AFRICAN UNION
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UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

DEXTER EDDIE JOHNSON

V.

REPUBLIC OF GHANA

APPLICATION NO. 016/2017

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

ORDER FOR PROVISIONAL MEASURES

28 SEPTEMBER 2017

The Court Composed of; Sylvain ORÉ - President, Ben KIOKO- Vice-President, Gérard NIYUNGEKO, El Hadji GUISSÉ, Rafâa BEN ACHOUR, Solomy B. BOSSA, Ângelo V. MATUSSE, Ntyam S. O. MENGUE, Marie-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA-Judges; and Robert ENO-Registrar.

In the matter of:

DEXTER EDDIE JOHNSON

Represented by Saul LEHRFREUND, Co-Executive Director, The Death Penalty Project

V.

REPUBLIC OF GHANA

Unrepresented

After deliberation,

Issues the following Order,

I. THE PARTIES

1. The Application is filed by Mr. Dexter Eddie Johnson, (hereinafter referred to as "the Applicant), a dual Ghanaian and British national, against the Republic of Ghana (hereinafter referred to as "the Respondent").

2. The Respondent became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 1 March 1989, and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol"), on 16 August 2005. It deposited, on 10 March 2011, a declaration under Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations. Furthermore, the Respondent became a party to the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant"), on 7 September 2000.

II. SUBJECT OF THE APPLICATION

3. The Applicant states that he was convicted of murder and sentenced to death on 18 June, 2008.[1] The Court of Appeal and the Supreme Court of Ghana confirmed the conviction and sentence on 16 July, 2009 and 16 March, 2011, respectively. The Applicant remains on death row awaiting execution.

4. The Applicant alleges, *inter alia*, that the imposition of the mandatory sentence of death, without consideration of the individual circumstances of the offence or the offender, violates:

(a) The right to life under Article 4 of the Charter ;

[1] By the Fast Track High Court in Accra.

(b) The prohibition of cruel, inhuman or degrading treatment or punishment under Article 5 of the Charter;

(c) The right to a fair trial under Article 7 of the Charter;

(d) Article 1 of the Charter, by failing to give effect to the aforementioned rights;

(e) The right to life under Article 6(1), the right to protection from inhuman punishment under Article 7, the right to a fair trial under Article 14(1) and the right to a review of sentence under Article 14(5) of the Covenant; and

(f) The right to life under Article 3, and the prohibition of cruel, inhuman or degrading treatment or punishment under Article 5 of the Universal Declaration of Human Rights (hereinafter referred to as "the Universal Declaration").

III. PROCEDURE

5. The Application was filed at the Registry of the Court on 26 May, 2017.

6. Pursuant to Rule 36 of the Rules of Court, (hereinafter referred to as "the Rules"), by a notice dated 22 June, 2017, the Registry served the Application to the Respondent drawing attention to the request for provisional measures and indicating that the

Respondent could respond to the same within fifteen (15) days should they so wish. The Respondent was also requested to communicate the names and addresses of its representatives within thirty (30) days and respond to the Application within sixty (60) days of receipt of the notice. The Respondent is yet to comply with these instructions.

III. JURISDICTION

7. In dealing with an Application, the Court has to ascertain that it has jurisdiction on the merits of the case.

8. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.[2]

9. Article 3(1) of the Protocol provides that "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned".

[2] See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated15 March 2013) and Application 006/2012 African Commission on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated15 March 2013); Application 004/2011 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

10. The Court notes that the rights alleged to have been violated are guaranteed under Articles 1, 4, 5 and 7 of the Charter, Articles 6(1), 7, 14(1) and 14(5) of the Covenant and Articles 3 and 5 of the Universal Declaration.

11. As indicated in paragraph 2 of this Order, the Respondent became a Party to the Charter on 1 March 1989, to the Protocol on 16 August 2005 and deposited on 10 March 2011, a Declaration accepting the competence of the Court to receive cases from individuals and Non- Governmental Organisations. Furthermore, the Respondent became a party to the Covenant on 7 September, 2000.

12. In light of the foregoing, the Court concludes that it has *prima facie* jurisdiction to hear the Application.

IV. ON THE PROVISIONAL MEASURES REQUESTED

13. The Applicant has requested the Court for:

"(i) An order that the Respondent shall not carry out the execution of the Applicant while his application remains pending before the Court; and

(ii) An order that the Respondent shall report to the Court within 30 days of the interim order on the measures taken for its implementation."

14. Under Article 27(2) of the Protocol and Rule 51(1) of the Rules, the Court is empowered to order provisional measures "in cases of extreme

gravity and urgency, and when necessary to avoid irreparable harm to persons..." and "...which it deems necessary to adopt in the interest of the parties or of justice".

15. It is for the Court to decide whether to issue provisional measures depending on the circumstances of each case.

16. The Applicant is on death row and it appears from this Application that there exists a situation of extreme gravity and urgency, as well as a risk of irreparable harm to the Applicant.

17. Given the circumstances of this case, where the risk of execution of the death penalty will jeopardise the enjoyment of the rights guaranteed under Articles 4, 5 and 7 of the Charter, Articles 6(1), 7, 14(1) and 14(5) of the Covenant and Articles 3 and 5 of the Universal Declaration, the Court has decided to exercise its powers under Article 27(2) of the Protocol.

18. The Court consequently, finds that the situation raised in the present Application is of extreme gravity and represents a risk of irreparable harm and that the circumstances require that an order for provisional measures be issued, in accordance with Article 27(2) of the Protocol and Rule 51 of the Rules, to preserve the *status quo,* pending the determination of the main Application.

19. The Court recalls that the measures it will order will necessarily be provisional in nature and will not in any way prejudge the findings it might make on its jurisdiction, the admissibility of the application and the merits of the case.

20. For the avoidance of doubt, this order shall not in any way prejudice any findings the Court shall make regarding its jurisdiction, the admissibility and merits of the Application.

21. **For these reasons,**

The Court,

Orders the Respondent to:

Unanimously,

(a) refrain from executing the death penalty against the Applicant until the Application is heard and determined.

By a vote of seven (7) for and four (4) against, Justices Gérard NIYUNGEKO, Rafâa BEN ACHOUR, Marie-Thérèse MUKAMULISA and Chafika BENSAOULA dissenting,

(b) report to the Court within sixty (60) days from the date of receipt of this Order, on the measures taken to implement this Order.

Signed:

Sylvain ORE, President

Ben KIOKO, Judge, Vice President

Gérard NIYUNGEKO, Judge

El Hadji GUISSÉ, Judge

Rafâa BEN ACHOUR, Judge

Solomy B. BOSSA, Judge

Angelo V. MATUSSE, Judge;

Ntyam S. O. MENGUE, Judge

Marie-Thérèse MUKAMULISA, Judge

Tujilane R. CHIZUMILA, Judge

Chafika BENSAOULA, Judge

Robert ENO, Registrar

Done at Arusha, on the Twenty Eighth Day of the month of September 2017, in English and French, the English version being authoritative.

In accordance with Article 28(7) of the Protocol and Rule 60(5) of the Rules of Court, the Joint Dissenting Opinion of Judges Gérard NIYUNGEKO and Rafâa Ben ACHOUR and the joint Dissenting Opinion of Judges Marie-Thérèse MUKAMULISA and Chafika BENSAOULA are appended to this Order.

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