**HISTORY PAPER FIVE P210/5**

**QUESTION 1.** Examine the origin and nature of the laws of East Africa. (25 marks)

 **A candidate is expected to identify and explain the sources of laws and the types of laws in East Africa.**

The following is the basis of the answer.

*Origin of laws refers to the Sources of law.*

*•* The National Constitutions e.g. the constitution of the Republic of Uganda, 1995.

It is supreme laws . Any other law or custom which is inconsistent with the national constitution is void.

The power to control and govern the country is derived from the national constitution.

• Legislation (or Acts of parliament).

The above refers to a situation whereby laws are passed by a competent authority such as a parliament. Legal rules are passed and the respective policies are turned into enforceable laws. A written law which is commonly referred to as statute law is put in place. In this case, Statutes or Acts of parliament are sources of law e.g. the laws limiting the power enjoyed by the president. In Uganda, such laws include;

* The Uganda Independence Act, 1962 . All Acts, Decrees, Statues, Ordinances, Statutory
instruments and Legal notices in effect on the 31st Day of Dec. 2000.
* In Kenya, Acts of Kenyan parliament are a source of law. The formal sources of law in Kenya are set out in Section 3 of the Judicature Act Cap. 8 Laws of Kenya.
* Specific Acts of the parliament of the United Kingdom.
* In Kenya for instance the Act of the U K parliament are cited in Part I of the schedule to the Judicature Act Section 3 and form part of Kenyan laws. Thus, they are also a source of law in East Africa.

Some of the Act of parliament of United Kingdom forms a part of statute law of
Kenya.

* The Acts of United Kingdom Parliament that got root into Kenyan legal system since the colonial
rule included: Evidence Act of Britain (1851) Section 7 and 11., b. The foreign Tribunal
Evidence Act (1856). c. British Law Ascertainment Act (1859)
* **Statutes of General Application.**

The courts of East African countries have over the years accepted several United Kingdom statutes as statutes of General Application and applied them in determining cases before the court e.g. Courts in Kenya.

* **English statutes of General application,** in force in England on the 12th August 1897 are a source of law in Kenya for instance.

The substance of Common law in force on the 12th August 1897 is another source of law in Kenya.

* **Delegated or subsidiary legislation.**

The principal legislation which is called a statute provides the source of these laws. It does not contradict the principal or parent Act neither the constitution and if it contradicts it is declared void for inconsistence with the constitution or the principal legislation. The laws made hereupon include; rules, regulations, orders, proclamations, ordinances or by-laws.

* **The principles of Common Law of England.**

Common law is a branch of law of England which was developed by the ancient common law courts from customs usages and practice of the English people. Law courts applied the people's customs to resolve legal problems so customs were given the effect of law

* **Judicial precedents, judicial reasoning and case law.**

Judicial precedent means decisions of judges laying down legal principles for cases coming before the judiciary. They are also referred to as case law, which are result of judicial reasoning by the judges when deciding cases in a particular situation. This is another source of law because, in trying and deciding cases, judges look back to see how previous judges dealt with the case involving similar facts.

* **The doctrine of equity is another source of law in East Africa.**

The principles of fairness between persons are used to derive the law. Natural justice is considered and law is a matter of conscience. The expression of natural justice or public morality in the social public relationships is used to cause law. The Judicature Act in Uganda provides for applicability of equity as well as the Magistrates Act.

It refers to right doing, good faith, honesty and ethical dealing in transactions or relationship: between man and woman.

It denotes doing to others what a person would want others to do unto him or her.

• Customs or Conventions are a source of Customary Law.

 Customs are rules of conduct, which govern legal relationships as established by custom and usage. Customs have the force of law in as much as they are consistent with the written law

• International Treaties and Conventions.

 International instruments are a source of constitutional law for instance. These are conventions and treaties to abide by and observe international regulations. Domestic laws must be interpreted consistently with international obligations of the state. Domestic courts resolve conflicts in accordance with provisions of international treaty and particularly where a state has ratified a treaty

* Established administrative practices either by circulars, orders etc are a source of law, e.g. In
Uganda, Corporal Punishment was outlawed as per the circular No.15/2006 issued to the Heads
of schools by the Ministry of Education & Sports on the 7th August, 2006.
* Law Reports are a source of law in East Africa.

Law reports are referred by judges, advocates and law students as authoritative source of legal principle. Reporting of legal decisions has great influence on the authority of judicial precedents. 15. Founding statutes

* It is for instance noted that various government bodies are established under a particular law
which is usually under an Act of Parliament. This enables such government bodies to carry out a
particular function of government e.g. Civil Aviation Authority (CAA) to regulate Air traffic,
Uganda Revenue Authority, etc
* Rules and regulations governing various government activities are a source of law. This is where many of the administrative law are found.
* Authoritative writings are another source of law in East Africa.

These refer to opinions of leading authorities in law in situations where it is not possible to ascertain some rules and regulations in practice where there is a dispute over rules; guidance is sought from books of authority.

• African customary tradition is source of Customary law in E. Africa

Customary **law** is generally understood to be rules of law derived from the customs and usages of different communities.

• Quran and Teachings of Prophet Muhammad are sources of Islamic Law.

