The Application of the International Covenant on Civil and Political Rights in National Law

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Abstract

This paper is in five parts. Part 1 examines some general features of the ICCPR and its relations to other human rights norms. Part 2 looks at the prohibition of torture and inhuman and degrading treatment in the Covenant and related international instruments. Part 3 examines the EU Minimum Standards on the application of the Death Penalty. Part 4 examines decisions of UK courts relating to the death penalty. Part 5 gives some examples of how some of other human rights principles have been applied in the United Kingdom.

Keywords

International Covenant on Civil and Political Rights, international human rights law, a non-derogable right, the right to life, prohibition of torture, the death penalty, Human Rights Committee, general comments, the EU Minimum Standards on the application of the death penalty, UK courts

Part 1: The ICCPR and related human rights norms

Human rights in international law

1. The concern of the international community with human rights in the modern era goes back to the foundation of the United Nations and in particular the adoption of the Universal Declaration of Human Rights (UDHR) by the General Assembly of the UN in 1948. To some extent

the activities of the international community in negotiating and adopting treaties and conventions at the regional and international plane may be seen as a development of the principles and aspirations set out in the declaration.

2. By way of a general survey we may note the following developments:

The European Convention on Human Rights (ECHR) 1950 and its many subsequent Protocols:

This was the earliest of the human rights conventions following the UDHR and was designed to rebuild Europe after the Second World War. It is a product of the earliest European institution, the Council of Europe.

The rights set out in the ECHR were similar to those that would be set out in the ICCPR. Unlike the latter, however, the ECHR provided for a court that would adjudicate on disputes and from the 1960's the European Court of Human Rights Court accepted applications from individuals complaining of violations of human rights.

The Court now sits in permanent session in Strasbourg; it is an institution of the Council of Europe and its decisions are enforced by the Council of Ministers of the contracting parties. It gives authoritative determinations binding on states parties in international law on applications for complaints of violations of rights and for just satisfaction. Its very extensive case law (to be found on the web at http://echr.coe.int/echr/en/hudoc) is of prime importance in the interpretation and application of human rights in the United Kingdom, throughout Europe and also internationally.

Applications that meet the admissibility criteria result in judgments usually after an oral hearing. Cases are decided by chambers and important cases can be reviewed by or proceed in the Grand Chamber. The decision is binding on the sate concerned. It may result in an award of compensation. The enforcement of the judgement and the application of consequential reforms to give effect to it, is undertaken by the Committee of Ministers.

The UN Convention Relating to the Status of Refugees 1951 (Geneva) and the 1967 New York Protocol (The Refugee Convention)

Asylum was once seen as the privilege of states. This Convention imposed a duty of *non refoulement* of individuals with a well founded fear of persecution on enumerated grounds albeit subject to exceptions (see Article 33).

A consequence of a prohibition on expulsion usually required the state to rant some form of a residence permit to a recognised refugee.

This measure was one of the first to grant aliens certain rights against contracting states in which they found themselves. The Convention can thus be seen as a human rights instrument in nature.

The International Covenant on Civil and Political Rights 1966 (ICCPR)

This is the first universal treaty based human rights instrument. The international complaint mechanism for states parties to the Covenant is a communication to the Human Rights Committee (HRC) who communicate views (rather than judgments) on violations in particular cases.

The HRC also issues general comments on the scope of specific articles of the ICCPR for the benefit of states parties.

The Covenant came into force a decade after it was signed. The Committee takes account of the jurisprudence of the ECtHR, and other international human rights bodies.

The American Convention on Human Rights (ACHR) (1969)

This provided for another regional human rights body with the Inter American Court sitting in San Jose, Costa Rica, and the Inter-American Commission sitting in Washington.

As well as facilitating the resolution of inter-governmental disputes, these institutions of the Organisation of American States built on the earlier American Declaration on Human Rights (1948).

The UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984) (UNCAT)

This treaty substantially developed the general prohibition against such treatment contained in the UDHR and the ICCPR and the regional instruments, including a prohibition on expulsion to face torture.

It required states to adopt universal jurisdiction in respect of the crime of torture even if committed by a former head of state.

Complaints of violations of this Convention are considered by the Committee Against Torture (CAT) who (like the HRC) also issue General Comments.

The UN Convention on the Rights of the Child (1989) (UNCRC)

This treaty made the welfare of the child a primary consideration in all official action affecting the child and has specific provisions in respect of punishment of children and the death penalty.

It is one of the most widely ratified international instruments in international law.

The Rome Statute of the International Criminal Court (1998) provides for international redress for war crimes in the event of an absence of local prosecution.

The Charter of Fundamental Rights of the European Union (2000)

This a treaty agreed by the Member States of the European Union (a different body to the Council of Europe) to be applied by the institutions of the European Union and the members States when dealing with matters within the scope of the EU law.

It re-states and in some respects develops the rights provided in the ECHR.

Its opening article states that "human dignity is inviolable".

3. In addition to treaty based obligations states may have their own constitutional traditions of respecting human rights, and some propositions of customary international law may be binding obligations on states.
4. Although decisions of regional human rights courts only apply within the region of the courts functioning, they often result in detailed examination of the comparative jurisprudence and the case law of other treaty based bodies, and thus prove influential in the development of the law.
5. By contrast decisions of the HRC may be much shorter in their explanation and the citation of materials taken into account and not judgments of judicial bodies.

