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RECONFIGURING LEGAL EDUCATION TO DEEPEN GENDER EQUALITY

MAINSTREAMING GENDER THROUGH CURRICULUM REVIEW AT THE SCHOOL OF LAW UNIVERSITY OF NAIROBI

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RECONFIGURING LEGAL EDUCATION TO DEEPEN GENDER EQUALITY: MAINSTREAMING GENDER THROUGH CURRICULUM REVIEW AT THE SCHOOL OF LAW UNIVERSITY OF NAIROBI

Patricia Kameri-Mbote and Seth Wekesa***

ABSTRACT

The curriculum deals with the actual content of education. It includes the methodologies and processes by which learning takes place. It is concerned with not only the facts and figures but also with the culture and values of the education system and the society. The processes of teaching and learning take place within a social context, reflecting the values and norms of that society. This calls for an inclusive curriculum that challenges problematic social norms and responds to the needs of those who might be excluded. Transformative curricula include more than excludes. Through it, a School of Law can confidently champion the production of open-minded lawyers who are not only able to cope with diversity but also accept and celebrate it. Mainstreaming gender into legal education curricula aims at training a larger pool of students with knowledge that enables them to work effectively to address questions of exclusion, discrimination and disadvantage in order to promote a more just and equitable society. The academy has a role to play in impacting society positively through knowledge production and dissemination. This underscores the importance of gender-sensitive legal education for (future) legislators, lawyers, judges, and prosecutors.

This paper traces the journey of mainstreaming gender in legal education curriculum content and pedagogy at the University of Nairobi. It describes major curriculum reforms since the School was established and considers the extent to which they incorporated gender equality in the curriculum; approaches used by the school to introduce gender perspectives into its law curriculum; and partnerships under programmes such as NORHED that have facilitated the integration. It concludes that engendering the curriculum is a Constitutional dictate and not optional and finally proposes ways of deepening the integration of gender perspectives into the course content and pedagogy.

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I. INTRODUCTION

Gender refers to both biological difference and to the socially constructed relations between men and women.¹ It is also about how people relate to each other – and these relationships change over time, space and circumstances.² Gender relationships may differ between groups because cultures, religions, ethnicities and classes that men and women belong to are different.³ Institutions may also have a ‘gender culture’ that shapes relationships between men and women.⁴ Such relationships and cultures can be changed through gender sensitivity interventions aimed at bringing to light the inequalities and promoting measures to rectify the inequality.

Despite the region’s diversity, women in Africa share experiences of discrimination on the basis of their sex, gender based violence, economic deprivation and political marginalisation.⁵ Women’s marginalisation and under-representation in the government agencies’ responsible for the implementation of human rights standards pose a major challenge to checking these abuses.⁶ This invisibility has also permeated legal education.

Africa has a regional human rights system that protects both individual and group rights. The African Charter on Human and People’s Rights (African Charter) was adopted in 1981 and came into force in 1986.⁷ Despite the African Charter being in existence, most African countries relegated women in a position of inequality after gaining independence.⁸ This relegation led to strong women’s rights movement linked to international feminist movements that advocated for equality before the law, access to land and rights to property.⁹ It took the application of CEDAW both in public and private spheres together with women’s rights organisations to push national governments to recognise protect and promote the rights of women in their respective countries.¹⁰

The World Conference on Human Rights in Vienna and the Fourth World Conference on Women in Beijing played a critical role in the recognition of women’s rights as human rights.¹¹ The Vienna Declaration of Human Rights and the Beijing Plan of Action stated that:

1 E Leo-Rhynie (1999) Gender mainstreaming in education (Institute of Development and Labour Law, 1999), p. 8

2 Ibid p.6

3 Ibid p.6

4 E Leo-Rhynie (1999) p. 8.

5 KB Wester Violated: Women’s Human Rights in Sub-Saharan Africa Topical Review Digest (2013) p.3

6 Ibid

7 B Derman, A Hellum & KB Sandvic ‘ethnographic and historical perspectives on rights claiming on the African continent in B Derman, A Hellum & KB Sandvic (eds) Worlds of Human Rights: Ambiguities of Rights in Africa (2013) p.15.

8 Ibid. p. 16

9 Ibid

10 Ibid

11 The Vienna Conference was only the second global conference that focused exclusively on human rights. The Fourth World Conference on Women in Beijing adopted the Declaration on Elimination of Violence against Women.

The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms.¹²

African women's rights organisations used the world conferences and global events to push for gender equality in the continent.¹³ Due to weak protection of the rights of women in the African Charter, these organisations championed for the formulation and adoption of Maputo Protocol as an additional protocol to the Charter focusing on the protection of the rights of women in Africa. These international and regional human rights instruments have clearly made a mark on the development and protection of rights of women among African countries. They have influenced national Constitutions and laws to offer protection to women's rights.

Gender-blindness¹⁴ in education has had a negative impact on the recognition and attainment of equal opportunities in various areas including politics, employment and family. The perception that women are of a lower status in society was shaped by stereotypes and sexist education that was integrated into the educational and social systems.¹⁵ This was reinforced through their role within family and their functions as caregivers. The link between gender-blind education and the common notion of a lower status for women has exacerbated women's lower status generally and in Kenya specifically. The section below highlights how this has played out.

Gender mainstreaming is a way of sensitizing individuals and institutions to gender. It refers to policy measures and programmes aimed at improving and realizing gender equality,¹⁶ as well as the integration of gender equality in public policies.¹⁷ Gender mainstreaming in the legal field refers to the promotion of women's rights in the formulation, interpretation and implementation of laws (including positive special measures, where necessary), with an aim to fulfil gender equality.¹⁸ In legal education, gender mainstreaming involves the adoption of curricula and pedagogical approaches that take into account the social construction of maleness and femaleness taking care not to use such constructions to discount either gender's perspectives or to perpetuate negative perspectives of either gender.

This paper examines the extent to which gender equality has been mainstreamed into the curriculum of the School of Law at the University of Nairobi. It argues that the 2010 Constitution's robust exposition of this principle makes it imperative that taught law

12 Vienna Declaration and Programme of Action. World Conference on Human Rights Vienna, 14-25 June 1993. P.18

13 Ibid

14 Gender blindness refers to a failure to identify or acknowledge difference on the basis of gender where it is significant.

15 Randall (1982) p.262.

16 UN Office of the Special Adviser on Gender Issues and Advancement of Women report on gender mainstreaming p.1; ECOSOC Conclusions 1997/2.

17 The idea of gender mainstreaming appeared in international documents for the first time at the UN Third World Conference on Women held in Nairobi in 1985, and afterwards was accepted in Beijing in 1995, <http://www.undp.org/women/mainstream> (accessed on 7 January 2017).

18 E Leo-Rhynie (1999) p. 8.

courses take them on board. It is divided into six parts. Part I is the introduction while Part II outlines the background of the paper. It specifically discusses sexist experiences and views as shared by female students and lecturers at the School of Law and the approaches taken to engender the law curriculum.¹⁹ This provides the backdrop against which mainstreaming of gender in the curriculum is discussed. Part III analyses the Constitutional, statutory and policy framework in Kenya that makes it imperative to mainstreaming gender into the law curriculum. Part IV critically looks at the evolution of the law curriculum at the school and problematizes the quest for inclusion of a course on gender equality namely “Women in the Legal Process” in 1992 and how that was maintained until the 2010 Constitution was passed. It also analyses the 2013 curriculum whose impetus was to respond to, among others, the dictates of a changed Constitutional landscape. Highlighting the role of partnerships such as the Norwegian Partnership for Higher Education which the School has been involved in since 2014, it specifically interrogates the extent to which the 2013 curriculum has taken on board the principles of gender equality, the approaches adopted to integrate these issues in both the course content and teaching approaches and the role of partnerships in mainstreaming gender in the curriculum. It also addresses challenges that have stood in the way of the integration. Part V concludes.

