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

THE MATTER OF

DEXTER EDDIE JOHNSON

V

REPUBLIC OF GHANA

APPLICATION NO. 016/2017

RULING
(JURISDICTION AND ADMISSIBILITY)

28 MARCH 2019

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The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice-President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM and Imani D. ABOUD Judges; and Robert ENO, Registrar.

In the Matter of:

Dexter Eddie JOHNSON

represented by:

Saul Lehrfreund, Co-Executive Director, The Death Penalty Project

Versus

REPUBLIC OF GHANA

represented by:

i. Miss Gloria Afua AKUFFO, Attorney General and Minister of Justice;
ii. Mr Godfred Yeboah DAME, Deputy Attorney General and Deputy Minister of Justice;
iii. Mrs Helen A.A. ZIWU, Solicitor General;
iv. Mrs Yvonne Atakora OBUOBISA, Director of Public Prosecution;

after deliberation,
renders the following Ruling:

I. THE PARTIES

1. Dexter Eddie Johnson (hereinafter referred to as “the Applicant”), is a dual national of the Republic of Ghana and Great Britain who was convicted and sentenced to death for murder and is currently on death row awaiting execution.

2. The Application is filed against the Republic of Ghana (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 1 June 1989 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the 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, through which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges, from the Application, that on 27 May 2004, an American national was killed near the village of Ningo in the Greater Accra region of Ghana. The Applicant was accused of committing this crime and brought to trial. He denied the offence. On 18 June 2008, the Fast Track High Court in Accra, convicted the Applicant of the murder and sentenced him to death.

4. The Applicant appealed his conviction and sentence before the Court of Appeal, arguing that while the death penalty *per se* is authorised by Article 13(1) of the Constitution of Ghana, the mandatory imposition of the death sentence, on which the Constitution was silent, was unconstitutional. To buttress this assertion, the Applicant argued that the mandatory death penalty violates the right not to be subjected to inhuman and degrading treatment or punishment, the right not to be

arbitrarily deprived of life and the right to a fair trial, all of which are protected by Ghana's Constitution.

5. On 16 July 2009, the Court of Appeal dismissed the appeal both on the conviction and sentence.

6. The Applicant further pursued his appeal against both the conviction and sentence before the Supreme Court and on 16 March 2011 his appeal was**,** again**,** dismissed.

7. Subsequently, in December 2011 and April 2012, respectively, the Applicant made two clemency petitions to the President of Ghana**.**

8. In July 2012, the Applicant filed a communication to the United Nations Human Rights Committee (hereinafter referred to as "the HRC") under the First Optional Protocol to the International Covenant on Civil and Political Rights.

9. On 27 March 2014, the HRC found, in its Views, that since the only punishment for murder under Ghanaian law was the death penalty, courts had no discretion but to impose the only sentence permitted by law. The HRC held that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life contrary to Article 6(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR"). [1] It thus ordered the Respondent State to provide the Applicant with an effective remedy including the commutation of his sentence. The HRC also reminded the Respondent State that it was under a duty to avoid similar violations in future including by adjusting its legislation in line with the provisions of the ICCPR.

10. The HRC requested the Respondent State to file, within one hundred and eighty (180) days, information about the measures taken to give effect to its Views and also requested the Respondent State to publish the HRC's Views and have them widely disseminated in the Respondent State. The HRC also reminded the Respondent

[1] Article 6(1) provides as follows: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

State that by becoming a party to the First Optional Protocol to the ICCPR it had recognised the competence of the HRC to determine whether there had been a violation of the ICCPR and to provide an effective and enforceable remedy when a violation is established.[2]

11. The Respondent State has not implemented the Views of the HRC. The Applicant remains on death row and his death sentence has not been commuted.

12. Since the Respondent State has not acted on the Views of the HRC, the Applicant decided to apply to this Court for the protection of his rights. The Applicant, while acknowledging the fact that there is a long-standing *de facto* moratorium on carrying out executions in the Respondent State, argues that this has no bearing on the merits of this Application.

