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Republic of Kenya

**Report of the Ministerial Task Force
on the
Development of a Policy and Legal Framework
for Legal Education in Kenya**

Chairperson

Prof. Githu Muigai

Presented to

Hon. Kiraitu Murungi, E.G.H, M.P
Minister for Justice and Constitutional Affairs

August, 2005

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THE TASK FORCE

The Task Force was set up by the Minister of Justice and Constitutional Affairs, the Honourable Mr. Kiraitu Murungi, EGH, MP to examine the issues under the Terms of Reference and to make a report and recommendations within four months.

PREFACE

I am delighted on behalf of the members of the Task Force to present this report and the annexed draft legislation. Members of the Task Force and I have been uniquely privileged in having the exceptional and challenging mandate of appraising and redesigning the policy and legal framework for legal education and training in Kenya. This is the first time that a comprehensive reevaluation of legal education and training has been undertaken since the Denning committee made its recommendations just before independence in 1962.

We have tried to respond to the terms of reference given to us by the Honourable Minister for Justice and Constitutional Affairs in as detailed a manner as possible. In this regard, we have considered all the memoranda submitted by interested parties, considered all the presentations made both by members of the profession and the feedback from the stakeholders workshop. We have also read numerous reports on contemporary developments in other jurisdictions.

The recommendations contained in this report are both wide-ranging and radical. This is because the problems confronting legal education and training are colossal. Almost all who submitted before the Task Force acknowledge that standards in the legal profession were at an all time low and continuing to decline. It is for this reason that we felt compelled to consider long term solutions as opposed to the short term fixes that have characterized previous reform efforts in this sector. As a result, some of the recommendations we have made may very well be controversial, but in our view they are necessary to stem the tide and rehabilitate the legal profession.

Finally, we would like to thank all those who made this exercise a success including but not limited to the very able secretariat, the Ministry of Justice and Constitutional Affairs, the various development partners through the Governance Justice Law and Order Sector-Reform Programme(GJLOS), the various officials of Municipal Councils that at short notice allowed us to use their premises, all those who took time to read the material put out by the Task Force, those who

responded at public hearings and in writing, the Kenya Institute of Mass Communication for a very valuable verbatim recording of all sessions.

We thank everybody most profusely for their cooperation and participation in the work of the Task Force.

Yours Sincerely

Prof. Githu Muigai
Chairman

To The Honourable Kiraitu Murungi, EGH, M.P.
Minister for Justice and Constitutional Affairs
Co-operative House
P.O.BOX 56037- 00100
NAIROBI

Dear Sir

We have the pleasure of presenting to you the Report as the Task Force appointed by yourself on Development of a Policy and Legal Framework for Legal Education and Training Kenya.

Signed:



Chairman

Signed:



Secretary

TRANSMITAL LETTER

The Task Force on the Development of a Policy and Legal Framework for Legal Education and Training in Kenya was set up by the then Minister of Justice and Constitutional Affairs, the Honourable Mr. Kiraitu Murungi, EGH, MP in mid February, 2005 to examine the issues under the Terms of Reference and report within four months of commencement of its work.

Although the Task Force completed its work within the mandated period of time and presented its report to the Government Printer for final processing, due to circumstances beyond the control of the Government Printer, largely precipitated by the printing of the Draft constitution Bill in time for the Referendum on the constitution on November 21st 2005, this report was not processed by the Government Printer on time. The result has been that the report is stated to be presented to the immediate former Minister of Justice & Constitutional Affairs the Hon. Kiraitu Murungi, EGH, MP.

The Task Force is however immensely pleased to present this report to the newly appointed Minister of Justice and Constitutional Affairs, the Honourable Martha Karua, EGH, MP. We thank you for receiving us.

Dated this 18th day of January, 2006.

Prof. Githu Muigai
Chairperson

MEMBERS

Members of the Task Force comprised of the following:

Prof. Githu Muigai	-	Member Council of Legal Education & Chairman of the Task Force
Hon. Mr. Justice Emanuel O. O'kubasu	-	Judge of Appeal & Member, Council of Legal Education
Hon. Mr. Justice Paul Kihara Kariuki	-	Judge of The High Court of Kenya
Mr. Wanjuki Muchemi	-	Solicitor General and Member, Council of Legal Education
Mr. Gichira Kibaara	-	Director of Legal Affairs, Ministry of Justice & Constitutional Affairs
Mr. Okech - Owiti	-	Ag. Dean, Faculty of Law, University of Nairobi
Mr. Henry J. A. Lugulu	-	Dean, Faculty of Law, Moi University
Mrs. Lucy Kambuni	-	Member, Council of legal Education.
Prof. H.W.O. Okoth-Ogendo	-	Professor of Public Law, University of Nairobi
Prof. Wanyama Kulundu-Bitonye	-	Principal, Kenya School of Law & Secretary of the Council of Legal Education

The Hon. Mr. justice E. O O'kubasu and Hon. Justice Paul Kihara Kariuki were not able to attend and participate in the proceedings and activities of the Task Force due to commitments and duties beyond their control. Their apologies were duly received.

Professor Githu Muigai was unanimously elected as Chairman of the Task Force at its first meeting.

SECRETARIAT

Mr. Joseph Kihanya	-	Assistant Secretary/Principal Lecturer, KSL
Mrs. Emily Otieno	-	Assistant Secretary /Assistant Deputy Chief Legal Officer, MOJCA
Mr. Ronoh Tuimising	-	Liaison Officer/State Counsel, State Law Office
Mr. Edward Muriithi	-	Liaison Officer/Senior Deputy Registrar, High Court of Kenya, Judiciary
Mrs. Phoebe W. Kariuki	-	Administrative Officer/Executive Secretary, KSL
Mr. Frank Were	-	Accountant/Senior Accountant, KSL

ABBREVIATIONS

SCA	-	<i>State Corporations Act</i>
MOJCA	-	<i>Ministry for Justice and Constitutional Affairs</i>
LSK	-	<i>Law Society of Kenya</i>
LDC	-	<i>Law Development Centre</i>
KSL	-	<i>Kenya School of Law</i>
IUC	-	<i>Inter-University Council</i>
HELB	-	<i>Higher Education Loans Board</i>
Denning Committee	-	<i>Committee on Legal Education for students from Africa. Cmd. 1255, London, HMSO. 1962</i>
COJ	-	<i>College of Justice</i>
CLE	-	<i>Council of Legal Education</i>
CHE	-	<i>Commission for Higher Education</i>

CHAPTER 1

INTRODUCTION AND OVERVIEW

- 1 Since independence in 1963, Kenya has undergone tremendous socio-political and economic transformation. These changes have put great strain on policy, structures and legal instruments that had hitherto been conceived, introduced and nurtured with the advent of political independence in 1963. One of the areas that has undergone great transformation is legal education. Although it is only eleven years since the last assessment of this sector of our socio-economic development by the *Akiwumi* committee¹, the conclusions of this committee, its recommendations and the institutions it created have been largely overtaken by events, rendering them ineffectual.
- 2 This, the third and perhaps the most comprehensive investigation and assessment of the legal education sector in Kenya has been necessitated by the realization that there is need to look anew at both legal policy and the institutions implementing such policies particularly, institutions pertaining to the formulation of legal education generally on the one hand and those involved in training on the other. This approach calls for the separation of policy formulation from its implementation and the need to create new organizational structures and instruments to oversee and manage these processes.
- 3 There is an urgent need for legal education and training in Kenya to respond to rising demands for competent and professional training which is in touch with market trends and international best-practices from other jurisdictions of the world. The broad nature of the mandate given to the Task Force in its Terms of Reference has availed a rare and unique opportunity for the Task Force to thoroughly and comprehensively review all pertinent issues and structures involved in formulation of legal education policy and training in Kenya. This mandate is only comparable to that of the Denning Committee forty three years ago².
- 4 The Task Force on Policy and Framework on Legal Education and Training in Kenya was thus appointed by the Minister for Justice and Constitutional Affairs, Hon. Kiraitu Murungi, EGH, MP, on the 11th January 2005 and inaugurated on the 14th April, 2005 with these responsibilities in mind. This appointment followed unequivocal recommendations to the same effect by stakeholders at a workshop in Mombasa from the 27-29th September 2004. The need for reform in legal education and training was unanimously seen a *sine quo non* for improving the quality and delivery of legal services in Kenya.

¹ Previous to this Report, the Denning Committee on Legal Education for Students from Africa: Cmnd 1255, London HMSO 1962 had recommended the introduction of a KSL, initially training lawyers for admission to the BAR on an Articled Clerkship programme but which converted into a post-graduate programme in 1970 on the establishment of a fully fledged Faculty of law at the University of Nairobi.

² Denning Committee on Legal Education for Students from Africa, Cmnd. 1255 London HMSO, 1962.

TERMS OF REFERENCE

- 5 The Terms of Reference of the Task Force appointed by the Minister of Justice and Constitutional Affairs the Honourable Kiraitu Murungi, EGH, MP on 11th February 2004 and inaugurated on the 14 April 2004 were as follows:
- i) The form, structure, role and functions of the Council of Legal Education as a regulator of all aspects of legal education in Kenya.
 - ii) The de-linking of the KSL from the Council of Legal Education, its form, structure, role and functions as the training agency of Government in the legal sphere,
 - iii) The admission criteria for joining various training institutions licensed by the Council of legal Education for dispensing legal education,
 - iv) The recognition and accreditation of foreign universities for purposes of admittance to the advocacy training programme in Kenya,
 - v) The promulgation of various programmes and development of curricular to be followed during the various stages development of legal profession.
 - vi) The establishment of Bar examinations, including Pre-Bar examinations and establishment of the necessary secretariat to run and manage the said examinations.
 - vii) Collaboration with other legal institutions within the region on training matters.
 - viii) Measures necessary to reform the School of Law to respond to regional legal education needs and become a centre of excellence for legal education in the region.
 - ix) Promulgate and develop continuing and paralegal education and training programmes for various stages in the development of legal professionals.
 - x) Any other matter or issue incidental to the above.
- 6 As will be discerned from these Terms of Reference, it was the considered view of the Task Force at the interpretation stage that all aspects of legal education and training were up for discussion. This interpretation was further informed by recent issues, developments and problems which both the Council of Legal Education and the KSL have been grappling with. In particular the Task Force was of the view that it should thoroughly study issues pertaining to:

- i) the dichotomy between the Council of Legal Education as the overall regulator of legal education on the one hand and the KSL as a training agency of the Government;
 - ii) their role, functions and powers and whether the two can or should continue to exist under one statute;
 - iii) admission criteria for joining various stages of legal education and training in Kenyan institutions;
 - iv) recognition of foreign universities and the accreditation of their programmes and course offerings, in particular the accreditation of foreign degrees for purposes of admission into the advocacy training programme in Kenya;
 - v) updating and modernizing programmes and course offerings at legal training institutions; the establishment of Pre-Bar and Bar examinations and the appropriate structure to run such examinations;
 - vi) establishment of Para-legal and continuing professional development structures as the means of improving and updating professional legal knowledge for practitioners in the field and the collaboration of legal institutions within the region and internationally.
- 7 The Task Force paid special attention to the provisions of the *Council of Legal Education Act*³, and the Regulations promulgated thereunder⁴, the *Advocates Act*⁵ and the Regulations⁶ thereunder, and the structures and relationships they create. The Commission for Higher Education established under the *Universities Act*⁷ also received special mention as it provides the general framework within which education is perceived and regulated in this country. The Task Force was of the general view that there is no harmonization and coordination of the various legal regimes which govern legal education and consequently, that there is little effort made by the various actors to understand what the other is doing. This has led to unnecessary contradictions and conflict in the roles these institutions play, often resulting in wastage of public resources.
- 8 Harmonization of the various regimes regulating legal education and a coordinated effort by the actors is an imperative if legal education is to be organized on a rational basis.

³ Cap 16A of the Laws of Kenya.

⁴ Advocates Admission Regulations (1997) (Legal Notice No. 357) of 1997 and Compulsory Courses Regulations (Legal notice No. 2618) of 2005.

⁵ Cap 16 of the Laws of Kenya.

⁶ The Advocates (Continuing professional development) Rules 2004.

⁷ The Universities' Act, Cap 210b of 1985 (as amended)

METHODOLOGY

- 9 On appointment, the Task Force constituted itself into a working committee to set out modalities, organize its itinerary and the interpret Terms of Reference. Rules of engagement were agreed upon, a Secretariat set up and the appointment of support staff undertaken. It was agreed that given the diverse interest in legal education by various stakeholders, in particular: the Ministry of Justice and Constitutional Affairs, the Judiciary, the Attorney-General's office and the KSL, it would serve a useful purpose for each of these units to supply an Assistant Secretary to the Task Force. Such Assistant Secretary would also serve the liaison person for the institution represented to engage with the Task Force and supply the required up-to-date information and date on various issues.
- 10 After these preliminary steps, a detailed study of various background policies, relevant legal instruments and other policy material was undertaken. For this purpose, the Task Force met five times. These preliminary meetings culminated in an elaborate and detailed Situational Analysis Paper which summarized the issues and posed critical questions on each of the Terms of Reference. This Paper gave a historical background into the various Terms of Reference. This paper encapsulated the facts as recorded by the Akiwumi Report and the Report of Stakeholders Workshop on Legal Education held in Mombasa in September, 2004. This paper was not only used as a point of reference by the Task Force but was also distributed to stakeholders and the public at large through the public media and the Kenya Gazette to solicit their opinions and contributions during the public hearing stage of the task Force's work. This Paper and the Terms of reference were also deposited in local libraries across the country for general information.
- 11 After adequate time for the public to digest both the Terms of Reference and Situational Analysis paper, the Task Force commenced its public hearings to collate views. The Committee held eight public hearings in Kisumu, Mombasa, Moi University Campus, Eldoret, University of Nairobi campus, two meetings at the KSL, Karen and in Nyeri. At these meetings stakeholders and members of the public were given an opportunity to freely air their views and representations. Both *viva voce* and written submissions were received and debated by the Task Force. In all 695 submissions were made covering a wide spectrum of the issues and concerns.
- 12 The onerous task of analyzing the data and submissions commenced immediately after the public hearings ended. The Task Force sought the quiet atmosphere around Lake Naivasha to do this work. After the initial analysis of data and drafting of the preliminary Report, a second Stakeholder Forum was convened at Leisure Lodge in Mombasa in mid June 2005 where the Preliminary Report was subjected to analysis and further debate. This Report is the culmination of the various inputs, representations and submissions from a wide a spectrum of stakeholder interest and debate and consensus by the members of the Task Force.

CHAPTER 2

BACKGROUND TO ISSUES AND THEMES

- 13 At the analysis stage the Terms of Reference were collapsed into five broad band themes, each of which has presented legal education and training with peculiar problems. This was thought necessary in order to facilitate the analysis of the individual terms of reference in a legal sector-wide context. This approach was also preferred because of the need to create institutional linkages in the resolution of the problems and issues raised in the terms of reference. These broad band themes are:

- i) Regulation and standard setting in Legal Education in Kenya.
- ii) Training for Legal Education in Kenya.
- iii) Programmes and Curriculum in legal training for Kenya
- iv) Accreditation and recognition of legal trainers.
- v) Harmonization with local, regional and international institutions.

A short background on each of these themes will suffice here.

REGULATING LEGAL EDUCATION IN KENYA

- 14 The formal and institutionalized regulation of legal education in Kenya can be traced back to the colonial days in 1961, when the Advocates Ordinance⁸ was passed. This was achieved via the establishment of the Council of Legal Education which was in the nature of an administrative body charged with general oversight powers over persons who became admissible to practice law as advocates. The "Council" was constituted by nominees of the Chief Justice, the Attorney-General and the Law Society of Kenya⁹. The Chief Justice was granted an "absolute discretion to admit to practice as an advocate for any specified suit or matter, any person who had been called to or within the Bar in the UK"¹⁰.

⁸ Advocates' Ordinance (1961) section 3.

⁹ *Op. Cit.* section 3. It is noteworthy that at this stage representation from other stakeholders was greatly limited. In fact all members of the Council were Government functionaries. In latter revisions of the Ordinance, the notion of stakeholder representation was introduced to a small scale.

¹⁰ *Op. Cit.* section 10. Section 9 enumerates public officers who were deemed to qualify as advocates for purposes of the Ordinance and section 12 set out the qualifications for admission as an Advocate. The essence of these qualifications were that, you either possessed a law degree from a prescribed university or had attended articles with an advocate of such class as may be prescribed and you

- 15 The Council established under this Ordinance had the mandate to "exercise of general supervision and control over legal education in Kenya for purposes of the Advocates Act and to advise the Government in relation to all aspects thereof." The current legislative regime under Section 6 of the Council of Legal Education Act¹¹ has maintained this mandate in relation to issues pertaining to the overall oversight of legal issues, the training of advocates and the conduct of Bar examinations. The Act however, delegates all these functions to the KSL as its agent, in the process making the School the most visible face of its activities.
- 16 Under the Ordinance, the notion of regulation of legal education was limited to the process of vetting candidates for admission to the roll of advocates. There was no training component and therefore the name Council of Legal Education was something of a misnomer. Perhaps it would have been more appropriate to call it a council for admission of advocates onto the roll of advocates. Further, as far as we can discern, no rules or procedure were set up for the exercise of the rather unfettered discretion given to the Chief Justice under section 10, or by the 'Council' under section 12 (2). By this process, the admission of to the roll of advocates became in large measure a matter where a great deal of influence was exercised by officials in Government, particularly, in the Attorney-General's office.
- 17 Under the current regulatory regime, the status and role of the Council has been on the recommendations of the AKIWUMI Report¹² greatly increased¹³. Among other things: the Council has been bestowed with legal personality, and perpetual succession with the attendant powers to sue, own property, and borrow money in its own name. Further, the membership of the Council has been expanded to include: a Senior Counsel appointed by the Attorney-General, the head of any recognized university faculty of law whose law degree is approved by the Council, the head of any training institution established by the Council, and the Permanent Secretary of the Ministry for the time being responsible for higher education¹⁴.
- 18 Perhaps more importantly, the new Act sets out in detail the legal education functions and objectives for which it is established¹⁵. The mandates of the Council in this regard are:

passed prescribed examination of the Council. The Council retained a general power to exempt any person from all or any of the admission requirements.