II. METHODOLOGY

This paper relied on both primary and secondary sources of data. Secondary data was mainly gathered through review of old and new curricula, course outlines, Kenya Constitution, 2010, relevant statutes, text books, theses, scholarly journals articles and reports. There was also extensive use of Internet sources to access electronic books, journals and reports. The data obtained from the secondary sources was supplemented with primary data. The primary data filled in the gaps that existed in the literature reviewed. Primary data was collected through interviews and focal group discussion. The interviews included both face to face as well as telephone interviews with the selected respondents comprising of students and members of the faculty of the School of Law. An interview guide comprising questions that were relevant to the research objectives and research questions were prepared. The advantage of using this instrument was that it gave the researcher an in-depth understanding of the research issues. The interview guide was pre-tested to improve on its reliability. In addition to the interview guide, the researcher also designed a questionnaire that guided the focal group discussion.

¹⁹ Benzon defines engenderment as taking women’s life situation and experiences as starting point in the analysis of law.

III. HISTORICAL BACKGROUND

A. Law and Legal Education

Traditionally, the law school curriculum was gender neutral and ignored the specific perspectives of women. This was because, according to liberal legal ideological approaches to understanding the law, the law is objective, neutral and value-free.²⁰ Outside of feminist critiques, there is little or no recognition in either the law itself or the teaching of law that our legal system rests on an androcentric vision of reality and human nature which makes it inherently flawed; the reasonable person standard.²¹ The reasonable person is rarely ever female. Ngaire Naffine has argued in *The Man of Law* that the person with the greatest rights in law does not really exist characterizing that person as follows:

the abstract individual of ... law is not a prototypical person... he is an idea of humanity.... He has the social and physical characteristics and the moral qualities considered ideal by those who find themselves reflected in this image. The 'ideal type' of legal person... possesses at least three essential qualities, which match those of the socially powerful. One pertains to sex, a second to class, a third to gender. The legal model of the person... is a man, not a woman... a successful middle-class man, not a working-class male... a middle-class who demonstrates ... a form of 'emphasized' middle-class masculinity... and he evinces the style of masculinity of the middle classes.²²

The standard person that law uses in its neutrality is elusive.²³ There is however no sufficient acknowledgement that legal scholarship rests on androcentric primary and secondary materials; judgments written predominantly by men; and legislation devised, drafted and enacted predominantly by men.²⁴

20 R Graycar and J Morgan, *The Hidden Gender of Law* (Sydney: Federation Press, 1990), C MacKinnon *Feminism Unmodified: Discourse on Life and Law* (Cambridge MA: Harvard University Press, 1987), LM Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning* (1989) 64 *Notre Dame Law Review* 886, N Naffine *Law and the Sexes: Explorations in Feminist Jurisprudence* (Sydney: Allen and Unwin, 1990), and M Davies, *Asking the Law Question* (Sydney: The Law Book Company Limited, 1994) at Chapter 6. See also R Morgan, *Legal Education Watershed* (1992) 17 *Alternative Law Journal* 140, M Thornton, *Portia Lost In the Groves of Academe Wondering What to do about Legal Education* (1991) 34 *The Australian Universities' Review* 26, CA MacKinnon, *Feminism in Legal Education* [1989] *LegEdRev* 7; (1989) 1 *Legal Education Review* 85, BA Hocking, *Feminist Jurisprudence: The New Legal Education* [1992] *MelbULawRw* 16; (1992) 18 *Melbourne University Law Review* 727, E Jackson, *Contradictions and Coherence in Feminist Responses to Law* (1993) 20 *Journal of Law and Society* 398, and M Thornton, *Women and Legal Hierarchy* [1989] *LegEdRev* 8; (1989) 1 *Legal Education Review* 97.

21 L Bender, *A Lawyer's Primer on Feminist Theory and Tort* 38 *Journal of Legal Education* (1933) 3. The author noted that we have a curriculum designed in the main, by male, middle class, 'Anglos' and reflecting their perceptions of the reality of the legal order.

22 N Naffine *Law and the sexes: Explorations in feminist jurisprudence* (1990) Sydney NSW p.34.

23 PK Mbote & N Kabira, *Separating the Baby from the Bath Water: Women's rights and the politics of Constitution-making in Kenya* 14 *East African Journal of Peace and Human Rights* (2008).

24 *Ibid.*

B. Sexism and Legal Education in Kenya

Sexism is a term that was used in the cultural field of American neo-feminism in the 1960s.²⁵ It was inspired by the term racism.²⁶ It refers to the stereotyping of males and females based merely on the sex to which they belong.²⁷ Sexism is expressed in different ways.

1) Sexist Language

Sexism can be expressed in the way language is used in relation to women²⁸ and when referring to women in discourse.²⁹ Sexist language in the law curriculum leads to the perpetuation of gender inequality and to gender bias in law generally. This was generally the case in Kenya until the late 1980s when law teaching was the preserve of males. Sexism was reflected in the examples used to explain concepts as well as in the posturing of the courses in the law curriculum. Surprisingly, this seems not to have changed as interviews for the baseline study in preparation for the implementation of the Norwegian Partnership for Higher Education (NORHED) focusing on Masters, PhD and Research for Capacity-building in Law Faculties in Southern and Eastern Africa in 2015 confirmed. University of Nairobi law school students shared their experiences and views regarding sexism in the legal profession.³⁰ These ranged from male students' assumption that they were better than their female counterparts in class; discounting of female students' contributions in class; ogling at female students; to male students dominating conversations in and outside of class.³¹ Some students were however of the view that the language used in class was gender neutral and approved the University Gender Policy's requirement that gender-neutral language be used in class.

2) Gender stereotyping

Some students felt that the use of women judges as examples to illustrate certain points by both lecturers and students amounted to stereotyping. They also noted that feminist lecturers received backlash from students. An example was given of a family and succession law lecturer who spent an hour in class defending herself from attacks by male students as she tried to justify a feminist approach in teaching family and succession law.³²

25 E Catelani & E Stradella Equal opportunities and legal education: a mainstream perspective 16 *European Journal of Legal Studies* (2014) 16.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid.

30 Students and lecturers of law at the University of Nairobi, Parklands Campus were interviewed by Dr Agnes Meroka, Dr Nancy Baraza and Dr Seth Wekesa between June and August 2015 on the importance of mainstreaming gender into the law curriculum. They were also asked to share their experiences as female students at the law school.

31 Ibid.

32 Ibid.

With regard to the legal profession, some female lecturers and students felt that the legal profession in Kenya is still male dominated. This view emanates from their observations and experiences in jobs and job interviews. Students who had worked as interns in law firms or been interviewed by lawyers expressed the views that their being women was brought to the fore in the interviews and the office space. For instance, the issues of marriage and childbearing were key determinants in getting employment, upward mobility and retention on the job. Interestingly while law schools³³ have larger numbers of female students and many graduate in the top half of the class, the higher echelons of the legal profession remain male dominated.³⁴ This raises the issue of wastage of female law graduates. Becoming a successful lawyer seems incompatible with marriage and childbearing. In the interviews, respondents were also of the view that even where women established successful law practice, their areas of practice were discriminated against despite the investment of long hours and years of work.

Women were also expected to dress 'correctly' during job interviews – a vague requirement that could lead to disqualification of a candidate by the interviewing panel on account of not wearing make-up.

The posturing of law as male³⁵ and its emphasis on male values resulted, in the respondents' opinion, in patronizing attitudes which put pressure on women to work harder and perform better than men to retain their jobs. Women have to eschew their femininity and behave like men – be abrasive, aggressive and hard – if they are to survive in the male dominated legal sphere. This could be attributed to failure of legal education to address stereotypes by employers who some are alumni of the University of Nairobi, School of Law.

C. Challenging Gender Inequality in Legal Education

Although feminist legal theory has questioned the claim of the law to be rational, objective and neutral, it has not obliterated the perpetuation of male biases in the law and the law school curriculum.³⁶ This calls for a deliberate effort to engender law curricula using the feminist lens.

Traditionally, different approaches have been used towards this end. 'Adding and stirring' women into law was the first approach. This entailed addressing gender neutrality by providing that 'he' meant both men and women; combing through existing law and identifying spaces where women could be added; infusing statutory interpretation to include 'he' and 'she' where only 'he' was used; and including this argument in politics and in personal law. The emphasis here was on legislative barriers and the role of

³³ The University of Nairobi School of Law has 60% female students while Strathmore University Law School has close to 70%.

³⁴ For instance, Kenya has had male Chief Justices and Attorney Generals since independence.

³⁵ C Smart *Feminism and the power of law* (1989) p. 5.

