Moshi Co-operative University

Faculty of Business and Information Sciences

Department of Law

Programme:	LLB II, First Semester, 2020/2021
Course:	Human Rights Law
Code:	MAL 237
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Welcome to the human rights law course!

1.1 General matters

- Self-introduction—Instructor and students
- Teaching methodology—lectures and seminars. Lectures will be delivered by the Instructor during lecture hours—students are expected to actively participate by asking questions and making contributions. During seminar sessions, students will make presentations—on questions that will be issued to them in advance.
- Students can ask questions in class or through the Instructor's e-mail address.
- Assessment: Assignments and tests (coursework 40%, final examination 60%).
- Things to observe:
  - Attend all lecture and seminar sessions;
  - Be in class 5 minutes before each session (punctuality);
  - Phones should be switched off/put in silence mode during classes;
  - Avoid making unnecessary noises in class and disturbing fellow students (self-discipline);
  - Actively participate during lecture and seminar sessions;
  - Abide by Examination Regulations and Disciplinary Rules; and

- Private reading (individually or in groups) is very important—not everything will be covered in class.

1.2 Course content

1.2.1 Course Objectives

The objectives of the course are to enable you:

(i) Explain basic concepts in human rights both at the local, regional and international perspectives;
(ii) Apply the knowledge acquired to interpret human rights in different contexts; and
(iii) Appreciate the role of law in protection, fulfillment and respect of human rights at local, regional and global levels.

1.2.2 Learning Outcomes

At the end of the course, you are expected to:
(i) Explain basic human rights concepts and principles;
(ii) Interpret and apply human rights in different contexts;
(iii) Prosecute human rights cases at local, regional and international levels;
(iv) Guard against human rights violations; and
(v) Advise and provide legal opinion on human rights issues.

1.2.4 Topics, sub-topics and guiding questions

Introduction	Key concepts: human rights, human rights law, promotion of human rights, protection of human rights, protection of human rights, enforcement of human rights, limitation of human rights, derogation of human rights, justiciability of human rights. **Human rights** ▪ Human can mean: relating to or involving people, or human being – people/persons. ▪ Rights: entitlement or freedom: a justified claim or entitlement or the freedom to do something. So, human rights: are claims/entitlements/freedoms that people have (inherent in people—not given by any other person or the State). *Inherent* = part of the very nature of something and therefore permanently characteristic of it. **Human rights law** Human rights law means the manifestation of human rights in positive law. In other words, when human rights are included in treaties, constitutions and legislation they become part of the legal system. Human rights law is therefore a

	study of the legal and institutional framework for protection and promotion of human rights at the national, regional and international levels. **Key human rights principles:** Indivisibility, interdependence, interrelated, inalienable, universal, non-discrimination. ***Universality and Inalienability*:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights." ***Indivisibility*:** Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education. ***Interdependence and Interrelatedness:*** Human rights are interdependent and interrelated. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information. ***Equality and Non-discrimination:*** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.
Brief history of international human rights law	1. WW I was very catastrophic. More than 16 million people lost their lives. After the war, the League of Nations[1] was established in 1920 to maintain international peace and security and prevent another world war. The League of Nations failed to fulfil its main obligation. This, and other reasons, lead to the outbreak of WWII (1939 – 1945). 2. WW II caused a lot suffering, loss of life and destruction of property. More than 60 million people lost their lives. After the war, the

[1] The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined in its Charter was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights.