This is a limited source of law in East Africa for instance in Kenya, It is applied by Kadhis Courts, established under Section 66 of the Kenyan Constitution

***Nature of laws in East Africa***

* **Private Law.** This refers to law that regulates and enforces the relationship among individuals,
associations and corporations. It is concerned with rights and individuals towards each other
rather than towards the state. It generally includes; Law of Contract, Family Law, Law of Succession, Law of Property and Law of Tort.
* **Law of Contract.** This deals with agreements made between two or more people which are
treated as binding. It grants a remedy for a person who breaks such as agreement. For example
In Kenya, the basic statute is the Law of Contract Cap. 23.
* **Law of Trust.** This deals with aspects of trust and imposes a strict obligation on the trustee to
administer the trust property in accordance with the conditions of the trust. A trust is a
relationship which arises whenever one person called the "settler" transfers his property to
another person called the "Trustee".
* **Family Law.** This refers to law which governs matters relating to the family such as well as
property rights during and after marriage. In other wards it defines the status, rights and
obligations of a husband and wife.
* **Law of succession.** This is Law which provides for the rules governing inheritance. It deals with
the transfer of property on the death of a person to his /her
* **Law of property-** This refers to law that determines the nature and extent of rights people
enjoy over land and other property and chattels.
* **Law of Tort.** This refers to law which lays down rules whereby a person will recover damages from another who has injured him or her property. Examples of torts include; Negligence, trespass, nuisance, defamation etc. A tort is a civil wrong for which the remedy is a common law action for damages.
* **Public law**. This is law which is concerned with the state in its political or independent capacity. It includes; constitutional and administrative laws. Public law is designed to promote social security, public revenue, local government, electoral laws. It also includes criminal law.
* **National laws.** These are laws that govern a particular state e.g. Uganda, Kenya, Tanzania within its boundaries. This law does not in most cases have influence /force outside the territorial boundary of a given state. They are the internal laws of the nation e.g. Kenya, Uganda and Tanzania.
* **International laws.** These refer to laws which govern the relationship between states and international agencies such as the United Nations. They are body of law which is composed or rules of conduct which states feel they are bound to observe in their relations with each other.
* **Common law.** This is the unwritten law of England which is administered by the common law courts in E. Africa. They are customs identified as being common to the whole of England and Wales.
* It refers to the principles of social relationship of justice as perceived by the English. It is law that was created by the customs of people and decisions of judges in England. The common law of England was applied in Uganda through colonial rule. It is unwritten law of England. In Uganda, the Judicature Act (Cap. 13) provides for the application of the common law of England where written law does not extend or apply.
* **Civil law.** These are derived from legislation as their primary source. It is law that regulates the relations between private individuals by enforcing obligations or compensating injured parties.
* Its aim is to protect rights and enforcement of duties. It also provides remedies as and when people's rights have been violated and such wrongs are subject to criminal law e.g. dangerous driving, assault, defamation.
* **Procedural law.** This consists of rules which determine the manner in which the court proceedings bare required to be conducted. This is law that guides how a right is prosecuted. It provides the rules of procedure or steps to be followed at law. Such rules are continued in the procedure Act, Criminal Procedure Act, Law of evidence, Registered Land Act etc.
* **Substantive Law**. This law consists of actual rules regarding the civil obligation and criminal wrongs. It defines civil and criminal wrongs and provides remedies for each of the wrongs. It specifies what is unlawful to do and the punishment attracted by breach of this code of rules, Examples of substantive laws include; the penal code, property Act, Succession Act etc.
* **Written law.** These are rules of law that have been reduced into a written form. They are embodied in a formal document e.g. the constitution of Kenya; Laws made by Parliament (Legislations). Such laws prevail over unwritten law.
* **Unwritten Law.** These are rules of law that have not been reduced into written form. They are not embodied in any single document. Reference may be made from various sources and in some cases even in tales passes on from one generation to another. Examples include; the African Customary Law, Islamic Law, Common Law, Equity, Hindu Law and like the United Kingdom's Constitution. The existence of these laws must be proved.

**• Municipal Law.** This is the Law of the state. It also means the law regulating the conduct of the citizens within the state. Such laws may be public or private laws, civil or criminal laws and procedural or substantive laws.

* **Islamic Law.**

This is a limited law in East Africa applicable to the Muslim community alone and applied by Kadhis Courts, In Kenya; the Kadhi Courts are established under Section

**Question 2.** Describe the features of a federal government. (25 marks)

 **A candidate is expected to describe the features of a Federal government.**

• Recognizes power sharing between the central and the state government units.

* Each regional state exercises a high degree of independence or autonomy in relation to
others.
* It shows how powers of a government are to be shared between the central government
(federation) and the individual states in the federation

• Acts as an agreement between the federating states and the central government regarding
the power to be shared among the two levels of government.

* Issues pertaining national authority, national security, national defence policy and foreign
policy are taken over by central government.
* Regional state governments deals with issues concerning internal developments, order and
local taxation.

**Question 3.** To what extent have Human Rights Commissions contributed to the promotion of individual rights in East Africa? (25 marks)

**A candidate must give the degree to which the Human Rights Commissions have contributed to the promotion of Individual Rights in East Africa**

Human Rights commissions are established by law and their functions are stated in the constitution, Uganda has the UHRC which was established in 1995 under the new constitution with broad functions and powers to promote human rights. The UHRC began its work in 1996.

In Tanzania, The Commission for Human Rights and Good Governance (CHRGG) was established in 2001 by Articles 129-131 of the 1977 Constitution of the United Republic of Tanzania and the CHRGG Act, Chapter 391 of 2001. In Kenya, there is the Kenya National Commission on Human Rights mandated with the promotion and protection of Human Rights in Kenya.