³⁶ KT Bartlett, *Feminist Legal Methods* (1990) 103 *Harvard Law Review* p.829- 831.

Parliament in engendering equality. The adding of women was superficial and in name only. It was not penetrative of the structure and ordering of law and legal education.

The second approach focused on equality of opportunity and was often fragmented and piecemeal. It, however, resulted in the recognition of maternity leave as a right and elimination of discrimination in isolated statutes, particularly in the employment field. The claw back clauses in the Constitutions – excluding personal law matters and insulating adoption, marriage, divorce, burial devolution of property on death from the equality provision – remained. Thus, there was the need to adopt a women’s law approach to address the disadvantages that African women suffered because of their gender. Collaboration of scholars at the University of Oslo³⁷ and Eastern and Southern African universities and empirical research by related organizations (Women and Law in Southern Africa and Women and Law in East Africa) questioning the role of law in women’s lives and how it was nuanced by customary law influenced these changes significantly in the 1990s.³⁸ Their work entailed historical revisionism through women’s law and grounded theory, teasing out women’s rights and living customary law arguments.³⁹ Major comparative work on the law of succession⁴⁰, family and marriage laws⁴¹, domestic violence and other gender related violations and access to justice were carried out across the region with a view to influencing law reform initiatives. While this work was fairly penetrative, it was still not ingrained and required conscious awareness for effectiveness. Significantly, this work birthed courses on women in the legal process in a number of universities in the region including Nairobi. The University of Nairobi’s then Faculty of Law introduced the course in 1992 and sent members of staff for postgraduate training in the women’s law approach and grounded theory to the Universities of Oslo and Zimbabwe to equip them to teach the course ably.

The third approach has been through Constitutional reforms ingraining equality, non-discrimination human rights (civil, political and socio-economic rights). The 2010 Kenyan Constitution signalled that stage with the state being obligated to enforce the Constitutional norms and to align all laws with the Constitution. The Constitution also reformed the judiciary empowering it to ensure that the rights provided for are realized.

37 For instance, Tove Stang Dahl Anne Hellum; and Agnete Weis Bentzon.

38 These organizations brought together legal and social science scholars and civil society actors involved in work on women’s rights. They carried out research on diverse issues using the grounded theory that took women and their experiences as the starting point.

39 Agnete Weis Bentzon et al. Pursuing grounded theory in law: South-North experiences in developing women’s law (North-South legal perspectives series) Mond Books 1998.

40 See e.g. Winnie Mitullah et al., *Women Inheritance Laws & Practices*, WLEA, Nairobi (2002)

41 See Report on Women’s Rights in Family Law in East Africa, WLEA (1998) (On file with the authors).

IV. CONSTITUTIONAL, STATUTORY AND POLICY FRAMEWORK FOR ENGENDERING LAW CURRICULUM

In a modern democratic society like Kenya, education represents the main channel for promoting liberty, human dignity, equality and social justice. These values are aimed at ensuring equal representation, power and participation of both men and women in all spheres of public and private life. Education, particularly higher education, represents a powerful tool for social change. Integrating a gender-sensitive approach into higher education, especially in law schools, is of utmost importance. This section looks at the legal and policy framework that justifies and gives impetus to mainstreaming equality, non-discrimination and gender into the law curriculum at the University of Nairobi.

A. The Kenya Constitution 2010

The 2010 Kenya Constitution recognizes equality, social justice, human dignity, rule of law, equity, inclusiveness and freedom as national values and principles.⁴² Although these national values and principles do not form part of justiciable rights under the bill of rights, they underscore the values that should govern the Kenyan society after promulgation of the Constitution in August 2010. They also act as a guide to courts when interpreting and applying the Constitution and other laws, as well as to government when making or implementing public policy decisions.⁴³

The Constitution contains an expansive bill of rights and places a duty on the state to observe, respect, promote, protect and fulfil the rights provided in the bill of rights.⁴⁴ Although there are general provisions in the bill of rights that apply to every person, the Constitution specifically mentions gender equality and women in many of its provisions. Equality and non-discrimination provisions provide the standard against which the legality of certain actions and decisions are measured. Article 27(1) provides that 'every person is equal before the law and has a right to equal protection and equal benefit of the law.'⁴⁵ This principle of equality entails full and equal enjoyment of all rights and fundamental freedoms.⁴⁶ The Constitution further provides that 'women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres'⁴⁷ and expressly prohibits sex-based discrimination in article 27(4).⁴⁸ It lists sex as one of the grounds, which should not be the basis of unequal treatment or discrimination. Consequently, affording different treatment to women and men solely based on their sex is considered discrimination at law. This Constitutional prohibition of sex-based discrimination was aimed at reversing

42 Constitution of Kenya, article 10.

43 Constitution of Kenya, article 10(1).

44 Constitution of Kenya, article 21(1).

45 Constitution of Kenya, article 27(1).

46 Constitution of Kenya, article 27(2).

47 Constitution of Kenya, article 27(3).

48 Constitution of Kenya, article 27(4).

the historical marginalisation and exclusion that women were subjected to in society. It is important to note the Constitution does allow for differential treatment of men and women to level the playing field.

In this regard, in order for women to benefit from the equality provisions, the Constitution provides for practical measures in section 27(6) by imposing an obligation on the state to 'take legislative and other measures, including affirmative programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.'⁴⁹ Further, the equality clause sets a numerical benchmark for the number of men and women to be involved in elective and appointive positions, stating that 'the state shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointed bodies shall be of same gender'.⁵⁰ The Constitution also provides for a gender quota of forty-seven seats reserved for women in the National Assembly.

The role of education and training in the overall development of a country's social, economic and political spheres cannot be overemphasized. The Constitution recognizes education as a human right and offers a solid foundation for the government's commitment to education, and for extensive reforms in policy, legislation, and curriculum aspects of the education sector. Article 53 (1) (b) provides for free and compulsory basic education as a human right to every Kenyan child.⁵¹ Article 43 (1) (f) recognizes education as a basic socio-economic right for every person.⁵² Article 54 (1) (b) provides for the rights of persons with disability to access educational institutions and facilities and to be integrated into society to the extent compatible with the interests of the person.⁵³ Article 55 (1) (a) requires the State to take measures to ensure that the youth access relevant education and training while Article 56 (1) (b) recognizes the rights of minorities and marginalized groups to education.⁵⁴

Apart from the Constitution providing for gender equality and the right to education, articles 2(5) and 2(6) of the Constitution incorporate international law into domestic law. Article 2(5) provides that 'general rules of international law shall form part of the law in Kenya'.⁵⁵ Article 2(6) states that 'any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution'.⁵⁶ The Constitution further provides that the state must enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.⁵⁷ Ndulo has noted that these

49 Constitution of Kenya, article 27(6).

50 Constitution of Kenya, article 27(8).

51 Constitution of Kenya, article 53(1)(b).

52 Constitution of Kenya, article 43(1) (f).

53 Constitution of Kenya, article 54(1) (b).

54 Constitution of Kenya, article 56 (1) (b).

55 Constitution of Kenya, article 2(5).

56 Constitution of Kenya, article 2(6).

57 Constitution of Kenya, article 21(4).

provisions imply that international human rights norms that prohibit discrimination are applicable in Kenya.⁵⁸

The UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. CEDAW is often described as an international bill of rights for women and it establishes international standards in this respect. Kenya ratified CEDAW on 9th March 1984 and is under an obligation to implement its provisions. It is worth noting that Kenya made its second report to CEDAW in November 2017. At the regional level, the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa, also known as the Maputo Protocol, was adopted in 2003 by the African Union to guarantee comprehensive rights, including the right to education to women in Africa. Kenya ratified Maputo Protocol on 6th October 2010. By ratifying CEDAW and the Maputo Protocol, Kenya accepted an international obligation to eliminate a traditional understanding of gender roles in all forms of education, and for that purpose to initiate revising of textbooks, curricula and teaching methods.⁵⁹ In addition, Kenya has an international obligation to ensure that the education offered in institutions of higher learning is gender sensitive. The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, held in Beijing in 1995, established that gender discrimination in education remained very strong and that this must be overcome in order to cease reproducing stereotypes and social inequalities.⁶⁰

B. Universities Act 2012

Prior to the enactment of the Universities' Act, the University of Nairobi Act, 1985, governed the University of Nairobi. This Act was repealed by the Universities' Act 2012, which applies to all universities in Kenya. The Act provides for among others, the development of university education and the establishment, accreditation and governance of universities. It outlines the objectives of university education to be among others: advancement of knowledge through teaching, scholarly research and scientific investigation; promotion of learning in the student body and society generally; promotion of cultural and social life of society; support and contribution to the realization of national economic and social development; promotion of the highest standards in, and quality of, teaching and research; education, training and retraining higher level professional, technical and management personnel; dissemination of the outcomes of the research conducted by the university to the general community; facilitation of life-long learning through provision of adult and continuing education; fostering of a capacity for independent critical thinking among its students; promotion of gender balance and equality of opportunity among students and employees; and promotion of equalization for persons with disabilities, minorities and other marginalized groups.⁶¹

⁵⁸ M Ndulo African customary law and women's rights 18 *international journal global legal studies* (2011) 99.

