

# **Tutorial Letter 101/3/2018**

## **International Human Rights Law**

### **LCP4807**

#### **Semesters 1 and 2**

#### **Department of Public, Constitutional and International Law**

This tutorial letter contains important information  
about your module.

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Dear Student

## 1 INTRODUCTION

Welcome to international human rights law. As this is an elective module, we hope that you will find it interesting and rewarding. We will help where we can, but the first key to success in this module is to start studying today. Plan your assignments and do them thoroughly and with a bit of creative thought.

This tutorial letter contains important information about the module. Read it carefully (now!) and refer to it while working through the study material, completing the assignment(s), preparing for the examination and asking us questions (which you must feel free to do at any stage – before the exam!).

In this tutorial letter, you will find both the assignments and instructions on writing and submitting them. You will also find all you need to know about the prescribed study material and how to obtain it. Absorb this information and get hold of the prescribed material as soon as possible.

We have also included certain general and administrative information about the module. Please study this section of the tutorial letter carefully.

Although this may seem obvious to some, you must read all the tutorial letters you receive during the semester immediately and carefully. They always contain important and, sometimes, urgent information – why else would we write them?

We hope that you will enjoy this module and wish you all the best!

## 2 PURPOSE AND OUTCOMES

### 2.1 Purpose

The purpose of this module is for students to gain sufficient knowledge, skills, attitudes and competencies to analyse and critically evaluate international human rights instruments directly pertaining to International Human Rights Law, to formulate legal arguments and to apply their knowledge to practical problems that may arise from the application of human rights, their enforcement mechanisms and remedies which are available. The most important human rights instruments you will study are:

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic Social and Cultural Rights  
(these three are often referred to collectively as the International Bill of Rights)
- The Inter-American Convention on Human Rights
- The European Charter on Human Rights
- The African Charter on Humans and People's Rights

First of all, we hope to give you a sound theoretical knowledge of the principles on which the law governing human rights (sometimes also called human rights law) is based. Although we cannot hope to turn you into experts in the course of one module, we require you to understand

the basic principles on which the protection of human rights is based in international instruments and, secondly, to be able to apply your theoretical knowledge to practical problems.

Essentially, then, this is a practical subject which is based on certain theoretical principles. You will notice that a good deal of emphasis is placed on identifying the issues in problem cases, and then applying the law to them. We think that the practical (“hands-on”) nature of the module makes it more “real”, and therefore more interesting.

## 2.2 Outcomes

The specific outcomes of the module is:

- Outline of the theoretical framework and development of international human rights law (IHRL) in the international community, current South African law and everyday life;
- differentiate between universal and regional human rights documents, specifically as it pertains to the European, American and African regional human rights systems;
- Explain the difference between IHRL and municipal law of South Africa (or any other country)

## 3 LECTURER(S) AND CONTACT DETAILS

### 3.1 Lecturer(s)

Lecturer	Mr PJ Ngandwe	Ms M Mooki (Primary Lecturer )
	Tel 012-429 2855	012-429 8358
	Email <a href="mailto:ngandpj@unisa.ac.za">ngandpj@unisa.ac.za</a>	mookism@unisa.ac.za
	Office Room 7-28	Room 7-94,
	Muckleneuk Ridge,	Muckleneuk Ridge,
	CvV Building	CvV Building

You are welcome to visit us to discuss any queries about or problems with the module. However, please make an appointment beforehand, otherwise you run the risk of the lecturer's not being available to see you.

### 3.2 Department

All enquiries that are not of a purely administrative nature but are about the content of this module should be directed to us. Please have your study material and your student number with you when you contact us. The department can be reached by telephone 012 429 8339 or fax 012 429 8587. Alternatively, contact us as follows:

The Module Leader:

Ms MS Mooki

Department of Public, Constitutional and International Law

PO Box 392

UNISA

0003

### **3.3 University**

If you need to contact the University about matters not related to the content of this module, please consult the publication *My Studies @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (e.g. to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Please remember to refer to your student number when you contact Unisa.

## **4 RESOURCES**

### **4.1 Prescribed books**

There is no prescribed book for this course. Your Study Guides have been compiled in such a manner so as to incorporate all the recommended readings. Time and again we will post new developments in the additional resources tab and additional tutorial letters.

### **4.2 Recommended books**

You must study the cases as they appear in the prescribed textbook and study guide. This will help you to gain greater insight into the relevant principles and their application.

Though you are not required to order these cases from the library, they can be accessed online as further reading.

### **4.3 Electronic reserves (e-reserves)**

There are no electronic reserves.

