Wednesday, 5.30 pm – 8.30 pm; Lecture Room 1

Course Convenors: Prof Ben Sihanya and Mr Njaramba Gichuki

Course Context
The post World War II period ushered in interest in law in development. The post-Cold War era has been referred to as a time of “rule of law revival.” The rule of law is seen as indispensable to establishing a market economy and constitutional government or democratic rule, the twin projects of neo-liberalism. Therefore, legal and institutional reforms in one shape or another have been undertaken or proposed in LDCs, in the developing and post-communist world. This revival of the belief in the rule of law as central to development raises important questions. At the theoretical level, what are the conceptual linkages between law and the processes of democratization and development? What informs the expectation that law will influence these processes? At an empirical or practical level, what lessons have emerged from two decades of legal and institutional reform, and earlier “law and development” experiments? The course seeks to answer these theoretical and practical or empirical questions through the prism of diverse topics, such as construction of the state, “globalization,” governance reforms, international trade, decentralization, ethnicity and inequality, gender and social relations, sustainable development, law in mineral and infrastructural development, biosafety, food for health and development, informalism and juridical pluralism, education and communication policy and law, and intellectual property.

Course Materials
The course draws materials from a variety of sources. Every student must have these materials.

Only the materials listed as “essential reading” are put together. However, students are encouraged to read the materials on the “recommended reading” list, particularly if the student wishes to write in this area. The materials in “law and development” are not found in a single text. However, the following is an indicative list of what may be regarded as “core texts” in the field:
Core Texts:
10. See the texts cited in and discussions at the blogspot at [www.innovativelawyering.com/blogs](http://www.innovativelawyering.com/blogs)

Assessment
(a) The assessment of this course will be as follows:
40% earned from a written analytical essay based on oral presentations on assigned readings. The focus is on the relevant class or theme. This requires an appreciation of all the readings. Engage the literature, legal instruments, and policy as well as operational documents in terms of the issues, the evidence and the argumentation. Circulate the presentation by Tuesday 5pm for the next class; comments made in class are them addressed by the group in class and in the coursework essay; all group members must sign the group report. The group report is then integrated and compiled from individual presentations. It must be your original work – not plagiarized from any other person or source or from the Internet. Clear analysis that fuses evidence and argumentation; proper citation in text, footnote, and bibliography; maximum 4000 words; one-and-a-half spacing; full and accurate citation; footnotes and bibliography; submit personally to the secretaries, Commercial Law Department and sign for it; members to verify their group has submitted.

(b) 60% earned from a written sit-in 3 hour examination administered at the end of the first semester.
Reading List

Class 1 (September 26, 2012): Introduction and Course Overview – led by Ben Sihanya & Njaramba Gichuki

- Introductions: Convenors; Students.
- Discussion of students’ and lecturers’ expectations and obligations including reading in advance, class attendance, contributions in class; registration for course.
- Overview of the Syllabus of Issues, course outline and reading materials.

Class 2 (October 3, 2012): What is Development? – led by Ben Sihanya & Njaramba Gichuki

- Concept or doctrine;
- Conception or conceptualisation;
- Indicators or manifestations of development
- Theorizing and operationalisation of development…..

Essential readings:

Recommended further readings:

Class 3 (October 10, 2012): Theories of Development

(A) (October 10, 2011): The Economic and Institutional Perspectives – led by Ben Sihanya & Njaramba Gichuki
Econometric theories of development as the dominant discourse; Neo-Marxist political economy; what are institutions and why do they matter in development (theory and practice)? Stages of development? Path dependence? Foundations of the “Kenya debate” (cf. Class 13).
Essential readings:


(B) (October 10, 2012): Cultural perspectives of development – led by Ben Sihanya & Njaramba Gichuki

What is culture? Custom? Tradition? What is cultural development? How does culture relate to political and socio-economic development? How does law relate with culture? Is there cultural determinism in juridical and development terms? The impact of law on culture and vice versa

Education, training and mentoring)

Salaries and remuneration for education workers

- Teachers in primary and secondary schools
- Lecturers and Professors: Universities Academic Staff Union (UASU)
- Employees under Universities Non Teaching Staff Union (UNTESU)
- Employees under Kenya Union of Domestic, Hotel, Educational Institutions, Hospitals, and Allied Workers (KUDHEIHA)

The impact of law on culture and vice versa

Essential readings


Recommended further readings:


**Class 4 (October 17, 2012): The state in development**

**(A) (October 17, 2012): Theorizing the state – led by Ben Sihanya**

What is state? State, market, society, civil society or “people”; sovereignty; government, democracy, governance; constitutional government; state in development discourse.

