


**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**  
**DECLARATION BY JUDGE DUMISA BUHLE NTSEBEZA**  
**IN THE MATTER OF APPLICATION NO. 033/2016**  
**MAKUNGU MISALABA V UNITED REPUBLIC OF TANZANIA**  
**JUDGMENT OF 7 NOVEMBER 2023**

Pursuant to Rule 70(3) of the Rules of Court, read together with Article 28(7) of the Protocol, I declare that I disagree with the majority in their judgment on the death penalty on the following bases:

1. The death penalty is not only a clear violation of Article 5 of the African Charter in relation to the method of execution by hanging as implemented by the Respondent State. The death penalty, in and of itself, violates Article 5 because it is an inherently cruel, degrading, and inhuman treatment or punishment. It is irreversible and has a potential for error.
2. It has no demonstrable deterrent effect.
3. Its discriminatory application undermines the fundamental principles of human dignity, justice, and equality.

**Signed:**

Judge Dumisa Buhle NTSEBEZA 

Done at Algiers this Seventh Day of November in the year Two Thousand and Twenty-Three, the English text being authoritative.

