HUMAN RIGHTS MEMORIAL
CONSIDERATION OF THE INITIAL REPORT OF ISRAEL TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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 Israel and the Occupied Territories. 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 (Mikiko) as soon as possible to discuss the problem, and to raise any queries or concerns that you may have. At a later stage, Sa’ad Hamid, who helped to prepare this problem and who works for the Center for Economic and Social Rights, will be meeting with you to discuss the problem (which is closely based on his actual work in this area).

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 Committee on Economic, Social and Cultural Rights 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 Committee procedures are 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 Committee on Economic, Social and Cultural Rights, 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 and reporting mechanisms actually work, and for you to gain some experience in preparing the kinds of arguments that arise for adjudication and consideration 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

The State of Israel ratified the International Covenant on Economic, Social and Cultural Rights in 1991. On January 20, 1998, Israel submitted its initial report (UN Doc. E/1990/5/Add.39) pursuant to Articles 16 and 17 of the Covenant to the Committee on Economic, Social and Cultural Rights (the “Committee”). You can assume that a (fictitious) NGO, Equal Rights for All Israeli People, has also submitted a counter-report to inform the Committee of problems with regard to economic, social and cultural rights of both Israeli and Palestinian people. Prior to its consideration of Israel’s report, the Committee transmitted a “list of issues” (UN Doc. E/C.12/Q/ISR/1) to the Israeli Government, indicating the Committee’s concerns with such issues as, inter alia: (1) the legislative measures taken to implement the Covenant in the Israeli legal system; (2) the Government’s discriminatory land use and housing policy against non-Jewish people; and (3) the effects of closure of the Palestinian Occupied Territories on the rights to health, work, etc. of the Palestinian people.

This exercise is intended to be a re-enactment of selected parts of the Committee’s consideration of Israel’s initial report under the Covenant. In other words, three of you will be preparing a written report to the Committee for the State of Israel, and three of you will be preparing a written response to Israel’s report on behalf of Equal Rights for All Israeli People (a fictitious NGO working on economic and social rights in Israel and the Occupied Territories). In both cases, your reports will focus on, and will respond to, certain specific issues raised by the Committee in its “list of issues” (which was sent to Israel in anticipation of its initial Report to the Committee).

Each team should review all relevant legal, media and governmental materials and should develop arguments on the three issues suggested below by using your own research and analysis. You are encouraged to consult international human rights experts, NGOs, or any other resources. Due to the fact that this exercise is a reproduction of the actual review by the Committee of the initial report of the State of Israel, you can take advantage of this fact by looking at the official summary records of the Committee’s proceedings, in which questions and answers between Committee Members and the appointed delegates of the Israeli government are recorded. You can also pick up, and add, other issues discussed in the consideration of Israel’s report related to certain provisions of the ICESCR (however, please DO NOT take up the issue of the “applicability” of the Covenant to the Palestinian Occupied Territories).

ARGUMENTS AND ISSUES IMPLIED

The following are the specific issues to be taken up by the Committee in considering Israel’s initial report (and are the issues that you should address in your Memorials):

(1) GENERAL MEASURES OF IMPLEMENTATION—ARTICLE 2(1)

Both Israel and the NGO should address the following issues:
- What measures has Israel adopted to comply with the obligations contained in the Covenant? Has Israel enacted any domestic legislation, or taken any other positive steps, to bring Israeli practice into accordance with the provisions of the Covenant, and to ensure the full realization of economic, social and cultural rights in Israel?

- What is the status of the Covenant vis-à-vis constitutional or other national law in Israel?

- Has it been necessary to amend legislation in order to implement the Covenant and, if so, in what areas? Has any progress been made in amending existing laws to comply with the provisions of the Covenant?

- To what extent can the Covenant be implement through the courts in Israel? Can the provisions in the Covenant be invoked before, or directly enforced by, the courts, or must they be transformed into internal laws in order to be enforced by the authorities concerned?

- What difficulties, if any, have been encountered in connection with the implementation of the Covenant?

(2) THE ISRAELI GOVERNMENT’S DISCRIMINATORY LAND USE AND HOUSING POLICY AGAINST NON-JEWS—ARTICLE 11 (THE RIGHT TO HOUSING) AND ARTICLE 2(2) (NON-DISCRIMINATION)

Both Israel and the NGO should address the following issues:

- Do the Israeli government’s land use and housing policies (including house demolition policies and practices) violate the right to housing under Article 11 of the Covenant? Can the government justify such policies on any grounds? Please research and analyze both factual and legal arguments.

- Are the Government’s land use and housing policies discriminatory against non-Jews (and, in particular, Palestinians in the Occupied Territories)? Can the Government justify such policies on any grounds? Again, please fully research and consider both factual and legal arguments.

(3) EFFECTS OF “CLOSURE” OF THE PALESTINIAN OCCUPIED TERRITORIES ON THE RIGHTS TO MEDICAL TREATMENT, WORK AND EDUCATION OF PALESTINIAN PEOPLE—ARTICLE 12 (THE RIGHT TO HEALTH); ARTICLE 6 (THE RIGHT TO WORK), ETC.

Both Israel and the NGO should address the following issues:

- What is “closure”?
- What economic, social and cultural rights are affected by “closure”?

- Do these effects of closure on people inside the affected area constitute a “violation” of their rights by the Israeli government?

- Can the government justify such policies on any grounds?

MATERIALS

In addition to the materials that will be distributed to you by Mikiko and Sa’ad, please review the following closely:

(1) **In relation to the Committee on Economic, Social and Cultural Rights and Reporting Procedures, see:**


- Revised general guidelines regarding the form and content of reports to be submitted by states parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. UN Doc. E/C.12/1991/1. [http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/903e9a1332660f74c12563ef004ea4b0?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/903e9a1332660f74c12563ef004ea4b0?Opendocument)

- Compilation of Issues Relevant to the Examination of States Parties Reports: UN Doc. E/C.12/1996/REF

- General Comment No. 1: Reporting by States parties


(2) **For relevant Documents of the Committee and other UN documents, see:**

- Initial report of Israel. UN Doc. E/1990/5/Add.39(1) (2) (3)

- List of issues (Israel): UN Doc. E/C.12/Q/ISR/1

- Summary record of the 31st meeting (Israel): UN Doc. E/C.12/1998/SR.31
- Summary record of the 33rd meeting (Israel): UN Doc. E/C.12/1998/SR.33

- Concluding observations of the Committee on Economic, Social and Cultural Rights: UN Doc. E/C.12/1/Add.27

   *Note: all the documents related to the consideration of the initial report of Israel are available at the UNHCHR Web-site. Go to the main page, http://www.unhchr.ch, click DATABASE/DOCUMENTS, Treaty bodies database, Documents, by Country. Israel, Committee on Economic, Social and Cultural Rights


- General Comment 3: The nature of States parties obligations (Article 2, para.1)

- General Comment 4: The right to adequate housing (art. 11.1 of the Covenant)

- General Comment 7: The right to adequate housing (art. 11.1 of the Covenant): forced evictions


   ** Note: Many of these documents are on file with both Sa‘ad Hamid and Mikiko. Please ask either of them for assistance if you are unable to locate any of them.

(3) Other relevant resources:


- LAW reports on the Palestinian Occupied Territories: http://www.lawsociety.org/isrocc.html

- B’tselem Report on conditions inside Israel and many reports/resources on conditions in Israel, http://www.btselem.org

Good Luck!!