The scheme of the ICCPR

6. The basic obligation imposed on states is to ensure that national law permits an effective remedy to individuals subject to its jurisdiction to secure that the rights afforded are effectively respected. Article 2 of the ICCPR provides:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

7. A number of points emerge from the above that inform the interpretation of this instrument whether by a national court or an the HRC:[1]
   i. All individuals are protected, not just citizens or even lawful residents but everybody. These are human rights and not constitutional rights. Even irregular aliens may have rights that need protecting.
   ii. The view of the HRC and after some date, now the settled jurisprudence of the ECtHR, is that individuals who are subject to the jurisdiction of contracting states have human rights claims whether or not they are also within the sovereign territory of those states.[2]

1 Most of these comments are drawn from General Comment 31 adopted May 2004, available on http://daccess-dds-ny.un.org/doc/UNDOC/GEN.

2 "This principle also applies to those within the power or effective control of the forces of a State Party

iii. All branches of the state must respect these rights, national, federal and local, executive, administrative and judicial. A state cannot evade its obligations by contending that an independent branch of government is committing the violation.

iv. There can be no discrimination in application of the rights. This emphasises not merely the point about citizens and aliens, but differential treatment on grounds of sex, race or social status. These terms are to be given a broad meaning developing as societies become more complex.

v. Where laws have not been passed to give effect to the rights there is a duty to do so.

vi. Depending on the constitutional traditions judges may be able to fill the gap in legal measures by creative interpretation, strike down incompatible laws or grant declarations that laws need to be amended to bring them into compliance. What is not satisfactory is to remain indifferent to a failure to secure the rights in question.

vii. Administrative bodies and public officials may be able to remedy the defect in the law. Not every case needs a judge to provide the effective remedy but in the event of a legal challenge the judge will have to examine whether the administrative remedy provided is effective.

viii. Whether there has been a violation of a continuing violation by reason of inadequate laws states must do something about it.

ix. A violation in an official capacity is no excuse for non compliance with the Convention, and the state cannot be immune from the application of the laws to itself.

8. These principles lie at the heart of human rights law and inform the nature of the obligation that states undertake when they introduce these provisions into their own legal systems.

9. There is considerable discretion how states incorporate the ICCPR rights and principles into law: in some states international treaties are automatically incorporated without further legislation, in others they are

acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation." GC 31, para. 10.

presumed to be respected unless the terms of national law prevent such a conclusion.

10. The obligation however is to respect the rights and give effective remedies to individuals whose rights are, have been and in some cases will be violated. The fact that national law does not at present recognise these rights is not a sufficient answer to the ICCPR. States need to do something to bridge the gap between the incompatible laws and practices and the rights promised by either accession or incorporation into law.

Rights from which a derogation cannot be made

11. Not all rights are of the same importance in the scheme of the Convention, but certain rights are non-derogable even in time of war or national emergency. Article 4 provides:

> 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
> 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

12. The following principles emerge from this:

    i. No derogations can be made from Art. 6 (life), 7 (torture), 8 (slavery), 11 (imprisonment for debt), 15 (retrospective criminal offence), 16 (recognition as a person in law) and 18 (freedom of thought conscience and religion). These rights must always be respected although what amounts to a violation of may depend on context.

    ii. Other rights (eg. Art. 9 detention) may be interfered with in a time of national emergency but only:

        a. If that is possible under other international obligations.

        b. Is done without discrimination.

        c. Is strictly necessary.

13. An examination of the rights afforded under the ICCPR permits the following categorisation of them:
    i. Fundamental rights that cannot be the subject of a derogation in time of national emergency.
    ii. Rights that can be the subject of derogation at times of emergency but are otherwise not the subject of exceptions or can be outweighed by competing considerations, these include the rights to liberty and fair trial.
    iii. Balanced rights, such as freedom of expression, privacy and enjoyment of family life that can be interfered with, even outside times of national emergency if a sufficient compelling public interest requires it.

Balanced rights

14. It is with respect to balanced rights that differences between state practice, both inside Europe and between Europe and other parts of the world, notably Asia may emerge. Not every state has to take the same approach to divorce, abortion, same sex marriages, the prohibition of prostitution and pornography for example. The legislature and the judiciary are entitled to give weight to particular national moral sentiment and public opinion. This applies within a diverse range of societies such as in Europe that include societies that are essentially secular in nature and those where religion plays a strong role.
15. The human rights bodies afford what is sometimes called "a margin of appreciation" or a discretionary area of judgment of varying size according to the subject matter and the emergence of a regional or international consensus. A national judge will be closer to the vital interests of a particular society than an international tribunal and so "margin of appreciation" would not be appropriate in a domestic application of the ICCPR, but some weight can be given to legislative choices on issues of controversy provided that the principles of the ICCPR are respected.
16. Two such principles reflected in Article 5 of the ICCPR can be noted:
    i. The rights cannot be used to undermine the rights of others. There is little case law on this issue. It has greatest application in determining the limits of free speech, but this does not mean that aliens, criminals or others who have deserved punishment can be deprived of their

rights.

ii. The rights in the ICCPR cannot be used to restrict more generous rights afforded elsewhere in national law or other Treaties.

17. The ICCPR thus cannot be used as a restriction on rights provided elsewhere: in a state's constitution or under another Treaty such as UNCAT or the UNCRC. They provide minimum standards that have to be adhered to, this is sometimes called a floor below which states cannot reduce rights rather than a ceiling on rights.

