



THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL.B DEGREE PROGRAMME – LEVEL 6
FINAL EXAMINATION – 2017/2018
LWU4325/ LLU6717- INTERNATIONAL HUMAN RIGHTS LAW
DURATION – THREE (03) HOURS

Date – 19-02-2020

Time- 1.30 pm-4.30 pm

Total No. of questions: 08

Answer five (05) questions only.

Candidates will be penalized for illegible handwriting.

1. ‘.. But this formal consensus masks a deep and enduring disagreement over the proper status of economic, social and cultural rights. At one extreme lies the view that these rights are superior to civil and political rights in terms of an appropriate value hierarchy and in chronological terms. Of what use is the right to free speech to those who are starving and illiterate? At the other extreme we find the view that economic and social rights do not constitute rights (as properly understood) at all.’

- Henry J Steiner, Philip Alston and Ryan Goodman. (2008).
International Human Rights in Context. 3rd edition. Oxford:
Oxford University Press, p. 237

Comment on the above statement Comparing and contrasting how the two categories of rights are recognized in the international bill of rights. Using examples from real life, discuss why all human rights are considered as indivisible, inter-dependent and inter-related. (20 marks)

2. Trace the evolution of the notion of individual criminal responsibility in international law and discuss how the International Criminal Court statute (The

Rome Statute) (1998) gives force to this conception. Explain why ensuring accountability for international crimes is an important global concern.

(20 marks)

3. 'Attempts to construct Universalist creeds and doctrines – or to present a particular creed or doctrine as universal – run the risk of destroying or decimating dissimilar universe. The claim of a universal warrant is an extremely tricky proposition, if not altogether impossible. That is why attempts at creating an international consensus on what constitutes human dignity must be approached with nuance, open-mindedness and the complexity it deserves'

- Makau Mutua. (2002). *Human Rights: A Political and Cultural Critique*. Philadelphia: Pennsylvania University Press.

Critically analyze the above statement in the light of the debate between the Universalist claim of human rights and counterclaims based on the idea of cultural relativism. Do you think the modern human rights framework reflects euro-centric values while undermining moral values of non-western cultures? Justify your answer with examples.

(20 marks)

4. Federasia is a developing country having a parliamentary system of government. Though the country has maintained representative institutions of government for decades, critics have observed that women's representation in elected bodies is significantly low. Identifying this as a problem, several women's rights activists formed a 'women's platform' to advocate the need of introducing a quota system as a mean of increasing women's representation in the parliament and other representative institutions. Accordingly, they suggested that 25% of seats of each assembly should be reserved for women making it mandatory for political parties to have more female candidates in their election lists. However, the 'Yellow Alliance' which is a political party in

the country started agitating against this proposal arguing that such preferential treatment violates the idea of equality between men and women. They claim that Federasia has no law prohibiting women from contesting elections. Any woman is free to contest for public office if she is willing to do so. In such context, preferential treatment for women means discriminating against men and creating unnecessary problems among men and women.

You are appointed as a legal adviser to the women's platform to prepare a report on behalf of the organization to be submitted to the government justifying the demand for seat reservations. Present the main points of the report you will prepare. You are expected to refer to domestic and international human rights provisions in presenting your position. Assume that the constitution of Federasia is similar to the 1978 Sri Lankan constitution and the country has ratified all core international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) as well as the Convention for the Elimination of all forms of Discrimination against Women (CEDAW). (20 marks)

5. States ratify international human rights treaties but often tend to disregard their implementation in the domestic level. The international human rights law regime contains a comprehensive system of various mechanisms to ensure that state parties respect the provisions of treaties. However, the effectiveness of these mechanisms depends on the extent states are willing to comply with their human rights obligations as there is no sanction regime attached to the international human rights monitoring system.

Do you agree with the above statement? Explain your answer with reference to the powers and functions of United Nations human rights monitoring bodies.

(20 marks)

6. '..Not all States Parties ensure, to the maximum extent, the survival and development of all children everywhere. In almost every context, children are often still viewed as passive recipients of care, their voices dismissed or ignored. [...] Children are particularly vulnerable to trafficking and slavery, including the worst forms of forced labour, domestic slavery, sexual slavery and forced marriage'
- Michelle Bachelet (United Nations High Commissioner for Human Rights). Opening statement at the 80th session of the Committee on the Rights of the Child, 14 January 2019.

The above extract highlights some of the challenges the human rights community is facing in ensuring a dignified life for children in contemporary times. Discuss to what extent the Convention on the Rights of the Child (1989) provides a framework to envision a better future for children by recognizing the child as a rights bearer; as opposed to a passive recipient of care. (20 Marks)

7. Verso Republic is a state ravaged by civil war fought between the state forces and a militant rebel organization known as the 'Freedom Fighters of Verso' (FFV). Leon is a small-scale businessman who lived in the area the rebels have influence. On January 2013, Leon was arrested by the military police at a check point on the suspicion that he is collaborating with rebel forces. He was taken into an unofficial detaining center and was held there for three months. He was not allowed to see an attorney nor his relatives; and was not produced to a magistrate. While on detention, Leon was subjected to severe beating on a daily basis. Further, he was forced to sign a confession stating that he is a member of the FFV. After obtaining the confession, Leon was produced to the magistrate's court and the court ordered him to be detained in a state-run facility. Though Leon claimed he was beaten while at detention, the Magistrate

did not pay his attention to the claim. Leon was later indicted at the high court under the *Suppression of Terrorism Act*; a controversial law which *inter alia* provided that statements made by suspects while at custody are admissible as evidence in the courts. He was found guilty at the trial, largely based on his own confession and was sentenced to twenty years of imprisonment. His appeals to the superior courts were also dismissed.

Leon believes his rights are violated and seeks the possibility of submitting a communication to the United Nations Human Rights Committee in Geneva. Referring to domestic and international human rights instruments, prepare a legal brief for your senior counsel outlining the grounds Leon could make the communication. In your brief, you should also explain whether Verso Republic is bound by recommendations of the Human Rights Committee. Assume that the legal system in Verso Republic is identical to Sri Lanka and it has ratified the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol.

(20 Marks)

8. Write essays on any two of the following.

- a) Derogation from international human rights obligations
- b) Relationship between human rights and fundamental rights
- c) Duty bearers under International Human Rights Law

(10×2=20 marks)

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