B. Alleged violations

13. The Applicant alleges that the imposition of the mandatory sentence of death, without consideration of the individual circumstances of the offence or the offender, violates the following rights:

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

    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) 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 a sentence under Article 14(5) of the ICCPR; and

[2]Communication No. 2117/2012 *Dexter Eddie Johnson v Ghana*, 27 March 2014. (hereinafter referred to as "*Dexter Johnson v Ghana" (HRC)).*

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

14. The Applicant also submits that by failing to give effect to the rights cited above the Respondent has also violated Article 1 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

15. The Application was filed on 26 May 2017 and served on the Respondent State by a notice dated 22 June 2017, directing the Respondent State to file the names and addresses of its representatives and its Response to the Application within thirty (30) and sixty (60) days of receipt of the notice respectively**,** in accordance with Rules 35(2) (a) and 35 (4) (a) of the Rules of the Court (hereinafter referred to as "the Rules").

16. On 28 September 2017, the Court, upon the Applicant's request, ordered Provisional Measures directing that the Respondent State should refrain from executing the Applicant pending the determination of the Application.

17. On 28 May 2018**,** the Registry received the Respondent State's Response to the Application and the Respondent State's Report on Implementation of Provisional Measures. On 31 May 2018 the Registry transmitted these to the Applicant and requested him to file his Reply, if any, within thirty (30) days of receipt of the notice. The Applicant's Reply was received by the Registry on 5 July 2018.

18. On 10 August 2018**,** the Registry received the Applicant's submissions on reparations and transmitted these to the Respondent State by a notice dated 14 August 2018 requesting it to file the Response thereto within thirty (30) days of receipt of the notice.

19. On 11 September 2018**,** the Registry received a letter from the Applicant requesting to file further written submissions on the admissibility of the application and also providing a list of counsel who would appear for the public hearing, if any.

20. On 7 November 2018**,** the Registry sent a letter to the Applicant, copied to the Respondent State, informing the Applicant that the Court had denied his request to file additional submissions on the admissibility of the Application.

21. On 14 December 2018**,** the Registry received the Respondent State's Response to the Applicant's Submissions on Reparations and on 19 December 2018 this was transmitted to the Applicant for information.

22. On 4 February 2019, the Parties were informed that the pleadings had formally been closed.

23. On 20 March 2018 the Registry informed the Applicant that the Court would not hold a public hearing in the matter.

IV. PRAYERS OF THE PARTIES

24. The Applicant prays the Court for the following :

On merits

"a. For the Court to grant a declaration that the imposition of the mandatory death penalty on the Applicant violates Articles 4, 5 and 7 of the Charter, Articles 6(1), 7, 14(1) and 14(5) of the ICCPR and Articles 3, 5 and 10 of the UDHR.

b. For the Court to grant a declaration that by failing to adopt legislative or other measures to give effect to the Applicant's rights under Article 4, 5 and 7 of the Charter, the Respondent State also violated Article 1 of the Charter.

c. For 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 as reflects the circumstances of the offence and the offender and the violations of his rights under the Charter.

d. For the Court to order the Respondent State to take legislative or other remedial measures to give effect to the Court's findings in their application to other persons."

On reparations

"e. An order for the Respondent State not to carry out the death penalty imposed on the Applicant and to take immediate remedial measures, by commutation or otherwise, to effect the prompt substitution of the Applicant's sentence of death with a sentence of life imprisonment or such other non-capital sentence as reflects the circumstances of the offence and the offender and the violations of his rights under the Charter and other relevant instruments.

f. An order for the Respondent State to amend its laws in order to bring them in line with the relevant provisions of the applicable international instruments, including Articles 3(2), 4, 5 and 7 of the Charter, Articles 6(1), 7, 14(1) and 14(5) of the ICCPR and Articles 3, 5, 7 and 10 of the UDHR, by amending section 46 of the Criminal Offences Act, 1960 (Act 29) so that the death penalty is not stipulated as the mandatory sentence for the offence of murder.

g. An order for the Respondent State to review within six months from the date of this judgment the sentences of all prisoners in the Respondent State who have been mandatorily sentenced to death and to adopt remedial measures by commutation or otherwise to ensure that such sentences are compatible with this judgment.

h. An order that the judgment of the Court represents a form of reparation for the moral prejudice suffered by the Applicant as a result of the imposition of an unlawful mandatory death sentence and his subsequent incarceration on death

row pending execution of sentence and an order that, in addition, the Respondent State shall pay the Applicant a sum in such amount as the Courts sees fit as reparations for the said prejudice.

i. An order for such other reparations as the Court sees fit.

j. An order for the Respondent State to publish within six months from the date of the judgment:

- a summary in English of the judgment as prepared by the Registry of the Court in the Ghana Gazette;
- the summary in English of the judgment as prepared by the Registry of the Court in a widely read national daily newspaper; and
- the full text of the judgment in English on the official website of the Respondent State, to remain available for a period of at least one year.

k. An order for the Respondent State to submit to the Court within six months from the date of this judgment a report on the status of compliance with all the orders contained within it.

l. An order that each party bear its own costs."