	international community decided to create a new international system for maintaining international peace and security. The United Nations was therefore established in 1945 to maintain international peace and security. 3. The Charter of the United Nations (which established the UN) provides that human rights are an essential pillar in maintaining international peace and security. Task. Look for provisions in the UN Charter which talk about human rights. 4. The UN Charter was not very clear and thorough about the nature and scope of human rights. 5. In 1948, the United Nations General Assembly adopted an important document named 'the Universal Declaration of Human Rights'. This document clearly mentioned the human rights which each person has. Therefore, the United Nations Charter and the Universal Declaration are the founding instruments of international human rights law. 6. Since the year 1965, the United Nations has adopted nine core human rights treaties.
Global human rights system	**Key concepts in international human rights law:** • Human rights reaty, declaration, convention, charter, signing of a treaty, ratification of a treaty, accession to a treaty, domestication of a treaty, implementation of a treaty, declaration, general comment, treaty monitoring body, complaints mechanism, state reporting, concluding observations/recommendations, protocol to a treaty, cultural relativism, realization of human rights. • Generation of human rights – is a way of categorizing human rights. There are three traditional generations of human rights: ➢ Civil and political rights ➢ Economic, social and cultural rights ➢ Group rights e.g. the right to peace, safe environment etc. Main obligations imposed on States by international human rights treaties 1. To fulfil human rights 2. To respect human rights 3. To protect human rights Nature and scope of international human rights law International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, Governments

undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. The domestic legal system, therefore, provides the principal legal protection of human rights guaranteed under international law. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

Core UN Human Rights treaties and Protocols are as follows:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984
CRC	Convention on the Rights of the Child	20 Nov 1989
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006
ICESCR - OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	10 Dec 2008
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec 1989
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999

	OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000
	OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000
	OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	19 Dec 2011
	OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002
	OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec 2006

Question: What is the International Bill of Rights? what is it called so?

Components of the UN Human Rights system

1. Treaty-based system: human rights treaties and treaty monitoring bodies.
   Questions:
   (i) What are the core UN human rights treaties?
   (ii) What are treaty monitoring bodies?
   (iii) What are the functions of the treaty monitoring bodies?
2. Charter-based system (this is a system based on the UN Charter)

- Human Rights Council
- Special Procedures of the Human Rights Council
- Human Rights Council Complaint Procedure

Task: find out what each of the above does/how it functions.

Regional human rights systems	A region (in international human rights law) is a continental organization or group of countries. Therefore, a regional human rights system which is established by a continental body or a group of countries in a particular geographical area. A regional human rights system comprises of treaties and monitoring institutions. The following are the existing regional human rights systems: 1. The African Human Rights System – under the African Union 2. The Inter-American Human Rights System – under the Organization of American States 3. The European Human Rights System **What you should find out:** 1. What are the main human rights treaties in each region?

	2. What institutions are in place for promoting, monitoring, enforcing human rights? 3. What other mechanisms are in place for promoting and monitoring human rights? 4. Why do some treaties focus on specific groups e.g. women, children, persons with disabilities and older persons? **More specific questions on the African Human Rights System** 1. When was the African Charter on Human and Peoples' Rights adopted and entered into force? 2. What is the meaning of the word 'peoples' in the charter's title? 3. What are the unique features of the African Charter? I*t covers civil and political rights, economic, social and cultural rights and duties of people.* 4. What are the functions of the African Commission on Human and Peoples' Rights? 5. How do special mechanisms of the African Commission function? 6. What are the functions of the African Court on Human and Peoples' Rights? 7. Where is the location of the African Court? 8. Can individuals and NGOs take cases to the African Court against Tanzania?
Protection, promotion and enforcement of human rights in Tanzania	1. Brief history of human rights in Tanzania. The Independence Constitution did not contain a bill of rights, why? When was the bill of rights included in the Constitution of Tanzania? 2. Constitutional guarantee of human rights: which rights are protected/guaranteed? What duties are imposed on people? Are the rights limited? Can the rights be derogated? 3. Enforcement of human rights: The Basic Rights and Duties Enforcement Act. 4. The role of the Commission for Human Rights and Good Governance (CHRAGG) 5. Role of the Courts (High Court and Court of Appeal) 6. The role of the Attorney General's Chambers. **Specific questions** 1. Human rights during the colonial period. What was the situation? *(read Chris Peter Maina: Human Rights in Tanzania and other sources)* 2. What were the perceptions of post-independence leaders on human rights? 3. When was the bill of rights enacted? 4. When did the bill of rights become operational? 5. Which regional (African Union) human rights treaties has Tanzania ratified? 6. Which regional (African Union) human rights treaties has Tanzania

