

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

CASE SUMMARY

APPLICATION No. 016/2017

DEXTER EDDIE JOHNSON V. REPUBLIC OF GHANA

SUMMARY OF THE FACTS

1. The Application is filed against the Republic of Ghana (hereinafter referred to as “the Respondent State”). The Applicant states that he was convicted of murder and sentenced to death. He further states that the death penalty is the mandatory and the only prescribed sentence for murder in the Respondent State. Currently, the Applicant is on death row awaiting execution.
2. The Applicant, following his conviction and sentence, appealed to the Court of Appeal and subsequently to the Supreme Court against both his conviction and sentence. Both the Court of Appeal and the Supreme Court dismissed the Applicant’s appeal.

3. Subsequently, the Applicant submitted a communication to the United Nations Human Rights Committee (hereinafter referred to as “HRC”). In his communication he alleged that the indiscriminate imposition of the death penalty amounted to a violation of his right to life (Article 6(1)), the right to protection from inhuman punishment (Article 7), the right to a fair trial (Article 14(1)) and the right to review of sentence (Article 14(5)) of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”). The HRC, in its Views, found the Respondent in violation of Article 6(1) of the ICCPR and concluded that no separate findings were required in relation to alleged violations under Articles 7 and 14.

COMPLAINT

4. The Applicant alleges that the imposition of a mandatory sentence of death, without consideration of the individual circumstances of the offence or the offender violates the right to life (Article 4), the prohibition of cruel, inhuman or degrading treatment or punishment (Article 5) and the right to a fair trial (Article 7) of the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”).
5. The Applicant contends that the mandatory death sentence imposed on him is a violation of his rights under the Charter for the following reasons:
 - a. The sentence is arbitrary and in violation of Article 4, in that it imposes the same ultimate punishment for all offences of a particular category, without distinction as to the circumstances of the offence or the offender.
 - b. The sentence is cruel and inhuman and in violation of Article 5 for it is imposed purely by reason of the category of offence for which the Applicant was convicted (murder), without distinction, and because it excludes the possibility of advancing mitigation as to why the sentence of death should not be imposed.
 - c. It violates the Applicant’s right to a fair hearing under Article 7(1) because it excludes the possibility of judicial determination of an appropriate sentence, it excludes the possibility of relying on evidence in mitigation

of sentence, and it excludes the possibility of review of sentence by a higher court.

6. The Applicant further submits that the mandatory death sentence violates the provisions of the ICCPR and the Universal Declaration of Human Rights (hereinafter referred to as “the UDHR”), namely Articles 6(1), 7, 14(1) and 14(5) of the ICCPR and Articles 3, 5 and 10 of the UDHR.
7. The Applicant avers that by failing to adopt legislative or other measures to give effect to the Applicant’s rights under Articles 4, 5, and 7 of the Charter, the Respondent has also violated Article 1 of the Charter.

THE APPLICANT’S PRAYERS

8. The Applicant prays the Court for the following interim relief:
 - a. An order that the Respondent shall not carry out the execution of the Applicant pending his application before the Court; and
 - b. An order that the Respondent shall report to the Court within 30 days of the interim order on the measures taken for implementation.
9. The Applicant prays the Court for the following substantive reliefs:
 - a. A declaration that the imposition of the mandatory death penalty on the Applicant violates Articles 4, 5, 7 of the Charter, Articles 6(1), 7, 14(1) and 14(5) of the ICCPR and Article 3, 5 and 10 of the UDHR.
 - b. 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 has also violated Article 1 of the Charter.
 - c. An order directing 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. An order directing the Respondent to take legislative or other remedial measures to give effect to the Court's findings.
- e. An order for such reparations as the Court sees fit.

RESPONDENT'S PLEADINGS

10. The Respondent, prays the Court to be guided by the provisions of Article 56(5) of the Charter, Article 6(2) of the Protocol and Rule 40 of the Rules in determining the admissibility of the Application.

11. On merits the Respondent submits that:

- a. The death penalty is imposed after a seven-member jury reaches a unanimous verdict of guilt subsequent to a careful judicial review inherent in the definition of the offence and statutory procedures and only when it is found that the circumstances portray a clear intention of killing another.
- b. The Applicant is enjoying a *de facto* life sentence since the Respondent State has established a moratorium on the death penalty and has not executed anyone since 1993. The Respondent further submits that prisoners on death row are entitled to have their sentences commuted to a lesser term after serving ten years in prison or a full pardon.
- c. The Applicant was duly represented by counsel throughout the trial and was given a fair hearing up to the Supreme Court. The Respondent further submits that a plea for mitigation of sentence before the imposition of the death penalty would not have made any difference as the death sentence for murder is legally prescribed and no Court has discretion in the matter.
- d. The Applicant exercised his right to appeal against his sentence at the Court of Appeal and at the Supreme Court and he availed himself of the avenues for clemency under Article 72 of the Constitution thus his right to fair trial has not been infringed.
- e. The death penalty does not contravene the right to life under Article 4 of the Charter since what is prohibited under the Charter is not the death

penalty rather it is the arbitrary use of the death penalty. The Respondent further submits that the right to life cannot be violated when the Applicant has not been executed and is still in custody.

- f. The death penalty does not violate the prohibition against cruel, inhuman and degrading treatment or punishment under Article 5 of the Charter, since the Charter and other international instruments such as the ICCPR recognize it as a form of punishment. The Respondent further submits that it has not ratified any international human rights instrument that expressly prohibit the imposition of the death penalty as a form of punishment.
- g. The Applicant has not shown any cruel, inhuman or degrading treatment that he has suffered during his trial, after his conviction or during imprisonment.
- h. It has not violated Article 1 of the Charter and it recognizes all the rights, duties and freedoms enshrined in the Charter.

RESPONDENT'S PRAYERS

12. The Respondent prays the Court to order:

- a. That the death penalty was imposed on the Applicant in accordance with proper judicial process and does not violate Article 4.5 and 7 of the Charter.
- b. That the Respondent has not violated Article 1 of the Charter.
- c. That the Application be dismissed in its entirety.
- d. That the Court dismiss the relief sought by the Applicant.