

# AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

## JOINT DECLARATION BY

JUDGE BLAISE TCHIKAYA AND JUDGE SUZANNE MENGUE

IN

APPLICATION NO. 045/2019

MOSES AMOS MWAKASINDILE V. UNITED REPUBLIC OF TANZANIA

JUDGMENT OF 6 MARCH 2026

1. This Declaration confirms our joint opinion penned in the matter of *Bahati Mtega and Flowin Mtwewe v. Tanzania*, judgment of 26 June 2025. In the case referenced, we expressed reservations and criticisms regarding the fairness and legal validity of the life sentence from the perspective of international human rights protection.
2. It is in relation to drug trafficking, an offence that is well known in the Respondent State's territory, that the *Mwakasindile* case raises the issue of life sentence once again. The Court's judgment provides grounds for discussing the main aspects of life imprisonment.
3. Mr *Moses Amos Mwakasindile* was sentenced to life imprisonment for drug trafficking. The unfortunate man saw this as a major violation of his rights. He was suspected and accused of transporting a plant known as *khat*.<sup>1</sup>
4. He considered his appearance before the High Court for drug trafficking to be an injustice. He appealed the decision to the Court of Appeal in Mbeya. That his appeal was dismissed on 30 August 2019 seemed to him to be yet

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<sup>1</sup> A drug prohibited under the Respondent State's Drugs and Prevention of Illicit Traffic of Drugs Act.

another injustice. Thus, without legal representation,<sup>2</sup> he brought the matter before this Court on 19 September 2019.<sup>3</sup>

5. In our opinion in *Bahati Mtega*, we recalled that “[...] life imprisonment is contrary to the protection of human rights”.<sup>4</sup> Whether it is actual life imprisonment – for serious criminals – or a reduced life sentence, both sentences violate human rights, as sentence variation is always uncertain.
6. The *Moses Amos* case illustrates this. At its core, this declaration rejects both the sentence and the variation of the sentence as it currently stands.

**I. The Moses Amos Mwakasindile case reflects expectations regarding life sentences**

7. The operative part in the *Moses Amos Mwakasindile* case reflects the expectations of legal doctrine and human rights in relation to life sentences. As we pointed out in *the Bahati case*, life imprisonment lends itself to criticism. Overall, it calls into question and undermines the major principle underpinning the need for sentencing. For a sentence to be fair, it must be necessary and not superfluous.
8. It should be recalled that on 9 July 2013, the European Court of Human Rights condemned the United Kingdom for imposing life sentences.<sup>5</sup> This area has therefore evolved significantly in our law and requires greater attention. The Strasbourg Court ruled that life imprisonment without “the

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<sup>2</sup> The Court decided, *suo motu*, to grant the Applicant legal aid. Mr Edwin Hans was therefore appointed to represent him.

<sup>3</sup>AfCHPR, *Moses Amos Mwakasindile v. Tanzania*, judgment of 6 March 2026

<sup>4</sup> Joint Separate opinion of Judges Suzanne Mengue and Blaise Tchikaya in *Bahati Mtega and Flowin Mtweve v. Tanzania*, judgment 26 June 2025.

<sup>5</sup> Claverie-Rousset, La compatibilité de la perpétuité réelle avec l'article 3 de la Convention, *Journal d'actualité du droit international et européen*, 2012. In this study, the author recalled the judgments of the European Court: In *Vinter and Others v. the United Kingdom* (9 July 2013), three British nationals were sentenced to life imprisonment without parole for murder. They claimed a violation of Article 3 for inhuman and degrading treatment. Then, in *Harkins and Edwards v. the United Kingdom* (17 January 2012), a British and an American citizen charged with murder in the United States were arrested in the United Kingdom. the United States' request for extradition, was accepted by the United Kingdom. The applicants argued that if extradited to the United States, they risked being sentenced to death or life imprisonment without parole both of which are incompatible with Article 3 of the Convention.

possibility of parole and the possibility of review” was incompatible with Article 3 of the European Convention,<sup>6</sup> which is— equivalent to Article 5 of the African Charter —. It should be reiterated that this aspect of the criminal justice system aims to protect human rights internationally. National particularities must therefore be put into perspective.

