

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION
JULY 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 one:

Sandora is a small landlocked state in Africa. It has ratified all the international instruments under the African Union, as well as the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic Social and Cultural Rights (CESCR). Sandora has a constitution which provides for the socio-economic right to education for all primary school students. This constitution mirrors the Swaziland constitution.

Menzi, a seven year old girl lives with her grandmother in the rural, impoverished village of Soroti. Menzi does not attend school because both her parents are dead, and her grandmother is too old and indigent. The closest school to Menzi's village is 20 kilometres, which some students from the village cover on foot every day. The school lacks resources and has insufficient teachers. When Menzi tried to enroll at the school, she was told she is too old to join the first grade, and did not have the money to pay the 500 Sandora Dollars school fees.

On a daily basis, Menzi wakes up, wears banana leaves and performs traditional dances to tourists passing through the area for a few dollars. This money sustains both Menzi and her grandmother. The government, through a tourism publication advertises these services that Menzi provides, and uses her pictures draw more tourists to the landlocked Sandora. The local media also features Menzi now and again, referring to her as a 'young entrepreneur'.

Other than the few dollars Menzi makes in any given week, her grandmother receives a grant of 240 Sandora Dollars every three months from the government, since she is over 60 years old. However, on many occasions these gratuitous payments do not come forth, and the government department responsible does not provide sufficient explanation. On occasions where the government defaults in paying out the elderly grants, Menzi and her grandmother go for weeks without food, or medication for her chronic back pain. She has to travel for over 150km to have access to a government clinic. After traveling for so long, Granny is sometimes turned back by the nurses because there are no drugs in the clinic. The major state hospitals in the big cities are also facing drug shortages, resulting in a large portion of the citizenry being denied the right to access to health care.

In the past 10 years, young girls like Menzi who continued to search for education have had to endure abuse at the hands of criminals who way-lay them in the forests on the way to school and rape them. The state of Sandora has not done much to prosecute the offenders, even though they are known. Further, these girls are hastily married traditionally whenever they 'make noise' about being raped, and their cases die a natural death.

Despite demands from the people of Soroti, the situation has not been addressed for over 40 years now. Instead the state of Sandora has gone ahead, amidst these demands, to purchase a new jet for their president, as well as a new fleet of luxury cars for the entire cabinet. For over forty years, the government of Sandora has been complaining about insufficiency of funds.

The residents are skeptical of approaching the local courts to sue the government since for two years, the government has been refusing to give effect to orders issued by these courts. Further, those who were brave enough to go against the government of Sandora have mysteriously disappeared. As a result, they have lost confidence in the justice system of the country.

Menzi and her grandmother have instructed you to bring a complaint (communication) before the African Commission on their behalf.

- (a) Relying on article 56 of the African Charter, draft a communication, dealing with each point on admissibility as outlined in the Charter. (15)
- (b) After dealing with the admissibility issues, state and substantiate the particular rights contained in the Charter that have been violated. (10)

(25 Marks)

Question two:

There are arguments that natural rights and human rights are one and the same thing. They both derive from natural law. Critically discuss the veracity or otherwise of this statement.

(25 Marks)

Question three:

The African Court of Human Rights has been hailed by some as a panacea to human suffering in Africa. Others have however, been critical of this new institution, claiming that it does not have teeth that can bite. Critically discuss.

(25 Marks)

Question four:

Forced evictions serve as a good illustration of the universality of the *domino-effect* of human rights violations. However, a comparison of the Swaziland jurisdiction to that of other African states, such as

South Africa, reveals that the victims of forced evictions vary in nature and character. Discuss this in relation to forced eviction in at least three jurisdictions on the continent.

(25 Marks)

Question five:

There are arguments that international human rights law (IHRL) should not be used in cases of conflict, but that international humanitarian law (IHL) should be employed instead. Discuss.

(25 Marks)