**Extent to which they have contributed to promotion of individual Rights**

* They investigated, at their own initiative or on a complaint that was made by any person or a group
of persons against violation of any human right.
* They open a complaint on their own initiative where a violation of Human Rights is identified.
* They visited jails, prisons, and places of detention or related facilities with a view of assessing and inspecting conditions of the inmates and made recommendations.
* They establish a continuing programme of research, education and information to enhance respect of human rights.
* They recommended to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights, or their families.The Human Rights Commission have always presented an Annual Report to the National Assembly (or Parliament) as regards the Human Rights situation in the respected country. Accordingly, they have been making assessments of the state of Human Rights in the respective countries they were established.
* They created and sustained within society the awareness of the provisions of the Constitution as the fundamental law of the people of the respective commissions country.
* They educated and encouraged the public to defend the Constitution of their respective countries at all times against all forms of Human Rights abuses and violation.
* They formulated , implemented and played the role of overseeing the various programmes that were intended to inculcate in the citizens of the respective countries awareness of their civic responsibilities and an appreciation of their rights and obligations as free people.
* They monitored the Government's compliance with the international treaty and convention obligations on human rights.
* They reviewed cases of persons who were restricted or detained under the Emergency Laws in the respective East African countries..
* They did set a hearing of cases forwarded to their Human Rights Commission Tribunal from the security institutions such as police upon completed investigations. Additionally, they appropriately handled cases referred to it by other agencies of government.
* They summoned various people to attend before their tribunal in respect of the respective subject matters that were under investigations because they have the power of a court,
* They also ordered various persons to produce documents and records that were relevant to investigations by the Commission.
* They directed the respective persons mentioned in the matters to disclose information within their knowledge relevant to the investigations that were conducted by the Commission.
* They committed various persons for contempt of their orders in respect of the subject matter thai was ongoing under their investigations.
* They ordered the release of detained and restricted persons when they were satisfied that there had been a violation of human rights or freedom,
* They ordered the payment of compensation of victims of abuse of individual rights when they established the truth and were satisfied that there was a violation of human rights,
* They also ordered other legal remedies or redress in respect of the subject matter that was ongoing under its investigation.
* They also referred other complaints to other institutions such as High Court, police for redress e.g matters of Land disputes; criminal matters such as assault, threatening violence, fraud, defilement, domestic violence, denial of access to justice, denial of access to the child, failure to provide maintenance; Child custody, denial of education & medical services.
* *HRC promoted information, education and communication of human rights related issues among communities.*
* *HRC drew guidelines upon which players in the promotion of human rights based.*
* *HRC supervised and monitored lower institutions involved in human rights work.*
* *Because the UHRC have powers of court, they ordered to arbitrate in cases of human rights abuse.*

**Other factors and agencies contributing to promotion of Individual Human Rights**

* National Constitutions provide for, freedoms of the individual in various aspects are upheld.
* United Nations Declarations. These have well pronounced the rights of individuals and are followed by all member states having ratified charters to that effect.
* The Universal Declaration of Human Rights spells out the human rights and freedoms which it seeks to protect.
* The African Union Charter on Human Rights
* Ministerial Statements and Circular Standing Instructions e.g. the directive to have all districts establish human rights desks and the instruction to school administrators to stop all forms of corporal punishment on children in Uganda.
* Local Ordinances and Bye-laws i.e special subsidiary laws to promote .human rights
* Parliament makes adequate laws that protect and promote freedoms of individuals.
* Education Institutions e.g Tertiary institutions, secondary and primary schools promoted the right to education through government programs of Universal Primary Education (UPE), Universal Secondary Education (USE), Alternative Basic Education for Karamoja (ABEK) etc.
* Schools also have human rights clubs to sensitize children on their rights. They also avail courses and subjects for choice.
* Electoral Commission. Manages the electoral procedure through which the right to represent and be represented is achieved.
* Government Departments. Ministries that directly involve in the dispensation of human rights promotion include the following:- *Ministry of Defense:-* the army and other security agencies guarantee security for all individuals.
* ***Ministry of Gender, Labour and Social Development:*** is mandated to deal with vulnerable categories by promoting programmes responsible for the livelihood of vulnerable groups like women, youth, PWDS, PLHAs, elderly.
* ***Ministry of Finance:*** mobilizes and promote human rights in part e.g. the right to a good salary among others. It also determines the welfare of the citizens through the budget.
* ***Ministry of Justice and Constitutional affairs:-*** through the justice, law and order sector (JLOS), the right to a free and fair hearing is achieved through the courts of judicature. This ministry generally checks the abuses of human rights through its court system.
* ***Ministry of Local Government:-*** enhances the freedom of expression in planning, budgeting and implementation of activities at the local level through its decentralization mechanisms
* ***Ministry of Internal Affairs:-*** through the police department, the right to protection of life and property is achieved.
* ***Ministry of Health:*** through the health service systems delivery, promote the right to life e.g. through their programs of immunization, surveillance, inspection, clinical administration, education and outreach services.
* **Religious houses. e.g** churches, mosques, synagogues that provide a variety of worship centers which enhance individual freedom of worship.
* **The Civil Society Organizations.** They include NGOs, CBOs and FBOs that are involved in direct dispensation of human rights. They carry out advocacy on human rights monitoring.
* **Aid agencies:** These provide funds and other resources planned for human rights promotional activities. For example, DANIDA has been a major funder of civil society networks across the country promoting the rights based approach to development.
* **Media,** The media provides information and communication on all aspects of human rights through radios, televisions, newspapers and internet.
* **Political Parties.** By their very existence, political parties enhance freedom of association when they recruit members. They also act as a voice for the expressions of their members. Parties also enhance the right to representation
* **Regional groupings.** They include bodies under treaties of countries in a particular region, e.g. Inter­ governmental authority on development (IGAD) in East Africa. This responds to disaster prone areas where human rights are not respected for example, in Somalia where IGAD states mobilized and provided food aid and rescue missions for women and children trapped in war.
* The East African Legislative Assembly (EALA) supports the right to representation, democracy and good governance in the EAC member states as well as the establishment of other institutions that promote human rights.
* The Community

The community is responsive to any act of abuse of human rights e.g. political and religious persecution, unemployment, child sacrifice, domestic violence, state inspired insecurity, etc. The community reports human rights abuses to responsible authorities. The community is a pro-active target of human rights plan and programme implementation.

