



GREAT ZIMBABWE UNIVERSITY
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EXAMINATIONS DEPARTMENT

HERBERT CHITEPO LAW SCHOOL
BACHELOR OF LAWS HONOURS DEGREE
LEVEL 2 SEMESTER 2
EXAMINATION QUESTION PAPER

MODULE CODE	LLB 225
MODULE NARRATION	HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW
DATE	2024
DURATION	3 HOURS

INSTRUCTIONS TO CANDIDATES:

- 1 This question paper is divided into TWO SECTIONS. These are SECTION A, which is compulsory and SECTION B.
- 2 Answer THREE Questions in ALL. Answer all questions in SECTION A and any two other questions of your choice from SECTION B.
- 3 You are allowed to bring clean copies of the Geneva Conventions, 1949, and the Optional Protocols, 1977 and The Constitution of Zimbabwe Amendment No. 20 of 2013 for use during the examination.
- 4 Write legibly and refer to relevant authority.
- 5 This question paper is six pages long.

SECTION A

This section is compulsory. Answer all questions.

QUESTION ONE

(a).Ms Waivepi Hlupo is a Form V student. In her first three years at high school she was very rebellious and constantly flouted school rules. She recently became very religious and has started wearing a head scarf to school with her existing school uniform. She has been warned verbally by her class teacher and the principal that this is in contravention of the school's strict rules regarding uniforms. On 1 October 2021, her parents received a letter from the school stating that she is required to comply with the school uniform rules which provide that only 'school hats may be worn with school uniforms and designated white sport hats with sports uniforms. No other headgear may be worn by learners'. The letter informs Ms Hlupo's parents that a headscarf is not a school hat and may not therefore be worn at the school. The letter states further that the school's reasons for its approach are:

- (i) The school's uniform policy serves the purpose of ensuring that learners are neat and tidy for school. It also ensures that all learners wear appropriate clothing including sun hats when they are outside;
- (ii) The school is non-denominational and the school does not want to show favouritism towards any one religion; and
- (iii) They believe that this is simply another of Ms Hlupo's antics that reflect her defiant attitude towards authority.

Ms Hlupo's and her parents are very angry at the school's refusal to accommodate her religious beliefs. Ms Hlupo's feels that she is being treated like a child and that none of her teachers take her religious beliefs seriously which undermines her dignity. Ms Hlupo's and her parents approach you for advice on the following issues:

Write a legal opinion advising Ms Hlupo and her parents on the human rights that have been violated.

(10 Marks)

(b). The States Alpha and Beta are engaged in a war caused by an unresolved border dispute. The armed conflict was started by Alpha which invaded Beta's territory across the disputed border by using its army and airforce, while its navy blockaded all Beta's ports. Beta responded in kind attacking targets deep inside Alpha territory causing damage to hospitals, schools, shrines and other vital public utilities such as national dams, roads, electricity installations and government buildings. The situation resulted in each occupying part of the other's territory. During the fighting thousands of civilians were killed, lost their homes, food and domestic animals. Each side in the conflict engaged in indiscriminate attacks on both person and property. Both presidents of the two states ordered their senior military officers to do everything necessary to destroy each other's territory.

Identify which principles of International Humanitarian Law have been violated and by whom. **(10 Marks)**

(c) Mujaki is a famous artist and anti-war campaigner who uses photography and video to create controversial works of art. His latest exhibition is about the atrocities of war. It contains many pictures and film clips taken from the aftermath of the recent bombing of a city involved in an ongoing conflict. Some of the pictures and film clips are shocking. Many of the images are available on the internet. The exhibition divides opinion. Some people claim it is a challenging but vital work whilst many others are offended and outraged. The local council asks Mujaki to remove the most offending images. He refuses to make changes to his work claiming this is 'an act of censorship'. The council imposes a temporary suspension of the gallery's licence. This effectively closes the exhibition.

Advise whether Pavel has a strong legal case to challenge the ban or whether the council can prevent him from exhibiting. **(10 Marks)**

[Sub-Total 30]

SECTION B

Answer any two questions of your choice from this section

QUESTION TWO

(a). Gari is a Zimbabwean who follows the Gaba religion. The religion states that women are perpetual minors; they are not allowed to make decisions without the approval of their

husbands. The religion further allows the punishment of women through flogging by their husbands. The religion also allows the smoking of marijuana and that their male children should not shave their hair and beard. Ndangi the son of Gari was enrolled at Maose High School together with his twin sister. Maose High School is a private school that is run in accordance with Christian values. Some of the values were that the school does not allow the smoking of marijuana; marriages whilst enrolled at the school and keeping of beard and long hair. In addition, every pupil at the school was expected to go for morning and evening prayers. Ndangi did not shave his beard as per his Gaba religion. He was also smoking marijuana at 6 pm every day at the school in line with the Gaba religion. He also refused to attend prayer sessions on the basis that it was against his religious beliefs. During the school holidays, Esinath got married and was expelled from the school when the schools opened because of her pregnancy. Her brother, Ndangi, was also expelled from the school because he was keeping a beard and long hair; refusing to attend prayer sessions at the school and smoking marijuana. When Gari enrolled his children at the school, he signed a contract with the school where he agreed that his children would be bound by school values.