¹¹ Cap. 16A of the Laws of Kenya.

¹² Perhaps the most comprehensive report written so far on legal education since the attainment of independence in Kenya, the AKIWUMI Report details out the structural, organizational and operational problems of both the Council and the School and suggests radical but practical changes. The Report however misses the point and history of legal education in Kenya when it fails to see the two facets of the development of legal education in the Council and School and lumps them together as essentially one and the same institution. Although the Report creates a regulatory framework in incorporating the Council for the very first time, it superimposes on the Council operational and training mandates which makes it impossible for it to perform its oversight role.

¹³ Act No. 12 of 1995 (Now Cap 16 A of 1998 as revised).

¹⁴ Section 3 of Council of Legal Education Act, cap 16A of the Laws of Kenya.

¹⁵ *Op. Cit.* section 6.

- i) Establish, manage and control training institutions for purposes of: i) Organizing and conducting courses for the acquisition of knowledge and skills for admission as advocates; ii) Organize and conduct courses in legislative drafting; iii) Conduct induction courses for magistrates and other legal professionals; iv) Conduct courses for Government personnel on the general understanding of the law; v) Organize Para-legal courses and programmes; vi) Introduce courses and programmes on Continuing Education, and vii) conduct seminars and courses on topical legal issues,
 - ii) Conduct examinations for the grant of academic awards, and
 - iii) Award certificates, fellowships, scholarships and bursaries.
- 19 For the very first time the Council of Legal Education was mandated to carry out an educational and training function. But as we have noted above, under Schedule II to the Act:
- 'The KSL existing immediately before the commencement of this Act shall be an institution deemed to be an institution established, managed and controlled by the Council under section 6'.*
- 20 By this process, all the regulatory functions of the Council are tied to the training role the School has been carrying out for many years as a department of Government in the Attorney-General's Office. As a result of this, the CLE and the School have played parallel and sometimes competing roles. The seeds of institutional dualism in the regulation and provision of legal education in Kenya and the obfuscation of the roles and functions of the CLE and the School were firmly implanted.
- 21 In addition; the CLE has not endeavoured to establish or forge any meaningful linkages with other providers of legal education and training in the country. This has resulted in the CLE virtually relegating all its regulatory and supervisory functions, identifying instead with the narrow training mandate prosecuted by the School. The little regulatory role carried out by the KSL for purposes of admission by those seeking to qualify as advocates is the only regulatory function the CLE actually undertakes. This is too little and narrow a regulatory role for the mandate espoused under the Act.
- 22 Apart from its failure to live up to its statutory mandate, it is also curious that the Council has no clear management and financial structure as all its operations are currently financed via appropriations by way of a line budget allocated to the KSL.
- 23 The central issue for consideration here is whether the several roles of regulator, trainer and examiner can be viably combined in one and the same institution or affiliate institutions as the case is under current legislative regime. Is it appropriate and best practice to expect the CLE with its current linkages to the School to play a meaningful role as both regulator, trainer and examiner at one and the same time?

TRAINING FOR LEGAL EDUCATION

- 24 As has been already noted above, since the attainment of independence in 1963, the Council of Legal Education's understanding of legal education was limited to training for advocacy and admission to the roll of advocates¹⁶. The regulation and provision of other facets of legal education, notably: university education, Para-legal and continuing professional development have not been given any cognizance or priority whatsoever. In a sense, regulation of legal education has been synonymous with "limiting and controlling entry onto the roll of advocates". The Council has had no role of an oversight nature in legal education at the university level; has established no infrastructure to provide continuing and Para-legal education at other level of professional competence even though the current legislative framework clearly mandates it to carry out these functions.
- 25 In the past, the Council has established no linkages with other institutional operators in the field of legal training, whether as a regulator or trainer. There is no functional relationship with the Commission for Higher Education, nor, is there a working relationship with local faculties of law and other tertiary legal training institutions such as the Kenya School of Professional Studies (KSPS). There are no structures for the Council to involve private local and international initiatives in the sphere of legal education and training in this country.
- 26 Even within the advocacy programme, the Council has done little or nothing to update and modernize its programmes and course offerings. The current curriculum was tailored for the Articled Clerkship programme introduced by the Denning Committee¹⁷ immediately after independence¹⁸. When this system fell into increased disuse in the mid 1970's and graduates from the universities of Dar-es-Salaam and Nairobi became the main avenue for admission to the Bar, through the School, the old curriculum was still retained. The curriculum has no practical or clinical component and yet the School has always been billed as a "practical" vocational training institution. The inherited curriculum has considerably skewed training at the School and at present many of the courses offered are both outdated and irrelevant to the needs of the modern legal system in Kenya. There is an urgent need to overhaul both the programmes and course offerings at the School to make them relevant to the needs of a vibrant

¹⁶ The Scramble for the control and domination of the Council by Government on the one hand and the Law Society of Kenya on the other both during the colonial period and post-independent Kenya should be seen in this light. Each party has sought to exert the most influence over admission to the Bar.

¹⁷ Cmdr 1255 London HMSO 1962.

¹⁸ Under the Advocates (Admission) Regulations, 1997, the course offering at the School comprises of: Constitutional Law and Legal Systems of Kenya, the Law of Contract, Criminal Law, Family Law, the Law of Succession, the Law of Torts, Accounts, Civil Procedure, Criminal Procedure, Commercial Law, the Law of Business Associations, the Law of Equity, the Law of Evidence, Land law, Conveyancing, and Professional Ethics and Practice. In this system, the minimum admission requirement was the possession of "O" levels at credit level. Candidates entering the School at this level were required to complete their studies within a minimum period of 5 years. Option was given to "A" level holders and graduates whose minimum prescribed period of completion was 4 and 3 years respectively.

and modern legal system.

- 27 The inadequacy or and irrelevance of the curriculum at the School cannot be gainsaid. The AKIWUMI Report¹⁹ has categorically stated:

Periodic re-evaluation of curriculum is in order, inter alia, to accommodate changes in the real world in which knowledge and skills learnt are utilized is necessary for good management of legal education. Many changes have occurred since the present curriculum was introduced... Major skills that are considered to be highly relevant to a successful career in law practice are advocacy, communication, drafting, negotiation and analysis²⁰.

- 28 Nine years after the promulgation of the Council of Legal Education Act, there has been no change in the curriculum to accord with its new mandate. The other training role of the Council, viz: the conduct examinations is carried out in a most haphazard manner²¹. There is need to institutionalize the setting of examinations and to establish a secretariat to run both Pre-Bar and Bar examinations on a professional basis. The passing of the Bar examinations by all candidates training at the School should be made a mandatory requirement for admission to the roll of advocates²².
- 29 Overall, and in the judgment of many respondents and the Task Force, the Council of Legal Education has been a dismal failure in the performance of its mandates. It is felt that standards in training for legal education have fallen at a time when the need for and demands on all training providers is very high as is exemplified by the flurry for registration under the parallel programme. This, it has been argued with some justification is partly responsible for the poor delivery of legal services in the country. Remedial action needs to be taken.

PROGRAMMES AND CURRICULUM

- 30 Although we have covered some aspects of programmes and curriculum in the previous section, some salient features on this theme need outlining.
- 31 It is accepted international practice that a properly planned and integrated education system in any field of training must have three benchmarks namely: a theoretical (conceptual) segment which is general and broad based, a vocational one for dispensing specific skills, and a continuing education

¹⁹ Government Printer, Nairobi (1994).

²⁰ AKIWUMI Report (Government Printer) Nairobi, Pp 42-43. Other grounds for curriculum review advanced were the harmonization of the 1989 8-4-4 law curriculum introduced by the University of Nairobi and that of the School so that each institution has niche areas of operation; to accommodate the new mandate of the School as promulgated by the new legislation under the Council of Legal Education Act, No. 12 of 1995.

²¹ In recent times the examination process at the School has come under scrutiny, with issues of quality and poor standards, delay in processing the examinations being raised.

²² The current practice where students from the two local universities: University of Nairobi and Moi University attend the School as a mere formality and receive a post-graduate diploma without attending lectures or sitting examinations is inexplicable, to say the least.

framework to invigorate professionals in the field.

- 32 The theoretical-conceptual segment which is also the foundation stage equips the student with baseline knowledge on a variety of issues, either for knowledge's sake or for general application. The vocational stage trains the student on specific work skills and continuing education adds new skills to the competences of the worker and refreshes his or her baseline knowledge. Training in a properly planned and integrated system should be cascaded in this manner to meet the needs of a modern economy.
- 33 A good education system should not only be integrated and answer to the above format but must also allow for a systemic progression from lower echelons of learning and skills to more advanced ones, normally accepting the lower rank qualification as a benchmark qualification for the more advanced programmes. Each segment of training should folk into the other to allow for internal movement within the whole. In the Kenyan context therefore, graduates at "O" levels should easily integrate with programmes both at diploma and degree levels of the education system. Those holding diplomas should be able to develop their knowledge skills at university level as a natural progression; and then refresh their knowledge base via structured programmes of continuing education.
- 34 Training and admission requirements for available law programmes and their curriculum do not conform to this integrated and programmatic structure in this country. The "O" level qualification seems to be the only benchmark qualification for certificate, diploma and degree programmes at various stages of the education system, making both the certificate and diploma courses completely terminal. There are no avenues for a holder of a diploma or a holder of an alternative qualification eg. Bachelor's of Arts degree to use his or her qualification as a benchmark for progression to the law degree level. For some reason, and regardless of whatever other qualification you may have, admission into law programmes is predicated on only a good pass at "O" levels. Other qualifications whether they are bridging or even higher qualifications are not recognized.
- 35 As a result of the above, admission to law programmes, particularly in the advocacy programme, has been rather skewed and in recent years accusations of unfairness and discriminatory action have surfaced. Candidates who legitimately qualify to do other courses at a higher level than "O" levels and then opt to pursue a career in law are shut out of law programmes because of their initial qualifications at the "O" level stage of the education system. This situation has recently been compounded by admissions into the parallel programme at the universities of Nairobi and Moi. Apparently this programme has hitherto admitted candidates whose entry qualifications are lower than the regular programme requiring a B plain in English and a mean grade of C+.

RECOGNITION AND ACCREDITATION OF FOREIGN QUALIFICATIONS

36. The recognition of foreign qualifications and accreditation of programmes and courses offered in foreign universities is one of the most serious inadequacies in our education system. At independence in 1963 and in conformity the practice established during the colonial period, the Advocates (Degree Qualification) Regulations promulgated under Legal Notice No. 475 recognized several (predominantly British)²³ university degree qualifications for purposes of registration as an advocate in Kenya. But even then, there is no clear indication that the actual law programmes taught at these institutions were accredited or evaluated in any scientific way.
37. After independence, Kenyans from many walks of life got an opportunity to travel abroad to study law. The list promulgated in 1963 (as amended in 1965, 1968 and 1971) continued to be used as a guide for purposes of admission to the KSL. Recognition of foreign universities and degrees under this regime was not extended to non-British institutions, particularly those outside the common law system. Even within the common law systems, institutions in the new emergent African countries, some with more common heritage and social patterns to Kenya were not recognized and their courses accredited.
38. It may seem that the Council of Legal Education Act²⁴ has carried over the 1963 (Degree Qualifications) Regulations pertaining to the recognition of foreign universities for purposes of admission to the School. Exempting students from studying certain courses if they are deemed to have studied them at university level, is however, a process that is carried out in a most *ad hoc* basis.
39. Policy on the recognition of foreign universities and accreditation of their programmes and course offerings for purposes of admission into the advocacy programme at the KSL needs urgent attention. This should include the establishment of parity of foreign degrees, diplomas and certificates for admission to other tertiary programmes run at Kenyan institutions.

²³ The LL. B. degrees recognized under the Regulations were from: University of Aberdeen, University of Aberystwyth, The Queens University of Belfast, University of Birmingham, University of Bristol, University of Cambridge, University of Dublin Trinity College, University of Durham, University of Edinburgh, University of Exeter, University of Glasgow, University of Hull, National University of Ireland, University of Leeds, University of Liverpool, University of London, Victoria University of Manchester, University of Oxford, University of St Andrews, University of Sheffield, University of Southampton, Makerere University College, University of East Africa, University of Nairobi. The Regulations also recognized B. A. Degrees in Law from the following Universities: University of Cambridge, University of Dublin Trinity College, National University of Ireland, Nottingham University, University of Aberdeen, University of Edinburgh, and University of St. Andrews, University of Glasgow, University of Oxford, University of Sheffield, University of Southampton.

²⁴ Op.Cit.

HARMONIZATION WITH LOCAL, REGIONAL AND INTERNATIONAL INSTITUTIONS

- 40 In addition to the recognition and accreditation processes discussed above, there is need for programmes and training initiatives carried out in Kenya to gain acceptance regionally and internationally so that Kenyans who have started their professional training locally may find acceptance at the international level. This process will assume extra importance in the light of developments currently taking place under the auspices of the economic integration of the East African countries.
- 41 There is urgent need, to harmonise and standardize programmes, syllabi and other operational mechanisms, including disciplinary and ethical issues on all law training initiatives within the East African Community to allow legal practitioners and professionals to freely move within the region.

REGULATION OF LEGAL EDUCATION IN KENYA (STANDARD SETTING)

- 42 Section 6 of the Council of Legal Education Act²⁵ sets out the mandate and functions of the Council as being: the exercise of general supervision and control over legal education in Kenya for purposes of the Advocates Act and to advise the Government in relation to all aspects thereof. A close look at these mandates will indicate that they cover three critical areas: regulation and oversight over all legal matters on legal education; training of in all areas of law including Para-legal, continuing education, and the conduct of short courses and workshops and the conduct of BAR examinations for admission to the roll of advocates in Kenya. In a nutshell, the CLE mandate combines the functions of a regulator, service provider as a trainer and an examiner at least in relation to BAR examinations.
- 43 The CLE has under current regulations delegated²⁶ all its mandate and functions to the KSL, an institution originally set up as a department of Government in the Attorney-General's Office as its general agent. By this process, CLE has made the KSL the most visible face of all its activities. Besides, this arrangement has entrenched a symbiotic relationship between the KSL and the CLE. This relationship covers both operational, management and financial issues. A part from the Secretary to the CLE who also doubles up as the Principal of the KSL, the CLE has no management structure, budget, employees nor its own assets.
- 44 The CLE has not endeavored in any meaningful way to establish or forge linkages with other actors in legal education and training whether as a regulator or trainer. In this sense, the CLE has not exercised its mandate to license trainers other than the KSL or supervise the manner in which legal training is dispensed by institutions such as faculties of law at both public and private universities.
- 45 The result of this has been that the CLE and the KSL have played parallel and sometimes competing roles. By this process, the seeds of institutional dualism in the control and provision of legal education in Kenya were firmly implanted. With the passage of time, the two institutions have essentially become one. Although the Akiwumi Report²⁷ was cognizant of this fact, it did not unequivocally recommend separation and the de-linking of these two institutions. As an innovation, the AKIWUMI Report recommended that the CLE be clothed with legal persona with all the attendant attributes that come with

²⁵ Op. Cit.

²⁶ Clause 2 of the Second Schedule to the CLE Act.

²⁷ OP. Cit.

it. However, *post facto* administrative action²⁸ was commenced through the Directorate of Personnel Management, Office of the President, to de-link KSL from the Attorney-General's office in 1999. This in effect means there are two institutions existing side by side, one acting as agent of the other.

