

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The Matter of

Bahati Mtega and Flowin Mtweve v. Tanzania

Application No. 009/2019

Judgment of 26 June 2025

Joint Separate Opinion of Judge Suzanne Mengue and Judge Blaise Tchikaya

1. The African Court has considered decisions by which Tanzanian courts sentenced Messrs *Bahati Mtega and Flowin Mtweve* to life imprisonment¹ and flogging.²
2. Clearly, there is nothing ambiguous about flogging, *a priori*. The same can however not be said of life imprisonment. This penalty, which is the subject of our opinion, has various definitions, the most widely accepted of which is:

Life imprisonment is a sentence imposed following a conviction that authorises the State to detain a person for life, that is, until they die.³
3. On 22 March 2019, *Mr Bahati* and *Mr Mtweve*, convicted of gang rape, brought their case before this Court. They had been arrested on 26 October 2010 and found guilty by the Ludewa District Court on 2 September 2013. They were each sentenced to life imprisonment and 12 strokes of the cane. On 14 February 2014, the unfortunate men appealed the judgment before

¹ AfCHPR, *Bahati Mtega and Flowin Mtweve v. Tanzania*, 26 June 2025

² The Court has ruled on flogging as a criminal sanction on several occasions.

³ Zyl Smit (Dirk V.) and Appleton (Dr. Cath.), *Life Imprisonment: A Global Human Rights Analysis*, Harvard University Press, 2018.

the High Court of Tanzania which, by judgment of 18 September 2015, upheld the decision of the trial court.

4. The case brought before this Court immediately raises two issues that were the object of the Court's attention, namely, the legal regime applicable to flogging⁴ as a criminal sanction, on the one hand, and the determination of the law applicable to life imprisonment, on the other. This issue arose as early as in 2023 during deliberations on provisional measures. While both applicants were sentenced to life imprisonment and 15 strokes of the cane, the Court, in its ruling on provisional measures, held that:

There is also no indication of the irreparable harm that the Applicants are likely to suffer if no order for provisional measures is issued. The Applicants have simply made a request for provisional measures without substantiating it.⁵

5. In the Court's view, it was understood that applying the said sanction entailed neither urgency nor risk. This was partially demonstrated by subsequent proceedings and the judgment on the merits. While the Court disavowed flogging,⁶ it did not rule on the question of life sentences.
6. For reasons confirmed by international human rights law, the Court should have outlawed life imprisonment. It should, as in the related issue of the death penalty, mobilise all its critical and praetorian resources.
7. In the *Bahati Mtega and Flowin Mtweve* case, the Applicants, aggrieved by the sentence imposed by domestic courts, requested that it be vacated (I.).

⁴ An issue on which this Court has already ruled. See, in particular, AfCHPR, *Kabalabala Kadumbagula and another v. Tanzania*, 4 June 2017 and Judgment of 4 June 2024.

⁵ AfCHPR, Orders for provisional measures, *Bahati Mtega and Flowin Mtweve v. Tanzania*, 26 July 2023.

⁶ AfCHPR, *Judgment* of 26 July 2025, Point vi of the operative part, the Court "Holds that the Respondent State violated the Applicants' right to dignity as provided in Article 5 of the Charter by maintaining corporal punishment in its criminal laws" In point xii: "Orders the Respondent State to set aside the sentence of 12 strokes of the cane imposed on the Applicants".

The Court also had at its disposal a significant normative and jurisprudential fund to outlaw life imprisonment for being contrary to human rights (II).

I. The Applicants' contestation of life imprisonment

8. The Applicants reject the life imprisonment sentence on the grounds that it is an attack on their dignity. In their Application filed on 22 March 2019, the Applicants allege that the Respondent State violated their right to respect for the dignity inherent in a human being and to the recognition of their legal status. Invoking Article 5 of the African Charter, they challenged the flawed proceedings before domestic courts.
9. These breaches, they contended, led to their being found guilty and to the life sentence imposed on them. In its judgment, the Court framed this rather unusually.⁷
10. Messrs *Bahati and Mtwewe* alleged in support of their case that their inherent human rights were violated. Paragraphs 15 and 16 of the judgment are instructive in terms of how the Applicants argued for the rejection of the life sentence imposed on them. They maintain that the Respondent State violated:

The right to equality before the law and to equal protection of the law under Article 3 of the Charter.⁸

11. In addition, as reparation, they sought the setting aside⁹ of:

⁷ AfCHPR, *above-mentioned judgment*, § 91: "The Court notes that it has not established any violations relating to the conviction and sentence of the Applicants except in so far as concerns the question of corporal punishment and access to free legal assistance. These violations, in the Court's assessment, do not vitiate the findings reached by the domestic courts in relation to the guilt of the Applicants". While the idea is clear, it could have been framed differently.