***QUESTION 4.* With reference to specific examples, account for the adoption of a multi – party system of government. (25 marks)**

A Candidate is expected to give **reasons for multi-party system of government using any example from East** Africa e.g Kenya in 1990s

For Kenyan Example , the basis of the answer is the following. Kenya achieved her independence in 1963 and was ruled as a single party state under KANU until 1990s. President Arap Moi restored a multi-party political system in Kenya in 1991.

**Reasons for adoption of multi-party political system in Kenya**

* Increased influence of the executive in judicial affairs by KANU party was hated e.g. appointment of judges was on tribal basis.
* Abuse of electoral process by KANU leadership e.g. 1988 elections was characterized by rigging.
* KANU imposed a hated Mlolong election system of 1988 where a queue voting system was designed by one party state and had glaring ridging and KANU leaders ridged massively.
* The U.S policy pressure on Moi's government
* The U.S Ambassador Smith Hampstone made public pronouncements in support of multiparty democracy.
* The U.S Ambassador's speech before Kenyan Businessmen that in future U.S foreign assistance was to be allocated to countries that practiced multi-party democracy encouraged Kenyans.
* Censorship of the press under KANU one party government e.g. publications were banned by government in 1988 and 1989, Editors were arrested e.g. Gitobu Imanyara. It accelerated the demand for multi-party democracy.
* Interference in the legislature by KANU government which removed critics from all committees since 1985
* Parliamentary debate had fizzled out and there was no leveled ground / forum for expressing criticisms.
* Tribal dominance in one party KANU and intimidation of Kikuyu by KANU officials called for multiparty democracy to end ethnic tensions.
* Tribal Discrimination in the economic field under KANU government of one party
* Discrimination against Kenyan Somali nationals requiring them to carry a special card that identified them as Kenyans was hated. This was instituted by government in 1989.
* Mounting criticism of president Moi's one party government from the civil societies and multiparty activists by 1991. E.g. journalists, lawyers, clergy demanded for political reform to involve all.
* Disregard of lawful Assemblies under one-party system.
* Former cabinet ministers Kenneth Matiba and Charles Rubia's role.
* They organized rallies to sensitize the masses for democracy and multipartyism e.g. on 7th / July/ 1990.
* Riots by Kenyans demanding for multi-partyism since 1986 to have the right to freely express opinions and assemble peacefully without government interference e.g. the Sabasaba July, 7th Riots in Nairobi.
* Unprecedented political campaigns for pluralism in 1990 pushed government to establish a review committee (June 1990) to address constitutionalism. It guaranteed views which generally reflected the demand for multiparty democracy.
* The 1983 committee on national code of conduct initiated democratic discussions that laid down a foundation to push for multiparty discussions.
* Deterioration of Human rights under KANU - one party government e.g. arresting multiparty activists.
* Pressure from other international donors. E.g. Germany recalled its Ambassador as a protest to brutality of KANU government of one party.
* Western donors of foreign Aid while demanding for reforms in Kenya e.g. from 1991-1993 foreign Aid was suspended for Kenya.
* Constitutional amendment of December 1991 when the parliament repealed the one part\ section of the Kenyan constitution
* Parties emergence e.g. forum for the restoration of democracy (FORD), as leading opposition to KANU.
* Defection of leading KANU party leaders (figures) to other parties worked for multiparty
* Democratic Party was also formed under Mwai Kibaki & increased on efforts to establish multi­party democracy.
* The democratization process/movement sweeping across Africa since 1980s e.g. Zambia, Tanzania had adopted multiparty politics and Kenya was spared.
* Influence of the leading Kenyan politicians and their struggle for power in the new state ol Kenya e.g. Oginga Odinga formed the Kenya Peoples Union (KPU) after leaving government in 1966 and was committed to multiparty democracy.
* The Saitoti review committee collected people opinion, and recommended opening up for debate and reform. As a result it led to repealing of section 2A from the constitution in 1991 and returned multiparty democracy to Kenya.
* End of cold war removed the west's involvement in Kenya's politics and pressure was left to Kenyans to put pressure by themselves.
* Desire by the Kenyans to fully participate in the governance of their country.
* Exclusion of various political parties was hated.

**For the Tanzanian example, the following forms the basis of the answer**

* In January 1992 the National Executive Committee of Chama Cha Mapinduzi (CCM) accepted the recommendation made by the president on the multiparty approval.
* In 1991 the presidential commission known as the Nyalali Commission recommended that Tanzania should be changed to multiparty democracy and in the same way, the parliament changed the constitution to legalize the operation of political parties (multi-Partyism).
* The need to have effective separation of powers so as to check the excessive powers of the chief
executive.
* The poor economic performance in the country.The Tanzanian economic policy based on
socialism under one party system had failed and eventually caused a need for a change of
political system.
* To note, like the liberty desk, the national committee for constitutional reform under James Mpalala, the civic united front and other civic groups repealed or brought to an end the existence of a constitution which had provided for one party system and therefore started demanding for a change to multi-party system.
* The change of heart of Mwalimu Julius Nyerere. During Nyerere's tour of the country from 1986-87, as a party chairman, he moved to all parts of the country while finding out the views of the people and later developed in himself a question of whether it was still necessary for the country to remain under one party system. From 1990, he decided to advise party members to look for reasons to continue to a new political system
* Violation of fundamental human rights and freedoms of the people by the then government.
* This was the policy used by the party in power in order to effect its administration without any opposition. For example, in order to fulfill the 1963 Arusha declaration philosophy, the Tanzanian people were forced to go to the villages to start a new life which was the violation of their rights.
* Strict censure of the press. Newspapers, televisions, etc were all controlled by the government as the means of controlling the people's opposition to the government. This therefore derived a chance to the citizens to express them hence demanding for multiparty democracy.
* Pressure from donor agencies like the International Monitoring Fund (IMF), World Bank and other donor countries that linked financial assistance to the economic development of the country. But the donor agencies on the other hand gave conditions that for the country to benefit from their assistance, it was to expected change from a single party to multiparty democracy hence Tanzania's transition to multipartyism.
* The drastic changes in one party state politics in Africa for example president Kenneth Kaunda of