- 46 As will be noted from these processes a great deal of confusion persists as to the individual status of the two institutions. Even the process of de-linking the KSL from the Attorney-General's Office did not go very far as the School continued to be administered from that office long after the process started.
- 47 A series of questions arise at the onset on whether the same institution can carry out these diverse mandates effectively and efficiently and what best practice points to in this regard. Could the present form, structure, operational modalities and the manner in which the mandates have been formulated have something to do with the rather dismal performance of the CLE and should the reform process proceed from the point of view of institutional reorganization? What ideally should be the interface between the CLE and the KSL? How about the other actors or providers in the field of legal education and training? How is the CLE's mandate as the licensor of other training institutions to be carried out in circumstances where it is also a service provider through the KSL?
- 48 These questions were subjected to lively discourse both by the members of the Task Force, stakeholders and the public. Passionate views were expressed that the present status that combines in the CLE both the regulatory and training functions is not ideal and does not conform to best practice from elsewhere internationally. Strongly held views were expressed in that the functions of the CLE as a regulator, trainer and examiner should be separated by divesting the CLE of all functions which are of a training or examination nature. Only those functions which are regulatory or supervisory should be retained by the CLE. Submissions by members of the public were unequivocal on the issue that the current status where the CLE is both regulator and service provider is untenable and the CLE should be reformed so that it becomes a proper standard setter on all aspects of legal education and training²⁹.
- 49 The separation of CLE and the School and divesting the CLE of all non-regulatory and supervisory functions should be undertaken by statute.
- 50 In order for the CLE to carry out its functions of setting standards, there is need to license all institutions intending to offer legal education and training. In this sense, licensing should be seen as a useful mechanism for imposing, supervising and maintaining standards in legal education and training. Further, licensing would import recognizing and accrediting licensed institutions to carry out specific training functions which they have capacity both in human resource

²⁸ A part from granting the KSL a line budget by the Ministry of Finance little else happened. Staff at the School continued to enjoy the status of civil servants in the Office of the Attorney-General, and there may be merit in the allegations that staff that had disciplinary matters pending in the Attorney-General's Office were posted to the School as punishment.

²⁹ This function should encompass a supervisory role of the teaching and other forms of regulation of law faculties at both public and private universities and other post-secondary tertiary institutions.

and capital to carry out.

- 51 For this purpose CLE should have a direct and full relationship with all institutions involved in the provision of legal education and training which should include: pre-university institutions (post-secondary training in law for purposes of feeding into university education or paralegal services), universities and post-university institutions, training for continuing professional development. The special relationship which the CLE has cultivated with the KSL should be discontinued as it is not in consonant with its status as a regulator. The KSL should as any other service provider in the sphere of legal education and training be subjected to the full rigour of the regulatory and supervisory role of the CLE.
- 52 In terms of scope of coverage of the CLE's regulatory and supervisory mandate, it was the preponderant view that the CLE should regulate and supervise ALL institutions that are engaged in ANY form of legal training and certification which leads to the use of a law qualification as a tool of trade or other professional undertaking eg as: a para- legal, law graduate or advocate.
- 53 On the financing of the CLE, the Task Force heard that there is need to adequately finance the regulator if it is to be effective in discharging its mandate. One of the reasons that accounts for the poor performance of the current CLE is precisely the lack of its own finances. A regulator must be in a position to carry out its mandate without hindrance and collect fees and other charges from service providers who apply to it for the necessary licences to undertake their work. Several sources of funding for the CLE were considered including implementing S. 15 of Cap 16A (CLE Act) which makes provision for charging an Education Levy against every practicing advocate and other training institutions for reinvestment into the legal education sphere.
- 54 The other sources of funding suggested are: Financing from the Exchequer; fees from regulatory services: (recognition and accreditation),
- 55 Enriched with the views of the public, the Task Force further debated the exact nature of the role and functions of the CLE as a regulator. For an analysis on these issues, the subject was sub-divided into several sub-themes as follows:
 - i) Standards setting;
 - ii) Other functions of the regulator;
 - iii) Relationship of the regulator with other bodies having regulatory functions in higher education;
 - iv) Form and structure of the regulator;
 - v) Relationship between the regulator and the KSL.

THE STANDARDS SETTING MANDATE

- 56 The Task Force noted that the question of standards has many connotations: standards as to who should be licensed to offer what legal training; standards at what level: either before admission to the course programme whether diploma or degree, or in the course of university and other tertiary instruction with specific focus on the proficiency levels desirable). It became clear that for a regulator, the question of setting standards goes beyond purely academic issues and would inexorably cover the following broad areas of the legal education process:
- i) Curricula development;
 - ii) Capacity of providers;
 - iii) Depth of instruction;
 - iv) Quality assurance (Examinations); and
 - v) Evaluation and monitoring.
- 57 In terms of regulating curricula development, the regulator's role would entail providing the template curriculum, and leave syllabi development at the individual institutional level to the trainers. The basic role of the regulator would be to benchmark issues in curricular development and not provide the detailed course contents.
- 58 With respect to the capacity of providers of legal education, regulation would aim at ensuring that: the teaching and administrative staff is properly trained (who is teaching what, to whom, where, when and for what?); the institutions have adequate academic infrastructure viz: a library with adequate resources, lecture halls, social centres, etc; and, ultimately, adequate funding.
- 59 A second component of the capacity of providers/trainers is the qualification to teach in what institution. The general principle would be that a lecturer should hold a higher qualification than the one he/she is teaching in. Simply put, if teaching at the undergraduate level, a lecturer ought to be a holder of a master's degree, which should be developed to doctorate level. A system of exacting standards needs to be put in place for purposes of enforcing this requirement. Similarly, non-degree holders ought not train at diploma level. In addition, lecturers at all levels should ideally possess formal exposure to teaching methodologies/skills, as this would enhance their capacity to impart knowledge more effectively.
- 60 International comparative experience indicates generally that university lecturers are not required to possess any formal or specific teaching qualifications before engaging in imparting knowledge, such experience

perhaps emanating from primarily continuing education. A structured mechanism may be required in Kenya to integrate the need to progressively develop teaching staff in the country's tertiary institutions.

- 61 On the depth of instruction, the regulator should require trainers to show how the quality of instruction is maintained. This calls for a system of monitoring and evaluation, capable of periodic reviews by both the training institutions and the regulator itself. Currency of information is a key component to this process. There is need to monitor the updating of information that is imparted, keep current the research facilities and methodologies, and professional development for the lecturers.
- 62 On quality assurance at all levels of legal training, which is a key aspect of quality of instruction, the Task Force noted the need to set up a mechanism for periodic and regular updating of syllabi, research and professional development. The assumption and practice should be that a provider has been licensed to train because it has demonstrated capacity to perform at a particular benchmarked level at which level the performance by the institution and training facilities must be maintained for it to continue enjoying the grant of such licence.
- 63 Considerable thought was given to the issue as to whether the individual providers or training institutions should set and administer their own exams, and if so, how the regulator should exact the highest levels of standards amongst a multiplicity of service providers. The consensus view leaned in favour of establishing a structure whereby the teaching process is segregated from the examination process so that a different set of persons teach the course, another sets the examinations and another set of persons mark the scripts. The setting of examinations and marking should be subjected to moderation and external audits by senior colleagues in the profession. This structure is suggested, would give integrity to the examination process, expose lecturers who do not teach adequately the course syllabi or teach in proper depth, and would reduce the chances of examination cheating, besides contributing to a common stock of legal practitioners. It was further suggested that the setting of Bar Examinations in this structured way would in the long run cure many perceived or real issues of inadequacy in training standards.
- 64 Although this recommendation was unanimously endorsed, it was understood and recognized that Universities, especially public universities would continue their age old practice of running their own examination process, although with the safeguards suggested above.
- 65 At the training for a diploma both in the Para-legal studies and the post-graduate diploma in advocacy (the Pre-Bar and the Bar), the consensus was in favour of an Examinations Secretariat, as a separate unit of the CLE that would standardize this aspect of legal education.

- 66 The foregoing entails clothing the regulator with authority to interrogate the provider or trainer to establish how it deals with quality assurance issues. To facilitate this function, the regulator should develop indices or a check list of standards in advance for use in evaluating the performance of trainers. Evaluation and monitoring must be a continuous process, and the regulator must determine the intervals when this should be undertaken. This system should accommodate scheduled and unscheduled checks or inspections to provide an assurance system at all times.

OTHER FUNCTIONS OF THE REGULATOR

- 67 Other functions of the regulator should include licensing of post-secondary and other higher education institutions to provide legal education, either through facilitating the role of the *Commission of Higher Education (CHE)*, Universities' Joint Admission Board, etc, or through some other mechanisms. Licensing should be employed as a mechanism for standard setting. For the CLE to carry out this function properly it will have to collaborate with various other actors in the sphere of legal education, eg. CHE and University Admission Boards.

RELATIONSHIP BETWEEN THE REGULATOR AND OTHER BODIES WITH REGULATOR FUNCTIONS IN THE FIELD OF HIGHER EDUCATION (CHE)

- 68 The relationship between CHE and CLE should be complementary. An arrangement needs to be found whereby the respective competencies of the two institutions are profitably brought to interface with a view to enriching and rendering the process of regulation efficient and cost-effective. With respect to legal education, a duty to consult (on the part of the CHE) should be created to promote the good of the legal profession. This duty should be created by statute.
- 69 Besides the foregoing, there is need for the harmonization of the relationship between public universities and the CHE, again with specific relevance to legal education (though admittedly this component is larger than the narrow aspect of legal education in terms of education policy).

RELATIONSHIP BETWEEN THE REGULATOR AND KSL

- 70 The special relationship which the CLE has cultivated with the KSL should be discontinued as it is not in consonant with its status as a regulator. The KSL should as any other service provider in the sphere of legal education and training be subjected to the full rigour of the regulatory and supervisory mandate of the CLE.

RECOMMENDATION: 1

I. The Council for Legal Education, should be the regulatory and policy authority for legal education and training and should be reconstituted under this mandate to exercise the following functions and powers:

II. The setting of standards for legal education providers with respect to;

- i) *Recognition and accreditation;*
- ii) *Licensing;*
- iii) *Core curriculum;*
- iv) *Mode of instruction;*
- v) *Mode and quality of examinations;*
- vi) *Monitoring and evaluation.*

III. These mandates should be provided for under statute.

IV. CLE to be under an obligation under statute to collaborate with other regulators in the field of education, in particular, the CHE and also professional bodies such as LSK.

FORM AND STRUCTURE OF THE REGULATOR

- 71 The question of the form and structure of regulator is one that has drawn great concern. The current situation where the mandates of the CLE are carried out by the KSL either on a delegated or agency basis is unsatisfactory. Similarly, evidence indicates that the constituencies and stakeholders represented on the Council of the CLE need revisiting with a view to making it a more efficient organ. The history of the CLE indicates that this body has been dominated by representatives from the judiciary, the Attorney-General's Office and the Law Society of Kenya. Other stakeholders in legal education such as universities, the consumer, and the private sector need representation at the CLE.

RECOMMENDATION: 2

I. Representation on the CLE is suggested as follows:

- i) MOJCA;*
- ii) State Law Office;*
- iii) Judiciary;*
- iv) Legal profession;*
- v) Private Sector;*
- vi) Academia (Universities), and*
- vii) Civil Society organizations in the legal sector.*

In terms of its institutional status, the regulator should be a body corporate, established by statute with all the attendant attributes of a legal person. The CLE should comprise of a Management Board and serviced by a Secretariat. The current Council for Legal Education should in the new structure constitute the Board of Management. The Secretariat of the CLE should NOT be the KSL. A new secretariat of the Council should be constituted as a professional unit possessing certain core competencies, and under the complete control and supervision of the Board.

The Task Force further recommends that the Secretariat should be adequately funded for it to perform its new and more focused role. It would greatly enhance efficiency to supply, within the secretariat, all the expertise needed to implement the regulator's mandate. The expertise required should as a matter of practice be out-sourced for every specific function, maintaining the Secretariat lean and efficient. The Council itself should be a stakeholder forum where issues are brainstormed, and handed over to the Secretariat for processing, implementation and feedback.

RECOMMENDATION: 3

I. The CLE, as regulator and policy formulator in legal education should:

- i) *be set up as a body corporate;*
- ii) *be created by statute;*
- iii) *The mandate of CLE should be Should be de-linked from any institution engaged in training for legal education;*
- iv) *The CLE should have an obligation to collaborate with other regulators;*
- v) *The CLE should however have consult and collaborate in the formulation of policy on continuing professional development with KSL.*

RECOMMENDATION: 4

- I. Representation to the CLE should be drawn from:
 - i) *Ministry for the time being responsible for legal education in Kenya;*
 - ii) *Ministry of Finance;*
 - iii) *Office of the Attorney General;*
 - iv) *The Judiciary;*
 - v) *The LSK;*
 - vi) *One representative from the academia,*
 - vii) *Representative of the private sector,*
 - viii) *Representative from civil society organization in the legal sector.*
- II. The CLE should have a secretary who shall be CEO and the Secretariat should be adequately capacitated
- III. Representation on the CLE should have 1/3 of either gender in the minority at any one time.
- IV. That the CLE should be funded from the Legal Education Fund.
- v. Funding for the CLE should be by the Exchequer and from regulatory service fees. The levels of such funding should be adequate for the CLE to efficiently carry out its mandate.

CHAPTER 4

TRAINING FOR LEGAL EDUCATION:

(Advocacy and continuing professional development)

- 74 Since the inception of regulation of legal education in Kenya during the Colonial period, there has been an overlap in the roles and functions of the CLE and KSL which has led to their inability to operate optimally. Despite the recommendations of the Akiwumi Report or rather because of it, this unhappy situation has persisted to the present day. Whereas, the CLE lacks the basic infrastructure to carry out its mandate, the KSL has been unable to operate independently, in large measure functioning as a department of Government (initially under the Attorney-general's Office)³⁰ and now under the Ministry of Justice and Constitutional Affairs. Although the CLE was clothed with legal *persona* in 1995, this new status has had little impact on its operations. Ironically, the CLE has in reversal role been used as the Board of Directors of the KSL.
- 75 A further factor that stifles the functions of the CLE has been the lack of clear and proper inter-connection and coordination with faculties in public universities on the one hand and institutions which have mandates to exercise control over legal education and training, especially the CHE and CLE, with the result that conflicts and overlaps abound in relation to the training activities at various service providers. Ostensibly, each institution, whether as regulator or service provider only operates within its narrow mandate conferred to it by the enabling or respective statute, which statute(s) unfortunately has no in-built cross-referencing mechanisms.
- 76 The form, structure, role and functions of the KSL as a public training institution undertaking training for and on behalf of the Government and issues relating to its de-linking from the CLE raised a great deal of interest from respondents and generated a great deal of discourse at the Task Force. Just as stakeholders were unequivocal about segregating the training and examination roles from the current mandate of the CLE, so also were they unequivocal about setting up an independent and autonomous public training institution charged solely with the responsibility of training in various aspects of law for and on behalf of Government. Such a School by whatever name called, may also undertake some training for the private sector and collaborate with international agencies in the discharge of their mandates in training in the sphere of legal education in Kenya. The establishment of such a School is further anchored on the argument that since the Government is the largest consumer of legal services in the country, it has a direct interest in ensuring that the training of legal professionals proceeds on clear and defined lines,

³⁰ This was as a result of the Denning Committee Report, which recommended the setting up of an institution in the manner of the College of Law then existing in the United Kingdom. The programme introduced at the School was on the Articled Clerkship system which was phased out in 1989.

availing to such an institution the best resources and facilities possible to enhance the quality of professionals produced.

- 77 What form and structure may such an institution then take and what functions would it discharge? The preponderant view in the submissions and at the Task Force was that the current KSL should be re-established and possibly renamed, as a statutory body with its own Board of Governors or management, the Board being drawn from its various stakeholders and comprising of experts in legal education and training who would add value to the management of the institution. After further argument at the at the Mombasa Stakeholders' Workshop, it was resolved that the name The KSL should be retained for historical reasons.
- 78 Representation to this Board of Management or Governors should be drawn from the Ministry for the time being responsible for legal education, Ministry of Finance, Office of the Attorney-General, the Judiciary, a representative of the academia, the Law Society of Kenya, the private sector and a representative of civil society organizations working in the legal sector.
- ~~79~~ In the proposed structure the office of the Principal would be re-designated as Director and Chief Executive. The Director would also act as the Secretary of the Board of Governors.

RECOMMENDATION: 5

I. The current KSL should be re-established as an independent corporate legal entity.

II. The KSL should be a public training institution in legal education in the following areas:

- i) Advocacy training ;
- ii) Continuing Professional Development;
- iii) -Para-legal training;
- iv) Specialized professional training.

III. The KSL should also undertake projects, consultancies and research.

RECOMMENDATION: 6

I. Members of the (KSL) Board of Management should be drawn from the following stakeholders:

- i) *The Ministry for the time being responsible for legal education*
- ii) *The Ministry for the time being responsible for finance*
- iii) *The Attorney - General's Office*
- iv) *The Judiciary*
- v) *The Law Society of Kenya*
- vi) *Three representatives from the Academia*

II. The management of the KSL should comprise of:

- i) *Director, who will also be the Chief executive and secretary to the board.*
- ii) *Deputy Directors to be determined by the board,*
- iii) *Such Assistant Directors and other officers as may be determined from time to time by the board.*

III. The board of the KSL should comprise persons with expertise, experience and interest in running and managing such institutions.

80 There was need then to inquire into what relationship the institution referred to above should have with the CLE, the government and with other providers of legal education in Kenya. Views expressed were mainly to the effect that the relationship between CLE and KSL or other providers must be one of clear regulatory and supervisory nature. All providers of Legal Education must be under supervision of CLE. The KSL should be accountable and responsible and to MOJCA on academic and administrative issues and in turn report to the CLE on training issues as required of institutions under CLE Act.

81 Further, the members of the Task Force were of the strong view that a committee on the harmonization and coordination of legal education in like manner to the Inter-University Council of East Africa (IUCEA) be established.

