public to dispel unfounded myths about PWA;
ix. Provide effective training to law enforcement officials, prosecutors and judges on the effective investigation and prosecution of offences committed against PWA;
x. Set up a fund for advocacy and services in the interests of PWA with participation of PWA in its design, establishment and implementation; and
xi. Provide other symbolic reparations as the Court deems appropriate.

27. With respect to jurisdiction and admissibility, the Respondent State prays the Court for the following:

i. That the Honourable Court is not vested with jurisdiction to adjudicate over the matter;
ii. That the Application has not met the admissibility requirement stipulated under Rule 50(2)(e) of the Rules of Court;
iii. That the Application be declared, inadmissible

28. With respect to the merits of the Application, the Respondent State prays the Court for the following:

i. A Declaration that it did not violate the rights to life, dignity and effective remedy of persons with albinism protected under Article 4, 5 and 7 of the Charter;
ii. A Declaration that it did not violate the right to freedom from torture, cruel, inhuman or degrading treatment protected under Article 5 of the Charter, Article 7 of the ICCPR, and Article 16 of the Children's Charter;
iii. A Declaration that it did not violate Article 29 of the Children's Charter;
iv. A Declaration that it did not violate Article 2 of the Charter and Article 3 of the Children's Charter;
v. Dismiss the Application with costs;
vi. Dismiss the prayers on reparations as baseless, misconceived and untenable.

V. JURISDICTION

29. The Court notes that Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

30. Pursuant to Rule 49(1) of the Rules, "[t]he Court shall conduct preliminarily examination of its jurisdiction…in accordance with the Charter, the Protocol and these Rules."

31. On the basis of the above-cited provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

32. The Respondent State raises an objection to the temporal jurisdiction of the Court. The Court will therefore consider the said objection before examining other conditions of admissibility, if necessary.

A. Objection to temporal jurisdiction

33. The Respondent State objects to the temporal jurisdiction of the Court arguing that the alleged violations which date back to the year 2000, occurred prior to it becoming a party to the Protocol.

34. According to the Respondent State, the cases cited by the Applicants, that is, *Reverend Christopher Mtikila v. Tanzania* and *Urban Mkandawire v. Malawi*, in support of their submission on temporal jurisdiction can be distinguished herein. To this end, the Respondent State contends that the crux of the above-mentioned cases with respect to jurisdiction is the deposit of the Declaration under Article 34(6) of the Protocol and that they therefore fall under personal jurisdiction. In distinction, it argues that, its objection herein is on temporal jurisdiction.

35. Citing the matters of *Zongo and Others v. Burkina Faso* and *Christopher Mtikila v. Tanzania*, the Respondent State submits that it became a party to the Protocol in 2006, and that since treaties do not apply retroactively, the Court does not have temporal jurisdiction to adjudicate on the killings of PWA which occurred from the year 2000 through 2006.

36. During the public hearing, the Respondent State contended that since the Applicants did not enumerate the victims of their alleged violations, did not provide names and dates of the said violations, and made reference only to the year 2000, the Court's temporal jurisdiction is not satisfied.

37. Citing *Christopher Mtikila v. Tanzania* and *Urban Mkandawire v. Malawi,* the Applicants aver that the alleged violations are continuing and therefore, the Application satisfies the Court's temporal jurisdiction. In this regard, they submit that even if the reported violations began in 2000, which is prior to the Respondent State becoming a party to the Protocol, the effects of the alleged violations continued thereafter.

38. The *amici curiae* did not submit on the jurisdiction of the Court.

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39. The Court reiterates that its temporal jurisdiction is determined from the date of entry into force of the Protocol which established it.[7] Also, in accordance with the principle of non-retroactivity, the Court cannot *a priori* consider allegations of human rights violations that occurred before the Respondent State became a party to the Protocol, unless the alleged violations are continuing.[8]

40. In the Instant case, the Court notes that the alleged violations are said to have occurred, between the year 2000 and 2016, and both Parties concur on this fact. However, even though some of the alleged violations occurred before the Respondent State had ratified the Protocol on 10 February 2006, they continued thereafter, and other new alleged violations also arose thereafter as it emerges from submissions of both Parties and affirmed by outcome of the public hearing.

41. Furthermore, during the public hearing, the Respondent State's own witness number 1 testified that between the years of 2008 and 2017, there was an upsurge of attacks, mutilations and killings of PWA.

42. In view of the above, the Court dismisses the objection raised by the Respondent State and finds that it has temporal jurisdiction to hear this Application.

[7] *Ligue Ivorienne des Droits de l'Homme and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 041-2016, Judgment of 5 September 2023 (merits and reparations), § 58.
[8] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo & the Burkinabè Human and Peoples' Rights Movement v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 68; and *Igola Iguna v. United Republic of Tanzania,* ACtHPR*,* Application No. 020/2017, Judgment of 1 December 2022, § 18.

B. Other aspects of jurisdiction

43. The Court notes that there is no contention regarding its personal, material or territorial jurisdiction. Nevertheless, it must satisfy itself that conditions pertaining to these aspects of its jurisdiction have been met.

44. With regard to personal jurisdiction, the Court notes that in accordance with Article 5(3) of the Protocol, the Applicants are NGOs with observer status before the Commission.[9] The Respondent State on its part, as indicated in paragraph 2 of the present Judgment, became a party to the Charter on 21 October 1986, the Protocol on 10 February 2006, and on 29 March 2010, deposited the Declaration in accordance with Article 34(6) of the Protocol in which it accepted NGOs and individuals to file cases directly before this Court. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration.

45. The Court recalls its jurisprudence that, the withdrawal of a Declaration does not apply retroactively and only takes effect one year after the date of deposit of the notice of such withdrawal, in this case, on 22 November 2020.[10] This Application having been filed before the Respondent State's withdrawal came into effect, is thus not affected by it. Consequently, the Court finds that it has personal jurisdiction.

46. In relation to material jurisdiction, pursuant to Article 3 of the Protocol, the Court has material jurisdiction in all disputes concerning the interpretation and application of the Charter and any other relevant human rights instrument ratified by the states concerned. In the instant case, the Applicants allege violations of Articles 2, 4, 5 and 7 of the Charter, Article 7 of the ICCPR and Articles 16 and 29 of the Children's Charter to which the Respondent State is a party.[11]

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[9] See paras 1, 2 and 3 above of this Judgment.
[10] *Ingabire v. Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540 § 67, *Cheusi v. Tanzania* (judgment), *supra*, §§ 37-39.
[11] Ratified ICCPR on 11 June 1976; Ratified the Children's Charter on 16 March 2003.

47. The Court thus finds that it has material jurisdiction to consider the present Application.

48. With regards to territorial jurisdiction, the Court notes that the alleged violations in the present Application occurred within the territory of the Respondent State, which is a member of the African Union and a State Party to the Protocol.[12] Accordingly, the Court's territorial jurisdiction is established in this Application.[13]

49. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. ADMISSIBILITY

50. Article 6(2) of the Protocol provides that: "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

51. Pursuant to Rule 50(1) of the Rules, "[t]he Court shall ascertain the admissibility of an application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules."

52. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity;
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;

[12] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 41.
[13] *Ibid*.

c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
d. Are not based exclusively on news disseminated through the mass media;
e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
g. Do not deal with cases which have been settled by those States involved, in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union, or the provisions of the Charter.

53. The Respondent State raises two objections to the admissibility of the Application, both are based on the failure of the Applicants to exhaust local remedies. The Court will, therefore, consider the said objections before examining other conditions of admissibility, if necessary.

A. Objections based on non-exhaustion of local remedies

54. The Respondent State raises two objections to the admissibility of the Application relating to the non-exhaustion of local remedies: First, that the remedies are available, efficient and sufficient and thus should have been exhausted (i); and second, that the Applicants could have filed individual cases on behalf of the PWA alleging violation of their rights (ii).

i. Objection on the ground that the Applicants did not exhaust available remedies

55. The Respondent State contends that the Applicants have not exhausted local remedies as required by the Charter even though they are available. It argues that exceptions to the rule on exhaustion of local remedies do not

apply in this matter as remedies are available and provided for by law, that is, the Constitution 1977 (revised in 1995) (hereinafter the Constitution), Penal Code 1981 (revised 2022), Criminal Procedure Act 1977 (revised 2022), Basic Rights and Duties Enforcement Act 1995 (revised 2019) and Persons with Disabilities Act 2010.

56. According to the Respondent State, the Applicants could have filed a petition before the High Court of Tanzania but did not make such an attempt. Citing the Commission's case of *Article 19 v. Eritrea*, the Respondent State contends that the Applicants should have exhausted local remedies rather than casting aspersions on the ability of the domestic courts to provide a remedy for the alleged violations.

57. The Respondent State argues that Article 26(2) of the Constitution, and the Basic Rights and Duties Enforcement Act 1995 (revised 2019), allow both individuals and other groups seeking to protect human rights to seize the High Court of Tanzania with alleged human rights violations in order to obtain reliefs. It therefore argues that the fact that the Applicants are NGOs is not an encumbrance to them seeking relief for the alleged violations in the domestic courts.

58. Citing the cases of *Reverend Christopher Mtikila v. Attorney General* and *Attorney General v. Jeremiah Mtobesya*, the Respondent State contends that the doctrine of public interest litigation is customary before its domestic courts. It argues that the Applicants should, therefore, not be absolved from exhaustion of local remedies simply because they did not suffer the alleged violations personally.

59. According to the Respondent State, the Tanzanian case of *Legal and Human Rights Centre and Tanganyika Law Society v. Hon. Mizengo Pinda and Attorney General* can be distinguished herein. This is, according to the Respondent State, because, even though the case was struck out owing to the applicants' lack of *locus standi*, the decision was based on the fact that the petitioners had relied on Article 30(3) of the Constitution, rather than

Article 26(2) of the Constitution which was the relevant provision. The Respondent State thus argues that if the Applicants had filed a case alleging violations of rights of PWA pursuant to Article 26(2) of the Constitution they would have been heard.

60. During the public hearing, the Respondent State contended, that the third Applicant, the LHRC had successfully filed constitutional petitions before the High Court of Tanzania alleging violation of human rights, and cited the case of *Legal and Human Rights Centre and Others v. Attorney General* as an illustration of one such occasion.[14]

*

61. The Applicants aver that the rationale of the rule on exhaustion of local remedies is to give national authorities the chance to prevent or remedy the violations of the Charter. Citing the Court's case of *Lohé Issa Konate v. Burkina Faso*, the Applicants argue that they are not required to exhaust local remedies unless they are available, effective and sufficient.

62. Referring to the Judgment of the High Court of Tanzania in the matter of *Legal and Human Rights Centre and Tanganyika Law Society v. Hon. Mizengo Pinda and Attorney General*, the Applicants aver that local remedies are unavailable to them before the Respondent State's courts. In this regard, they argue that corporate bodies do not have *locus standi* to seize national courts on alleged violations of human rights in the Respondent State.

63. According to the Applicants, section 4 of the Basic Rights and Duties Enforcement Act 1995, limits the seizure of the High Court on alleged human rights violations to "direct victims" of the alleged violations.

[14] High Court of Tanzania case, *Legal and Human Rights Centre (LHRC) & Others vs Attorney General* (2) (Massati, J.) (Misc. Civil Case 77 of 2006) [2006] TZHC 2 (24 April 2006).

64. Furthermore, citing the decision of the High Court of Tanzania in the matter of *Legal and Human Rights Centre and Tanzania Albino Society v. Attorney General and Others*, the Applicants argue that a public interest case filed on behalf of PWA was rejected on the basis that it had been filed by an NGO, and the PWA were informed that they had to file individual cases alleging violations of their rights.

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65. Article 56(5) of the Charter whose provisions are restated in Rule 50(2)(e) of the Rules, provides that any application filed before the Court shall fulfil the requirement of exhaustion of local remedies, unless the same are unavailable, ineffective and insufficient or the domestic proceedings thereof are unduly prolonged.[15]

66. The Court recalls its jurisprudence that a remedy is available if it can be utilised as a matter of fact without impediment; a remedy is effective if it offers a real prospect of success; and a remedy is sufficient if it is capable of redressing the wrong complained against.[16]

67. The Court notes that the bone of the contention herein is whether domestic remedies are available in respect of corporate bodies' ability to file human rights petitions on behalf of individuals. In this regard the Court refers to the Tanzanian case of *Legal and Human Rights Centre and Tanganyika Law Society v. Hon. Mizengo Pinda and Attorney General*,[17] where it was held that:

> The petitioners' allegations are in general terms, and they are litigating on behalf of individuals, which would bring the matter into the realm of public

[15] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.
[16] *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 460, § 37.
[17] High Court of Tanzania, *Legal and Human Rights Centre and Tanganyika Law Society v. Hon. Mizengo Pinda and the Attorney*, General Misc. Civil Cause No. 24 of 2013 (2014) 22-25.

> interest litigation under Article 26(2) of the Constitution. As such, section 4 of Cap. 3, and therefore the entire Act, does not cover them in the context of this particular petition. Matters would have been different *if the alleged violation of fundamental Human Rights touched upon the petitioners' own interests*, such as, for instance, the petitioners' *corporate rights to exist as juristic persons, or to execute the aims and objectives of their respective constitutive instruments*. That is obviously not the case herein.

68. The Court notes from the above excerpt that while public interest litigation can be instituted under Article 26(2) of the Constitution, this is limited to the "procedure provided by law". In the instant case, the law providing for the protection of human rights is the Basic Rights and Duties Enforcement Act 1995, and the same requires victimhood as stipulated under section 4: "where any person alleges that any of the provisions of Articles 12 – 29 of the Constitution have been, is being or is likely to be contravened in *relation to him,* he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress."

69. The Court further notes the amendment to section 4 of the Basic Rights and Duties Enforcement Act 1995, which stipulates that victimhood is a prerequisite for a petitioner to file cases alleging human rights in Tanzanian courts. The amendment reads as follows:[18]

> …(2) without prejudice to the provisions of the Commission for Human Rights and Good Governance Act, relating to powers of the Commission to institute proceedings, an application under subsection (1) shall not be admitted by the High Court *unless it is accompanied by an affidavit stating the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution has affected such person personally*.
>
> (3) For avoidance of doubt, a person exercising the right provided for under Article 26(2) of the Constitution shall abide with the provisions of Article 30(3) of the Constitution.

[18] Written Laws (Miscellaneous Amendments) (No. 3 Act) (2020).

70. Furthermore, one of the Applicants, that is, the LHRC, filed a public interest case previously together with the Tanzania Albino Society[19] before the Hight Court of Tanzania, which was dismissed for lack of *locus standi*, making the remedy unavailable.

