

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE

281

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2012

- TITLE OF PAPER:** LAW OF HUMAN RIGHTS
- COURSE CODE:** LS07
- TIME ALLOWED:** THREE (3) HOURS
- INSTRUCTIONS:**
- (a) ANSWER ANY FOUR QUESTIONS, INCLUDING QUESTION 1 WHICH IS COMPULSORY.
 - (b) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.
 - (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 (Compulsory)

Compare the Inter-American human rights system to the African human rights system.

(25 Marks)

Question Two

Sandora is a small landlocked state in southern Africa. It has ratified all the international instruments under the African Union and the United Nations. Sandora's constitution provides for the socio-economic right to education and primary healthcare, and in most respects, mirrors the Swaziland Constitution.

Menzi, a seven-year old girl lives with her grandmother in the rural, impoverished village of Soroi. Menzi does not attend school because both her parents are dead, and her grandmother is too old and indigent. Until one year ago, Menzi was a beneficiary of an education scheme provided by the Soroti Department of Education, which was stopped abruptly by the state citing escalating economic hardships.

On a daily basis, Menzi wakes up to wear beautifully crafted banana leaves and perform traditional Sandoran dances for tourists passing through the area's scenic valley, in return for a few dollars. This money sustains both Menzi and her grandmother. The government, through a tourism publication advertises these services that Menzi provides, as an epitome of true Sandoran culture and show of patriotism. Her pictures on the glossy magazine draws more tourists to the tiny landlocked Sandora every year. The local media also features Menzi frequently in their publications, referring to her as a 'young Sandoran entrepreneur'.

Other than the few dollars Menzi makes in any given week, her grandmother receives a grant of 240 Sandoran dollars every three months from the government, since she is over 65 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 145km to have access to a government clinic. After travelling 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 health care.

Schooling has become even more difficult since the revival of an old Sandoran custom, where male suitors are permitted to abduct girls they 'love', so long as their ultimate intention is to marry them, and they have the requisite number of cattle for *lobola*. As a result, many girls leaving home for school never reach their destination.

Attempts to challenge these customs in the courts proved futile as the Sandoran Constitution elevates custom above fundamental rights, and the judiciary has in past cases shown an bias towards the supremacy of the customary rules. Pro-democracy advocates and human rights defenders who attempted to tackle these issues mysteriously disappeared. As a result, no human rights cases have been filed before Sandoran courts in the last five years.

Menzi and her grandmother have now instructed your organisation, the Centre for Human Rights to bring a complaint before the African Commission on Human and Peoples' Rights 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 Three

With reference to Swaziland's appearance before the United Nations' Universal Periodic Review (UPR) process in October 2011 and subsequently in March 2012, a lot of conflicting ideas filled the public space; with the Government of Swaziland hailing it as a success, whilst civil society labelled the state's performance as dismal. Relying on proceedings from this process, and through the prism of three specific rights, critically assess whether the UPR process holds any hope for human rights advocates in Swaziland.

(25 Marks)

Question Four

In recent times, African leaders have referred to certain rights as demonic, unAfrican and foreign. In the Swazi context, human action that draws its legitimacy from fundamental rights has quite often been referred to as unSwazi, satanic and foreign; and irreconcilable with the Swazi way of life and Swazi culture. Critically assess the veracity or otherwise of these assertions.

(25 Marks)

Question Five

You are in a bus to Manzini when a member of the public strikes a conversation with you. She tells you that the state of Swaziland has not signed or ratified the Rome Statute, and that because of that fact, perpetrators of violence and crimes against humanity as well as other human rights violations cannot be brought before the International Criminal Court (ICC) for trial. Your task is to enlighten this person on the possibility of having such perpetrators of human rights violations in Swaziland tried before the ICC.

(25 Marks)

Question 6

In 2011, the clashes between the Free Syrian Army and the forces loyal to President Assad escalated, with loss of life, limb and property recorded each passing day. The United Nations tried furtively to intervene in the clashes.

- (a) How can the Syrian situation be classified?
- (b) Assuming that Swaziland gave military assistance to the Syrian troops, would this have any impact on the classification?
- (c) How, if at all, is the Syrian conflict different from recent clashes in central Africa, where those perpetrating violence used pangas/machetes?

(25 Marks)