9. There must therefore be a possibility to review sentences (ECHR, 13 November 2014, *Bodein v. France*). If the convicted person shows serious efforts at social rehabilitation, it should be possible to adjust the sentence. The logic of human rights dictates that this should be the case universally.<sup>7</sup>
10. *The University of Michigan Law Review*<sup>8</sup> presented an enlightening study on the subject. The study compares the effects of the death penalty to those of life imprisonment. Professor Radelet, who led the study, describes these harmful effects as impacting families, friends and lawyers. These sentences punish families as much as they punish the guilty parties. This impact undermines the now established principle of the individuality of offences and penalties.<sup>9</sup> it is a principle that underpins and structures all criminal law, including international criminal law.
11. The *Moses Amos Mwakasindile* decision joins the rank of decisions that do not improve the state of national rights when it comes to the variation of life imprisonment.

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<sup>6</sup> Article 3 of the European Convention on Human Rights: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. Article 5 of the African Charter: (...) All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment shall be prohibited.”

<sup>7</sup> See in particular (Ben Achour R.), *La Convention européenne et la Charte africaine : étude comparée*, *Revue québécoise de droit international*, 2020, pp. 549-572; Abdou-Khadre (D.), *L'influence de la jurisprudence européenne sur le système africain de protection des droits de l'homme*, *Revue Québécoise de droit international*, 2020, pp. 593-610 ; Kouity (Tietoun L.), *L'influence occidentale dans le système africain de protection des droits de l'homme*, Thèse de Doctorat, Nantes, 2025, 560 p.

<sup>8</sup>Radelet (Michael L.), *The Incremental Retributive Impact of a Death Sentence Over Life Without Parole*, *Journal of Law Reform*, 49, 795 (2016).

<sup>9</sup> Saleilles (R.), *L'individualisation de la peine*, *Étude de criminalité sociale*, F. Alcan, 1898, 329 p. ; Giacomelli (M.), *De l'individualisation de la peine à l'indétermination de la mesure*, *Mélanges offerts à Raymond Gassin*, PUAM, 2007, p. 233; see also Dréan-Rivette (I.), *The personalisation of punishment in the Criminal Code*, L'Harmattan, 2005, 274 p.

**II. The Moses Amos Mwakasindile ruling is questionable from the point of view of the variation of life imprisonment**

12. The permanent incarceration of criminals remains under the control of the law, even when it is based on two criminal factors: the seriousness of the crimes committed and the criminal profile of the perpetrators. From a human rights perspective, life sentences must *ultimately* be subject to variation. This aspect is not mentioned anywhere in the *Moses Amos Mwakasindile* ruling. It is particularly from this point of view that life imprisonment is a violation of the right to life and violates Articles 4 and 5 of the African Charter on Human and Peoples' Rights.<sup>10</sup>
13. Human rights must be observed in this regard, and the fact of this sentence not being subject to variation is detrimental to individuals. To this end, it would be appropriate to seek the views of legal scholars on life sentence convictions in Europe.<sup>11</sup>
14. In most systems where life imprisonment is in force, it only applies to offences against human life or terrorist acts.<sup>12</sup> A true life sentence is imposed only in cases involving wilful offences against human life. The decision *in Moses Amos Mwakasindile v. Tanzania* of 6 March 2026 is at variance with this principle. This gives pause for thought, as Mr *Mwakasindile* was guilty of drug trafficking.<sup>13</sup>

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<sup>10</sup> Both articles are relevant to this issue; Article 4, which states in particular that [...] Every human being shall be entitled to respect for his life and the integrity of his person [...]; and Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".

<sup>11</sup> See in particular Pastre-Belda (B.), *La protection à géométrie variable de l'article 3 de la Convention européenne des droits de l'homme*, *RTDH*, 2016. 591.

<sup>12</sup> In France in particular, life imprisonment only applies to aggravated crimes or criminal acts of a terrorist nature. The *law of 14 March 2011* extended the minimum term of imprisonment for murder or assassination committed against a magistrate, a police officer, a member of the gendarmerie, an official of the prison administration or any other person in a position of public authority. Finally, the *law of 3 June 2016* introduced a minimum mandatory sentence for terrorist acts. In Senegal, Article 7 of the Penal Code (*Law 2004-38 of 28 December 2004*) introduces "afflictive and infamous penalties, including life imprisonment with hard labour"; in the Democratic Republic of Congo (DRC) – Code of 30 November 2004, Article 18 of the Criminal Code states that: "If there are mitigating circumstances, the death penalty may be commuted to life imprisonment or to a term of imprisonment to be determined by the judge".

<sup>13</sup> See AfCHPR, *Moses Amos Mwakasindile v. Tanzania*, 6 March 2026, cited above, § 3.