⁵⁹ CEDAW, article 10; Maputo Protocol, article 12.

⁶⁰ Article 30 of Beijing Declaration and Platform for Action, 1995

⁶¹ Universities' Act, section 3.

These objectives include gender equality and non-discrimination. Universities are also bound by the national values and principles of governance in the execution of their mandates under section 3(2) which provides that

In the discharge of its functions and the exercise of its powers under this Act, a university shall be guided by the national values and principles of governance set out under Article 10 of the Constitution, and shall in that regard –

- 1) promote quality and relevance of its programmes;
- 2) enhance equity and accessibility of its services;
- 3) promote inclusive, efficient, effective and transparent governance and institutionalization of systems and practices and maintenance of public trust; and
- 4) ensure sustainability and adoption of best practices in management.

The University of Nairobi operates under a Charter granted by the Commission of Universities Education established under the Act. This allows it to mobilize academic resources and develop its academic programmes subject to approval by the Commission. Interestingly, Section 29 on academic freedom provides that the power of universities to regulate its affairs in accordance with its independent ethos and traditions must have regard to the promotion and preservation of equality of opportunity and access; effective and efficient use of resources; and its obligations as to public accountability.⁶² The University of Nairobi as the largest and oldest public university has a duty to ensure inclusion of both individuals as well as subject matter. Its curriculum must be robust and if one reads this provision alongside the requirement to adhere to Article 10, which lists gender equality as one of the national values and principles of governance, public accountability must be reflected in the extent to which we include equality, non-discrimination and gender equality in our programmes.

C. Kenya Vision 2030

Kenya Vision 2030⁶³ was adopted in 2009 as a development strategy that aims to transform Kenya into a middle-income economy by 2030 through industrialization. It recognizes the importance of exploring the link between gender and education and overall national development.⁶⁴ Its social pillar acknowledges the fundamental role played by education and training in the social transformation of the Kenyan society and the need to bridge the gender gap in access to education at all levels.⁶⁵ One of the projects that the education sector is implementing as a Vision 2030 Flagship Project is reviewing the curriculum to align it with Constitutional principles, including gender equality.⁶⁶

⁶² Universities' Act, section 29.

⁶³ <http://www.vision2030.go.ke/about-vision-2030> (accessed on 26 November 2017)

⁶⁴ H Ouma Kenya's Vision 2030 from an income and gender inequalities perspective *Society for International Development* <https://www.sidint.net/content/kenyas-vision-2030-income-and-gender-inequalities-perspective> (accessed on 26 November 2017)

⁶⁵ Ibid.

⁶⁶ Kenya vision 2030 medium-term plan II education and training 2013- 2018: Towards a globally competitive and prosperous Kenya 83.

D. The Draft National Gender Policy, 2017

The objectives of this policy are to: facilitate and guide the effective integration of gender considerations in national and county government development agenda and in all sectoral policies, legislation, and programmes; strengthen institutional frameworks for women's empowerment and gender equality; promote new attitudes, values and behaviour and a culture of respect for both genders as human beings; provide for the facilitation of the collection, collation and analysis of gender-disaggregated data to inform policies, programmes and interventions in all sectors and at all levels of government; and strengthen normative, legal, policy and administrative frameworks for gender equality and women's empowerment at the national and county levels.

It proceeds from the premise that the Constitution includes equality, equity, inclusiveness and non-discrimination as some of the national values and principles of governance and expressly outlaws discrimination based on pregnancy, race, sex, marital status, health status, ethnic or social origin, colour, age, disability, tribe, religion, conscience, belief, culture, dress, language or birth. It provides the roadmap to facilitate the realization of these ideals; to redress any disadvantage suffered by individuals or groups because of past discrimination, and to ensure that not more than two-thirds of the members of elective or appointive bodies are of the same gender.

E. University of Nairobi (UoN) Gender Policy

The UoN Gender Policy (Revised 2015) is one of the guiding pillars in ensuring that the University of Nairobi develops curricula that ensure that there is equality and non-discrimination in the institution and most importantly in the content and delivery of programmes. In particular, the policy states that the university will:

Ensure that the curriculum is designed and developed in such a way that it is gender sensitive in content and delivery; Ensure that the curriculum provides positive academic role models to both male and female students and ensure that all students are exposed to theories and concepts that enable them to understand gender and its implications for Kenyan society.⁶⁷

Although the policy is clear on engendering of the curriculum, it does not outline the 'how' element and that leaves a policy gap, which needs to be addressed. While the policy is very elaborate on the need to integrate gender aspects in the curriculum, it does not say how and by whom this should be done. This, therefore, necessitates the need for the adoption of an 'engendering framework' to implement the policy. It is disheartening to note that the implementation of this policy has faced challenges with the Gender Office established under the policy receiving inadequate resources making its work of disseminating and implementing the policy effectively difficult.

⁶⁷ Gender Policy para. 4.4.

V. EVOLUTION OF THE LAW SCHOOL CURRICULUM

A. Cycles of Curriculum Review

Curriculum formulation is the mandate of law school boards and University Senates. Curricula are living documents and not cast in stone. This facilitates the review and overhaul of curricula as new issues arise. New curriculum design and any necessary reviews of curricula at the University of Nairobi usually start at the School, Faculty or Institute that is to implement the curriculum. The School of law has assigned this responsibility to the Academics Programmes Committee of the School. This Committee, through a consultative process involving members of staff and other relevant stakeholders, generates a draft curriculum that is presented to the School Board. The School Board then presents the curriculum to the Academic Board of the College of Humanities and Social Sciences, which then forwards the draft for further discussion to the Dean's Committee of Senate (in the case of undergraduate programmes) or to the School of Graduate Studies (previously Board of Postgraduate Studies) (in the case of graduate programmes). The Dean's Committee and the School of Graduate Studies subsequently forward the draft curriculum to the Senate, which is the highest decision-making organ of the University as far as academic programmes are concerned.⁶⁸ It is important to point out that at each of these junctures; the curriculum is deeply interrogated by academic staff members from other disciplines. The Dean of the School must convince a broad array of scholars that the programme is sound and adds value not only to the School but also to the entire University. It is not uncommon for programmes to be sent back to the School for further consultation and research.

The University of Nairobi, School of Law has undertaken four major curriculum reviews since its inception in 1970.⁶⁹ The first review was in 1978 and sought to tailor the curriculum to produce lawyers with technical skills for the variety of tasks that lawyers are called upon to perform effectively and who are sensitive to the socio-economic context in which legal rules are applied.⁷⁰ The second major review was carried out to accommodate the change from the 7-4-2-3 to 8-4-4 system of education in 1989 when one year was added to the duration of primary school and University education and the two years' Advanced Level Certificate, after four years of secondary education, scrapped. This review made some radical changes such as the restructuring of the law degree from a three-year to a four-year programme and the conversion of the year-long programme to a semester system of instruction.⁷¹ It is worth noting that the Women in the Legal Process course was introduced in this review phase. The third major review occurred in

⁶⁸ University of Nairobi Almanac 2013-2014 Academic Year.

⁶⁹ Before this date, law was only taught at the University of Dar es Salaam. See P. Kamari-Mbote, 'Legal Education and Lawyers', in Y.P. Ghai & J.C. Ghai, eds., *The Legal Profession and the New Constitutional Order*, Strathmore University Press, Nairobi (2014).

