



## **PRESS STATEMENT ON TANZANIA'S WITHDRAWAL FROM THE DECLARATION ALLOWING CITIZENS AND CIVIL SOCIETY ORGANISATIONS TO DIRECTLY FILE COMPLAINTS TO THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

### **1.0 Introduction.**

Tanzanian Human Rights Defenders Coalition (THRDC) together with the Legal and Human Rights Centre (LHRC) are greatly saddened and disappointed by the withdrawal of the Government United Republic of Tanzania from the Declaration that allows citizens and Civil Society Organizations to directly file complaints before the African Court on Human and Peoples Rights.

According to the Notice given and signed by the Minister of Foreign Affairs and East African Cooperation, Professor Palamagamba Kabudi, Tanzania has decided to withdraw from the declaration it had made following the use of the declaration contrary to the reservations made by Tanzania. However, the only reservations that Tanzania had made for individuals and CSOs to access the court is to ensure they exhaust all local remedies before approaching the said court.

The Declaration has been fully complied with and where petitioners fail to comply, State Attorneys have been always putting objections to those cases. We therefore believe that this reason cannot suffice to warrant the government of Tanzania to withdraw the declaration. It is worth remembering that on 22nd November 2019, The African Commission on Human and Peoples Rights issued a statement condemning the government of Tanzania on the deteriorating situation of human rights in Tanzania and therefore Tanzania's withdrawal depicts a picture of escaping the obligation to improve human rights protection.

The News on Tanzania's withdrawal has also been verified by the Minister of Constitutional and Legal Affairs, Ambassador Augustine Mahiga who insisted that Tanzania has not withdrawn from working with the African Court she has only withdrawn the declaration allowing citizens and Civil Society Organizations to directly file complaints to the African Court. When interviewed by Watetezi TV, the Minister of Foreign affairs and East African cooperation, Professor Kabudi

explained that the information/explanation given by the Minister of Constitutional and Legal Affairs is true and it is the stance for now.

Dear journalists, you should all know that, the African Court on Human and Peoples' Rights was established in pursuant to Article 1 of the Protocol to the African Charter on Human and Peoples' Rights. The establishment of the Court is the continuation of the efforts to enhance security and the advocacy of Human Rights being done by the African Commission on Human and Peoples' Rights. The Court's headquarters is in Arusha City in Tanzania.

## **2.0. About the declaration allowing Citizens and Civil Society Organizations to directly file complaints to the African Court.**

Article 34(6) of the protocol for establishment of an African Court on Human and Peoples Rights states that: "At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration."

Article 5 of the Protocol further explains who may Access the Court and is hereby in Article 5(3) states that; "The Court may entitle relevant Non-Governmental Organizations (NGOs) with Observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol."

The Protocol for the Establishment of the African Court on Human and Peoples' Rights has no specific time frame on which a State Party can withdraw from the Declaration it had made. However, the African Court on Human and Peoples' Rights deliberated on the issue in the case of *Ingabire Victoire Umuhoza Versus Rwanda* where one of the issues discussed in the case was the jurisdiction of the Court to hear cases on withdrawal of a country from the declaration made, the legality of withdrawal, implications of withdrawal and the importance of giving information/notice of withdrawal in her decision on the notice of withdrawal and specific time of withdrawal.

Discussing the importance of giving notice and time to give notice, the African Court on Human and Peoples' Rights gave examples from the American Convention for Human Rights and Article

56(2) of the Vienna convention where prerequisites of withdrawal include the respective Country filing a One Year notice. Therefore, considering the Notice signed by the Minister of Foreign Affairs and East African Cooperation, Professor Palamagamba John Kabudi on 14<sup>th</sup> November 2019, the United Republic of Tanzania will be considered to have officially withdrawn on 14<sup>th</sup> November 2020 in which case the one-year notice will have expired. Also in the above mentioned case, the Court explained that it will continue having jurisdiction to hear and decide all pending cases as the law does not operate retrospectively (the principle of legal-retroactivity). Hence all cases before the Court will continue until they are finalized.

### **3.0. Reasons for Withdrawal**

As previously explained, Tanzania has withdrawn from the Declaration it had made to allow Citizens and CSOs to file complaints before the African Court under the allegations that the Declaration is being used contrary to the Reservations made by Tanzania while signing of the declaration. However, the beneficiaries of the declaration have not been engaged before the decision to withdraw was made.

