

CENTER FOR HUMAN RIGHTS AND OTHERS V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 019/2018

JUDGMENT ON MERITS AND REPARATIONS

5 FEBRUARY 2025

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 5 February 2025: The African Court on Human and Peoples' Rights (the Court) delivered a decision in the case of *Center for Human Rights and Others v. United Republic of Tanzania*.

The Centre for Human Rights ("CHR") is an academic department of the Faculty of Law, University of Pretoria and a non-governmental organization ("NGO"), whilst, The Institute for Human Rights and Development in Africa ("IHRDA"), is a "Pan-African NGO" based in Banjul, The Gambia and the Legal and Human Rights Centre ("LHRC") is an NGO based in Dar es Salaam, United Republic of Tanzania. The three afore-mentioned institutions are the Applicants in this matter and they allege the violation of several rights of persons with albinism (hereinafter referred to as "PWA") protected under the African Charter on Human and Peoples' Rights ("Charter") within the territory of the United Republic of Tanzania.

In accordance with Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights ("Protocol"), the Court first determined whether it had jurisdiction to hear the Application. In this regard, the Respondent State raised an objection to the temporal jurisdiction of the Court arguing that the alleged violations which date back to the year 2000, occurred prior to its becoming a party to the Protocol. The Court however, dismissed the objection and found that the alleged violations occurred between the year 2000 and 2016, that is, within the time the Respondent State had become a party to the Protocol. Furthermore, that, even though some violations occurred prior to Tanzania becoming a party to the Protocol on 10 February 2006, they continued thereafter. Therefore, the Court found that it had temporal jurisdiction to hear the Application.

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Although other aspects of jurisdiction were not contested by the Respondent State, the Court examined them as required by its Rules. In this regard, the Court found that it had personal jurisdiction since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol. This Declaration allows individuals to file applications against the Respondent State as per Article 5(3) of the Protocol. The Court underscored that the Respondent State's withdrawal its Declaration on 21 November 2019, which did not affect this Application, as the withdrawal took effect on 22 November 2020, while the Application was filed at the Court on 26 July 2018.

The Court held that it had material jurisdiction as the Applicants had alleged violations of Articles 2, 4, 5 and 7 of the Charter, Article 7 of the International Covenant on Civil and Political Rights ("ICCPR") and Articles 16 and 29 of the African Charter on the Rights and Welfare of the Child ("Children's Charter") to which the Respondent State is a party. Furthermore, the Court held that it had territorial jurisdiction, as the alleged violations occurred within the territory of the Respondent State, which is a member of the African Union and a State Party to the Protocol.

The Court then determined whether the Application was admissible as provided for under Article 6(2) of the Protocol and Article 56 of the Charter. In this regard, the Respondent State raised two objections to the admissibility of the application in relation to the non-exhaustion of local remedies by the Applicants and the lack of seizure of national courts by PWAs individually.

With respect to the first objection, the Court found that corporate bodies are barred from filing public interest cases in the Respondent State, and therefore, the local remedies were unavailable to the Applicants.

With regards to the second objection, the Court found that the local remedies were ineffective and insufficient. The Court further noted that because of the nature of the alleged violations that is, serious and massive, meant that the Respondent State had notice of them and therefore, should have taken steps to resolve them. The Court also found that the Applicants could not have filed cases on behalf of PWA as they lacked the necessary standing. In light of the foregoing, the Court

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rejected the objections and declared that the Application had complied with Rule 50(2)(e) of the Rules.

Although conditions of admissibility were not challenged by the Respondent State, the Court nonetheless had to ensure that they had been fulfilled. In this regard, the Court found that the Applicants had been identified by name in fulfilment of Rule 50(2)(a) of the Rules. Furthermore, the Application sought to protect rights provided for under the Charter in compliance with Rule 50(2)(b) of the Rules, the Court further found that the language used in the Application was 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. The Court also noted that, even though it took the Applicants eight years and four months to file the case, the alleged violations are continuing 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.

The Court also found that even though three cases had been filed by three different PWA and decided by the United Nations Committee on the Rights of Persons with Disabilities; the nature of the claims of the three cases were different from the Application filed by CHR and others and therefore, the Application had not been settled in accordance with the principles of the Charter or the UN Charter and thus fulfilled the requirement of Rule 50(2)(g) of the Rules. Consequently, the Court found that all the admissibility conditions had been fulfilled and declared the Application, admissible.

On the merits of the case, the Court considered whether the Respondent State had violated the rights of PWA under Articles 2, 4 5, 7 of the Charter and Articles 16 and 29 of the Children's Charter.

With regard the alleged violation of the right to non-discrimination, the Court found that PWA are treated differently primarily due to the wide held superstitions and harmful beliefs regarding the mythical powers attributed to them. The Court also noted that even though the Respondent State has undertaken some initiatives towards addressing the discrimination suffered by PWA, such

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efforts have fallen short of the international human rights law standards, therefore, the Court found a violation of the right of PWA to non-discrimination.

