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TANZANIA BLOCKS DIRECT PETITIONS TO THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

by Ben Phillips*

On November 21, 2019, Tanzania withdrew its recognition of the right of individuals and Civil Society Organizations (CSOs) to bring claims before the African Court on Human and Peoples' Rights ("the Court").¹ Tanzania's withdrawal came just days before the Court ordered Tanzania to take steps to expunge a law requiring mandatory death sentences for capital crimes and at a time where most of the cases pending before the Court were against Tanzania.² This withdrawal is part of a larger crackdown by the Tanzanian government on opposition to the ruling Chama Cha Mapinduzi (CCM) party and President John Magufuli.³ The Court is an important mecha-

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¹ *Tanzania: Withdrawal of Individual Rights to African Court Will Deepen Repression*, AMNESTY INT'L (Dec. 2, 2019), <https://www.amnesty.org/en/latest/news/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/>.

² Alex Malanga, *Row Convicts Win Big at Africa Court*, THE CITIZEN (Nov. 30, 2019) <https://www.thecitizen.co.tz/news/Row-convicts-win-big-at-Africa-court/1840340-5368026-231fl-hz/index.html>; African Court on Human and Peoples' Rights, *Contentious Matters*, <https://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#pending-cases> (last visited Jul. 12, 2020).

³ Peter Beaumont, *Tanzania President Magufuli Condemned for Authoritarian Regime*, THE GUARDIAN (Oct. 29, 2019), <https://www.theguardian.com/global-development/2019/oct/29/tanzania-president-magufuli-condemned-for-authoritarian-stance>.

nism for accountability and part of a larger endeavor to create a strong regional human rights apparatus in Africa, and Tanzania's decision to withdraw the right of individuals and CSOs to directly file claims only serves to limit access to the Court.

The Court is a regional human rights body meant to enforce and protect the rights laid out in the African Charter on Human and Peoples' Rights (the Charter).⁴ It was officially formed in 2004 and has jurisdiction over all claims, whether contentious or advisory.⁵ It also has jurisdiction over cases referred to it by the African Commission of Human and Peoples' Rights (the Commission) and by individuals and recognized CSOs.⁶ Tanzania's withdrawal and its aftereffects has revealed the frailty of the current system and represents a significant challenge to the Court's authority and legitimacy.

Tanzania's withdrawal of the right of individuals and CSOs to bring claims before the Court is part of a larger trend of resisting the Court's jurisdiction and ability to enforce human rights protections. The Court does not have jurisdiction over claims from all African states, and in fact, only thirty of the fifty-four African states have signed onto the Protocol establishing the Court.⁷ At the time of withdrawal, Tanzania was one of nine nations that recognized the Court's ability to directly receive cases from individuals and CSOs.⁸ Tanzania was only the second country, after Rwanda in 2016, to withdraw the rights of individuals and CSOs to directly access the Court.⁹ Complicating matters further, the Court itself is based in Tanzania. Tanzania's move to withdraw recognition of the Court's jurisdiction, while being

⁴ Organization of African Unity, *African Charter on Human and Peoples' Rights* (Banjul Charter), June 27, 1981, 1520 U.N.T.S. 217.

⁵ See African Court on Human and Peoples' Rights, *Welcome to the African Court*, <https://en.african-court.org/index.php/12-homepage1/1208-welcome-to-the-african-court1> (last visited Jul. 12, 2020).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Tanzania*, *supra* note 1.

the host nation of the Court itself, undermines its perceived authority and legitimacy.¹⁰ Consequently, shortly after Tanzania's withdrawal, Benin and Côte d'Ivoire both followed suit and withdrew the right of direct petition following decisions against them by the Court.¹¹ Tanzania's withdrawal, followed by Benin and Côte d'Ivoire, has created an existential crisis for the Court, as states have started restricting access to the Court in reaction to adverse decisions and increased accountability.

The withdrawal of the right to direct petition is also problematic in terms of general accessibility to the Court. The vast majority of cases heard by the Court come from direct petition, while referral by the Commission is very rare.¹² Referral requires that a case be brought to the Commission's attention through activist and CSO reports, and after review, the Commission must then decide to submit the case to the Court. Direct petition allows an individual or CSO to bypass the Commission's review and petition the Court themselves, and case numbers show that direct petition cases are more likely to be heard by the Court.¹³ Time and access to an impartial Court are important considerations when discussing human rights abuses, especially where there are severe abuses, and faster access to a court can prevent serious harm to endangered lives. Tanzania's decision to withdraw the right of direct petition slows the process and hinders access to the Court for its citizens and CSOs.

While Tanzania's withdrawal of direct petition has serious repercussions on the power of the Court, it also has grave implications on Tanzania's current political situation. Tanzania's decision to withdraw the right of individual complaints to the Court was preceded by

¹⁰ See *Tanzania*, *supra* note 1.

¹¹ *Benin and Côte D'ivoire to Withdraw Individual Access to African Court*, INT'L JUSTICE RES. CTR. (May 6, 2020), <https://ijrcenter.org/2020/05/06/benin-and-cote-divoire-to-withdraw-individual-access-to-african-court/>.

¹² African Court on Human and Peoples' Rights, Contentious Matters, <https://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#statistical-summary> (last visited Nov. 1, 2020).