- Liberal, neoliberal and neo-conservative (neo-con) theory of the state: Weber, etc; Montevideo Convention on Rights and Duties of States, 1933.
- Neo-Marxist or socialist state, etc. cf. communist state…
- Developed, developing country, LDC state…
- Cf: Predatory state; patriamomial state; rentier state; prebendal state…
- Neo-colonial, post-colonial state…
- Dependent, independent, interdependent…

**Essential readings**


**(B) (October 17, 2012): The African state and the legacy of colonialism – led by Njaramba Gichuki**

Essential Readings


Recommended further reading on the state in development


Class 5 (October 24, 2012): The State and Globalization

(A) (October 24, 2012): State and Governance in Globalization Context – led by Njaramba Gichuki

What is the role of the state in governance? What is “globalization”? What is the role of the state in “globalization”? “global” v. international v. transnational v. national; transnational legal process (TLP); transnational peace, security and criminal justice; what are the key issues in the foregoing? Cf. piracy, crimes against humanity (focus on the list in this class); focus on Kenya
in the transnational criminal justice process (International Criminal Court (ICC), etc); the marginalization of Africa.

**Essential readings**


**Recommended further readings**


(B) (October 24, 2012): The State in a Globalising World: Governing International Trade – led by Njaramba Gichuki

What is international trade? What is the role of international trade in development? What is the role of the state and law in trade (and dev)? Public procurement and disposal of goods, services and works, under WTO; public procurement in Kenya – efficiency, timeliness, concerns regarding anti-corruption, and integrity; administration and regulation, procurement reforms.

**Essential readings**


**Recommended further reading**


4. Richard Elliot, Marie-Helene Bonin & Carol Devine “Patents, International Trade Law
and Access to Essential Medicines) [electronic version available from course convenor].


Class 6 (October 31, 2012): The Rule of Law and the Rise, Fall and Reinvention of Law and Development Movement – led by Ben Sihanya

What is law (again); dev? What is the (problematic) link between law and development (generally, in Kenya and Africa); law and development v. law in development. Rule of law v. law in development movements: three or four or five? Post WWII, post independence, post Cold War (SAPs…), GJLOS… phase.

Essential readings


Recommended further reading


15. Constitution of Kenya 2010
17. Vetting of Judges and Magistrates Act, 2011
18. Judicial Service Act, 2011

Class 7 (November 7, 2012): Sustainable Development, Environmental Governance, Life Sciences, Health, Food and Security


Mineral development; prospecting and exploration and tentative juridical and political economy issues like ecological and social concerns; development prospects; constitutional and juridical questions.

- Oil
- Gas
- Coal mining: “integrated development”; the Chinese connection
- Other commercial minerals
Essential readings
8. Mining Act Cap 306 of 1940

(B)(November_7, 2012): Regulating the Frontiers of Innovation: Life Sciences; Health, Food and Security; Bio-safety integration led by Ben Sihanya

Essential readings
6. Prof Ben Sihanya (2012) “Regulate breast milk substitutes equitably,” at sihanya@innovativelawyering.com/blogs
and Information, Centre on Agricultural Biotechnology (CAB), London (Vol. 6 No. 3, pp. 53N-60N, 1994) (refereed).


(C)(November 7, 2012): Infrastructure development (railways, roads, housing); Law in infrastructure development

- Road construction
- Housing
- Railway transport; Rail expansion and modernization; Railway concessions – Kenya Railway divestiture; RVR and beyond case law
- Lamu Port and Lamu-Southern Sudan-Ethiopia Transport Corridor (LAPSSET): political economy and legal questions.
- Tatu City, Thika Greens

Essential readings

1. Constitution of Kenya 2010
3. Kenya Roads Act
6. Any other?

Recommended further reading:
6. The Land Act 2012  
7. The Land Registration Act 2012

Class 8 (November 14, 2012): Regulating the Frontiers of Innovation:

(A) Intellectual property, innovation and anti-counterfeiting – led by Ben Sihanya
What is innovation? IP? Infringement, counterfeiting, piracy; Goldstein’s copyrightability and infringement test; what is the role of IP in innovation, ToT, development? Reforming IP and innovation law and policy. NB: IP is a global concept. What are its specific doctrines? Context specific issues e.g. Copyright in Kenya’s book, or communication, or entertainment industries.

