

Exchange Program between Judges / Prosecutors from Germany and Tanzania

Verena Alexander / Silke Benner / Eike Fesefeldt / Evelyn Oltmanns / Melanie Rischke

I. Introduction

As part of an exchange program between the German state of Baden-Württemberg and East African states (so far Burundi, the Democratic Republic of Kongo, Rwanda and Tanzania), five lawyers from Stuttgart visited Tanzania in March 2019. This special exchange program offers the unique chance of meeting colleagues from another continent and jurisdiction. It is funded by the Baden-Württemberg State Government and organized by the *Stiftung Entwicklungs-Zusammenarbeit Baden-Württemberg (SEZ)* under the leadership of Professor Dr *Hartmut Hamann*.

This exchange follows the idea that a direct and professional exchange ensures a better understanding of the other legal system. In particular, the project aims for a professional exchange about questions concerned with an independent and efficient judiciary. The participating lawyers shall further develop their horizon and built a professional network that simplifies the exchange of information and experience. The exchange was conducted for the first time in Stuttgart in October 2014 and in Lubumbashi (Democratic Republic of Congo), Kigali (Rwanda) and Nairobi (Kenya) in February 2016.¹

During the second phase, four East African lawyers visited the State of Baden-Württemberg between the 5th and 12th November 2017. They received a German tandem partner and accompanied them for a week at work. In addition, they attended several court hearings and visited the State Criminal Police Office, a prison and other institutions. Later, five lawyers (three judges from the District Court of Stuttgart and two prosecutors from the Office of the Prosecution Stuttgart) visited Tanzania in March 2019. This report summarizes this week, which took place in the towns of Arusha and Mwanza.

1 Recht in Afrika – Law in Africa – Droit en Afrique 19 (2016), pp. 94–101.

II. The Week

1. Monday: Arusha High Court

On the first day of the visit, we joined a parade at the High Court of Arusha with which the court session of the Court of Appeal was officially opened. Afterwards, we and our tandem partners were welcomed by Hon. Justice Dr *Paul F. Kihwelo* and Hon. Judge *Moses Mzuna*. Then we were given a presentation about the Judicial Court System in Tanzania by Hon. Judge *Issa Maige*, one of the tandem partners. The Tanzanian court system turned out to be significantly different from the Judicial Court System in Germany.

Thus, Tanzania consists of a union of two states: Tanzania Mainland and Zanzibar. The Court system in Tanzania encapsulates this structure of the union. Although the judicature is not a union matter as such, the separate court systems in the two parts of the Union meet at the Court of Appeal. The law in Tanzania consists of the Constitution and both written and unwritten laws, which exist in the form of customary and Islamic law. For historical reason, English law with its substances of common law, doctrine of equity and statutes of general applications, form significant parts of the Tanzanian law. Especially, as Tanzania is a common law country, their dispute settlement procedure is an adversarial system.

Concerning the hierarchy of the court system in the Mainland, at the bottom are primary courts established under the Magistrates Courts Act. Above them, there are District and Resident Magistrate courts. Then follows the High Court of the United Republic of Tanzania and finally the Court of Appeal of Tanzania. They are established under the Constitution of the United Republic of Tanzania.

Primary courts enjoy geographical jurisdictions within the districts of their establishments. They have unlimited original jurisdictions in matters arising from customary and Islamic laws. In non-customary law civil matters, their jurisdictions are limited to disputes whose value of the subject matter is not more than 30 million Tanzanian Shilling (TZS) for movables and 50 million TZS for immovable. They also enjoy criminal jurisdiction in some petty crimes. Primary courts can usually impose a custodian sentence of not more than one year. The language of the courts is Kiswahili.

Whereas the district court enjoys geographical jurisdiction within the district of its establishment, the court of resident magistrate enjoys jurisdiction in the region wherein it is established. Both have concurrent jurisdictions in both civil and criminal matters unless otherwise specifically provided. The pecuniary limit of their jurisdiction in civil matters is 300 million TZS for movables and 500 million TZS for immovable save for commercial disputes. They can deal with all criminal matters except those in which the High Court has original jurisdiction. The language of both courts is English.