### **4.4 Library services and resources information**

For brief information, go to [www.unisa.ac.za/brochures/studies](http://www.unisa.ac.za/brochures/studies)

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

The library has compiled a number of library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding, obtaining and using library resources and tools to assist in doing research – [http://libguides.unisa.ac.za/Research\\_Skills](http://libguides.unisa.ac.za/Research_Skills)
- how to contact the library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>

## 5 STUDENT SUPPORT SERVICES

For information on the various student support systems and services available at Unisa (e.g. student counseling, tutorial classes, language support), please consult the publication My Studies @ Unisa that you received with your study material.

Contact with fellow students

All of the information about myUnisa tools is located on the myUnisa website for this module. However, we thought it was important to stress the tools that will be used for discussion.

- **Discussions:** This tool is the place for online discussion forums, where you share your ideas and insights with the other students in your small groups. Inside the **Discussions** tool, there may also be several other discussion forums where you can share ideas and post your discussions online. We also give you place to just speak socially with the other students in the course -- we call this the "*Social Indaba*", because in several African languages, the Indaba is a place where people gather to interact socially.

You can also use **Questions and Answers** tool on MyUnisa for this purpose.

## 6 STUDY PLAN

### Learning

We are aware that studying via a distance education institution such as Unisa requires a higher degree of commitment and self-management than studying at an on-campus institute. This may be attributed to the lack of one-on-one contact between you and the lecturer, to

the fact that you don't have to attend classes, and to the lack of peer support. In an attempt to overcome these obstacles, we have decided to insert a few study techniques which, we hope, will help you in your studies as a law student.

The ability to do the following is indispensable to all fields of law:

- ❖ to research, analyse and critically evaluate legal materials (the 1996 Constitution, legislation, case law, academic opinion, etc.)
- ❖ to formulate a logical and coherent legal argument
- ❖ to apply the theoretical knowledge that you have acquired to a practical or concrete problem

## **Time management**

We are aware that each student has his or her own way of studying. We are also aware that there are many factors which may influence the study method that a student adopts, for example individual personalities, employment circumstances, family responsibilities, the field of study chosen by the student, and the number of modules the student is attempting in a semester.

Given all this, we firmly believe that TIME MANAGEMENT is an essential ingredient for success. You must pace yourself properly; otherwise you will find it difficult to cover all the material prescribed for this module. As you work through the study material, you will find that some aspects of fundamental rights are easier to understand than others, and will generally take less time to grasp than others. The trick is to manage your time in such a way that you AVOID spending too much time on the easy stuff and, instead, concentrate on the difficult concepts and principles. One method of ensuring that you do not end up in the position of trying to get through the bulk of your studies just before the exam is to divide up the study material according to your particular needs.

## **Improving your language skills**

Some of our students are experienced and academically mature. However, many students do not yet have the necessary linguistic experience, skill and expertise, so what is said here is for their benefit. Language is very much the lawyer's tool. Therefore, highly developed language skills are indispensable. Because English is the language in which this module is

presented, and the language in which most of our sources are written, language skills in this module mean ENGLISH language skills!

Students therefore need to practice both their reading and writing skills. You can improve your reading skills by practicing the following:

- Comprehension skills: you must understand what you read! This may mean practising any one, or all, of the following things:
- Reading a particular text more than once.
- Completing your glossary of commonly used terms as explained in the activity.
- Making concept maps or mind maps or summaries of individual study units to reduce the content of a study unit to a page or two. This will make studying and revision for the exams much easier.
- Personalising the content as often as possible. This means that you must relate the knowledge that you obtain from the prescribed material to your everyday life. Remember the knowledge you are grappling with is a tool that can make your own life and the lives of the people around you more meaningful.

Using a good dictionary, including legal dictionaries. As we have said, language is an essential tool of the legal profession. It is important in the study of any area of the law. You must bear in mind that a word can have a variety of meanings, depending on the context in which it is used.

Throughout the study guide, you will encounter a number of complex and unfamiliar concepts. Most of these concepts are defined in detail. However, some concepts may not be defined – but there is no need to panic! As a law student, you are required to develop certain basic skills which will help you in the real world. Learning how to find the meaning of difficult words is one of these basic skills. You could acquire or simply consult any one of the following sources in order to find the meaning of words:

- ❖ Collins Cobuild English Dictionary and Grammar (1995)
- ❖ The Concise Oxford Dictionary
- ❖ Van der Walt & Nienaber (1998), English for Law Students, published by Juta

Some of these sources are extremely useful, because they contain considerably more than simply the meaning of words: they also contain additional information on how a word may be used in different contexts.



- ❖ Identifying keywords in a text and making summaries/concept maps which reflect the keywords and ideas included in the text.
- ❖ Careful reading to ensure that your identification of keywords and your summaries are accurate.

This may require that you read the prescribed material more than once to make sure you understand the essence of the study material.