Essential readings

Recommended further reading
Class 9 (November 21, 2012): Regulating the Frontiers of Innovation

(A) Communication and Education Policy – led by Ben Sihanya

What is communication? Content and media of communication or the three layers in what Sihanya calls the Benkler-Lessig model: physical, code and content layer. Counterfeit phones in Kenya? Digital migration or switch over; Implications of the three layers on government or bureaucratic allocation or regulation v. market auctions v. the commons strategy. Regulating communication: Lessig’s four modalities (market technology or architecture, social norms, law). Communication regulatory approaches agencies, and processes: state, self, independent, “cocktail.”

What is education, training, research…? What are the key policy issues in education – access, equity; standards, quality and relevant; financing education; management and governance; Research, science, technology, innovation, ICT, ODEL, EMIS…; Relate the foregoing to university and legal education.

Human resource development and labour questions in education; the role of employers or administrators like Teachers Service Commission (TSC), University Councils, Kenya National Union of Teachers (KNUT), Kenya Post Primary Education Teachers (KUPPET), Universities Academic Staff Union (UASU), Universities Non Teaching Staff Union (UNTESU) and Kenya Union of Domestic, Hotel, Educational Institutions, Hospitals, and Allied Workers (KUDHEIHA) ; Salaries and Remuneration Commission, president, Prime minister, Government ministers.

Essential readings
7. University Act, Council for Legal Education (CLE) Act; Advocates (Degree Qualifications) Regulations; Advocate (Admission) Regulations; CLE Regulations on Accreditation 2009 of legal training institutions.
Class 10 (November 28, 2012): Sustainable Development in the financial sector – led by Njaramba Gichuki

Issues in development in the financial sector; role of Central Bank of Kenya in development; Regulation of banks, building societies; mobile money transfer; capital and securities market development; microfinance institutions and saccos; money laundering; project financing. The viability of a joint financial services regulator.

Essential readings

Recommended further readings

Class 11(December 5, 2012): Legislating Equity

(A) (December 5, 2012): Gender and Social Relations, Kenya & Africa – led by Njaramba Gichuki

Gender mainstreaming. The one-third rule; is it a value? Principle! Rule? Consider its application in the context of appointment v. elective position in national v. county government

Essential readings

Recommended further reading
7. Lourdes Beneria, Gender, Development and Globalization: Economics as if all People Mattered (2003) [chapter 4 “Global/Local Connections: Employment Patterns, Gender and Informalization”].
(B) (December 5, 2012): Ethnicity, Decentralization and Integrity for prosperity in Kenya & Africa – led by Njaramba Gichuki

Ethnicity, regional balancing. Ethnicity and devolution; values, principles and rules in international instruments and in the constitution of Kenya, Nigeria and Uganda.

Essential readings
6. Reference texts:
   d. National Cohesion and Integration Act, 2008

Recommended further reading
Class 12 (December 13, 2012): Beyond juridical Centrism: Informality and Regulation “in the shadow of the law”- led by Ben Sihanya

Rule of law’s emphasis on rules and formal procedures; the injustice and rigidity of formalism; the justice of informalism; the limits of informalism; NB: informalism operates “in the shadow (or context) of the law” i.e. legal rules and procedures undergird or apply to informal transactions…; NB: in all these contexts, conceptualise, problematise, and contextualise legal centrisim (or formalism) and informalism in relation to economic transactions like trade or business, and informal or jua kali sector; land transactions (including ownership, access); and social relations like marriage or related domestic relations.

The rule of law and law in development tend to focus on certainty, predictability, equality (equal treatment), and even formalism of substantive legal rules. There is also focus on certainty and predictability in legal or administrative procedures. Consider pros & cons. Might certainty and predictability or formalism entrench treating unequal’s equally; procedural rigidity and hence injustice? Consider formalism v. informalism in economy and property rights (esp. land ownership, access and administration); economic activities and transitions related to production and exchange or trade (substantive and procedural) – eg formal sector manufacturing and service delivery v. jua kali...

Social relations – especially domestic relations relating to 4-5 year systems of marriage, related transactions, including succession - questions.

Essential readings

Recommended further reading

Class 13 (December 19, 2012): Towards Liberty, Integrity and Prosperity: Prospects for Development in Kenya and Africa; Reforms; national and international development processes; actors in development; bureaucracy & development administration – led by Njaramba Gichuki


What is administration and administrative bureaucracy? Briefly conceptualise, problematise and contextualise the role of actors in development, especially lawyers as advocates, magistrates, judges, politicians, scholars, in civil society, in international organizations, bureaucrats… What is their role in the law and development process?

What are some of the key issues regarding the role of liberty and integrity in prosperity (i.e. in law in development)? What reforms are necessary at the national and transnational level to secure development through law?

Essential readings

Recommended further reading
Canada Ltd, Toronto & Montreal.


***END***