



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

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JANUARY – APRIL 2022

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FACULTY OF LAW

REGULAR PROGRAMME

CLS 323: INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Date: APRIL 2022

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any Other TWO Questions

Q1. “We the people of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...” These words are contained in the 1945 United Nations Charter. Following this historic moment, the people of the United Nation indeed brought these words to life through the codification of an international bill of rights.

- a. Comprehensively discuss the covenants entailed in the so-called international bill of rights taking note to delve into the practicalities of the pathways available for enforcement (20 marks)
- b. The OAU similarly set up the main continental binding human rights instrument stating in its preamble, “Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights.” Discuss this instrument and its key features particularly bearing in mind the words of the preamble (10 marks)

Q2. GM Wachira and A Ayinla make the observation that “A human rights guarantee is only as good as its system of supervision. The African Commission on Human and Peoples' Rights (African Commission) is the only institution charged with the promotion and protection of human and peoples' rights in Africa, as articulated in the African Charter on Human and Peoples' Rights (African Charter).” Discuss the African Commission’s twin mandates (15 marks) and address its most perceived deficiency (5 marks)

Q3. The Faculty of Law holds monthly academic lunch hour talks and your IHRHL law lecturer has selected you to make a presentation on a human rights topic. She advises you to focus your presentation on the categorisation of human rights into generations and their resultant obligations. So that it is not merely academic, she suggests that you should demystify the myths associated with the traditional classification of rights so that the audience can get a practical sense of state obligations in guaranteeing human rights. You agree.

- c. Guided by a paper that you have prepared, you proceed to make the presentation as discussed (15 marks)
- d. During the plenary session, one of the lecturers makes this contribution: "Civil and political rights, which states can implement immediately, are the only "true" and "fundamental" human rights.' You respond by saying... (5 marks)

Q4. General Hatari, his lieutenants and key support staff are holding a strategy meeting to devise a plan of action for one of their on-going military operations. They have conceived various courses of action and are debating the merits, demerits and lawfulness of each. Lieutenant Sikujua points out that one of the possible courses of action is completely ungoverned by both treaty and customary International Humanitarian Law (IHL). He makes a spirited case for the adoption of this plan, as it will afford them carte blanche, "we can basically proceed however we want without regard to IHL," he declares victoriously. At this juncture, Junior Under Officer Mjanja, a lawyer from the legal division interjects clarifying that actually IHL does envisage unforeseen scenarios such as this one.

- e. What is Mjanja referring to? (4 marks)
- f. Very impressed with this information, General Hatari asks Mjanja to brief the team of other relevant principles similar to the one she just pointed out. She elaborately explains 4 more principles and highlights their rationale and provision in law. Do the same (16 marks)

Q5. Write brief explanatory notes on the following:

- a. The African Court on Human and Peoples' Rights (8 marks)
- b. The basic principles of human rights (6 marks)
- c. The distinction between combatants and non-combatants (6 marks)

END