⁸ AfCHPR, *Bahati Mtega and Flowin Mtwewe v. Tanzania*, 26 June 2025, cited above, §§ 15 and 17.

⁹ AfCHPR, *Alex Thomas v. Tanzania*, 4 July 2019: it is established that the Court may only order release in exceptional and compelling circumstances.

The sentences of life imprisonment in jail and twelve (12) strokes of the cane [...] payment of reparations [...] on account of the loss in their dignity [...] that the Respondent is ordered to amend its laws to ensure respect for dignity.¹⁰

12. The Applicants' arguments align with current human rights principles on life imprisonment, which principles espouse a certain perception of human rights in dignity and utmost respect for life, as proclaimed at the birth of this right in the wake of World War II. This is a new regime, that of international human rights law.¹¹
13. The denunciation of life imprisonment goes beyond the legalistic and internalist one found in its judgment of 28 September 2017 in the matter of *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. Tanzania*. . The applicants claimed that the criminal provision¹² did not have sufficient constitutional scope to be applied against them. The Court did not agree with them.
14. In this regard, the Court adopted a rather unusual approach in its judgment of 26 September 2019 in the matter of *Benedicto Daniel Mallya v. Tanzania*. It took a rather peculiar position insofar as it took judicial notice of the existence of the life sentence and of its application but failed to make a pronouncement as to its validity. No doubt the Court expected the applicant to have contested the sentence before ruling on it. However, it is well-known that *ultra petita* does not exist in human rights jurisdiction,¹³ which is always

¹⁰ *Ibid.*, paras. 15 and 17.

¹¹ The Universal Declaration of Human Rights was adopted on 10 December 1948 by the Member States of the UN General Assembly in the famous Resolution 217 A (III). One of its main objectives, inspired by the end of World War II, was the dignity of human life and its preservation. See Cassin (R.), *La déclaration universelle et la mise en œuvre des droits de l'homme* (The Universal Declaration and the Implementation of Human Rights), *RCADI*, 1951, pp. 237 et seq.; see also, by the same author, *Droits de l'Homme et méthode comparative* (Human Rights and Comparative Method), *Revue internationale de droit comparé*, 1968, pp. 449.

¹² Under Article 286 of the Penal Code, anyone found guilty of armed robbery is liable to life imprisonment, with or without corporal punishment.

¹³ There is no *a priori* restriction on the decision of a human rights court once its jurisdiction has been established. This case has a sequel in the Court's judgment of 2 December 2021 in the matter of *Robert Richard v. Tanzania*. A Tanzanian national who was imprisoned after being convicted of sodomy and sentenced to life imprisonment. Although the applicant appealed against the violation of his right to be tried within a reasonable time, it was only on this last ground that the State was ordered to pay

full jurisdiction, as emphasised in Article 27(1) of the Protocol establishing the Court, which provides:

1. If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation [...].

15. In *Dexter Eddie Johnson v. Ghana*,¹⁴ it is surprising to read that the applicant requested the Court to:

Order the Respondent to take immediate steps to effect the prompt substitution of the Applicant's sentence of death with a sentence of life imprisonment or such other non-capital sentence [...].

16. The case did not have the expected outcome, as it ended without going into the merits. The Court considered that the application did not meet the admissibility criteria¹⁵ and therefore did not rule on one of the issues of concern raised in the application, namely, life imprisonment.

17. In *Chrizostom Benyoma v. Republic of Tanzania*,¹⁶ the applicant unambiguously requested the Court to:

Restore justice where it was overlooked and quash both conviction and sentence imposed upon him and set him at liberty and that he be granted reparation [...].

18. Following his confession, the applicant was found guilty of rape and sentenced to life imprisonment. This is one of the cases that illustrate the Court's repeated silence on life sentences. This is further illustrated in the

compensation. The Court concluded that the Respondent State violated the applicant's right to be tried within a reasonable time, as protected by Article 7(1)(d) of the Charter (§ 50), leaving the important issue of life imprisonment unresolved.