You can improve your writing skills by paying attention to the following guidelines:

- Make sure that your grammatical construction and usage are correct.
- Make sure that you spell words correctly. Once again, a good dictionary is indispensable!
- Make sure that you use the correct words.
- Make sure that your thoughts and ideas are presented in a logical and coherent argument.

Use your myStudies@unisa brochure for guidelines on general time management and planning skills.

## 7 PRACTICAL WORK AND WORK-INTEGRATED LEARNING

There are no practicals for this module.

## 8 ASSESSMENT

### 8.1 Assessment criteria

In accordance with University policies, there are **two compulsory assignments** per semester for this module. The **FIRST ASSIGNMENT** determines admission to the exam and makes up one half of your year mark. It will be corrected and returned to you with commentary.

The second assignment makes up the other half of your year mark.

The combined mark you receive for the first and the second assignment is your year mark for the course and counts 20% towards your final mark.

Please note that the actual assignment questions appear in the Annexure at the end of this tutorial letter.

**There is NO automatic admission to the examination.** You **must** submit BOTH assignments by the due date as stipulated in paragraph 8.4 below. The mark you receive for the first assignment counts one-half (50%) of your year mark. The mark you achieve for the second assignment counts one half (50%) of your year mark. The two marks together represent your year mark for this course and this counts 20% of your final mark.

The examination consists of one two-hour paper which counts 100 marks. The exam mark counts 80% of the final mark for the module and the assignment 20 %.

The commentaries on the compulsory assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

NOTE THE FOLLOWING:

We will be assessing the assignment taking the following aspects into account: language usage, reasoning, and technical aspects (such as use of footnotes and bibliography).

### **Very important: Plagiarism**

Plagiarism is theft which occurs when you use the

- WORDS
- IDEAS or
- THOUGHTS

of another and create the impression that they are your own. If, therefore your answer to an assignment is copied directly (or mostly) from the guide, a tutorial letter, or another student, you will be guilty of plagiarism and will (at the very least) receive a round 0% for the assignment. Please also note that just as you can't be a "little dead", so too you can't indulge in a "little plagiarism"! We want to know how YOU think, and how YOU express your thoughts.

You all receive the *Disciplinary Code for Students* (2004) on registration. Study the Code, especially Sections 2.1.13 and 2.1.14 (2004 3-4). Please also read the University's *Policy on Copyright Infringement and Plagiarism*.

In addition, although students may work together when preparing assignments, each student must submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. That will amount to plagiarism and none of these

assignments will be marked. Furthermore, these students may be penalised or subjected to disciplinary proceedings of the University

## 8.2 Assessment plan

Assessment will be done by the Module Leader and, where applicable, the Module Team and/or the Examiner(s). The name(s) of Examiner(s) will also be indicated on the examination question paper.

## 8.3 Assignment numbers

### 8.3.1 General assignment numbers

Assignments are numbered consecutively per module, starting from 01. In this module there are two Assignments: Assignment 01 and Assignment 02.

### 8.3.2 Unique assignment numbers

In addition to the general assignment number each Assignment must have its own unique number. **Please fill in this unique assignment number** on the cover page of the assignment in the space provided for it. Please see the annexure with the assignments for the unique numbers.

## 8.4 Assignment due dates

### FIRST SEMESTER

Assignment	Unique	Closing Date
01	872434	23 March 2018
02	678358	13 April 2018

### SECOND SEMESTER

Assignment	Unique	Closing Date
01	795503	17 August 2018
02	780532	21 September 2018

## 8.5 Submission of assignments

Students may submit written assignments and assignments done on mark-reading sheets either by post or electronically via myUnisa. Assignments may not be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure My Studies @ Unisa which you received with your study material.

To submit an assignment via myUnisa:

- Go to myUnisa.
- Log in with your student number and password.
- Select the module.
- Click on “Assignments” in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

**Very Important: PLEASE LOAD YOUR ASSIGNMENTS AS PDF DOCUMENTS.**

Please note that if you submit your assignment online, it will not be posted back to you but will be sent to your Unisa mylife email account.

## 8.6 The assignments

### **ASSIGNMENTS FOR 2017 SEMESTER ONE**

#### **Assignment 01**

**Unique number: 872434**

**Due date: 23 March 2018**

**Compulsory assignment for admission to the examination.**

**Assignment length: Maximum 2500 words.**

**Always acknowledge your sources and provide a brief bibliography. Do not plagiarise.**

#### **QUESTION 1**

The Universal Declaration of Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were the first United Nations human rights treaties to be adopted in 1946 and 1966 respectively. They still provide the foundation for the UN Treaty-Based Human Rights System and are generally regarded as the International Bill of Rights. They provide for the protection of civil and political rights as well as economic, social, and cultural rights.