71. The Court reiterates its jurisprudence that local remedies need not be exhausted in circumstances where NGOs representing the interests of individuals are proscribed from seizing the domestic courts of the Respondent State. This is because such remedies are considered to be unavailable.[20]

72. Resultantly, it is manifest that the Applicants as corporate bodies, had no *locus standi* to file a case alleging the violation of the rights of PWA in the Respondent State's courts. Therefore, the local remedies were unavailable to the Applicants.

ii. Objection on the ground that the national courts were not seized by the PWA individually

73. According to the Respondent State, its local remedies are available, effective and sufficient. In this regard, it argues that it has put in place mechanisms to ensure that the rights of PWA are respected. The mechanisms include:

    i. Fast tracking of investigation and adjudicating of cases involving PWA – this is aided by a task force which includes the Office of the Attorney General, Police Force, National Prosecutions Service, Combating of Corruption Bureau, Chief Government Chemist and the Office of the President of the Republic;
    ii. Having special sitting sessions of the judiciary in order to handle cases involving PWA; and

[19] High Court of Tanzania, *Legal and Human Rights Centre and Tanzania Albino Society v. Attorney General & others*, Miscellaneous Civil Cause No 15 of 2009 (10/9/2015) 21.
[20] *Beneficiaries of the Late Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, §§ 109-111.

iii. Putting in place laws mentioned above which PWA can rely on to seek redress for alleged violations.

74. The Respondent State argues, that other than the public interest litigation avenue, the Applicants could have also provided legal assistance to the affected PWA for them to seek redress at the national courts, but they did not.

75. The Applicants argue that the Respondent State has failed to provide effective or sufficient remedies to PWA who are victims of alleged violations of human rights. In this regard, the Applicants aver that the Respondent State has not conducted effective investigations and prosecution with due diligence in cases involving PWA.

76. The Applicants especially aver that many criminal cases related to the attack of PWA have been dismissed through the entry of *nolle prosequi* by the prosecutors of the Respondent State.

77. Referencing the Commission's communication of *Anuak Justice Council v. Ethiopia*, the Applicants argue further, that in instances of widespread violations of human rights, the state is presumed to have notice of the alleged violations and is expected to resolve the same. In such an instance, the requirement of exhaustion of local remedies is dispensed with.

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78. The Court has already noted that the essence of the rule of exhaustion of local remedies is to provide states, the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the state's responsibility for the same.[21]

[21] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

79. The Court observes that the Respondent State's objection herein is twofold, firstly, that the PWA could have filed individual cases and secondly, that the Applicants could have assisted the PWA in filing cases before the national courts.

80. On the Respondent State's claim that PWA could have filed individual suits before domestic courts in respect of the violations alleged in the present Application, the Court reiterates the Commission's communication in *Article 19 v. Eritrea*,[22] that:

> where the Communication reveals serious and massive violations of human rights, it cannot hold the requirement of exhaustion of local remedies to apply literally in cases where it is *impracticable or undesirable* for the complainants to seize the domestic courts in respect of each individual complaints.

81. The Commission further observed that, "this is the case where there are a large number of victims and due to the seriousness of the human rights situation and the large number of people involved, such remedies as might theoretically exist in the domestic courts are as a practical matter unavailable".[23]

82. The Court observes that the Respondent State has enumerated "mechanisms" to demonstrate that its local remedies were available, effective and sufficient, however, it has done so *in abstracto* without detailing specific instances where PWA have relied on the remedies and were able to remedy the violations of their rights.

83. With regard to the effectiveness of the remedies in the Respondent State regarding a case concerning the rights of a PWA, the Court notes the finding of the United Nations Committee on the Rights of Persons with Disabilities (hereinafter referred to as "RPD Committee") as follows:[24]

[22] ACHPR, Communication No. 275/2003, *Article 19 v. Eritrea*, § 71.
[23] *Ibid.*
[24] UNCRPD, *X v. Tanzania*, CRPD/C/18/D/22/2014.

> …the primary responsibility to prosecute remains in the hands of the authorities of the State party, that have a non-delegable duty and obligation to investigate, prosecute and punish. Furthermore, the Committee noted that the lengthy procedures initiated by the author before the judicial authorities had not had any result to that date. In such circumstances, the Committee does not find it reasonable to require that the author should have gone to court to initiate additional proceedings of an unpredictable duration, such as civil proceedings. A civil claim and an award of compensation, by itself, would not be an effective remedy.

84. The Court further observes that another rationale for the rule on exhaustion of local remedies is that the Respondent State has notice of the alleged violations and takes steps to remedy the same. It is unequivocal that the Respondent State was aware of the plight of PWA as its own witness during the public hearing testified that from the year 2007 to 2018, there were numerous incidents of persecution, attacks and killing of PWA.

85. Given the notice that the Respondent State had, combined with the ineffectiveness of the domestic remedies in relation to alleged violations of the PWA, the Court finds that the PWA were not required to file individual suits in order to exhaust local remedies.

86. In relation to the second part of the objection that the Applicants could have assisted the PWA in filing cases before domestic courts, the Court reiterates that the lack of *locus standi* of the Applicants before the Respondent State's domestic courts prevented them from filing such suits, thus, the Applicants were not required to exhaust local remedies.

87. In light of the foregoing, the Court dismisses the objection and declares that the Application has complied with Rule 50(2)(e) of the Rules.

B. Other conditions of admissibility

88. The Court notes that there is no contention regarding the Application's compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d), (f) and (g) of the Rules. Nevertheless, in accordance with Rule 50(1), it must satisfy itself that these conditions have been met.

89. From the record, the Court notes that, the Applicants have been identified by name in fulfilment of Rule 50(2)(a) of the Rules.

90. The Court also notes that the Applicants' claims seek to protect rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. Consequently, the Court finds that the Application is compatible with the Constitutive Act. It therefore holds that the requirement of Rule 50(2)(b) of the Rules is met.

91. The Court further finds that the language used in the Application is not disparaging or insulting to the Respondent State and its institutions or to the African Union, in fulfilment of Rule 50(2)(c) of the Rules.

92. The Court finds that the Application is not based exclusively on news disseminated through mass media as it is founded on witness testimonies, reports of the African Committee on the Rights and Welfare of the Child (hereinafter referred to as "Children's Committee"), reports of independent experts as well as reports of United Nations' Human Rights Committee, in fulfilment with Rule 50(2)(d) of the Rules.

93. Regarding, the requirement that an application should be filed within a reasonable time after exhaustion of local remedies in accordance with Rule 50(2)(f) of the Rules, the Court notes that the Application was filed on 26 July 2018. The Court further notes that there is no date of exhaustion of

local remedies since the Applicants were not required to exhaust local remedies. Therefore, the Court is required to set a date as the commencement of the time limit.

94. In this regard, the Court notes that the Respondent State deposited its Declaration on 29 March 2010 and therefore, the Applicants could only seize the Court after that date. The Applicants filed their Application on 26 July 2018, that is, eight years and four months after the Respondent State deposited its Declaration. The Court will therefore determine if the above time is reasonable according to Rule 50(2)(f) of the Rules.

95. The Court notes that, even though, it took the Applicants eight years and four months to file the case, the alleged violations are continuing, in that, the PWA allegedly continue to face persecutions, attacks and killings on the basis of their albinism, and therefore the time-limit does not apply as the Applicants could have seized the Court at any point as long as the alleged violations persisted.[25]

96. In view of the above, the Court finds that the Application was filed within a reasonable time in compliance with Article 56(6) of the Charter.

97. With regards to whether the Application concerns a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter in accordance with Rule 50(2)(g) of the Rules; the Court notes that the Applicants submitted that, three cases[26] filed by PWA were decided by the RPD Committee.

98. Given the above, the Court must ascertain whether the afore-mentioned decisions of the RPD Committee constitute settlement as contemplated under Article 56(7) of the Charter. In doing so, the Court recalls as it has

[25] *Harold Munthali v. Republic of Malawi*, ACtHPR, Application No. 022/2017, Judgment of 23 June 2022, § 63.
[26] UNCRPD, *Mr X v. United Republic of Tanzania,* CRPD/C/18/D/22/2014, *Mr Y v. United Republic of Tanzania,* CRPD/C/20/D/23/2014, *Ms Z v. United Republic of Tanzania,* CRPD/C/22/D/24/2014.

held in its case-law,[27] that, a matter will be considered to be settled if there is convergence of the following cumulative conditions: i) the identity of the parties; ii) identity of the issues arising; and iii) the existence of a decision on the substance or merits.[28]

99. With respect to the identity of the parties, the Court notes that the Respondent State is the same in both cases, it is therefore only necessary to establish the identity of the Applicants.

100. The Court observes that the Parties do not have to be the same as the identity extends to privies of the Parties. In this regard, the Court observes that, the Applicants in the RPD Committee cases are anonymous individuals as their identities have not been disclosed, while the Parties in the present case are, the CHR, IHRDA, and LHRC which are NGOs pursuing public interest litigation with regards to the rights of PWA. Given the fact that the Applicants in the RPD Committee cases are individual PWA, and that the Applicants herein seek to protect the rights of PWA at large, therefore the Court finds that the criterion on "identity of the parties" has been met.

101. With regard to the "identity of the claims", the Court must decide whether the legal and factual basis of the claims are the same by examining the alleged violations and the prayers of the Applicants.[29]

102. The Court notes in this regard that, in *Mr X v. Tanzania* before the RPD Committee,[30] the applicant alleged violation of his rights to equality and non-discrimination, freedom from torture and physical integrity under the Convention on the Rights of Persons with Disabilities (hereinafter referred to as "CRPD").

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[27] *Jean-Claude Roger Gombert v. Republic of Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 45; *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 48.
[28] *Legal and Human Rights Centre and another v. United Republic of Tanzania*, ACtHPR, Application No. 039/2020, Judgment of 13 June 2023, § 67.
[29] *Legal and Human Rights Centre and Another v. Tanzania* (merits), *supra*, § 71.
[30] UNCRPD, *Mr X v. United Republic of Tanzania,* CRPD/C/18/D/22/2014, adoption of views on 18 August 2017.

103. In *Mr Y v. Tanzania* before the RPD Committee,[31] the complaint related to alleged violations of his rights to equality and non-discrimination, liberty and security of person, freedom from torture, freedom from violence and abuse, integrity of the person and education under the CRPD.

104. In *Ms Z v. Tanzania,* before the RPD Committee,[32] the complainant alleged violations of her right to equality and non-discrimination, right to liberty and security of the person, freedom from torture, freedom from violence and abuse and integrity of the person as protected under the CRPD.

105. In the three cases, the RPD Committee made findings among others in respect of the rights to freedom from torture and non-discrimination. Conversely, the Application before this Court involves the rights to life, freedom from torture, dignity, effective remedy and the prohibition on sale and trafficking of children as guaranteed under the Charter, ICCPR and Children's Charter respectively.

106. Although there is overlap of alleged violations, the cases brought before the two forums are distinguishable from three standpoints. Firstly, the rights to dignity, effective remedy and freedom from sale and trafficking whose violations are alleged in the present Application were not adjudicated in the cases before the RPD Committee.

107. Furthermore, in its above-mentioned decisions, the RPD Committee granted different reliefs and ordered the Respondent State to provide compensation for violations of individual's human rights under the CRPD, while the Applicants before this Court have filed a case of public interest in which they allege massive and serious violations, and pray the Court for findings on violation and reparations that affect a wider spectrum of PWA.

[31] UNCRPD, *Mr Y v. United Republic of Tanzania,* CRPD/C/20/D/23/2014, adoption of Views on 31 August 2018

[32] UNCRPD, *Ms Z v. United Republic of Tanzania,* CRPD/C/22/D/24/2014, adoption of views on 19 September 2019.

108. Lastly, the reliefs sought before the RPD Committee included an order that the Respondent State effectively investigate the singular attacks against the complainants and criminalize the trafficking of body parts.

109. In the present Application, the reliefs sought are much wider as the Applicants seek an order that the Respondent State adopt a comprehensive national strategy to eliminate attacks on PWA, set up a fund for advocacy and services for PWA, reform of laws to recharacterize attacks on PWA as hate crimes, form a committee to identify victims of attacks and provide compensation to them, conduct nationwide sensitization campaigns and train law enforcement, prosecutors and judges on how to effectively investigate and prosecute perpetrators of attacks against PWA. Resultantly, the claims are not identical.

110. In the circumstances, the Court finds that the Application has not been settled in accordance with the principles of the Charter, the Constitutive Act of the AU or the UN Charter and therefore fulfils the requirement of Rule 50(2)(g) of the Rules.

111. In light of the foregoing, the Court finds that all the admissibility conditions have been fulfilled and declares the Application, admissible.

VII. MERITS

112. The Applicants allege the violation of the following rights:

i. The right to non-discrimination protected under Article 2 of the Charter;
ii. The right to life protected under Article 4 of the Charter;
iii. The prohibition against torture, degrading and inhumane treatment under Article 5 of the Charter, Article 7 of the ICCPR , Article 16 of the Children's Charter;
iv. The right to dignity protected under Article 5 of the Charter;

v. The right to an effective remedy guaranteed under Article 7 of the Charter; and
vi. The prohibition of sale, trafficking and abduction of children under Article 29 of the Children's Charter.

113. The Court will examine each of these alleged violations successively.

A. Alleged violation of the right to non-discrimination

114. The Applicants aver that the Respondent State has not adequately addressed the root causes of discrimination against PWA, in violation of Article 2 of the Charter.

115. Citing the communication in *Zimbabwe Lawyers for Human Rights and Institute for Human Rights v. Zimbabwe*, the Applicants define discrimination as an:

> act which aims at distinction, exclusion, restriction or preference which is based on any ground such as race, colour, 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.

116. According to the Applicants, the misconceptions and myths about PWA has led to stigmatization, discrimination, 'right from birth and in their day-to-day activities.' Moreover, the Applicants allege that acts of discrimination further curtail the ability of PWA to enjoy the right to inherent dignity and self-worth, prohibition against torture, cruel, inhuman and degrading treatment, as well as the rights to health and education. As an illustration, the Applicants submit that, the parents of one of its witnesses - Zainab Muhamed, a PWA, asked her to get rid of her daughter who was a PWA.

117. The Applicants further argue that owing to the restrictive and discriminatory environment within which PWA find themselves, many are forced to flee from their homes due to fear of attacks.

118. The Applicants aver that the discrimination suffered by PWA fundamentally translates into life-threatening attacks, and exclusion from family and community care structures. Furthermore, due to their apprehension, they are unable to properly benefit from the right to education because of dropping out of school in order to avoid stigma. The PWA according to the Applicants, also face challenges in education with regards to failure of the Respondent State to reasonably accommodate them, by not catering for their congenital vision problems.

119. The Applicants allege that the Respondent State has not done enough in relation to policy and legislation, stressing that the stigma and discrimination is structurally embedded and the social exclusion is worrisome.

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120. The Respondent State contends that its laws abhor discrimination. It also submits that it has taken affirmative action towards eliminating negative perceptions towards PWA, which include: formulating the National Policy on Disabilities, employment of PWA in private and public sector, including them in development projects for their well-being, and inclusion of PWA in government activities.

121. The Respondent State contends that out of the 71, 631 PWA living in its territory,[33] 44,144 are gainfully employed. Furthermore, the Respondent State argues that as part of affirmative action, PWA have allocation of special seats in parliament. As illustration, the Respondent State named the following PWA who are Members of Parliament: Hon. Barwan Salum, Hon. Al Shaymaa Kwegyr, and Hon. Khadija Taya. In addition, the Respondent

[33] United Republic of Tanzania, Population and Housing Census, 2022.