¹⁴AfCHPR, *Dexter Eddie Johnson v. Ghana*, 28 March 2019.

¹⁵AfCHPR, *Dexter Johnson v. Ghana*, 28 March 2019.

¹⁶AfCHPR, *Chrizostom Benyoma v. United Republic of Tanzania*, 30 September 2021.

matter of *Amini Juma v. the United Republic of Tanzania*,¹⁷ in which the applicant was found guilty and sentenced to life imprisonment on 18 September 2008. The applicant's appeal was rejected on 17 October 2011, and his life sentence was replaced with a death sentence by hanging.

19. It should be noted that both life imprisonment and death penalty are now prohibited under international human rights law.

II. Outlawing life imprisonment as contrary to the protection of human rights

20. Through increasingly clear and insistent jurisprudence, human rights outlaw life imprisonment without parole. The current tacit position of this Court is therefore indefensible.
21. National criminal courts resort to life imprisonment without parole as a replacement for the death penalty, which has already been declared unlawful. This means that the convicted person is kept alive, but deprived of any human existence, that is, deprived of all human rights, including the right to life. This approach is unacceptable, as demonstrated by developments in the protection of human rights.
22. The Court may draw on the precedent set the European Court of Human Rights (ECHR) in the matter of *Pierre Bodein v. France* in which, for a moment, it was thought that the European Court of Human Rights (ECHR) would capitulate to life imprisonment. Believing that his 2007 conviction violated the European Convention on Human Rights, Mr. Bodein, nicknamed Pierrot le fou,¹⁸ appealed the conviction before the ECHR.¹⁹

¹⁷ AfCHPR, *Amini Juma v. United Republic of Tanzania*, Order on provisional measures, 3 June 2016; merits, 30 September 2021.

¹⁸ His real name is *Pierre Bodein*, a French serial killer born in 1947 in Obernai. His criminal record shows seven convictions, including three by Assizes court, notably for violent rape. The Strasbourg Assize Court in France believed it could sentence him in 2007 to life imprisonment without the possibility of parole. It is this sentence that the European judge will question.

¹⁹ He also complained about the lack of reasoning in the Court of Assizes' ruling.

23. However, in the last sentence of paragraph 61 of its decision, the European court ruled that:

French law offers a possibility of review of life imprisonment, which is sufficient in view of the States' margin of appreciation in this area.²⁰

24. In the last sentence of the grounds for its decision in paragraph 61, it stated as follows:

The Court concludes that this possibility of review of life imprisonment is sufficient to consider that the sentence imposed on the applicant is compressible for the purposes of Article 3 of the Convention.²¹

25. It now seems natural for international courts to endeavour to lay bare the fact that life imprisonment as a sentence is socially ineffective. Doing so effectively preserves the right to life. As Yannick Lecuyer opines:

This particular sentence, which now seems to be accepted [...] nevertheless raises many difficulties, both in terms of its foundations, its pronouncement, its execution [...] and, above all, its effectiveness.²²

26. This Court should update its jurisprudence on this point. It cannot reasonably fail to consider what clearly constitutes a violation of human rights, namely, the imposition of a life sentence by a judge. It should be remembered that life imprisonment without parole is a sentence that violates human dignity and the right to life. The absence of a time-limit on a sentence also violates the same right. In this regard, Article 3 of the European Convention is eloquent: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

²⁰ The ECHR had emphasised that it accepted the life sentence, provided that it left open the "possibility of release" and the "possibility of review", ECHR, *Bodein v. France*, 13 November 2014

²¹ *Ibid*, § 61.

²² Lecuyer (Y.), *La perpétuité perpétuelle - Réflexions sur la réclusion criminelle à perpétuité*, Ed. PUR, 2012, 200 p; See also Bérard (J.), *L'autre peine de mort, La perpétuité incompressible et la lutte contre le terrorisme*, Cairn – *Sciences humaines et sociales*, pp. 85 et seq.