The Chair of the proposed committee should be a member of the CLE and members should be drawn from recognized legal education providers.

RECOMMENDATION: 7

The KSL should be accountable to the ministry for the time being responsible for legal education but with reporting responsibilities to the CLE on programmes and curriculum matters.

- 82 The KSL as re-established will require proper levels of financing as of necessity. Finance for the institution should be sourced from the Consolidated Fund through MOJCA, Self-generated funds from various income-generating activities, donor-sourced funds and all courses offered by the School must be provided for at a cost.
- 83 Subsidies may be provided for needy students. A student studying towards the advocacy programme or otherwise in a formal training programme may be eligible as a beneficiary of financial help under the HELB Act.

RECOMMENDATION: 8

The KSL should be financed through:

- i) *The Consolidated Fund through the Ministry for the time being responsible for legal education;*
- ii) *Funds from various income-generating activities including courses which must be provided at cost;*
- iii) *Donor-sourced funds.*

- 84 It was further suggested and agreed that KSL should establish branches in Mombasa and Western Kenya for the efficient and effective provision of legal education, particularly continuing professional development and the supervision of the advocacy programme. It was further noted that the School can draw immense inspiration and experience from the South African College of

Justice on the diversity of programmes on continuing professional development undertaken at that institution.

RECOMMENDATION: 9

The KSL may set up campuses in other parts of the country on a need basis.

PROGRAMMES, CURRICULA AND EXAMINATIONS

85 Other than for purposes of the advocacy programme, there are no formal requirements or criteria for admission to an institution licensed by the CLE *per se* for any purpose. Therefore, an institution whether offering degrees or diplomas or other qualifications may admit students as it pleases so long as those students have no intention of entering into the advocacy programme³¹. This presents no problem until these students then seek to join the advocacy programme at the KSL. Some students have obtained diplomas in para-legal studies or indeed in other non-legal courses which they then have used to enter into law degree programmes at universities. After qualifying at the degree level they then seek entry into the advocacy programme since they are graduates in law. This has in the past caused problems of entry into the School as such students have been confronted with the challenge that they were ineligible to join a law programme at local universities and are therefore ineligible for admission at KSL.

86 The problem posed above manifests itself as an issue of the inter-linkage in programmes and curricula taught at various stages of legal training in Kenya and therefore the need for harmonization and integration of training initiatives to allow for internal progression from one programme to another. To discuss this problem fully this part of the Report covers the following sub-themes:

- i) Admission criteria;
- ii) Programmes and curriculum development comprising the following facets: a) Diploma programmes, the Advocacy Programme, Para-legal training and Continuing professional development;
- iii) Pre-Bar and Bar examinations; and
- iv) Pupilage supervision.

ADMISSION CRITERIA

87 The fundamental question under this sub-theme is what should be the admission criteria for the purposes of enrolling for various levels of training in legal education. This question covers admission criteria for all levels of legal training including diploma, degree and post-degree levels of education.

³¹ It would appear from this point that there is a general assumption, rightly or wrongly, that all who train in law in any institution are all looking to join the advocacy programme.

Responses and submissions from members of the public lent favour to the view that there should be set standards for entry into every level of the legal profession. It should be noted that public responses on this question were predicated on the apparent general fixation with admission to the roll of advocates being the end product of legal education. To that extent, therefore, public views were limited to benchmarking entry qualifications for the degree-level training and admission to the KSL.

- 88 Taking into account the views of the public and best practice from other countries, the Task Force arrived at the conclusion that the various stages of legal education will require different benchmarks for entry (i.e. entry standards/requirements). It is further the view of the Task Force that the process of setting these benchmarks or criteria should be a consultative process involving the regulator (CLE) and the providers of legal education at each level of training eg the KSL.³²
- 89 In setting admission criteria, the Task Force noted that it would be important to ensure that the study of law is capable of fitting into a progression line which allows one to move from one level of academic standing to another. A student who holds a diploma in-law should be able to use it to progress to a higher level of study: that is to degree level and ultimately admission into the advocacy programme.
- 90 The minimum requirements for entry into the different levels of training institutions should be as per the harmonization scheme agreed upon by the proposed committee of Legal education Providers and as determined from time to time.
- 91 During the hearings, the Task Force was told that legal education should not be oriented purely for the advocacy programme and that it should be opened up to accommodate degree level training for purposes other than advocacy. The implication here may be that the requirement that every law graduate must study and pass the same subjects should be approached with caution or even avoided as the students who may not wish to practice law as advocates may not probably need to cover certain subjects at some level or with the same rigour.
- 92 Although the Task Force had sympathy with the force of this argument, it was however of the strongly held view that training at whatever level of legal education should take into account the end use of the certificate and that each level of training should be sufficiently generalized to impart to the student enough knowledge.

³² CHE will need to be consulted for guidance on what constitutes a certificate or a diploma. This is a question of educational benchmarking. There will be need to define the admission criteria for purposes of admission to post-secondary para-legal training programmes and KSL para-legal training programmes.

- 93 The Task Force also heard that bridging courses should be made available and acceptable as a mode of progression to higher levels of legal education. In this regard, universities should be mandated to put in place modalities for the recognition of bridging courses as acceptable alternative qualifications for admission into their programmes. It was further recommended that basic degrees ought to be accepted as alternative and basic qualifications for enrollment under the LL.B. degree programme.
- 94 In terms of institutional linkages, thought was given to the nature of the relationships that ought to be fostered between the CLE/KSL and other educational policy instruments such as the CHE and the Ministry of Education in fashioning overall education policy on admissions, and it is recommended that there should be between CHE and CLE complementary/horizontal relations obliging them to consult and act in concert in their respective regulatory mandates. As between the CLE and KSL, the relationship should be linear, grounded on the regulatory/supervisory links between the regulator and the regulated.
- 95 The CLE should be expected to annually report to the CHE, which shall in turn be responsible for reporting to the line ministry for legislative purposes. The KSL, on the other hand, and for reasons stated elsewhere in this Report, will report on the finance and administrative matters to the MOJCA, but with reporting responsibilities on academic issues to the CLE. The relationship between the CLE and any service providers for legal education shall be linear.

RECOMMENDATION: 10.

- i) *Entry standards to various levels of legal training (certificate, diploma, degree and Bar qualification) should be set by CLE in consultation with CHE,*
- ii) *Legal education should facilitate progression from lower to higher levels; recognition of prior learning and experiences in law;*
- iii) *There is need to establish equivalencies and a system for credit transfers;*
- iv) *Alternative academic qualifications should be accepted as alternative routings to the LL.B degree training.*

- 96 As noted in the introductory chapter, a good education system in any field of study should be able to distinguish between conceptual, vocational and continuing education needs of the student and provide for them at the programme and curriculum development levels. This general point is true of all professional programmes including law, although argument has been made that professional programmes unlike general degrees tend to introduce the vocational training component at a slightly earlier stage in the education system. This notwithstanding, in the design of programmes and curricular, there is always the need to move from the general to the specific with elementary or foundation courses being taught at the lower end of the academic spectrum and more advanced and technical courses at the higher level.
- 97 For purposes of training in law this would translate into a training progression whereby elementary or foundation courses are studied at diploma level, concepts and theoretical based courses are taught at university level and practical or clinical education taught at the KSL. This is the case even if we accept the argument earlier advanced that each segment of learnership and training is terminal in the sense that on completion the successful candidate receives a certificate which gives him or her entry into the labour market. Each segment of learning and training whether foundation or vocational, should naturally lead to the other and for this reason ALL these courses should be labeled CLE, CLE being the accrediting institution.
- 98 As between the degree programme and the courses offered for the bar, the difference should be more in the manner and mode of instruction than in the course content. The degree programme should emphasize on equipping the student with core conceptual knowledge aimed at empowering the student to understand the principles of law and their socio-economic rationale; while instruction in courses at the bar should take a practical and clinical orientation, giving the student the opportunity to do things rather than being told how to do them. The Task Force also holds the strong view that teaching at degree level should be in a social context.
- 99 The courses herebelow, are proposed to be offered at the various stages of legal training. The general principle espoused by the Task Force is that each training segment should comprise of a composite or generic core number of courses which may then be added on by way of optional or elective courses giving each institution a preferred niche area. This means therefore that each qualification must accommodate or comprise several functions, but should at the same time be versatile enough to answer to specific uses within the legal profession. For example, if Moi University wishes to have its niche area in commercial law courses and therefore preferring to produce commercial oriented lawyers, it may tailor its courses in such a way that that additional courses at the optional or elective level required to complete the degree programme are all in commercial law.

RECOMMENDATION: 11

CORE COURSES RECOMMENDED AT DIPLOMA LEVEL

The unit descriptions herebelow, are a mere guide and not definitive. Different course descriptions may be adapted by different providers.

- i) *Elements of Contract*
- ii) *Elements of the Law of Torts*
- iii) *Elements of Commercial law*
- iv) *Elements of Property law*
- v) *General Principles of Constitutional Law and legal systems*
- vi) *Elements of Family Law and Succession*
- vii) *Elements of the Law of Business associations*
- viii) *Elements of Civil procedure*
- ix) *Elements of Criminal law and Procedure*
- x) *Basic Book-keeping and accounting*
- xi) *Elements of Office Practice and management.*

RECOMMENDATION: 12

CORE COURSES AT THE DEGREE LEVEL

The unit descriptions herebelow, are a mere guide and not definitive. Different course descriptions may be adapted by different Universities for similar courses.

- i) *Legal research*
- ii) *Jurisprudence*
- iii) *Law of Torts*
- iv) *Administrative Law*
- v) *Constitutional Law*
- vi) *Law of Contract*
- vii) *Legal systems and methods*
- viii) *Criminal law*
- ix) *Family Law and succession*
- x) *Law of Evidence*
- xi) *Commercial Law (Sale of goods, hire purchase and agency)*
- xii) *Law of Business Associations*
- xiii) *Equity including law of trusts.*
- xiv) *Property Law*
- xv) *Public International law*
- xvi) *Labour Law*

RECOMMENDATION: 13

THE BAR COURSES

1. The units as described herebelow, are merely a guide and not definitive. CLE should determine the course content in respect of each course:

- i) *Professional Ethics and Practice*
- ii) *Accounts (including Trust accounts)*
- iii) *Advocacy and Evidence*
- iv) *Legal Drafting*
- v) *Conveyancing*
- vi) *Civil procedure*
- vii) *Criminal procedure*
- viii) *Wills, Trusts and Probate administration of estates.*
- ix) *Bankruptcy and Insolvency processes*
- x) *Administrative action*
- xi) *Alternative Dispute Resolution Mechanisms*
- xii) *Managing Legal Practice*
- xiii) *Pupillage.*

RECOMMENDATION: 14

- i) *The Bar courses should be taught in a clinical and practical manner to facilitate skills transfer.*
- ii) *There should be no prohibition to universities teaching some of the BAR courses at university level, although students will be required to sit for the BAR examination at the KSL or other provider at that level.*

101 For purposes of training for Bar exams, it is necessary to review the KSL academic calendar urgently to ensure that it is more accommodative of the needs of the students and its facilities are maximally exploited. For this purpose, it is proposed that there should be two admissions per year and each group shall be examined separately. The necessary regulations amending Legal Notice No. 357 of 1997 should be promulgated in due course.

102 As it has been noted elsewhere, the KSL should in addition to training for BAR examinations, train in specialized professional courses responsive to the needs of both the public and private sectors, besides training for continuing professional development. In some cases, there may be need for the KSL to mount remedial and bridging courses along side faculties of law for students from recognized universities who may not have covered CLE core courses.

RECOMMENDATION. 15

Development of curricula and Syllabi should be undertaken by service providers and accredited by the CLE.

PARA-LEGAL TRAINING (At Diploma Level)

103 The public are of the overwhelming view that there is an urgent need to provide Para-legal education and training in a formal and structured manner in this country in order to improve and enhance the quality of service provision in the legal sector. While the KSL should take a lead role in establishing the structures to carry out this mandate; it should not be conferred a monopoly in providing this level of training. The CLE should for this purpose license and accredit other institutions, both in the public and private sectors, to do so.

104 Both evidence at public hearings and debate by the Task Force clearly pointed to the advantages which will be had from a more professional cadre of Para-legal staff and strong recommendation is herewith made that it is desirable for the legal profession be served by such a trained cadre of professionals. It is further recommended that both the Bench and the Bar should be required by some formal mechanism to engage this level of professional service.

105 In terms of scope, Para-legal education and training should accommodate the police, lay prosecutors, court clerks, office clerks, legal secretaries, legal registry staff, law librarians, process servers, among others.

RECOMMENDATION: 16

- i) *There is need for a formal structure for the training of Para-legal personnel in Kenya;*
- ii) *The Para-legal training programme should cover all aspects of Para legal services including: the setting of standards for different cadres (judicial and advocacy, clerkships, public prosecutions, process serving and interpretation etc);*
- iii) *The curricular and syllabi should be developed by service providers and approved by the CLE;*
- iv) *CLE should recognize and accredit trainers and programmes for that purpose;*
- v) *Examinations should be conducted by CLE's Examinations' division as recommended herein; with such quality assurance standards as have been discussed in chapter 3.*

CONTINUING PROFESSIONAL DEVELOPMENT

106 The terms of reference required the Task Force to assess the principles and parameters upon which continuing professional development ought to be developed and streamlined in Kenya. In debating this all important area of legal education and training, the Task Force had to grapple with issues pertaining to the introduction and maintenance of continuing professional development in the country; the institutions which should offer instruction for this purpose; the form the training ought to take, including questions of certification; the course content and curriculum to be followed and the administrative mechanisms that should be put in place to implement the programme.

- 107 In the course of its deliberations the Task Force noted that continuing education has become a living and dynamic process in many spheres of socio-economic life of every economy across the world. The need for continuing education in law is perhaps more urgent than in most other areas. The need for the legal practitioners, whether as judge, magistrate, prosecutor, corporate lawyer or advocate to update his stock of knowledge, acquire new knowledge or merely interact with his colleagues to exchange views is an important aspect of learning, which has in large measure been accorded low or no priority in this country.
- 108 There is need for training not only in advanced formal legal courses such as corporate governance, economic crimes, intellectual property rights, human rights, arbitration and conciliation, but also in technical and support services courses such as: legal research, client counseling, information technology, among many others. This anomaly or rather omission in our curriculum should be corrected by institutionalizing continuing professional development in various aspects of our legal practice.
- 109 In order for continuing professional development to be relevant and impact on socio-economic development as advocated above, it should be introduced at a programmatic and not in a haphazard fashion. It should also not take a sectoral approach with each sub-sector of the legal profession eg. the prosecutions or the Law Society devising its own programmes, but should rather be handled under one structured roof. The CLE as regulator should license institutions and accredit programmes which meet set criteria imparting quality continuing professional development.
- 110 Although at the initial stage the KSL should play a lead role in developing curricular and training at this level, other providers should develop niche areas. For the KSL to play this role effectively, it will be necessary to endow the KSL with the both human and capital resources to carry out this function. The judiciary, Attorney-General's Office, Government Departments and other public sector institutions including the private sector should be required to utilize the KSL as the outlet for training in continuing professional development.
- 111 KSL should on its part endeavour to give relevance and professionalism to continuing professional development programmes by hiring personnel at appropriate levels, and or outsourcing relevant expertise on specific and specialized areas/subjects from outside the institution.
- 112 To effectively implement the reforms proposed under this sub-theme, there will be need for legislative initiatives, harmonization of the relevant acts, the enhancement of the capacity of KSL and CLE in financial, management and operational aspects. To mainstream this programme within the civil service, it will be necessary to incorporate continuing professional development programmes in their official terms and conditions of service, with corresponding obligations on the part of the Government to facilitate the acquisition of such training, as a concomitant obligation on the part of civil

servants to meet the minimum annual benchmarks which will then be used in their performance evaluation. It is further recommended that the Government will need to expand the hiring of specialist legal personnel in legal departments within ministries.

113 It may also be worth the while for Government to include continuing professional development as one of the criteria for appointment and promotions to public offices, appointment as Senior Counsel and to other senior legal offices.

114 Academic institutions should also internalize the ethos of continuing professional development.

RECOMMENDATIONS: 17

- i) *Continuing Professional Development should be implemented for the development and the maintenance of standards for all persons in the legal profession and sector including law lecturers or judges and practicing advocates;*
- ii) *The CLE in collaboration with the KSL should develop guidelines for continuing professional development, including course offerings;*
- iii) *Continuing professional development especially for public service professionals should primarily be undertaken at and through KSL although other accredited institutions may offer and run programmes;*
- iv) *The capacity of the KSL should be enhanced to competently run and manage the continuing professional development programmes;*
- v) *For relevance, KSL may out-source specialized personnel in areas/subjects where such expertise is lacking at the School.*

PRE-BAR EXAMINATIONS

115 The issue of Pre-Bar examinations has been fairly controversial and both submissions and debate by the Task Force bear testimony to this. Pre-Bar Examinations have not been employed in Kenya before as the means for admission to the KSL or the Bar. As noted earlier graduates enter different courses at university level with a fairly wide range of entry qualifications.

These admission criteria are tailored at Faculty and university levels. The current admission requirement for studying law at local universities is an aggregate grade of C+ and an English grade of B plain. This entry requirement has in the past been enforced as the minimum requirement for any candidate seeking admission into the KSL and hence admission to the Bar.