State avers that it has enhanced the public participation of PWA by appointing them to diplomatic positions.

122. According to the Respondent State, the Association of Disabled Persons has played a central role in shaping legislation and policy. In this regard, it contends that the Association has played a major role in shaping the lives children, youth and adult with disabilities.

123. In terms of awareness raising, the Respondent State submits that it celebrates the International Albinism Awareness Day, on 13 June every year. According to the Respondent State, on the afore-mentioned day, it sensitizes the public on issues of albinism where high level of governmental officials deliver key messages to rally against discrimination of PWA.

124. Furthermore, the Respondent State contends that it has combatted discriminatory practices by undertaking sensitization activities to raise awareness on the rights of PWA through public and private media on a daily basis.

125. The *amici curiae* submit that albinism is a disability that causes PWA to suffer barriers to social integration and exclusion from mainstream life owing to forms of discrimination within society. Furthermore, that the social barriers have an adverse impact on PWA who seek medical treatment and maternal healthcare along with a detrimental effect on their psychosocial health.

126. The *amici* further contend that discrimination in the Respondent State has led to children with albinism dropping out of school as a result of bullying and harassment and that failure to implement reasonable accommodation in the education system in the form of providing assistive devices, particularly to assist PWA with vision impairments has exacerbated their impediment in accessing education.

127. The *amici* also submit that discrimination against PWA manifests as a form of discrimination on the basis of colour and that the hypervisibility of their disability means they are heightened to exposure to abuse and marginalization. The *amici* conclude that the Respondent State has a duty to protect PWA from harmful stereotypes and ensure PWA have protection from discrimination on the basis of their colour.

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128. Article 2 of the Charter provides as follows:

> Each 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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

129. The Court recalls its jurisprudence[34] that the right to freedom from discrimination is related to the right to equality before the law and equal protection of the law as guaranteed under Article 3 of the Charter. However, the scope of the right to non-discrimination extends beyond the right to equal treatment before the law. It also has practical dimensions 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.[35]

130. The Court notes that, discrimination is "a differentiation of persons or situations on the basis of one or several unlawful criterion/criteria."[36] This understanding of discrimination, however, is what is often referred to as

[34] *African Commission on Human and Peoples' Rights v. Kenya* (merits) (26 May 2017) 2 AfCLR 7, § 138.
[35] *Ibid*.
[36] *Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Côte d'Ivoire* (merits) (18 November 2016) 1 AfCLR 668, §§ 146-147; *Kambole v. Tanzania* (merits and reparations), *supra*, § 68.

direct discrimination. In cases where the discrimination is indirect, the key indicator is not necessarily different treatment based on visible or unlawful criteria but the disparate effect on groups or individuals as a result of specified measures or actions.[37]

131. The Court underscores that while the Charter is unequivocal in its proscription of discrimination, not all forms of distinction or differentiation can be considered as discriminatory. A distinction or differential treatment becomes discrimination, contrary to Article 2, when it does not have any objective and reasonable justification and, in circumstances where it is not necessary and proportional.[38]

132. In examining the Applicants' allegation of discrimination in the present Application, this Court is particularly cognisant of General Recommendation No. 14 of 22 March 1993 on the definition of discrimination of the Committee on the Elimination of Racial Discrimination (hereinafter referred to as "CERD"), which stipulates that:

> 1. ... A distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States Parties by Article 2, paragraph 1 (c), to nullify any law or practice which has the effect of creating or perpetuating racial discrimination.
> 2. ... In seeking to determine whether an action has an effect contrary to the Convention, [the Committee] will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.

133. The Court is further enlightened by the General Recommendation No. 19 of 18 August 1995 on racial segregation and apartheid in which the CERD was of the view, *inter alia*, that:

[37] *Kambole v. Tanzania*, *ibid*, § 68.
[38] See *Tanganyika Law Society and others v. United Republic of Tanzania* (merits) (2013) 1 AfCLR 34, § 106 ; *Kambole v. Tanzania*, *ibid*, § 72.

3. ... while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a *condition of partial segregation may also arise as an unintended by-product of the actions of private persons*. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be *stigmatized and individuals suffer a form of discrimination* in which racial grounds are mixed with other grounds.

4. The Committee therefore affirms that a condition of racial segregation can also arise *without any initiative or direct involvement by the public authorities*...

134. Specially on the discrimination of PWA, the Court notes the report of the Human Rights Council Advisory Committee as follows:[39]

> …[t]hose various forms of discrimination are evident from the "nasty, brutish and short" lives of persons with albinism: if they survive infanticide at birth, they face a constant threat of physical attacks. Should they survive those physical threats, they are unlikely to be educated, owing to the absence of reasonable accommodation for their poor eyesight. A lack of education leads to unemployment or employment outdoors in the sun, where they are vulnerable to developing skin cancer. Skin cancer remains a life-threatening condition for most persons with albinism under the age of 40.

135. The Court notes that, as it follows from these considerations, discrimination may arise from targeted acts towards a specific group on account of some beliefs about the group or some of their characteristics. The question to be determined by the Court in the present Application is thus whether PWA in the Respondent State have suffered or continue to suffer discrimination based on the beliefs attributed to them.

[39] United Nations General Assembly, Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism, A/HRC/28/75, 10 February 2015, § 27.

136. The Court is of the considered view that the discrimination claimed herein is by conduct of state agents and by omission through failure to prevent discrimination by non-state agents, whereby the PWA are targeted on the basis of their albinism. In this regard, the Court acknowledges the report of the Human Rights Council Advisory Committee on the discrimination faced by PWA in which it states that the discrimination of PWA has become a mechanism for abuse, attacks and even killings.

137. The Court further acknowledges the Report of the United Nations Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism, which documented the PWA encounter with discrimination in the judicial process by conduct of state agents, as follows:[40]

> …law enforcement authorities and some members of the judiciary tend to share the same superstitious beliefs entrenched in the communities, including and not limited to, considering persons with albinism as *subhuman beings*. Procedural fairness including *informing the victim of attack about the trial process*, preparing him or her for trial and providing him or her with legal representation or access to the prosecutor are all reportedly impaired by subsisting prejudices against the victim as a person with albinism.

138. As illustrated by the Applicants, and uncontroverted by the Respondent State, the fundamental ignorance of the condition of albinism results in harsh discriminatory treatment whereby parents are urged to get rid of their children with albinism.

139. The Court also notes the submission of the *amici* which was uncontroverted by the Respondent State that, among the effects of the stigma and discrimination is the dropping out of children from school due to bullying and harassment as reported by the Committee and the barriers that PWA face when trying to access health services.

[40] Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism, *supra*, § 30.

140. Furthermore, the Court recognizes the Report of the United Nations Independent Expert on the Enjoyment of Rights of Persons with Albinism, that she was informed by PWA in the Respondent State that a number of attacks were not reported because of "the growing sense of *national shame* around the attacks and a corresponding unwillingness to report the crimes in the media."[41]

141. The Court observes that, PWA also face discrimination because of their skin colour owing to the lack of the melanin, especially in countries like the Respondent State, where PWA stand-out from the majority of the population who have brown skin colour.[42]

142. The Court further notes that, as it is reported by United Nations Independent Expert on the enjoyment of rights of persons with albinism, "the degree of contrast in pigmentation between the majority and the person with albinism in a community tends to correlate positively with the severity and intensity of discrimination faced by persons with albinism." The stigmatization of PWA manifests in "name-calling, being laughed at, avoidance and exclusion".[43]

143. In this regard, during the public hearing, one of the *amici*, Ms. Ikponwosa Ero, a person with albinism and the former United Nations Independent Expert on the Enjoyment of the Human Rights of Persons with Albinism submitted that the PWA in Tanzania have been referred to as "white goats". This pejorative and denigratory reference to the colour of their skin is symbolic of the manifestation of discrimination.

144. The Court further stresses that the discrimination in relation to women is exacerbated by a gender-based lens. In this regard as reported in the Outcome Report of the Expert Meeting on 'Persons with Albinism: Violence,

[41] Human Rights Council, Thirty-Seventh session (26 February - 23 March 2018), Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to the United Republic of Tanzania, 20 December 2017, A/HRC/37/57/Add.1, § 54.
[42] *Ibid*, § 30.
[43] *Ibid*.

Discrimination and Way Forward', the mothers of children with albinism particularly bear the brunt, as they are often rejected by their husbands, who "accuse [them] of adultery and blame [them] for giving birth to children who are perceived as a curse, misfortune or a cause of shame for the family."[44]

145. The Court observes that according to the above-mentioned Outcome Report, due to social pressure, the mothers often have to choose between abandoning their child or their marriage. Furthermore, the women are often banished from their communities leading to social isolation.[45]

146. In the instant case, the Court stresses that it is not in dispute that PWA are treated differently primarily due to the wide held superstitions and harmful beliefs regarding the mythical powers attributed to PWA.

147. The Court notes that State obligations in preventing discrimination of PWA involve the need to recognize that the discrimination faced by PWA is intersectional and multi-faceted. This would require, *inter alia*: enacting of legislation which categorize violence against PWA as aggravated offences; clarity as regards laws regulating traditional medicine and witchcraft. Lastly, "active public education and awareness-raising campaigns must be launched and sustained."[46]

148. The Court takes positive note of the initiatives taken by the Respondent State to combat discrimination, including: Appointing PWA to senior government positions which then gives visibility to PWA; undertaking sensitization activities including the observance of 13 June, every year – international Albinism Awareness Day; and registration of traditional healers to differentiate them from witch doctors.

[44] Outcome Report of the Expert Meeting on Persons with Albinism; Violence, Discrimination and Way Forward, 24 September 2014, § 15.
[45] Statement of the United Nations Expert on the Enjoyment of the Rights of Persons with Albinism to the Committee of the Convention on the Rights of Persons with Disabilities, 25 August 2017.
[46] Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism, *supra*, § 68.

149. The Court notes however, that, as per the standards set out under international human rights law as expounded above, addressing the root of the stigma and discrimination that PWA face requires the Respondent State to undertake intensive long-term awareness-raising campaigns with multiple stakeholders. These campaigns should be designed and conducted in a manner and with the purpose to impress on the society that PWA are human beings with innate dignity and who deserve the same treatment as any other human being.

150. The Court thus finds that even though the Respondent State has put up some measures to combat the discrimination against PWA, the measures are insufficient and that is why the myths about PWA are still widespread resulting in discrimination on the basis of the albinism.

151. In light of the foregoing, the Court finds that the Respondent State has violated the right of PWA to non-discrimination under Article 2 of the Charter by failing to put up sufficient measures to combat myths and stereotypes relating to albinism.

B. Alleged violation of right to life

152. The Applicants aver that the right to life is sacrosanct as all the other rights cannot be enjoyed by someone who is deceased. In addition, the Applicants submit that arbitrary deprivation of life results in irreparable harm as death is irreversible.

153. Referencing the Commission's General Comments Nos. 3 and 4 on the Charter on the right to life (Article 4), the Applicants aver that responsibility for killings by non-state actors is attributable to the Respondent State where it fails to exercise due diligence to prevent such killings or ensure proper investigation and accountability.

154. Citing the European case of *Osman v. United Kingdom*, the Applicants submit that, where it is aware of a real and immediate risk to individual or

groups from criminal acts of third parties, the State ought to take measures within the scope of its powers to avoid that risk.

155. Specifically, the Applicants aver that the Respondent State has not taken sufficient initiatives to prevent killings and attacks on PWA, nor has it diligently investigated and prosecuted the perpetrators of such violence. The Applicants argue that since the year 2000, about 76 PWA have been reported attacked and killed and that several others have been mutilated or raped.

156. According to the Applicants, the killing of PWA has been the subject of several NGO reports, and concluding observations of many UN human rights bodies and other regional human rights bodies. In this regard, the Applicants submit that the Respondent State has violated Article 4 of the Charter, as well as Article 6 of the ICCPR.

157. By way of illustration, the Applicants aver that, on 12 May 2014, a 40-year-old woman with albinism was brutally murdered in Mwachilala sub-village in Simiyu Region. The killers severed her left leg from the knee, her left index and middle fingers and the upper part of her left thumb.

158. Moreover, the Applicants submit that on 21 October 2015, a 35-year-old man with albinism was attacked at his home in Mkuranga town, Dar es Salaam. He sustained serious injuries to the right side of his head and ear and never recovered from the injuries leading to his death on 24 April 2017.

159. The Applicants also submit that on 17 February 2015, the mutilated remains of a one-year-old boy with albinism were discovered by police in Shilabela Mapinduzi sub-village in Geita region with both of his arms and legs severed.

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160. The Respondent State contends that it has led the continental response to the attacks inflicted on PWA. It argues that since the murders were reported

in the press around 2006, it has taken a proactive and strategic approach to the protection and empowerment of this vulnerable population.

161. According to the Respondent State, its Penal Code (Revised Edition, 2022) covers the offences such as murder, manslaughter, grievous bodily harm, kidnapping and unlawful possession of body parts and provides for punishment for the same.

162. It also argues that it has ratified international treaties that protect the right to life *inter alia*, the Charter, ICCPR, CERD, Convention on the Rights of the Child (hereinafter referred to as "CRC"), and the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as "CEDAW").

163. Other measures that the Respondent State claims to have taken is the issuance of Police General Order No. 7 which provides for community engagement in security matters.

164. The Respondent State argues that it also set up special task forces for investigating and prosecuting cases involving violence against PWA. In this regard, that specific sessions were held by the judiciary to expedite the hearing of cases relating to the PWA.

165. Furthermore, the Respondent State avers that from 2006 to 2018, its National Prosecution Services (hereinafter referred to as "NPS") prosecuted perpetrators of physical attacks against PWA in which in 42 cases, the accused persons were charged with murder, while in seven cases, the accused were charged with manslaughter, and that the accused persons were convicted and sentenced accordingly.

166. The Respondent State highlights two cases, involving Mwigulu Mwatonange and Baraka Cosmos, where the accused persons were charged, convicted and sentenced for attacking PWA. The Respondent State therefore contends that it has not violated the right to life under Article 4 of the Charter.

167. During the public hearing, the Respondent State's witness no.1 testified that the NPS was established as an independent office from the Office of the Attorney General in order to increase productivity in the prosecution of perpetrators of crimes. The Respondent State's witness also averred that it has created an emergency hotline in 2018 where crimes can be reported by the public and that the hotline had received more than 350,000 calls reporting crimes as at the date of the public hearing.

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168. Article 4 of the Charter provides that: "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."

