HUMAN RIGHTS MEMORIAL
COMMUNICATION TO THE HUMAN RIGHTS COMMISSION UNDER THE 1503 PROCEDURE
IN RELATION TO ALLEGED VIOLATIONS IN BURMA

Instructions

Set out below is a factual situation that gives rise to a number of human rights considerations. The situation envisaged is of various human rights abuses in the State of Burma. Please read the factual scenario, meet with your team-mates, and consider the ways in which you intend to approach the problem. Then, schedule a meeting with your Teaching Assistant (Alyson) as soon as possible to discuss the problem, and to raise any queries or concerns that you may have. You are required to research both the issues raised by the problem (including factual issues, questions of domestic and international law, and any other relevant points) and the general work of the Human Rights Commission to the extent required to write your Memorial in a persuasive and comprehensive manner. This is a “team exercise” (and you should endeavour to work on it together), although each of you is solely responsible, and will be graded for, your section of the Memorial that you finally submit.

In framing the problem we have taken certain liberties (such as modifying the way in which the 1503 procedure is normally carried out) in order to create a strong hypothetical problem for the purposes of this exercise. While you are not required to follow all the rules of procedure of the Human Rights Commission and the 1503 mechanism, you should approach this problem as if it were as realistic as possible. Your focus, however, should be on the substantive human rights issues raised in the problem rather than on more technical issues of procedure. You are encouraged to consult international human rights experts, NGOs, or any other resources.

The aim of the exercise to familiarize you with how human rights complaints mechanisms actually work, and for you to gain some experience in preparing the kinds of arguments that arise for adjudication before treaty bodies. While we have provided detailed guidelines as to how we suggest that you approach the problem, you should see this as only the required minimum (ie, feel free to include your own creative ideas or arguments and to move beyond the points we have set out). If you have any concerns, please email either your TA or Peter Danchin.

Your Memorial should be approximately 10-15 pages in length per student (that is, approximately 35-45 pages in total) including any footnotes. This assumes that you will use 11 or 12 point font (smaller for footnotes), and space-and-a-half in the main text. Do not exceed this word limit.

Facts

A group of Burmese citizens, including one, Myo Kyi (a young man who contracted AIDS having had no education about it) have asked for assistance in
You will submit a communication to the Commission on Human Rights, a subsidiary body of ECOSOC, under the 1503 procedure. Before a situation can be put on the Commission, or Sub-Commission’s agenda, a 5-person working group must consider whether there is reasonable evidence of a consistent pattern of gross human rights violations. Normally, the state party has access to the complaint, but the NGO or individual has no access to the state’s submission, and is not informed of whether the matter has been taken up. The matter is then referred for examination by the full Sub-Commission, which decides whether to refer the situations to the Commission on Human Rights. The Commission then has several options, including referring it to ECOSOC. The only thing which is revealed up till this stage is the name of the country under examination. 1503 has a requirement of exhaustion of domestic remedies, which you may assume in this case.

In this exercise, the NGO will first present its communication to the working group of independent experts, then the state will give its response, and then both sides will have a short period in which to rebut any views presented by the other side – THIS IS NOT HOW IT IS NORMALLY DONE.

Burma is still ruled by the State Law and Order Restoration Council (“SLORC”), now called State Peace and Development Council (“SPDC”), despite the victory of the National League for Democracy in the 1990 elections. Unofficial figures estimate that 1-2% of the population is HIV positive. The junta is downplaying the spread of AIDS in the country, both through sexual contact, often with commercial sex workers, and through the country’s many intravenous drug users who share needles. Its official view is that there is no problem with HIV/AIDS, or alternatively, that it is a matter for individuals and not governmental action. It also argues that there is a religious and cultural objection to sex education, since it will encourage promiscuity. Sanctioning drug use through needle exchanges would run counter to its anti-drugs policy. It claims not to have the resources to deal with the problem (although some international NGOs and international organizations could provide funding, possibly subject to conditionality). Private schools and universities have been closed for the past 2 years, leaving only state schools open. Rural areas often lack roads and other infrastructure which would be necessary for the dissemination of information. Burma does have a very low GDP per capita, and is among the 10 Least Developed Countries in the world, although it is rich in natural resources.

Consider this scenario in relation to the right to life. In its General Comment Number 6, the Human Rights Committee observed:

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2 Available on-line from [www.unhchr.org](http://www.unhchr.org), go to Databases, select the Treaty Bodies Database, select Human Rights Committee, and then General Comments.
“1. that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.”

Furthermore, the right is to be given a very expansive definition

“5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

Does government policy violate the right, as a knowing refusal to deal with a disease which unquestionably threatens life? How far do its obligations go? What other rights are implicated, either supporting the case, or competing? You should carefully study the Inter-American Court Case, Velasquez v Honduras, now thought to represent customary international law, which finds that states have an obligation, not just to avoid violating human rights themselves, but also to “ensure” the effective enjoyment of rights, which means dealing with non-state violators of human rights.

Burma is not a member, nor even a signatory of the ICCPR, ICESCR, Torture Convention, or the Migrant Workers Convention, but it did become a party to the Child Convention (“CRC”) in 1991, and CEDAW in 1997.

Most governments, including Burma, have not ratified the Optional Protocol to the ICCPR. It is also questionable how effective an individual petition procedure can be in the face of widespread gross human rights violations. (The Inter-American system

3 The University of Minnesota has the full text online http://www1.umn.edu/humanrts/iachr/b_11_12d.htm Or the Law Library: VELÁSQUEZ RODRÍGUEZ V HONDURAS, 29 July 1988, Series C, No 4.

