FEEDBACK TUTORIAL LETTER

2ND SEMESTER 2019

Assignment 1

Law for Public Managers
(LPM521S)
Feedback tutorial for assignment 1. Law for Public Managers.

Thank you all for submitting your assignments on time. Most of you performed poorly in assignment one. I can only attribute this to your inability to read and understand your assignment questions before attempting to answer them.

Below are my comments and/or observations pertaining to your first assignment.

1. Plagiarism

I have noticed that many of you still struggle to properly refer to your sources of info. Plagiarism is a serious academic offence and may incur some severe penalties. Please acknowledge all your sources of info. You are further requested to acquaint yourself with NUST’s rules and regulations pertaining to plagiarism.

2. Over-reliance on the study guide.

Please use other materials to answer your assignment questions. The study guide as the name implies, is a guide and does not contain all the necessary information for the subject. You are therefore requested to consult as much materials from the library and the internet as possible.

In your next assignment I hope you will address my concerns and do better.
Assignment 1

**Question 1**

Answer the following statements as either true or false. You are further requested to motivate why you think the said statement is true or false.

1.1 The state created human rights. (1) False. They exist automatically since humans existed (inherent) (1)

1.2 Second Generation of Rights are also known as RED Rights. True. (1) These rights are sometimes referred to as "red" rights. They impose upon the government the duty to respect and promote and fulfill them, but this depends on the availability of resources. (1)

1.3 Racism and tribalism can be entertained in some instances for as long as article 23 of the Namibian Constitution is concerned. False. (1) All forms of racism and tribalism are prohibited by articles 8 (dignity) and 10 (equality) of the Namibian Constitution. (1)

1.4 It is unconstitutional for the Electoral Commission of Namibia to prevent a 16 year Namibian from voting in a general election. False. (1) The voting age by law in Namibia is 18 years. (1)

1.5 The Rechtsstaat principle has nothing to do with human rights protection. False. (1) Rechtsstaat principle does imply that there is protection of human rights. (1)

**Question 2**

Pastor Alpheya Lukadinho Bushery is a charismatic preacher and leads a church called God’s chosen people Ministries. He claims to speak to the almighty God on a regular basis and at one stage he shocked the country when he resurrected a seemingly dead person. The pastor is known for his flashy and/or flamboyant lifestyle. He owns several mansions, expensive cars and a private airplane. He is allegedly funding his lifestyle by exploiting the poor and the gullible. Some few weeks ago, three women, aged between 17 and 23 approached the police and opened a case of rape against the pastor. He acknowledge that he indeed slept with the said ladies but it he did so because it was the holy spirit that instructed him. Therefore it was his constitutional to right to practice and profess a religion of his own choice. Arresting him on rape charges violates this right. Fed up with his shenanigans, the police promptly arrested and charged him with rape. His church was shut down after it also emerged that he was using the church premises to launder money.

2.2 In light of his constitutional rights, do you think the police action of shutting down his church is justified? (6)
Yes. (1) In terms of art 5 of the Constitutional the state has a duty to enforce fundamental rights and freedoms and in this case the Police are doing that. (1) Pastor Bushery committed the offence of rape—which is a serious offense in Namibia. (1) Although the Namibian Constitution allows for freedom of religion and conscience, this right is not absolute. (1). All fundamental rights except the right to human dignity and the right to life are limited under article 22 of the Namibian Constitution. (1) In this scenario, the rights of these three women Trumps those of Pastor Bushery. (1)

**Question 3**

3.1 Briefly explain at what levels are human rights protected? (3)

Global (1)
Regional (1)
Domestic (1)

3.2 What instruments protect human rights at each level? (5)

At Global level-United Nations and its agencies. (1)
Regional level-European Convention on Human Rights (1)
- Inter-American Convention on Human Rights (1)
- African Charter on Human and Peoples’ Rights (1)
Domestic level- Constitution and other legislation. (1)

3.3 Chapter 3 of the Namibian Constitution is said to be entrenched. Please explain (3)

This means that it cannot be changed. (1) An entrenched clause or entrenchment clause of a basic law or constitution is a provision that makes certain amendments either more difficult or impossible to pass, making such amendments inadmissible. (1) Overriding an entrenched clause may require a supermajority, a referendum, or the consent of the minority party. (1)

3.4 there exist a symbiotic relationship between democracy, constitutionalism and human rights. Briefly explain

True. (1) Human Rights and Democracy are inter-related concepts, in the sense that the one cannot be discussed without reference to the other. (1). Discussing the relation between democracy and human rights entails that democracy is based on the human right to
participate in the political decision process. (1) For example everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (1) Everyone has the right of equal access to public service in his country. (1) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (1) In summing up, the existence of democracy is a prerequisite for the enjoyment of human rights, as well as the recognition of human rights is the most eminent feature of democracy. (1)

**Question 4**

Which constitutional human rights, if any, have been violated in the following scenarios?

4.1 Charity Pleasurenight is a sex worker. One night she was approached by three city police members and they threatened her with arrest unless she agreed to sleep with all of them. She obliged and was taken to an isolated spot outside the city and the three police officers took turns raping her. The same night she went to the police station to open a case of rape but to her disappointment she was told sex workers cannot be raped due to their promiscuous lifestyle. (4)

Her right to human dignity (art 8) has been violated. (1) Rape violates the dignity of a person. (1). Art 10 of the Namibian Constitution has also been infringed. Her promiscuous lifestyle does not mean that her rights to equality before the law should be ignored. (1). She may rely on Art. 25 (2) for redress. Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient. (1)

4.2 On 03 February 2019, the organised crime unit of the Namibian Police received a tip that Shadow von Pilsener an alleged mob boss was planning a hit on a witness in his upcoming trial for drug trafficking among other charges. Due to the urgency of the matter and without authorisation from the court, the unit began wiretapping Von Pilsener’s communications. They tailed his vehicle and in the process took pictures of him in a hotel lobby passionately kissing his mistress.

His right to privacy has been infringed. (1). Article 13 provides as follows:
(1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others. (1)

(2) Searches of the person or the homes of individuals shall only be justified:

(a) where these are authorised by a competent judicial officer; .(1).

(b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied. .(1).

4.3 After a spate of armed robberies in Rocky Crest, Sinkumbwa Petersen Sinkumbwa was arrested after being identified by an old couple whose house was one of those that got robbed. He was not adequately informed of the reasons for his arrest, let alone his rights while awaiting his trial. While in custody he was deprived of food and water for long hours while being interrogated by the police.

Art 11 (Arrest and detention was infringed. (1) Article 11 (2) provides that: No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest. (1). The fact that he was deprived of food and water for long hours while being interrogated is a violation of Article 8 (dignity) of the Namibian Constitution. (1). Art. 8 (b) states that: No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. (1)

4.4. Avatar Goodlove is an openly gay activist and is of the opinion that the rights of LBTQI people are neither protected nor promoted in Namibia. To address this, he forms a political party that will cater specifically for black sexual minorities. However, his quest to register his political party with the Electoral Commission of Namibia is unsuccessful. According to the ECN, his political party is not representative of the country’s different demographics and thus doesn’t satisfy the criteria for registration as a political party. (5)

Although the right to freely form and join a political party of one’s choice is constitutionally guaranteed, the decision of the ECN in rejecting the application for registration of the said party was justified. (1)

Article 17(1) (1) states that: All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join political parties and; subject to such qualifications
prescribed by law as are necessary in a democratic society to participate in the conduct of public affairs, whether directly or through freely chosen representatives. (1)

However, the ECN may refuse to register a political party on ground of public interest. Art 17(3) (1) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society. (1)