



THE CASE OF GEORGE PETER MWANZA & ANOTHER V THE ATTORNEY GENERAL

An Exploration of the Relevance of
International Human Rights Law in
National and Local Courts in
Commonwealth Countries.

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Upholding Dignity: Human Rights and International Law in Focus



- This presentation explores a critical intersection: the relevance of International Human Rights Law in safeguarding fundamental human rights in national and local courts within Commonwealth countries.
 - The case of ***George Peter Mwanza & Another v The Attorney General*** serves as a paragon of the use of international human rights legal principles to address human rights concerns within the Zambian context as a commonwealth law country.
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- The presentation will give a background to the case, outlining the facts and issues the courts were called to determine, critically examining how the right to life, interpreted broadly to include a dignified existence with access to essential resources like nutrition, is a cornerstone of international human rights standards.
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- Furthermore, we will see how courts, both nationally and internationally, are increasingly referencing and applying these standards to ensure the humane treatment and well-being of individuals, particularly vulnerable populations like prisoners.
- Understanding this connection is crucial for appreciating the ongoing evolution of human rights protection and the mechanisms available to ensure accountability and justice.

In this case, the Court was tasked with establishing whether the prisoners' right to a dignified life had been negated



- The case was **commenced in the High Court of Zambia by way of Petition** and which court holds original jurisdiction for matters involving the violation of human rights. The facts as presented were that **the two Petitioners were incarcerated** for different offences and found themselves **at the Lusaka Central Prison** serving jail terms.
- At the prison, **they had access to Ante-Retroviral Therapy**, which **requires a balanced diet to assist in recovery due to the effects of the medication**, which would cause drowsiness and weakness once ingested. The prisoners were fed on a diet of beans, anchovies and maize meal which did not constitute a balanced diet which is essential for recovery.



- The **prison facility was extremely congested**, with prison cells **designed for 15 people often holding up to 50 people**, making it impossible for the Petitioners to sleep as they would have to stand the entire night. Further, they **did not have adequate ablution facilities**, and neither was there adequate ventilation in the packed cells.
- These conditions they were exposed to pose a **threat to their right to life** and a violation of their right to **freedom from inhuman and degrading treatment**. The High Court dismissed the Petition for lack of merit as it found that the rights sought to be protected were not justiciable within Zambia. Desolate with the decision of the High Court, **the petitioners appealed to the Supreme Court** against the decision of the High Court.

This case has set a pivotal precedent for dealing with the health and safety of prisoners



Issues before the Supreme Court

1. Whether economic, social, and cultural rights are directly enforceable or only relevant to civil and political rights;
2. Another key question was whether the prisoners' rights to life and protection from inhuman treatment were violated; and
3. The Court also needed to determine the justiciability of the claimed rights, especially those linked to public policy goals.

This case has set a pivotal precedent for the expansive interpretation of civil and political rights