18. A further important principle that human rights bodies apply is the incremental (living instrument) approach updating the instrument and ensuring it keeps pace with modern needs and circumstances without encroaching on policy questions whether the national legislature should have the last word. We shall see in the next section how this "living instrument" approach has come into play.

Part 2 The right to life and the prohibition of torture and related ill-treatment

19. The right to life and freedom from torture are two rights that are non-derogable in times of war or national emergency. Together they impose restrictions on the use of deadly force by the state including the application of the death penalty. Article 6 is in these terms:

> 1. 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.
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> 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
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> 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

20. We can comment on this provision as follows:

i. The right to life must be protected by law. The circumstances in which it may be legitimate to deprive someone of life have to be clearly set out in law. This applies to the laws of homicide, self-defence, the use of reasonable force to quell disorder or prevent crime, or the use of capital punishment for grave crimes.

ii. Deprivation of life must not be arbitrary. Any discretion to inflict lethal force or punishment must thus be narrowly circumscribed by clear, transparent principles not contrary to the other terms of the Covenant.

iii. The right gives rise to an ancillary obligation of investigation whenever a person meets his death at the hands of state agents.

iv. It is not itself a breach of the ICCPR for states to retain capital punishment for a period after accession if it already exists in a state. However, accession to the ICCPR implies a state is moving towards abolition when it can sign the Optional Protocol to that effect. In the meantime, the application of capital punishment is strictly limited by the ICCPR.

v. The following limitations can be noted:

a. it must be limited to the gravest of crimes and the possibility of retention shall not be used to delay or prevent eventual abolition if this is considered appropriate.

b. Only courts of competent jurisdiction can impose the death penalty for conduct that was a capital offence at the time of its commission.

c. Capital punishment cannot be imposed on people who were under 18 at the time the crime was committed. It cannot be carried out on

pregnant women.

d. There must be a right to seek pardon or commutation before the sentence is executed.

vi. The case law of the HRC identifies when capital punishment and other deprivations of life is considered contrary to other provisions of the Covenant. These include a breach of the fair trial provisions or where imposition of the death penalty can be considered as a form of inhuman or degrading treatment.

21. These provisions cannot be read in isolation as a complete code. Under the ICCPR as well as the regional Conventions there are Optional Protocols to abolish the death penalty without reservation. International human rights scholars agree that this indicates the direction of travel; the death penalty should be restricted in its application until its final abolition.

22. Whilst retention of the death penalty is permitted, its use cannot by itself constitute cruel or unusual punishment or torture or inhuman treatment and punishment. However, use of the death penalty may become an arbitrary violation of the right to life if capital punishment is imposed in circumstances that breach other rights under the Covenant and for present purposes those other rights are most significantly the right to a fair trial and the prohibition on torture.

23. This presentation does not examine in detail the rights to a fair trial but we summarise the relevant provisions of Article 14 here:

i. Equality before the law.

ii. Open justice save where private sitting is necessary.

iii. The presumption of innocence until guilt if proved in accordance with law.

iv. The minimum fair trial guarantees include:

a. Being informed promptly and in detail and in a language that the person can understand the nature and cause of the charge.

b. Adequate time to prepare a defence and communicate with counsel.

c. To be tried without delay.

d. To be present at trial, and the right to legal assistance of his own

choosing or in the case of absence of means and where the interests of justice require it to be assigned such assistance.

e. To examine and have examined the witnesses against him and equality with the prosecution of the terms in which witnesses are heard.

f. The free assistance of an interpreter

g. Privilege against being forced to testify or confess guilt.

24. Freedom from torture is a non-derogable right. Article 7 ICCPR prohibits subjecting people to treatment or punishment that amounts to torture or that is cruel, inhuman or degrading. Scientific experimentation without consent is prohibited under this Article.

25. We may also note Article 10 ICCPR in the context of punishment:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

26. Even where a person faces a capital charge ort has been sentenced to death by a court applying the highest standards of process, the treatment of a person in custody or following sentence may deprive him of dignity or be considered inhumane. Such treatment is not merely a violation of the ICCPR in its own right but also prevents effect being given to the sentence of death. Compliance with Article 6 requires any derivation of life to be in accordance with the "other provisions of this Covenant".

27. Given the importance of the prohibition on torture it has been the subject of more detailed rules in the UNCAT from which we derive definitions likely to apply to ICCPR. UNCAT Article 1 provides:

> For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

28. Torture can never be justified and must be investigated and prevented see Articles 2(see also Articles 4-12):

    1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
    2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
    3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

29. Further there is an absolute prohibition against expelling someone to face torture abroad provided by Article 3. This is a much broader protection that the non-refoulement principle in the Refugee Convention, where it can be exempted on the grounds of national security and criminal convictions. This is an example of the evolution of national standards:

    1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

30. There are a number of important subordinate measures with respect to torture:

    i. It must be made a criminal offence (Art. 4).
    ii. States must ensure they have jurisdiction to prosecute all those guilty of torture wherever committed and whoever committed it (Art. 5-9).
    iii. A state must educate its law enforcement agencies to prevent torture

(Art. 10).

iv. Interrogation rules and practices must be kept under review to prevent torture (Art. 11)

v. States must investigate torture (Art. 12) and ensure that complaints by individuals of torture are properly examined (Art. 13) with a right of effective redress for victims of torture (Art. 14)

vi. Evidence obtained by torture "shall not be invoked as evidence in any proceedings" save for the trial of the torturer (Art. 15).

31. Further by Article 16:

> "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment".