Withdrawing without involving stakeholders/beneficiaries of the declaration has resulted into mixed opinions given the fact that the reservations made were all complied by stakeholders and therefore no tangible justification for withdrawal. It is also unknown as to how the government involved stakeholders in the discussion so as to resolve the defects that have caused the violation of the reservations made by the Government of the United Republic of Tanzania when it signed the Declaration to the Protocol on the Establishment of the African Court on Human and Peoples' Rights. We believe that, if the Government had involved stakeholders, we could have had a much better solution apart from withdrawal.

### **4.0 The History of the Country's Withdrawal from the Declaration allowing Citizens and CSOs to file complaint to the African Court**

Tanzania is now the second country to withdraw after Rwanda's withdrawal in 29<sup>th</sup> February 2016. History Show that nations withdrawing from the declaration have been condemned for the violations of human rights being made in their country. To this moment, there are 70 incomplete cases from Tanzania that were filed to the Court by both Organizations and individual Citizens.

Also, among 62 cases decided by the African Court, 32 of them were filed against the Government Tanzania by both her Non-Governmental Organizations and Citizens. Tanzania is followed by Rwanda where 10 cases out of the 62 were decided by the African Court ( for more information visit <http://en.african-Court.org/index.php/cases/2016-10-17-16-18-21#finalised-cases>). Further, among 172 currently pending cases in the Court, 105 originate from Tanzania whereas 70 of the cases were filed by CSOs and Citizens and 33 were filed by States, Civil Society Organizations and Citizens from other Countries (for more information please visit: <http://en.african-Court.org/index.php/cases/2016-10-17-16-18-21#pending-cases>). This clearly shows how Tanzania has been condemned for Violation of Human Rights. Also the Press Statement by the African Commission on Human and Peoples Rights on the decline in the state of human rights in the country is another indicator of the violation of Human Rights in the Country.

History also shows that Tanzania has been ignoring the decisions made by the African Court on Human and Peoples' Rights which raises questions as to whether our Country ratified the Declaration to the Protocol for the Establishment of the Court in good faith. Some of the decisions made by the Court have not been implemented to this day these include the decision on the case of independent candidate that was filed by the Legal and Human Rights Centre, Tanganyika Law Society and the Late Christopher Mtikila; the case against Death Penalty and many other cases (For more Information Visit: <http://en.african Court.org/index.php/cases/2016-10-17-16-18-21#finalised-cases>).

### **5.0 Implications of the Withdrawal**

Apart from Civil Society Organizations and Citizens' being denied direct access to the Court, there will be disturbances and delays in individuals and CSOS' access to the Court though the Commission on Human and Peoples' rights which has its headquarters in Banjul, The Gambia. Citizens will be deprived their right of appeal after failing to get justice in the local courts.

Tanzania's withdrawal also brings a bad picture nationally and internationally considering that we are the host of the Court hence we are supposed to lead by example. It is also clear that, the violation of Human Rights has been progressing in the nation and it might continue progressing especially due to CSOs and Citizens being denied opportunity for easy and affordable access to the Court which is located in the country.

Statistics shows that a lot of that have been filed in the African Court were filed by Tanzanians and it is because for them it was easier to access the court. Withdrawal by Tanzania means the court will now lack a lot of cases to handle and hence leading to misuse of resources without benefiting Tanzanians.

#### **6.0. Our Call**

1. We urge the Government of the United Republic of Tanzania to reconsider its decision to withdraw and if possible, revoke its decision as withdrawal brings a bad picture and denies Citizens and CSOs opportunity to access the Court to get their rights easily and affordably.
2. The Government to involve Stakeholders on discussions so as to resolve together the challenges that have arisen that have led to the violation of the reservations (if available) made by Tanzania when it signed the declaration allowing Citizens and CSOs to directly file complaints to the Court.
3. We beseech the Government of the United Republic of Tanzania to implement the decisions made by the African Court on Human and Peoples' Rights in good faith in order to maintain its reputation as a host of the Court.
4. We urge Civil Society Organizations and Citizens to continue using the African Commission on Human and Peoples' Rights as well as the East African Court of Justice to file their complaints where they see violations of their rights. Also they should use the one-year notice period to claim their rights in the African Court on Human and People's Rights.
5. We as Civil Society Organizations think that it high time for African Union (AU) to remove the mandate given to a nation to make a declaration allowing citizens and CSOs to file complaints before the African Court since the said requirement denies citizens of African Countries their right to demand their rights before the Court that was established for them.

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