169. Article 6 of the ICCPR stipulates as follows: "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

170. Article 3 of the UDHR provides that, "everyone has the right to life, liberty and security of person."

171. The Court reiterates that the right to life holds an unparalleled status as the most sacred and fundamental of all rights, as it serves as the bedrock of human dignity and the essence of existence.[47] Deprived of this right, all other rights lose their significance and feasibility. It provides the very foundation upon which individuals can cherish their freedoms, exercise their liberties, and pursue their dreams and aspirations.[48]

172. Recognizing the paramount importance of this right, major international and regional human rights conventions safeguard the sanctity of life by explicitly prohibiting its arbitrary deprivation. Article 4 of the Charter similarly

[47] *Makungu Misalaba v. United Republic of Tanzania*, ACtHPR, Application No. 033/2014, Judgment of 7 November 2023, § 145; *Ghati Mwita v. United Republic of Tanzania*, Application No. 012/2019, Judgment of 1 December 2022 (merits), § 66.
[48] *Ibid*.

intertwines the right to life with the inviolability of human beings, strictly proscribing any arbitrary deprivation of life.

173. General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right To Life (Article 4)[49] provides that:[50]

> The Charter imposes on States a responsibility to prevent arbitrary deprivations of life caused by its own agents, and to protect individuals and groups from such deprivations at the hands of others. It also imposes a responsibility to investigate any killings that take place, and to hold the perpetrators accountable. This intersects with the general duty, recognised in the Charter, of all individuals to exercise their rights and freedoms with due regard to the rights of others...

174. General Comment No.3(11)[51] (2015) stipulates that:

> As part of their broader duty to secure the conditions for dignified life, States have a particular responsibility to protect the human rights, including the right to life, of individuals or groups who are frequently targeted or particularly at risk, including on the grounds listed in Article 2 of the Charter and those highlighted in resolutions of the Commission.

175. Finally, General Comment No. 3(39) (2015) provides that:

> The State is responsible for killings by private individuals which are not adequately prevented, investigated or prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with respect to mob-justice, gender-based violence, femicide, or harmful practices. States must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.

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[49] General comment 3 on the African Charter on Human and Peoples' Rights: The Right To Life (Article 4), Adopted During the 57th Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015, in Banjul, the Gambia.
[50] General comment 3(4) on Article 4 of the Charter.
[51] General Comment 3(11) on Article 4 of the Charter.

176. The Court notes the holding in the case of *Velasquez Rodrigues v. Honduras* in the Inter-American Court of Human Rights (IACtHR) that:

> The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.[52]

177. The IACtHR further held that:

> The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.[53]

178. The Commission, in *Amnesty International v. Sudan*, held that where larger patterns of violence were occasioned by unidentified individuals, even during civil war, States are under the duty to conduct independent, properly resourced investigations and that even if executions were not committed by forces of the government, it has a responsibility to protect all people within its jurisdiction.[54]

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[52] IACtHR, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (Judgment), § 176.
[53] *Idem*, § 177.
[54] ACHPR, *Amnesty International and Others v. Sudan* Communication Number 48/90. 50/91, 52/91, 89/93, §§ 44-45.

179. The Court recalls the Commission's Resolution on the prevention of attacks and discrimination against persons with albinism as follows:

> 1. Urges State Parties to take all measures necessary to ensure the *effective protection* of persons with albinism and members of their families;
> 2. Calls upon State Parties to ensure *accountability* through the conduct of impartial, speedy and effective investigations into attacks against persons with albinism, the prosecution of those responsible, and by ensuring that victims and members of their families have access to appropriate remedies.

180. With respect to ensuring the protection of PWA, the Court notes that the Applicants, relying on the report by Under the Same Sun 'Children with albinism in Africa, argue that: Murder, mutilation and violence',[55] was reported between 2006 and 2012 in the Respondent State, 71 murders of PWA took place, 29 serious assaults including mutilation, rape and attempted murder took place and 17 grave robberies occurred.[56] The report further documents that nine attempted killings of children occurred between 2011 and 2012.[57]

181. Furthermore, the Court notes the uncontroverted evidence put forth by the Applicants which indicates that ritual attacks against PWA are rife in particular regions owing to the thriving trade in PWA body parts for ritual and witchcraft purposes which further incentivises human trafficking or trade in PWA organs.[58]

182. The Court observes that preventive measures that the Respondent State avers it has taken include: ratification and domestication of international treaties, *inter alia*, the Charter and ICCPR. It also references its domestic

[55] Under the Same Sun *supra*.
[56] *Ibid,* at page 25.
[57] *Ibid,* at page 26.
[58] United Nations Human Rights Council, 'Report of the Office of the United Nations High Commissioner for Human Rights: Persons with albinism', §19-42.

laws, namely: the Constitution, National Policy on Disability 2004, the Anti-trafficking in Persons Act, 2008, the Penal Code 1981 and Child Act 2009.

183. The Court takes cognisance of the Respondent State's contention that it has put in place a special task force for investigating and prosecution of cases involving violence and killings of PWA. As the Respondent State has submitted, the make-up of the task force includes state attorneys, public prosecutions and the judiciary. However, the Respondent State has not demonstrated the effectiveness of the task force to curb the killings of PWA.

184. The Court notes that while the Respondent State has legal frameworks such as the Penal Code to tackle crimes, these laws are of general application and, this is not exceptional, insofar as such laws also exist in all States. Furthermore, the laws themselves do not constitute preventive measures, the implementation thereof would constitute a better protective measure as far as deterrence is concerned. International obligations of the Respondent State, as earlier expounded, demand that it undertakes other measures, including: concrete measures that would facilitate the implementation [of the laws], such as advocacy and the training of law enforcement personnel and judicial authorities, and continuous awareness-raising campaigns to demystify the superstitions and harmful beliefs.

185. The Court also recalls the testimony of the Respondent State's witness that the period between 2008 and 2017 was the period of heightened attacks, mutilations and killings of PWA. This is practically an acknowledgement of the failure by the Respondent State to protect PWA. Also, it is noted that even though the Respondent State acknowledges that the attacks on PWA are systematically carried out in pursuit of financial gain, it has failed to formulate and implement an effective strategy that would ensure the protection of PWA.

186. Specifically in respect of Children, the Court takes cognisance of the concluding observations of the United Nations Committee on the Rights of the Child which stated that it is:[59]

> extremely alarmed about the killings of children with albinism including for ritual purposes …[and] concerned that the root causes of the violence including murder, mutilations, and trafficking of body parts, are insufficiently addressed, that prosecution of offenders is hampered by fear and the reported complicity of some State authorities, and that children with albinism have been placed in boarding schools/shelters for children with special needs.

187. With respect to accountability, the Court notes that the evidence adduced by the Applicants demonstrate that as of January 2014, only 11 out of the 139 reported cases, resulted in convictions by the national courts. Also, of the 76 murders of PWA documented in the Respondent State's territory since the year 2000, only five cases are known to have resulted in successful prosecutions.

188. The Court observes that, the Respondent State contends that since 2006 to the date of the filing of the present Application, it had prosecuted 49 cases involving PWA and convicted the perpetrators accordingly. Given that the number submitted by the Applicants as of 2014 was 139, the Court finds that at least 90 cases would not have been resolved favourably, which unfortunately is a high percentage.

189. In light of the foregoing, the Court finds that the Respondent State has not effectively discharged its duty to prevent, effectively investigate and punish perpetrators of killings of PWA.

190. Accordingly, the Court finds that the Respondent State violated the right to life under Article 4 of the Charter and Article 6 of the ICCPR.

[59] United Nations Committee on the Rights of the Child – Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania CRC/C//TZA/CO/3-5, §§ 29-31.

C. Alleged violation of the prohibition against torture and cruel, degrading and inhumane treatment

191. The Applicants contend that the Respondent State has violated Article 5 of the Charter, Article 16 of the Children's Charter and Article 7 of the ICCPR by failing to protect PWA from torture occasioned by discrimination on the basis of their albinism.

192. The Applicants aver that the definition of torture according to Article 1 of the Convention against Torture (hereinafter referred to as "CAT") comprises of four elements, that is: infliction of severe physical or mental pain or suffering, intent, for a prohibited purpose, by a public official or with involvement or acquiescence of a public official.

193. According to the Applicants, unlike the CAT, Article 7 of the ICCPR, does not require the acquiescence of a public official. The Applicants argue that Article 7 of the ICCPR imposes a: "…duty on the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity."

194. The Applicants also argue that the prohibition of torture is a peremptory norm which means it does not allow any derogation. The Applicants aver that the Committee against torture (hereinafter referred to as "CAT Committee") indicated that the obligation to prevent torture and other cruel, degrading and inhuman treatment or punishment are "indivisible, interdependent and interrelated." Resultantly, the obligation to prevent torture overlaps with the obligation to prevent cruel, inhuman and degrading treatment."

195. The Applicants aver that the UN Special Rapporteur on Torture observed that the *travaux preparatoires* of Article 1 of the CAT revealed that torture should be considered an aggravated form of cruel, inhuman and degrading

treatment. Furthermore, that the CAT Committee is *ad idem* with the UN Special Rapporteur on Torture in its practice as it has found instances of torture without raising the question of intensity of pain.

196. Therefore, the Applicants submit that the distinction between torture and cruel, inhuman and degrading treatment is the purpose of the attack and the powerlessness of the victim rather than the degree of pain.

197. Citing the CAT Committee's General Comment No. 2 (2007) on implementation of Article 2 of the CAT, they underscore that where state authorities have "reasonable grounds to believe" that acts of torture or other cruel treatment are being meted out by private individuals and fail to exercise due diligence to "prevent, investigate, prosecute and punish such actors", then the state will bear the responsibility. The state's "indifference or inaction provides a form of encouragement or *de facto* permission."

198. The Applicants contend that the conduct complained of in the submissions satisfies both the threshold for cruel, inhuman and degrading treatment and torture, given the infliction of severe pain and suffering on PWA motivated by discriminatory intent to dismember them, whilst they are still alive, and powerless in the face of an armed ambush.

199. The Applicants aver that the physical attacks, mutilations, and other forms of violence against PWA for purposes of obtaining their body-parts is cruel, degrading and inhumane treatment. They argue that the Respondent State has not intervened adequately to prevent such acts, or prosecute those responsible, in order to create an effective deterrent for such behaviour. Therefore, liability can be imputed to the Respondent State.

200. The Applicants by illustration submit, that a 70-year-old woman with albinism was attacked by five men in her home where they severed her left thumb in Mlalo Bongoi village, Tanga region.

201. The Applicants further argue that the measures taken by the Respondent State have not been adequate. According to the Applicants, in March 2015, more than 200 witch doctors were arrested but released a week later by the order of the Regional Commissioner. The Applicants argue that the mass arrest was a reactionary response rather than a coordinated effort to find and prosecute the perpetrators of the attacks and persecution of the PWA.

202. The Respondent State contends that it has enacted laws, such as, the Constitution, and the Child Act 2009, which have provisions proscribing torture, inhuman or degrading treatment.

203. It also argues that it has undertaken initiatives to combat torture, such as: Setting up the National Committee on Combating Cruelty against Persons with Disabilities; coordinating a stakeholder round table forum on the fight against the violation of the rights of PWA through the Commission for Human Rights and Good Governance and, the establishment of the National Criminal Justice Forums.

204. According to the Respondent State, in the year 2016, the Prime Minister's Office launched a two weeks' awareness-raising campaign on the rights of PWA in Mwanza, Geita, Simiyu, Shinyanga, Kagera, Tabora, Kigoma and Mara. In this regard, the Respondent State submits that it used local media, dances and school programs to raise awareness about the plight of PWA. It contends that this is a best practice which has been replicated by other African countries.

205. The Respondent State also submits that it put restrictions on the activities of traditional healers through cancelling of their licences in order to curtail harmful practices related to superstitious beliefs.

206. Furthermore, the Respondent State argues that it has prosecuted 12 cases on grievous harm offences resulting in conviction and sentencing.

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207. Article 5 of the Charter reads as follows:

> Every individual shall have the right to respect of 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.

208. Article 7 of the ICCPR provides as follows:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

209. The Court notes that while the Charter does not define torture in Article 5, in the case of *Alex Thomas v. United Republic of Tanzania* it held that the definition from Article 1 of the CAT is authoritative.[60]

210. Article 1(1) of CAT defines torture as any act, physical or mental intentionally inflicted on a person for any reason *based on discrimination* of any kind with the consent or acquiescence of public official or any other person acting in official capacity. It follows therefore that torture can result from actions or omissions of state agents.

211. The Court recalls its decision in *Yassin Rashid Maige v. United Republic of Tanzania* that the prohibition on torture is to be interpreted as widely as possible and must include prohibition of actions which cause serious physical or psychological suffering. Furthermore, that the severity of physical or mental pain inflicted on a person is the determinant factor of what amounts to cruel, inhuman and degrading treatment or punishment.[61]

[60] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 144.
[61] *Yassin Rashid Maige v. United Republic of Tanzania*, ACtHPR, Application No. 018/2017, Judgment of 5 September 2023, § 135.

212. The Court notes the report of the United Nations Special Rapporteur on torture and other cruel inhuman and degrading treatment or punishment, where he summarised the elements constitutive of torture under international law as follows: an infliction of severe pain or suffering that is physical or mental, an element of intent, for a specific purpose and commission by a public official or with involvement or acquiescence of a public official.[62]

213. Recalling its jurisprudence, the Court reiterates that three main factors are relevant in determining whether the freedom from torture, cruel, inhuman and degrading treatment has been violated.[63] Firstly, it is clear that, Article 5 of the Charter is absolute as it has no limitation clauses. Secondly, the prohibition in Article 5 of the Charter is to be interpreted so as to provide the widest possible protection against abuse be it physical or mental. Lastly, personal suffering and indignity can take various forms and assessment must always depend on the circumstances of each case.

214. With regards to Article 5 of the Charter being absolute, the Court notes that there is no evidence that the Respondent State has enacted any laws or policies to limit the rights under Article 5 of the Charter.

215. In relation to Article 5 of the Charter being given the widest possible interpretation, the Court notes that torture, and inhuman or degrading treatment can result from either State actions or omissions.

216. With regards to the distinction between torture and cruel treatment, the Court notes the General Comment No. 2 (2007) of the CAT Committee as follows: "…[e]xperience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment."

[62] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/13/3/Add.5 dated 5 February 2010.
[63] *Maige v. Tanzania* (merits), *supra,* § 135.

217. Furthermore, even though state liability for acts that amount to torture requires acquiescence, the CAT Committee has noted that such acquiescence need not be granted through acts only but it can be achieved through omissions as well. Therefore, in accordance with General Comment No. 2 (2007) of the CAT Committee,[64] whenever States

> …have reasonable grounds to believe that acts of torture or ill- treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.

218. Moreover, the CAT Committee in General Comment No. 2 (2007) accentuate that discriminatory use of physical or mental violence or abuse is an important element in determining acts that constitute torture. States are therefore mandated to protect the rights of at-risk or vulnerable groups by implementing "…positive measures of prevention and protection."[65]

219. Lastly, with regards to the personal suffering**,** the Court observes that the attacks and persecution of PWA by the Respondent State's own admission have been on-going for at least ten years, that is, from 2007 to 2017 and have been incremental in terms of number of targeted individuals and the nature of the attacks. The Respondent State therefore had reasonable grounds to believe that acts of cruel treatment of torture was on-going and would be exacerbated but failed to put in place protective measures beyond the enacting of legislations of general application.

