



ZIMBABWE EZEKIEL GUTI UNIVERS

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 310
COURSE TITLE : Human Rights and International Humanitarian Law
DURATION : 3 Hours
LEVEL : 3.2
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer **FOUR questions**. Question ONE in section A is compulsory. Answer any **THREE** questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are **NOT** allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things.
4. Write legibly.
5. Number your answers accordingly.

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SECTION A: COMPULSORY

Question 1

On November 4, Mutema Prime Minister Hlupeni Matyabadza launched a military offensive against forces of the Maoneke People's Liberation Front (MPLF), which is the governing authority of the northern Mutema region of Maoneke. Coming after months of rising tensions between the MPLF and the Matyabadza administration, the latest military action was precipitated by an alleged surprise night-time assault by the MPLF on a major Mutema National Defense Force (MNDF) base in Maoneke that resulted in the killing of non- Maoneke soldiers and the attempted looting of heavy artillery and weapons. Declaring that the assault on the federal army base had "crossed the last red line," Prime Minister Matyabadza maintains that his hand was forced by the MPLF leadership into sending the army "to save the country and the region." More than a week on, the military operation is still reportedly targeting Maoneke's militia establishments and the MPLF leadership, and not its citizens—though there are worrying reports of civilian casualties, which are difficult to confirm due to an Internet and telephone blackout imposed by the government on the entire Maoneke region. The Council of Representatives has also imposed a state of emergency on Maoneke, effectively isolating it from the rest of Mutema.

For the judicious observer of Mutema's ethnic politics, there have been signs of ominous tensions between Maoneke and the central government since Matyabadza came to power two years ago. The MPLF had held a stranglehold on power for decades, since taking power in 1991. Following a months-long popular revolt that ushered him to power in early 2018, Matyabadza swiftly curbed the MPLF's dominance over Mutema's political and economic life, leaving its leaders feeling targeted and purged. The President of the Mutema region charged the Prime Minister with trying to sideline and even criminalize the MPLF.

The MPLF had exerted power in Mutema through a governing coalition, composed of four ethnic-based parties, called the Mutema Peoples' Revolutionary Democratic Front (MPRDF). But in 2019, shortly after Matyabadza took power, the other three parties annulled the MPRDF coalition and moved to replace it with a single national Prosperity Party that was not organized on ethnic lines. The MPLF countered by breaking away from the new governing coalition and launching a vain attempt to unite opposition forces under a new federalist coalition. Failing that, it has now isolated itself from the political process.

In March, the National Election Board of Mutema (NEBM), an autonomous body accountable to the House of Peoples' Representatives temporarily postponed the national and regional elections scheduled for August 2020 due to COVID-19 concerns. Legislators from Maoneke, including the speaker of the Upper House, withdrew from the national parliament in protest. Relations soured further in September 2020 when the MPLF, in open defiance of the constitution and federal government, held elections in Maoneke and reported a 98 percent victory in the popular vote. (The election was not overseen by international observers.) The newly-installed regional legislators in

Maoneke immediately declared that the federal government lacked legitimacy to govern the country and refused to recognize it.

The national assembly then countered by annulling Maoneke's election results and refusing to acknowledge the newly-elected leadership. Federal funding to the region was also slashed significantly, limiting the flow of resources only to local governments to protect basic services, and bypassing the MPLF. The leadership in Mudzimwa, the capital of Maoneke, called the cessation of their funding a declaration of war.

Mutema Prime Minister Matyabadza's decision to launch federal troops into the country's western Maoneke region have sent shockwaves across the African region and beyond. With a population of 110 million people, Mutema is the second largest country in Africa and borders six other African nations. Chronic instability and acute humanitarian needs are rife across the region. A prolonged conflagration between well-armed factions inside of Mutema is sending hundreds of thousands of refugees across borders, disrupt trade routes. This is a potentially cataclysmic scenario for a region ill-equipped to handle additional tumult or a humanitarian fallout that could affect more than nine million people.

Meanwhile, Kandel Tabvira a citizen of Mutema in Maoneke and studying for his Bachelor of Law Honours Degree at ZEGU. He was affiliated to the All Mutema National Independent Student Union-Revolutionary, the students' wing of the then opposition. On 10 November 2020, Kandel was walking in the alleyways of the neighbourhood of with a friend, Allanviny. At approximately 3 p.m., 11-12 armed men in plain clothes got out of a van belonging to the MPLF, attacked Kandel, forced him into the van at gunpoint and took him away. While Kandel was being captured, his friend ran away.

