



**COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE**  
**NPHR504: INTERNATIONAL CRIMINAL LAW AND TRANSITIONAL JUSTICE**

**END OF SECOND SEMESTER EXAMINATIONS**

**MAY 2020**

**LECTURER: Ms A MUDADA (Attorney at Law)**

**DURATION: 48 HRS**

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***INSTRUCTIONS***

You are required to answer questions as instructed

Answer **One (1)** question only

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Credit will be awarded for logical, systematic and neat presentations

## Question 1

In 2001, the Marian governmental forces committed widespread and systematic crimes amounting to crimes against humanity against an ethnic minority group, the Serges. Marian's Minister of Foreign Affairs, Mr. Ani, was widely believed to have personally ordered some of the gravest crimes, including a massacre in August 2001, where approximately 2000 innocent Serges` were killed. In October 2003, Mr. Ani went on a holiday to Morocco, to enjoy the summer there. The minister said he was confident that Moroccan authorities would not arrest him, as he was immune to such arrest. To his surprise, however, Mr. Ani was arrested by Moroccan police once he set foot on Spanish soil. Two months later, in December 2003, a Moroccan Judge decided that Mr. Ani be prosecuted. Mr. Ani, who was still incumbent Minister of Foreign Affairs, appealed the decision. He argued that Moroccan courts lacked jurisdiction and that he was immune under international criminal law. The Moroccan Chief Prosecutor, on his part, argued that the issues of jurisdiction and immunity could not be invoked by the minister himself, only by his home country. In any case, Marian authorities had remained silent on the matter, and this should be seen as a tacit waiver of both jurisdiction and immunity, preventing the minister from raising the issues.

After a Moroccan court in May 2004 had found that Moroccan courts had jurisdiction and that the minister was not immune, the Marian Government, which initially had not wanted to intervene in the matter, decided to bring the matter before the International Court of Justice. Here Mari argued that because the alleged crimes had been committed outside Morocco and neither the minister nor any of the victims were Moroccan citizens, Moroccan courts lacked jurisdiction under international law. The fact that the Moroccan penal code provided for jurisdiction was irrelevant. Morocco, on its part, argued that Moroccan courts had jurisdiction due to the gravity of the crimes. Mari further argued that even if Moroccan courts had jurisdiction, an incumbent Minister of Foreign Affairs enjoyed absolute immunity before national courts. Morocco argued, on its part, that the crimes in question were personal acts and therefore not covered by any immunity rule. In January 2006, a new democratic government came to power in Mari. This government soon initiated investigations into the crimes committed by the former regime. Upon investigation, the Marian Chief Prosecutor decided to prosecute inter alia Mr Ani. In January 2000 Mr Ani had, as the foreign minister, participated in a campaign with the purpose to rid a certain region of Serge. During this campaign, in which thousands of Serges were forcibly transferred out of the region, more than 400 Serges were killed. Although it

was clear that Mr Ani had not personally participated in any of the killings, the Chief Prosecutor argued that he could be held responsible for them because it was foreseeable that such a campaign could lead to killings.

- (a) Can the Minister of Foreign Affairs (Mr Ani) raise the issues of jurisdiction and immunity before Moroccan courts?
- (b) Discuss the rights and remedies available to the Serghes Minority group before international criminal courts.
- (c) With reference to case law, do Moroccan Courts have jurisdiction over the alleged crimes?

## **Question 2**

Transitional justice has been critiqued from assuming a neo- liberal democratic and its literature being “defined by a Western legalistic approach to justice which affects the field’s ability to account for indigenous and customary mechanisms of justice that do not espouse this legalistic lens” (Vieille, 2012). Thomson and Nagy(2011) note the field of transitional justice has only recently started to pay attention to, “more localized traditional as a corrective to the shortcomings internationalized “one size fits all” approaches. Do you agree with these critiques? Outline your position explaining the implications for successful transitional processes.

## **Question 3**

What is the international attitude to amnesties for the perpetrators of grave human rights violations or crimes against humanity? Does it make a difference if investigating bodies such as truth commissions are established to give a factual account of what happened?

**END OF PAPER**