220. The Court notes the Respondent State contention that it has taken some initiatives towards the protection of the rights of PWA including setting up the National Committee on Combating Cruelty against Persons with

[64] Committee against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007).
[65] *Ibid*.

disabilities. However, the Court observes, that the Respondent State has not submitted sufficient evidence to indicate that it has undertaken a concerted approach to detect, investigate and prosecute the perpetrators of attacks on PWA.

221. Furthermore, it failed to diligently investigate, prosecute and punish the perpetrators of the acts of torture. Resultantly, the Court finds that the Respondent State has been complicit and by implication, ratified the actions of torture of the private actors. In the circumstances, the Respondent State has violated the right not to be subjected to torture.

222. Accordingly, the Court finds that the Respondent State violated Article 5 of the Charter and Article 7 of the ICCPR by failing to protect PWA from torture, cruel, inhumane and degrading acts occasioned on account of their albinism.

D. Alleged violation of the right to inherent dignity

223. Citing the Commission's communication of *Purohit and Another v. The Gambia*, the Applicants aver that "human dignity is an inherent basic right to which all human beings, regardless of their mental capacities or disabilities … are entitled to without discrimination."

224. The Applicants in reference to the Canadian case of *Law v. Canada* (Minister of Employment and Immigration), submit that human dignity is related to physical and psychological integrity and empowerment. Furthermore, that human dignity is negatively impacted by unfair treatment based on personal traits and circumstances which do not relate to individual needs, capacities or merits.

225. It is the Applicants' submission that PWA are treated less like humans and more like goods as they are hunted for their body parts and are perceived as "gateway to riches".

226. The Applicants, relying on the Commission's communication of *John Modise v. Botswana* aver that, exposing victims to personal sufferings and indignity violates the right to human dignity. According to the Applicants, the perceived devaluation of the life of PWA through the Respondent State's inability to bring perpetrators to justice is a violation of their right to dignity.

227. The Applicants submit that Article 1 of the CRPD obligates States to promote the right to dignity of persons with disabilities and consequently, that since the Respondent State has not undertaken "immediate, effective and appropriate measures" in respect of PWA, it has violated their right to dignity as protected under Article 5 of the Charter.

228. The Respondent State contends that its Constitution recognizes the right to respect of inherent dignity and individual autonomy including the freedom to make one's own choices.

229. According to the Respondent State, following the incidents of attacks, kidnapping and dismembering of bodies of PWA, it hosted PWA who were susceptible to such physical attacks in five schools. During the public hearing, the Respondent State submitted that the children who were in the schools received education alongside other pupils. Furthermore, that all the children have now been reintegrated into their families.

230. As regards health care, the Respondent State argues that, the Tanzania Health Policy provides for free medical care for marginalised groups including persons with disabilities. Furthermore, the Respondent State avers, that it collaborates with the Kilimanjaro Medical Clinic University College and the Standing Voice NGO, in setting up mobile health clinics in eight regions in Tanzania, every six months.

231. According to the Respondent State, in these clinics, PWA are given cryogenic treatment, supplied with sun hats, sunscreen and are also referred for surgery, where needed. Furthermore, that the Department of Persons with Disabilities formulates guidelines for protection of PWA.

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232. Article 5 of the Charter provides that "[e]very individual shall have the right to respect of the dignity inherent in a human being…"

233. The Court recalls its jurisprudence in *Makungu Misalaba v. United Republic of Tanzania*, that:[66]

> …the concept of human dignity holds a profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely prohibits all forms of treatment that undermines the inherent dignity of an individual.

234. The Court has also previously held in its jurisprudence related to human dignity, that indignity can take various forms and assessment will depend on the circumstances of each case.[67]

235. The Court recalls the Commission's decision in *The Nubian Community in Kenya v. The Republic of Kenya* that, the respect of the dignity inherent in the human person informs the content of all the personal rights protected in the Charter.[68]

236. The Court notes that the Commission further considered the notion of human dignity in *Purohit v. The Gambia*, where it took the view that human dignity is an inherent basic right to which all human beings, regardless of

[66] *Misalaba v. Tanzania*, *supra*, § 165.
[67] *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 88.
[68] ACHPR, Communication 317 / 2006 - *The Nubian Community in Kenya v. The Republic of Kenya,* § 137.

their mental capabilities or disabilities as the case may be, are entitled to without discrimination. The Commission thus considered that human dignity is a right which every human being is obliged to respect by all means possible and confers a duty on every human being to respect this right.[69]

237. The Court observes that the alleged violation of the right to dignity of PWA is linked to evidence tendered on the treatment of PWA within the Respondent State. This relates to PWA being treated as commodities awaiting harvest and sale of body parts, occasioning brutal and severe attacks upon their person, in violation of their right to equal worth as human beings.

238. Furthermore, the Court notes from the record that the thriving and lucrative commodity trade has led to desecration of graves and grave robbery for body parts. This has created a climate of fear where PWA are incapable of enjoying their rights and freedoms and perceive their life as devalued vis-a-vis persons without albinism.

239. The Court also notes the submission by the Applicants as detailed above that PWA face assault from private parties in society motivated by beliefs in witchcraft and myth that undermine the equal enjoyment of human rights and freedoms of PWA in society.

240. The Court observes that the beliefs, which are prevalent in the Respondent State, lead to credible manifestations of harm suffered by PWA who are hunted for their body parts and even suffer ritual killing. In the Court's view, such actions against PWA without concerted efforts to prosecute and punish offenders, leave an indelible mark on their right to dignity and cause them to feel ostracized from the society.

[69] ACHPR, Communication Number 241/2001 - *Purohit and Moore v. The Gambia*, §§ 55-57.

241. Importantly, the Court observes that whilst such attacks and the climate of fear they create constitute violations of PWA right to dignity under Article 5 of the Charter, in order for such violations to be attributable to the Respondent State, the latter must have failed to perform due diligence by failing to take necessary steps to prevent the violation or provide the victims with reparations.[70]

242. In this regard, the Court notes its earlier finding that the Respondent State has failed to exercise due diligence in preventing attacks, investigating them as well as prosecuting offenders and sentencing them accordingly.

243. In light of the foregoing, the Court finds that the Respondent State violated Article 5 of the Charter by failure to take necessary steps to prevent the violation of the rights of PWA.

E. Alleged violation of the right to an effective remedy

244. The Applicants argue that even though Article 7 of the Charter provides for the right to have one's cause heard, it should be read jointly with the Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. In this regard, they aver that everyone has the right to an effective remedy by competent national tribunals for violation of rights protected under the Constitution, national laws or the Charter.

245. In reference to Article 2(3)(b) of ICCPR, the Applicants submit that the right to effective remedy includes claiming such a remedy before a competent judicial, administrative or legislative authority. Furthermore, citing the Commission's case of *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, the Applicants aver that the protection under Article 7 of the Charter is not limited to arrested and detained persons but also envisions the right of every individual to access the relevant judicial bodies competent to hear the cases and grant reliefs.

[70] ACHPR, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication Number 245/20, § 143.

246. Citing the Court's decision in *Beneficiaries of the late Norbert Zongo v. Burkina Faso*, the Applicants submit that the failure of a State to act with due diligence in "seeking out, prosecuting and placing on trial" those responsible for human rights violations amounts to a violation of Article 7 of the Charter.

247. According to the Applicants, the Respondent State has violated the PWA' right to an effective remedy, as guaranteed by Article 7 of the Charter due to the alleged inadequacy of judicial response, including the limited number of successful prosecutions and convictions related to attacks on PWA, as well as the lack of adequate compensation and support for victims.

248. The Respondent State contends that it has taken certain measures to guarantee the rights of PWA which include: Legislative, judicial and administrative measures. In this regard, the Respondent State argues that it enacted laws to protect PWA such as Constitution, Persons with Disabilities Act and the Legal Aid Act 2017.

249. As for the judicial measures, they include setting up of mobile courts and amending the interpretation act to remove language barriers for PWA. According to the Respondent State, administrative measures it has undertaken include, setting up a reporting system where information regarding attacks of PWA and the perpetrators of such attacks are communicated to the relevant authorities.

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250. Article 7 of the Charter reads as follows:

> 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 defence, 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.

251. The Court notes that, while the Charter does not expressly provide for a right to a remedy, Article 1 of the Charter stipulates that "[t]he Member States of the Organisation of the African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined therein and shall undertake to adopt legislative and other measures to give effect to them."[71]

252. The Court observes that the right to a remedy derives from the obligation set out in Article 1 of the Charter to establish judicial or other such mechanisms to address alleged breaches of substantive rights protected in the Charter. This right to a remedy is further reinforced by a joint reading of Articles 1 and 7(1)(a) of the Charter. These provisions are in line with the general principle of law that a remedy must be afforded when rights are breached.[72]

253. In the present case, the Court notes that the Respondent State has enacted laws of general application but which also have provisions for the protection of PWA such as the Constitution, Persons with Disabilities Act and the Legal Aid Act 2017 and this has not been disputed by the Applicants.

254. The Court also notes the uncontroverted evidence submitted by the Respondent State that it has set up mobile courts and removed language barriers in order to increase access to the courts by PWA. Furthermore, the

[71] *Munthali v. Malawi* (merits and reparations), *supra*, § 102.
[72] *Munthali v. Malawi*, *ibid*, § 102.

Applicants have not demonstrated the alleged inadequacy of judicial response by the Respondent State.

255. In the circumstances, the Court finds that the Respondent State has not violated the right of an effective remedy under Article 1 as read jointly with Article 7 of the Charter.

F. Alleged violations of the rights and welfare of the child

256. The Applicants allege the following violations of the rights and welfare of the child:

i. Right not to be subjected to abduction, sale and trafficking of children;
ii. Right related to the best interests of the child; and
iii. Right to education.

257. The alleged violations will be considered successively.

i. Alleged violation of the right not to be subjected to abduction, sale and trafficking of children

258. Citing the decision of the African Committee on the Rights and Welfare of the Child (hereinafter referred to as "Children's Committee") in *Centre for Human Rights and Another v. Senegal*, the Applicants aver that the definition of child trafficking is "the recruitment of victims, their transportation, transfer and harbouring of children for the purpose of exploitation."

259. According to the Applicants, children are the majority of the targets for trafficking, given the thriving market for body parts of PWA combined with the fact that children are vulnerable and "easy to find and capture". The Applicants further argue that the Respondent State has not safeguarded the rights of children with albinism within its territory.

260. The Applicants argue that by failing to prevent the abduction, sale and trafficking of PWA along with failing to effectively investigate and prosecute the perpetrators, the Respondent State has breached Article 29 of the African Children's Charter.

261. The Applicants aver that investigation and prosecution in relation to cases of human trafficking are inadequate, leading to a thriving cross-border market for PWA body-parts that sustain high demand and prices. This economic environment, in turn, encourages individuals inside the Respondent State to violate human rights of PWA to supply the said demand.

262. The Respondent State contends that it has put the following legislations in place to combat trafficking: Article 7 of the Constitution, which provides for the freedom of movement; the Anti-Traffic in Persons Act, 2008 which prohibits trafficking; cross-border operation plans between Tanzania, Malawi and Mozambique on combatting the cross-border trafficking of PWA and lastly, the Law of the Child Act, 2009.

263. According to the Respondent State, perpetrators of crimes against PWA have been charged with offences of murder, trafficking and abduction in accordance with its laws, as part of the strategy to combat the exploitation of PWA and promote their human dignity.

264. The Respondent State also contends that it temporarily suspended all practicing certificates of traditional healers who were considered suspects in the trade of body parts of PWA. The Respondent State argues that killing of PWA has been made a "principal crime", resulting in many witchdoctors leaving the country to neighbouring countries for fear of arrest and prosecution.

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265. Article 29 of the African Children's Charter reads as follows:[73]

> State Parties to the present Charter shall take appropriate measures to prevent:
>
> (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child.
>
> (b) use of children in all forms of begging.

266. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ('the PALERMO Protocol')[74] defines 'trafficking in persons' as follows:

> [t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

267. The Court notes that the Respondent State has ratified the Optional Protocol to the CRC, which obliges it to ensure at a minimum that offering, delivering or accepting a child by whatever means for the purpose of transfer of organs of the child for a profit is criminalized.

268. The Court further notes, that the Ouagadougou Action Plan to Combat Human Trafficking[75] obliges states to take measures to eliminate harmful

[73] Ratified by the Respondent State on 16 March 2003.
[74] Adopted on 15 November 2000; entered into force on 25 December 2003; Ratified by the Respondent State on 24 May 2006.
[75] Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children as adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006.

customs and traditional practices and to counter cultural stereotypes which can lead to trafficking in human beings.

269. In evaluating the breach of Article 29 of the Children's Charter, the Court notes the established definition of human trafficking that all kidnappings and abductions of children with albinism for the purposes of sale of their person, extraction of their body parts or sale of their body parts constitutes human trafficking. In this regard, the Court notes that the Applicants have provided evidence that there are targeted abductions and kidnappings of children with albinism in the Respondent State with the intention of trading in their person or body parts. This evidence has not been rebutted by the Respondent State.

270. The Court observes that the Ouagadougou Action Plan to Combat Human Trafficking[76] obliges, the Respondent State to counter cultural stereotypes against PWA that directly fuel their trafficking.

271. The Court acknowledges the United Nations Committee on the Rights of the Child – Concluding Observations on the Report of the United Republic of Tanzania[77] wherein the Committee indicated that the Respondent State has weak or inadequate preventative measures regarding the sale of children and expressed concern about the ritual killing of children with albinism.[78]

272. Furthermore, and by illustration of the nature of the Respondent State's anti-trafficking law, the Court observes the views of the former Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, that: "…although the provisions of the [Anti-Trafficking in Persons Act, (2008)] Act would apply in the event that a person was moved by abduction, coercion or deception for the end goal of organ removal, they would not

[76] *Ibid*.
[77] United Nations Committee on the Rights of the Child – Concluding Observations United Republic of Tanzania, CRC/C/OPSC/TZA/CO/1.
[78] Ibid, § 20.

apply to the *trafficking of body parts that were harvested* from a victim who was not moved."[79]

273. The Court also notes as regards the legal measures undertaken by the Respondent State that the former Independent Expert on the Enjoyment of Human Rights by Persons with Albinism observed that the Respondent State's Witchcraft Act, was inadequate. This is because the definition of witchcraft was ambivalent and it thus conflates the practices of traditional healers and witchdoctors. The Court observes that the ambivalence of the law further makes it harder to root out the witchdoctors who instigate the attacks on children with albinism.[80]

274. From the record, the Court observes that consistent, intentional attacks of PWA with sharp weapons occur in the Respondent State and this is not disputed by the Respondent State. Furthermore, these attacks subject PWA to intense physical and long-term psychological suffering. The Court also notes that the attacks occur for the purpose of illegally participating in the sale of their body parts because of their albinism and without the Respondent State practicing due diligence to protect PWA, investigate attacks against them and punish and prosecute the perpetrators.

