

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES



048

LL.M IN CRIMINAL JUSTICE ADMINISTRATION DEGREE PROGRAMME

FINAL EXAMINATION (SECOND YEAR) - 2023/2024

LLPA409- HUMAN RIGHTS RELATING TO CRIMINAL JUSTICE ADMINISTRATION

DURATION: 03 HOURS

Date: 03.11. 2024

Time: 01.30 p.m. - 04.30 p.m.

Total Number of Questions: 07

Answer Four (04) questions only. Each question carries 25 marks.

Candidates will be penalized for illegible handwriting.

01. United Nations has attained progressive development in extending and strengthening the scope of International Human Rights Law. It is through the encouragement of adopting treaties, political pressure and developing a strong political culture, that the United Nations urges the member states to ensure the accepted international human rights standards in their national contexts.

In light of the above statement, write a legal opinion regarding the incorporation of **one (01)** of the following international human rights instruments into Sri Lanka. Your legal opinion should highlight the following matters;

- (a) the domestication process of selected international human rights treaties into Sri Lanka,
- (b) critique on the limitations posed in its implementation with relevant legal authorities and contemporary examples and,
- (c) your recommendations to address the issues relevant to limitations of implementation.

List of International human rights treaties

- The 1966 International Covenant on Civil and Political Rights
- The 1979 Covenant on the Elimination of All Forms of Discrimination against Women
- The 1984 Convention against Torture and other Cruel, Inhuman and Degrading Treatment.

(25 marks)

02. Gold and Gem are two brothers and prominent human rights activists in the state of Yakarta. Recently, they took part in a peaceful demonstration organized by a trade union in the field of agrarian service. During the demonstration the police used tear gas to disperse the crowd. While dispersing the demonstrators, the police fired two-gun shots. Gold and Gem died as a result of gun shooting. Silver, the sister of the deceased, blames that the actions taken by the police were unlawful and both deaths were committed by an arbitrary police action. She further blames that the state authority has failed to conduct an impartial investigation and the police personnel who were responsible for shooting have not been punished. Silver wants to file an individual communication to the human rights Committee.

(a) Can Silver file a communication to the Human Rights Committee? If so, what are the conditions to be fulfilled by her when sending a communication? (05 marks)

(b) On behalf of Silver draft the individual communication using an acceptable format. (15 marks)

(c) If you are a member of the Human Rights Committee, how would you review this case? Write your review. (05 marks)

Your answers should be supported with relevant legal authorities. Assume that Yakarta's legal system and international human rights obligations are similar to that of Sri Lanka.

(05+15+05=25 marks)

03. The availability of legal assistance in criminal proceedings is vital as everybody in the society is not in a position to afford for them. Therefore, States are obliged to provide legal aid for those who need legal assistance. However, in reality all states are not able to provide legal assistance to everyone who needs it.

In light of the above statement answer the following questions. Your answer should be supported by relevant legal provisions and the General Comments of the treaty bodies.

(a) Critically assess the impact of legal assistance in a criminal trial. (10 marks)

(b) What are the difficulties faced by the States in providing legal aid? Explain. (05 marks)

(c) Evaluate as to what extent Sri Lanka has taken legal measures to provide legal assistance as a state party to the 1966 International Covenant on Civil and Political Rights (ICCPR).

(10 marks)

(10+5+10 = 25 marks)

04. State of Kanda is planning to introduce a comprehensive set of laws to protect the rights of prisoners. Generally, the prisoners include all type of prisoners such as prisoners imprisoned for criminal matters, convicted prisoner, under trial prisoners, child prisoners, women prisoners and prisoners with disability. Assume that you are a member of the law drafting committee and asked to engage in the followings.

(a) Justification of the introduction of a distinct law to protect the rights of prisoners in the State of Kanda. (10 marks)

(b) Prepare a legal draft outlining the rights of convicted prisoners. (15 marks)

Provide your answers with relevant examples, national and international legal authorities. Consider the State of Kanda's legal system and international obligations are similar to that of Sri Lanka.

(10+15 = 25 marks)

05. The following are the extracts from individual communication sent to the Committee on the Elimination of Discrimination against Women.

Read the following extract and answer the questions given below. Your answer should be supported with contemporary examples and national and international legal authorities.

From the complaint

The author argues that the criminalization of female same-sex sexual activity and the concomitant potential for arrest and prosecution amount to discrimination on the grounds of gender and sexual orientation.

From the state party observation

There are no laws in Sri Lanka permitting discrimination on the ground of sexual orientation or precluding persons from engaging in their day-to-day activities solely on this basis of sexual orientation.

From the Committee's observations

"...The Committee considers that the criminalization by article 365A of the Penal Code of 1883 as amended of same-sex sexual activity in Sri Lanka has resulted in much more significant difficulties for the author, being a lesbian woman. In particular, the Committee considers that the criminalization is incompatible with the author's right to complain about the abuse and threats to which she has been subjected."

“...The Committee considers that the rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women, and that article 16 of the Convention applies also to non-heterosexual relations.”

(Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 134/2018, adopted by the Committee at its eighty-first session (7 – 25 February 2022)).

- i. Explain the meaning of sex-based discrimination according to the 1979 Convention on Elimination of All kinds of Discrimination against women (CEDAW) (03 marks)
 - ii. Do you think that criminalization of same sexual activity (lesbian) has an impact on the rights of women? Explain. (05 marks)
 - iii. Do you think that belonging to a particular sexual orientation is a denial to access to criminal justice in Sri Lanka? Explain with relevant examples and authorities. (05 marks)
 - iv. Discuss the measures available in Sri Lanka to protect women from sex-based discrimination. (12 marks)
- (03+05+05+12= 25 marks)

06. ‘National Human Rights Institutions (NHRIs), due to their broad mandate, have a decisive role in protecting and promoting human rights in a country. This mandate brings legalistic and non-legalistic approaches together in safeguarding human rights.’

Do you agree with this statement? Critically assess the above statement in light of the powers and functions of the Human Rights Commission of Sri Lanka Act No. 21 of 1996.

(25 marks)

07. Write notes on the following

- (a) Universal periodic Review (UPR) (07 marks)
- (b) Inter- state complaints (06 marks)
- (c) Victim and Witness Protection (06 marks)
- (d) Non – derogable human rights (06 marks)

(07+06+06+06= 25 marks)

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