⁷⁰ Kivutha Kibwana et al, *Law Curriculum Development in an African Context: The Kenyan Experience*, Faculty of Law, University of Nairobi (1990) p. xi

⁷¹ Ibid.

1999 when more elective courses were introduced into the law curriculum to reflect the growth in the law landscape. Courses such as intellectual property, Environmental Law and Law, Science and Technology were introduced.

The fourth and most radical review started in the late 2000s and was completed in 2013. It was informed by the 2010 Constitution and the changed governance system of higher education generally and legal education specifically. The University of Nairobi was now required to get a Charter under the Universities' Act.⁷² Additionally, the Legal Education Act 2012 revamped the Council for Legal Education (CLE) and mandated it to accredit legal education programmes and providers. The Council prescribed 16 mandatory courses⁷³ that legal education providers needed to include in their curriculum. In addition to these courses, each law school was expected to identify a core niche area in which it would specialize.⁷⁴ This was a very difficult exercise for the School but a niche was eventually coined as follows:

As the oldest School of Law in Kenya, the University of Nairobi's School of Law has distinguished itself as a hub of legal scholarship with a strong foundation for training on basic legal concepts, legal advocacy and legal research. The School of Law has distinguished itself as a centre of excellence in research, scholarship and teaching in the following five thematic areas of law:

1. Financial and Commercial Law;
2. Democracy, Governance and Law;
3. Human Rights Law;
4. Environmental Law; and
5. International Law.

Through this Curriculum, the School of Law plans to consolidate, harness and nurture its research, scholarship and teaching in these thematic areas. It seeks to realize this objective in three major ways:

1. Making the five thematic areas the embryonic foundation for centres of excellence to facilitate research, enhance pedagogy, and contribute to national and international discourses.
2. Ensuring that throughout their course of study, students are exposed to the various social, political, and economic dynamics that impact on the nature and operation of the discipline of law. This entails fusing these dynamics in the teaching of each course in the Curriculum.

72 Chartered on March 1, 2013, after a rigorous audit process to facilitate both the Chartering of the University as well as the accreditation to teach the variety of courses already being offered at the University.

73 Legal Research, Law of Torts, Law of Contract, Legal Systems and Methods, Criminal Law, Family Law and Succession, Law of Evidence, Commercial Law, Law of Business Associations, Administrative Law, Constitutional Law, Jurisprudence, Equity and Law of Trusts, Property Law, Public International Law and Labour Law.

74 See PK Mbote 'Legal Education and Lawyers', in Y.P. Ghai & J.C. Ghai, eds., *The Legal Profession and the New Constitutional Order*, Strathmore University Press, Nairobi (2014).

3. Offering students a unique learning experience in their fourth year of study by giving them an opportunity to specialize in one of the five thematic areas. Ultimately, we hope that we will train and nurture lawyers who not only understand black letter laws but even more importantly, are able to think “beyond the law box.”

The Bachelor of Laws (LLB) curriculum contains core and elective components. The content of the core component is compulsory and includes courses that satisfy the profession’s requirements for admission to the bar to practice law in Kenya.⁷⁵ The core component is offered in the first and second years of study and a few courses in third and fourth years of study. The elective component gives students a number of courses to choose from in their third and fourth years of study.

B. Reconfiguring the Law Curriculum at the University of Nairobi to Conform to the Equality and Non-discrimination Imperatives

This section is divided into two phases. First phase focuses on the activities that took place between 1992 when Women in the Legal Process course was introduced and 2013 when the new curriculum renamed the course to Gender and the Law. Second phase looks at the activities undertaken after 2013 as a result of the implementation of the NORHED project.

1) First phase: From 1992 to 2013

There was great resistance to the incorporation of women’s perspectives into the law curriculum.⁷⁶ Women’s perspectives were considered peripheral and the teaching of a course on women in the legal process was seen as unconventional. What was conventional was the teaching of law courses from a male-centric viewpoint, as many lecturers; most of who were male could not really appreciate the need to engender the curriculum.⁷⁷ The three women members of academic staff at the School (then Faculty)⁷⁸ fought a bare-knuckle war⁷⁹ in the faculty boardroom and after much struggle, the course ‘Women in the Legal Process’ was introduced in 1992. This was a major win in the efforts to have women’s perspectives in the law curriculum. The instruction of the course was largely left to the women and this gave them room to shape it to challenge the dominant narratives in law. As soon as the course was introduced, it became extremely popular,

⁷⁵ These includes Tort law, Contract law, Family law, Succession law, Constitutional Law, Administrative Law, Legal systems and Methods, Legal research and writing, Property Law Evidence Law, Commercial Law, Jurisprudence, Public International Law and Equity and Trust.

⁷⁶ Patricia Kameri-Mbote noted this in an interview conducted in her office then as the Dean, School of Law University of Nairobi in September 2016.

⁷⁷ Ibid.

⁷⁸ Janet Kabeberi Macharia; Edith Munene; and Patricia Kameri- Mbote.

⁷⁹ Derogatory comments against the women were made by the male members of staff such as “Women, we gave you children, now you also want women?” in reference to the fact a course on Children and the Law had already been included in the curriculum.

especially among the female students who felt that the law and the legal curriculum now acknowledged the important role that they played not only in the general practice of the law, but also taught them the heavy weight of the patriarchal society and the strategies that they could apply to overcome, and set them forth as legal reformers. The male students used the class to rehash their sexist prejudices, largely acquired through their experiences in families and in the society, making the course difficult to teach.⁸⁰

Women in the legal process being an elective was introduced to the law curriculum as a result of skills acquired at the Women's Law Course at the University of Oslo and at the University of Zimbabwe's Southern and Eastern Africa Regional Centre of Women's Law (SEARCWL). The course has been taught for many years and survived a major curriculum reviews in 2003 and 2013. While the latter curriculum review renamed the course Gender and the Law,⁸¹ the mode of teaching of the course has however not changed. Women and their experiences are used as the starting point. The course provides a gendered perspective of law and legal processes and recognizes women's views when it comes to lawmaking and implementation processes.⁸² It interrogates the role of women in the development of the law and policy and in the implementation of reforms and unpacks gendered social inequalities while suggesting ways in which the law has/should address such inequalities. The course covers, among other topics, feminist perspectives on law as well as the role of women in political leadership. Other topics included are reproductive rights of women and the legal framework in place to address gender-based violence in Kenya. The course has continued to attract a large number of female and male students over the years.⁸³

Both male and female students interviewed underlined the importance of the course. They noted that it had made them appreciate the place of women in society; the role of law in that space; and made them think about ways in which law can be a tool for empowering or disempowering women. They also said that it equipped them with skills to combat the discrimination and marginalization of women and also to get involved in furthering feminist jurisprudence by pointing out the flaws or biases in provisions in the Kenyan legal system. However, there was a general feeling among students that the

80 In this regard, Prof. P. Kamari-Mbote who taught the course for many years fully identifies with Mumbi Machera's views in 'Opening a Can Worms: Opening a Debate on Female Sexuality in the Lecture Theatre', in *Rethinking Sexualities in Contexts of Gender*, Signe Arnfred, ed., Uppsala, Sweden: Nordic Africa Institute November 2004. Every year, starting the class was like climbing a steep hill to get students and the instructor on one page. There was no telling what issues would be raised in any year and many unexpected questions were asked hence the instructor relating with the opening of a can of worms.

81 Some of us view this as retrogression as the use of the word gender in the place of women is sometimes used by apologues who do not want to admit upfront that women are the marginalized gender.

82 The objectives of the course were: by the end of this course, it was envisioned that students will be able to understand the various strands of feminist jurisprudence and theory; understand the core concepts in feminist jurisprudence; be able to analyse laws, institutional mechanisms and social practices from a gender perspective; have a critical appreciation of the role that law and legal institutions play both in reproducing and overcoming gender injustice; and understand the possibilities and limits of law as a tool for reforming gender relations and bringing about justice.

83 For the last five years, the course has attracted about 125 students every year. It has been co-taught by both male and female faculty members for the last three years.

name 'Women in the Legal Process' could work against engendering efforts as it labelled the course a 'women-only' course. Studies have shown that the various injustices that are perpetrated against women in society need to be tackled using a 'gendered approach' as the success of any effort to empower women, to bring equality and end discrimination, would require the combined efforts of both men and women. The male students noted that the name 'Women in the Legal Process' made them feel that it was designed for women and not for them as men. This had the effect of creating acrimony between men and women and the exclusion of men in the empowerment of women has been termed⁸⁴ as one of the deterrents of the accelerated efforts of women empowerment.