The High Court of the United Republic of Tanzania has unlimited jurisdiction to hear and determine matters except where it is provided otherwise by the Constitution or any other written law. In some cases, the High Court can constitute itself as a Constitutional Court. The High Court has as of now four divisions. On top of the judiciary, there is the Court of Appeal. The Court of Appeal hears appeals from the High Court and/ or its divisions.

The Judicial Court System in Germany in turn was presented by some of the German participants and they also explained the requirements for becoming a judge or a prosecutor in Germany. After taking a closer look at the court building, we were given the great possibility to attend a court hearing of the Court of Appeal. The appeal was filed in 2011 by a convicted murderer, 25 years after he had been convicted. Besides other issues, the judges had to deal with the fact that the files couldn't be found anymore. Later we joined our tandem partners who gave us a first insight in their daily work.

2. *Tuesday: Visit to the East African Court of Justice*

The next day, we paid a visit to the East African Court of Justice (EACJ). This court has its temporary seat in Arusha until the permanent seat is determined. As one of the organs of the East African Community, the responsibility of the EACJ is to ensure the adherence to law in the interpretation and application of and compliance with the East African Community Treaty.

The President of the court, the very charismatic Hon. Justice Dr *Emmanuel Ugirashebuja* welcomed us and gave us an introduction about the function of the EACJ, the rules of procedure and major decisions that the court has rendered so far. After a brief discussion about different topics, we went to a reception held at the court's library. Not only did we have a chance to talk to Mr *Yufnalis Okubo*, Registrar of the EACJ, and other members of the court's administration, but also to try some delicious local dishes.

After that, we went to the pronouncement of an important judgement of the First Instance Division of the court. The decision holds that member state Uganda violated the East African Community Treaty and the Customs Union and Common Market Protocols by imposing extra excise duty law over imported cigarettes within East Africa. It was a decision in a case filed by the British American Tobacco (BAT) Ltd Uganda, challenging the Government of Uganda. In exercising its discretion, the court ordered each party to bear its own costs on the basis that this case has canvassed matters of grave importance to the advancement of Community law and EAC intra-regional trade, which would be of significant public interest.

3. *Wednesday and Thursday: Mwanza*

The third day of our program took us to Mwanza – a city of approximately 700.000 and therefore almost twice the size of Arusha. We were greeted at the airport by court officials who took us to the hotel to get settled. Soon after, we started our tour discovering the Mwanza judiciary. The tour we received gave us a good impression of the different court levels that Judge *Maige* had told us about on our first day.

It started at the lowest Court – the Mwanza Primary Court. We were greeted by everyone who worked there – from the court officials to the cleaning staff – before we had a chance to take a tour of the building. As we proceeded to the next level in the court hierar-

chy, – the District and Resident Magistrate Courts – it became apparent that the higher level of jurisdiction also resulted in a higher standard of the equipment and facility.

As we proceeded and went on to the building of the High Court, we bore witness to the importance of the cases that are being tried there. As we visited the building, there was a criminal proceeding in session about a case of diamond smuggling with police officers among the defendants. The case was of such public interest, that not only the courtroom was packed to the maximum, but there were at least a hundred people waiting outside the court building, hoping to get a glance of the proceeding and learn about the outcome of the case.

Towards the end of our tour that day, we had a chance to meet the judges of the Appeals Court panel, that was holding proceedings in Mwanza at the time. They greeted us and we had a brief discussion of our impression of the Tanzanian Judiciary so far and the purpose and objective of the exchange program. The judges were in preparation of an appeals case that was going to start the next day and told us a little bit about the merits of the case as we were scheduled to watch some of the proceedings.