32. The HRC's General Comment dates from 1992[3] and is somewhat out of date. However that comment combined with the subsequent case law particularly of the ECHR Case law[4] suggests that inhuman treatment is where severe suffering is caused irrespective of intention. Cruel treatment means the same and degrading treatment is where a person is disproportionately humiliated and deprived of dignity.

33. Whilst capital punishment, imprisonment, being restrained at trial have all the capacity to humiliate and degrade, there will only be a violation of this norm in the context of detention and punishment if the treatment is either done with the purpose of inflicting humiliation over and above the legitimate acts themselves or does humiliate without objective justification.

34. This is a field in which social developments are important. For a long time British educational and penal establishments thought that the corporal

3 GC No. 20 (1992).

4 See for example *Peers v. Greece* (2001) and the extensive subsequent case law including *Dougoz v. Greece*, *Kalashnikov v. Russia*, and *Onofriou v. Cyprus* (2010), ECtHR.

punishment of children was an acceptable form of discipline: beating them with a cane, rod or whip.

35. In 1978 in the case of *Tyrer v. United Kingdom*, the ECtHR said at [31]:

> The Attorney-General for the Isle of Man argued that the judicial corporal punishment at issue in this case was not in breach of the Convention since it did not outrage public opinion in the Island. However, even assuming that local public opinion can have an incidence on the interpretation of the concept of "degrading punishment" appearing in Article 3 (art. 3), the Court does not regard it as established that judicial corporal punishment is not considered degrading by those members of the Manx population who favour its retention: it might well be that one of the reasons why they view the penalty as an effective deterrent is precisely the element of degradation which it involves. As regards their belief that judicial corporal punishment deters criminals, it must be pointed out that a punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control. Above all, as the Court must emphasise, it is never permissible to have recourse to punishments which are contrary to Article 3 (art. 3), whatever their deterrent effect may be.
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> The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field. Indeed, the Attorney-General for the Isle of Man mentioned that, for many years, the provisions of Manx legislation concerning judicial corporal punishment had been under review.

36. The HRC General Comment No. 20 follows suit, and so corporal punishment can now be seen as illegitimate when inflicted by state authorities. Whether a state is required to ban smacking by parents is presently a contentious issue in the United Kingdom and elsewhere in Europe.

37. This quotation also indicates that the relationship between human rights and public opinion. Whilst public opinion reflected in the choices made by democratically accountable governments is relevant in assessing some issues that arise in human rights decision making (particularly with respect to balanced rights) it is of limited significance in respect of non-derogable rights, as there is the possibility that the public endorse that

which is prohibited. So the executive and judiciary when making decisions engaging human rights may sometimes have to lead rather than follow public opinion.

38. However in order to preserve the absolute character of this provision, the HRC and the regional courts have insisted that the ill-treatment considered has to raise minimum standards of severity before it comes within Article 6 (or in the ECHR Article 3).

39. Summarising the extensive case-law on this question it may be said that the prohibition on torture, and subjecting someone to inhuman or degrading treatment or punishment gives rise to at least the following types of case (apart from capital punishment that will be further considered in the next section) although the categories are never closed:

    i. The prohibition on corporal punishment (see *Tyrer above*).

    ii. Minimum standards in conditions of prisons for remand and long term prisoners (see footnote 4 above.)

    iii. Subjecting people (especially juveniles, detainees, prisoners facing trial and other vulnerable people) to excessive force.

    iv. Obtaining confessions of other information by force of threat of force in criminal investigations.[5]

    v. Using information obtained by torture in any proceedings by a public authority.[6]

    vi. Inappropriate medical treatment without informed and free consent, particularly where linked to reproductive capacity and discrimination.[7]

    vii. Expelling an alien to a place where there are substantial grounds for concluding that they will be subject to torture or inhuman or degrading treatment.[8]

    viii. Enforcing destitution on a person (notably asylum seekers) by preventing them from being self sufficient and denying them equal

5 *Selmouni v. France* (1999), ECtHR 66; *Ocalan v. Turkey* (2005), ECtHR 282.

6 *Abu Qatada v. United Kingdom,* ECtHR (2012) 56.

7 See a recent decision of the ECtHR in *VC v. Slovakia* (2011).

8 *Soering v. United Kingdom* (1989), ECtHR 14; *Chahal v. United Kingdom* (1996) 54; *Saadi v. Italy* (2008), ECtHR 179.

access to social security.[9]

Part 3: The EU Minimum Standards on the Death Penalty

40. The previous section has revealed how treatment inconsistent with other provisions of the Covenant may result in a violation of the right to life in the context of capital punishment.

41. Both the Council of Europe and the European Union now require member states to abolish the death penalty. New state parties now sign up to the optional protocol to this effect. There is very little contemporary case law from the two European Courts on human rights and the death penalty, and the fact that a state or a group of states have abolished the death penalty does not of itself impose any legal obligation on another state to do so immediately. However, we may note two earlier decisions of the ECtHR indicating while the death penalty itself may not be a violation of human rights particular circumstances may make it so.

42. In the case of *Soering v. United Kingdom*[10] decided in July 1989 the Court concluded that the extradition of a German national from the UK to Virginia where the public prosecutor was seeking a capital sentence would violate Article 3 ECHR (the equivalent of Article 7 of the ICCPR). This was because the death row phenomenon where the convicted prison may spend many years in solitary confinement pursuing challenges to his execution and not knowing whether he would live or die from one week to the next was considered so degrading and demeaning of human dignity to be inconsistent with the standards of Article 3.

