



PROGRAM : LL.B
BA (LAW)
BCOM (LAW)
BA (INTERNATIONAL RELATIONS)

MODULE : **PUBLIC INTERNATIONAL LAW**

CODE : **INL41AO/ITR0011**

ASSESSMENT : SEMESTER ASSIGNMENT

DEADLINE : TUESDAY 7 MAY 2019

SUBMITTED ON : BLACKBOARD

TOTAL MARKS : 50

EXAMINER : DR MISPA ROUX

MODERATOR : PROF MR PHOOKO

INSTRUCTIONS

1. GENERAL INSTRUCTIONS:

- a. Write an essay of **between 1500 – 2000 words** (excluding footnotes and the bibliography).
- b. Your assignment must be **typed** in **12 font** and in **1,5 spacing**. Handwritten assignments are not acceptable.
- c. The following two Annexures must be attached to your assignment when handing in:
 - i. Annexure 1: Prescribed cover page;
 - ii. Annexure 2: Anti-plagiarism declaration.

2. RESEARCH:

- a. You are required to refer to the sources of international law, wherever relevant and applicable, in order to substantiate your arguments.
- b. You have to refer to the following in the main text as well as in footnotes:
 1. international treaties and conventions;
 2. customary international law;
 3. general principles of law recognised by civilised nations;
 4. judicial decisions (both international and national); and
 5. academic works (books or full journal articles).
- c. You may not use internet sources alone EXCEPT if it consists of articles or books that are only available in electronic form and which are published by recognized academic publishers or journals.

3. REFERENCING STYLE:

a. Footnotes:

- i. You must use footnotes in your assignment.
- ii. The footnotes in your assignment must be in accordance with the International Law style guidelines as well as the *TSAR (Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg)* style guidelines (see Blackboard).
- iii. Footnotes do not count towards your word length.
- iv. Keep your footnotes relevant and brief; guard against misusing them.

b. Bibliography:

- i. You are required to include a bibliography at the end of your assignment.
- ii. Your bibliography must reflect every source referred to in the footnotes in alphabetical order.
- iii. Your bibliography must also be in accordance with the International Law style guidelines as well as the *TSAR (Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg)* style guidelines (see Blackboard).

4. MANNER OF ASSESSMENT:

- a. You will be assessed according to the following:
 - i. **Instructions:** conformity with instructions in general (submitted on due date and time, length, style, footnotes and bibliography used, and all annexures attached);
 - ii. **Structure:** essay has a clear structure with a logical flow between the constituent parts;
 - iii. **Referencing style and originality:** footnotes and bibliography follow *TSAR*-style guidelines. Student provides adequate acknowledgment of sources of authors of ideas, writings, works or inventions.
 - iv. **Research conducted:** identification of correct primary sources and contextually relevant and sufficient secondary sources referred to.
 - v. **Language and grammar:** correct and clear use of language, punctuation, grammar, sentence structure, and use of paragraphs. Essay should not contain mistakes in grammar, spelling and punctuation.
 - vi. **Argument:** essay contains a strong, persuasive, substantiated, legal argument and reflects critical thinking. The argument must be logically structured.

5. PLAGIARISM:

- i. Plagiarism is a very serious transgression in terms of the University of Johannesburg's rules and regulations.
 - ii. Please refer to the latest UJ Policy on Student Plagiarism (see Blackboard).
 - iii. Please ensure that your assignment is entirely your own work and that you always acknowledge the ideas and work of others. Do not copy anybody else's work or share work in connection with this assignment. Do not even show your assignment to your fellow students.
 - iv. When a suspicion arises that a student may have committed any form of plagiarism the student will be informed of this and the assignment will be handed over to the University's Student Ethics and Judicial Committee. The Disciplinary Committee will then investigate the matter, and will decide whether there is enough evidence to charge the student at the Committee.
 - v. Interim disciplinary steps will be taken against a student in the above event up until such time as a decision has been made by the Student Ethics and Judicial Committee. Interim disciplinary steps will consist of a mark of zero being awarded to such a student, which might ultimately result in the student not being allowed entrance to the final examination.
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ACADEMIC RESEARCH ESSAY QUESTION:

