

CHILDREN'S RIGHTS - PUNISHMENT

III. JURISPRUDENCE

ICCPR

· *C. Johnson v. Jamaica* (592/1994), ICCPR, A/54/40 vol. II (20 October 1998) 20 (CCPR/C/64/D/592/1994) at paras. 10.3, 10.4 and 12.

...

10.3 With regard to the author's death sentence, the Committee notes that the State party has not challenged the authenticity of the birth certificate presented by the author, and has not refuted that the author was under eighteen years of age when the crime for which he was convicted was committed. As a consequence, the imposition of the death sentence upon the author constituted a violation of article 6, paragraph 5, of the Covenant.

10.4 In the circumstances, since the author of this communication was sentenced to death in violation of article 6 (5) of the Covenant, and the imposition of the death sentence upon him was thus void *ab initio*, his detention on death row constituted a violation of article 7 of the Covenant.

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12. Under article 2, paragraph 3(a), of the Covenant, Clive Johnson is entitled to an effective remedy. In view of the fact that the author was a minor when he was arrested and that he has spent almost thirteen years in detention, more than seven of which on death row, the Committee recommends the author's immediate release. The State party is under the obligation to ensure that similar violations do not occur in the future.

· *Baroy v. The Philippines* (1045/2002), ICCPR, A/59/40 vol. II (31 October 2003) 518 (CCPR/C/79/D/1045/2002) at paras. 2.1-2.3, 8.3 and 9.

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2.1 On 2 March 1998, a woman was raped three times. The author and an (adult) co-accused were thereafter charged with three counts of rape with use of a deadly weapon contrary to article 266A(1), 1/ in conjunction with article 266B(2), 2/ of the Revised Penal Code. It is alleged that on the date of the offence, the author would have been 14 years, 1 month and 14 days old, by virtue of being born on 19 January 1984.

2.2 At trial, the defence introduced the issue of minority through the author, who claimed to have been born in 1982. The trial court instructed the appropriate government agencies to submit evidence on his true age. Three documents were submitted. A Certificate of Live

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Birth listed the date as 19 January 1984, while a Certificate of Late Registration of Birth showed the date as 19 January 1981, and an Elementary School permanent record as 19 January 1980. The trial court considered, in the light of the author's physical appearance, that the author's true date of birth was 19 January 1980, thus making him over 18 years of age at the time the offence was committed.

2.3 On 20 January 1999, the author and his (adult) co-accused were each convicted of three counts of rape with a deadly weapon and sentenced to death by lethal injection. In imposing the maximum penalty available, the Court considered that there were the aggravating circumstances of night-time and confederation, and no mitigating circumstances. By way of civil liability, each was further sentenced to pay, in respect of each count, PHP50,000 in indemnity, PHP50,000 in moral damages and PHP50,000 in civil damages. On 4 January 2002, the communication was submitted to the Committee.

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8.3 In spite of this conclusion with respect to the claims under article 6 [finding the claim inadmissible], the Committee observes that sentencing a person to death and placing him or her on death row in circumstances where his or her minority has not been finally determined raises serious issues under articles 10 and 14, as well as potentially under article 7, of the Covenant. The Committee observes, however, with respect to the exhaustion of domestic remedies, that the author has filed a "partial motion for reconsideration", currently pending before the Supreme Court, requesting the Court to reconsider its treatment of his minority in its judgment of 9 May 2002...

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 5, paragraph 2(b), of the Optional Protocol;

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Notes

1/ This provision defines rape as committed "by a man who shall have carnal knowledge of woman under any of the following circumstances:

a) through force, threat or intimidation;".

2/ This provision sets out : "Whenever the rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death."
