

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2010

TITLE OF PAPER: LAW OF HUMAN RIGHTS

COURSE CODE: L507

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- (a) ANSWER ANY FOUR (4) QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL MARK OF 25.**
- (c) THE CONTENT OF YOUR ANSWERS, CLARITY OF EXPRESSION AND LEGIBILITY OF YOUR HANDWRITING ARE ALL EXTREMELY ESSENTIAL.**

DO NOT OPEN THIS PAPER UNTIL SO PERMITTED BY THE INVIGILATOR.

Question 1

Tanoh, a Congolese national who has been living in the country for over five years decided to join the throngs of people at the 2009 graduation ceremony at Kwaluseni Campus. To match up to the pomp and style that has come to characterize this event, Tanoh was determined to dress to kill, in full Rastafari colours, from hair to toe. As a devout Rastafarian, Tanoh decided to tuck his dreadlocked hair in a large Rastafari-inspired woolen hat, with the red, green and yellow colours.

As Tanoh entered the arena, he was accosted by an uncompromising member of the Swazi army who ordered him in vernacular to '*remove that ugly thing on the head*'. Although Tanoh had over the years managed to grasp a few SiSwati words, he felt offended by the reference to his colourful hat as ugly. He decided to press on, and disappeared into the crowd whilst pretending that he had not heard the soldier's demand.

Tanoh was soon followed by the soldier who was now in the company of a member of the state police. They caught up with him just as he was about to sit down under the marquee. Already television cameras from the tabloid station, Channel S were zooming in on the commotion. The two state agents were uncompromising, ordering Tanoh to remove the hat as it was unSwazi to wear a hat in the presence of His Majesty. Tanoh retorted that it was his religious belief to cover his head in that manner, and as a devout Rastafarian, he was not prepared to remove the hat.

In the scuffle that ensued, caught on camera and broadcast in the evening bulletin by Channel S, the two state agents were seen assaulting Tanoh.

In a later interview, the Prime Minister in his capacity as minister responsible for police made a comment that there was nothing improper with the conduct of the state agents, and that Swaziland is a Christian country. He went on to state that had the young man complied with lawful orders from the two state agents, he would not have been hurt the way he was. He further appealed to every Swazi who loves his country and king to obey customary rules of conduct on such occasions. In driving his point home, the Premier reminded the nation of an instance where a young man from Mbhuleni location had been found at a public event to have hidden an *Okapi* in a hat. He concluded by stating that Tanoh's rights cannot be absolute, they have been justifiably limited by Swazi customs.

Advise Tanoh if he can approach the Swaziland Human Rights Commission for redress, and what rights, if any have been violated.

(25 Marks)

Question 2

In mid-2009, Swaziland was rocked by newspaper headlines of two women who publicized their engagement to each other, with a view to getting married in the future. The public opinion on this was ambivalent, with some supporting these two women whilst others claimed that this was a sign that the end of time was near. In fact the church referred to this development as a '*sinful fashion*'. Traditionalists on the other hand felt this was unSwazi and would cause the ancestors to turn their backs on the nation. Yet others, without reference to either culture or religion, claimed that our society and our legal system would never allow such to take place. Those in support felt that the rights of these young ladies to establish and found a family were being violated, and that it was high time that our laws changed to conform with the constitution. Critically assess all these arguments based on Swaziland's Constitution and the country's international law obligations under the treaties it has signed and ratified.

(25 Marks)

Question 3

Human rights protection at the national level has come a long way to where it is today. The United Nations (UN) has not always featured much in states' attempts to safeguard fundamental rights internally, until about a decade or so ago. Trace the history of human rights protection domestically, indicating the UN's intervention up to the position that obtains today.

(25 Marks)

Question 4

African constitutions have been criticized for not making adequate provision for disability rights. The adoption of a disability convention in 2007 was welcomed as the dawn of a new era internationally. Some commentators hailed the new instrument as signaling the long-awaited shift from the charity model to a rights based approach to disability rights. That notwithstanding, disability rights continue to be relegated to the bottom of the human rights spectrum, with some claiming that disability rights cannot not be immediately realizable, but are subject to progressive realization. Critically discuss.

(25 Marks)

Question 5

Regional human rights systems are vital for human rights protection. They serve as supplementary mechanisms to the global United Nations mechanism. To that end, each of the three continental land masses has its own system. Contrast the Inter-American system with the African system, drawing on similarities and differences between the two.

(25 Marks)