The Supreme Court's decision



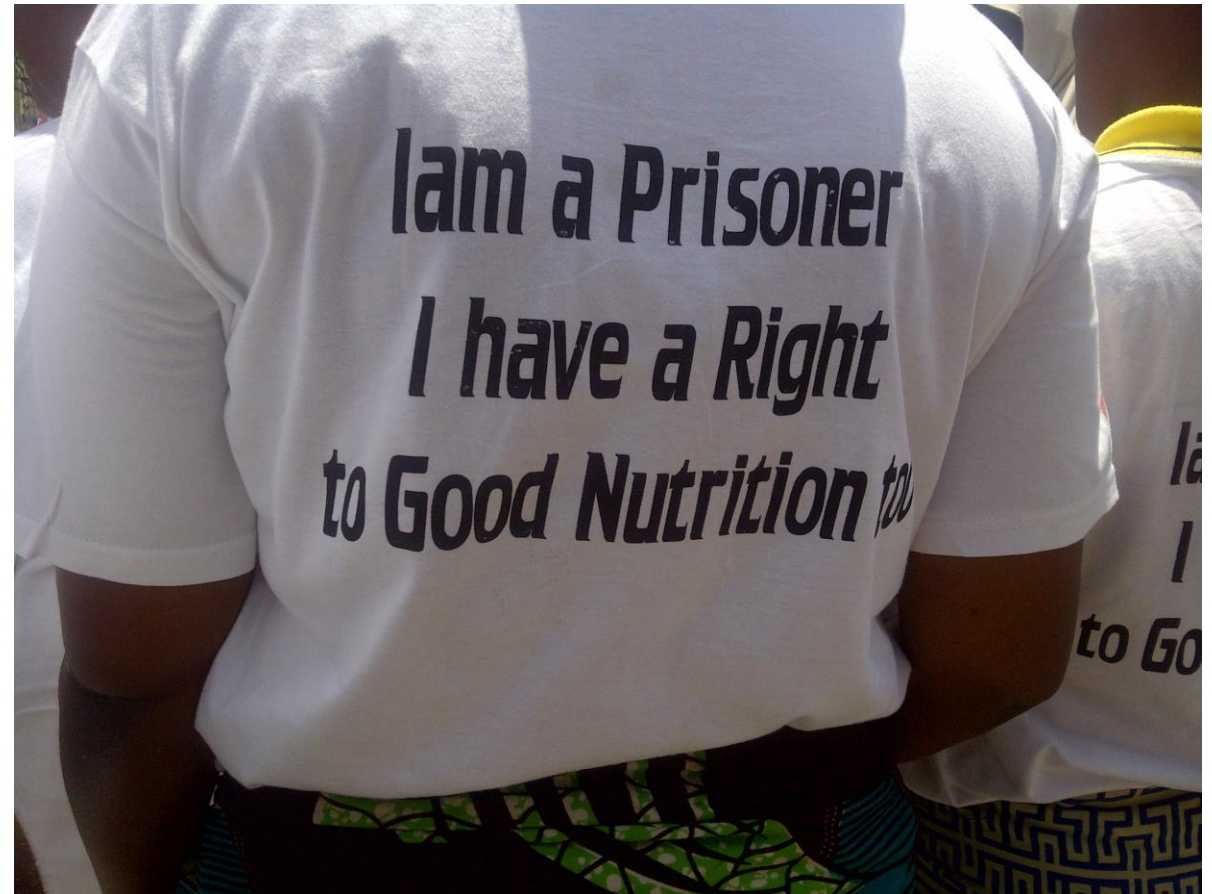
- The Supreme Court took note and account of General Comment Number 9 of the Committee of Economic, Social, and Cultural Rights, which is in favour of the justifiability of economic, social and cultural rights. The Supreme Court further noted that the justiciability of economic, social and cultural rights is achieved through direct application or indirectly through civil and political rights. In the George Peter Mwanza case, the courts applied the indirect approach through a liberal interpretation of civil and political rights.
- Through the use of various decisions within the Commonwealth that have been liberally interpreted to expand civil and political rights. The **court found that there was a violation of the right to life under Article 12 of the Constitution of Zambia through the failure to provide a balanced diet to the petitioners** and that the conditions exposed to the petitioners in the prisons **amounted to inhuman and degrading treatment** in violation of **Article 15 of the Constitution**.
- On appeal, the Appellants raised 3 grounds of appeal to the Supreme Court seeking to upset the judgment of the High Court. The Supreme Court framed the issue for determination in the appeal as to whether it could adjudicate on economic, social and cultural rights in a dualist state or whether the court could call in aid the economic social and cultural rights in interpreting civil and political rights.
- The Supreme Court **observed that the rights that were violated were second-generation rights**, but **ultimately led to a violation of the first-generation rights**. Put in other words, the first-generation rights (civil and political rights) were violated through the non observance of a second generation right (economic, social and cultural).

The Supreme Court emphasized the need to decongest prisons within the country and protect prisoners from inhuman and degrading treatment

In line with the Supreme Court's finding, it ordered the government to allocate more resources to the prisons to enable them provide a balance diet to prisoners and also increase their rations.

The Supreme Court acknowledged the overpopulation of prisons and ordered the decongestion of all prisons within the country to enable them to provide sanitary conditions to prisoners.

The conditions that the prisoners were exposed to violated their **right to protection** from inhuman and degrading treatment under **Article 15 of the Constitution of Zambia**.





In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions...while the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions.