Zambia with his ideology of one party system lost elections to Fredrick Chiluba of multiparty

democracy ideology.

* The activities of the Tanzanian human rights activists since 1984. The activists had made a

research about the condition of human rights in the country and had come out with the fact that

the fundamental rights and freedoms of people were not respected as revealed by the Nyalali

Commission that pointed out the major weaknesses of the ruling party such as a:

* There was absolute power on the part of the state especially the executive which overshadowed

the legislature or the national assembly. The CCM's National Executive committee became the

practical law maker and this was not liked by the citizens.

* Under multi-party political system, there is protection and promotion of fundamental human rights and freedoms
* Multi-party political system provided the government the consent or sovereignty of the people in their state.
* There was need for peaceful co-existence under multi-party politics.
* Multi-party politics promoted regional development. This is because where there was strong the

opposition there was prospective criticism towards the ruling government with the aim of

developing all the regions.

* It promoted freedom of association under multi-party political system. The people enjoyed all

the political activities

* In a multi-party political system the ruling government was noted to be answerable to people
* It encouraged political development. The multi-party political system made individuals to
* development their political career so that in future they participated in politics especially the

young ones.

* The spirit of dictatorship was unwanted and was therefore reduced in the country i.e. in

multiparty politics, due to the presence of the opposition, the ruling party did not dictate on

policies for running the country but instead did consultations in parliament where the

opposition that acts as the people's voice approved the policies.

Under multiparty politics there was respect for the constitution.

* Multiparty political system also provided constructive opposition
* In multiparty politics also the opposition parties also acted as a government in waiting which meant that they were able to form a government in case the ruling party took to rule the country.
* Under multiparty politics the principle of separation of powers was upheld. This is because with the presence of opposition, the ruling government was meant to be answerable to the people and more so the work of the opposition made the executive not interfere with the work of other organs of government for example the Judiciary and the Legislature.

**QUESTION 5. Examine the relationship between the Central and the Local Governments in any one country in East Africa. (25 marks)**

**A candidate is expected to show the relationship between the local governments and the central government in terms of responsibilities. The following is the basis of the answer.**

Local governments refer to administration at the level below the national government e.g. City council/Municipal council/Town council /and District council.

Central government refer to the government of a whole country rather than local Government which is concerned with smaller areas.

**The relationship.**

* The central government makes policy (through parliament which local governments base upon to administer their areas e.g. Education and Health, agriculture, transport and
Communication, industrial and Energy policies.
* The central government interprets the laws for local governments in case of passing local
bills to administer justice .It receives local government bills passed by District councils or city councils or municipal councils to ensure that it is not inconsistent with the constitution.
* The local Bills are forwarded to the Attorney General to certify that the Bill is not
inconsistent with the constitution before the chairperson of the District signs the Law.
* The central Government Lays standards in the public service Commission upon which the
District Service Commission perform their functions .
* The central government oversees the functioning of local government s in delivery of services The supervisory role is done through the ministry of local Government
* Through the Auditor General may carry out special investigation of the local government council. The central government may also investigate cases of mismanagement or abuse of any office in the local government through the Inspector General of Government.
* The central government controls the transactions that the local administration may decide to engage into e.g between a foreign government or international NGO and the local council such as city council, town council, municipal council, District council.
* Central Government also controls the election of local Government s to enable democracy and good governance to prevail in a country.
* The local Government committees of finance ,Health ,Education are approved by the central government to enable them make plans for the respective departments
* The central government re-enforces the discipline of civil servants in the local government.
* The central government issues lawful order to local administration e.g. it gives information affecting public peace. Local government is expected to prevent public nuisance, detect offenders and bring them to justice e.g. areas of illegal drinking and gambling are to be observed in the interest of peace.
* In Conjunction with local government s, the central government sensitizes the local populace on the governmental polices and programs e.g. UPE, USE, NAADS as the case for Uganda, etc.
* Central government provides government services in the areas of local administration with support of the local authorities. E.g. the upgrading of national roads in the Districts, Municipal or city areas.
* The local governments would provide local materials and mobilize labour to implement the project.
* The central government through the central Bank regulates Banks and Banking which operates within the local governments' e.g. the SACCOS that are encouraged to have By-laws designed by the central government institutions.
* The taxation and taxation policy in the local government s is determined by the central
government e.g. license fees, school fees etc
* The central government provides arms, ammunitions and explosives to local government security department s like police and prisons to enable them maintain law, order and security.
* The local governments encourages the establishment of local projects such as agro -based industries but the central Government of sets the national standards to protect the consumers of products through the National Bureau of standards.
* In the control and management of epidemics and disasters in a country, the central government closely works with the local government s in support and treating the victims e.g. the Landslides in Eastern Uganda as for instance in Bududa District.
* The local Governments recommend the people who live within their areas and are applying for recruitment in the in police forces, prisons services and Uganda peoples Defense forces that are under the central government.
* The central Government provides the judiciary and its staff to administer justice in the local government areas where there are courts managed by central Government staff . Local council have courts that refer cases to higher courts in the judiciary sector.
* The central Governments gives grants to local governments to enable them perform their functions in line with government policy. This is because the local authorities have inadequate funds he central government grants are conditional or non -constitutional.