- 116 This requirement, has been the subject of litigation and allegations of discriminatory action on the part of the CLE and the KSL. The rule has been applied even to students who have studied and attained law degrees from CHE recognized and accredited universities and institutions. In other words, although CHE may have ostensibly recognized these qualifications, the CLE did not with the result that the hope of many ordinary Kenyans who sent their children to school abroad in the hope that they will return and enroll for the advocacy programme at the KSL were dashed. There is need therefore, to harmonize the functions of CHE and CLE in this regard.
- 117 The rationale for Pre-Bar examinations will then be to standardize admission to the Bar for those who will not be eligible to sit the Bar examinations. The basic qualification to hold before taking the Pre-Bar examination shall be the appropriate law degree.
- 118 ~~Both submissions from the public and debate by the Task Force points to the~~ fallacy in the assumption that only candidates who passed "O" levels at a particular threshold have either become or can become good lawyers and advocates. The Pre-Bar Examination mechanism should be used to test the competences of candidates wishing to join the Bar but who did not initially have the requisite grade to do so.

RECOMMENDATIONS 18

- i) *Graduates seeking to take the Bar who have qualified with an LL.B after following the prescribed CLE Curriculum will be automatically exempted from taking Pre-Bar Examinations.*
- ii) *Similarly, Graduates seeking to take the Bar and who have qualified from foreign but recognized (by CHE) and whose courses are accredited by the CLE will be automatically exempt from the Pre-Bar Examinations.*
- iii) *Any other graduate in Law seeking to take the Bar who either has not followed the prescribed CLE curriculum or studied in a foreign university which is either not recognized by CHE or whose curriculum has not been accredited by the CLE shall be required to sit Pre-Bar Examinations as a condition of taking the Bar.*
- iv) *The Pre-Bar Examination shall test all aspects of legal knowledge at the degree core subjects level and will not be limited only to testing proficiency in English.*
- v) *A candidate shall be allowed to take Pre-Bar examinations a maximum of three times.*

BAR EXAMINATIONS

- 119 Submissions from members of the public were overwhelming in their recommendation that Bar Examinations should be made mandatory for all candidates seeking admission into the advocacy programme. The rationale for this recommendation is predicated on the need to enhance standards, and assure the nation of a competent legal profession which is properly trained. To this end, it was strongly advocated that the current practice whereby a blanket exemption is given to local graduates from public universities from taking the Bar Examinations should be discontinued forthwith. Only a minority view, mostly from the student community, was not in support of this recommendation, arguing that such examinations were mere duplication of what they had already studied at university level and therefore requiring to undergo further training at the KSL was a mere ploy to delay them from entering the lucrative legal practice.
- 120 The student community took great exception to the recently published Legal Notice No. 2618 of 2005 on Compulsory Courses, arguing that it was pre-emptory on the part of the CLE to gazette the subjects when the matter was up

for discussion under the terms of reference by the Task Force. They further argued that training at the KSL merely duplicated courses covered at faculties of law.

- 121 The Task Force exhaustively debated the matter and resolved it by recasting both the manner of course content and instruction of the courses to be taught at the KSL vis-à-vis those taught at university level. With this new recommendation on what the Task Force has called CLE courses the requirement that ALL applicants seeking to join the KSL in the advocacy programme must sit BAR Examinations assumes a new stature.
- 122 Previous experience at the CLE and the KSL demonstrates that some students take unduly long to successfully complete the BAR Examinations, and a question arose as to whether such examinations should be taken at infinitum or whether there should be a restriction on the number of re-sits. Some submissions mostly from students argued for no restriction whatsoever on the number of re-sits so long as the candidate can pay the examination fees required.
- 123 The preponderant view of the Task Force however was that if a candidate fails the examinations in four consecutive sittings currently permitted under the regulations, this would be evidence of academic ineptitude begging for retraining such candidate from further attempts. In any case it was thought to be a waste of everyone's time and money to keep sitting for the same examination for ever. Candidates who fail to start a legal career after four successive re-sits should be released to try a career in something else.
- 124 After interrogating these opposing views, the Task Force settled for a medium view that a maximum of four sittings within a period of four years should be allowed per candidate. It was further resolved that re-sitting of BAR Examinations should be made increasingly more expensive in order to encourage students to prepare adequately for them.

RECOMMENDATION 19

- i) *Any person seeking to practice law in Kenya must take and pass the Bar examination unless otherwise exempted by law.*
- ii) *Candidates will be allowed a maximum of five times to sit and pass ALL examination papers pertaining to the BAR within a prescribed period of four academic years.*

STRUCTURE OF EXAMINING BODY

- 125 The question as to who should conduct examinations in CLE courses ranging from the certificate courses through to the BAR examinations was debated at great length. The critical question here was whether the individual service providers should conduct their own examinations under close supervision by the CLE; or whether the CLE itself should constitute itself into an examination body or whether a new national examination's body should be set up to carry out this function.
- 126 The debate on these issues revolved around the important considerations that: the examination process must be given integrity, examinations must be fair and reflective of all syllabi taught, and that incidences of vindictiveness and other examination malpractices must be reduced to the minimum.
- 127 From the onset of this debate, the Task Force agreed and resolved that the CLE courses taught at university segment should continue being examined as are currently by faculties themselves. This resolve was based on the understanding that conducting examinations is a traditional role faculties have played since time immemorial and that for this purpose, universities and faculties have established clear structures and practices which both ensure integrity, fairness and objectivity. The position was however different for courses proposed to be taught at certificate and diploma level.
- 128 On the issue of whether individual providers should set and mark their own examinations, it is the preponderant view of the Task Force is that the examination process at these institutions would not inspire confidence in the mind of many people as meeting quality assurance standards set above and in any case, certificates from these providers are unlikely to be readily accepted by the market to enable its holders compete favourably in the market for employment.
- 129 The second issue which arises is what the CLE would do in the short and medium terms to assure standards and quality in the face of such examinations? It is the considered view of the Task Force that at least in the transitional period the CLE is unlikely to do much and therefore providers may have a carte blanche in doing what they want, thereby qualifying into the market sub-standard products.

- 130 On the basis of these two grounds, the Task Force resolved that the better option is to remove the examining role from service providers in these segments of training at least in the short and medium terms. The options available on this issue are either to set up an independent national examining body on the same lines as KASNEB for the accounting profession or the Engineers Board of Examiners, or constitute a unit of the CLE as the Examining Board.
- 131 The Task Force has opted to recommend that the CLE sets up a dedicated division or unit as a secretariat to set, moderate and mark examinations for the CLE courses taught at Certificate, Diploma, Pre-Bar and Bar levels.

RECOMMENDATION: 20

A division or unit of the CLE should be established as the examining body for the certificate, diploma, Pre-Bar and Bar examinations of the CLE.

PUPILLAGE

- 132 It is the KSL's mandate to supervise students during the pupillage phase of their residential training programme. Like many other academic activities at the School, pupillage has had several problems with the result that it has not been properly run and supervised. In the last five years no supervision of students during the pupillage phase of their training programme has taken place. One of the problems with this programme is that with increased students' enrolment there are not enough outlets for students to be attached. There is need to expand pupillage practicing outlets beyond Advocate's chambers to include the A.G's office, assistance to judicial officers, parliament, ministries, accredited NGOs such as FIDA, Kituo cha Sheria and the need to reactivate the Legal Aid scheme. Some students should be attached to senior judicial officers as their assistants.
- 133 Students should also have the freedom to move from one firm to another in a horizontal fashion to provide them with the opportunity to gain as much experience as possible, provided they accumulate and transfer training time. Pupil Masters should be seized of the authority to allow and facilitate such motions. Reciprocal duties ought to be created to define the training module, the relationships between the parties (KSL, pupil masters and the pupil). The LSK must encourage its members to actively support the pupillage process as this is the only opportunity for its future members to gain practical experience. This could be done by imposing sanctions or awarding incentives for lawyers to take in pupils. The overall duty to supervise students during this period should however remain with the KSL.

- 134 The pupillage programme should be made more viable through funding by reactivation of the Legal Aid Scheme and the enforcement of section 15 of CLE on the education levy to provide students with a stipend for upkeep. It has been suggested elsewhere that the Higher Education Loans Board assistance should be extended to the BAR segment of training at KSL.
- 135 To render these proposed reforms viable, there will be need for legislative action, as well as the implementation of such legal provisions as section 15 of the CLE Act.

RECOMMENDATIONS: 21

- i) *Pupilage should be a component of Bar training accredited by the CLE;*
- ii) *For supervisory mechanisms to be strengthened a training module should be developed to guide the Bar training institutions, Pupil Masters and the Pupil;*
- iii) *Pupilage should span a period of 6 months, but at the discretion of the Bar training institution this period may be extended;*
- iv) *Bar training should cover a period of 6 months;*
- v) *There should be flexibility on the attachment during Bar training for the pupils to allow for mobility across institutions;*
- vi) *Institutions where pupilage could be undertaken should be increased by way of recognizing law courts and other legal establishments, including non-governmental establishments;*
- vii) *A Legal Aid scheme should be developed and employed as a training facility for pupils but with the provider institution's supervising the student's outputs.*

CHAPTER 6

RECOGNITION AND ACCREDITATION OF FOREIGN PROGRAMMES

136 It became clear very early in the work of the Task Force that there is no clear process by which foreign qualifications and universities are recognized and their programmes and courses accredited for purposes of admittance of their graduates into the education system or economy in this country. Although section 13 of the *Advocates Act*³³ provides that a person shall be duly qualified to be admitted as an advocate of the High Court of Kenya if:

- i) *Having passed the relevant examinations of any recognized university in Kenya he holds, or has become eligible for the conferment of, a degree in law of that university; or*
- ii) *Having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in each particular case approve.*
- iii) *He possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education.*

137 Since the passage of CLE Act³⁴, the Council has not undertaken this recognition and accreditation exercise.

138 The nearest a recognition and accreditation exercise was undertaken in this regard was under the auspices of the *Advocates (Degree Qualifications) Regulations*³⁵ promulgated under Legal Notice No. 475 of 1963 (as amended in 1965, 1968 and 1971). As already noted, most of the universities recognized in this regard were British universities and no attempt has been made to date to evaluate universities from other jurisdictions where Kenyans from all walks of life have gone for training, for example, universities in the USA, Canada and other countries in Central and Eastern Europe.

139 The lacunae created by the absence of recognized and accredited qualifications and programmes for purposes of admission and practice in Kenyan institutions has caused challenges in admission to the KSL. The Council and the administration of the KSL have largely engaged in guesswork in admitting

³³ Cap 16 of the Laws of Kenya.

³⁴ Cap 16 A of the Laws of Kenya.

³⁵ Note also that the status of these regulations under the current the CLE Act is doubtful since there is no unequivocal or expression provision in the Act that these regulations were carried over with the passage of this Act. The correct position in law may be that there are no such regulation under the CLE Act implying that there is no system of recognition and accreditation of foreign legal qualifications.

foreign students to pursue studies in the advocacy programme. The practice of the CLE and the KSL in admitting foreign students has leaned heavily in favour of British and commonwealth universities³⁶ to the detriment of other jurisdictions.

- 140 The evaluation of courses for purposes of exempting students from courses already covered at university level is done on *ad hoc* basis. It is the considered view of this Task Force that the recognition and accreditation of foreign qualifications, degrees and programmes for purposes of admission to the Bar should be commenced immediately and without delay.
- 141 In undertaking this exercise, care should be taken to thoroughly assess the curriculum, capacity to train, quality assurance, monitoring and self-evaluation mechanisms of the institutions which train candidates for entry into the Kenyan market. The process should be on a case by case basis, but involving all aspects of the academic and training life of the institutions concerned. In particular and when accrediting programmes offered in civil law jurisdictions, care must be taken to ensure that recognition and accreditation does not only extend to the corpus of the law, but also to the process and teaching methodologies.

³⁶ Although this is generally true, little recognition is had of qualifications from many African countries. It is also worth noting that although qualifications from Indian universities are generally recognized for admission purposes, students from such universities are hardly given any exemption from courses they covered at such universities.

RECOMMENDATIONS: 22

- i) *CHE in consultation with CLE should recognize foreign institutions offering legal education.*
- ii) *There should be periodic evaluation and monitoring of foreign universities for purposes of recognition.*
- iii) *The CHE should endeavor to publish its guidelines and international standards on: recognition, accreditation, monitoring and evaluation of foreign programmes.*
- iv) *The accreditation of law programmes for purpose of admission to the BAR should be undertaken by CLE, and for this purpose the CLE should develop detailed guidelines and assessment criteria on a complimentary basis with CHE.*
- v) *CLE should involve local Bar Associations in accrediting programmes in the countries that the universities are located.*
- vi) *At the regional level, EAC recognition and accreditation should take the form of harmonization of programmes, without necessarily standardizing them. Credit/unit transfers should be considered.*

HARMONIZATION WITH THE LOCAL, REGIONAL AND INTERNATIONAL INSTITUTIONS

- 142 As at the date of this Report, only persons who are citizens of the three East African countries are eligible for admission into the advocacy programme in Kenya under Sections 12(a) and 13(d) of the *Advocates Act*.³⁷ This new law came into force on 15th December 2002. This reality establishes the need to encourage the harmonization of the different admission systems within the sub-region, although reliance will initially be placed on reciprocity agreements between these countries.
- 143 Recently, the Attorney-General of Kenya published amendments to the *Advocates Act*³⁸ allowing advocates in Uganda and Tanzania to enroll as Advocates in Kenya and vice versa. This is a milestone in the legal histories of the three countries where collaboration in the legal sector has been absent. At university level, there are also efforts to collaborate in the sourcing of external examiners and holding joint moot courts. There is need to explore more avenues for increased collaboration within the three countries, especially in exchanging information and increased harmonization and uniformity of curricular offered by the various faculties and the law schools.
- 144 This is a challenge to the CLE and KSL. With economic integration becoming a reality in the region, there is need for the CLE, KSL and other institutions engaged in legal education and training to espouse the spirit of cooperation to create for themselves niche areas where they have comparative advantage as centres of excellence. In the short and medium terms, there will be need for expert training in development areas linked to the East African Community Treaty protocols such as international trade law. National training institutions must live to this challenge.
- 145 Some steps are already being undertaken to enhance collaboration and harmonization of in this regard. The Sectoral Council on Legal and Judicial Affairs, which comprises of the Attorney-Generals from the three East African countries is now considering how best to implement Article 126(2)(b) of the Treaty, which requires the following: harmonization of legal training at all levels, including degree and on-degree training; harmonization of certification for these trainings; standardization of judgments; and the publication of the East African Law Reports and other legal publications.
- 146 Under the Statute Law (Miscellaneous Amendments) Act 2002 Legal Notice Number 35 of 2005 the Attorney-General of Kenya has published a Bill allowing cross-border legal practice, with simultaneous freeing of the sector by similar notices by the Attorney-Generals of Tanzania and Uganda. This Notice is in line with the provisions of Article 126 of the Treaty for the Establishment of the

³⁷ Cap 16 of the Laws of Kenya

³⁸ Op Cit.

- 147 To expeditiously implement Community protocols on collaboration and harmonization, the Task Force recommends the convening as a matter of priority a meeting of the Principals of law schools and the Deans of the faculties of law to begin the process. It is critical that the KSL positions itself strategically to play a leading role in this process. In order to play this role, the Task Force reiterates the need for KSL to be reorganized, increase its staff complement and be adequately funded, including the generation of its own resources. The KSL will do well to borrow a leaf from recent success stories such as: the International Legal Institute, the Law Development Centre, the International Development Law Organization, among others.
- 148 Two other matters need to be mentioned quickly. Firstly modalities need to be put in place to establish, reorganize or restructure cross-border practice. Best practices should be borrowed wherever necessary, and caution will need to be taken to ensure discipline is upheld. The American Bar Association experience in inter-state cross border practice may come in handy here.
- 149 Secondly, the scope of courses offered at faculties of law in East African universities will need to be expanded to reflect the Community's global mandates and demand for legal services at international level. A good starting point could be the introduction of courses structured to answer to the development agenda in the EAC community, the COMESA, and the WTO's multi-lateral trading regime.

RECOMMENDATION: 23

CLE in consultation with counterpart institutions within the East African sub-region should set up mechanisms for collaboration in matters pertaining to legal education and training.

CHAPTER 8

INCIDENTAL ISSUES

- 150 Several incidental issues were raised in the course of submissions and deliberation by the Task Force. Two matters which are of relevance to the Terms of Reference of the Task Force are:

TWO YEARS INTERNSHIP UNDER S.32 OF ADVOCATES ACT

- 151 An overwhelming majority of respondents (both advocates and students) expressed grave misgivings over the effect of S.32 of the Advocates Act which Bars newly admitted advocates from engaging in private practice on their own before two years have elapsed from the date of admission. During this period, such young advocates are required to work under a senior colleague under some form of internship. In practice, the implementation of this provision has been dismal and ineffectual as there is little or no supervision of the young lawyer by seniors and in many cases young advocates are exploited as cheap labour. In some cases the young advocate may not even gain employment and therefore will not be able to acquire the experience anticipated under the provision.
- 152 While in theory there is merit in young advocates working under their senior colleagues for some time to gain hands on experience before setting out on their own, it is not tenable to restrict advocates who have already qualified to enter practice without guaranteeing that they would be usefully employed. It is the considered view of the Task Force that it is neater to employ other mechanisms to cure the mischief that section 32 of the Advocates Act envisages. This can be achieved through revamping and strengthening the Advocates' Complaint's Commission's disciplinary mandate, the LSK Disciplinary Committee's role and the rigorous enforcement of the recently introduced requirement for a professional insurance indemnity cover for all advocates.