27. On 9 July 2013, the European Court condemned the *United Kingdom* for its legislation on life imprisonment, finding it incompatible with Article 3 of the European Convention on Human Rights.²³ It ruled that “there must be a possibility of release and a possibility of review”.
28. It follows that any sentence of this nature in the Council of Europe system will be unlawful.
29. This explains the meticulous reasoning of the ECHR in *the 2023 case of Horion v. Belgium*²⁴, in which the applicant, who had been in detention since 1979, was sentenced to life imprisonment in 1981 for five murders committed during a robbery. In its judgment, the Court unanimously found that there had been a violation of Article 3 of the European Convention insofar as, as far back as January 2018, psychiatrists and domestic courts had agreed that the applicant’s continued imprisonment was no longer justified from the point of view of public safety, resocialisation and reintegration.
30. In the judgment, the European Court held that States must always afford prisoners the possibility of redemption, a tangible and dignified opportunity to make amends. For, it is essential that a sentence demonstrate its social utility and be consistent with human dignity within the meaning of Article 5 of the African Charter, which provides:

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.

²³ ECHR, *Vinter and Others v. the United Kingdom*, 9 July 2013.

²⁴ ECHR, *Horion v. Belgium*, 9 May 2023, See Paragraph 75 of the judgment states that: “ [...] the Court considers that the impasse in which the applicant has found himself for several years, resulting from the practical impossibility of placing him in a forensic psychiatric unit when his detention in prison is no longer appropriate according to the domestic authorities, means that he currently has no realistic prospect of release, which is prohibited by Article 3 of the Convention. The sentences imposed, in particular those of life imprisonment, must be examined by this Court.

31. Sentences imposed by national courts, particularly those involving life imprisonment, should be reviewed by this Court. The Court's silence could be interpreted as endorsing these sentences, which are already considered a violation of human rights.
32. It should be noted that the Inter-American system has similar provisions requiring social rehabilitation and review of life imprisonment sentences. Article 5 of the *Inter-American Convention on the Right to Integrity of the Person* states:
1. Every person has the right to have his physical, mental, and moral integrity respected.
 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.²⁵
33. Life imprisonment is a punishment that combines torture and cruel, inhuman and degrading treatment and, therefore, is an attack on human dignity. The individual is deprived of all hope and has no prospects for the future, attributes that are essential to life.
34. By refusing to examine life imprisonment, the Court in *the Bahati Mtega and Flowin Mtweve case* failed to give full weight to the right to hope, which is already recognised as a means of preserving human rights. The ECHR, in particular, has recognised a "right to hope" for prisoners. This right safeguard "a fundamental aspect of their humanity".²⁶ A life sentence without hope of release constitutes inhuman and degrading practice and therefore contravenes Article 3 of the European Convention on Human Rights. The Strasbourg Court also emphasised the importance of rehabilitation among the objectives of imprisonment.

²⁵ *Inter-American Convention on Human Rights*, San José, Costa Rica, 22 November 1969, see Article 5.

²⁶ ECHR, *Vinter and Others v. the United Kingdom*, *supra*.

35. Similarly, Inter-American human rights law further castigates life imprisonment by upholding the principle that:

Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.²⁷

36. In a way, therefore, human rights come into play to shape criminal law. This is a well-known issue, although it falls within the remit of judges, who are responsible for striking a balance.²⁸

37. Moreover, recent developments in international criminal law reflect a restrictive approach to life imprisonment for serious crimes. Article 110(3) of the *Rome Statute of the International Criminal Court* (17 July 1998) provides a framework for life imprisonment. It should be noted that when a person has served two-thirds of their life sentence, a mandatory review of the sentence is required to determine whether it should be reduced.²⁹ This circumstance therefore adds to the life sentence referred to in Article 77 of the Statute of the International Criminal Court.³⁰ There is no such thing as true life imprisonment. All life sentences are subject to possible reduction *ipso jure*.

38. Life imprisonment without parole violates human rights. The Court should sanction it. With all due respect to the Honourable Judges, it is on the basis of this conviction that we submit the present opinion.

²⁷ Inter-American Convention on Human Rights, Article 5(6).

²⁸ Van de Kerchove (M.), *Les caractères et les fonctions de la peine, nœud gordien des relations entre droit pénal et droits de l'homme*, in *Les droits de l'homme, bouclier ou épée du droit pénal ?* Ed. PUSL, pp. 337-361.

²⁹ *Statute of the International Criminal Court*, Article 110, “2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person. 3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time”.

³⁰ Article 77 on Applicable Sentences “Subject to article 110, the Court may impose one of the following penalties on a person [...]: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.”.

Done at Arusha, this twenty-sixth day of June in the year two thousand and twenty-five, in English and French, the French text being authoritative.



Suzanne Mengue, Judge



Blaise Tchikaya, Judge