The objectives of the course were to provide students with a clear understanding of the theoretical dimensions of the twin doctrines of equality and non-discrimination; to analyze the equality jurisprudence of Kenyan courts historically and comparatively; and to equip students to think critically about the possibilities and limits of using law to address various manifestations of inequality and discrimination. The theoretical grounding in equality law and the focus on formal equality versus substantive equality; direct and indirect discrimination; positive and negative discrimination; intersecting inequalities; and equality jurisprudence provides the students with a firm grounding to tackle questions of gender inequality in the Gender and Law Course.

2) Second phase: From 2013 to-date

As discussed earlier "Women in the Legal Process Course" was renamed "Gender and the Law" in the 2013 review. Gender and the Law course is within the Human Rights theme. The Human Rights course was made a law school obligatory course in this theme over and above the 16 CLE units. This provides space for teaching general equality and non-discrimination principles to all students even those that do not take the gender and the law course. The original designation of the course as "Women in the Legal Process Course" was deliberate and meant to keep the marginalized gender in focus. It is worth noting that the move to the more general designation of gender may be a response to the backlash that feminist movements have encountered in recent years.⁸⁵ The proponents of the course had also to make a choice between having the course offered by a different name or risk losing it altogether as other courses jostled for space in the already crowded thematic area.⁸⁶

The NORHED Partnership⁸⁷, started in 2014, was timely as it came after the Constitution and as the School was implementing the 2013 curriculum. Its objective is to mainstream

⁸⁴ This was revealed from the interview with some male students who took the course.

⁸⁵ See e.g. N. Davidson, *The Failure of Feminism*, Prometheus Books; First Edition (January 1, 1988)

⁸⁶ Other courses in this theme include Children's Law; Disability Rights; Health Law and Policy and Education Law and Policy. See University of Nairobi, School of Law Curriculum 2013 (on File with the authors).

⁸⁷ NORHED partnership was launched in 2014 as a programme aimed at strengthening capacity of higher education institutions in low and middle-income countries to educate more and better-qualified candidates and to increase the quality and quantity of research conducted by faculty members from those institutions. University of Nairobi is one of the partner

human rights; socio-economic rights; and gender into law school curricula through review of undergraduate and graduate curricula; capacity building through masters', doctoral, post-doctoral programs and fellowships; and the development of supportive infrastructure. The University of Nairobi School of Law has used this project to embed women and gender perspectives and the right to equality and non-discrimination in legal education. Some of the contributions of the partnership to the curriculum review include the baseline study carried out before the implementation of the project activities⁸⁸; meetings with internal and external stakeholders⁸⁹; capacity building of doctoral fellows; and research on diverse issues by postdoctoral fellows and other members of academic staff.

The 2013 reflected the radically altered curriculum way of framing curricula as required by CLE. The goals and objectives of each course had to be laid out followed by the course description, learning outcomes, mode of instruction and the requisite instructional resources. (See Box 1 below)

Box 1: Gender and Law

GENDER AND LAW

Contact Hours: 45

Pre-requisites: Constitutional Law; Human Rights Law; Family Law and Succession

Purpose of the course: To introduce the students to feminist analysis of law; deepen their understanding of conceptual linkages between law and gender discrimination in diverse spheres; and equip them to think critically possibilities and limits of using law to address gender inequality.

Expected Learning Outcomes of the Course:

By the end of the course students should be able to:

1. Explain the various strands of feminist jurisprudence;
2. Explain gender equality jurisprudence that has emerged from various national (Kenyan), regional and international institutions;
3. Critically analyse laws and institutional and social practices from a gender perspective;
4. Demonstrate a critical appreciation of various perspectives on the role that law and legal institutions play both in reproducing and overcoming gender discrimination in various spheres of social relations;
5. Demonstrate clear understanding of the possibilities and limits of law as a tool for reforming gender relations and bringing about equality.

⁸⁸ A Meroka, N Baraza & S Wekesa 'Report on mainstreaming gender and socio-economic rights in law curricula at University of Nairobi' (2015).

⁸⁹ For instance, the School held a curriculum review meeting in Naivasha in July 2014 as the rollout was going on. This meeting also looked at the Master of Laws (LL.M) and the PhD Curricula (Report on file with the authors).

Content:

Feminist legal theories and their critiques; conceptualizing equality and discrimination; gendered construction of citizenship; gender equality under Kenya's 2010 Constitution in comparative perspective; regional and international norms and institutions on women's human rights; gender equality in labour and labour relations; gender in the criminal justice system; gender and property relations; reproductive health and rights; gender and political participation.

Mode of Delivery:

Lectures; Panel presentations; Tutorials; Case Method; Seminar discussions; Problem based learning.

Instructional Materials and/or Equipment:

Computers; Internet; Laws; Law Reports; Discussion Aids; Chalk/whiteboards and necessary accompaniments; Library; DVDs; E-Journals: Lexis-Nexis; HeinOnline; JSTOR.

Assessment:

Type	Weighting (%)
Examination	70
Continuous Assessment	30
Total	100

International & regional treaties

1. United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW).
2. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
3. International Covenant on Economic, Social and Cultural Rights.
4. International Covenant on Civil and Political Rights.
5. African Charter on Human and Peoples' Rights.

Core Texts:

1. Kabira, W. M., *Time for Harvest: Women and Constitution Making in Kenya*, University of Nairobi Press, Nairobi (2012).
2. Tsanga. A., and Julie Stewart (Eds.), *Women and Law: Innovative Regional Approaches to Teaching, Researching and Analysing Women and Law*, (The North-South Legal Perspective Series No. 5, Weaver Press, Harare, 2011)

3. Hellum, A., et al, *Paths are Made by Walking: Human Rights Interfacing Gendered Realities and Plural Legalities*, Weaver Press (2007)
4. Smart, C., *Feminism and the Power of Law*, Taylor & Francis, 1989, repr. 1991.
5. Smith, Patricia (ed), (1993), *Feminist Jurisprudence*
6. Becker, Mary, Cynthia Bowman and Morrison Torrey (1994), *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously*
7. Bowman, Cynthia & Akua Kuenyehia (2003), *Women and Law in Sub-Saharan Africa*
8. Stang Dahl, T., *Women's Law: An Introduction to Feminist Jurisprudence*, Norwegian University Press, (1987)

Recommended Reference Materials:

Useful resources:

Official website of UN-Women (www.unwomen.org)

Various publications by Women and Law in Southern Africa, and Women and Law in East Africa.

Legislation

1. Constitution of Kenya 2010
2. Sexual Offences Act 2006
3. Employment Act 2007
4. Land Act 2012
5. Land Registration Act 2012
6. Marriage Act 2014
7. Matrimonial Property Act 2013

This was complemented by the need for a radical approach tearing down, reframing and restructuring mainstream courses taught at law school to reflect the Constitutional imperative of equality and remove aspects that perpetuate stereotypes. While this is no longer optional, there has not been universal acceptance by the faculty of the need to mainstream gender in law courses. Resistance by some staff citing academic freedom and the quest to ferociously defend turfs remains the greatest challenge to holistic integration of gender aspects into the law school curriculum. In the circumstances, the approach taken by the School has been to identify entry points with paths of least resistance to pave the way for gradual integration and mainstreaming gender perspectives while steering clear of 'dyed in the wool' defenders of patriarchy. Surprisingly these include young men and women. It is indeed surprising that the ideology and fervour of the feminists who made the case for the introduction of the "Women and the Legal Process" at the School in 1992 has waned despite the increase in the number of women lecturers.