THE PROCESS OF ADMISSION TO THE ROLL OF ADVOCATES

- 153 Students at the KSL raised the specific complaint that the process of admission to the roll of advocates after completing studies at the School was too slow, time-consuming, frustrating. What is generally referred to as holding-time may last upwards of a year after formal studies have been completed. There are no time-lines observed, both by the KSL and the Office of the Chief Justice in admitting students to the roll of advocates.
- 154 It is the view of the Task Force that time-line for the admission process be set and enforced. The various actors, in particular the office of the principal, KSL and Office of the Chief Justice should find ways of reducing the holding-out period to the minimum possible.

OMNIBUS RECOMMENDATION: 24

For various recommendations and causes of action made in this Report to be implemented, it will become necessary to harmonize the legislative framework of the relevant acts to make room for various changes and amendments to be made. In particular, the Education Act, The CHE Act, the CLE Act, the Advocates Act, the Universities Act and the LSK Act and HELBS Act will require to be amended to conform to the recommendations herein made.

Further, administrative mechanisms and action will be required to coordinate various institutions, such as CHE, the CLE, universities and the Ministry of Culture and Adult Education to conform to the recommendation made in this Report.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION: 1

I. The Council for Legal Education should be the regulatory and policy authority for legal education and training and should be reconstituted under this mandate to exercise the following functions and powers:

II. The setting of standards for legal education providers with respect to;

- i) Recognition and accreditation;
- ii) Licensing;
- iii) Core curriculum;
- iv) Mode of instruction;
- v) Mode and quality of examinations;
- vi) Monitoring and evaluation.

III. These mandates should be provided for under statute.

IV. CLE to be under an obligation under statute to collaborate with other regulators in the field of education, in particular, the CHE and also professional bodies such as LSK.

RECOMMENDATION: 2

I. Representation on the CLE is suggested as follows:

- i) MOJCA;
- ii) State Law Office;
- iii) Judiciary;
- iv) Legal profession;
- v) Private Sector;
- vi) Academia (Universities), and

- vii) Civil Society organizations in the legal sector.

RECOMMENDATION: 3

I. The CLE, as regulator and policy formulator in legal education should:

- i) be set up as a body corporate;
- ii) be created by statute;
- iii) The mandate of CLE should be ~~Should be de-linked from any institution engaged in training for legal education;~~
- iv) The CLE should have an obligation to collaborate with other regulators;
- v) The CLE should however have consult and collaborate in the formulation of ~~policy on continuing professional development~~ with KSL.

RECOMMENDATION: 4

I. Representation to the CLE should be drawn from:

- i) Ministry for the time being responsible for legal education in Kenya;
- ii) Ministry of Finance;
- iii) Office of the Attorney General;
- iv) The Judiciary;
- v) The LSK;
- vi) One representative from the academia,
- vii) Representative of the private sector,
- viii) Representative from civil society organization in the legal sector.

II. The CLE should have a secretary who shall be CEO and the Secretariat should be adequately capacitated

RECOMMENDATION: 5

I. The current KSL should be re-established as an independent corporate legal entity.

II. The KSL should be a public training institution in legal education in the following areas:

- i) Advocacy training ;
- ii) Continuing Professional Development;
- iii) Para-legal training;
- iv) Specialized professional training.

VI. That the CLE should be funded from the Legal Education Fund.

V. Funding for the CLE should be by the Exchequer and from regulatory service

III. The KSL should also undertake projects, consultancies and research.

RECOMMENDATION: 6

I. Members of the (KSL) Board of Management should be drawn from the following stakeholders:

- i) The Ministry for the time being responsible for legal education
- ii) The Ministry for the time being responsible for finance
- iii) The Attorney - General's Office
- iv) The Judiciary
- v) The Law Society of Kenya
- vi) Three representatives from the Academia

II. The management of the KSL should comprise of:

- i) Director, who also be the Chief executive and secretary to the board.

- ii) Deputy Directors to be determined by the board,
- iii) Such Assistant Directors and other officers as may be determined from time to time by the board.

III. The board of the KSL should comprise persons with expertise, experience and interest in running and managing such institutions.

RECOMMENDATION: 7

The KSL should be accountable to the ministry for the time being responsible for legal education; but with reporting responsibilities to the CLE on programmes and curriculum matters.

RECOMMENDATION: 8

I. The KSL should be financed through:

- i) The Consolidated Fund through the ministry for the time being responsible for legal education;
- ii) Funds from various income-generating activities including courses which must be provided at cost;
- iii) Donor-sourced funds.

RECOMMENDATION: 9

The KSL may set up campuses in other parts of the country on a need basis.

RECOMMENDATION: 10

- i) Entry standards to various levels of legal training (certificate, diploma, degree and Bar qualification) should be set by CLE in consultation with CHE;
- ii) Legal education should facilitate progression from lower to higher levels; recognition of prior learning and experiences in law;
- iii) There is need to establish equivalencies and a system for credit transfers;

- iv) Alternative academic qualifications should be accepted as alternative routings to the LL.B degree training.

RECOMMENDATION: 11

CORE COURSES RECOMMENDED AT DIPLOMA LEVEL

The unit descriptions herebelow, are a mere guide and not definitive. Different course descriptions may be adapted by different providers.

- i) Elements of Contract;
- ii) Elements of the Law of Torts;
- iii) Elements of Commercial law;
- iv) Elements of Property law;
- v) General Principles of Constitutional Law and legal systems;
- vi) Elements of Family Law and Succession;
- vii) Elements of the Law of Business associations;
- viii) Elements of Civil procedure;
- ix) Elements of Criminal law and Procedure;
- x) Basic Book-keeping and accounting;
- xi) Elements of Office Practice and management.

RECOMMENDATION: 12

CORE COURSES AT THE DEGREE LEVEL

The unit descriptions herebelow, are a mere guide and not definitive. Different course descriptions may be adapted by different Universities for similar courses.

- i) Legal research
- ii) Jurisprudence
- iii) Law of Torts
- iv) Administrative Law
- v) Constitutional Law
- vi) Law of Contract
- vii) Legal systems and methods
- viii) Criminal law
- ix) Family Law and succession
- x) Law of Evidence
- xi) Commercial Law (Sale of goods, hire purchase and agency)
- xii) Law of Business Associations
- xiii) Equity including law of trusts.
- xiv) Property Law
- xv) Public International law
- xvi) Labour Law

THE BAR COURSES

1. The units as described herebelow, are merely a guide and not definitive. CLE should determine the course content in respect of each course:

- i) Professional Ethics and Practice
- ii) Accounts (including Trust accounts)
- iii) Advocacy and Evidence
- iv) Legal Drafting
- v) Conveyancing
- vi) Civil procedure
- vii) Criminal procedure
- viii) Wills, Trusts and Probate administration of estates.
- ix) Bankruptcy and Insolvency processes
- x) Administrative action
- xi) Alternative Dispute Resolution Mechanisms
- xii) Managing Legal Practice
- xiii) Pupillage.

RECOMMENDATION: 14

- i) The Bar courses should be taught in a clinical and practical manner to facilitate skills transfer.
- ii) There should be no prohibition to universities teaching some of the BAR courses at university level, although students will be required to sit for the BAR examination at the KSL or other provider at that level.
- iii) At an appropriate level, the CLE may set up other service providers to train in the advocacy programme.

RECOMMENDATION: 15

Development of curricula and Syllabi should be undertaken by service providers and accredited by the CLE.

RECOMMENDATION: 16

- i) There is need for a formal structure for the training of Para-legal personnel in Kenya;
- ii) The Para-legal training programme should cover all aspects of Para legal services including: the setting of standards for different cadres (judicial and advocacy, clerkships, public prosecutions, process serving and interpretation etc);
- iii) The curricular and syllabi should be developed by service providers and approved by the CLE;
- iv) CLE should recognize and accredit trainers and programmes for that purpose;
- v) Examinations should be conducted by CLE's Examinations' division as recommended herein, with such quality assurance standards as have been discussed in chapter 3.

RECOMMENDATIONS: 17

- i) Continuing Professional Development should be implemented for the development and the maintenance of standards for all persons in the legal profession and sector including law lecturers or judges and practicing advocates;

- ii) The CLE in collaboration with the KSL should develop guidelines for continuing professional development, including course offerings;
- iii) Continuing professional development especially for public service professionals should primarily be undertaken at and through KSL although other accredited institutions may offer and run programmes;
- iv) The capacity of the KSL should be enhanced to competently run and manage the continuing professional development programmes;
- v) For relevance, KSL may out-source specialized personnel in areas/subjects where such expertise is lacking at the School.

RECOMMENDATIONS 18

- i) Graduates seeking to take the Bar who have qualified with an LL.B after following the prescribed CLE Curriculum will be automatically exempted from taking Pre-Bar Examinations.
- ii) Similarly, Graduates seeking to take the Bar and who have qualified from foreign but recognized (by CHE) and whose courses are accredited by the CLE will be automatically exempt from the Pre-Bar Examinations.
- iii) Any other graduate in Law seeking to take the Bar who either has not followed the prescribed CLE curriculum or studied in a foreign university which is either not recognized by CHE or whose curriculum has not been accredited by the CLE shall be required to sit Pre-Bar Examinations as a condition of taking the Bar.
- iv) The Pre-Bar Examination shall test all aspects of legal knowledge at the degree core subjects level and will not be limited only to testing proficiency in English.
- v) A candidate shall be allowed to take Pre-Bar examinations a maximum of three times.

RECOMMENDATION 19

- i) Any person seeking to practice law in Kenya must take and pass the Bar examination unless otherwise exempted by law.
- ii) Candidates will be allowed a maximum of five times to sit and pass ALL examination papers pertaining to the BAR within a prescribed period of four academic years.

RECOMMENDATION 20

A division or unit of the CLE should be established as the examining body for the certificate, diploma, Pre-Bar and Bar examinations of the CLE.

RECOMMENDATIONS: 21

- i) Pupilage should be a component of Bar training accredited by the CLE;
- ii) For supervisory mechanisms to be strengthened a training module should be developed to guide the Bar training institutions, Pupil Masters and the Pupil;
- iii) Pupilage should span a period of 6 months, but at the discretion of the Bar training institution this period may be extended;
- iv) Bar training should cover a period of 6 months;
- v) There should be flexibility on the attachment during Bar training for the pupils to allow for mobility across institutions;
- vi) Institutions where pupilage could be undertaken should be increased by way of recognizing law courts and other legal establishments, including non-governmental establishments;
- vii) A Legal Aid scheme should be developed and employed as a training facility for pupils but with the provider institution's supervising the student's outputs.

RECOMMENDATIONS: 22

- i) CHE in consultation with CLE should recognize foreign institutions offering legal education.
- ii) There should be periodic evaluation and monitoring of foreign universities for purposes of recognition.
- iii) The CHE should endeavor to publish its guidelines and international standards on: recognition, accreditation, monitoring and evaluation of foreign programmes.
- iv) The accreditation of law programmes for purpose of admission to the BAR should be undertaken by CLE, and for this purpose the CLE should develop detailed guidelines and assessment criteria on a complimentary basis with CHE.

- v) CLE should involve local Bar Associations in accrediting programmes in the countries that the universities are located.
- vi) At the regional level, EAC recognition and accreditation should take the form of harmonization of programmes, without necessarily standardizing them. Credit/unit transfers should be considered.

RECOMMENDATION: 23

CLE in consultation with counterpart institutions within the East African sub-region should set up mechanisms for collaboration in matters pertaining to legal education and training.

OMNIBUS RECOMMENDATION: 24

For various recommendations and causes of action made in this Report to be implemented, it will become necessary to harmonize the legislative framework of the relevant acts to make room for various changes and amendments to be made. In particular, the Education Act, The CHE Act, the CLE Act, the Advocates Act, the Universities Act and the LSK Act and HELBS Act will require to be amended to conform to the recommendations herein made.

Further, administrative mechanisms and action will be required to coordinate various institutions, such as CHE, the CLE, universities and the Ministry of Culture and Adult Education to conform to the recommendation made in this Report.

APPENDIX I

The following Acts and their associated Regulations have been taken into consideration in the review process.

The Advocates Act 1989 Chapter 16 Laws of Kenya

The Advocates (Continuing professional development) Rules 2004 Legal Notice Number 58 of 2004

The Council of Legal Education Act Chapter 16A Laws of Kenya

The Advocates Admission Regulations 1997 Legal Notice Number 357 of 1997

The Compulsory Courses Regulation Legal Notice Number 2618 of 2005

The Universities' Act, No. 210B of the Laws of Kenya

University of Nairobi Act

Moi University Act

HELB Act (Higher Education Loan's Board)

APPENDIX II

DESCRIPTIVE ANALYSIS OF SUBMISSIONS

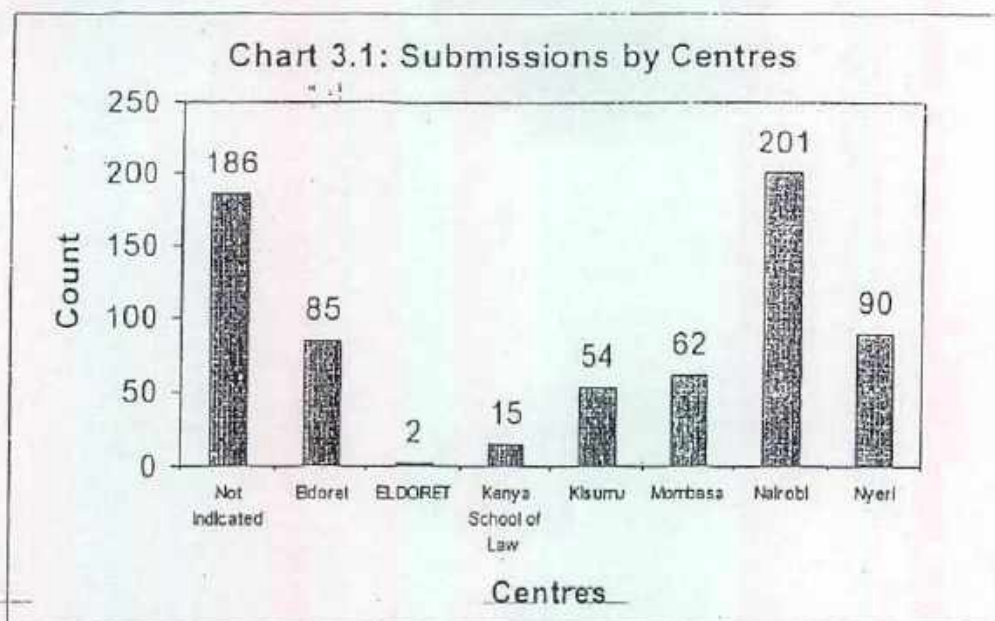
- 1 As stated elsewhere in the Task force Report, six centers were visited, with eight public hearing being made. A total of 695 views and submissions on various TORs were received¹. The highest number of submissions came from Nairobi with 201 submissions, which formed 28.9% of all submissions. The 2nd & 3rd highest submissions came from Nyeri with 90 submissions & Eldoret with 87 submissions, comprising 12.9% & 12.5% of all submissions, respectively. Submissions from Mombasa amounted to 62, comprising 8.9% of all submissions while those from Kisumu were 54, comprising 7.8% of all submissions. Last but not least, submissions brought through KSL amounted to 15 and compromised 2.2% of all submissions. It is important to note that 186 or 26.8% of all submissions did not have their center sources indicated.

A detailed analysis of submissions by Centers is contained in Table 3.1, below.

TOR		Centre								Total
		Not Indicated	Eldoret	ELDORET	Kenya School of Law	Kisumu	Mombasa	Nairobi	Nyeri	
1.00	Count	30	14	0	3	2	7	32	11	99
	% within TOR	30.3%	14.1%	.0%	3.0%	2.0%	7.1%	32.3%	11.1%	100.0%
2.00	Count	16	4	0	0	3	6	21	8	58
	% within TOR	27.6%	6.9%	.0%	.0%	5.2%	10.3%	36.2%	13.8%	100.0%
3.00	Count	37	5	0	1	3	8	32	19	105
	% within TOR	35.2%	4.8%	.0%	1.0%	2.9%	7.6%	30.5%	18.1%	100.0%
4.00	Count	22	7	0	3	4	1	17	5	59
	% within TOR	37.3%	11.9%	.0%	5.1%	6.8%	1.7%	28.8%	8.5%	100.0%
5.00	Count	39	32	1	4	28	20	48	20	192
	% within TOR	20.3%	16.7%	.5%	2.1%	14.6%	10.4%	25.0%	10.4%	100.0%
6.00	Count	18	2	0	3	4	1	11	9	48
	% within TOR	37.5%	4.2%	.0%	6.3%	8.3%	2.1%	22.9%	18.8%	100.0%
7.00	Count	6	1	0	0	0	4	16	12	39
	% within TOR	15.4%	2.6%	.0%	.0%	.0%	10.3%	41.0%	30.8%	100.0%
9.00	Count	10	4	0	1	6	8	11	5	45
	% within TOR	22.2%	8.9%	.0%	2.2%	13.3%	17.8%	24.4%	11.1%	100.0%
10.00	Count	8	16	1	0	4	7	13	1	50
	% within TOR	16.0%	32.0%	2.0%	.0%	8.0%	14.0%	26.0%	2.0%	100.0%
Total	Count	186	85	2	15	54	62	201	90	695
	% within TOR	26.8%	12.2%	.3%	2.2%	7.8%	8.9%	28.9%	12.9%	100.0%

¹ For further details on the actual recommendations from the public and Stakeholders refer to collated views which are available from the Secretariat.