43. In the case of *Ocalan v. Turley*,[11] the well known leader of the PKK violent separatist group was sentenced to death. The Court considered that such a sentence was contrary to Article 3 where the trial resulting in such a sentence did not meet the highest fair trial standards. In this case the detention of Mr Ocalan in solitary confinement with no effective access to his lawyers breached the fair trial standards and made the sentence inhuman or degrading treatment.

9 *MSS v. Belgium and Greece* (2011), ECtHR; *Adam* (2005), UKHL 66; C 411-10, *NS (EU law)* [2011], CJEU.

10 (1989) 11, EHHR 439.

11 (2005) 41, EHHR 45.

44. Today, not merely is the sentence of death unlawful inside both the Council of Europe and the European Union, but state parties of both organisations cannot extradite or return a person to a state they faced execution. The Strasbourg Court so concluded in its recent decision of *Al Sadoon v. United Kingdom*[12] where the UK was in breach of the ECHR by handing a terrorist suspect held in British military detention in Basra to the Iraqi authorities for trail without seeking a prior assurance that he would not face the death penalty.
45. As far as the EU is concerned both the EU Charter and the 2004 Qualification Directive Article 15 prevent any person being returned from an EU state to a territory where they may face the death penalty.
46. Further in 2004 the European Union adopted the following Minimum Standards in respect of communications with states who retain the death penalty even though the condemned person may not be an EU national. As a matter of general foreign relations the following principles are expected to be applied.

EU Minimum Standards

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

i. Capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.

ii. Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

iii. Capital punishment may not be imposed on:

Persons below 18 years of age at the time of the commission of their crime;

12 (2010), EHRR.

Pregnant women or new mothers;

Persons who have become insane.

iv. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.

v. Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.

vi. Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.

vii. Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

viii. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.

ix. Capital punishment may not be carried out in contravention of a state's international commitments.

x. The length of time spent after having been sentenced to death may also be a factor.

xi. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.

xii. The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.

47. Although these were standards adopted by EU Member States they

reflect UN principles of international human rights law rather than a mere regional antipathy to a punishment that has now been abolished throughout the Council of Europe.

48. Although the International Court of Justice in Hague is not a human rights court and not generally concerned with these issues, it has made a small contribution to restricting the death penalty in respect of its rulings under the Vienna Convention on Diplomatic Relations, that affords a foreign national prisoner a right of access to consular authorities. In the case of *La Grand*,[13] it was held that a failure to inform the prisoner of his consular rights had an adverse impact on fair trial as his consulate might have provided legal advice to him. The death penalty should not be implemented in such cases.

49. The EU principles reflect both international law and the recommendations of the UN 2004 Human Rights Council resolutions of other UN bodies.

50. They also reflect the General Comment of the HRC:

General Comment 6 of the Human Rights Committee (extracts)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4)… It is a right which should not be interpreted narrowly.

…

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number

13 *Germany v. USA* Judgment of 27 June 2001, ICJ.

of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

Part 4 Decisions of the UK Courts relating to human rights and the death penalty

51. The UK suspended executions in 1964 prior to abolishing it first for murder and subsequently for all crimes. Since 1966 the UK has enabled individuals to pursue complaints to Strasbourg of a breach of the ECHR and since 1973 it has been a party to the European Union (as it has now become).

52. Although British judges only consider the question of whether a person may face execution in the context of extradition or asylum law, the most senior judges (formerly the Law Lords now the Justices of the Supreme Court) also sit on the Judicial Committee of the Privy Council in London that is the highest court of appeal for a number of independent Commonwealth countries and dependent territories (including until recently Hong Kong). Many of these countries retained both the death penalty on independence. They all had constitutions protecting human rights reflecting the principles of the ECHR and a number of these countries were party to the regional human rights treaty (the ACHR). The judges who sit on the Judicial Committee of the Privy Council thus has recent experience of constitutional and human rights litigation concerning the death penalty that is worth noting as of potential interest to a constitutional court in Taiwan considering the application of the ICCPR

in this context.

53. Decisions of the UK Courts are available very easily on www.bailii.org where Privy Council, House of Lords, Supreme Court decisions can be found (UKPC, UKHL, UKSC) as well as decisions of the Court of Appeal (EWCA Civ) and the High Court (EWHC Admin) and decision of the two European Courts (ECtHR and CJEU). These initials will be used in this and the final section of the paper.

54. By reference to some cases arising particularly from the Caribbean (Jamaica, Trinidad, Barbados and Grenada) we can see how a state's obligations under both ICCPR and the ACHR led to development of its constitutional protection against both arbitrary deprivation of life and being subjected to cruel or inhuman treatment of punishment.

55. Over a 30 year period we can trace a significant change of approach as human rights principles assumed a greater importance in constitutional adjudication and the living instrument applied in practice. The following summary picks out a few of these decisions:

    i. *De Freitas v. Commisioner of Prisons* [1976] AC 239: the PC concluded that the prerogative of mercy was not subject to judicial review or constitutional supervision.

    ii. In *Riley v. AG Jamaica* [1983] I AC 719 it was concluded following *De Freitas* by a majority that delay in execution did not render the implementation of the death penalty inhuman or degrading.

    iii. The decision in Riley was reversed and the minority judgement approved in the landmark decision in Pratt and Morgan v. AG Jamaica (November 1993) [1994] 2 AC 1. Lord Griffiths said at [60]:

> "There is an instinctive revulsion against the prospect of hanging a man after he has been held under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity; we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time. But before their Lordships condemn the act of execution as "inhuman or degrading punishment or other treatment" within the meaning of section 17(1) there are a number of factors that have to be balanced in weighing the delay. If delay is due entirely to the fault of the accused such as an escape from custody or frivolous and time wasting resort to legal

procedures which amount to an abuse of process the accused cannot be allowed to take advantage of *that* delay for to do so would be to permit the accused to use illegitimate means to escape the punishment inflicted upon him in the interest of protecting society against crime."

