**UNIVERSITY OF NAMIBIA**

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| **FACULTY** | FACULTY OF LAW | | |
| **SUBJECT** | LAW SPECIFIC MATURE AGE ENTRY EXAMINATION | | |
| **DATE** | 2 August 2019 | | |
| **DURATION** | 180 MINUTES | **MARKS** | 100 |

**Mature Age Entry (Law Specific) Examination 2019**

**Examiners:** Mr. K Kariseb /Mr. P Balhao
Moderator: Dr. T Warikandwa

This question paper consists of 6 pages, including the cover page.

***Instructions:***

1. Answer all the questions in SECTION A and any one question from SECTION B.
2. Kindly number the answers appropriately on the front of the answer book in the sequence you have answered them.
3. Please write legibly and to the point.
4. In addition to substantive arguments and/or answers, your answers will, where appropriate be credited for coherence, vocabulary and generally good language use.

## SECTION A

**Question 1** **[30 marks]**

**Read the opinion piece titled "Human Rights: A needed UN reform" by Mary Robinson (Marked "Annexure 1" at the back of this paper) and answer the following questions:**

1.1. What does the acronym UN stand for? **(2)**

1.2. According to the text, Mary Robinson argues for "much needed UN reform" with implications on human rights protection and promotion. In your own words, define what human rights are? **(4)**

1.3. What UN agency is since 2006 mandated with the promotion and protection of fundamental human rights within the UN legal system? **(2)**

1.4. What is the predecessor UN agency of the "newly" formed Human Rights Council? **(2)**

1.5. What is the primary legal document that informs the work of the agency you identified in 1.4 above, in holding States accountable for their human rights violations? **(2)**

1.6. Who was the first chairperson of the Commission for Human Rights? **(2)**

1.7. Identify and state two (international) non-governmental organisations that are crucial to the working of the UN Commission for Human Rights/Human Rights Council. **(2)**

1.8. According to the text what are some of the fundamental flaws of the UN Commission for Human Rights. **(4)**

1.9. State and explain in your own words at least four reforms identified by Mary Robinson that are crucial for the improved functioning of the "new" Human Rights Council. **(8)**

1.10. According to the final paragraph of the text the author makes a compelling argument for the USA to endorse the proposed reforms. State at least two possible explanations as to why USA endorsement of these reforms are important? **(2)**

**Question 2** **[20 marks]**

**State whether the following statements are True (T) or False (F):**

2.1. Namibia is a secular monist State founded upon the principles of democracy, the rule of law and freedom for all.

2.2. Under the Namibian legal system sodomy is both a common law and statutory crime.

2.3. The Namibian Constitution is the supreme law of the land.

2.4. Reference to Lower House of parliament means the National Assembly of Namibia.

2.5. Namibia's marital regime is based on the principle of fault.

2.6. Namibia has signed and ratified the 1961 OAU Refugee Convention.

2.7. Namibia's National Assembly consists of 100 elected members and 8 non-voting members.

2.8. Namibia's devolution policy is based on a delineation of thirteen (13) regions.

2.9. Namibia's Chief Justice is the head of the legislative arm of government.

2.10. The media is the fourth arm of government in Namibia.

## SECTION B

This section consist of four questions. Choose **any one** topic from the following questions and **write an essay of maximum three pages**. Your essay should make compelling legal arguments and practical (legal) solutions as far as possible.

**Question 3** **[50 marks]**
Violence against women and girls should be justified under certain Namibian cultural practices.

OR

**Question 4** **[50 marks]**
Sodomy should be decriminalised in Namibia.

OR

**Question 5** **[50 marks]**
Unmarried partners in long-term relationships should be entitled to inherit from each other without a will.

OR

**Question 6** **[50 marks]**
The use of marijuana should be legalised in Namibia.

**"Annexure 1: Human Rights: A needed UN reform"**

Opinion

***Human Rights: A needed UN reform***
**Mary Robinson**

MARCH 2, 2006

**NEW YORK** — During my time as UN high commissioner for human rights, I saw first-hand the weaknesses of the United Nations main human rights body, the Commission on Human Rights, which governments now plan to replace with a Human Rights Council.

The commission has a proud history. Under its first chairperson, Eleanor Roosevelt, it gave the world the Universal Declaration of Human Rights, and went on to develop the body of international human rights law we have today. It was therefore deeply frustrating to see its work increasingly undermined by block voting and procedural maneuvers that prevented some of the world's worst human rights violators from being held to account for their abuses.

I agreed with UN Secretary General Kofi Annan when he proposed a body that would ensure higher standards of membership and accountability, and I shared his disappointment - and that of human rights organizations around the world - when, last September, governments did not take forward an initial proposal for creating the new council. The failure of that first initiative was due in part to demands for sweeping changes to the text that U.S. Ambassador to the United Nations John Bolton put forward at the last minute. More than five months later, a new proposal has been negotiated - weaker than the original one, but with significant improvements on the current commission - and yet again the opportunity to implement it is hanging in the balance.

Some suggest that a stronger, new institution could be created by further negotiation, and that nongovernmental organizations like Amnesty International and Human Rights Watch, as well as the secretary general himself, have acted feebly by declaring their support for the proposal as it stands. It is far more likely, however, that Annan and General Assembly President Jan Eliasson are simply being realistic and that this is why most diplomatic observers agree that the proposal should be approved now as it stands. More talk will almost certainly produce a weaker council.

While the new proposal is not all that human rights advocates hoped for, it is a clear improvement on the commission and has many positive aspects that can be welcomed. For example, members would be elected directly and individually by secret ballot - irrespective of regional slates. To be elected, candidates must win an absolute majority - that is at least 96 positive votes in the General Assembly -and abstentions would count as negative votes. In practice this could be a higher standard than the two-thirds majority initially proposed. Those elected would be expected to respect the council's rules and their performance would be reviewed during their term of service. No state would sit for more than two three-year terms without a break, and members found guilty of poor human rights performance could be suspended. Moreover, the council would meet more often and for more weeks in the year, and would be able to call additional meetings in order to address human rights crises. The special role accorded by the commission to nongovernmental organizations and experts has been retained, preserving some of the checks and balances that help hold states properly accountable for their human rights conduct.

It is essential to understand that the vote to create the new council is just the beginning. UN officials, diplomats and human rights NGOs realize that the first year of the new body would be vital. During this time, the council would determine its agenda and working practices, review the mandates of experts and establish arrangements for a new periodic review mechanism that would be introduced. Establishing the council is only half the story: We should also be asking what governments would do after the vote to make the new body effective.

It is more than an unfortunate coincidence that many of the countries that were able to secure membership on the commission in an effort to shield themselves from scrutiny would favor the detailed review of the council proposal that Bolton now seeks. Equally troubling, the United States is no longer perceived to be the standard bearer on human rights. Its authority on such matters is much weaker due in part to post-9/11 policies.

If the United States presses for further negotiation, the U.S. media and Americans should ask themselves what sort of Human Rights Council they want and whether they prefer to stand beside the U.S. administration and countries like Cuba and Sudan as they search for it, or with human rights organizations and the majority of UN member states, including those in the European Union, calling for the current resolution to be adopted without further delay.

*(Mary Robinson, a former president of Ireland and UN High Commissioner for Human Rights, is president of Realizing Rights: The Ethical Globalization Initiative.)*