Chart 3.1, below gives the count of submissions emanating from the respective centers.



i) Summary of proposals by TORs

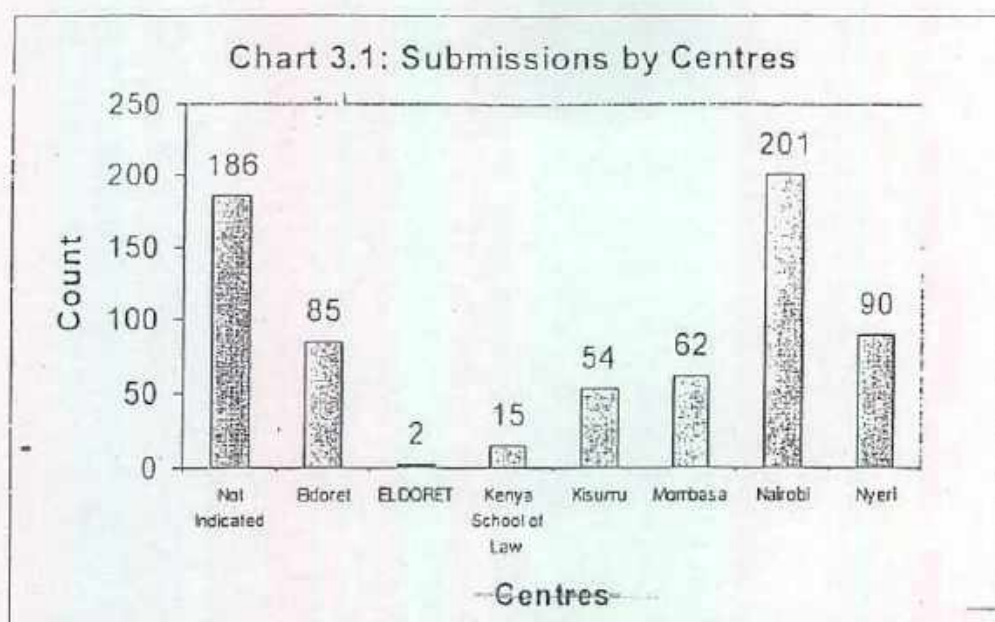
- 2 The work of the task force was guided by TORs that were set out in the appointing letter as to thoroughly study the recommendation of the workshop, interview relevant stakeholders, and collate all other relevant materials on legal education in Kenya. Consequently, the Task Force set out to do its work. 148 lawyers (21.3%), 14 lecturers (2.0%), 65 (9.4%) organizational representatives, 134 Students (19.3%) and 334 (48.1%) members of the public who did not specify their professions gave views & presented their memoranda to the Task Force.
- 3 Collated data from the centers visited and from received memoranda suggest that 192 presentations, accounting for 27.6% of all presentations, addressed the issue of promulgation of various programs and development of curricular to be followed during the various stages of development of the legal profession. The second most addressed TOR was the admission criteria for joining various training institutions licensed by CLE for dispensing legal education, with 105 presentations comprising 15.1% addressing this issue. Another issue that received overwhelming support was TOR 1 pertaining to the form, structure, role and functions of the CLE, with 99 presentations or 14.2 % of all presentations addressing this issue.
- 4 As stated elsewhere in the Task force report, six centers were visited. A total of 695 views on various TORs were received. The highest number of submissions came from Nairobi with 201 submissions, which formed 28.9% of all submissions. The 2nd & 3rd highest submissions came from Nyeri with 90

submissions & Eldoret with 87 submissions, comprising 12.9% & 12.5% of all submissions, respectively. Submissions from Mombasa amounted to 62, comprising 8.9% of all submissions while those from Kisumu were 54, comprising 7.8% of all submissions. Last but not least, submissions brought through KSL amounted to 15 and comprised 2.2% of all submissions. It is important to note that 186 or 26.8% of all submissions did not have their center sources indicated.

A detailed analysis of submissions by Centers is contained in Table 3.1, below.

TOR		Centre								Total
		Not Indicated	Eldoret	ELDORET	Kenya School of Law	Kisumu	Mombasa	Nairobi	Nyeri	
1.00	Count	30	14	0	3	2	7	32	11	99
	% within TOR	30.3%	14.1%	.0%	3.0%	2.0%	7.1%	32.3%	11.1%	100.0%
2.00	Count	16	4	0	0	3	6	21	8	58
	% within TOR	27.6%	6.9%	.0%	.0%	5.2%	10.3%	36.2%	13.8%	100.0%
3.00	Count	37	5	0	1	3	8	32	19	105
	% within TOR	35.2%	4.8%	.0%	1.0%	2.9%	7.6%	30.5%	18.1%	100.0%
4.00	Count	22	7	0	3	4	1	17	5	59
	% within TOR	37.3%	11.9%	.0%	5.1%	6.8%	1.7%	28.8%	8.5%	100.0%
5.00	Count	39	32	1	4	28	20	48	20	192
	% within TOR	20.3%	16.7%	.5%	2.1%	14.6%	10.4%	25.0%	10.4%	100.0%
6.00	Count	18	2	0	3	4	1	11	9	48
	% within TOR	37.5%	4.2%	.0%	6.3%	8.3%	2.1%	22.9%	18.8%	100.0%
7.00	Count	6	1	0	0	0	4	16	12	39
	% within TOR	15.4%	2.6%	.0%	.0%	.0%	10.3%	41.0%	30.8%	100.0%
9.00	Count	10	4	0	1	6	8	11	5	45
	% within TOR	22.2%	8.9%	.0%	2.2%	13.3%	17.8%	24.4%	11.1%	100.0%
10.00	Count	8	16	1	0	4	7	13	1	50
	% within TOR	16.0%	32.0%	2.0%	.0%	8.0%	14.0%	26.0%	2.0%	100.0%
Total	Count	186	85	2	15	54	62	201	90	695
	% within TOR	26.8%	12.2%	.3%	2.2%	7.8%	8.9%	28.9%	12.9%	100.0%

Chart 3.1, below gives the count of submissions emanating from the respective centers.

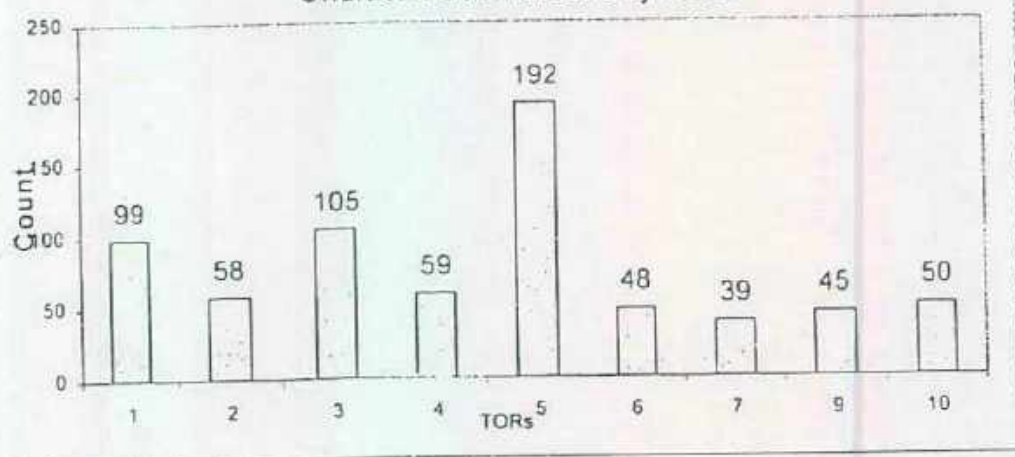


ii) Summary of proposals by TORs

- 5 The work of the task force was guided by TORs that were set out in the appointing letter as to thoroughly study the recommendation of the workshop, interview relevant stakeholders, and collate all other relevant materials on legal education in Kenya. Consequently, the Task Force set out to do its work. 148 lawyers (21.3%), 14 lecturers (2.0%), 65 (9.4%) organizational representatives, 134 Students (19.3%) and 334 (48.1%) members of the public who did not specify their professions gave views & presented their memoranda to the Task Force.
- 6 Collated data from the centers visited and from received memoranda suggest that 192 presentations, accounting for 27.6% of all presentations, addressed the issue of promulgation of various programs and development of curricular to be followed during the various stages of development of the legal profession. The second most addressed TOR was the admission criteria for joining various training institutions licensed by CLE for dispensing legal education, with 105 presentations comprising 15.1% addressing this issue. Another issue that received overwhelming support was TOR 1 pertaining to the form, structure, role and functions of the CLE, with 99 presentations or 14.2% of all presentations addressing this issue.
- 7 Fourth on the list of popular presentations was TOR 4 pertaining to the issue of the recognition and accreditation of foreign universities for purposes of admittance to the advocacy training program in Kenya, with 59 presentations (8.5%) addressing this issue. The 2nd, 10th, and 6th, TORs also received

overwhelming support with 58 (8.3%), 50 (7.2%), 48 (6.9%), of presentations addressing these issues, respectively. The least addressed was TOR 7/8 pertaining to collaboration with other legal institutions within the region on matters of training, with only 39 or 5.6% of all presentations addressing this issue.

Chart 3.2: Submissions by TORs

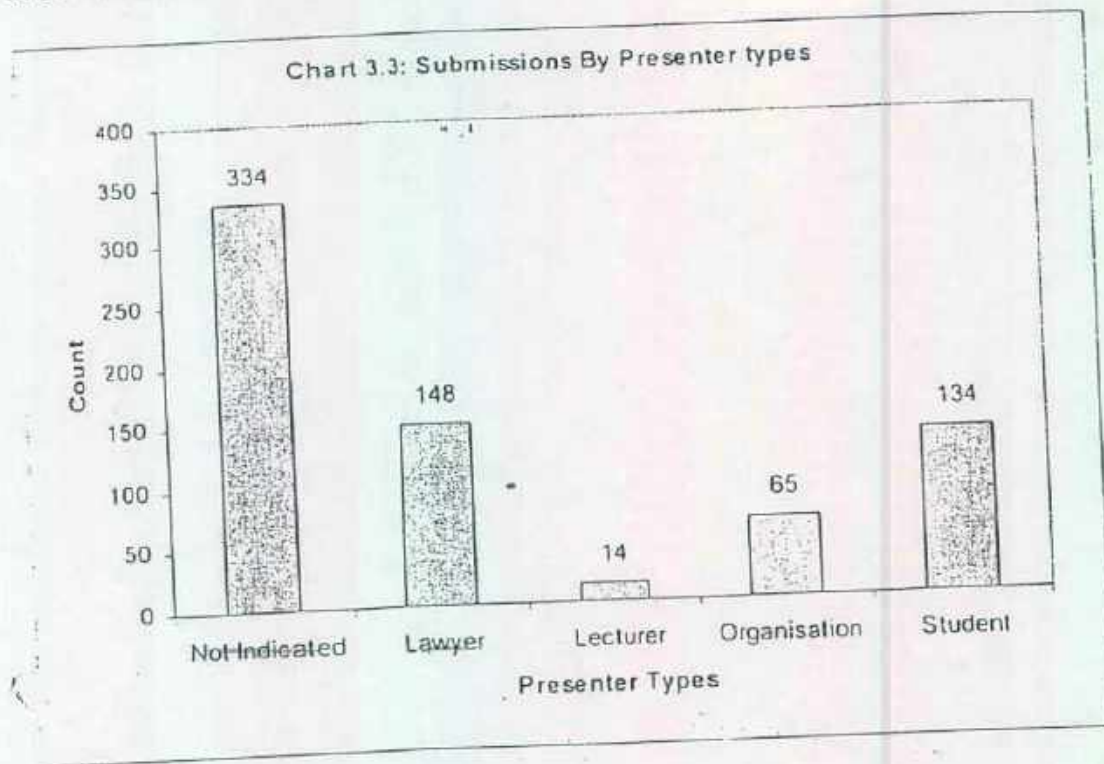


3.0 Summary of proposals by Presenter Types and TORs

As stated elsewhere in this report, of the 695 submissions received, 148 (21.3%) were from lawyers, 134 (19.3%) were from students, 14 (2.0%) were from lecturers while 65 (9.4%) were from organizational representatives. 334 (48.1%) came from persons who did not indicate their professional background.

		Table 3.3 TORs and Presenter Type Cross tabulation					Total
TORs			Lawyer	Lecturer	Organization	Student	
1.00	Count	51	20	1	11	16	99
	% within TOR	51.5%	20.2%	1.0%	11.1%	16.2%	100.0%
2.00	Count	37	6	0	9	6	58
	% within TOR	63.8%	10.3%	.0%	15.5%	10.3%	100.0%
3.00	Count	65	13	3	10	14	105
	% within TOR	61.9%	12.4%	2.9%	9.5%	13.3%	100.0%
4.00	Count	31	13	0	8	7	59
	% within TOR	52.5%	22.0%	.0%	13.6%	11.9%	100.0%
5.00	Count	70	56	5	12	49	192
	% within TOR	36.5%	29.2%	2.6%	6.3%	25.5%	100.0%
6.00	Count	24	12	3	3	6	48
	% within TOR	50.0%	25.0%	6.3%	6.3%	12.5%	100.0%
7.00	Count	24	4	2	6	3	39
	% within TOR	61.5%	10.3%	5.1%	15.4%	7.7%	100.0%
9.00	Count	21	12	0	5	7	45
	% within TOR	46.7%	26.7%	.0%	11.1%	15.6%	100.0%
10.00	Count	11	12	0	1	26	50
	% within TOR	22.0%	24.0%	.0%	2.0%	52.0%	100.0%
Total	Count	334	148	14	65	134	695
	% within TOR	48.1%	21.3%	2.0%	9.4%	19.3%	100.0%

A representation of the total submissions by presenter types is indicated herein below in Chart 3.3.



A breakdown of submissions by type of presenter and TORs follows here under.

TOR 1

99 submissions were received from across all the centers on this term of reference. Of these, 20 or 20.2% were submitted by lawyers, 16 or 16.2% were submitted by students, 11 or 11.1% were submitted by organizational representatives while 51 or 51.5% of submissions received were from persons who did not have their professional backgrounds.

TOR 2

In total 58 submissions addressed this TOR. Of these, 9 or 15.5% were submitted by organizational representatives while 10.3% of submissions each were shared between lawyers and students. 63.8% of the submissions were from stakeholders who did not have their professional backgrounds.

TOR 3

A total of 105 submissions addressed this TOR. Of these, 14 or 13.3% were submitted by students, 13 or 12.4% came from Lawyers while 10 or 9.5% were from organizational representatives. 61.9% of submissions were not indicative of the professional background.

TOR 4

59 submissions were received on this TOR. Lawyers submitted the most, with 22.0%. Organizational representatives came next with 13.5% while students came third with 11.9% of submissions under this TOR. 31 or 52.5% of submissions were not indicative of the professional background.

TOR 5

192 Submissions were received on this TOR. 56 or 29.2% of there submissions came from Lawyers, 49 or 25.5% were submitted by students, 12 or 6.3% of submissions on this TOR came from organizational representatives while 70 or 36.5% of submissions were not indicative of the professional background.

TOR 6

A total of 48 submissions were received on this TOR. Of these, 12 or 25% and 6 or 12.5% of the submissions came from lawyers and students, respectively. 3 or 6.3% each came from lecturers and organizational representatives, respectively, while 24 or approximately 50% of submissions were not indicative of the professional background.

TOR 7/8

39 submissions were received on these TORs. Of these 6 or 15.4% and 4 or 10.3% were from organizational representatives and Lawyers, respectively. 3 or 7.7% were from students while 24 or 61.5% were not indicative of the professional background.

TOR 9

This TOR received a total of 45 submissions of which 12 or 26.7% and 7 or 15.6% were from Lawyers and Students, respectively. 5 or 11.1% came from organizational representatives. Those not indicative of the professional background were 21 or 46.7%.

TOR 10

This TOR received 50 submissions of which 26 or 52% were from students while 12 or 24% were from lawyers. 11 or 22% were not indicative of the professional background.

