



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2020/2021

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW

LIL 405: INTERNATIONAL HUMAN RIGHTS LAW

DATE: Thursday, 13th May 2021

TIME: 12.00p.m-2.00p.m

INSTRUCTIONS:

- 1 **ALL** questions are Compulsory
- 2 Support your answer with relevant illustrations from case law , statutory provisions and any other references
- 3 Your writing must be **NEAT** and **LEGIBLE**
- 4 Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein
- 5 Do not scribble or draft answers on the inner or outer cover pages or your question paper
- 6 Do not write anything except your **REGISTRATION NUMBER** on this question paper
- 7 **All** Kenyatta University Examinations rules apply as if they were contained herein

QUESTION ONE

In December 2012 terrorist attacks in the Taba and Weiba tourist resorts in the State of Alta led to the death of 114 people and injury of more than 200 people. In January 2013, the State of Alta launched a counter-terrorism strategy which included a specialized security unit to investigate cases of alleged terrorism, established of detention facilities and purchase of surveillance equipment and increased budgetary resources to the specialized security unit, equivalent to one sixth of the country's annual budget.

In March 2013, following extensive mobile data surveillance and intelligence gathering, Alta's specialized security unit identified three men, Gayez, Younis and Sabbah as possible suspects in the December 2012 terrorist attacks. Mobile data surveillance traced the three men to a small village in the neighbouring State of Kano. Alta's specialized security unit crossed to the State of Kano arrested Gayez, Younis and Sabbah and held them in a temporary security camp owned and manned by the

specialized security unit. Inside the security camp, Gayez, Younis and Sabbah were subjected to severe beating with horse pipes, standing next to a wall in waist level water for extended hours, lowering of their heads in a foul smelling pit for hours and sleep deprivation for prolonged periods, in a bid to extract information from them on their involvement in the December 2012 terrorist attack. Sabbah died in the security camp in the course of the interrogation.

In May 2013, *Justicia*, a human rights organization in the State of Kano learnt of the existence of the security camp and the interrogation tactics applied by Alta's specialized security unit and held a press conference in which it openly condemned the State of Alta. *Movement for Rights and Justice*, a human rights organization in the State of Alta, also joined in the condemnation and also accused the State of diverting budgetary resources meant for provision of relief food, provision of drugs in public hospitals and child immunization to its counter-terrorism strategy. Indeed research showed an increase in the number of people dying of hunger in the southern part of Alta and increased child mortality from immunisable diseases such as, measles and meningitis. The condemnation of the State of Alta by *Justicia* and *Movement for Rights and Justice* caused a public uproar among the citizens and calls for the Attorney General of the State of Alta to resign. The UN High Commissioner for Human Rights also issued a press statement urging the State of Alta to ensure that its counter-terrorism measures were compatible with international human rights law.

Irritated by calls for her resignation, the Attorney General of Alta in June 2013 held a press conference in which she indicated that contrary to the condemnation by *Justicia*, Alta cannot be held responsible for the human rights violations in the security camp in the State of Kano, as that is outside the territory of Alta. In regard to the deaths in Alta as a result of hunger, the increased child mortality and lack of drugs in public hospitals, the Attorney General stated that following the December 2012 terrorist attacks, the State of Alta had prioritized protection of the right to life over other rights, particularly socio-economic rights, as it considered the right to life paramount. Reacting to questions from journalists on whether the State of Alta was justified in applying the alleged interrogation tactics in the security camp, she indicated that Alta had put a reservation on the definition of torture in the UN Convention against Torture and Inhuman and Degrading Treatment or Punishment, hence was not bound by the provisions. The State of Alta has ratified all the nine (9) UN core human rights treaties but has not ratified any of the individual complaints protocols.

With the use of relevant authorities and case law:

- i. Discuss three (3) rights violated in this scenario, pointing out the international treaties in which the rights are protected (12 Marks)
- ii. Analyze three (3) concepts in international human rights law arising from the Attorney General's statements (15 Marks)
- iii. Comment on the inquiry procedures that would be undertaken under the UN Convention against Torture and Inhuman and Degrading Treatment or Punishment in this scenario (3 Marks)

QUESTION TWO

- (i) Rada State is located in the northern part of the African Continent bordering the Mediterranean Sea. It has ratified the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child and the Protocols to the African Charter on the Rights of Women in Africa and on Establishment of the African Court on Human and Peoples' Rights. It has however not made the declaration in Article 34(6) of the Protocol on the Establishment of the African Court on Human and Peoples' Rights.

In June 2008, Ngoni an investigative journalist and author of a national publication, *Uncensored News*, in Rada, his brother Doma and 2 other people were found burned in a car that was taking them to the southern part of Rada to carry out investigations on alleged corruption scandals affecting the economic and social welfare of the people of Rada. The family of Ngoni and Doma reported the matter to the police immediately and demanded investigations and prosecution noting that Ngoni had previously reported to the police threats to his life, although no action was taken. By 2011, three years later, the national police had only interviewed one person and released him due to lack of sufficient evidence. Three years later in 2014, another person implicated in the death was dismissed from his employment but never prosecuted.

In 2015, Ngoni's family approached a non-governmental human rights organization, *Rights International*, seeking to have the case adjudicated by the African Court of Human and Peoples' Rights (African Court).

Citing relevant international law provisions and case law, discuss:

- (a) Admissibility of the case in relation to the rule on exhaustion of local remedies (5 Marks)
- (b) Access to the African Court in view of the Article 34(6) declaration (5 Marks)
- (ii) The African human rights system is the only regional mechanism with a specific treaty on the protection of the rights of children, the African Charter on the Rights and Welfare of the Child. Discuss the procedures for implementation of the African Charter on the Rights and Welfare of the Child. (10 Marks)

QUESTION THREE

- (i) The Kingdom of Java, is a member of the United Nations situated in the Elasian Continent. The Kingdom has not ratified any of the nine (9) core UN treaties and has also not ratified the regional charter on human rights, the Elasian Declaration of Human Rights.

In February 2019, the Kingdom of Java received notification from the UN Human Rights Council that the Kingdom was set to undergo the Universal Periodic Review in March 2020.

Advise the Minister of Justice of the Kingdom of Java on the Universal Periodic Review paying attention to the normative basis, procedure and outcome of the Universal Periodic Review. (15 Marks)

- (ii) Using case law examine the doctrine of margin of appreciation in the European human rights system (5 Marks)