The next day we went back to the building of the High Court, where the Court of Appeals now heard an appeal of three defendants who had been sentenced to death by the High Court for the murder of a Tanzanian albino. The defendants, who appeared to be farm people, spoke no English and for their benefit, the proceeding was partly held in Swahili. When it came to the legal arguments and the grounds of the appeal, however, the proceeding switched to English – a phenomenon we witnessed not only in this proceeding and is due to the fact, that the case law foundation is that of the British Common Law system. For the part of the proceeding that was held in English, the defendants have no choice but to put their trust into their lawyers, for there is no interpretation.

We did not see the outcome of the case but learned later that the appeal was rejected. We were told however, that the death penalty is currently not being enforced by discretion of the President. Afterwards, we also had a chance to sit in on a civil matter before the High Court that was hearing an appeal against a decision by one of the lower courts. On Thursday in the afternoon, we went back to Arusha.

4. Friday: Continental and International courts of Arusha

On Friday's agenda stood visits to three international courts, all of them based in Arusha. We went to the African Court on Human and Peoples' Rights (AfCHPR), the United Nations International Residual Mechanism for Criminal Tribunals (IRMCT) and again to the East African Court of Justice (see above). These courts are not in the city centre and especially reaching the IRMCT requires a car ride of approximately half an hour.

Similar to the European Court of Human Rights, the AfCHPR was established by several African countries to ensure the protection of human rights in Africa. The judges have jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human Rights and any other relevant human rights instru-

ment ratified by the concerned States. The court is composed of eleven ad-hoc judges which come from the member states. The AfCHPR struggles with two major issues, which were explained to us by our court guide at length. First, as of 2019, only nine countries (Burkina Faso, Ghana, Malawi, Mali, Rwanda, Tanzania, Republic of Côte d'Ivoire, Tunisia and the Gambia) have declared to place themselves under the jurisdiction of the court while altogether 30 states have ratified the determining protocol. A change in the number of state members is not foreseeable at the present time. Secondly, in more than 10 years of its existence, the judges have worked on not more than 100 cases. Just in the week of our visit, several major cases were decided by the AfCHPR. The tour through the building (the court is based in a former wildlife conservation centre) however made clear that many visions and core values stand behind this project. The creators of the court hope for judicial independence and a fair and impartial application and interpretation of the provisions of the African Charter and other relevant African human rights laws.

Afterwards, we took a 30 minutes taxi ride through the suburbs of Arusha and passed by the little airport. We arrived at the IRMCT at around 1 pm. The security procedure took quite long, but in the end two women of the outreach service of the court kindly showed us the premises of this very new court building. The IRMCT was established by the United Nations Security Council in 2010. It is the successor of the International Criminal Tribunal for Rwanda, which dealt with the Rwandan genocide. As such, the IRMCT is tasked with the remaining functions and open legal questions concerning Rwandan war criminals. Further on, the court may hold trials if one or more of the remaining nine fugitives are captured. The court is located in very modern premises which seem a little bit out of place in the rural African surroundings. There is a small photo exhibition in the library. Next to the courtroom stands a “peace tree”. The guided tour was short but informative.

The last agenda item for Friday and of the exchange program itself was a panel debate on “Legal Aid and Access to Justice”, organized by the Judiciary of Tanzania in collaboration with the Institute of Judicial Administration and the East African Court of Justice. Participants on the Tanzanian side were academics from the Makumira University, Tanzanian judges as well as lawyers from the East Africa Law Society, Pan African Lawyers Union and the Tanganyika Law Society.

Professor *John Eudes Ruhangisa* of the Makumira University made an introductory statement branded “provocative statement”. He highlighted as fundamental elements of access to justice: Availability of independent and impartial courts or tribunals, competent magistrates/judges, good laws and regulations understood by most of the people, available and enough lawyers, timely and fair trials for all citizens regardless of their socio-economic and political status. He then enumerated some of the factors that impede access to justice in Tanzania: The high ignorance rate, inadequate provision of legal services and problems caused by the law itself, prolonged investigations, the limited number of judges and magistrates and inadequate court facilities. Other participants from Tanzania added as further issues: The limited knowledge of citizens of their rights, the lack of enough legal aid, the de-

lay of and the weak enforcement of laws and implementation of orders or decrees, the issue of corruption.