25. The Respondent State prays the following declarations from the Court:

On merits

"a. That the death penalty was imposed on the Applicant in accordance with the proper judicial process in Ghana and was therefore not in violation of Articles 4, 5 and 7 of the Charter.
b. That the Respondent State has not violated Article 1 of the Charter.
c. That the Application be dismissed in its entirety.
d. That all the reliefs sought by the Applicant be denied."

On reparations

"e. That the death penalty was imposed on the Applicant in accordance with the proper judicial process in Ghana and was therefore not in violation of Article 4, 5 and 7 of the Charter;

f. That the Respondent State has not violated Article 1 of the Charter.

g. That Applicant has not established any grounds for reparations and as such the reparations sought by the Applicants should be denied."

V. JURISDICTION

26. Under Article 3(1) of the Protocol 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." Further, in terms of Rule 39(1) of the Rules "the Court shall conduct preliminary examination of its jurisdiction …".

27. The Applicant submits that the Court has previously ruled that as long as the rights alleged by the Applicant(s) are protected by the Charter or any other human rights instrument ratified by the State in question then the Court will have jurisdiction over the matter.[3] In the present Application, the Applicant set out the specific provisions of the Charter, the ICCPR and the UDHR that he alleges have been violated by the Respondent State and submitted that the Court has material jurisdiction to hear this matter.[4]

28. The Applicant further avers that the Court has personal jurisdiction, temporal jurisdiction and territorial jurisdiction in the present matter.

[3]Application No. 006/2013. Judgment of 18/03/2016 (Merits), *Wilfred Onyango Nganyi & Others v United Republic of Tanzania*, § 57.

[4] The Applicant alleges that the Respondent State has violated Articles 4, 5 and 7 of the Charter together with Articles 6(1), 7, 14(1) and 14(5) of the ICCPR and Articles 3, 5 and 10 of the UDHR.

29. The Respondent State did not make any submissions regarding the Court's jurisdiction to hear this case.

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30. Notwithstanding the absence of any objection to the Court's jurisdiction by the Respondent State, the Court must satisfy itself that it has jurisdiction before it proceeds.

31. In this Application, the Court finds that it has:

    i. material jurisdiction given that the Application invokes violations of human rights protected under the Charter and other human rights instruments ratified by the Respondent State;
    ii. personal jurisdiction given that the Respondent State is a Party to the Protocol and has deposited the declaration prescribed under Article 34(6) thereof, allowing individuals to institute cases directly before it, in accordance with Article 5(3) of the Protocol;
    iii. temporal jurisdiction since the alleged violations are continuous, given that the Applicant remains sentenced on the basis of what he considers as not being in line with the provisions of the Charter and other human rights instruments;[5]
    iv. territorial jurisdiction because the alleged violations took place in the Respondent State's territory and the Respondent State is a State Party to the Protocol.

32. In view of the foregoing, the Court holds that it has jurisdiction to hear the instant Application.

[5] Application No. 013/2011. Judgment of 21/06/2013 (Merits), *Beneficiaries of Late Norbert Zongo and Others v Burkina Faso*, §§ 73-74 (hereinafter referred to as "*Norbert Zongo v Burkina Faso"*).

VI. ADMISSIBILITY

33. In terms of Article 6 (2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter". Pursuant to Rule 39 of its Rules, "the Court shall conduct preliminary examination ... of the admissibility of the Application in accordance with Articles 50 and 56 of the Charter and Rule 40 of these Rules".

34. Rule 40 of the Rules, which in essence restates Article 56 of the Charter, stipulates that Applications shall be admissible if they fulfil the following conditions:

> "1. Indicate their authors even if the latter request anonymity,
> 2. Are compatible with the charter of the organization of African Unity or with the present Charter,
> 3. Are not written in disparaging or insulting language'
> 4. Are not based exclusively on news disseminated through the mass media,
> 5. Are filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
> 6. Are filed within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
> 7. Do not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provision of the present Charter."