Allanviny was also been taken away, on 02 December 2020, while he was visiting his sister at her apartment in Chikomo District. On that occasion, a group of 5-7 MPLF Army personnel entered the apartment, arrested Allanviny, forced him into a van and brought him to Mandikise prison, where he was detained incommunicado and subjected to interrogations and beatings, for around two months. On 01 February 2021, Allanviny heard someone crying in a cell close to his, and recognized his friend's voice. Five days later, he walked past his friend while going to the toilet and recognized him, although they were both blindfolded, as Allanviny managed to peep out several times. They managed to communicate for a few minutes while in the toilet and Allanviny saw that his friend's body was swollen and covered with bruises. During the following days and weeks, they did not have occasion to communicate again. According to Allanviny, the conditions of detention at Mandikise amounted to cruel, inhuman and degrading treatment. Detainees were often forced to sleep in the open air, on gravel. They were constantly held in handcuffs. Most of the time, they were blindfolded. Water and food were scarce and provided irregularly, depending on the guards' mood. Moreover, detainees were interrogated while under duress, both during the day and at night time. Kandel was frequently threatened with death; he was also beaten, dragged

on the ground and forced to kneel on pebbles for hours. He has indicated that many of the detainees were repeatedly subjected to electric shocks and submerged in water.

On 01 March 2021, Allanviny was released. He was also threatened, however, by soldiers who told him that he would be rearrested or killed if he initiated any legal action regarding his or his friend's detention. Allanviny did not dare to do so. He went back to his village in Chikomo District. Neither Allanviny nor any other member of Kandel family have ever seen Kandel again, whose fate and whereabouts remain unknown.

(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)

- a) Discuss the above conflict on the basis of the following sub headings:
- i. Context leading to the conflict
 - ii. Evolution of the conflict from non-international armed conflict
 - iii. Major actors and alliances between the actors
 - iv. Major violations of IHL committed in the conflict **(15 marks)**
- b) Applying International Law in general and International Humanitarian Law and Human Rights Law in particular, advise Allanviny and Kandel on the possibility of suing for violation of their rights, if any, enshrined in the Constitution. Other than their rights, what other rights, if any that have been violated. Be careful to mention the forum(s) they might approach and justification thereof. **(10 marks)**

[25 marks]

Section B choose any three (3) Questions

Question 2

Differences in culture, religion, social, and political contexts means human rights cannot be characterised as universal.

Discuss this assertion, making reference to key theoretical foundations. **[25 marks]**

Question 3

The African human rights system has been criticised on a number of fronts, one of which is that this is a mere duplication of the UN treaty system and therefore unnecessary. Those who defend the African human rights system insist that it is necessary and substantial different from the UN treaty system as it addresses human rights issues peculiar to the African continent.

Discuss the above statement and in your answer be careful to demonstrate the Africanness of the protocol on the Rights of Women in Africa (Maputo Protocol). **[25 marks]**

Question 4

With aid of Zimbabwean case law authorities, examine and analyze the justification for the application of constitutional avoidance and related doctrines in constitutional litigation. In your answer also explore whether the approach by the courts is consistent with the duty placed on every institution and every person including the courts to respect, promote and fulfil the rights and freedoms set out in the Bill of Rights at every level as well as being consistent with regional and international trends in constitutional adjudication. [25 marks]

Question 5

“It is unconvincing to present the international human rights treaty-body system as an effective set of mechanisms for holding states to account for their practices affecting human rights. The treaty-body system is weak, underfunded and lacks any real enforcement mechanism, and it is for precisely this reason that so many states have created and signed on to it.”

Discuss the veracity of this statement, in your answer identify and recommend how best the current system can be more effectively improved upon. [25 marks]

Question 6

“New technologies are changing human interaction profoundly – including in times of armed conflict. Many States are investing heavily in the development of means and methods of warfare that rely on digital technology. Cyber tools, increasingly autonomous weapon systems, and artificial intelligence are being used in contemporary armed conflicts. The International Committee of the Red Cross, (ICRC) closely follows the development of new means and methods of warfare and their use by militaries; it also engages all relevant stakeholders on the applicability of IHL to the use of these new means and methods of warfare. Technological advances can have positive consequences for the protection of civilians in armed conflict: weapons can be used with more precision, military decisions can be better informed, and military aims can be achieved without the use of kinetic force or physical destruction. At the same time, new means of warfare and the way they are employed can pose new risks to combatants and civilians, and can challenge the interpretation and implementation of International Humanitarian Law (IHL). The ICRC’s assessment of the foreseeable humanitarian impact of new technologies of warfare, and the challenges they may pose to existing IHL rules, focuses on interrelated legal, military, technical, ethical, and humanitarian considerations.” *Extract from the ICRC 2019 Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflicts.*

Analyze and discuss challenges posed to IHL on the use of new technologies in the times of armed conflict. [25 marks]

Question 7

Outline and discuss the relationship between access to justice and derogations from human rights standards in times of public emergency? Do non-derogable human rights norms (such as the right to life, prohibition of torture etc.) entail a non derogable right of access to justice to vindicate such rights in court? And for derogable human rights, to what extent is it permissible to suspend or exclude corresponding judicial remedies in times of public emergency? [25 marks]

Question 8

"All is fair in love and war", Shakespeare, *'Twelfth Night'*. Is this statement consistent with International Humanitarian Law? [25 marks]

******End of Examination******