Having reviewed the decision in *Soering* and comparative international jurisprudence from other countries including India the PC stated at 73:

"In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence."

Following *Pratt* a rule of thumb emerged that a five year period following sentence was appropriate to allow the condemned man to pursue an appeal against sentence, seek international remedy from the HRC or the regional body under the ACHR and then to seek commutation of the sentence of death from the Mercy Committee.

iv. *Guerra v. Baptiste* [1995] UKPC: The PC considered that the carrying out of an execution without the customary 48 hours notice applicable in Trinidad to enable the condemned man to say farewell to families was unlawful even though the five year time limit had not quite been exceeded, particularly where international remedies and the right to seek commutation of the sentence of death had not been exhausted. The Court concluded:

47. The giving of reasonable notice to a condemned man of his impending execution has another distinct purpose to perform, which is to provide him with a reasonable opportunity to obtain legal advice and to have resort to the courts for such relief as may at that time be open to him. The most important form which such relief may take in the circumstances is an order staying his execution. If the condemned man

> is not given reasonable notice of his execution, he may be deprived of the opportunity to seek such relief, with the effect that his right not to be deprived of his life except by due process of law may be infringed, contrary to section 4(a) of the Constitution. In this connection it must not be forgotten that, by virtue of section 5(2)(h), the right to the due process of law includes the right not to be deprived of "such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms". It follows that, in their Lordships' opinion, the due process of law requires that a reasonable time should be allowed to elapse between the reading of a warrant of execution and the execution itself, not only for the humanitarian purposes which their Lordships have previously described, but also to provide a reasonable opportunity for the condemned man to take advice and if necessary seek relief from the courts. The settled practice that a period of at least four clear days (including a weekend) will be necessary to constitute such reasonable time should be regarded as applicable as much to the latter purpose as to the former.
>
> 48. Fortunately, in the present case, those acting for the appellant succeeded in filing the necessary proceedings later in the evening of 24th March, and in obtaining a stay of his execution early the following morning. Even so, the giving of less than 17 hours' notice to the appellant of his execution constituted a breach of his constitutional rights, under sections 4(a), 5(2)(b) and 5(2)(h) of the Constitution. However since their Lordships have already concluded that the appellant's sentence of death must be commuted to a sentence of life imprisonment on other grounds, it is unnecessary that any further relief should be granted by reason of the above breaches of his constitutional rights."

56. Alongside these developments the question of whether there was an enforceable right to seek commutation of the sentence from the mercy committee or whoever exercised the prerogative of mercy in a particular state. In *Pratt and Morgan* time was built in to enable the condemned man to seek clemency. In *Thomas and Hilaire* it was concluded that it was unlawful to prevent a condemned man from seeking relief from the international human rights bodies. It was recognised that the conclusions of those bodies would be relevant to the exercise of the prerogative of mercy and thus in principle the condemned man should be afforded the opportunity of submitting he judgment of the International Court to the

national authorities exercising the prerogative of mercy.

57. Thus in a case from Jamaica called *Steve Shaw* in 1998, the HRC decided that the carrying out of the sentence of death on someone who had been convicted of an offence of murder some years previously would violate his rights because the highest standards of fairness had not been met in his trial:

    i. He had been held without access to a lawyer or being brought before a court for an e-unexplained length of time.

    ii. He had been held in custody for more than two years before his trial came on for hearing.

    iii. There was some concern as to his mental and intellectual functioning and there was inadequate recourse to a doctor.

    iv. The conditions in which he was held both pre trial and after convictions were unsatisfactory: over-crowding, inadequate exercise, inadequate facilities to prepare a defence.

    v. There was no right of appeal against the sentence of death itself that was mandatory in the case of murder and there was no right to seek a pardon from the Mercy Committee who advised the head of state, this was seen as a privilege and not a right.

58. This was one of a number of similar rulings made in such cases. The conclusion was that the standards of Article 14 had not been met and so the sentence of death could not be carried out.

59. There was some tension between the views of the HRC and the UKPC as to delays. For the HRC Article 14 provided for the right to trial within a reasonable period of time, and so a failure to meet that standard was an irremediable violation of the fair trial rights that prevented execution. It was only very exceptionally that post-trial delay could prevent a state carrying out the penalty. The HRC was concerned that a 5 years period would lead to premature execution when moratoria, or further post conviction remedies might in due course lead to commutation.

60. It is for this reason that the EU Common standards are not prescriptive about post trial delay. The UKPC members were themselves not convinced that all pre trial delay made a trial unfair or that the remedy for pre trial delay was to deprive the state of its ability to enforce its own laws.