15. It is not superfluous to question the conditions under which the sentence could be subsequently subject to variation.<sup>14</sup> No specific procedure accompanies the reduction of a life sentence, as handed down by the national court or confirmed by this Court. Is the variation procedure exclusive and under what jurisdiction would it fall? We also know that the various criminal justice systems, which are by nature national, are independent.
16. The sentencing judge is in fact faced with a convict who is generally impatient and “unaware” of his rights. There is a procedural problem with life imprisonment when it is said to be reducible, which is not sufficiently addressed. Do criminal justice systems in Africa afford convicts the free choice to initiate sentence variation procedures?
17. Access to sentence variation is considered theoretical, if not difficult. Angela Beye’s work on the variation of *long prison sentences*<sup>15</sup> is an important contribution to this field. In the chapter on *restricting access to variation of long sentences*, she makes this quite clear. On the European Court, she concluded, as the African Court did,<sup>16</sup> that:
- While we can welcome the dual European requirement of legal and factual reducibility of life sentence, it is true that the decisions handed down, particularly with regard to *de jure* reducibility, do not give it the effectiveness that one might have hoped for, and the Court seems to lack courage in not following through on its reasoning.
18. The life sentence was designed to keep individuals in detention for life, out of fear of recidivism. This school of thought tends to organise a violation of the right to life whereby the prisoner is not eligible for parole. The *Moses Amos* case brings to the fore the fact that this situation exists in countries

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<sup>14</sup> Hery-Isler (M.), *Les aménagements aux peines privatives de liberté* [Adjustments to custodial sentences], Ed. EUE, 2018, 80 p.

<sup>15</sup> Beye (A.), *L'aménagement des longues peines privatives de liberté*, Université Aix-Marseille, Thesis, 2023, § 134.

<sup>16</sup> The three human rights courts express a kind of convergence, particularly in the procedures applicable to the exercise of rights: Kouity (Tietoun L.), *Op. cit.*, p. 147 et seq.

where strict interpretation of criminal law and international human rights law is not guaranteed. A prisoner will wait in vain for a hearing bringing together their lawyers, prosecutors, prison administrations and experts for the purpose of parole.

19. Many questions remain about the conditions for parole to which the convicted person is entitled. In the 2017 case of *Hutchinson v. United Kingdom*,<sup>17</sup> the European Court emphasised that prisoners must know how and under what conditions they can take advantage of the mechanism provided for in domestic law. At the time of the review, international law agrees on an initial review within twenty-five years of the conviction.<sup>18</sup>
20. In the *Moses Amos Mwakasindile v. Tanzania*, the judgment of the High Court reveals that, none of these aspects are mentioned. The trial Judge simply states that:

I have considered carefully the submissions by both sides but my hands are tied since there is only one punishment prescribed by the law.

21. Life sentence<sup>19</sup> is not inevitable following the abolition of the death penalty as there is a wide range of options in the sentencing kit. Many countries, including Brazil, Norway, Mexico, Portugal, Croatia, Venezuela, do not impose life sentence.
22. However, this declaration recognises that it is not certain that this specific issue falls within the jurisdiction of the African Court. While States have criminal sovereignty over this matter, international judicial control would not be superfluous.

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<sup>17</sup> ECHR, *Hutchinson v. United Kingdom*, 17 Jan. 2017, D. 2017. 1274.

<sup>18</sup> Descamps (L.), Dix ans de jurisprudence européenne sur l'emprisonnement à perpétuité : un bilan en demi-teinte, *Revue des sciences criminelles et de droit pénal*, 1, no. 1, pp. 53–68

<sup>19</sup> Marchetti (A.-Marie), *Perpétuités : le temps infini des longues peines*, Ed. Plon, 2000, 525 p. ; Genevoix (M.), *La perpétuité*, Ed. Juillard, 2017, 118 pages.

23. Although this is not the position taken in this Declaration, it should be noted that some voices are already calling for the abolition of the life sentence.<sup>20</sup>

Done at Arusha, this Sixth Day of March in the year Two Thousand and Twenty-Six, the French version being authoritative.



Blaise TCHIKAYA, President



Suzanne MENGUE, Judge



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20 Van Zyl Smith (D.) and Appleton (C.), *Life Imprisonment: A Global Human Rights Analysis*, Harvard University Press, 2019 ; b Salas (D.), *Abolir la prison perpétuelle (Abolishing Life Imprisonment)*, *Revue du Mauss*, 2012, p. 183.