



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A
MAIN EXAMINATION

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MAY – JULY 2019 TRIMESTER

FACULTY OF LAW

SPECIAL / SUPPLEMENTARY EXAMINATION

CLS 317: GENDER AND THE LAW

Date: JULY 2019

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

1. The Constitution of Kenya 2010 has been described as an excellent tool of law reform, which does not only create an environment that allows more inclusive state-society relations, but has enshrined realisation of social justice, especially for women, through an expanded Bill of Rights that can be enforced by court rulings; and by prescribing a range of institutional reforms to enable greater accountability. **[Will the Constitution of Kenya 2010 Work for Women and Children? Domingo P., et al, UNICEF Project Briefing, Overseas Development Institute, London, UK, 2011]**

Citing constitutional provisions, enabling statutes, case law and policy, describe the specific gains for women enshrined in the Constitution of Kenya 2010 and how the gains impact a woman's:-

- a) **Political life [10 MARKS]**
- b) **Family life [8 MARKS]**
- c) **Economic life [5 MARKS]**
- d) **Social life [4 MARKS]**
- e) **Cultural life [3 Marks]**

2. Although the Constitution of Kenya 2010 does not condone discrimination, it nonetheless provides for affirmative action. **[The Constitution of Kenya, 2010: An Introductory Commentary, PLO Lumumba and Luis Franceschi, Strathmore University Press, Nairobi, Kenya, 2014]**

a) What is affirmative action in the context of gender discrimination?

(5 marks)

b) Citing relevant constitutional and statutory provisions, case law and policy, what **three** imperatives must affirmative action comply with for it to meet requisite constitutional, legislative and policy threshold? **[15 MARKS]**

3. Your client, Hon Kamau MacOnyango, Member of Parliament for Tabubika Constituency wishes to abandon the Raia Bila Mipaka Democratic Party (RBMDP), on whose ticket he won his Parliamentary seat in 2013, to form a new political party, Wanaume Musilale Bado Mapambano Men's Party (WMBMMP). The key pillars of the proposed WMBMMP's Manifesto is empowerment of men and restoration of their lost glory by: i) Locking out women by denying them party membership; ii) Putting in place strategies that will ensure that the "river goes back to its course," where as ordained by God and traditions over the years, women must only be seen but not heard; and iii) insulating WMBMMP from interference by "busybody" watchdogs particularly inter-governmental/governmental authorities and civil society activists.

Citing relevant constitutional and statutory provisions, case law, policy and practice, advise Hon MacOnyango on his chances of success in registering his proposed party.

[20 MARKS]

4. The World Health Organisation (WHO) has declared maternal mortality, maternal morbidity and female genital circumcision "a serious threat to a woman's life" and "disablers that impact men negatively." **[The State of the World's Health, 2013 WHO Report]**

a) How do the three disablers affect men?

[2 MARKS]

b) How do they affect women?

[6 MARKS]

c) Name **three (3)** each of the legislative and human rights approaches which have been employed at international and municipal levels to address these threats?

[12 MARKS]

5. In order to counter the ever escalating HIV infection rate in the country, your boss, the Cabinet Secretary for Health, has drafted Revised Policy Guidelines for Primary Health

Care in Kenya, which guidelines will take effect immediately they are published. Guideline No. 15 provides for compulsory circumcision of all males over 15 years of age, and the modalities of implementing it.

Your boss has instructed you to go over the guidelines with a toothcomb to ensure that there are no loopholes that might expose her to litigation by “nosy, busybody, human rights and gender activists.” What would you advise her in the context of Guideline No.15 of her draft? Cite relevant constitutional and statutory provisions, international instruments, case law and policy **[20 MARKS]**.

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