Beyond resistance, however, there are members of staff who though willing to integrate equality into their courses, lack the skills and capacity to do so. This raises the need to facilitate the tooling and retooling of course instructors with new perspectives; development of teaching materials with new perspectives and going beyond the numbers of women on the faculty to what and how the members of faculty teach. This is the concern of the NORHED project. There is an opportunity to prepare online teaching materials in collaboration with the University's Open, Distance and eLearning (ODEL) Campus. This presents an opportunity for capacity building in preparation of materials and pedagogical approaches to mainstream gender equality and human rights for members of staff. As noted above, for a school of law to be accredited by the CLE to teach law, there are 16 obligatory courses⁹⁰ that it must include in its core curriculum to satisfy the professional requirements for admission to the bar to practice law in Kenya.⁹¹ Those who teach these obligatory courses have the potential to greatly influence the integration process and equipping them to do so is a critical intervention. In addition to these 16 courses, the University of Nairobi Law School has 9 other additional obligatory courses, which include Equality Law in the fourth year and Human Rights in the third year. Gender and Law is taught as an elective course. Of the other obligatory courses, Constitutional Law, Social Foundations of Law, Property Law, Labour Law, Family Law and Succession, and Jurisprudence, Research Methodology have taken or could take the equality and gender perspective. In Social Foundations of Law, Property Law, Labour Law, Family Law and Succession⁹² for instance, there have been efforts to present material about the law's differential impact on men and women, and to analyse the 'maleness' of legal standards and values. In the Research Methodology Course, women-friendly methodologies and gender aware data collection tools are taught.⁹³ In some of the other courses, the efforts are often 'piecemeal and ad hoc, and are often considered to be peripheral to the main focus of the curriculum by both students and faculty.'⁹⁴ Through the introduction of a specific obligatory course focusing on equality and an elective course on women's perspectives on law, the curriculum of the University of Nairobi School of Law reflects the faculty's concern to depart from the androcentric state of legal 'knowledge' and, importantly, from the perspective of women students of law that women will continue to be cast as the 'other' by the law and the law school curricula.⁹⁵

90 Legal Research and Writing; Law of Torts; Law of Contract; Legal Systems and Methods; Criminal Law; Family Law and Succession; Law of Evidence; Commercial Law; Law of Business Associations; Administrative Law; Constitutional Law; Jurisprudence; Equity and Law of Trusts; Property Law; Public International Law; and Labour Law.

91 These includes Tort law, Contract law, Family law, Succession law, Constitutional Law, Administrative Law, Legal systems and Methods, Legal research and writing, Property Law Evidence Law, Commercial Law, Jurisprudence, Public International Law and Equity and Trust.

92 See Dr. Nkatha Kabira's Course Outline (On file with the authors).

93 See Course outlines for the subjects (On file with the authors).

94 MJ Mossman, 'Otherness' and the Law School: A Comment on Teaching Gender Equality (1985) 1 *Canadian Journal of Women and the Law* 213 p. 214.

95 Ibid.

As the oldest law school in Kenya whose academics have been instrumental in the establishment of newer law schools and the preparation of law school curricula, the School of Law at the University of Nairobi has contributed to the birthing of Gender and Law Courses in other schools of law in Kenya.⁹⁶ Increasingly, players in the legal academy in Kenya and in other schools of law have acknowledged the need to include women's perspectives in the law school curriculum. They have introduced elective courses on gender and the law.⁹⁷ This is an indication that they understand the importance of inclusion of gendered perspectives in law curricula.

The challenge for feminists in law schools in law curriculum reform is to both reconfigure and 'transform the normative tradition of law so that what law now recognises as 'otherness' is seen as central to an understanding of law and society.'⁹⁸ This requires mainstreaming and deepening of equality and non-discrimination principles in more obligatory courses. Until that is achieved, however, law will continue to be taught in a contextual vacuum as far as equality and non-discrimination issues are concerned. The learning environment and legal pedagogy exacerbates the situation, which can also exclude women's views and experiences as noted above. For instance, concerns abound regarding the silencing, alienation and marginalisation of women in law school classrooms and activities on account of the designation of women's issues and perspectives as irrelevant.⁹⁹

The gender and the law course in the elective component of the curriculum is not a solution in addressing biased nature of the law curriculum. This approach has a number of shortcomings. There is a danger that lecturers could stop teaching feminist/gender perspectives in other courses such as family and succession law, property law and jurisprudence which are core courses offered in third year, based on the assumptions that these issues would be covered in gender and the law in fourth year. Additionally, elective courses are only availed to students to select in the last two years (third and fourth year) of the law degree course. This means that not only will feminist issues dealt with in the elective course not be encountered by all law students but also those who select the course are often what might be termed as the 'converted'. Besides, marginalisation of feminist perspectives on law that accompanies their relegation or hiving off to the elective curriculum brings in the aspect of stigmatisation of those students, usually women, who choose to take this course.

⁹⁶ A good example is Strathmore Law School where Patricia Kameri-Mbote's engagement in the establishment of the School and as chair of SLS board has contributed to the development of the gender and law course and the mentoring of faculty teaching the course. In the 2017/2018 academic year, Kameri-Mbote has co-taught the course with a member of faculty at Strathmore who is also her doctoral supervisee in the area of women's rights at the University of Nairobi School of Law. Students in the class have written to the dean making a recommendation that the course be made obligatory.

⁹⁷ Other examples of schools teaching gender and the law include Riara University; Moi University and Strathmore University.

⁹⁸ Ibid.

⁹⁹ Meroka, Baraza and Wekesa *supra* note 76.

In short, although inclusion of a gender and the law course is an important part of an equitable approach to law curriculum reform, it cannot be considered conclusive. This is because if the feminist content of an elective unit is bypassed by a student, then it is possible that they may never be exposed to information about the experiences and perspectives of women and law, and may never have an opportunity to critically challenge to the androcentric, liberal, legal ideology.

C. Course Content and Teaching: Integrating Gender Perspectives into the Core Curriculum

As discussed earlier, inclusion of gender and the law in the elective curriculum is not sufficient progress towards achievement of gender equity in the school of law. It is the case of too little spread too thin. The best approach is to integrate gender perspectives into the content of courses throughout the entire law curriculum, including importantly the core curriculum. There are three justifications for advancing this argument. First, there are many women amongst law students and practitioners. More than half of all law students at the University of Nairobi and more than half of Advocates being admitted to the bar to practice law in Kenya are women.¹⁰⁰ This number's views ought to be reflected in the law curriculum. The impact of the absence of gender perspectives in the law curriculum manifests as the lack of a female perspective in many judgments from the law courts in which such a perspective would be important for resolution of dispute. The female perspective seems to be very hard to achieve due to a complete overlap between the perspective of men and the perspective of law.

The second reason is the relevance to an emphasis on the principle of equality in the Kenyan system as captured in the Constitution. It is in law school that values, principles and ethics of law and the legal profession are first introduced, developed and inculcated. It is the current law students that will become judges, lawyers and law lecturers in the future. This would have a considerable influence on both the role and status of women lawyers and on ways in which law interacts with women's experience. This argument illustrates the link between gender, equality, law and justice.

The third reason is based on the discrimination against women across the world. Although discrimination varies between countries, geographical places and cultures, there is evidence of the continued global oppression of women. This evidence should be challenged by the law which is believed to be a social weapon called on to eradicate women's subordination and give full implementation to the concept of equality.

As part of the implementation of NORHED project, a review of course outlines and interviews with some lecturers was conducted. It showed that substantive and

¹⁰⁰ <https://www.standardmedia.co.ke/article/2000102869/chief-justice-willy-mutungu-admits-100-lawyers-to-roll-of-advocates> (accessed on 6 December 2017). For instance, in January 2014 out of the 100 advocates admitted to the bar, 35 were male and 65 were female.

compulsory courses such as Constitutional law, criminal law, contract law, tort law and legal systems and methods, which are taught in first and second years of study traditionally have omitted course materials addressing gender perspectives.¹⁰¹ Several reasons have been advanced for this position. Some have argued that integration of gender aspects requires them to rethink the structure, content and process of teaching their courses. Others believe that making materials that have a 'strong ideological perspective' compulsory is inappropriate in the 'neutral' world of law and legal education. A few consider that inclusion of feminist perspectives in the core curriculum will perpetuate and entrench gender differences in our society.

However, there are a number of core courses that have integrated gender perspectives both in the course content and teaching methodology. This has however depended largely on the nature of the course and the research interests of the course instructor on gender issues.¹⁰² For instance in the Equality Law Course which was introduced in 2013, a thematic area on gender discrimination that focuses on the role of national and international law in addressing gender discrimination as well as promoting equality between men and women in society is included.¹⁰³ The course outline, reading list and reference materials contain textbooks, journal articles and cases on gender equality. These are discussed, analysed and criticized in class. The teaching approach in this course has brought out the 'gender question'. Equality law students, which is the entire fourth-year class, have been able to identify the gender implications of laws, rules, principles and practices that appear to be neutral and objective on face value.

