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III. JURISPRUDENCE

ICCPR

· *Baban et al. v. Australia* (1014/2001), ICCPR, A/58/40 vol. II (6 August 2003) 331 (CCPR/C/78/D/1014/2001) at paras. 2.4 and 6.7.

...

2.4 On 24 July 2000, the author, along with other detainees, participated in a hunger strike in a recreation room at Villawood Detention Centre, Sydney. On 26 July 2000, the hunger strikers were allegedly cut off from power and contact with the outside world. Allegedly drugged bottled water was supplied. Guards were alleged to have forcibly deprived the hunger strikers of sleep by making noise. On 27 July 2000, the hunger strikers (and the author's son) were forcibly removed and transferred to another detention centre in Port Hedland, Western Australia. At Port Hedland, the author and his son were detained in an isolation cell without window or toilet. On the fifth day of his detention in isolation (his son was regularly fed from the day *after* arrival), the author discontinued his hunger strike, and, eight days later, he was removed from the cell. During the period of isolation, the author contends that access to his legal adviser was denied. On 15 August 2000, the author and his son were returned to the Villawood detention centre in Sydney to attend their hearing in the Full Federal Court.

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6.7 Concerning the author's claims under article 19, the Committee, even assuming for the sake of argument that a hunger strike may be subsumed under the right to freedom and expression protected by that article, considers that in the light of the concerns invoked by the State party about the health and safety of detainees, including young children, and other persons, steps lawfully taken to remove the hunger strikers from a location giving rise to these concerns may properly be understood to fall within the legitimate restrictions provided for in article 19, paragraph 3. It follows that the author has not substantiated, for the purposes of admissibility, his claim of a violation of his rights under article 19 of the Covenant.

· *Cabal and Pasini v. Australia* (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at para. 7.7.

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7.7 With respect to the authors' claim of a violation of their right to health, the Committee shares the State party's view that there is no such right protected *specifically* by provisions of the Covenant. The Committee considers that a failure to separate detainees with

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communicable diseases from other detainees could raise issues primarily under articles 6, paragraph 1, and 10, paragraph 1.^{22/} However, in the instant case the Committee considers that the authors have failed to substantiate their claim, which is therefore inadmissible, under article 2 of the Optional Protocol.

Notes

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^{22/} *Lantsova v. The Russian Federation*, Case No. 736/1997, Views adopted on 26 March 2002.

Wilson v. The Philippines (868/1999), ICCPR, A/59/40 vol. II (30 October 2003) 48 (CCPR/C/79/D/868/1999) at paras. 2.3-2.6, 7.4, 8 and 9.

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2.3 On 30 September 1998 the author was convicted of rape and sentenced to death, as well as to P50,000 indemnity, by the Regional Trial Court of Valenzuela...

2.4 The author was then placed on death row in Muntinlupa prison, where 1,000 death row prisoners were kept in three dormitories. Foreign inmates were continually extorted by other inmates with the acquiescence, and sometimes at the direction of, prison authorities. The author refers to media reports that the prison was controlled by gangs and corrupt officials, at whose mercy the author remained throughout his confinement on death row. Several high-ranking prison officials were sentenced for extortion of prisoners, and large amounts of weapons were found in cells. The author was pressured and tortured to provide gangs and officials with money. There were no guards in the dormitory or cells, which contained over 200 inmates and remained unlocked at all times. His money and personal effects had been removed from him en route to the prison, and for three weeks he had no visitors, and therefore no basic necessities such as soap or bedding. Food comprised unwashed rice and other inappropriate substances. Sanitation consisted of two non-flushing toilet bowls in an area which was also a 200-person communal shower.

2.5 The author was forced to pay for the 8 x 8 ft area in which he slept and financially to support the eight others with him. He was forced to sleep alongside drug-deranged individuals and persons who deliberately and constantly deprived him of sleep. He was forcibly tattooed with a permanent gang mark. Inmates were stretched out on a bench on public display and beaten with wood across the thighs, or otherwise "taught a lesson". The author states he lived in constant fear coming close to death and suicidal depression, watching six inmates walk to their execution while five others died violent deaths. Fearing death after a "brutally unfair and biased" trial, he suffered severe physical and

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psychological distress and felt "total helplessness and hopelessness". As a result, he is "destroyed both financially and in many ways emotionally".

2.6 On 21 December 1999, i.e. subsequent to the submission of the communication under the Optional Protocol, the Supreme Court, considering the case on automatic review, set aside the conviction, finding it based on allegations "not worthy of credence", and ordered the author's immediate release. The Solicitor-General had filed a brief with the Court recommending acquittal on the basis that material contradictions in witness testimony, as well as the physical evidence to the contrary, justified the conclusion that the author's guilt had not been shown beyond reasonable doubt.

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7.4 As to the claims concerning the author's mental suffering and anguish as a consequence of being sentenced to death, the Committee observes that the authors' mental condition was exacerbated by his treatment in, as well as the conditions of, his detention, and resulted in documented long-term psychological damage to him. In view of these aggravating factors constituting further compelling circumstances beyond the mere length of time spent by the author in imprisonment under a sentence of death, ^{13/} the Committee concludes that the author's suffering under a sentence of death amounted to an additional violation of article 7. None of these violations were remedied by the Supreme Court's decision to annul the author's conviction and death sentence after he had spent almost 15 months of imprisonment under a sentence of death.

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8 The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by the Philippines of article 7, article 9, paragraphs 1, 2 and 3, and article 10, paragraphs 1 and 2, of the Covenant.

9 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy...As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible... All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.

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13/ *Johnson v. Jamaica* case No. 588/1994, Views adopted on 22 March 1996; *Francis v. Jamaica* case No. 606/1994, Views adopted on 25 June 1995.