**ASSESSING SOUTH AFRICA'S OBLIGATIONS TO ASYLUM SEEKERS, REFUGEES
AND MIGRANTS IN TERMS OF INTERNATIONAL LAW**

Worldwide people are fleeing their homes out of fear of violence and persecution, and it is estimated that 1.2 million out of 25.4 million refugees globally are in urgent need of resettlement.¹ South Africa is currently one of the top ten states receiving refugees, asylum seekers and migrants. South Africa recently amended its refugee and immigration laws,² and our courts have pronounced on questions relating hereto on a number of occasions.³ It is further a member state to most international and regional treaties relating to refugees.⁴ Yet, xenophobia and intolerance directed at foreign Black Africans in particular is a stark and ever-present reality in South Africa, resulting in death, injury and the destruction of property. On 25 March 2019 the South African Cabinet adopted a *National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance*,⁵ wherein it is stated that the government will not tolerate violence against foreign nationals, and that perpetrators will be prosecuted.⁶ The National Action Plan describes xenophobia as

‘an unreasonable fear, distrust, or hatred of strangers, foreigners, or anything perceived as foreign or different and is often based on unfounded reasons and stereotypes. It can manifest itself in several ways in a country. For example, it can be through victimisation on the basis of one’s nationality or appearance, brutal assaults, murders, ethnic cleansing in an area, and mass expulsion from the country.’⁷

¹ The World’s Refugees in Numbers: The Global Solidarity Crisis, Amnesty International, retrievable at: <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/> (last visited 4 April 2019).

² Refugees Act 130 of 1998; Immigration Act 13 of 2002.

³ See inter alia: *Ruta v Minister of Home Affairs* 2019 (3) BCLR 383 (CC); *Arse v Minister of Home Affairs* 2012 (4) SA 544 (SCA); *Bula v Minister of Home* 2012 (4) SA 560 (SCA); *Ersumo v Minister of Home Affairs* 2012 (4) SA 581 (SCA); *Abdi v Minister of Home Affairs* 2011 (3) SA 37 (SCA).

⁴ See inter alia: Convention Relating to the Status of Refugees; Protocol Relating to the Status of Refugees; Organisation of African Unity Convention Governing the Specific Aspects of Refugee Status in Africa.

⁵ *National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Department of Justice and Constitutional Development, retrievable at: <http://www.justice.gov.za/docs/other-docs/NAP/NAP-20190313.pdf> (last visited 4 April 2019), (‘National Action Plan’).

⁶ National Action Plan (n 5) above para 82.

⁷ National Action Plan (n 5) above para 80.

In July 2017 the Department of Home Affairs released a *White Paper on International Migration for South Africa*,⁸ approved by Cabinet, in particular to address the outdated policy regarding ‘the management of integration for international migrants, management of emigration and management of asylum seekers and refugees’,⁹ while still keeping the sovereign equality of South Africa as well as public safety and national security in mind.¹⁰ Controversially, the White Paper aims to remove the ‘automatic right to work and study’ for asylum seekers,¹¹ and it is questioned whether this is in line with South Africa’s various obligations in terms of international law.

Write an academic research essay discussing South Africa’s White Paper on International Migration in the context of applicable domestic and international law on refugees, asylum seekers and migrants. Your essay must reflect a persuasive, legal argument that is substantiated with reference to relevant sources of public international law. In your essay, draw on the knowledge that you have gained from a range of topics discussed in the module, paying particular attention to Chapters 6 – 9. You should use your discretion and include other aspects that you believe are relevant. Your essay must demonstrate an insight of the principles, theories and debates that arise in international refugee law, and reflect an awareness of competing arguments by highlighting the relevant nuances entrenched in the issue.

TOTAL:

[100]

⁸ White Paper on International Migration for South Africa, Department of Home Affairs, retrievable at: <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf> (last visited on 4 April 2019) (‘White Paper’).

⁹ White Paper (n 8) above at iii.

¹⁰ White Paper (n 8) above at iii.

¹¹ White Paper (n 8) above at 61.