



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

**THIRD YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)**

LLBK 326: INTERNATIONAL HUMAN RIGHTS LAW

STREAM: LLBK 3 S2

TIME: 2 HOURS

DAY: WEDNESDAY, 12:00 – 2:00 P.M.

DATE: 25/05/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

On the 9th August, 2022 Kenya will hold Presidential and Parliamentary elections—elections that are held every five years. The country is a Party to the ICCPR. Article 25 (b) of the Covenant provides that

‘Every citizen shall have the right and the opportunity.... without unreasonable restrictions... to vote and to be elected at genuine periodic elections...’

Furthermore Art. 38 (2) of the Constitution of Kenya (2010) provides that ‘[e]very citizen has the right to free, fair and regular elections... and the free expression of the will of the electors...’

Taking into account the prevailing circumstances in the country and giving reasons for your answer assess the likelihood of holding free, fair and credible elections. **(30 Marks)**

QUESTION TWO

Assess the contribution of the (i) Cyrus Cylinder, (ii) the Magna Carta (1215), (iii) the 1648 Westphalia treaties, (iv) the 1776 American Declaration of Independence and (v) the 1789 French Declaration of the Rights of Man and of the Citizen in the development of international human rights. **(20 marks)**

QUESTION THREE

- (a) With reference to the Universal Declaration of Human Rights (UDHR), Rhona Smith asserts that ‘it is widely perceived as, although not originally intended to be, the definitive statement on human rights in contemporary society’ (Rhona Smith *Int. Human Rights* 6thed (2014) p.39 Oxford University Press (Oxford). Do you agree with the assertion or not? Give reasons for your answer. **(12 marks)**
- (b) The current volatile political crisis between Russia and Ukraine is partly attributed to struggle for the control of the Crimean Peninsula—a province of the latter. A vast majority of the population comprises Russians who are seeking to be part of Russia rather than Ukraine. Efforts by Crimea to secede from the latter to the former remain futile.

Using the Russia – Ukraine crisis as a point of departure, discuss the criteria for self-determination through secession in international human rights law.

(8 Marks)

QUESTION FOUR

- (a) In your view, and by giving reasons for your answer, is the concept of the progressive realisation of human rights as provided for under the International Covenant for Economic, Social and Cultural Rights (ICESCR) justified? **(8 Marks)**
- (b) In *Guerrero v Colombia*, (1982 a case before the United Nations Human Rights Committee, as it then was) the Colombian Police raided house in which it was thought that a kidnap victim was being detained. The victim was not found, but the police hid in the house awaiting the arrival of the suspected kidnapers. Seven persons who were never proved to have been connected with the kidnapping, were shot dead without warning as they arrived at intervals at the house. The police action was justified by the government on the basis of Legislative Decree No. 0070 which, provided *inter alia* that for so long as ‘the national territory is in a state of siege’,

provided the police with a defence to any criminal charge arising out of acts committed in the course of operations planned with the object of preventing and curbing kidnapping. Among the seven deceased persons was Maria Fanny Suarez de Guerrero, the wife to the applicant, which applicant seeks advice from you on the following:

- (i) Which right(s) were violated and what is the legal basis of such rights? **(6 Marks)**
- (ii) What pieces of evidence did the Committee rely on to make a finding of violations of the rights of the deceased persons in (i) above? **(6 Marks)**

QUESTION FIVE

Article 23(2) of the ICCPR provides that ‘the right of men and women of marriageable age to marry and to found a family shall be recognized.’

- (a) In view of this provision and with reference to your country (which is a Party to the ICCPR) as well as giving reasons for your answer discuss whether or not gay relationships should be permissible. **(10 Marks)**
- (b) In your view and giving reasons for your answer how satisfactory were the measures taken by your country in efforts to reduce and / or eliminate further spread of the Covid-19 Pandemic? **(10 Marks)**