**QUESTION 6: With reference to specific examples, discuss the duties and responsibilities of the speaker of the National Assembly. (25 marks)**

 A candidate is expected to identify and explain the functions of the speaker of the national assembly. **The following is the basis of the answer**

* The speaker is elected from among the MPs or any other person qualified for that post
* Is required to be authoritative and impartial in the conduct of parliamentary business
* The speaker subscribes to an oath constitutionally
**The functions of the speaker include:**
* Enforcing the rules of parliament
* Presiding over all debates in the parliament.
* Spokesperson of parliament
* Receives all items for debate in parliament.
* Proclaims and appoints time when a session of parliament is to be held.
* Guides the debates and controls the order in which debates take place.
* Ensures that MPs respect and adhere to the rules and regulations of parliament.
* Advises and corrects MPs who violate parliamentary procedures.
* Swear in all members at the beginning of a new session before they can participate in parliamentary business.
* Suspends any member of parliament who violates parliamentary rules or who fails to substantiate his or her claims when asked to or refuses to withdraw remarks when asked to. The Speaker
disciplines irresponsible MPs during debates.
* Keeps attendance records of members of parliament.
* Declares any seat vacant in case an MP is recalled or any other reason as provided by the
constitution.
* Certifies all bills sent to the president for assent.
* Causes a bill to be passed by 2//3 of all MPs when the president returns the bill twice and passes it into an Act of parliament.
* Prologues parliament i.e. ends session of parliament by proclamation after consulting the president.
* Gives special leave during a recess or adjournment of parliament.
* Summons parliament to meet within 21 days after receipt of the request of at least 1/3 of all Members of parliaments in a writing signed by them requesting for a meeting of parliament

**QUESTION 7. Examine the factors that led to the making of the 1995 Constitution in Uganda. (25 marks)**

**A candidate is expected to give reasons for making the 1995 Uganda Constitution. The following forms the basis of the answer.**

* The Frequent suspensions of the 1967 constitution by the in-coming regimes needed to come to an end. The frequent amendments of the 1967 constitution since 1971 had made the constitution vulnerable to periodical changes by dictatorial regimes..
* Divergent public opinion on matters of the country's constitution. The public had different opinions on which constitution the country could be governed.
* The public was sharply divided in opinion. While some section of the public want restoration of 1962 constitution because it was negotiated and agreed upon, others maintained that there was nothing wrong with the 1967 constitution.
* There were widespread discussions of the constitutional proposals both in the media and in the National Assembly. Therefore, there was need to have a formal answer to various constitutional questions in Uganda at that time.
* There was also a general failure of Ugandans to agree on the socio-political framework which could be the basis of national governance.
* The past constitutions of Uganda had failed to provide the country with a strong lasting democratic government. Instead, the past governments were noted to be more undemocratic and became responsible for instability in the country.
* By 1995, Ugandans had not reached a consensus on what type of constitution Uganda as a state could adopt as for instance from the choice of either federal or unitary.
* Ugandans had not also discovered common national interests.
* The 1962 constitution had various criticisms. For instance it did not reflect people's aspirations partly because it was made in a hurry, and in a foreign country (England) for purpose of securing independence.
* There were few Ugandans who participated in the making of the 1962 constitution. Thus, the degree of participation of the public in constitutional making process was less and those who were involved lacked depth of knowledge on the subject and a sense of foresight since political awakening was low in the country.
* The 1967 constitution was made by very few people in Uganda because they wanted to protect their own interests.
* The 1962 constitution failed to harmonize republicanism and monarchism as political systems that were applicable in Uganda. The unholy alliances like the UPC / KY alliance could not stand the test of time as it later turned out to be.
* The 1967 constitution also had challenges as regards its legality. It was not made under an ideal environment since there was a state of emergency. Above all, the term of office of the Uganda People's Congress (UPC) government had expired yet it continued to push for the 1967 constitution.
* Adverse impact of the 1967 constitutional changes on the communities and the country's leadership. Majority of the Ugandans were not consulted on the drastic changes that the 1967 constitution introduced for example the abolition of kingdoms, federation and concentration of too much power in the hands of the president that had led to undesirable dictatorship in Uganda.
* The need to consolidate political power also influenced the demand for a new constitution by 1995.
* under previous constitutions, Local governments were not given powers to elect their leaders to carryout development or administer social services without directives from the centre. Thus, it stifled local initiatives and development.
* There was a general desire for a new political system in Uganda. There was need for a new political order in the country.
* Drastic changes had taken place in the country since 1962 independence and there was need to
reconcile the different forces, republicanism, monarchism among others.
* Colonial wrongs continued to exist under 1962 and 1967 constitutions. Therefore, by 1995 there was an urgent need to correct what went wrong during the colonial rule which the past constitutions did not correct. E.g. dictatorship and abuse of human rights and freedoms.
* The 1962 and 1967 constitutions did not provide for address of emerging modern issues. There was need for a constitution which could address modern and current issues which cropped up by 1995 for example the position of the army, protection of environment, status of women, rights of children, national ideals and objectives, democratization, pluralism, and development.
* Global changes taking place throughout the world demanded Uganda to effect changes to avoid being taken unaware by the wind of democratic changes sweeping across the world.
* There was need for socio-economic and political transformations that could be possible as directed by a constitution that provided the institutional framework. Social justice was not guaranteed under the 1962 and 1967 constitutions.
* The situation had changed greatly since 1962 requiring fundamental changes in the country e.g, gender activism was high, democratic institutional development, minority rights etc. All the above need a constitutional guidance.
* The 1962 and 1967 constitutions failed to generally promote development in Uganda.