61. The next step in constitutional litigation was the case of *Lewis and others v. Jamaica* [2000], UKPC (and one of the others was the claimant Steve Shaw) the authorities were reviewed and in the light of these developments the judges moved away from the old rule in *De Freitas*. They concluded that the exercise of the prerogative of mercy was subject to judicial scrutiny for procedural propriety:

> 47. It is to their Lordships plain that the ultimate decision as to whether there should be commutation or pardon, the exercise of mercy, is for the Governor-General acting on the recommendations of the Jamaican Privy Council. The merits are not for the courts to review. It does not at all follow that the whole process is beyond review by the courts...
>
> 48. The fact that section 91 of the Constitution requires the Jamaican Privy Council to have the judge's report and such other information as the Governor-General, on the Jamaican Privy Council's recommendation, requires does not mean that the Jamaican Privy Council is precluded from looking at other material even if the right to have such material before the Jamaican Privy Council must be based on some other rule than the express provisions of the Constitution.
>
> 49. Whatever the practice of the Home Secretary in England and Wales and before the death penalty was abolished in 1965, the insistence of the courts on the observance of the rules of natural justice, of "fair play in action", has in recent years been marked even before, but particularly since, decisions like *Council of Civil Service Unions v. Minister for the Civil Service* [1985] A.C. 374 (see e.g. Lloyd v. McMahon [1987] A.C. 625 at pages 702-703; *Reg. v. Secretary of State for the Home Department, Ex parte Fayed* [1998] 1 W.L.R. 763) though the long citation of authority for such a self-evident statement is not necessary.
>
> 50. On the face of it there are compelling reasons why a body which is required to consider a petition for mercy should be required to receive the representations of a man condemned to die and why he should have an opportunity in doing so to see and comment on the other material which is before that body. This is the last chance and insofar as it is possible to ensure that proper procedural standards are maintained that should be done. Material may be put before the body by persons palpably biased against the convicted man or which is demonstrably false or which is genuinely mistaken but capable of correction. Information may be available which by error of counsel or honest forgetfulness by the condemned man has not been brought out before.

> Similarly if it is said that the opinion of the Jamaican Privy Council is taken in an arbitrary or perverse way – on the throw of a dice or on the basis of a convicted man's hairstyle – or is otherwise arrived at in an improper, unreasonable way, the court should *prima facie* be able to investigate."

62. Finally, constitutional litigation did lead to a merger of constitutional and human rights norms in a group of associated cases called *Reyes and Fox* [2002] UKPC 11, 13 where the UKPC concluded that the mandatory sentence of death for all murders that the British had provided for in the Caribbean was incompatible to contemporary norms of human rights see also *Watson v. DPP Jamaica* [2004] UKPC 34.

63. In summary this meant:

    i. Following conviction for a capital offence there needed to be a sentencing hearing.

    ii. The sentence of death must be reserved for the worst class of murders, after proper investigation of mitigating and aggravating factors.

    iii. Although juries were used to convict people of murder, the sentencing exercise was to be performed by the judge who had to secure respect for constitutional and human rights.

    iv. An investigation into mental responsibility was necessary as it was inhuman to execute a person who had no or limited understanding of his actions or ability to control them.

    v. Breach of human rights treaties was a mater that could be considered in the sentencing process

    vi. In any event the condemned person had the right to submit a petition for mercy where international obligations and the decisions of international bodies could be considered.

64. This approach was then argued before a number of Commonwealth African countries by lawyers working with the Death Penalty Project and successful outcomes prohibiting the mandatory death penalty have been obtained in Uganda, Kenya and Nigeria. The courts of Malaysia and Singapore have been less receptive to this approach and have applied older UKPC jurisprudence, but in doing so manifestly depart from the strict justification and "in no way flawed" approach of the HRC.

65. Retention of the death penalty by a state is therefore bound to invite appeals and constitutional challenges as the state's compliance with domestic and international norms, maintain human prison conditions, support a full assessment of moral culpability and mitigating factors is questioned in litigation. It is also likely that issues such as pre and post trial delay, methods of capital punishment and whether there is any convincing evidence that capital punishment is justified by reason of its ability to deter others. The controversies surrounding the application of the penalty as well as the experience of many states throughout the world that mistaken convictions and executions have happened, mount to god reason why the executive should dispense with the penalty.

66. It may be noted that abolition or restriction of the death penalty has largely come about by reason of executive decisions by government or judicial decisions by courts rather than a popular referendum or public opinion.

67. As the ECHR said in *Tyrer* (above) support for punishments may be based on popular norms that themselves violate international human rights: public spectacle, discriminatory treatment of criminals, lack of appreciation of mitigating factors etc.

68. The question whether the retention of the death penalty at all or in the particular circumstances of the case is a question of constitutional adjudication in the light of developing human rights norms, and the experience of judges and criminologists as to its effect and the alternatives to it. It is not a pure question of public opinion. In constitutional adjudication the question is likely to be whether the interference with the right to life is still justified by a pressing social need and is proportionate in all the circumstances.

Part 5 Human Rights Litigation in the United Kingdom

69. British common law does not consider that Treaties signed by the state are part of the law for that reason alone. Generally a statute is required to make the Convention part of the law before it can be relied on by an individual either against the state or against a private individual (*Brind* [1991] UKHL 4; *R v. Lyons* [2002] UKHL 44).

