



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

JANUARY- APRIL 2024

RLB 320: INTERNATIONAL HUMAN RIGHTS LAW

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INSTRUCTIONS

1. This is the final examination in International Human Rights Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 5 pages, including this one.
4. Time allocated for this examination is **TWO** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means that save for a clean copy of the Constitution of Kenya, which shall be supplied by the Law School, you are not permitted to bring **ANY** hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE (30 Marks)

The year is 2024, in the State of HAMAKI, on the Eastern African Coast. It has a 'Democratic Constitution' which outlines that Executive, Legislative and Judicial power is derived from the People and should be exercised only as stipulated in the Constitution.

On 13 February 2024, the Republic of HAMAKI conducted its presidential and parliamentary elections. The elections pitted the incumbent President Don MBOTE against the fast-rising youthful female opposition leader Alexis. In the run up to elections, it became apparent that the incumbent was using his position to threaten, intimidate and harrass the opposition candidate. For starters, the incumbent issued an Executive Order banning all political rallies, and gatherings as one of the measures aimed at containing the spread of DISEASE-X, a severe airborne respiratory disease with a 30% fatality rate for those with underlying medical conditions. Consequently, any political gatherings or organizing by the opposition was swiftly and violently dispersed by the police.

On the other hand Don MBOTE continued to hold political campaigns and gatherings dubbing them as 'meet the people tours, to dialogue on the extent of the national response to DISEASE-X'. Furthermore, he ordered a shutdown of the mainstream Social Media 4 weeks to the elections. The only available network was one called TUJUANE, which was run and owned by the President's daughter, who used it to run political messaging for her father.

Two weeks to the elections, the opposition party's offices were vandalized and Alexis was arrested and kept in detention for 'violating DISEASE -X restrictions'. Later on, she was released after her supporters staged week-long violent protests in the capital city. Two days to elections, the government of HAMAKI ordered an internet shutdown across the country, including a shutdown of all mobile banking and mobile money transfer operations. This negatively affected among others, the ability of the opposition to mobilise their agents on the ground and send them the much-needed funds for logistical purposes.

On election day, the distribution of ballots to most of the Opposition strongholds did not commence until midday, while in zones seen as loyal to the ruling party, voters had already cast their votes by midday. Bands of 'unknown goons' were witnessed beating and causing mayhem at voting stations in opposition zones visibly under the noses of the police. When counting and tallying of votes commenced, it became apparent that the electronic voter tallying system had been hacked into as it crashed just one hour into operations, meaning that the vote tallying had to revert to the manual system.

When the results started trickling in, they showed over 160% voter turnout in favour of the incumbent, who was then quickly sworn in under the cover of darkness the next day at 7.30p.m. Visibly agitated, the opposition candidate marshalled her supporters and organized a peaceful march in the capital calling for a vote recount and adherence to democratic ideals. On the day of the march, police charged into the peaceful crowd, wounding 12 people while scores sustained injuries in the ensuing stampede. Alexis was arrested allegedly for recklessly endangering the lives of the protestors before being detained at SUBI Prison. On the evening of Alexis' arrest, the Chief Justice while being interviewed on national TV about the protests remarked that 'The likes of Alexis, who are a threat to our democracy shall not be entertained by the Judiciary'. It is 4 weeks later, and Alexis has not been released or arraigned before Court. Her lawyers have tried frantically to file *Habeas Corpus* applications in Court, but the Registrar insists that all court sessions must be done virtually in light of the prevailing restrictions. Curiously, the connection to the Courts have been mysteriously interrupted and discontinued each of the four instances when Alexis' lawyers are on virtual court sessions to prosecute their application.

The State of HAMAKI is a party to all the main UN Human Rights Treaties as well as the African Charter on Human and People's Rights and the Protocol Establishing the African Court on Human and Peoples' Rights. The State of HAMAKI has not made a declaration under article 34(6) of the Protocol.

You are a human rights lawyer who has been contracted by the HAMAKI Law Society.

A) Provide a concise legal opinion on whether there have been violations of HAMAKI'S obligations under the African Charter on Human and People's Rights (15 Marks)

b) Advise Alexis on how she can go about filing and prosecuting her complaint within the African Human Rights System as well as the key considerations as she embarks on this process. (15 Marks)

QUESTION TWO (20 Marks)

- a) Henry Shue postulated that States have 3 major human rights obligations in relation to their citizens and residents.

Identify and provide a detailed critical analysis of these state obligations

(10 Marks)

- b) ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.’ (Vienna Declaration and Platform for Action, 1993). **Provide a critical analysis of this statement in the context of the universalist-relativist debate.(10 Marks)**

QUESTION THREE (20 Marks)

Read the following news article and answer the questions that follow:

UN Report Calls for Accountability, Justice for Violations by All Parties in OPT And Israel

GENEVA (23 February 2024) – A UN Human Rights Office [report](#) issued today calls for accountability and justice across the board for serious violations of the laws of armed conflict and other gross human rights violations committed by all parties in Gaza, the West Bank, including East Jerusalem, and Israel over the 12-month period up to 31 October 2023.

“The entrenched impunity reported by our Office for decades cannot be permitted to continue. There must be accountability on all sides for violations seen over 56 years of occupation and the 16 years of blockade of Gaza, and up to today,” the UN High Commissioner for Human Rights, Volker Türk, said. “Justice is a pre-requisite for ending cycles of violence and for Palestinians and Israelis to be able to take meaningful steps towards peace.”

The report raises a broad range of concerns of unlawful killings, hostage-taking, the wanton destruction of civilian property, collective punishment, and deprivation of essential services, strikes on civilian infrastructure, forced displacement, incitement to hatred and violence, sexual assault and torture, all prohibited by international human rights law and/or international humanitarian law (IHL).

Further investigations are needed to establish the full extent of crimes under international law committed, adds the report.

Türk urged all parties to immediately cease violations of international humanitarian law and violations and abuses of international human rights law and to conduct prompt, independent, impartial, thorough, effective, and transparent investigations into all alleged violations. All those responsible for violations must be held to account in fair trials.

He called on all parties to cooperate with international mechanisms for accountability, including the International Criminal Court, as well as the International Court of Justice.

See: [https://www.ohchr.org/en/press-releases/2024/02/un-report-calls-accountability-justice-violations-all-parties-opt-and-israel#:~:text=GENEVA%20\(23%20February%202024\)%20,.and%20Israel%20over%20the%2012%2D](https://www.ohchr.org/en/press-releases/2024/02/un-report-calls-accountability-justice-violations-all-parties-opt-and-israel#:~:text=GENEVA%20(23%20February%202024)%20,.and%20Israel%20over%20the%2012%2D) (accessed on 20 March 2024)

In view of the foregoing, provide a critical analysis of how the United Nations system for the promotion and protection of human rights can be activated to address the concerns raised in the news report. (20 Marks)