

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME - LEVEL 6
FINAL EXAMINATION 2020/21
INTERNATIONAL HUMAN RIGHTS LAW LLU6717/LWU4325
DURATION – THREE (03) HOURS



Date: 08-09-2021

Time: 01.00 pm-4.00 pm

Please read the instructions carefully.

The paper consists of five (05) questions. You should answer four (04) questions. Part A question is compulsory. You may choose three questions from Part (B).

PART A

1. (a) Serendib is a nation comprising different religious groups. Alvenians are a minority religious group having the religious belief that once an Alvenian dies, the body should be buried. Cremation of dead bodies is in contravention to their religious teachings. Following the Covid-19 outbreak that resulted in a medical emergency in the country, the government of Serendib decided to ban burying corpses of those who die contacting the virus. The Health Ministry issued a circular imposing a ban on burials. The government stated that since all information about the virus is not discovered yet, burying bodies might have a risk in contaminating underground water resources. Religious and political leaders representing the Alvenian community objected this decision arguing that no scientific evidence has been produced to sustain the government's claim. They pointed out that in all other countries in the world, bodies of those who die from Covid-19 are allowed to be buried, provided that relevant health guidelines are followed. The Alvenians further alleged that they are targeted by this decision due to their religious identity.

As the government did not respond favorably to their objections, a political group known as *Alvenian Liberation front* (ALF) convened a demonstration condemning the government's move. On the prediction that the demonstration might lead to communal clashes, the day before the protest, the government declared a public emergency and publicized regulations banning any public protest or demonstration. On the day of the demonstration, the police obtained a restraining order from the Magistrate Court prohibiting any demonstrations on the particular day. The Magistrate relied on the emergency regulations in issuing the order. ALF commenced the demonstration defying the restraining order. When the police intervened with the demonstration, the leader of the group stated that they cannot observe the court order because emergency regulations banning demonstrations is unlawful as it restricts their fundamental rights recognized by

the constitution. The police applied force to disperse the crowd. They used rubber bullets against protesters resulting in the death of three protestors.

The ALF leader thinks the conduct of the government is a violation of human rights. He is interested in submitting a communication to the Human Rights Committee (CCPR) against the government's conduct. Assume you are the legal advisor for the ALF. The leader asks you to prepare a memorandum explaining on what legal grounds the conduct of the government can be challenged. Prepare a memo advising the leader, referring to relevant international human rights law provisions. Your memorandum should also explain possible counter arguments the government would present. Assume that Serendib has ratified the International Convention on Civil and Political Rights (ICCPR) and its First Optional Protocol.

(25 Marks)

- (b) Meanwhile, Escobar – the father of one of the dead protestors approaches you and seeks the possibility of submitting a communication with the CCPR. He is reluctant to raise the issue before domestic courts because he believes the domestic Judiciary is biased against his community. Also, he wishes to make the complaint anonymous because he is afraid of any repercussions. Further, he wants to know whether the Serendib government is bound to grant any relief to him if the CCPR decides on his favor. Advice Escobar referring to relevant treaty provisions and judicial authorities. Assume the legal system in Serandib is similar to Sri Lanka.

(15 Marks)

(40 Marks)

PART B

2. *Dharani* is a community-based civil society organization in Ceylanka, working to empower rural communities. Ceylanka is a developing country having a fragile economy. One of the main health related issues that has emerged recently in Ceylanka is the spread of a chronic kidney disease that has endangered the lives of many rural inhabitants. Scientific data has been produced referring to the overuse of chemical fertilizer in agriculture as the main reason behind the spread of the disease. *Dharani* is concerned about health issues rural inhabitants have to face because of this disease. It has continuously urged the government to regulate the use of fertilizer with harmful chemicals. The government has disregarded these calls and continues to import fertilizer with harmful substance. Further, *Dharani* is critical about the chronic lack of healthcare facilities in rural areas. People suffering from the kidney disease need specific treatment. But *Dharani* complains that the government has not taken necessary steps to provide these treatment facilities to rural hospitals. The organization further alleges that the healthcare budget of the government has rapidly declined over the past few years. Responding to these claims, the health minister states that

as Ceylanka is a poor country, it does not have necessary resources to provide specific treatment measures sufficiently. He also says that as a poor country, development is a priority to Ceylanka and therefore they prioritize development related projects like road construction in allocating budgetary funds.

(a) In the light of international human rights law, discuss human rights obligations of Ceylanka in relation to the right to highest attainable standard of health. You must refer to relevant international human rights law instruments as well as General Comments and views adopted by treaty bodies in your discussion.

(12 Marks)

(b) Assume Ceylanka's legal system is similar to Sri Lanka. Can *Dharani* file a fundamental rights petition before the Supreme Court for the violation of right to health of rural inhabitants? Can You suggest a legal strategy to bring matters like right to health into the consideration of the fundamental rights jurisprudence?

(08 Marks)

(20 Marks)

3. *'...States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole'*

- Kofi Annan (Former UN General Secretary, 2005)

The United Nations Human Rights Council (UNHRC) was established in 2006 replacing the Human Rights Commission because the latter body was seen as incompetent as a monitoring mechanism. Explain how the UNHRC involves in international human rights protection and promotion. Critically examine whether the establishment of the UNHRC has contributed to enhancing the international system of human rights protection.

(20 Marks)

4. Soman is an island nation where conservative cultural elements are strong. Traditionally, the higher education sector in Soman was reserved for male students. Until 1990s there was even a law prohibiting women from attending universities. This law reflected the dominant conservative attitude in the society which held that girls should only learn to the extent that is sufficient to fulfill day to day requirements. Women becoming professionals was seen as something undesirable. Their role was mainly seen as raising children and been good housewives. However, in 1990s, a newly elected government – with the intention of promoting women's rights – decided to allow female students to enter universities. It repealed the previous law and made university entrance open for female students too. However, despite this decision, there was no significant improvement in female university enrollment. In a survey conducted in 2020, it was revealed that only 10% percent of the

entire university student population were female. Most of these female students were from urban middle-class families. The survey revealed that the number of female university entrants from rural areas were significantly low. Traditional cultural norms are quite strong in rural areas, where it is still believed that its inappropriate for women to seek entry into higher education. The government claims that they have done their best to improve female participation in higher education. They refer to the removal of the ban as an example for what the government has done to enhance equality.

Assume you are a human rights activist campaigning for equal rights for women. Also assume that Soman has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the light of CEDAW provisions, examine to what extent Soman has ensured equal rights for women in the field of higher education. What are the suggestions you make for the government to improve the situation of women's rights in the higher education sector?

(20 Marks)

5. (a) The establishment of the International Criminal Court (ICC) is a milestone in the trajectory of ensuring accountability for international crimes. However, there is historical precedence for the prosecution of international crimes. The *ad hoc* UN tribunals in 1990s; International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were also important events in the development of this area of law. Discuss the powers and functions of the ICC giving special attention to the difference between the ICC and UN *ad hoc* tribunals.

(12 Marks)

(b) '... The conduct of any official in a country that has not ratified the Rome Statute (2002) cannot be referred to the International Criminal Court. Their conduct is totally immune from international criminal jurisdiction.'

Do you agree with this statement? Justify your answer with reference to the provisions of the Rome Statute.

(08 Marks)

(20 marks)