35. The Applicant submits that the Application discloses the Applicant's identity since he did not request anonymity. Furthermore, he avers that the Application accords with the objectives of the African Union because it invites the Court to consider whether the Respondent State is meeting its obligations to protect the Applicant's rights under the Charter. In support of his submission, he cites the case of *Peter Chacha v Tanzania,* where the Court held that an application will be admissible if its facts reveal a *prima facie* violation of a protected right.[6]

[6]Application No. 003/2012. Ruling of 28/03/2014 (Jurisdiction and Admissibility), *Peter Chacha v United Republic of Tanzania*, §123.

36. The Applicant also submits that the Application does not contain disparaging or insulting language and the Application is not based on news disseminated through the mass media.

37. The Applicant further submits that local remedies have been exhausted since he has taken his appeal against the imposition of the mandatory death penalty as far as possible within the Respondent State's domestic courts, namely the Supreme Court of Ghana which is the highest court in Ghana from which no further appeal can be brought.

38. The Applicant further avers that he is lay, indigent and incarcerated and after exhausting local remedies, he unsuccessfully attempted to use "extraordinary measures" by pursuing an application for clemency and then filing an application to the HRC before turning to this Court. The Applicant, therefore, submits that the Application was filed within a reasonable time since he explored "extraordinary measures" before bringing the Application to the Court. The Applicant relies on the case of *Alex Thomas v Tanzania* in support of his submission.[7]

39. Lastly, the Applicant submits that the Application does not raise matters or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

40. In this regard, the Applicant submits that the fact that the HRC has adopted Views in his case does not preclude the admissibility of the present Application under Rule 40(7) of the Rules since the HRC did not address any matter or issue in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union and the Views of the HRC were based on the ICCPR which contains its own

[7]Application No. 005/2013. Judgment of 20/11/2015 (Merits), *Alex Thomas v United Republic of Tanzania*, (hereinafter referred to as "*Alex Thomas v Tanzania"*) §§ 73 -74.

detailed provisions on human rights which are separate and distinct from the Charter of the United Nations and the other instruments listed in Rule 40(7) of the Rules.

41. Furthermore, the Applicant avers that none of the issues in the HRC proceedings have been settled by the parties because the Respondent State has chosen to ignore the HRC's Views such that the issues remain entirely unsettled and unresolved.

42. The Respondent State submits that in determining the admissibility of the Application the Court should be guided by the provisions of Article 56(5) of the Charter, Article 6(2) of the Protocol and Rule 40 of the Rules.

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43. The Court notes that with regard to the admissibility of the Application, the Respondent State merely notes that in determining admissibility the Court should be guided by the provisions of Article 56(5) of the Charter, Article 6(2) of the Protocol and Rule 40 of the Rules. The Respondent State did not raise any objection to the admissibility of the Application.

44. Nevertheless, the Court will, *suo motu*, and as empowered by Rule 39 of the Rules, examine whether the Application meets the admissibility requirements set out in Rule 40 of the Rules and Article 56 of the Charter.

45. The Court notes that the Application discloses the identity of the Applicant; is compatible with the Constitutive Act of the AU and the Charter because it invites the Court to determine whether the Respondent State meets its obligations to protect the Applicant's rights enshrined in the Charter; is not written in disparaging or insulting language directed at the Respondent State and its institutions or the African Union; is not based exclusively on news disseminated through mass media; and was sent after the Applicant exhausted local remedies since the Applicant's appeal was dismissed by the Supreme Court, which is the highest appellate court in the Respondent State; and was also filed with this Court within a reasonable time after

the exhaustion of local remedies.[8] The Court, therefore, finds that the Application meets the admissibility requirements under Article 56(1) to 56(6) of the Charter, which are reflected in Rule 40(1) to 40(6).

46. The Court, however, notes that in terms of Article 56(7) of the Charter, which is reiterated by Rule 40(7) of the Rules, Applications shall be considered if they "do not deal with cases which have been settled … in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter".