“166. The second obligation of the States Parties is to " ensure " the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

167. The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation - it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.”
could be interestingly comparatively – it has reduced evidential and procedural barriers to gross human rights abuse complaints). Through ECOSOC resolutions 1235 (public) and 1503 (private), it is possible to make complaints in such circumstances. Read them carefully, and consider the advantages and disadvantages of each. Which human rights and treaties are relevant? What would it be necessary to show? What results could flow from a “successful” complaint? Can they be used simultaneously, or one after the other on the basis of the same facts?

We suggest that you organize your Memorials as follows (note that your Memorials must, at a minimum, cover these 3 issues):

(1) THE RIGHT TO LIFE

What is the status of the right to life (Art 6, ICCPR)? Is it binding on Burma because of customary international law, *ius cogens*, the United Nations Charter, or the Universal Declaration of Human Rights? What about the ICESCR, and the right to health? Secondly, according to these facts, and whatever other research you do, is there a violation of these rights? What is the government doing about this problem, and what should it be doing? What would “progressive realization” mean? Is less required of developing countries?

Burma will argue that this right is not binding on it, or alternatively, that the facts do not show a violation. The representatives of the citizens will argue that the facts do disclose a “consistent pattern of gross and reasonably-attested violations” thus bringing it within the Commission’s 1503 procedure.

(2) THE RIGHTS OF CHILDREN

Focusing on children, since Burma is a party to the Convention on the Rights of the Child, what does this imply for Burma’s obligations towards children and their human rights? Look at Articles 3, 4, 6, 13, 17, 19, 24, 27, 28, 30. Is there a duty to provide sex education? (See Article 19 representative’s report at http://www.hri.ca/uninfo/unchr98/theme1.shtml#rights). What about cultural and religious practices? Burma is an ethnic patchwork – what does this imply for appropriate education? Does AIDS have a differential impact on children?

Burma will argue that it does not have the resources to deal with this issue, and that for cultural reasons, it does not want to encourage promiscuity, or spoil children’s childhoods. Furthermore, national security is an issue – and under international law, it is up to Burma, and Burma alone, to determine what measures are required to counteract the threat. The NGO will contest all of these assertions, and focus on the right to life and the right to health of children, and how they are being consistently violated by state practice.

(3) NON-STATE ACTORS
How far does the government’s duty extend to non-state actors, since the primary mechanisms for spreading AIDS are in fact, individuals, including commercial sex workers, and those involved in the drugs trade? What are the implications of Velasquez-Rodriguez v Honduras?

Burma will argue that there is no duty under international law to control private morality, and it would indeed be contrary to rights of privacy. Further, it is doing what it can to control narco-trafficking, but it is clearly a losing battle. Needle exchanges would promote drug abuse, and provision of condoms would promote promiscuity. The citizens’ representatives will argue that Burma has a duty to do far more, including providing legal, educational and health systems which deal with those who knowingly infect others, and prevent others from unwittingly spreading the disease. This requires re-opening educational establishments, a public health and advertising campaign, and other tools recommended by, inter alia, the World Health Organization. Lack of resources is not an excuse for inaction.

SOURCES

Everyone must read the following before starting the exercise:

- UN country rapporteurs are indexed at [http://www.unhchr.ch/html/menu2/7/cm.htm](http://www.unhchr.ch/html/menu2/7/cm.htm) and thematic rapporteurs at [http://www.unhchr.ch/html/menu2/7/tm.htm](http://www.unhchr.ch/html/menu2/7/tm.htm). (There is a special rapporteur on Human Rights in Myanmar and 4 reports are available on line. Try to find them yourself)

OTHER SOURCES:

See relevant news articles in Alyson King's folder (MIA) on the AIDS epidemic in Burma, the political situation, and how neighbouring countries deal with AIDS.

The Columbia Law Library: It’s in the same building as SIPA, and you need to discover it! It has many NGO, academic and UN sources relating to human rights, not all legalistic.


Search Pegasus (the Law Library catalogue) and Clio for keywords including “Burma”, “AIDS”, “human rights”, “World Health Organization”.

The Australian Human Rights Information Centre has a good on-line catalogue of Committee decisions from the 43rd – 58th/59th sessions – at: http://www.austlii.edu.au/au/other/ahric/Primary/hrcomm/index.html. Unfortunately Human Rights Committee decisions cannot be searched full text on-line, and you will need to refer to compilations of decisions in the Law Library.

Explore http://www.unhchr.ch/huridocda/huridoca.nsf for documents relating to all the United Nations Human Rights bodies, especially the Commission, Burma, the right to life and health.

Search for documents by country or theme on the U.N. eg, country reports, general comments, reporting guidelines, reports. Decisions and resolutions are largely symbolic and not worth reading for this purpose.


University of Minnesota has a fantastic website at: http://www1.umn.edu/humanrts which includes many more Human Rights Committee decisions than the UNHCHR has on its webpage. There are also compilation books in the law library.

Try also search engines, the regional librarians in SIPA’s Lehman Library, and anything else you can think of. But remember, the point is not to get lost in research but to make compelling arguments based upon some of the most important human rights issues of the day.

For more specific questions, whether legal or not, contact Alyson (ark27@columbia.edu; 316-8397)

Good Luck!!