¹³ See Beaumont, *supra* note 3.

concerning actions committed by the ruling party of the Tanzanian government.¹⁴ President Magufuli and CCM have been condemned by human rights groups as an authoritarian regime for suppressing opposition and stifling freedom of the press in Tanzania.¹⁵ This has taken the form of banning and suspending news sources and prosecuting journalists and activists for criticizing the government or promoting opposition politics.¹⁶ The suppression of the press and opposition parties will be of the utmost concern moving forward, as victims will no longer be able to directly petition to the Court once they have exhausted domestic court processes.

The actions of Tanzania's ruling party to suppress opposition serves as an important context when considering the decision to withdraw from the Court and the consequences the withdrawal will have on holding the ruling party accountable. The main opposition party, Chadema, refused to take part in the 2019 election after the ruling party implemented tactics of intimidation and suppression of political opponents, including police disruption of opposition meetings and protests, using violence against party opponents, and alleged disappearances and extrajudicial killings.¹⁷ The suppression of opposition activities also included denying opposition party members the ability to register in local elections by closing registration offices and tampering with registration applications.¹⁸ According to media sources, the ruling regime has also engaged in severe intimidation tactics and had the police engage in beatings,

¹⁴ See Beaumont, *supra* note 3.

¹⁵ Mia Swart, *Rights Groups Accuse Tanzania's Magufuli Over Rising Repression*, AL JAZEERA (Oct. 28, 2019), <https://www.aljazeera.com/news/2019/10/rights-groups-accuse-tanzania-magufuli-rising-repression-191027101530996.html>.

¹⁶ Oryem Nyeko et al, "As Long as I am Quiet, I am Safe": Threats to Independent Media and Civil Society in Tanzania, HUM. RTS. WATCH (Oct. 28, 2019), <https://www.hrw.org/report/2019/10/28/long-i-am-quiet-i-am-safe/threats-independent-media-and-civil-society-tanzania>.

¹⁷ *Tanzania's Opposition to Boycott Elections Over 'Cheating'*, AL JAZEERA (Nov. 8, 2019), <https://www.aljazeera.com/news/2019/11/tanzania-opposition-boycott-elections-cheating-191108102925136.html>.

¹⁸ *Id.*

kidnappings, and armed attacks on opposition activists and political opponents.¹⁹ These tactics effectively suppressed the ruling party's opposition, and it resulted in a landslide victory in the November 2019 election where President Magufuli and CCM won ninety-nine percent of the seats in parliament.²⁰ Since Tanzania withdrew recognition of the right of direct petition, there have been reports that these tactics of suppressing the media and political opponents were ramped up and repeated in the most recent election in October 2020.²¹ Tanzania's withdrawal of the right to direct petition came at a time when there were many allegations of human rights abuses, and the withdrawal serves to hinder accountability for these actions while simultaneously eroding the legitimacy and strength of the Court as a human rights mechanism.

In fact, many activists and rights groups have decried the worsening political conditions domestically and argued that Tanzania's withdrawal would likely lead to less accountability for the actions of the current regime and further embolden President Magufuli and the CCM ruling party.²² To this point, reports on the last election in October 2020 have already shown that President Magufuli and CCM have continued to attack the press and political opponents.²³ Given this backdrop of repression of journalism and political activism, the Tanzanian government has already shown a predilection for avoiding criticism and accountability.²⁴ Additionally, at the time of the withdrawal, the majority of the cases before the Court

¹⁹ US, UK Call Tanzania Elections 'Irregular, Lacking Credibility,' AL JAZEERA (Nov. 27, 2019), <https://www.aljazeera.com/news/2019/11/uk-call-tanzania-elections-irregular-lacking-credibility-191127160231437.html>.

²⁰ See *id.*

²¹ See *Tanzania: Freedoms Threatened Ahead of Elections: Authorities Crack Down on Opposition Parties, Rights Groups, Media*, HUMAN RIGHTS WATCH (Sept. 2, 2020), <https://www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections>.

²² See *Tanzania*, *supra* note 1.

²³ See *U.S. Cites 'Credible Allegations' of Fraud in Tanzania Election*, REUTERS (Oct. 29, 2020), <https://www.reuters.com/article/uk-tanzania-election-idUKKBN27E39Q>.

²⁴ See Swart, *supra* note 15.

against Tanzania involved violations of the right to a fair trial, which illustrates a systemic failure of their domestic courts to address human rights issues.²⁵ The withdrawal of the right of individuals and CSOs to bring claims to the Court effectively cripples the right of activists and CSOs to address human rights abuses as they can no longer petition to the Court after exhausting their domestic court options.

The African Court of Human and Peoples Rights was formed less than twenty years ago, and the aspiration was that its influence would be growing as it matures as a human rights mechanism. However, Tanzania's withdrawal of the right of individuals and CSOs to bring direct claims to the Court is a dangerous and concerning development for both the Court and Tanzania. As demonstrated by the subsequent withdrawal by both Benin and Côte d'Ivoire, the Court is facing a serious challenge to its jurisdiction and existence as regional human rights court. Regional human rights courts are important mechanisms for enforcing human rights protections as they have a legitimacy by being both international and local, which international human rights mechanisms often lack. The Court has the potential to be a strong and legitimizing regional human rights mechanism, but it must survive this unprecedented challenge to its authority and legitimacy. For that to happen, the African Commission on Human and Peoples Rights must endeavor to strengthen the Court and improve access to the Court by increasing the number of cases it refers. Additionally, the Commission and other international human rights institutions must intensely monitor the Tanzanian government and prevent further human rights abuses. The survival of the African Court of Human and Peoples Rights will rely on the strength of the African regional human rights system, and its ability to handle this current crisis.

²⁵ See *Tanzania*, *supra* note 1.