HUMAN RIGHTS MEMORIAL
Communication to the Human Rights Committee under the Optional Protocol to the ICCPR in relation to Alleged Violations in Iran

INSTRUCTIONS

Set out below is a factual situation that gives rise to a number of human rights considerations. The situation envisaged is of an individual in the State of Iran who claims to have been the victim of specified human rights violations. The individual concerned has decided to initiate a communication to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (the “ICCPR”). You are required to prepare either the written individual communication to the Committee, or to draft a response to the communication for the State party (depending on which side you have been assigned) (in both cases, a “Memorial”).

Please read the factual scenario below, 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 Committee 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 assuming that a State is a party to a convention when in reality it is not) 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 Committee, 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—particularly by researching new cases or decisions that support your arguments). 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

Three of you will be representing Zokhaya Shardi, a Baha’i woman who has been found guilty of torture and is about to be stoned for adultery, in accordance with sharia law. (The man, Abdullah Kareem, was unmarried, and therefore subject only to a fine and lashing.) Iran's court system is based on Islamic law. Article 119 of the Law of Hodoud and Qesas states: “In the punishment of stoning to death, the stones should not be too large so that the person dies on being hit by one or two of them; they should not be so small either that they could not be defined as stones.” Stoning must be endorsed by the Supreme Court, so there is no question about it being a state act. There is also no question about the facts, since various reliable witnesses provided evidence, and the trial was in conformity with Iranian and international law.

Three of you will be representing Iran. Iran is by no means homogeneous: its ethnic groups are divided thus: Persian 51%, Azerbaijani 24%, Gilaki and Mazandarani 8%, Kurd 7%, Arab 3%, Lur 2%, Baloch 2%, Turkmen 2%, and other 1%. Its religious groups are divided thus: Shi’a Muslim 89%, Sunni Muslim 10%, Zoroastrian, Jewish, Christian, and Baha’i 1%. ¹

Assume that Iran has been, at all material times, a party to the Optional Protocol to the ICCPR, allowing individual petitions to the Committee. Assume further that all domestic remedies have been exhausted. Iran has been a party to the ICCPR since 1968, and has entered no reservations (although Iran’s 1982 report to the Human Rights Committee includes comments to the effect that although Islam is basically in conformity with human rights, in the event of any conflict sharia will prevail.)

Iran is not a party to CEDAW, but assume for the purposes of this exercise, that it is, although with a reservation to the effect that any inconsistencies between CEDAW and sharia will be resolved in favor of sharia. Iran is not a party to the Convention against Torture. (Note: this is of more relevance to the 3rd part, although perhaps a case can be made that CEDAW definitions of non-discrimination are relevant to interpreting the ICCPR).

We suggest that you divide the topic the following way:

(1) PROCEDURAL QUESTIONS, AND THE MERITS

Iran will argue that the current republic is not bound by the ICCPR accession, since that was in the days of the Shah’s reign, and now it is an Islamic Republic, bound by the will of God, not the acts of men. This will be challenged by Zokhaya, based on General Comment Number 25 of the Human Rights Committee. Then on the application of the ICCPR Articles 6 and 7 to these facts: Iran will argue that it is up to it to determine the

meaning of the terms "cruel, inhuman or degrading treatment," since these words clearly incorporate moral beliefs, and each country must decide based on its (Shi’a Muslim here) beliefs. It will also argue that international jurisprudence has advanced the meaning of this phrase since it signed on to the ICCPR, and it should not be bound to such changes without its consent. The death penalty is not forbidden either; in Islam, adultery is a very serious crime.

Zokhaya will argue on international law grounds that Article 6 is to be interpreted in conformity with its current meaning, which the Committee has competence to interpret, and that states consented once and for all, to the incorporation of such development. She will rely on Committee jurisprudence on Articles 6 and 7 to show that the case is clear.

