

MAIN CAMPUS
THIRD YEAR EXAMINATIONS FOR THE AWARD OF
THE DEGREE OF BACHELOR OF LAWS
SPECIAL EXAMINATION JULY 2022
LLBK 326 INTERNATIONAL HUMAN RIGHTS LAW

STREAM: LLBK Y3 S2

TIME: 2 HOURS

DAY:

DATE:

INSTRUCTIONS

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

QUESTION ONE

Consider the following and answer the questions that follow:

Scenario 1 (S1): Republic vs. Musa Ola and Four others Cr, Case No 15 of 2018

In 2018 in present day Kakamega County, a group of five strong men attacked the family of one, Wanjala, at his house at about 2 a.m. At that time, Wanjala, his wife and three daughters aged between 15 and 19 were all asleep. The assailants gained entry by breaking into the house. They tied the five family members and brought them to the lounge. They beat up Wanjala and raped the three daughters in the presence of everyone present. They then inserted a round ringed bottle of Fanta soda into Wanjala's wife's private parts, ignoring her plea given under duress to rape her instead.

Scenario 2 (S2): The Dusit hotel terrorist attack - 2019

On the 15th January, 2019 the Dusit Hotel, Riverside Nairobi, Kenya was attacked by terrorists, an attack for which the Al-Shabbab militants claimed

responsibility. At least 30 people were killed, several others injured and property destroyed. By way of disarming the terrorists, the Kenyan security forces killed all of them.

Scenario 3 (S3): The case of Rafah Al-qunun

On or about the 11th January, 2019 Rafah Al-qunun, a Saudi Arabian teenager—with the help of the United Nations—sought and was granted asylum in Canada for fear of being killed by her family after renouncing Islam, following which she cut her hair. Indeed her parents went to look for her but she refused to see them. Instead she locked herself in her hotel room at the airport in Dubai, as she waited for her flight to Canada.

(a) Identify the rights which were violated by giving examples of the specific offensive actions from S1, S2 and S3. Who violated the said rights?

(12 Marks)

(b) Discuss the sources of three of the rights identified in (a) above.

(6 Marks)

(c) In your view, and giving reasons for your answer, how has your country sought to comply with its obligations under the binding instruments that form part of the International Bill of Rights, in respect of the rights discussed in (b) above?

(12 Marks)

QUESTION TWO

(a) Health care is one of the Four Big Agenda of the Jubilee government.

Discuss how it has sought to implement the right to health highlighting the main challenges it is facing.

(12 Marks)

(b) Suggest meaningful ways through which the challenges identified in (a) above may be overcome?

(8 Marks)

QUESTION THREE

- (a) Analyse the importance of the Universal Declaration of Human Rights (UDHR) **(8 Marks)**
- (b) Critically examine implementation of the principle of the Best Interest of the Child in your country. **(12 Marks)**

QUESTION FOUR

- (a) Jaber and Nyakwarkwar are female and male third year students respectively at Nyamage University in Hyde Bay County, Kenya. Both of them are invited to attend a wedding at Kaksingiri, Furaha County, scheduled for 1st June 2019, between Pleasure and Wangombe, both of whom are LLM male students at the Keiyan School of Law in Kenya. The wedding is intended to coincide with Jamhuri Day celebrations. As they arranged to attend the wedding, the two disagree on the legality of the wedding. Jaber argues that the wedding will proceed because it is permissible under the International Bill of Rights. Nyakwarkwar disagrees arguing that the intended union was not permissible under Kenyan Law. A scuffle ensues between them resulting in a physical fight for which both are charged with the offence of Affray at Miti Moja Chief Magistrate's Court. After her release on bond, Jaber approaches you as an expert in international human rights law, seeking your views and reasons as to whether same sex marriages should be allowed in Kenya or not. This will enable her decide the next legal course of action and also make a handshake with Nyakwarkwar possible. Advise her accordingly. **(12 Marks)**
- (b) In your view and giving reasons for your answer, does the principle of the progressive realisation of human rights promote or hinder the realisation of human rights? **(8 Marks)**

QUESTION FIVE

Write explanatory notes on each of the following

- (a) Equality before the law in Kenya **(5 Marks)**

- (b) Secession **(5 Marks)**
- (c) The duty bearer **(5 Marks)**
- (d) The Second Optional Protocol to the ICCPR **(5 Marks)**