The Court also determined whether PWA's right to life was violated. In this regard, the Court held that there was no doubt that PWA had suffered targeted killings for ritual purposes. The Court noted that although, the Respondent State had taken some initiatives to combat the murder through setting up of a special task force to investigate and prosecute cases relating to the murder of PWA, it had not demonstrated the effectiveness of the special task. Furthermore, the Court held that the Respondent State had failed to effectively investigate, prosecute and punish perpetrators of killings of PWA, therefore, it had violated the right to life of PWA.

Regarding, the alleged violation of the prohibition against torture and cruel, degrading and inhumane treatment, the Court noted that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be put in place to prevent ill-treatment. Furthermore, the Court found that even though the Respondent State was aware of acts of ill-treatment targeting PWA, it failed to put in place preventive measures beyond the enacting of legislations of general application. Also, that the Respondent State failed to diligently investigate, prosecute and punish the perpetrators of the acts of torture and therefore by inference was complicit and ratified the actions of torture by private actors. Resultantly, the Court held that the Respondent State had violated the freedom of PWA from torture, cruel, degrading and inhuman treatment, protected under Article 5 of the Charter.

On the violation of the right to inherent dignity, the Court held that the beliefs in the Respondent State coupled with the lack of concerted efforts to prosecute and punish offenders led to the harm inflicted on the PWA thereby violating the right to dignity of PWA protected under Article 5 of the Charter.

The Court found that the Respondent State had not violated the right to effective remedy because the Respondent State had taken initiatives to increase access to the Courts by PWA and that the Applicants had not demonstrated the inadequacy of the Respondent State's judicial response.

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On the rights of the welfare of the child, the Court found that the Respondent State had violated the right of children with albinism not to be subjected to abduction, sale and trafficking as a result of the abductions and trafficking of children with albinism together with the failure of the Respondent State to counter the same.

As regards the best interests of the child, the Court noted that the shelters set up by the Respondent State for the children with albinism was a noble and commendable act to avert the attacks against them, however, the conditions in the shelters including overcrowding were not suitable and in the best interests of the child. The Court therefore found a violation of Article 4 of the Children's Charter.

The Court further found that the education system provided at the shelters did not cater to the rights of PWA as for example the children with albinism were not provided with assistive devices such as spectacles. Consequently, the Court found a violation of the right to education.

With regard to the right to the enjoyment of the highest attainable standard of health, the Court noted that, it includes both physical and mental wellbeing. The Court also noted that the right to health should be available, accessible, acceptable and of acceptable quality. In this regard, the Court found that primary healthcare was not available, accessible or acceptable to PWA especially because of discriminatory attitudes that persist in the provision of health care and consequently found a violation.

The Court also found a violation of Article 1 of the Charter in relation to the Respondent State's duties to adopt legislative or other measures to give effect to the rights in the Charter as a result of its failure to comply with its obligations to promote and protect the rights of PWA given the findings of the violation of Articles 2, 4, 5, 7(1), 16, 17(1) of the Charter.

The Court then considered the Applicants' prayers for reparations. Under Pecuniary reparations, the Court ordered the Respondent State to establish a compensation fund and pay into it the sum of Ten Million Tanzanian Shillings (TZS 10,000,000) for the moral prejudice suffered by PWA, which will also form seed money to the establishment of the compensation fund.

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Under non-pecuniary reparations, the Court ordered the Respondent State to amend existing laws in order to criminalize and punish acts of violence that target PWA treating such acts as having being committed under aggravated circumstances. The Court also ordered the Respondent State to amend the Witchcraft Act, 1928, Chapter 18 of the Laws of Tanzania, in order to clarify ambiguities in relation to witchcraft and traditional health practices, and to finalize, promulgate and implement its national plan of action 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).

Furthermore, the Court ordered the Respondent State to take all necessary measures towards the full realization of the right to education; to take all necessary measures towards the full realization of the right to the best attainable standard of health; to take necessary steps to raise awareness on the myths regarding albinism through conducting far-reaching campaigns sustained continuously for at least two years and to formulate and execute strategies that will ensure the full realization of the rights and welfare of children with albinism. This will, *inter alia*, as per the Court's order, include initiatives on their security, psychosocial, medical and other assistance critical to their survival and development.

The Court ordered the Respondent State, in cooperation with the Applicants, to facilitate a comprehensive and coordinated effort to reduce overcrowding in the shelters, reunite families and ensure that children with albinism in these shelters have access to basic services.

The Respondent State was also ordered to publish the 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, ensuring that the text of the Judgment remains accessible for at least one year after the date of publication.

The Respondent State was also ordered to submit, within two years, a report on the status of implementation of the decision, and in case the judgment would not have been fully complied

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within three years of notification, the Court will hold an implementation hearing.

Each Party was ordered to bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0192018>

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at: www.african-court.org