Identify the human rights violations and remedies available to Gari in Zimbabwe.

(10 Marks)

(b). During an armed conflict between states Chigamba and Muhali both states use chemical and gas weapons of all types against each other's people. Food and water sources are also poisoned to eliminate as many enemy citizens as possible. Many deaths as well as the maiming of people and animals are caused by the use of these weapons. Both states in defence of their actions argue that they are entitled to use whatever weapons, methods and means of warfare to preserve their existence. To what extent can the arguments of the two states be supported by international humanitarian law?

(10 Marks)

[Sub-Total 20]

QUESTION THREE

(a). In reacting to a failed attempted *coup d'état* against his government, President Makanda and his senior colleagues unleash a reign of terror against the citizens of his country accusing them of having supported the unsuccessful military *coup d'état*. Makanda's orders are that all 'traitors' should either be killed, raped, assaulted, tortured or severely assaulted. Survivors must be forced out of the country against their will. What international crimes have been committed by Makanda and his colleagues and which court/s have jurisdiction to try the perpetrators of this violence? **(10 Marks)**

(b). Ms Spiwe Chara applied to the Sunnyside Boys' High School, a government school, for admission. At the interview, she was told that it was school policy to admit only boys. She was advised that there were many other single-sex schools in the region and that all school activities were designed for male learners. If female learners were admitted, significant changes would have to be made. For example, the school would have to make arrangements for bathrooms and change rooms for girls. The school believes that it is not acting unfairly. Ms Chara asks for your advice on this issue. Write a legal opinion advising Ms Chara.

(10 Marks)

[Sub-Total 20]

QUESTION FOUR

(a). During the initial phases of the invasion in the State of Mukwati, by a rebel group using the name Mukwati Army Resistance, (MAP) a number of Mukwati soldiers were captured by MAP. On the way to bringing them to a Prisoner of War (POW) camp, they realise that three of the captives are mercenaries from the state Jamali, hired by one Mukwati's Army Commander to assist his armed forces in defending against the invasion. The POW Camp Commander asks you, as a legal advisor, how these mercenaries should be classified, and if there are any treaty obligations related to their treatment. Advise him.

(10 Marks)

(b). The Universal Declaration of Human Rights (1948) is no longer relevant for dealing with human rights issues in the twenty-first century. Evaluate this statement with reference to authorities.

(10 Marks)

[Sub-Total 20]

QUESTION FIVE

(a). In an armed conflict between states Ayatola and Bhamhara, Ayatola is accused by Bhamhara of having provoked Bhamhara by repeatedly launching missiles into Bhamhara's territory which killed a number of Bhamhara's citizens and destroyed property worth billions of American dollars. Ayatola was launching the missiles from its territory. Bhamhara responded to Ayatola's provocation by invading Ayatola's territory. Aerial bombardments were carried out by Bhamhara in support of its ground forces who were equipped with armoured tanks. Bhamhara's military operations are indiscriminate in nature. Civilians on both sides are killed and wounded. Many mortally wounded combatants on both sides are 'finished off' to avoid taking prisoners. Property including churches, schools and hospitals are bombed and destroyed. Bhamhara's military capability is far superior to state Ayatola's.

What principles of international humanitarian law have been breached and by which state?

(10 Marks)

(b) Jubeki Jani and Dinga Dimbiri have been arrested on suspicion of a \$2 million bank robbery in Harare. This investigation generates a lot of publicity from the press and consequently Jubeki and Dino receive a number of death threats from the public. They request the police to give them 24-hour police protection for fear of their lives. The police denied this request. Further, the police manage to obtain a warrant, based on false information, to tap their telephones. As a result of the telephone tap, highly incriminating evidence is revealed about the robbery. The state wishes to use this evidence while Jubeki and Dinga's lawyer oppose the admission of this evidence.

Apply the requirements for a valid limitation of fundamental rights as contained in Section 61 of the Constitution of the Republic of Zimbabwe, Amendment No.20 of 2013 to the above set of facts. Examine the conduct of the police against each of the requirements of the limitation clause, and explain whether or not their conduct is lawful in each respect. **(10 Marks)**

[Sub-Total 20]

TOTAL MARKS: 70

END OF QUESTION PAPER