

THE OPEN UNIVERSITY OF SRI LANKA

LL.B DEGREE PROGRAMME-LEVEL- 06

FINAL EXAMINATION -2011/2012

INTERNATIONAL HUMAN RIGHTS LAW – LWU4325

DURATION: THREE HOUR



DATE: 31-03-2012

TIME: 13.30 -16. 30hrs

Candidates will be penalized for illegible handwriting.

Answer FOUR questions only.

Answer Question number (1) one and three other questions

01. Mr. Ronald intends to submit an individual communication to the United Nations Human Rights Committee on behalf of his son David against the State of Uskistan. He seeks advice from the "Forum for Human Rights", an NGO working on human rights issues. Assume that you are working as a lawyer for the Forum for Human Rights and draft the following documents.

(i) A document outlining the conditions that should be fulfilled prior to submitting an individual communication to the Human Rights Committee.

(10 Marks)

(ii) The individual communication to the United Nations Human Right Committee based on the facts given by Mr. Ronald.

(15 marks)

Note: Assume that the State of Uskistan has ratified all the major international Human Rights Instruments, including the optional protocol 1 to the ICCPR and the Constitution of Uskistan is similar to the Sri Lankan constitution of 1978. You must cite relevant articles of the International Covenant on Civil and Political Rights.

Facts of the Case

David was arrested by police officers on 9th August 2005 under the Penal Code of Uskistan on suspicion of having committed a burglary with the use of weapons, ammunition and explosives. There was no arrest warrant and the reasons for the arrest were not informed. After the arrest, David was subjected to torture for the purpose of extracting a confession. For three days he was deprived of food, and parcels sent by his family were not transmitted. Also, David's relatives were denied access to him. Moreover, David was told repeatedly that his parents would face serious problems if he did not confess. Mr. Ronald made a complaint to the National Human Rights Commission of Uskistan on behalf of his son. Subsequently, Mr. Ronald was intimidated by the police to withdraw the application. As a result, the application was withdrawn. Unable to withstand

the beating and physiological pressure, David made a confession to the police. Later he was produced before a court of law on 16th of August 2005.

A charge sheet was issued against David by the Attorney General's department of Uskistan. During the trial the testimonies of David and his witnesses were ignored. The prosecution also exerted pressure on the witnesses and no opportunity of cross examination was afforded to David's lawyers. The court also failed to function in an independent and impartial manner. At the end of the trial, David was sentenced to a term of 20 years imprisonment.

02. "...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent."

Gillick v Norfolk and Wisbech Area health authority (1986) A.C.112

Critically evaluate the above statement in light of the concept of "consent of child." You should support your answer with relevant Articles of the Convention on the rights of Child and case law where necessary.

(25 Marks)

03. "The principle of complementarity recognized under the Rome Statute of International Criminal Court is intended to offer a possible way out when state parties are unable or unwilling to prosecute against the serious violations of international crimes."

In light of the above statement, discuss the merits and demerits of the principle of jurisdiction enshrined under the Rome Statute of International Criminal Court, comparing with the jurisdiction of previously established ad hoc criminal tribunals.

You must cite relevant legal provisions to support your answer.

(25 Marks)

04. A group of experts has been drawn up by the government of Sri Lanka to prepare a periodic report to be submitted to the Committee against Torture (1984) in line with Article 19 of the United Nations Convention against Torture. Assume that you are one of the experts assigned the task of preparing a document as part of the report on the theme of "Measures taken by government of Sri Lanka to give effect to the obligations undertaken under the United Nations Convention against Torture (1984)".

Prepare the document. Your answer should include legislative, institutional and other measures adopted by the government of Sri Lanka.

(25 Marks)

05. Tropicana is a State where different tribes live and whose constitutional provisions and international human rights obligations are similar to those of Sri Lanka. Noor is a tribe in Tropicana to which the government recently donated 10 acres of land during a tribal function. The tribe of Noor has been practicing different cultural activities and customs for a long period of time including the following practices in relation to women.

There is no minimum age limit for marriage in this tribe and the consent of the female party to the marriage is not required. Women of the Noor tribe are prohibited from using any type of contraceptive method and they are expected to have babies as soon as they get married. Further, they need the permission of their father or husband to leave the home. However, no violence or abuse against women is tolerated by the tribe and any one found guilty of such an offence will be put to death.

Biku, a girl of the Noor tribe, refused to marry Kun, who was proposed as her husband by her father. Biku's father complained about this to a tribe leader. The tribal leaders then arranged her wedding ceremony according to the customs of their tribe and Biku was forcibly married to Kun. Biku was not interested in having children immediately after the marriage and this resulted in arguments and quarrels between the couple. One day during a quarrel Kun hit Biku with a hammer, and Biku ran away from the tribe.

- (i) Biku wants to question, at both domestic and international levels, the practices of the Noor tribe. How would you advise her? (13 Marks)
- (ii) Assume the State of Tropicana has taken a decision to adopt one common stringent legislation to abolish all the practices and customs belonging to different tribes. Do you believe this solution will lead to peaceful coexistence of the people of Tropicana? Give reasons for your answer. (12 Marks)

06. (i) What are the main functions of a Treaty-based mechanism established under major international human rights instruments in relation to the protection of human rights at domestic and international levels? (12 Marks)

(ii) Between the Charter-based mechanisms and Treaty-based mechanisms, which mechanism would you suggest as the most effective in protecting human rights? Give reasons for your answer. (13 Marks)