This is the same approach that has been adopted in teaching Property Law and Law and Development at undergraduate and postgraduate levels respectively.¹⁰⁴ With respect to the former, the current legal and policy framework relating to land law in Kenya makes it mandatory to engage students on the gender aspects in land law.¹⁰⁵ The Constitution, new land laws and national land policy call for the elimination of gender discrimination in law, customs and practices relating to land and property in land.¹⁰⁶ They also require measures to ensure that women own and access land, including matrimonial property and in the event of the death of their spouses.¹⁰⁷ This is in recognition of the fact that the lack of access to property rights by women has hindered their economic empowerment. Additionally, the Matrimonial Property Act 2013 provides for the rights and responsibilities of spouses relating to matrimonial property. This has provided an

101 Interview with Ms. Evelyn Asaala, Lecturer, Commercial Law Department in Nairobi (15th November 2017)

102 Interview with Ms. Yvonne Onyango, Lecturer, Public Law Department in Nairobi (14th November 2017)

103 Equality law is a compulsory course offered in first semester of fourth year of study at the school of law

104 Property law is a compulsory course offered in second semester of second year of study at the school of law; Law and Development is a compulsory course in the LL.M curriculum taught in first year study of the LL.M program at the school of law.

105 Interview with Dr. Agnes Meroka, Lecturer, Private Law Department in Nairobi (14th November 2017)

106 Chapter five of the Constitution of Kenya 2010 on land and environment, the Land Act 2012, Land Registration Act 2010, Community Land Act 2016 and the National Land Policy 2009.

107 Constitution, article 68.

opportunity to share gender perspectives drawn from judicial decisions with property law students when it comes to sharing of matrimonial property after dissolution of a marriage.

In Jurisprudence, the nature of the course and the structure of the course outline have restricted discussions and analyses on the impact of law on society from a gender perspective except when handling the topic on feminist legal theory. This is because of the traditional understanding of Jurisprudence as gender neutral. Male writers who have written most of the reference materials¹⁰⁸ in the course outline have extensively discussed arguments made by male philosophers. However, practical feminist reasoning has been used when teaching the topic on feminist legal theory. This entails posing open-ended questions about serious and concrete legal issues in order to determine both the possible solution and the actual problem that is found in the situation under consideration. Students are expected to consider the Constitution, statutes, common law and case laws from a feminist viewpoint. Apart from showing students how cultural diversity and inclusiveness can affect the reading and interpretation of law and judicial decisions, this approach has also given students an opportunity to identify different viewpoints and perspectives that may be far from the systems of values prevailing in society.

In addition, students have been reminded that there are female writers who have thought about the law and written about different legal theories other than feminist legal theories thus making a contribution to the understanding of jurisprudence and legal theory.¹⁰⁹ Due to one of the instructor's interests in gender matters, she has raised consciousness among students during discussion in class by making them more interactive and participatory to allow both male and female students to share and compare their personal experiences.

Other instructors interested in gender have also integrated gender perspectives as far as possible in the courses they teach. These include Family Law and Succession; Labour Law; Land Use Law and Law, Democracy and Governance.¹¹⁰ For instance, the course content for Law, Democracy and Governance contains an aspect on the place of women in the attainment and sustenance of democratic governance in Kenya today.¹¹¹ This focuses on the factors that hinder the participation of women in democratic processes and governance structures and discussions on how law can address them to ensure both men and women have an equal access to information in a timely manner to enable them participate in decision-making processes. Apart from recommending a reading

108 For example, Ronald Dworkin, Hans Kelsen, Lon Fuller, Jeremy Bentham, Gerry Spence, Jeremy Waldron, Hugo Grotius, Richard Posner, Roscoe Pound and Randy Barnett

109 For example Janet Portman and Samantha Besson.

110 Land use law is an elective course offered in second semester of fourth year of study while law, democracy and governance is a compulsory course offered in first semester of fourth year of study at the school of law. Family law and succession is a compulsory course offered in first semester of third year of study while labour law is a compulsory course offered in second semester of third year of study at the school of law.

111 Interview with Dr. Seth Wekesa, Lecturer, Private Law Department in Nairobi (14th November 2017)

list that contains text books and journal articles authored by female writers, the class has been divided into legal clinics that give students a chance to conduct extensive research around broad topics that touch on gender perspectives in democratic governance and make presentations of their findings in class for further discussion.

A similar approach has been adopted in Land Use Law whose course outline contains a topic on the place of women in land use processes in Kenya.¹¹² This allows the students to discuss the place and role of women both traditionally and under operative legal frameworks (Constitution, relevant statutes and policies) on various land use activities such as agriculture, urban planning, forestry, water management, wildlife conservation, mining and fisheries. Students have also been urged to read cases, articles, textbooks and other reference materials that have been written with a gender perspective to help them understand the importance of integrating gender in the course. Most significantly, the critique of traditional research methods using African women's knowledge, experiences and perspectives in the obligatory Research Methodology Course at the undergraduate and postgraduate levels has the greatest potential to bring gender perspectives into legal research.¹¹³

VI. CONCLUSION

This paper has documented the process of integrating gender equality into the law curriculum at the School of Law, University of Nairobi. The paper has demonstrated the critical role of legal education in promoting gender equity in Kenya, which plays two roles. First, legal education represents the background and the training of future lawyers, judges, practitioners and government officials who have a responsibility of implementing the Constitutionally guarantees considering gender equality as provided in the Constitution 2010. Secondly, legal education acts as a channel of creating awareness to lawmakers, some from law school, to remove gender biases and ensure statutes provide equal opportunities to both men and women. This can only be achieved when gender perspectives are included in the law curriculum.

Kenya is among very few countries that offer Equality Law as an obligatory course alongside Human Rights. This has greatly boosted the integration of the principles of equality and non-discrimination in legal education. The introduction of the Women in the Legal Process course in 1992 signaled a major step in the quest to mainstream gender into the law curriculum. While this is not enough to overcome the androcentric nature of legal education, it is noteworthy that course content and teaching methodologies have been adopted in teaching mandatory courses such as Social Foundations of Law, Human Rights and Equality Law. It is also encouraging that some of the CLE mandatory courses

¹¹² Ibid.

¹¹³ See Dr. Nkatha Kabira's Course Outline (On file with the authors).

such as Legal Research and Writing, Property Law, Labour Law and Family Law and Succession have embraced the equality and non-discrimination principles. More could be done in other courses such as Criminal Law, Constitutional law and Jurisprudence.

There is need to deepen the integration/mainstreaming of women/gender perspectives and the right to equality and non-discrimination in legal education. This can be done through: *One*, tearing down and restructuring mainstream obligatory and elective courses taught at law schools to remove aspects that perpetuate gender stereotypes; *two*, tooling and retooling people to teach with new perspectives; *three*, developing teaching materials with new perspectives; and *four*, going beyond numbers of women on faculty to what and how the members of faculty teach in class. Significantly, we must move beyond girl's club to women and gender perspectives and the right to equality and non-discrimination in legal education club; remove silos in inequalities so as to address intersectional discrimination and subaltern categories; ensure intergenerational transfer of skills to teach with the new perspectives; establish a framework for bringing in new perspectives and for monitoring adherence.

Considering the premium placed on equality, non-discrimination and gender perspectives in the Constitution, we should aim to have Equality Law taught as a core CLE course as is the case in Zimbabwe. We should also aim to have more people versed with the women/gender perspectives and the right to equality and non-discrimination teaching and authoring core texts for the compulsory CLE courses. We propose that a curriculum review impact assessment using the lens of gender equality and non-discrimination should be conducted in 2018-2019. This will be close to 30 years since the introduction of "Women in the Legal Process" in the curriculum and since the publication of the book *Law Curriculum Development in an African Context: The Kenyan Experience*¹¹⁴ was published. A conference around the impact assessment will provide an opportunity to assess success across board, guard against claw backs in the gains and propose ways of further deepening non-discrimination and gender equality through law teaching and research.

114 Kivutha Kibwana et al, supra note 68.