

ASSIGNMENT 01

QUESTION 1

Write an essay in which you discuss the potential for individuals and Non-Governmental Organizations to gain direct access to the African Court on Human and Peoples' Rights.

Note that this is an analytical essay that does not have a standard/model answer and will vary from one student to another depending on the depth of the research conducted. Points were awarded for the general structure of the essay and Content.

1. GENERAL STRUCTURE OF THE ESSAY

- Assignment cover
- Structure of the essay which consist of:
 - ✓ Table of contents;
 - ✓ Introduction;
 - ✓ Body-with headings and sub headings mainly a discussion and analysis of relevant articles of the convention/s
 - ✓ Conclusion
 - ✓ Footnotes/references and Bibliography
- Coherent, well-written, and legally defensible arguments.
- The Instruction indicate that you must do **independent research**. Therefore those who did were rewarded for further independent research such as the use of journal articles, books and cases that addresses or interpret the relevant provisions of the treaties.

2. CONTENT

You should have discussed the following points:

- The applicable convention is the Protocol to the African Charter on Human and Peoples' Rights Establishing an African Court on Human and Peoples' Rights

(Court Protocol) as well as the African Charter on Human and Peoples' Rights (African Charter)

- The question of *locus standi* before the African Court is governed by **Article 5** of the Protocol establishing the Court- and there are 5 classes of those who has direct access to the Court-as mentioned above.
- **Article 5(3)** of the Court Protocol provides that “The Court may entitle relevant **Non-Governmental Organizations (NGOs)** with observer status before the Commission, and **individuals** to institute cases directly before it, in accordance with article 34 (6) of this Protocol.
- Article 34 (6) provides that at the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol.
- Article 34(6) further indicate that the Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a special declaration.
- It is clear that in terms of article 5(3) individuals do not have direct access to the African Court unless the state in question has deposited a special declaration permitting individual petitions.
- For NGOs and individuals to have direct access to the Court few things are taken into consideration and the key questions determining whether individuals or NGOs would have access to the court are as follows:
 - Who is the claimant?
 - If the claimant is an NGO does it have the necessary observer status before the African Commission? If Yes
 - Has their country made an optional declaration under Article 34(6) of the Protocol enabling direct submissions to the African Court? If so, claimants may bring their case to the Court
- If the claimant is an individual the only question is asked is whether the country in question has made a special declaration in terms of Article 34(6).
- Most cases before the African court fail on this procedural issues-since few states have made this special declaration
- **Any other relevant information based on additional research.**

GUIDELINES FOR ASSIGNMENT 02

Just like assignment one, this assignment is also an analytical essay that does not have a standard/model answer and will vary from one student to another depending on the depth of the research conducted. Points were awarded for the general structure of the essay and Content.

GENERA STRUCTURE

- **Same as guidelines given in Assignment 01**

CONTENT

- IHRL is used in the SA constitution to interpret the Constitution itself, South African legislation or common law.
- S233 and 39 of the Constitution are relevant sections that indicate the application of international law in the domestic forum and how international law impact on South African Law.
- **S233-** provides that a **court interpreting any legislation** must prefer an interpretation in line with international law over any other interpretation which is not.
- **S39 (1) (c)** - provides that **when interpreting the bill of rights**, a court/tribunal/forum **must** consider international law. This is significant as the provision is mandatory/peremptory and that that the court is under an obligation to consider whether the South African law it applies is in line with international law or not.
- **Section 39** further indicate that this application is not only restricted to courts but also apply to other forums such as the CCMA in labour matters, etc.
- **Other relevant sections from the Constitution are 231 and 232.**
- **S231 of the Constitution** deals with the conclusion of treaties and how a treaty becomes a law in the country. This section indicates that international law becomes law in the Republic once it has been approved by a resolution of both the National Assembly and the National Council of Provinces and it has been incorporated into South African law.

- **S232 of the Constitution** provides that customary international law is law in the Republic unless it is inconsistent with the Constitution and legislation.
- **Therefore**, if a case involve a violation of the right in the Constitution- among other things the court is expected to do is to determine the meaning and relevance of the right by invoking s39 (1) (c) to determine what IHRL say regarding the rights-e.g. ICCPR/ICESCR; recommendations by international courts/TMB such as European Courts or HRC of the ICCPR – the same way the Constitutional Court did in *Makwanyane*, *Grootboom* and any other cases.
- **Any other relevant information based on additional research which indicate application of international human rights law by South African Courts.**

THE OCT/NOV 2018 EXAMINATION

The examination is a three-hour paper for **100 marks**. The paper contains short questions, problem- and essay-type questions. When writing the essay type response, ensure that you pay particular attention to the structure by demarcating your essay into headings and sub headings. Use Provisions of various conventions, their interpretations and case law as authority.

In answering the hypothetical/problem type question, be able to identify the issues raised and how you will structure your response. Demarcate your response accordingly-by using headings. Further, use of Conventions, case law; comparative analysis of different provisions, as authority to argue your case.