After the well-received introductory statement by Prof. *Ruhangisa*, the German participants elaborated on the particularities in the German court system regarding access to legal justice and legal aid. It was explained that under German law, public prosecutors must investigate a case under the inquisitorial principle which requires that the facts have to be investigated in all directions including circumstances which are in favour of the defendant. Further, depending on the severity of the allegations, a defendant will mandatorily be assigned a court appointed counsel for his defence. In civil law matters, a plaintiff may apply for cost exemption. The court then rules in a preliminary assessment on the potential merits of the case and the financial status of the plaintiff. If it finds the potential merits of the case positive and holds the financial status of the plaintiff sufficiently weak to be eligible for legal aid then it either strikes down court fees and assumes counsel's fees on the expense of the government or it rules that court and counsel's fees must be borne by the plaintiff but may be paid in instalments.

In the further discussion, the independence of the judges from the administrative bodies as well as from big companies were an issue. Tanzanian participants were interested to learn whether German judges felt completely independent from the government and major economic players. This was confirmed by the German participants. In Tanzania, the number of judges is limited. To become a judge at the High Court is a high privilege. From the level of high court upwards, judges are appointed by the government and are transferred from court to court after a relatively short period of time (3 years).

It was also debated, how the perception of the judiciary is within the population of the two countries. The German participants were confident that German people in general considered the German judiciary as independent while the Tanzanian participants felt that Tanzanian people did not consider the Tanzanian judiciary as completely neutral and independent from the government. As an example, a Tanzanian advocate stated that in criminal cases he noted that judges meet in chambers with public prosecutors to negotiate while advocates are not admitted.

Tanzanian participants asked whether verdicts rendered against the German Government and administrative bodies were enforced. This question was hardly understood by the German participants, since they argued that every verdict rendered against the government would be honoured automatically by the defendant administrative body. Tanzanian counsels were surprised by the German position as they felt that enforcement of verdicts against administrative bodies might be difficult in Tanzania.

III. Concluding Remarks

All in all, the week left us with a memorable impression not only of the Court System of Tanzania but also of the beauty of Northern Tanzania and the Victoria Lake region. This multitude of continental and international courts together with the headquarters of the East

African Community shows the significance of Arusha for East Africa and explains why the city is regarded as a major international diplomatic hub. The city is sometimes nicknamed “Geneva of Africa”. Because of this, we think that Arusha was a good choice for this exchange.

It seemed that we got a lot of attention for the fact, that neither a judge nor a prosecutor in Germany enjoy the benefits of state paid housing, car or driver and that we are deemed pretty much normal persons. On the other hand, we have taken home a great deal of appreciation for our own justice system, which we tend to forget in everyday work sometimes.

We felt high respect for the fact that judges in Tanzania not only have to deal with two languages during court sessions but also with so many different aspects of law – from labor law to criminal law. Especially through the panel discussion we got the impression that Tanzanian lawyers and judges – who regretted that knowledge about how to come to one’s right and access to justice in general is limited in/for larger parts of the population in their country – appreciate the idea that in Germany children can acquire some basic knowledge about the legal system at high school already and that there exists an insurance for legal expenses.

We are thoroughly grateful for the opportunity to participate in this exchange. We had the opportunity to visit numerous law enforcement agencies in Tanzania, including the East African Court of Justice and the East African Court on Human and Peoples’ Rights. Further on, we got an insight into the daily work of the African judges.

The exchange has not only given us inside knowledge on the judiciary in Tanzania (court offices, court rooms, docket filing, employment environment) but also many individual meetings with always open minded and welcoming hosts. One participant has for example become so interested in the entire region that she plans another trip to East Africa (including Burundi and Rwanda) in 2020 to allow a deepening of the now established relationships.