275. Furthermore, the Court references the Concluding Observations of the United Nations Committee on the Rights of the Child, which noted with extreme alarm the continued killings of children with albinism and that root causes for murder, mutilations and trafficking of body parts had been insufficiently addressed, with prosecution of offenders being ineffective.[81]

276. In light of the foregoing, the Court finds that the Respondent State has violated Article 29 of the Children's Charter by failing to prevent the trafficking and sale of children with albinism within its territory.

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[79] Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, *supra*, § 23.
[80] *Ibid,* §§ 26-27.
[81] United Nations Committee on the Rights of the Child – Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania CRC/C//TZA/CO/3-5, § 29-31.

ii. The right related to the best interests of the child

277. The Applicants aver that the placement of children with albinism in “holding shelters” where the conditions are not conducive for a full and dignified life is a violation of the principle of the best interests of the child.

278. The Applicants further aver that the failure to ensure that temporary holding shelters for PWA were adequately resourced and do not become permanent residence for PWA also amounts to a violation of PWA right to live with dignity and in dignifying conditions.

279. The Applicants submit in accordance with reports of the United Nations Human Rights Council, that, the “centres were overcrowded and the health and hygiene conditions were very poor, with little or no teaching material.” According to the Applicants, many of the children developed skin cancer due to the lack of knowledge of the staff on the special health needs of persons with albinism, and sexual abuse was also reported within the centres.

280. The Respondent State argues that it has taken initiatives to preserve the lives of PWA following the report of their attacks and killings, including hosting children with albinism in five centres in Kabanga in Kigoma region, Mwisenge in Mara region, Mitindo in Mwanza Region, Furaha in Tabora Region and Buhangija in Shinyanga Region – which are special schools for persons with disabilities. The shelters, the Respondent State asserts, decreased the number of attacks and killings of PWA.

281. The Respondent State also submits that during their stay at the shelters, the children were provided with all the “necessities”. According to the Respondent State, other “well-wishers” were also allowed to support the children in-kind and that the children continued to attend school while in the shelters.

282. During the public hearing, the Respondent State submitted that all the children who were in the centres have been reunited with their parents and are back to their homes.

283. The *amici* submit that the temporary shelters established by the Respondent State were not necessarily in the best interests of the child given that the children with albinism were removed from their families and placed in overcrowded shelters with inadequate facilities where there are incidents of child abuse.

284. The *amici* further submit that Article 9 of the CRC forbids the separation of a child from their parents against their will except when competent authorities subject to judicial review determine, in accordance with the applicable law and procedures that such separation is necessary for the best interests of the child.

285. Finally, the *amici* submit that the children inside shelters were not provided proper contact with their families, leading to contact being lost entirely between parent and child.

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286. Article 4 of the Children's Charter provides: "[i]n all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration."

287. The Court observes that the issue herein is in relation to the situation of children with albinism in the shelters and whether it upheld the right related to the best interests of the children and subsequently upheld their dignity.

288. In this regard, the Court notes that the concept of the best interests of the child is "aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the

child."[82] The principle of the best interest necessitates that all the child rights are given prominence "and no right could be compromised by a negative interpretation of the child's best interests."[83]

289. The Court notes that the respect for the principle of the best interests of the child, allows the children to live a full and dignified life.

290. The CRC, "…also explicitly refers to the child's best interests in other articles: article 9: separation from parents; article 10: family reunification; article 18: parental responsibilities; article 20: deprivation of family environment and alternative care…"[84]

291. The Court notes the decision of the Children's Committee in the matter of the *Centre for Human Rights and La Rencontre Africaine pour la Défense des Droits de l'Homme v. Republic of Senegal*, that "in guaranteeing the best interest of the child, a State Party has the obligation to ensure the consideration of the best interest of the child in all actions taken by "any person" or authority affecting the life of the child." The Children's Committee took the view, that "in this context, "any person" is broadly interpreted and entails that the principle of the best interest of the child must be applied in all actions concerning children regardless of whether the actions are undertaken by private or public entities."[85]

292. From the record, the Court notes in relation to the conditions of the temporary shelters, that they were constructed, staffed and managed by the Respondent State's government in response to the upsurge in violence against PWA that occurred in the early 2000s and required protection of PWA, particularly children. As a result, the conditions of the shelters and the actions of officials fall within the scope of responsibility that the Respondent

[82]United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration.
[83] *Ibid.*
[84] *Ibid.*
[85] ACERWC, *Centre for Human Rights and la Rencontre Africaine pour la Défense des droits De l'Homme v. Republic of Senegal*, Decision no 003/com/001/2012, § 35.

State assumed as it is directly responsible for actions of officials undertaken with public authority that result in violations.

293. The Court observes as noted earlier, that the issue that arises herein is whether the transfer of children with albinism and their stay at the temporary shelters was in accordance with their best interest. In this regard, of concern to the Court is whether the conditions in the shelter were suitable for the children to enjoy their rights and whether separation of the children from their families was conducted in a manner that would ensure that the children could be reunified with their families once the attacks had subsided.

294. The Court notes the Respondent State's submission was uncontroverted by the Applicants that the children with albinism were transferred to temporary shelters to shield them from the attacks that were on-going at the time.

295. The Court acknowledges the Report of the Children's Committee regarding a visit to one of the centres as follows:

    i. Most children were brought to the centres without birth certificates and some parents provided wrong information in order to conceal their identity which meant they were many children without family linkages;
    ii. The beds and food were severely inadequate; and
    iii. There were only a few staff to cater for the children and thus the centres "did not meet the standard to be habitable for children".

296. The Court underscores that the best interest of the child requires that actions taken in relation to children should be conducted with an aim to ensure their best interests are promoted. The Court notes that the placement of the children in the shelters without birth certificates and also wrongful information provided a bottleneck to the future reunification of the children with their families. The Court notes that the Respondent State's officials should have been vigilant to ensure that all the children were properly documented including information regarding their parents.

297. The Court further notes that the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism also reported that: “reducing shelter populations is complicated by the absence of a registration and family-tracking strategy.” This is because some of the children were brought in during the height of the attacks, were brought without birth certificates.[86]

298. The Court observes that while the shelters were a noble and commendable act by the Respondent State to avert the attacks on children, it is clear that the long-term separation of parents as indicated by the *amici* is not in the best interests of the children with albinism.

299. The Court also notes that the shelters had inadequate food and beds and therefore were not habitable for children. This was corroborated by the Independent Expert who reported that some of the shelters were still “severely overcrowded” and did not have enough food supplies.[87]

300. Furthermore, the overcrowding of the shelters which are understaffed and where children suffer some abuse impacts further on their psychological suffering and therefore infringes on the best interests of the child.

301. In light of the foregoing, the Court finds that the Respondent State has violated Article 4 of the Children’s Charter by failure to take into consideration best interests of the child in its shelters.

iii. Alleged violation of the right to education

302. The Applicants argue that children with albinism suffer bullying, grievous assault and marginalization owing to their skin pigmentation and this has in turn led to many children dropping out of school.

303. The Applicants aver that children with albinism have not been provided with assistive devices to enable them to enjoy the right to education. Devices

[86] *Ibid*, § 77.
[87] *Ibid*, § 79.

which may seem basic but are imperative to the learning of children with albinism, according to the Applicants, have not been supplied. These devices include: “glasses, magnifiers and special education equipment.”

304. The Applicants also allege that some students with albinism complain that they are unable to see the blackboard and they always have to sit under a shade. They argue that the right to education is also adversely affected due to the stigma and discrimination faced by the children with albinism.

305. The Applicants lastly argue that the classrooms in the shelters which the children of albinism were kept in for their security are overcrowded, do not have sufficient teachers and are unfit for purpose.

306. The Respondent State contends that Article 11(2) of the Constitution guarantees the right to education. Furthermore, that section 35 of the Education Act 1978 provides for compulsory education for children between the ages of 7 and 14. The Respondent State submits that the Education and Training Policy of 2014 and the National Disability Policy of 2004 provide for inclusive education.

307. The Respondent State also submits that it has undertaken the following affirmative measures towards the right to education: that children with disability are granted “a double capitation grant opportunity as compared to others”; persons with disabilities are given special consideration; PWA are provided with “wide hats, magnifying glasses and so on”; school fees for children with albinism for primary and secondary school have been waived; “early identification support of children with albinism in school” measures have been taken to ensure that adequate teachers with proper training are available; and students with albinism are given priority when choosing who attends boarding schools.

308. Furthermore, the Respondent State contends that students with albinism participate in different sports activities. Also, that the Respondent State in

collaboration with other stakeholders provide special training to teachers on reasonable accommodation of the needs of persons with disabilities.

309. The *amici curiae* submit that as a party to various international instruments, the Respondent State is obligated to advance the realization and enjoyment of the right to education of PWA. The obligations include: provide reasonable accommodation for the management of visual impairments and vulnerability to skin cancer; put in place policies and programmes to tackle attitudinal barriers and adequately protect children with albinism from attacks while going to school, and on their way back from school.

310. The *amici* further submit that the access to education by children with albinism should be holistic such that they do not suffer any kind of discrimination. In order for the State to ensure that the discrimination does not exist, the children with albinism must be reasonably accommodated. The reasonable accommodation includes: large print learning materials, assistive devices including glasses, extra time during exams and ensuring that teachers are trained on albinism in accordance with Article 24(2) of the CRPD.

311. The *amici* cite a report by Human Rights Watch which stated that public schools receive some equipment from the government but not enough and that schools are not adequately resourced to support students with albinism.

312. Lastly, the *amici* submit that the children with albinism are often confined to schools for visually impaired children where they are forced to learn using braille. This creates hardship for the children with albinism who are capable of learning in mainstream schools if they are provided with assistive devices.

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313. The Court notes that pursuant to Article 17(1) of the Charter**,** “[e]very individual shall have the right to education.”

314. Article 11(1) of the Children's Charter provides, "every child has the right to education." Whereas Article 11(3) stipulates:

> States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
>
> a) Provide free and compulsory basic education;
> b) Encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
> c) Make the higher education accessible to all on the basis of capacity and ability by every appropriate means; take measures to encourage regular attendance at schools and the reduction of drop-out rate;
> d) Take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community;
> e) Take special measures to ensure that gifted and disadvantaged female children have equal access to education in all social strata.

315. The Court notes the substance of General Comment No. 13 (1999) of the United Nations Committee on Economic, Social and Cultural Rights on Article 13 – the right to education, that education in all its forms shall be: available, accessible, acceptable and adaptable.[88]

316. Accessibility requires that the education be obtainable by everyone without discrimination and it also means that the education should be physically and economically attainable. Availability requires "functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party."[89] Acceptability relates to "…form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students…".[90] Adaptability means "education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings."

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[88] General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights on Article 13 – the right to education, E/C.12/1999/10, 8 December 1999.
[89] *Ibid*.
[90] *Ibid*.

317. Article 24(1) of the CRPD stipulates that:

> States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
>
> a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
> b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
> c) Enabling persons with disabilities to participate effectively in a free society.

318. Furthermore, Article 24(2) of the CRPD provides that:

> …in realizing this right, States Parties shall ensure that: (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; (c) Reasonable accommodation of the individual's requirements is provided.

319. As regards reasonableness in discharging State obligations pertaining to the right to education, the Court finds it relevant to refer to RPD Committee's General Comment 4, (2016) which states that "[r]easonableness" is understood as the result of an objective test that involves an analysis of the availability of resources, as well as the relevance of the accommodation, and the expected goal of countering discrimination."[91] What is reasonable is determined on a case-by-case basis by weighing up a number of

[91] Article 24 – CRPD, General comment No. 4 (2016).

considerations against the right to equitable education without discrimination.

320. The Court observes as submitted by the *amici* that in order for children with disabilities to 'access education', it requires them to be reasonably accommodated including being provided with: Large print learning materials, assistive devices including glasses, extra time during exams and ensuring that teachers are trained on albinism.

321. Furthermore, their security should be guaranteed to and from school. In this regard, the Court notes the Respondent State's submission which is buttressed by the report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism that, it has provided some assistive devices to children with albinism.

322. The Court, however, notes that some children with albinism have been denied the opportunity to attend mainstream schools and are therefore forced to learn braille. The Court also notes that the Respondent State has not discharged its obligation as regards providing of assistive devices.

323. The Court is alive to the fact that the right to education is a social, economic and cultural right which requires adequate finances but that does not excuse the Respondent State from reasonably accommodating children with albinism, who are already marginalised and anxiously face death threats on a daily basis. The Court therefore concludes that the education is not available or accessible to the children with albinism.

324. The education system especially in the shelters is also not acceptable or adaptable, as discussed above, due to the overcrowding, the lack of training of the teachers and the lack of provision of assistive devices.

325. In the circumstances, the Court finds that the Respondent State has violated the right to education under Article 17(1) of the Charter and Article 11 of the

Children's Charter by failing to ensure education is available, accessible, acceptable and adaptable to the needs of PWA.

G. Alleged violation of the right to the enjoyment of the highest attainable standard of health

326. The Applicants aver that the physical conditions of PWA, including impaired vision, lack of pigmentation, and vulnerability to skin cancer among others, limit their participation in social life on an equal basis with other members of the society.

327. According to the Applicants, many PWA die of skin cancer between the ages of 30 and 40 and that the susceptibility of PWA to skin cancer is exacerbated by the fact that they undertake menial jobs and therefore cannot afford the treatment. The Applicants argue therefore, that this is a violation of the right to health.

328. The Respondent State alludes to the laws it has enacted in relation to health of persons with disabilities. In this regard, it refers to section 26(1) of the Persons with Disabilities Act (hereinafter referred to as "PDA") which provides for reasonable standard of health care services for all the population, without discrimination.

329. The Respondent State also argues that section 34(1) of the PDA imposes a duty on every employer to ensure safe and healthy working conditions for all employees with disabilities. Other policies that the Respondent State relies on are the following: Code of Ethics for Public Health Care Services to Persons with Disabilities 2020 and Tanzania Health Policy 2017.

330. The Respondent State also contends that it organises mobile skin clinics for PWA through the Kilimanjaro Christian Medical University College Hospital in eight regions in 33 sites, every six months. These programs, the Respondent State contends, include: awareness raising component, full screening pre-cancerous lesions on PWA, where PWA are provided with

cryogenic treatment whenever necessary and provided with sun hats, sunscreens and referrals for surgery.

331. According to the Respondent State, different hospitals and health centres within the Respondent State provide medical care to PWA including the supply of sunscreen lotion.

332. The *amici* submit that the right to health is indispensable in the exercise of other human rights. The *amici* further submit that the right to health includes ensuring the right to access health facilities, goods, and services on non-discriminatory basis, especially for vulnerable or marginalised groups. It also includes, the provision of essential drugs to those who need them, and widely accessible education, and information for disease prevention and control.

333. According to the *amici*, the health care treatment of PWA must include access to regular skin care screening and treatment services as skin cancer is one of the most preventable cancers if detected earlier. Also, that if the skin cancer is not detected earlier then cancer patients end up paying for inpatient treatment such as surgery, transfusions, and for diagnostics investigations and other medications which poses a barrier in the access of cancer care.