There still existed historical disparities in Uganda even after independence.

* The 1962 constitution merely endorsed the historical disparity in the treatment of different parts of Uganda. As observed, some areas such as Buganda had a federal status while others had a Semi federal status e.g. Bunyoro, Toro, Ankole. Others areas simply had territory such as Busoga while the rest of the districts in Uganda had a unitary status.
* Unprivileged areas had continued with their rejection of the 1962 Constitution because it had given a special or privileged status to some area such as Buganda..
* The existing constitutions could not unite Ugandans as a matter of their interest. This is because the arrangement under the 1962 constitution was a wrong formula which could not build a united country.
* There was need for a constitution that would not enhance neo-colonialism in the country. Since the 1962 constitution merely confirmed the colonial order.
* There was urgent need to respect the doctrine of separation of power in Uganda. This is because the 1967 constitution concentrated too much power in the hands of the president and the central government.
* The 1967 constitution protected dictatorial leadership. This is partly because the president had the power to appoint almost all public officers as stipulated by the 1967 constitution. The public service commission became merely advisory.
* The 1967 constitution also limited the democratic practices in Uganda. For instance there was no requirement for popular election of the president. Democracy was not guaranteed as well as human rights.
* The 1962 & 1967 failed to establish peace in the country. This was also partly because the constitutions failed to articulate the issue of control of the Army forces.
* Many national interests were not catered for in the 1962 constitution. This is because this constitution was just influenced by the British government to give independence to Uganda.
* There was need to involve various stakeholders in the consultation and discussion of the constitution since the 1962 & 1967 constitutions involved a small section of the Ugandans that failed to come out with a clear rational system of government.
* The existing constitutions had not well defined the role of the president and the Prime Minister.
* The 1967 constitution made fundamental changes on major constitutional issues without involving or consulting the affected people e.g. abolition of kingdoms. The 1967 constitution had a number of loopholes to that effect.
* There was no consultation of majority stakeholders when the 1962 & 1967 constitutions were made. The national assembly simply adopted the 1967 constitution for instance and yet it was also discussed in an intimidating atmosphere of state of emergency

**Question 8.** Explain the role of the judges and magistrates in either Kenya or Uganda.

(25 marks)

**A candidate** must explain **the role of judges and magistrates in either Kenya or** Uganda

Judges and Magistrates are judicial officials who work in the judiciary. Magistrates are officials who act as judges in cases involving less serious crimes.

* They carry on the administration of justice and settlement of disputes. In Uganda, Magistrate Courts are important because they try the bulk of cases in the country. Magistrates try the bulk of customary cases and usually understand well the customs of the people in their home districts. This explains why they are usually appointed to work in their home districts.
* They help in the justice system mechanism that upholds the rule of law in the country.
* They enable enforcement of laws in a fair and rational manner as they provide forums to resolve disputes.
* The Chief Magistrates do supervision of all magisterial courts within the area of their jurisdiction.
* They preside over civil disputes and award damages or grant other relief to the affected persons.
* Magistrates in the lower courts as well as the Judges of High Courts for instance convict the accused persons on the basis of evidence after hearing the criminal case.
* Judges of Higher Courts reverse or uphold the decisions of the lower Courts depending on evidence established by court.
* They assist people on matters concerning succession of property through the Administrator Generals office.
* The Judges of the Constitutional Courts promote and protect human Rights in making declarations sought especially for the vulnerable like women and children.
* They ensure respect for human rights and freedoms of individuals in a country e.g. a free and fair trial.
* The Judges of the Constitutional Court interpret the Constitution. They answer all questions which require interpretation of the constitution usually, when there is a disagreement as to the exact meaning of any constitutional provision or an Act or Law being challenged as unconstitutional.
* The Judges also check the powers of Parliament and other bodies to make law that are workable and do not conflict with the constitution e.g. the Divorce Act, the Police Act.
* They also provide redress from those whose rights have been violated e.g. they decide on payments. Judges have the power to strike down any law that violates the constitutional rights.
* Judges are the only officials who have powers to order the government to amend the law to make it consistent with the constitution. It is noted that Parliament can use the Statutory Acts to overrule the courts and keep a discriminatory law in force and government may use this power to limit the constitutional rights of their citizens. Judges therefore help to order government to amend the law.

**QUESTION 9. To what extent has Police contributed to the rule of law in Uganda?**

 **(25 marks)**

A candidate is expected to give the degree to which police has contributed towards the rule of law in Uganda. A good answer should show the degree contributed by other factors or institutions that have in part contributed to rule of law. A stand point has to be given

**The following is the basis of the answer**

* Police is a state institution vested with the duty of maintaining law and order.
* Police apprehends law breakers or bring them to justice.
* Police works through departments e.g. crime investigations, counter terrorism, police dog unit, police fire brigade, anti stock theft, police Interpol etc
* The minister of internal affairs makes regulations to be followed by police.
* Police is headed by the Inspector General of Police (IGP).