2) DISCRIMINATION

Zokhaya will claim discrimination based on her sex and religion, contrary to Articles 2 and 26 of the ICCPR, alleging discriminatory application of the law. She claims that she should not be bound by Shia interpretations of law, because she is not a Shia Muslim. She will also argue Article 17, a right to privacy, which includes a right to do with her own body as she wishes, including having sex without the state interfering. (See Roe v Wade, 410 U.S. 113, 93 S.Ct. 705).

Iran will argue that the law is neutral on its face (although men’s hands are not tied during the stoning, while women’s are), and that many women support these laws since they provide them with protection. The state is also obliged to protect the family under Article 23.

3) SHARIA AND HUMAN RIGHTS LAW

Note that this part of the problem differs slightly from normal Committee practice. The Committee has called in two experts on Islamic law to find out what could be done if sharia is incompatible with human rights law. Iran’s expert will argue that, even if the state wished to change it, it cannot for it is divine law, not man-made. In any case, to challenge the law relating to adultery opens up a host of volatile problems, allowing no scope at all for deferring to national cultural/religious/political practices. Will the Committee then attack the hijab?

The expert speaking for Zokhaya will argue that many understandings of sharia are corruptions of Islam and that Islam is compatible with human rights, once these false teachings are removed. The state does have jurisdiction over clerics who interpret the law, and could force them back on to the paths of truth. Other Muslim states do not apply such laws.
HUMAN RIGHTS SOURCES

Before starting, read:


Also see a compilation of relevant news articles and articles on sharia law in Alyson King’s folder (MIA).

On Procedural Issues:


Search Pegasus (the Law Library catalogue) and Clio for keywords including “Iran”, “human rights”, “sharia”, “women”, “Islam” …


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


Search for documents by country or theme on the UN web site: http://www.unhchr.ch/data.htm. Choose treaty-based (but you knew this) for the Human Rights Committee, and charter-based for the Commission and Sub-Commission including rapporteurs.

University of Minnesota has a fantastic website at: http://www1.umn.edu/humanrts with links to more UN and regional case-law than is available on their own websites.

Human Rights gopher, with links to many organizations: gopher://gopher.humanrights.org:5000/1

Iranian Human Rights working group – has an article on stoning: http://www.ihrwg.org/; VERY HIGHLY RECOMMENDED, links to other Iranian groups.

Cornell University Middle Eastern Studies – women http://www.library.cornell.edu/colldev/mideast/women.htm

The full Iranian constitution (in English) is available: http://www.salamiran.org/IranInfo/State/Constitution/

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!!
VIENNA CONVENTION ON THE LAW OF TREATIES SIGNED AT VIENNA 23 May 1969
ENTRY INTO FORCE: 27 January 1980

The States Parties to the present Convention

Considering the fundamental role of treaties in the history of international relations,
Recognizing the ever-increasing importance of treaties as a source of international law and as a means of
developing peaceful co-operation among nations, whatever their constitutional and social systems,
Noting that the principles of free consent and of good faith and the pacta sunt servanda rule are universally
recognized,
Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful
means and in conformity with the principles of justice and international law,
Recalling the determination of the peoples of the United Nations to establish conditions under which
justice and respect for the obligations arising from treaties can be maintained,
Having in mind the principles of international law embodied in the Charter of the United Nations, such as
the principles of the equal rights and self-determination of peoples, of the sovereign equality and
independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the
threat or use of force and of universal respect for, and observance of, human rights and fundamental
freedoms for all,
Believing that the codification and progressive development of the law of treaties achieved in the present
Convention will promote the purposes of the United Nations set forth in the Charter, namely, the
maintenance of international peace and security, the development of friendly relations and the achievement
of co-operation among nations,
Affirming that the rules of customary international law will continue to govern questions not regulated by
the provisions of the present Convention,
Have agreed as follows:

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Article 19 Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation
unless: (a) the reservation is prohibited by the treaty;
(b) the treaty provides that only specified reservations, which do not include the reservation in question,
may be made;
or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object
and purpose of the treaty.

Article 26 Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27 Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.
This rule is without prejudice to article 46.

Article 46 Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of
a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless
that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in
accordance with normal practice and in good faith.