334. The *amici* further state that due to discriminatory attitudes in health care centres, some PWA have faced barriers in accessing health care centres. In this regard, PWA have been refused treatment and even ignored. Furthermore, that women who gave birth to children with albinism had to deal with stigma, were subject to breaches of confidentiality and did not receive timely access to health-related education and information including on prevention of skin cancer.

335. In relation to mental health, the *amici* submit that stigma, stereotypes, prejudices and social exclusion experienced by PWA in their families, immediate community and from society can cumulatively have a detrimental

effect to their mental health and cause effects such as anxiety, panic attacks, depression and suicide ideation. Women who give birth to children with albinism also suffer mental health illness due to abandonment by their husbands, and the *amici* submit that this constitutes a harmful practice and a form of stigmatization.

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336. Article 16 of the Charter stipulates that:

> 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
> 2. State 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.

337. Article 24 of the CRC provides that:

> States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

338. As regards the scope of the right to enjoy the highest attainable standard of health, the Court finds it relevant to refer to the General Comment No. 14 (2000) on the right to the highest attainable standard of health which stipulates that, "the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."[92]

339. The components of the right to health include: availability, accessibility, acceptability and quality. Availability relates to the functioning public health and health care facilities and these will include "safe and potable drinking

[92] Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, 11 August 2000, § 12.

water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel."[93]

340. Accessibility means that the right to health is within reach of every individual without discrimination and it is composed of the following components: non-discrimination, physical accessibility, economical accessibility, informational accessibility.[94] Acceptability requires that "all health facilities good and services must be respectful of medical ethics, and be culturally appropriate."[95] In terms of quality, the health services are required to be "scientifically and medically appropriate and of good quality."[96]

341. The Court also takes note of General Comment No. 14 (2000), which obligates states to mainstream gender in all the health policies, planning, programmes and research.[97] Notably, the requirement of the right to health is in relation to the "highest attainable standard of health", in other words, states are obliged to take the necessary steps "to the maximum of its available resources".

342. The Court observes that if a State is unwilling to use its maximum available resources then it will be in breach of its obligations. The burden of proof rests on the State to demonstrate that it has made use of all available resources in order to satisfy its obligations on the right to health.

343. In this regard, it is critical to recall that, under the General Comment No. 14 (2000), the core obligations of states which relate to providing primary health care and which constitutes the minimum required standard, is as follows:

[93] General Comment No. 14, *ibid*, § 12(a).
[94] General Comment No. 14, *ibid*, para 12(b).
[95] *Ibid*, § 12(c).
[96] *Ibid*, § 12(d).
[97] *Ibid*, § 20.

a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
b) To ensure access to the minimum essential food, which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
e) To ensure equitable distribution of all health facilities, goods and services;
f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, *shall give particular attention to all vulnerable or marginalized groups*.[98]

344. The Court recalls its jurisprudence affirming the above-mentioned principles of the right to health, that: the "[e]njoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind."[99]

345. The Court observes with relation to the physical health of PWA that owing to their skin condition which relates to reduced levels of melanin and the visual impairments which they are born with, primary health care dictates

[98] *Ibid*, § 43.
[99] *Ligue Ivorienne des Droits de l'Homme and Others v. Côte d'Ivoire*, *supra*, § 169.

that they should have access to sunscreen, wide hats and sunglasses. Accordingly, the provision of sunscreen, wide hats and sunglasses are not a luxury to PWA but the thin line between good health and serious infirmity, by analogy, it is akin to having access to potable and safe drinking water.

346. The Court notes the uncontroverted submission of *amici*, that PWA are very susceptible to skin cancer, which is both preventable, and treatable if detected early. Therefore, in order for PWA to be safeguarded from skin cancer, they require sunscreen lotion, wide hats and sunglasses, these are simply for survival and for a better standard of living.

347. The Court notes the Respondent State's submission that it provides PWA, two bottles of sunscreen lotion every six months, effectively, four bottles of sunscreen lotions annually. While the Court acknowledges and commends this effort, it cannot be considered to meet the standard of "to the maximum of its available resources."

348. The Court further observes that the situation is exacerbated by the fact that the supply of the bottles is in conjunction with civil society organisations, meaning, the Respondent State's capacity to supply more sunscreen lotions is undoubtedly under-utilized.

349. The Court notes from the record that the Respondent State has not given statistics regarding distribution of wide hats or sunglasses and reiterates, that it is obligated to distribute such to the maximum of its available resources. Furthermore, the Court underscores that the Respondent State is required to seek international assistance and cooperation in order to fulfil this obligation.

350. In terms of accessibility and acceptability, the Court notes the submission of the *amici*, that PWA face discriminatory attitudes when they seek medical attention and that they are sometimes ignored or denied treatment. In this regard, the Court observes that the right to health is not accessible or acceptable to PWA.

351. In relation to mental health, the Court has noted in this judgment that, PWA are discriminated against and suffer stigma from birth and throughout most of their lives. They suffer from anxiety and fear of attacks due to the superstitions and harmful beliefs regarding them. In addition, the disdainful treatment in health centres affects their psychosocial wellbeing. Children and women suffer other mental health challenges such as abandonment and seclusion from families and society at large.

352. The Court observes that the Respondent State has submitted that it has undertaken some awareness-raising campaigns to curb the societal norms and negative attitudes towards PWA, however, the Court notes that it has not addressed the issue of providing counselling and other services that PWA urgently require to avoid mental health diseases such as depression and suicide tendencies.

353. The Court underscores that the mental well-being of individuals in the Respondent State is not an inferior obligation or a by-product of physical wellness such that it can be taken for granted or dispensed with. The Court reminds the Respondent State that the mental well-being of PWA who suffer trauma from birth is equally a primary health care which needs to be attended to forthwith.

354. Finally, the Court observes as reported by the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism that many PWA lack basic medical information regarding their condition and therefore seek medical assistance as a last resort, at which point, it is too late.[100] The Court notes that the obligation of the Respondent State extends to disseminating of medical information especially to vulnerable groups like PWA. Therefore, the Respondent State has failed in this duty.

[100] Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, *supra*.

355. In light of the foregoing, the Court finds that the Respondent State violated Article 16 of the Charter and Article 24 of the CRC for failing to provide the highest attainable standard of health to PWA.

H. Violation of Article 1 of the Charter

356. Article 1 of the Charter provides as follows:

> The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

357. The Court notes that the Respondent State has "an obligation to make laws in line with the intents and purposes of the Charter." And "… whilst the said clause envisages the enactment of rules and regulations for the enjoyment of rights enshrined therein, such rules and regulations may not be allowed to nullify the very rights and liberties they are to regulate."[101]

358. The Court reiterates its earlier judgments, that, examining an alleged violation of Article 1 of the Charter involves a determination not only of whether the measures adopted by the Respondent State are available but also if these measures were implemented in order to achieve the intended object and purpose of the Charter.[102] Consequently, 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 have been violated.

359. In the present case, the Court has found that the Respondent State has violated Articles 2, 4, 5, 7(1), 16, 17(1) of the Charter. The Court observes that the violations herein especially relate to the Respondent State's failure

[101] *Legal and Human Rights Centre and Another v. Tanzania* (merits), *supra*, § 160.
[102] *Armand Guehi v. Tanzania* (merits and reparations), *supra*, §§ 149-150 and *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 124.

to comply with its obligations to promote and protect the rights of PWA as set out in those Articles of the Charter, including through legislative and other measures.

360. Resultantly, the Court holds that the Respondent State has also violated Article 1 of the Charter.

VIII. REPARATIONS

361. With regards to reparations, the Applicants pray the Court to order the Respondent State to:

i. Adopt a comprehensive national strategy so as to eliminate attacks against PWA;
ii. Diligently investigate and prosecute perpetrators of attacks against PWA;
iii. Reform its criminal law to classify crimes against PWA as hate crimes with enhanced penalties;
iv. Assemble a committee of government officials, civil society representatives, PWA or their representatives to identify victims of attacks, compensate them according to the extent of their injuries and provide them with rehabilitation measures;
v. Provide adequate housing to the families of PWA who have had to flee their homes as a result of attacks on them or their children;
vi. Ensure that children affected by attacks against PWA are provided special educational and vocational assistance programs;
vii. Ensure that holding centres for children with albinism are conducive for growth and development and plan for long term reintegration with their families;
viii. Carry out nation-wide sensitization of the public to dispel unfounded myths about PWA;
ix. Provide effective training to law enforcement officials, prosecutors and judges on the effective investigation and prosecution of offences committed against PWA;

x. Set up a fund for advocacy and services in the interests of PWA with participation of PWA in its design, establishment and implementation; and

xi. Provide other symbolic reparations as the Court deems appropriate.

362. The Respondent State prays the Court to dismiss the prayers on reparations as "baseless, misconceived and untenable; and to deny the request for publication."

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

364. The Court recalls its earlier judgments and restates its position that, "to examine and assess applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim".[103]

365. The Court also restates that reparations "… must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."[104]

366. The measures that a State may take to remedy a violation of human rights include: restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations taking into account the circumstances of each case.[105]

[103] *Abubakari v. Tanzania* (merits), *supra*, § 242 (ix), *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.
[104] *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 21; *Alex Thomas v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 287, § 12; *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 308, § 16.
[105] *Umuhoza v. Rwanda* (reparations), *supra*, § 20.

367. The Court reiterates that the general rule with regard to material prejudice is that there must be a causal link between the established violation and the prejudice suffered by the Applicant and the onus is on the Applicant to provide evidence to justify his prayers.[106] With regard to moral prejudice, the Court exercises judicial discretion in equity.

368. In its understanding of a "victim/s" of human rights violations, the Court remains alive to the fact that the notion of "victim" is not limited to individuals and that, subject to certain conditions, groups and communities may be entitled to reparations meant to address collective harm.[107]

369. In the instant case, the Court has established that the Respondent State violated the rights under Articles 2, 4, 5, 7(1), 16, 17(1) of the Charter and Article 29 of the Children's Charter in relation to PWA.

370. It is in relation to these findings that the Court will consider the Applicants' prayers for reparation.

371. The Court notes that the Applicants have made 11 prayers on reparations, but it has decided to group them into the following categories: Pecuniary reparations, and non-pecuniary reparations.

A. Pecuniary reparations

i. Material prejudice

372. The Applicants pray the Court for an order for the Respondent State to set up a compensation fund, and that a committee of government officials, civil society representatives, PWA or their representatives is set up, to identify victims of attacks and compensate them accordingly from the fund.

[106] *Christopher Mtikila v. Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR, § 15.
[107] *African Commission on Human and Peoples' Rights v. Kenya*, ACtHPR, Application No. 006/2012, Judgment of 23 June 2022 (reparations), § 60.

373. Furthermore, the Applicants pray the Court to order the Respondent State to set up a fund for advocacy and services in the interests of PWA with participation of PWA in its design, establishment and implementation.

374. The Respondent State did not respond specifically on this point but prays the Court to reject the prayers on reparations as baseless.

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375. The Court acknowledges that compensation is an important means for effecting reparations. For example, in the *Christopher Mtikila v. Tanzania,* the Court reiterated the fact that if a State that has violated rights enshrined in the Charter, it should "take measures to ensure that the victims of human rights abuses are given effective remedies including restitution and compensation."[108]

376. Given that the violations leading up to this judgment have been experienced by many PWA and over a substantial expanse of time, the Court considers it very important that any benefit, as a result of this litigation, should be extended to the PWA. In the circumstances, the establishment of a fund is one mechanism to ensure that PWA benefit from the outcome of this litigation.

377. The Court takes particular cognisance of the fact that the claim for compensation herein relates to the right to life, dignity, non-discrimination, freedom from trafficking, right to education, and right to health.

378. The Court is also aware that the violations herein of the rights of PWA affect them as a vulnerable group of the Respondent State's population. The award of compensation must, therefore, and in so far as is possible, operate to ameliorate the overall condition of the PWA.

[108] *Mtikila v. Tanzania* (reparations), § 29.

379. Given the fact that the violations affect a particular group of the population, the Court orders the Respondent State to establish a compensation fund, within and in consultation with the Applicants and representatives of PWA, identify victims of attacks and compensate them according to the extent of the prejudice suffered.[109] Furthermore, that the fund also be used for advocacy purposes to raise awareness regarding the plight of PWA.

ii. Moral prejudice

380. During the public hearing, the Applicants prayed the Court for moral damages to compensate the victims for the suffering including the psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation and reputational harm posed by the violation.

381. Citing the Court's decisions in *Zongo v. Burkina Faso* and *Konate v. Burkina Faso*, the Applicants aver that PWA and their families have suffered incalculable harm as a result of the Respondent State's failure to protect them.

382. In line with the jurisprudence of the Court, the Applicants pray the Court to award moral damages to the victims for the pain and suffering that they and their families have undergone owing to the violations of their rights.

383. The Respondent State prays the Court to reject the prayers for reparations.

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384. The Court notes that moral prejudice is that which results from the suffering, anguish and changes in the living conditions of the victim and his family.[110] As the Court has established in this judgment that the rights of the PWA

[109] *Ligue Ivorienne des Droits de l'Homme and Others v. Côte d'Ivoire*, *supra*, § 215.
[110] *Mtikila v. Tanzania* (reparations), *supra,* § 34; *Cheusi v. Tanzania* (judgment), *supra,* § 150 and *Nguza Viking and Another v. Tanzania* (reparations)(8 May 2020) 4 AfCLR 3, § 38.

were violated by the Respondent State resulting in psychological and emotional distress, entitling them to reparation for moral prejudice.

385. The Court has held that the assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the circumstances of the case.[111] The practice of the Court, in such instances, is to award a lump sum for moral prejudice.[112]

386. In the present case, the Court agrees with the Applicants, that PWA have definitely suffered moral prejudice including anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation. The Court observes however, that, the Applicants' request for reparations for moral prejudice is *in abstracto*, as they did not enumerate or attach the list of PWA who would be the recipient of the reparations.

387. While it is not possible to allocate a precise monetary value equivalent to the moral prejudice suffered by the PWA, nevertheless, the Court can award compensation that provides adequate reparation to them. In determining reparations for moral prejudice, as earlier pointed out, the Court takes into consideration the reasonable exercise of judicial discretion and bases its decision on the principles of equity taking into account the specific circumstances of each case.

388. The Court is mindful that the violations established in the present Application relate to rights that remain central to the very existence of the PWA. The Respondent State, therefore, is under a duty to compensate the PWA for the moral prejudice suffered as a result of the violation of their rights. Taking into account the exercise of its discretion in equity, the Court orders the Respondent State to pay into the compensation fund the sum of Ten Million Tanzanian Shillings (TZS 10, 000, 000) to remedy the moral

[111] *Juma v. Tanzania* (judgment), *supra,* § 144; *Viking and Another v. Tanzania* (reparations), *supra,* § 41 and *Umuhoza v. Rwanda* (reparations), *supra,* § 59.
[112] *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), *supra,* § 177.

prejudice suffered by PWA, which will also be the seed money to the said fund.