**Degree contributed by police**

* Protection of life through provision of armed security on rallies, meetings etc
* Protection of property by providing armed guards.
* Controls riots.
* Detects and prevents crime
* Promotes Human Rights through its Human Rights desk.
* Summons crime suspects for interrogation and does the investigations before action is taken further e.g. on matters of corruption, bribery, defilement etc
* Arrests and detains crime suspects in lawful safe custody before taking them to court for justice to prevail.
* Searches any premises believed on reasonable ground to have materials necessary for investigation of an offence e.g. *a* ritual killing, forgery, theft etc.
* Gives guidance for public address deemed not to breach peace.
* It also gives conditions for use of any apparatus in public processions and assemblies
* Executes the production warrant according to authority of a judge or magistrate authorizing police to enforce law and order.
* Institutes criminal proceedings before a magistrate and can issue a warrant of arrest or other legal process against any criminal suspect.
* Provides protection services for the community through its communication systems e.g. the toll free line.
* Determines the freeness and fairness of an election in order to be accepted by all parties through provision of law and order throughout the election processes.
* Facilitates community policing programs in partnership with the public.
* Organizes stake holders meetings and workshops through the liaison officers to sensitize the communities on security matters.

**Other agencies /factors**

* The UPDF controls law breakers in the army and protects against aggressors, terrorist attackers.
* Prisons services provide reasonable, safe and humane custody and the rehabilitation of offenders serving their punishments in jail.
* The public cooperates in observing national rules and regulations
* Courts administers justice as provided by the law
* National Assembly (Parliament) makes laws.
* Government ministries make policies and programs to establish orderliness.
* The president and presidential pronouncements enhance observance of laws
* Local councils implements policies in line with the national rules and regulations

**QUESTION 10:** Discuss the factors that led to failure of the East African Community (E.A.C) in 1977. (25 marks)

A candidate is expected to explain the various factors that led to the failure of the East African Community (E.A.C) in 1977

**The following is the basis of the answer**

* The E.A.C was a form of integration between Kenya, Uganda, Tanzania and signed by the three
leaders of these countries Obote (Uganda), Kenyatta (Kenya), Nyerere (Tanzania)
* It was established in 1967 with various organs, the Summit of Heads of State and government,
Council of Ministers, Coordination Committees, Court of Justice, and the Secretariat.
* It collapsed by 1977 due to various factors.
* Amin's bad relationship with other leaders as noted below,

Amin had personality differences with Nyerere which led to disharmony in E.A.C Amin used rude language to describe Nyerere which spoilt the relations

Amin ousted Obote one of the original signatories of the E.A.C treaty

In 1976 Amin caused armed border conflicts between Kenya and Uganda claiming that part of Kenya territory belonged to Uganda before 1902 British land transfer to the old British east Africa protectorate.

Amins 1971,1972 nationalization of Asian properties led to decline of foreign investments in the E.A.C

Amin was pre-occupied with individual and national matters.

Amin had no commitment to regional integration since was he not an original signatory to the treaty.

Amin caused border conflicts between Uganda and Tanzania when the army attacked Tanzania over the ownership of Kagera basin

• President Nyerere's personality differences with that of president Amin. Nyerere refused to recognize Amin's regime because it had come to power by force Nyerere blocked Amin's appointment to the top East African Community high rank position.

Nyerere refused to convene a meeting of the E.A.C as long as Amin was in power in Uganda.

Nyerere refused to sit down with president Amin to discuss matters of the E.A.C

Nyerere gave asylum to ex-president Obote which annoyed Amin

He also allowed Tanzania's army to cross border into Uganda to fight Amin to reinstate Obote

Nyerere boycotted the subsequent E.A.C meeting after 1975 when O.A.U summit was held in Uganda

* Conflicts between Kenya and Uganda were amplified by President Kenyatta since 1976
* Kenya blocked the movement of Uganda goods across its borders
* Kenya also put up prohibitive tariffs on food product from Uganda
* Kenya closed both her borders and coast to Uganda
* Negative attitude of Uganda and Tanzania towards foreign investors scared off investors who then concentrated in Kenya
* Economic disparities emerged causing discomfort between Kenya and the rest of East Africa.
* Involvement of member states in the cold war politics e.g. Tanzania accepted Russian socialist influence while Kenya was interested in capitalism led by U.S.A. As a result, there was no cooperation in E.A.C as a result.
* Individual member states were also economically poor due to severe economic problems
* Uneven distribution of commons services with Kenyans dominating E.A.C was hated by Uganda and Tanzania.
* Exclusion of the private sector and dependence on politicians and governments to implement activities caused a gap.
* The local people were not directly involved either through a referendum or otherwise.
* Strong cultural attachments humiliated the E.A.C e.g. Buganda rejected the federation
* Countries were only committed to their respective national policies and programs e.g. Kenya had **Harambee,** Tanzania had Ujamaa, while Uganda had the move to the left.
* Drfferences in collection of customs duty caused disharmony
* **Political** power struggles in the member states e.g. regime change in Uganda in 1971 through a **coup** disrupted the E.A.C
* **Imposition of** protectionist policies by the different E.A.C member state was hated by others in **the region.**
* Limited political commitment of the leaders Obote, Kenyatta and Nyerere who failed address the, in the E.A.C.
* Lack of public awareness of what integration meant to the local people in East Africa
* Production of similar goods led to duplication
* Mistrust and suspicion among member states e.g. Uganda and Tanzania accused Kenya of misappropriating the E.A.C funds
* Dependence on foreign markets during the global recession 1973-1974 and the oil crises made production expensive. As a result, the E.A.C countries turned to Europe for cheaper goods and violated the regional spirit.
* Lack of technocrats to run the affairs of the E.A.C
* Narrow capital contributed by member states made a limited pool of funds for development and service
* Foreign interference e.g. U.S.A encouraged Kenya to denounce socialism while china persuaded Tanzania to denounce capitalism

**END**