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Regional Systems

One of Many: The Power of Publication in the Human Rights Regime

by Amanda Lorenzo*

On September 19, 2011, the High Court of Tanzania found Ghati Mwita guilty of murder for a February 4, 2008 homicide, sentencing her to hang pursuant to Tanzania’s mandatory death sentence. The domestic Court of Appeal sitting at Mwanza dismissed Mwita’s appeal on March 11, 2013 and rejected her application for review on that decision on March 19, 2015. Mwita then brought the case to the African Court of Human Rights (the Court) alleging that the conviction and sentencing procedures violated her fundamental rights under the Banjul Charter (the Charter). The Charter imposes an affirmative duty on member states to uphold fundamental rights based in its text and other internationally recognized principles of human rights. As of December 2019, Tanzania has become only the second state to withdraw completely from the African Court, removing the Court’s jurisdiction to receive cases from individuals and non-governmental organizations. The Court has held that this does not destroy its jurisdiction over cases filed before November 22, 2020 — consequently, the withdrawal has resulted in a near monopolization of Tanzanian cases on the Court’s published decisions, inherently drawing the focus away from the merits of individual cases to the state of the law in Tanzania through the deliberate publicization of judicial opinions.

The Court routinely disregarded questions of the factual merits of the sentencing and conviction orders of the lower domestic courts, instead criticizing the law being applied, particularly the lack of an opportunity within the regime to mitigate the conviction and sentencing. The Court’s analysis was so thorough that it even considered Mwita’s constitutional human rights, as if that was how the domestic law was applied. The Court held that the mandatory death sentence imposed by Tanzania in Mwita v. Tanzania violated the right to life and to a fair trial, and considered the death sentence as cruel, inhuman, or degrading punishment. The Court’s judgments now serve as a reference in Tanzania, providing the legal framework and procedures for implementing the death sentence.

4 African Charter on Human and People’s Rights, art. 1, Dec. 28, 1988, 1520 U.N.T.S. 217 (Article 1 provides: “The Member States . . . shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.” A bright line interpretation of “other means” has not been enunciated, but it has been interpreted broadly to impose on states affirmative duties under the Charter.); Basic Information, AFRICAN CT. HUM. & PEOPLE’S RTS., https://www.african-court.org/wpafic/basic-information/ (last visited Mar. 23, 2023).

5 Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (“Maputo Protocol”), art. 34(6), July 11, 2003, https://au.int/sites/default/files/treaties/36393-treaty-0019_-_proto-col_to_the_african_charter_on_human_and_peoples_rights_e.pdf (requiring state parties to the protocol to make a separate declaration in order to allow direct access to individuals and non-governmental organizations to bring cases against them before the Court); Mwita, Afr. Ct. H.P.R., at 2; see @UNHumanRights, TWITTER (Dec. 3, 2019, 11:12 AM), https://twitter.com/UNHumanRights/status/120186893380530176, (“We regret decision by Tanzania Govt to block individuals and NGOs from taking cases to African Court on Human & Peoples’ Rights. We urge Govt to reconsider. The Court is crucial for justice & accountability in Tanzania.”).

the inherently degrading nature of the sentencing. Of the pecuniary relief prayed for, the Court only upheld a modest sum of seven million Tanzanian shillings (about $3,000 USD) for “reparations for the moral prejudice.” The Court remanded the case “through a process that does not allow a mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer.”

Mwita’s case is one of many handed down concerning alleged violations pointing to a systematic problem in the Tanzanian justice system. The Court, otherwise lacking traditional enforcement power, appeals outside of itself through deliberate publication practices: “There is no indication whether measures are being taken for the law to be amended to align with [Tanzania’s] international human rights obligations . . . The Court thus finds it appropriate to order publication of this judgment.”

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7 Mwita, Afr. Ct. H.P.R., at 30 (finding that State did not violate the Charter by reason of the time it took to conclude the trial at the High Court); id. at 31-32 (finding Mwita had a properly impartial tribunal); id. at 34 (holding state did not violate Mwita’s right to a fair trial); id. at p. 37, ¶129 (did not violate the right to effective representation); id. at 20, 23; id. at 25 (quoting Ally Rajabu and Others v. Tanzania); id. at 26-27 (holding that death via hanging and prolonged detention “encroaches upon dignity in respect of the prohibition of [. . . ] cruel, inhumane and degrading treatment.”).


9 Id. at 48.


11 Basic Information, AFRICAN CT. HUM. & PEOPLE’S RTS., https://www.african-court.org/wpafc/basic-information/ (last visited Mar. 23, 2023) (explaining that the enforcement power imbued to the Court is “delivery of judgments”); see Mwita, Afr. Ct. H.P.R., at p. 50; ¶ 180, p. 49; ¶ 176 (noting that Tanzania has not implemented the orders in “any of the earlier referred to cases where it was ordered to repeal the mandatory death penalty”).

12 See, generally, Andreas Zimmerman & Jelena Bäumler, Current Challenges Facing the African Court on Human and People’s Rights, KAS INT’L REPORTS (Jan. 1, 2010), at 39. http://www.jstor.org/stable/resrep09939. (“The African Charter on Human and People’s Rights . . . was not signed until the [Organization of African Unity] summit in 1981. This did not, however, establish a court with jurisdiction in respect to any of the contraventions of the Charter. On the contrary, the contracting parties were able to agree only on the creation of a Commission on Human rights . . . .” (emphasis added)).

13 Cf. Msuguri v. Tanzania, Mwita v. Tanzania, Iguna v. Tanzania, ¶ 7 (1 December 2022) (Separate Opinion of Tchikaya, J.) (“[The Court in this judgment] invalidates Tanzania’s mandatory death penalty provisions but allows the death penalty to persist in the Respondent state’s system. It should have taken the opportunity to strengthen international law on this issue . . . . The Court, a human rights court, should keep pace with the evolution of international law.”), https://www.african-court.org/cptm/storage/app/uploads/public/63e360/3a0/63e3603a0f0ece1864412002.pdf. See generally Elizabeth Schérer, Critical Intersections in Foreign Policy: Theoretical (Re)Applications: Soft Power — The Underestimated Strategy for Global Influence, 45 FLETCHER F. WORLD AFF. 41, 44 (2021).