47. The Court further notes that examining compliance with this provision requires it to make sure that this Application has not been "settled" and that it has not been settled "in accordance with the principles" of the Charter of the United Nation or the Constitutive Act of the African Union or the provisions of the Charter.[9]

48. The Court also notes that the notion of "settlement" implies the convergence of three major conditions: (i) the identity of the parties; (ii) identity of the applications or their supplementary or alternative nature or whether the case flows from a request made in the initial case; and (iii) the existence of a first decision on the merits.[10] This position has also been confirmed by the African Commission which has held that for a matter to fall within the scope of Article 56(7) of the Charter, it should have involved the same parties, the same issues and must have been settled by an international or regional mechanism.[11]

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[8] *Norbert Zongo v Burkina Faso*, (Preliminary Ruling) § 121; *Alex Thomas v Tanzania*, § 73-74 and Application No. 006/2015. Judgment of 23/03/2018 (Merits), *Nguza Viking and Another v United Republic of Tanzania* § 61.

[9]Application No. 038/2016. Judgment of 22/03/2018 (Merits)*, Jean-Claude Roger Gombert v Cote d Ivoire (hereinafter referred to as "Jean-Claude Gombert v Cote d Ivoire"),* § 44.

[10] See, ACHPR Communication 409/12, *Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v. Angola and thirteen Others* § 112; EACJ Reference No 1/2007 *James Katabazi et al v. Secretary General of the East African Community and Another* (2007) AHRLR 119 § 30-32; IACHR Application 7920, Judgment of 29 July 1988, *Velasquez-Rodriguez v. Honduras* CIADH §.24(4); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina v. Serbia-and- Montenegro*) Judgment of 26 February 2007, lCJ., Collection 2007, p.43

[11] ACHPR Communication 266/03, *Kevin Mgwanga Gunme and others v Cameroon,* § 86.

49. With respect to the first condition, it is not in dispute that the Applicant, Dexter Eddie Johnson, is the same person who filed a communication against the Respondent State before the HRC. The Court, therefore, finds that the parties, in this Application and the communication before the HRC, are identical and, therefore, the first condition has been met.

50. With regard to the second and third conditions, the Court notes that in the communication examined by the HRC, the Applicant claimed that a mandatory death penalty for all offences of a particular kind, such as murder, prevents the trial court from considering whether this form of punishment is appropriate and thus the death penalty amounts to a violation of his right to life under Article 6(1) of the ICCPR. The Applicant further claimed that the imposition of the death penalty, with no judicial discretion to impose a lesser sentence, violates the prohibition of inhumane or degrading treatment or punishment under Article 7 of the ICCPR and that the imposition of this sentence violated his right to a fair trial since part of this right is the right to review his sentence by a superior court contrary to Article 14(1) and (5) of the ICCPR. Lastly, the Applicant averred that the Respondent State failed in its obligations under Article 2(3) of the ICCPR to provide an effective remedy to the above-mentioned violations of his rights and he requested the HRC to make a finding to that effect.

51. In the present Application, the Court notes that there is a decision on the merits of the communication that was brought before the HRC and neither of the parties deny the existence of such a decision.[12] The Court observes that although the Respondent State may have opted not to follow the Views of the HRC this does not mean that the matter has not been considered and consequently settled within the meaning of Rule 40(7) of the Rules or Article 56(7) of the Charter. What is crucial is that there must be a decision by a body or institution that is legally mandated to consider the dispute at international level.

[12] *Dexter Eddie Johnson v Ghana (HRC)*.

52. The Court further notes that although the communication at the HRC and the Views of the HRC were based on the ICCPR and not on the Charter of the United Nations or the Constitutive Act of the African Union, or the provisions of the Charter, the principles contained in the provisions of the ICCPR that the HRC gave its Views on are identical to the principles provided for in the provisions of the Charter.[13] Substantively, therefore, the HRC adjudicated on the same issues that the Applicant has brought before this Court.

53. As has been noted by the Court, if the subsequent claim is not detachable from the claim(s) earlier examined by another tribunal, then it follows that the matter will be deemed to have been settled especially since "the identity of the claims extends to their additional and alternative nature or whether they derive from a claim examined in a previous case."[14] Applying the foregoing reasoning, it follows that the present Application has been settled by the HRC within the meaning of Article 56(7) of the Charter and Rule 40(7) of the Rules.