**GENERAL COMMENT NUMBER 9 OF THE COMMITTEE
ON ECONOMIC SOCIAL AND CULTURAL RIGHTS**

Comparative jurisprudence the Supreme Court noted from the commonwealth

Francis Mullin v Administrator of the Union Territory of Delhi

This case **catered on the rights of detainees and the interpretation of the right to life** under Article 21 of the Indian Constitution. The Supreme Court on India expanded the scope of this fundamental right, **emphasising that the right to life is not limited to mere physical survival or "animal existence."** Instead, it **encompasses the right to live with dignity and all the essentials** that make life meaningful and worth living.

The Supreme Court highlighted that **even detainees under preventive detention are entitled to humane treatment and a dignified life.** This includes the right to **adequate nutrition, shelter, clothing and facilities for reading and expressing oneself.**

Olga Tellis v Bombay Municipal Corporation

This case is a landmark judgment in Indian constitutional law, particularly relating to the rights of pavement dwellers and the interpretation of the right to life under Article 21 of the Indian Constitution. The Supreme Court of India headed by the Chief Justice Y.V. Chandrachud, found that the right to life under Article 21 encompasses the right to a livelihood. The court recognized that the pavement dwellers lived on the streets out of necessity and that evicting them without providing alternative accommodation would deprive them of their means of livelihood, thereby violating their fundamental rights.

The judgment emphasized that the state must balance its duty to protect public land with the need to safeguard the rights of vulnerable populations. It also established that the right to life is not limited to mere survival but includes the right to live with dignity.

Comparative jurisprudence the Supreme Court noted in the commonwealth

Taito Rarasea v. The State (2000)

This case is a notable judgment from Fiji, addressing issues related to escaping lawful custody and the treatment of prisoners. The High Court of Fiji upheld the sentence for escaping custody, emphasizing the seriousness of the offence. However, the court examined the constitutional implications of the sanctions under Section 25(1), which guarantees freedom from torture and cruel treatment. The court found that certain sanctions, such as **reduced rations**, were inconsistent with the constitutional obligation to treat prisoners humanely and with dignity.

Sauhoyamaxe Indigenous Communities v. Paraguay

In 2006, the Inter-American Court ruled that Paraguay had violated multiple rights of the Sauhoyamaxe Community, including: the right to property, the right to life and the right to recognition before the law. The court ordered Paraguay to: return ancestral land to the community within 3 years; Provide compensation for damages and establish a fund; Deliver basic goods and services until the land was restituted; and Publicize the judgement for accountability. This case underscored the importance of protecting indigenous rights and holding states accountable for violations of international human rights standards.

Comparative jurisprudence the Supreme Court took note of in the commonwealth

**Dr. Mohiuddin Farooque
v. Bangladesh and Others**

The Supreme Court of Bangladesh, in this matter, provided negative protection against inadequate food products that posed a threat to life. In construing the constitutional clause dealing with the right to life, the court held that the government should remove threats posed by consignments of powdered milk which exhibited traces of radiation above the accepted limits. In its holding, the court found that the right to life includes the protection of health and normal longevity and these can be threatened by the consumption of food and drink injurious to health.

In the case of *Mwanza and Another v Attorney General* the Court took a liberal interpretation to find that the right to life was violated by the failure to provide a balanced diet for prisoners living with HIV/AIDS and further that the same amounted to inhumane and degrading treatment

The issue of the right to life going beyond mere physical existence has been provided for in various treaty documents

The Universal Declaration of Human Rights

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Economic, Social and Cultural Rights

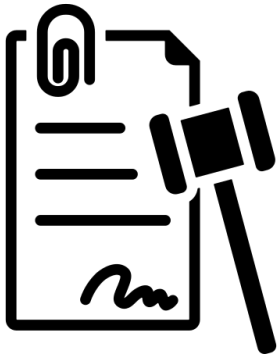
Article 11 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing, to this effect, the essential importance of international cooperation based on free consent.

The Supreme Court emphasized the need to decongest prisons within the country and protect prisoners from inhuman and degrading treatment



Verdict

1. The Supreme Court found that the failure to provide a balanced diet to HIV/AIDS prisoners was a violation of the right to life.
2. The Supreme Court found that the conditions of congestion, lack of ventilation and suitable ablution facilities constituted a violation of the right to protection from inhuman and degrading treatment.



Court Orders

1. Allocation of more resources from the national treasury to prisons to enable the correctional facilities to provide a balanced diet for prisoners in general, in accordance with the schedule under the prison rules.
2. Decongestion of prisons over a specified period, to be monitored by the courts.

Thank you!