

**UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(East London)**

**Human Rights Law
LFH 422E**

Degree Examinations

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Time: 3 hour

Subject: Human Rights Law

Marks: 100

**This paper consists of six (6) pages
including the cover page**

Examiner: Mr. A van Coller

External Examiner: Adv AW Makulana

INSTRUCTIONS

- a. Answer all the questions as per the specific instructions provided;
- b. It is in your best interest to write clearly, neatly and legibly;
- c. Rely on relevant case law and statutory provisions where applicable;
- d. Mark questions accurately and clearly;

QUESTION 1 (MULTIPLE CHOICE QUESTIONS)

[20]

- i. Each question has four possible answers, select and record the correct answer only;
 - ii. Questions where two or more selections are selected will be marked as incorrect;
 - iii. Record your answers in your answer book; not on this question paper.
1. **The Universal Declaration of Human Rights was adopted quickly due to the fact that is was:**
 - A. Regarded by the international community as a necessary binding treaty proclaiming human rights after the atrocities of the Second World War;
 - B. A policy statement by Western States wherein the human rights principles applicable to the Nuremburg Trails were set out;
 - C. Intended to serve as a settlement agreement wherein the principles applicable to the peace agreement between the Soviet Union and the USA were recorded;
 - D. A United Nations General Assembly Resolution drafted by the Commission on Human Rights.
 2. **The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were drafted as two separate instruments due to the:**
 - A. Inability of the drafters to differentiate between first, second and third generation rights as these distinctions had not crystalized at the time;
 - B. Fact that the instruments were drafted by separate institutions to ensure extensive participation;
 - C. Requirements of the ICJ Statute on the drafting of international instruments containing obligations and rights in the same instruments and the immediate enforcement of political rights as opposed to progressive implementation of socio-economic rights;
 - D. Ideological differences between the Eastern Communist and Western Liberal States existing at the time.
 3. **The United Nations Commission on Human Rights was empowered, in 1967, to consider gross violations of human rights with the introduction of Resolution 1235 that allowed for a process of:**
 - A. Tribunals with the power to consider complaints and give binding judgments;
 - B. Mediation and conciliation meetings between the parties;
 - C. Arbitration councils conducted within the jurisdiction of the United Nations;
 - D. Country-based investigations of such violations.
 4. **Mechanisms to increase the protection of human rights at a regional level were put in place based on the idea that:**
 - A. Effective implementation is based on separated judicial assets;
 - B. International instruments are not suited for application within certain regions within the international community due to financial constraints;
 - C. Political and cultural homogeneity provide for confidence in the local system;
 - D. States must not interfere in the internal workings of other states.

5. **The European system of the regional protection of human rights is based on two treaties, namely the:**
 - A. The Universal Declaration of Human Rights and the European Human Rights Statute;
 - B. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
 - C. European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter;
 - D. The United Nations Charter and the European Human Rights Charter.

6. **All the rights in the Universal Declaration of Human Rights and the two 1966 Covenants are individual rights with the exception of the rights to:**
 - A. Minority cultural protection (Indigenous Communities);
 - B. Peaceful co-existence;
 - C. Self-determination;
 - D. Equality of States.

7. **Human rights are in general internationalised and the implementation of these rights remains almost exclusively:**
 - A. Transnational;
 - B. International;
 - C. Regional;
 - D. National.

8. **The Universal Declaration of Human Rights regards international human rights as:**
 - A. Locally confined and discrete;
 - B. Sovereign and autonomous;
 - C. Indivisible and interdependent;
 - D. Independent and distinct.

9. **The International Bill of Rights consists of the following:**
 - A. The United Nations Charter and the Regional Human Rights Instruments of Europe, the Americas and Africa;
 - B. The International Court of Justice statute and the Universal Treaty on Basic Human Rights;
 - C. The Universal Declaration of Human Rights and the two 1966 Covenants on Civil and Political and Socio, Economic and Cultural Rights;
 - D. The Treaty of Versailles and the Nuremberg Accord.

10. **The treaty-based human rights system of the United Nations began with the adoption by the General Assembly of the**
 - A. International Convention on the Elimination of All Forms of Racial Discrimination;
 - B. Universal Declaration of Human Rights;
 - C. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment ;
 - D. Convention on the Prevention and Punishment of the Crime of Genocide.

QUESTION 2

[20]

The right to an **adequate standard of living**, as a subset of the right to life, dignity, and the pursuit of happiness, assumes the normativity of socio-economic rights in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person. However, the content and application of this standard is often misunderstood.