According to human rights scholars, the challenge that human rights practitioners, and intergovernmental organizations face is how to fulfill the promises of the UDHR and the ICESCR in as far as socio economic rights are concerned which they believe have been neglected by certain countries while civil and political rights are more recognised and accepted.

With reference to the statement above write an essay in which you discuss the nature of these treaties and specifically focus on the analysis of their enforcement mechanisms. **(25 marks)**

## **Assignment 02**

**Unique number: 678358**

**Due date: 13 April 2018**

**Compulsory assignment for admission to the examination.**

**Assignment length: Maximum 2500 words.**

**Always acknowledge your sources and provide a brief bibliography. Do not plagiarise.**

### **QUESTION 1**

State Z is a Southern African state which has ratified the Protocol to the African Charter on Human and Peoples 'Rights establishing an African Court on Human and Peoples 'Rights. At the time of its ratification of the Protocol, Z made a declaration in terms of article 34(6) in which it accepted the "right of petition under article 5(3)".

Justice for All Africans (JAA) is an NGO operating in Z. Horrified by the large-scale beating and intimidation of opposition supporters during the run-up to the elections in Z, it wishes to approach the Court for urgent relief, as the election is only 30 days away.

JAA approaches you for a legal opinion. Using the African Charter on Human and Peoples' Rights and the Protocol establishing the African Court and other relevant sources and cases, advice JAA. Among others reflect on:

- a) Does JAA have locus standi before the court?
- b) Will the Court have jurisdiction in the case?

- c) What orders may the court make in these circumstances?
- d) In view of the fact that the election is only 30 days away, what special measures could the court decide upon?

**Additional research is required for this question.**

**Please do not exceed 2500 words in your assignment. (25 marks)**

## **ASSIGNMENTS FOR 2017 SEMESTER TWO**

### **Assignment 01**

**Unique number: 795503**

**Due date: 17 August 2018**

**Compulsory assignment for admission to the examination.**

**Assignment length: Maximum 2500 words.**

**Always acknowledge your sources and provide a brief bibliography. Do not plagiarise.**

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. You must make reference to specific articles in the Protocol to the African Charter on Human and Peoples' Rights Establishing an African Court on Human and Peoples' Rights. **(25 marks)**

**You must do independent research for this assignment.**

### **Assignment 02**

**Unique number: 780532**

**Due date: 21 September 2018**

**Assignment length: Maximum 2500 words.**

**Always acknowledge your sources and provide a brief bibliography. Do not plagiarise**

In *S v Makwanyane and Another* 1995 (6) BCLR 665; 1995 (3) SA 391 (6 June 1995) [35], a South African Constitutional Court case in which the death penalty was deemed unconstitutional, Chaskalson P ruled:

In the context of section 35(1), public international law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework within which Chapter Three can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-

American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and in appropriate cases, reports of specialised agencies such as the International Labour Organisation may provide guidance as to the correct interpretation of particular provisions of Chapter Three [Chapter Two in the Final Constitution].

In light of this quoted passage, and with reference to further authority, write an essay in which you contemplate the extent to which international human rights law can impact on South African municipal law in light of s39 of the Constitution of the Republic of South Africa, 1996. You may assume that the quoted statement in respect of s35 (1) of the Interim Constitution of the Republic of South Africa Act 200 of 1993 is equally applicable to s39(1)(b) of the Constitution of the Republic of South Africa, 1996. **(25 Marks)**

### 8.7 Other assessment methods

There are no other assessment methods for this module.

### 8.8 The examination

Use your my Studies @ Unisa brochure for general examination guidelines and examination preparation guidelines.

At the end of the semester for which you are registered you will write a venue-based examination in LCP4807. The paper counts 100 marks.

As we pointed out above, it has been decided by the university authorities that there must be TWO compulsory assignments per semester in each module. One of the reasons for this step is that all students are required to prove that they have “studied actively” before writing the (final) examination. The assignments together will count 20% towards your final mark in the examination, PROVIDED that you achieve a mark of at least 40% in the examination.

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2017 and the supplementary examination will be written in October/November 2017.

If you are registered for the second semester you will write the examination in October/November 2017 and the supplementary examination will be written in May/June 2018.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

Previous examination papers are available on myUNISA. You may also accept that examination questions will be similar to the questions asked in the activities in your study guide and in the assignments.

Tutorial letter with information on the examination: To help you in your preparation for the examination, you will receive a tutorial letter that will explain the format of the examination paper, give you examples of questions that you may expect and set out clearly what material you have to study for examination purposes.

## **9 FREQUENTLY ASKED QUESTIONS**

The Studies @ Unisa brochure contains an A-Z guide of the most relevant study information.

## **10 SOURCES CONSULTED**

None

## **11 IN CLOSING**

Good luck with your studies and do not hesitate to contact us.

Your Lecturers.

## **12 ADDENDUM**

None.