B. Non-pecuniary Reparations

389. The Applicant prays the Court for orders for constitutive and legislative measures, rehabilitation, guarantees of non-repetition and measures of just satisfaction.

390. The Respondent State prays the Court to reject the prayers for reparations.

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391. The Court notes that the Applicants pray for four types of non-pecuniary reparations namely: legislative measures, measures of rehabilitation, guarantees of non-repetition and measures of just satisfaction. The Court will consider them successively.

i. Legislative measures

392. The Applicant prays for the following legislative orders:

    i. Adopt a comprehensive national strategy so as to eliminate attacks against PWA; and
    ii. Reform its criminal law to classify crimes against PWA as hate crimes with enhanced penalties.

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393. The Court recalls that, in appropriate cases, it has ordered State Parties to amend their legislation in order to bring it in conformity with the Charter. For example, in *Mtikila v. Tanzania*, it ordered the Respondent State “to take constitutional, legislative and all other necessary measures within a

reasonable time to remedy the violations found by the Court and to inform the Court of the measures taken."[113]

394. In the present case, the Court has found inadequacy in the laws of the Respondent State in relation to laws that criminalize and punish acts of violence against PWA. Furthermore, the Court has found that the laws of the Respondent State do not clearly distinguish witchdoctors from traditional healers.

395. Moreover, the Court notes its finding that the Respondent State has failed to safeguard the rights of PWA by failing to exercise due diligence in preventing attacks, investigating them as well as prosecuting offenders and sentencing them accordingly.

396. The Court therefore orders the Respondent State to take all necessary measures, within two years of notification of this judgment, to:

    a. Amend existing laws in order to criminalize and punish acts of violence that target persons with albinism treating such acts as having being committed under aggravated circumstances;
    b. Amend the Witchcraft Act, 1928, Chapter 18 of the Laws of Tanzania, in order clarify ambiguities in relation to witchcraft and traditional health practices and
    c. Finalize, promulgate and implement its national plan on the promotion and protection of the rights of PWA, as it undertook to do during the public hearing in the present matter, in conformity with the "African Union Plan of Action to End Attacks and other Human Rights Violations Targeting Persons with Albinism in Africa" (2021-2031).

[113] *Tanganyika Law Society and Reverend Christopher Mtikila v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 126.

i. Measures of rehabilitation

397. The Applicants pray the Court for the following measures of rehabilitation:
    i. Assemble a committee of government officials, civil society representatives, PWA or their representatives to identify victims of attacks to provide them with rehabilitation measures;
    ii. Provide adequate housing to the families of PWA who have had to flee their homes as a result of attacks on them or their children;
    iii. Ensure that children affected by attacks against PWA are provided special educational and vocational assistance programs; and
    iv. Ensure that holding centres for children with albinism are conducive for growth and development and plan for long term reintegration with their families.

398. The Respondent State prays the Court to reject the Applicant's request.

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399. The Court observes that measures of rehabilitation attempt to restore the health and well-being through the provision of "medical and psychological care as well as legal and social services."[114] The measures for rehabilitation are provided to "reduce the anger and frustration that might otherwise lead victims, their families or their communities to engage in vigilante justice and further cycles of violence and abuse."[115]

400. The Court recalls its finding herein that the PWA have suffered various psychological prejudice resulting from the stigma, the attacks that they have suffered and the general climate of fear in which they live in.

[114] United Nations, 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, par. 2(c), 3(d), 11 (Dec. 16, 2005) [hereinafter "U.N. Basic Principles"] § 21.
[115] African Court on Human and Peoples' Rights: *Comparative Study on the Law and Practice of Reparations for Human Rights Violations* (September 2019).

401. The Court also notes that the PWA have fled their homes for fear for their lives. Furthermore, the Court also noted the deplorable conditions in the temporary shelters set up by the Respondent State.

402. The Court notes that it has already ordered the Respondent State to finalize and implement a national strategy that would promote and protect the rights of PWA. This strategy would include action points on rehabilitation of PWA.

403. In addition, and in light of the above, the Court orders the Respondent State to take all necessary measures, within two years, towards the full realization of the right to education. This will include reasonable accommodation of children with albinism in mainstream schools and facilitating their studies through the provision of low vision aids, adaptive devices and large-print materials to all schools.

404. The Court also orders the Respondent State to take all necessary measures, within two years of notification of this judgment, towards the full realization of the right to the best attainable standard of health. This will include ensuring the availability and distribution of sunscreen, wide hats and sunglasses through domestic production and by facilitating the importation of the raw materials.

ii. Guarantees of non-repetition

405. The Applicants also pray the Court to order the Respondent State to:

i. Carry out nation-wide sensitization of the public to dispel unfounded myths about PWA;
ii. Diligently investigate and prosecute perpetrators of attacks against PWA;
iii. Provide effective training to law enforcement officials, prosecutors and judges on the effective investigation and prosecution of offences committed against PWA.

406. The Respondent State prays the Court to reject this request.

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407. The Court recalls that guarantees of non-repetition are aimed at ensuring that violations do not reoccur. As a form of reparations, they serve to prevent future violations, to cease on-going violations and to assure victims of past violations of the harm they suffered and of action to prevent the repetition thereof.[116]

408. The overall aim of guarantees of non-repetition is to "break the structural causes of societal violence, which are often conducive to an environment in which [human rights violations] take place and are not publicly condemned or adequately punished.[117]

409. The Court reiterates its finding that the Respondent State was not diligent in investigating, prosecuting and sentencing perpetrators of human rights violations of PWA. Consequently, the Court notes that it has already ordered the Respondent State to finalize and implement the national strategy that would promote and protect the rights of PWA. This strategy would include action points on sensitization of the public and training of law enforcement officers in order to curb the attacks on PWA on account of superstitions and harmful beliefs.

410. In addition, the Court deems it appropriate to also order especially that the Respondent State to take necessary steps to raise awareness on the myths regarding albinism, within two years of notification of this judgment, through far-reaching campaigns sustained continuously for at least two years. The campaigns should be in all national languages, involve persons with albinism and target communities in rural areas in particular.

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[116] *African Commission on Human and Peoples' Rights v. Kenya*, ACtHPR, Application No. 006/2012, Judgment on of 23 June 2022 (Reparations), *supra*, § 148. *Rashidi v. Tanzania* (merits and reparations), *supra*, § 146.
[117] *African Commission on Human and peoples' Rights v. Kenya* (reparations), *ibid*.

iii. Other symbolic reparations

411. The Applicants pray the Court to order other symbolic reparations that it may deem appropriate.
412. The Respondent State prays the Court to reject this request.

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413. The Court notes that the Applicants have requested for "other symbolic reparations, however, the Court recalling its jurisprudence, notes that a judgment can constitute a sufficient form of reparation.[118]

414. In the instant case, the Court observes that its judgment, constitutes a sufficient measure of satisfaction and therefore, rejects the prayer for other symbolic reparations.

iv. Publication of the judgment

415. The Court recalls that Article 27(1) of the Protocol gives it power to "make appropriate orders to remedy" violations. In the circumstances, the Court reaffirms that it can, by way of reparations, order publication of its decisions where the circumstances of the case so require.[119]

416. The Court observes that for reasons now firmly established in its practice and in the peculiar circumstances of this case, publication of this Judgment is necessary.[120] The Court notes that the alleged violations herein are serious and massive and affect a particular section of the population. Furthermore, the ignorance of some of the members of the society in the Respondent State has been noted, making it imperative for this judgment to be widely circulated.

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[118] *Mtikila v. Tanzania* (reparations), § 45 and *Armand Guehi v. Tanzania* (merits and reparations), *supra*, § 194.
[119] *Legal and Human Rights Centre and another v. Tanzania*, Judgment, *supra*, § 180.
[120] *Idem*, § 182; *Habyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania*, ACtHPR, Application No. 015/2016, Judgment of 3 September 2024, § 249.

417. In the circumstances, the Court, therefore, orders the Respondent State to publish this Judgment within a period of three months from the date of notification, on the websites of the Prime Minister's Office – Labour, Youth, Employment and Persons with Disabilities, Judiciary and, the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least two years after the date of publication.

v. Reparations related to the rights and welfare of the child

418. The Court notes the prayers of the Applicants that the Respondent State:

i. Provide adequate housing to the families of PWA who have had to flee their homes as a result of attacks on them or their children;
ii. Ensures that children affected by attacks against PWA are provided special educational and vocational assistance programs; and
iii. Ensures that holding centres for children with albinism are conducive for growth and development and plan for long term reintegration with their families.

419. The Court, having found the violations of Article 29 of the Children's Charter, as well as the violation of Articles 16 and 17 of the Charter deems it appropriate to make specific orders relating to the rights of children with albinism.

420. In the circumstances, the Court orders the Respondent State to formulate and execute strategies, within two years of notification of this judgment, that will ensure the full realization of the rights and welfare of children with albinism, this will, *inter alia*, include initiatives on their security, psychosocial, medical and other assistance critical to their survival and development.

421. Furthermore, the Court, orders the Respondent State in cooperation with the Applicants, to facilitate a comprehensive and coordinated effort, within two years of notification of this judgment, to reduce shelter overcrowding,

reunite families and ensure that children with albinism in these shelters have access to basic services.

C. Implementation and reporting

422. The Court notes that the Parties did not make any prayers in respect of implementation and reporting.

423. However, the justification provided earlier, in respect of the Court's decision to order publication of the judgment, is equally applicable in respect of implementation and reporting. The Court also notes that the order on reporting of the measures taken by a Respondent State is a matter of judicial practice.[121]

424. The Court holds, therefore, that the Respondent State is under an obligation to report on the steps taken to implement this Judgment within two years from the date of notification of this Judgment.

IX. COSTS

425. The Respondent State prays the Court to order the Applicants to bear the costs. The Applicants did not make any prayer as regards costs.

426. Pursuant to Rule 32(2) of the Rules "unless otherwise decided by the Court, each party shall bear its own costs."

427. The Court observes that it does not charge any fees for any of its procedures and the Respondent State has not substantiated its claim for costs. Therefore, the Court rules that each party shall bear its own costs.

[121] *Legal and Human Rights Centre and another v. Tanzania*, Judgment, *supra*, § 183; *Habyalimana and Another v. Tanzania*, Judgment, *supra*, § 253.

X. OPERATIVE PART

428. For these reasons:

THE COURT

Unanimously,

On jurisdiction

i. *Dismisses* the objection to its jurisdiction;

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objections to the admissibility of the Application;

iv. *Declares* the Application, admissible.

On merits

v. *Holds* that the Respondent State has not violated the right to an effective remedy guaranteed under Article 7 of the Charter as read jointly with Article 1 of the Charter;

vi. *Holds* that the Respondent State has violated Article 1 of the Charter with regard to failure to give effect to the rights in the Charter as related to PWA;

vii. *Holds* that the Respondent State has violated the right to non-discrimination guaranteed under Article 2 of the Charter by failing to put up sufficient measures to combat myths and stereotypes relating to albinism;

viii. *Holds* that the Respondent State has violated the right to life protected under Article 4 of the Charter and Article 6 of the ICCPR by failing to take sufficient preventive measures, effectively investigate and punish the perpetrators of killings of PWA;

ix. *Holds* that the Respondent State has violated the right to dignity under Article 5 of the Charter as well as the freedom from torture, degrading and inhumane treatment under Article 5 of the Charter and 7 of the ICCPR by failing to protect PWA from attacks and persecution occasioned on account of their albinism;

x. *Holds* that the Respondent State has violated Article 29 of the Children's Charter by failing to prevent the sale, trafficking and abduction of children;

xi. *Holds* that the Respondent State has violated Article 4 of the Children's Charter by not taking into consideration the best interests of the child in the operation of shelters devoted to children with albinism;

xii. *Holds* that the Respondent State has violated Article 17(1) of the Charter by failing to ensure that education is available, accessible, acceptable and adaptable to needs of PWA;

xiii. *Holds* that the Respondent State has violated Article 16 of the Charter by failing to provide PWA with the best attainable standard of health;

On reparations

Pecuniary reparations

Material prejudice

xiv. *Orders* the Respondent State to establish a compensation fund, within two years of notification of this judgment, and in consultation with the Applicants and representatives of PWA, identify victims of attacks and compensate them according to the extent of their injuries.

Moral prejudice

xv. *Orders* the Respondent State to pay, within two years of notification of this judgment, into the compensation fund the sum of Ten Million Tanzanian Shillings (TZS 10,000,000) for the moral prejudice suffered by PWA, which will also be the seed money to the compensation fund.

Non-pecuniary reparations

xvi. *Dismisses* the prayer for other symbolic reparations;

xvii. *Orders* the Respondent State to amend existing laws, within two years of notification of this judgment, in order to criminalize and punish acts of violence that target persons with albinism treating such acts as having being committed under aggravated circumstances;

xviii. *Orders* the Respondent State to amend the Witchcraft Act, 1928, Chapter 18 of the Laws of Tanzania, within two years of notification of this judgment, in order clarify ambiguities in relation to witchcraft and traditional health practices;

xix. *Orders* the Respondent State to, within two years of notification of this judgment, finalize, promulgate and implement its national plan on the promotion and protection of the rights of PWA in conformity with the African Union Plan of Action to End Attacks and other Human Rights Violations Targeting Persons with Albinism in Africa (2021-2031);

xx. *Orders* the Respondent State to take all necessary measures within two years of notification of this judgment, towards the full realization of the right to education;

xxi. *Orders* the Respondent State to take all necessary measures, within two years of notification of this judgment, towards the full realization of the right to the best attainable standard of health;

xxii. *Orders* the Respondent State to take necessary steps within two years of notification of this judgment, to raise awareness on

the myths regarding albinism through far-reaching campaigns sustained continuously for at least two years;

xxiii. *Orders* the Respondent State to formulate and execute strategies, within two years of notification of this judgment, that will ensure the full realization of the rights and welfare of children with albinism, this will, *inter alia*, include initiatives on their security, psychosocial, medical and other assistance critical to their survival and development;

xxiv. *Orders* the Respondent State, in cooperation with the Applicants, to facilitate a comprehensive and coordinated effort, within two years of notification of this judgment to reduce shelter overcrowding, reunite families and ensure that children with albinism in these shelters have access to basic services;

xxv. *Orders* the Respondent State to publish this Judgment within a period of three months from the date of notification, on the websites of the Prime Minister's Office – Labour, Youth, Employment and Persons with Disabilities, Judiciary and, the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication.

On Implementation and reporting

xxvi. *Orders* the Respondent State to submit to it within two years from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

xxvii. *Holds* that it shall conduct a hearing on the status of implementation of the orders made in this Judgment on a date to be appointed by the Court within three years of the date of notification of this judgment.

On costs

xxviii. *Orders* that each party shall bear its own costs.

Signed:

Modibo SACKO, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol, and Rules 70(1) of the Rules, the Separate Opinion of Justice Blaise TCHIKAYA is appended to this Judgment.

Done at Arusha, this Fifth Day of February in the Year Two Thousand and Twenty-Five in English and French, the English text being authoritative.