Required: Critically evaluate the right to an adequate standard of living in international human rights law. Your answer must comprise of three sections. You are required to locate the right to an adequate living standard within the body of human rights and the corresponding moral and legal obligations created therein. Second, you must evaluate the development of the international law on adequate living standards and the different sources that enlarged its scope internationally and in Africa. The third part of your answer must evaluate whether the adequate standard of living standard confer legal or moral obligations on States and whether this right has been realized in Africa.

QUESTION 3*

[20]

Casandra Storm is a 46-year-old citizen of South Africa who resides in East London. Casandra is part of a group called “The Army of God” and was, together with nine others, found guilty of 32 counts of the murder of 21 people, fraud and intimidation and sentenced to 13 life sentences, to run concurrently with 152 years in prison (also to run concurrently) for the other counts against her. It soon became clear that Casandra was the mastermind of the crimes and was able to influence others to act with her or on her behalf. The Court noted that Casandra was adapt at manipulating others and could even persuade others to kill close family members. Casandra’s mother and brother is currently also in prison serving 11 life terms and 115 years in prison for similar offences.

Casandra was placed in Pollsmoor Prison where she immediately started recruiting other prisoners to her group and influencing them to commit various serious offences in prison, including the assault of one prison employee and the murder and attempted murder of several other prisoners. Casandra also received several visitors while in prison and some of these visitors thereafter committed serious crimes in the name of the group.

Cassandra was, after her incarceration, charged with the murder of one prisoner and appeared in the High Court. Cassandra indicated that she was ordered by God to continue the work of the group and to kill all those whose names are made known to her during prayer. Cassandra confirmed that she is obliged to recruit others to continue the killing inside and outside the prison. Cassandra was found guilty of the murder. The investigating officer and a psychologist gave evidence during sentencing and stated that Cassandra cannot be rehabilitated and that she would continue to recruit and influence others to commit crimes with a reach beyond the prison walls. Cassandra was subsequently also charged with conspiracy to kill the children of the investigating officer and the judge in the first trial after several persons whom had contact with Cassandra was apprehended while planning such crimes on the instructions of Cassandra. Both the investigating officer and the psychologist is of the opinion that Cassandra is a threat to society and must be given the death penalty. Even the State indicated that such a sentence would have been appropriate had it been possible. The High Court handed down a further sentence of another 87 years imprisonment.

Several civil society organizations thereafter requested that the death penalty be reinstated. These organizations, including “Bring back the Death Penalty South Africa” now states that Criminal Procedure Act must include the possibility that the death penalty be a competent sentence in extraordinary cases. A referendum was held and 87% of votes support the reinstatement of the death penalty in specific matters where rehabilitation of the offender is not a viable option.

Required: Write an opinion on the human rights implications of the reinstatement of the death penalty in South Africa. You are required to both deal with the factors that may be used in support of the death penalty as a punishment and those that are against the existence of the death penalty. Include reference to international law, regional law, domestic law, case law and academic writing/reports in your answer.

*Note: This question will be made available to students one week (7days) before the assessment and students will be required to prepare their answers in advance in any manner that they deem fit. However, no documents used to prepare or notes made will be allowed into the assessment venue.

QUESTION 4**[20]**

The Preamble to the Universal Declaration of Human Rights states that the - “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom and justice and peace in the world.” Reference to “dignity” is repeated in various human rights instruments and in the several constitutions including the Constitution of the Republic of South Africa, 1996.

Required: Evaluate the possible meanings that may be assigned to ‘human dignity’ with specific reference to foreign and domestic judicial reasoning and academic writing? You are also required to evaluate the instruments where this concept is found and to assess the benefits and/or disadvantages that have been associated with the use of this concept.

QUESTION 5**[20]**

It may be argued that “human rights” is of relative recent currency on the African continent. However, the history of exploitation of Africa, has introduced the concept of human rights in the human rights documents of the continent. The African Charter on Human and Peoples’ Rights also reflects in many ways a reaction to the continental experience of slavery and colonialism. It is also well known that the struggle for human rights on the African continent is far from over or complete. The continent is plagued by widespread violations of human rights, often on a massive scale. The process to establish effective institutional structures, that will help to consolidate and protect the gains of the freedom struggles of the past, has become a struggle in its own right.

Required: Critically evaluate the main legal instruments relevant to the African continental protection of human rights. You are further required to evaluate the norms recognised (individual and peoples’ rights and duties, etc.) and thereafter to elaborate on the regional institutional structures set up to achieve the implementation of the norms. Include reference in your answer to the organs of the African Union, the African Commission on Human and Peoples’ Rights, the African Court on Human and Peoples’ Rights and the African Peer Review Mechanism, where applicable.

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