54. In the Court's view, and in respect of the admissibility requirement under Article 56(7) of the Charter, it does not matter that the decision of the HRC has been implemented or not. It also does not matter whether the said decision is classified as binding or not. In its jurisprudence, the Court has consistently refused to deal with any matter that is pending before the Commission or one that has been settled by the Commission, this notwithstanding the fact that the findings of the Commission are termed "recommendations", which are not binding.[15] In the present case, the Applicant elected to file his case before the HRC, and not before this Court, over a year after Ghana had deposited its Declaration under Article 34(6) of the Protocol. In the circumstances, the Applicant cannot, therefore, claim that the forum he chose does not make binding decisions and that since the Views of the HRC have not been

[13] By way of example, Article 6(1) of the ICCPR provides for the right to life and this is mirrored by Article 4 of the Charter; Article 7 of the ICCPR prohibits torture, cruel, inhuman or degrading treatment and punishment and this is captured by Article 5 of the Charter; and the right to a fair trial under Article 14 of the ICCPR finds its equivalent in Article 7 of the Charter.
[14] *Jean-Claude Gombert v Cote d'Ivoire,* § 51.
[15] Cf. Application No.003/2011. Judgment of 21/06/2013 (Jurisdiction and Admissibility), *Urban Mkandawire v Republic of Malawi* § 33.

implemented then the matter has not been settled in line with Article 56(7) of the Charter.

55. The Court wishes to reiterate the fact that the rationale behind the rule in Article 56(7) of the Charter is to prevent States from being asked to account more than once in respect of the same alleged violations of human rights. In the words of the African Commission:

> "This is called the *non bis in idem* rule (also known as the Principle or Prohibition of Double Jeopardy, deriving from criminal law) and ensures that, in this context, no state may be sued or condemned [more than once] for the same alleged violation of human rights. In effect, this principle is tied up with the recognition of the fundamental *res judicata* status of judgments issued by international and regional tribunals and/or institutions such as the African Commission. (*Res judicata* is the principle that a final judgment of a competent court/ tribunal is conclusive upon the parties in any subsequent litigation involving the same cause of action.)"[16]

56. In conclusion, the Court finds that the present Application does not fulfil the admissibility requirement under Article 56(7) of the Charter, which is also reflected in Rule 40(7) of the Rules.

57. The Court recalls that the conditions of admissibility under Article 56 of the Charter are cumulative and as such, when one of them is not met, then the entire Application cannot be considered.[17] In the instant case, since the Application does not meet the requirement set forth in Article 56(7) of the Charter the Court, therefore, finds the Application inadmissible.

[16] ACHPR Communication 260/02 *Bakweri Land Claims v Cameroon,* § 52.
[17]See, ACHPR, Communication 277/2003, *Spilg and others v. Botswana,* § 96 and ACHPR, Communication 334/06 *Egyptian Initiative for Personal Rights and Interights v Egypt*, § 80.

VII. COSTS

58. The Applicant prays that the Court order each party to bear its own costs.

59. The Respondent State did not make any submissions pertaining to costs.

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60. According to Rule 30 of the Rules of Court, "Unless otherwise decided by the Court, each party shall bear its own costs".

61. The Court, in this matter, does not see any reason why it should depart from the position in Rule 30 and as such it orders each Party to bear its own costs.

VIII. OPERATIVE PART

62. For these reasons:

THE COURT,

Unanimously:

On jurisdiction

(i) *Declares* that it has jurisdiction to hear the Application;

On admissibility

By a majority of Eight (8) for, and Two (2) against, Justices Rafaâ BEN ACHOUR and Blaise TCHIKAYA dissenting:

(ii) *Declares* that the Application is inadmissible;

On costs

(iii) *Orders* that each Party shall bear its own costs.

Signed:

Sylvain ORÉ, President; 

Ben KIOKO, Vice-President; 

Rafaâ BEN ACHOUR, Judge; 

Ângelo V. MATUSSE, Judge; 

Suzanne MENGUE, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Imani D. ABOUD, Judge;

and Robert ENO, Registrar;

In accordance with Article 28(7) of the Protocol and Rule 60(5) of the Rules, the Separate Opinion of Justice Chafika BENSAOULA and the Dissenting Opinions of Justice Rafaâ BEN ACHOUR and Justice Blaise TCHIKAYA are attached to this Ruling.

Done at Arusha, this Twenty Eighth Day of the month of March in the year Two Thousand and Nineteen, in English and French, the English text being authoritative.