70. Further unlike the position in the USA (*Marbury v. Madison*) the UK Supreme Court cannot strike down an Act of the UK Parliament (although

EU law may declare such statutes can only have effect subject to the requirements of EU law)

71. However, the common law does recognise:
    i. Treaties are binding in international law and may therefore be a source of standards, or criteria for the assessment of an executive discretion whether no domestic statute mandates the outcome.
    ii. Executive policies designed to give effect t treaty obligations may give rise to public law obligations to apply them and not depart from them without good reason.
    iii. European Union law (that is binding in the UK) itself is formulated on respect for the ECHR as a general principle of law.
72. In 1998 the UK Parliament passed the Human Rights Act 1998 that came into force in October 2000, and imposes:
    i. A duty on public authorities to respect the core human rights set out in an appendix to the Act save where they are prevented from doing so by a law of the UK Parliament.
    ii. A principle that all laws whenever passed in the UK are intended to respect Convention rights and should be interpreted as such where policy to do so.
    iii. Grants access to the UK courts to secure remedies for a failure to respect human rights.
    iv. Where a statute of the UK Parliament prevents respect for human rights being given by a public authority then a court may grant a declaration of incompatibility enabling swift legislative remedial action.
73. The experience of the UK courts over the past 10 years of litigation may be of relevance to the public authorities in Taiwan who have brought the ICCPR into the domestic law of the state.
74. The following cases reveal some of the range of issues dealt with:

    R v. A [2001] UKHL 25: a statutory prohibition on questioning a complainant in a rape case could contravene the fair trial rights of the defendant, the statute would be read as to in clued an exemption where the fair trial rights required it.

Bellinger v. Bellinger [2003] UKHL trans gendered person only had the right to be recognised in a new identity from the time of measures designed to implement respect for private life in accordance with developing Strasbourg norms (*Goodwin v. UK*) and this did not alter past civil status.

Ghaidan v. Mendoza UKHL [2004] 30 a same sex partner should be considered a member of the family of a tenant to avoid a violation of discrimination in respect for private life.

R (A) and others v. SSHD [2004] UKHL 56, a derogation made from the right to liberty in respect of foreign terrorist suspects who were considered dangerous but could not be deported from the UK was unlawful as it was discriminatory between foreigners and own nationals and could not be justified.

A No 2 v. SSHD [2005] UKHL 71: information obtained by torture and supplied by foreign intelligence agencies to the UK could not be used in legal proceedings against a person (in this case a deportation appeal).

ZH (Tanzania) [2011] UKSC 4 the interest of a child may preclude the removal it its non citizen mother despite her poor immigration history and failure to met the requirements of the immigration rules.

R v. Horncastle [2009] UKSC 14 evidence given by a witness whose identify was not revealed to the defence could be used in a prosecution where conditions set out in law designed to enable this had been met, even though it was the sole or decisive evidence in the case.

R (F) v. SSHD [2010] UKSC 17 a life-long requirement to be on the sexual offences register and supply information of current address was a disproportionate interference with the right to respect for private life.

Manchester City Council v. Pinnock [2010] UKSC 45; [2011] UKSC a statute enabling a local authority to recover possession of a dwelling house that was someone's home without any consideration of the proportionality of the reasons for doing so could contravener the right to respect for a home.

McCaughey [2011] UKSC 20 the right to life required an open fair and independent investigation into death of a terrorist suspect at the hands of the police into all the contributing circumstances whereby he came by his

death.

Kambazi v. SSHD [2011] UKSC 23 detention of an irregular migrant pending removal could be unlawful and require compensation in damages if it was unduly prolonged, or not in accordance with executive policy governing such detentions.

Al Rawi v. SSHD [2011] UKSC the common law did not permit the court to receive closed evidence (information not disclosed to a party of his lawyers in considering whether the UK security services had been complicit in a extraordinary rendition, (removal to face torture abroad).

Cadder v. HM Advocate [2010] UKSC 43 denial of access to a solicitor before a criminal suspect was interviewed made the stat's reliance on the contents of that interview a violation of the right to fair trial.

Case Law Scenarios

Problem 1:

Abdul is found by a police boat adrift in a life raft one kilometre from the shore. He says he is fleeing the PRC a country where he faces brutal interrogation, trial before a state security court and possible capital punishment because he is suspected of being an Islamic militant. He is banned from entering Taiwan. The police propose to hand him over to a vessel returning to Xiamen. A citizen's group files a motion preventing his return.

The state argues:

Abdul has not entered Taiwan, is not a citizen and has no right to challenge his removal.

In any event, the death penalty is lawful in China and Abdul cannot complain of he is guilty of political offences.

Problem 2:

Nigel is a British tourist visiting Taiwan.

He is arrested on suspicion of murdering his girl friend who has been found dead in his hotel room.

He asks for legal advice and for his consular authorities to be notified. He is denied the right to contact them.

He is held in police custody for seven days. He says he needs a special diet because he has medical complications that will cause him to have panic attacks. He is told he must eat the same food as everyone else.

He admits to hitting his girl friend in an argument.

He is brought to trial six months later. He asks for legal assistance but is told he has to pay himself as free assistance is limited to those who have paid taxes in Taiwan. He has no money.

He is convicted mainly on the basis of his confessions.

He is sentenced to death.

He now seeks constitutional redress setting aside his conviction and sentence.

公民與政治權利國際公約在國內法上的適用

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摘要

本文分為五個部份。第一部份檢視《公民與政治權利國際公約》的某些特徵以及與其他人權規範的關係；第二部份則關注該公約及其他國際機制中有關禁止刑求及其他不人道及侮辱性待遇的規範；第三部份說明歐盟在適用死刑上的最低標準；第四部份檢視英國法院在死刑相關案件上所作的判決；第五部份舉出一些實例，說明人權的原則如何在英國國內落實。

關鍵字

公民與政治權利國際公約、國際人權法、不得克減的權利、生命權、禁止刑求、死刑、人權事務委員會、一般意見書、歐盟適用死刑案件最低標準、英國法院