	domesticated? 7. Which UN human rights treaties has Tanzania ratified? 8. Which UN human rights treaties has Tanzania domesticated? 9. How are human rights treaties ratified? 10. How are human rights treaties domesticated? 11. What is contained in the bill of rights – rights and duties 12. Establishment of the Commission for Human Rights and Good Governance – when was it established, what are its core functions? 13. Who can file a human rights petition before the High Court? 14. What is the procedure for filling a human rights petition before the High Court? 15. What remedies can the High Court provide in a human rights petition? 16. How can Courts of law use international human rights law in deciding human rights petitions/cases? 17. What is the role of civil society organizations, the media, political parties and academic institutions in implementation of human rights? 18. What are the landmark human rights cases in Tanzania? Briefly explain what happened in each case.
Recommended Readings	1. Maina, CP & I. Juma (1998), Fundamental Rights and Freedoms in Tanzania, Mkuki na Nyota; Dar es salaam 2. Maina, CP, (1997) Human rights in Tanzania: selected cases and materials Koln: Rudiger Koppe Verlag Koln Maina, CP and Bisimba, HK (2007), Law in Justice in Tanzania, Mkuki na Nyota Publishers. Dar es Salaam 3. Shivji, IG; Majamba; IH, Makaramba RV & Maina, CP, (2004) Constitutional and legal system of Tanzania, Dar es Salaam: Mkuki na Nyota Publishers. 4. Heyns CH & Stefiszyn (eds) (2006), Human Rights, Peace and Justice in Africa: A Reader, Pretoria University Law Press. Pretoria (www.pulp.up.ac.za) 5. Heyns, CH & Killander M (eds) (2013), Compendium of Key Human Rights Instruments of the African Union, Pretoria University Law Press. Pretoria (www.pulp.up.ac.za) 6. Viljoen, F (2012), International Human Rights Law in Africa, Oxford University Press. Oxford. 7. Mbuya, AP, *'Commentary on the Constitution of the United Republic of Tanzania'*, in Wolfrum R, Grote R, & Fombad M (eds), *Oxford Constitutions of the World (2019)*, Ocean New York, Oxford University Press. (https://www.academia.edu/41028142/Commentary_on_the_Constitution_of_the_United_Republic_of_Tanzania) 8. Mbuya, AP, *'The Tanzanian Commission for Human Rights and Good Governance' in Fombad CM (ed) Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa, (2019),* Pretoria University Law Press. (http://www.pulp.up.ac.za/images/pulp/books/legal_compilations/NHRI/Chapter%2015%20NHRI.pdf) 9. Mbuya, AP, (2019). Justiciability of Economic, Social and Cultural Rights in Tanzania, East African Journal of Social and Applied Sciences, 1(1), 16-30.

	(https://mocu.ac.tz/wp-content/uploads/2019/12/ALPHONCE-PAUL-MBUYA_-justiciability-of-economic-social-and-cultural-rights-in-Tz.pdf) 10. United Republic of Tanzania, National Human Rights Action Plan 2013 – 2017.
Constitution/legislation	1. The Constitution of the United Republic of Tanzania, 1977 (2005 edition). 2. The Basic Rights and Duties Enforcement Act and its amendments. 3. The Law of the Child Act. 4. The Persons with Disabilities Act.
Recommended websites	Commission for Human Rights and Good Governance https://www.chragg.go.tz/ Attorney General's Chambers https://www.agctz.go.tz/ United Nations, Office of the High Commissioner for Human Rights https://www.ohchr.org/EN/Pages/Home.aspx African Committee of Experts on the Rights and Welfare of the Child https://www.acerwc.africa/ African Commission on Human and Peoples' Rights https://www.achpr.org/ Centre for Human Rights, University of Pretoria www.chr.up.ac.za Pretoria University Law Press http://www.pulp.up.ac.za/ Legal and Human Rights Centre https://www.humanrights.or.tz/ African Court on Human and Peoples' Rights https://www.african-court.org/en/ Tanzania Legal Information Institute (TANZLII) https://tanzlii.org/ Parliament of Tanzania http://www.parliament.go.tz/

Human Rights Framework