Summary of Submissions by TOR, Sub-Issue, and Presenter Types

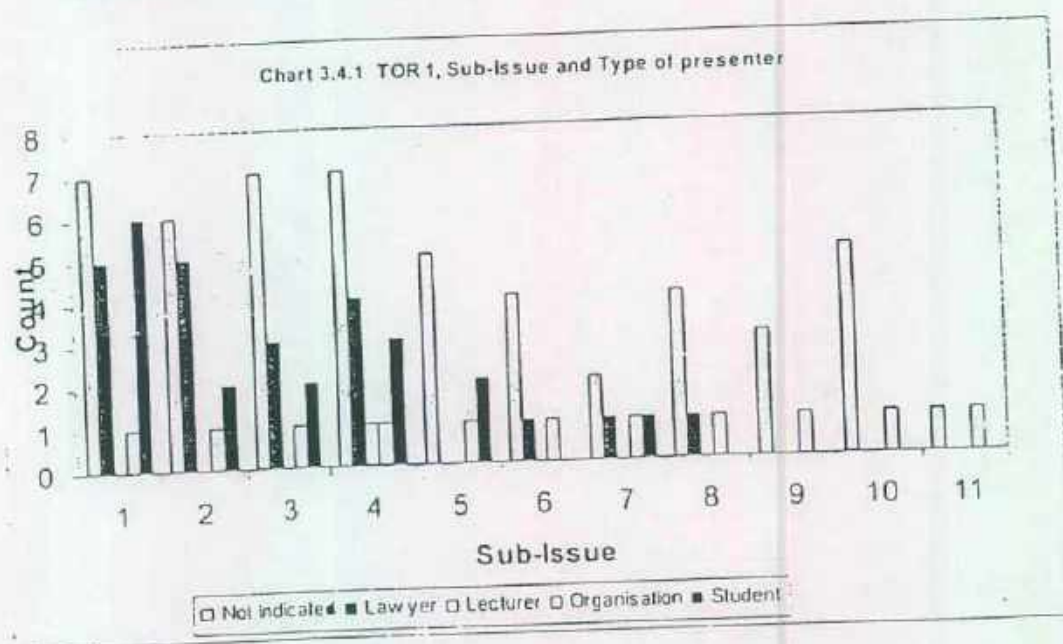
TOR 1

This TOR has 10 sub-issues and the following analysis gives a distribution of submissions across issues & by type of presenter.

- Collated data show that across all the categories, lawyers were the most concerned with the form, structure, role and functions of the CLE as relates

to the regulation of legal education in Kenya. The data further show that of the 19 submissions received on this sub-issue 6 or 31.6% came from students, 5 or 26.3% were from lawyers while 7 or 36.8% were not indicative of the professional background.

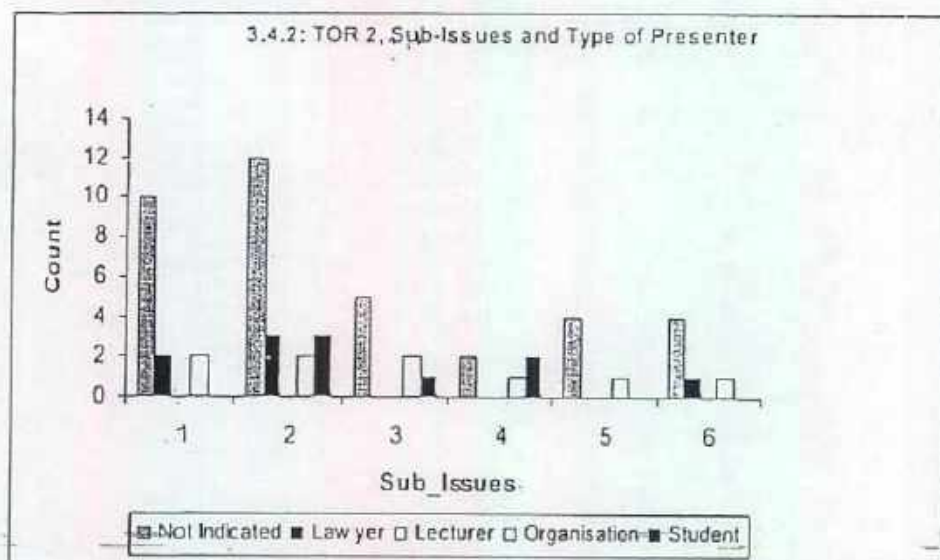
- On the second sub-issue pertaining to the shortfall in form and structure of CLE, 14 submissions were received. Of these, Lawyers had the highest voice accounting for 35.7% of the submissions followed by students with only 14.3% of submissions on this sub-issue. 6 or 42.9% of the submissions were not indicative of the professional background.
- On the role of whether the functions of CLE should be exercised in tandem with its role as a regulator, Lawyers gave the highest submissions comprising 23.1% of submissions, followed by students with 15.4% of submissions.
- As to whether KSL should be de-linked from CLE, Lawyers had the highest submissions comprising 25.0% while students came second with 18.8% of the submissions on this sub-issue.



TOR 2

- Collated data, including that without the professional background of presenters, show that the majority (100%) advocated for the need of having an independent tertiary legal training institution such as KSL.
- 20 submissions addressed the sub-issue pertaining to the form, structure & functions of an independent tertiary legal training institution. Of these, 3 or

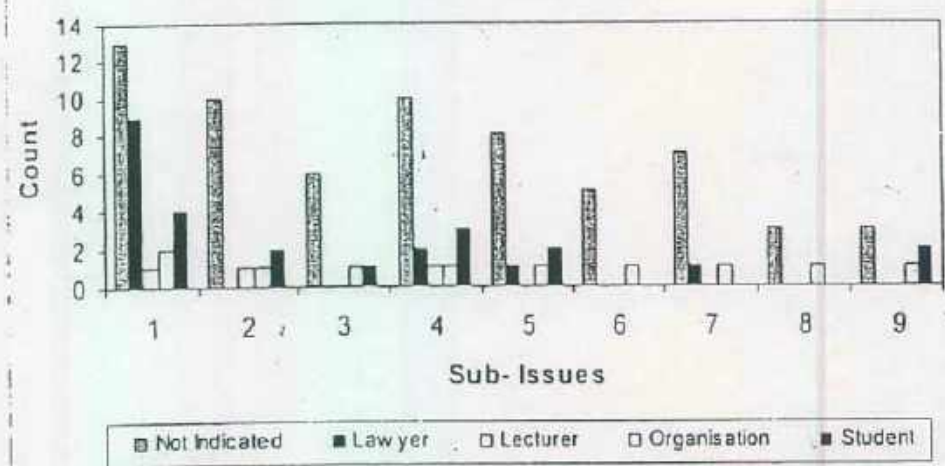
15.0% each came from lawyers and students, respectively, while 2 or 10.0% came from organizational representatives. 12 or 60.0% of the submissions on this sub-issue were not indicative of the professional background of the presenters.



TOR 3

- Obtained data show that lawyers had the highest number of submissions on the specification of the entry criteria for those seeking admission into the legal profession, with 31.0% of the submissions while students came second, with 13.8% of the submissions on this sub-issue. Overall, over 90% of submissions on this sub-issue underlined the necessity of specifying the entry criteria.
- Students had the most suggestions on the need to identify entry criteria to be benchmarked at various entry levels, with 14.3% of the submissions. Lawyers and organizational representatives gave each 7.1% of the submissions on this issue. Most of the submissions, amounting to 71.4%, on this sub-issue came from stakeholders who did not specify their professional background.
- 17 submissions were received on the sub-issue pertaining to pre-bar examinations necessary for admission into the advocacy-training programme. 29.4% of these submissions came from students and lawyers while 58.8% of submissions came from people whose professional background was not indicated.

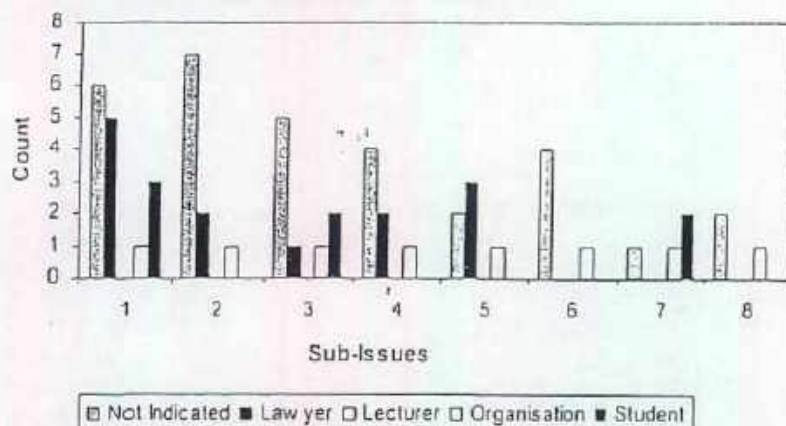
3.4.3: TOR 3, Sub-Issues and Type of Presenter



TOR 4

- The issue of the overall Kenyan policy on accreditation of foreign universities and certification received attention from: lawyers who gave 33.3% of the submissions on this sub-issue; and students who gave 20.0% of the submissions. About 40.0% of the submissions on came from persons whose professional background was not indicted.
- Lawyers were also keen on the issue of the policy on accreditation of foreign universities and legal certification for general purposes and for admission into the Advocacy training programme. They gave 20.0% of the submissions addressing this sub-issue with the bulk (70.0%) coming from persons whose professional background was not indicated.
- The student fraternity gave the most submissions on the issue of who should devise and enforce the accreditation policy in Kenya with regards to legal matters, having given 22.2% of the submissions on this sub-issue. Lawyers gave 11.1% of the submissions while 55.6% of the submissions came from persons whose professional background was not indicated.

3.4.4: TOR4, Sub-Issue and Type of Presenter



TOR 5

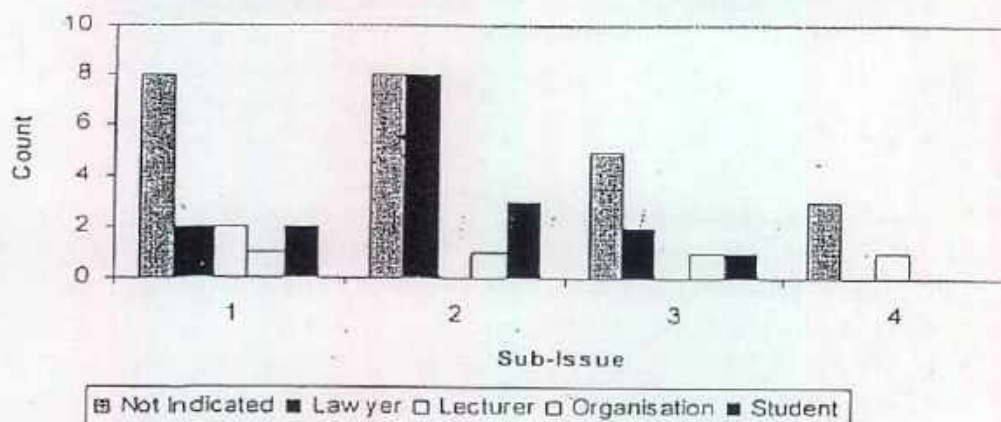
- The issue of what to teach at each level of legal training in Kenya and the institution which should undertake teaching at each level received submissions from all the categorized professions, with 44.2% of submissions coming from students, 25.6% from lawyers and a paltry 2.3% from lecturers. 25.6% of the submissions on this sub-issue came from persons whose professions were not specified.
- The issue as to what form and place should be assigned to the development of a para-legal training infrastructure received 33.3% of submissions from lawyers, 11.1% of the submissions from lecturers and 5.6% of the submissions from students.
- The issue of the necessity of having a generic programme that benchmarks the core courses to be taught at each level of legal training got overwhelming attention from students who gave 38.5% of the submissions. Lawyers and organizational representatives each gave 7.7% of the submissions while 46.2% of the submissions came from persons with unspecified professions.
- The issue of who should devise curricular to be taught at each level of legal training received substantial submissions from lawyers, who gave 21.4% of the submissions with the bulk (64.3%) of submissions coming from persons with unspecified professions.
- The issue of when and by whom is practical/clinical/internship legal education training to be dispensed in the training sequence of legal education in Kenya received an equal amount of submissions from both lawyers and students with each giving 22.2% of the submissions on this sub-issue. 44.4% of the submissions came from persons whose professional background was not specified.

- The issue as to what form the practical/clinical/internship training should take received 45.9% of the submissions from lawyers and 29.74% from the student fraternity.
- The issue of the funding mechanisms to be put in place to make practical/clinical/internship training viable received 40.0% of the submissions from lawyers and 33.3% from the student fraternity.

TOR 6

- The issue as to who should set and mark examinations at the various stages of legal training received an equal amount of submissions from lawyers, lecturers and the student fraternity with each submitting 13.3% of submissions on the sub-issue. The rest of the submissions amounting to 53.3% came from persons who did not specify their professional background.
- The issue as to the necessity of having BAR exams as the main criterion for admission to the roll of advocates received overwhelming submissions from lawyers who gave 40.0% of the submissions while the student fraternity gave 15.0% of the submissions on the sub-issue. 40.0% of the submissions came from persons who did not specify their professional background.
- The issue pertaining to the necessity of setting up an examinations board to run BAR examinations received highest attention from lawyers with 22.2% of the submissions while another 22.2% of the submissions were shared equally between students and organizational representatives. 55.6% of the submissions on this sub-issue came from stakeholders who did not specify their professional background.
- The issue pertaining to the legal and administrative mechanisms needed to be put in place in order to realize this reform agenda received 25.0% of the submissions from lawyers while the rest 75.0% came from stakeholders who did not specify their professional background.

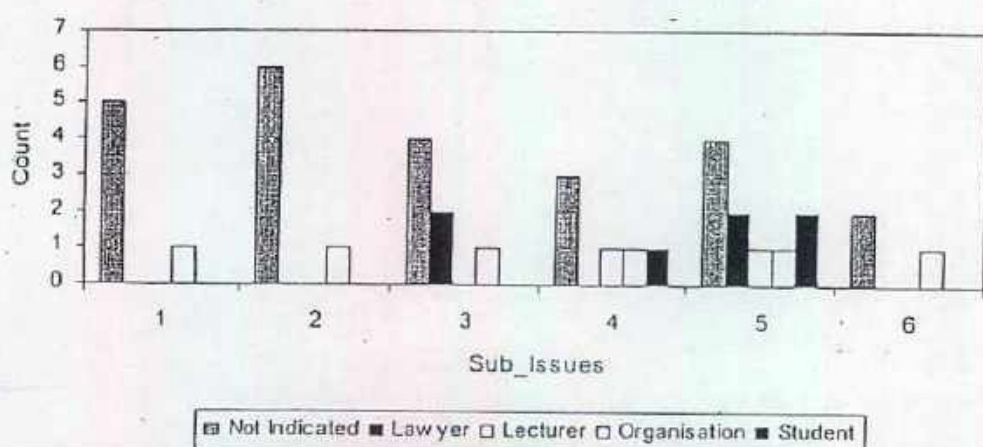
Chart 3.4.6: TOR 6, Sub-Issues and Type of Presenter



TOR 7/ 8

- The issue as to how KSL could become a center of excellence in legal training in the East African sub-region received an equal amount of submissions from both lawyers and the student fraternity of 20.0% each of the submissions while 10.0% came from lecturers. 40.0% of the submissions came from persons who did not specify their professional background.

Chart 3.4.7: TOR 7/8, Sub-Issues and Type of Presenter

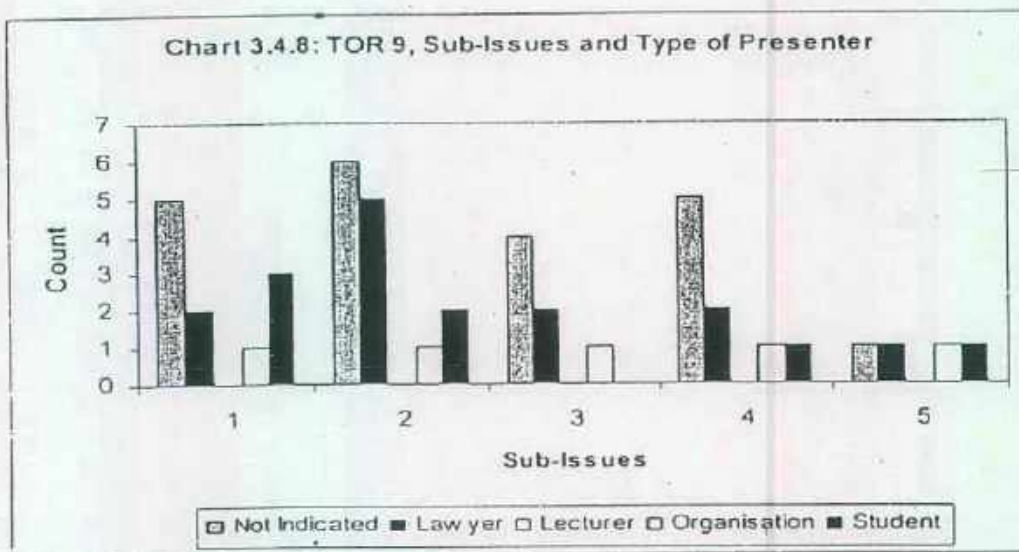


TOR 9

- The issue pertaining to the steps to be taken in order to institutionalize continuing legal education in Kenya received 27.3% of the submissions from the student fraternity and 18.2% from lawyers. 45.5% of the submissions on this

sub-issue came from persons who did not specify their professional backgrounds.

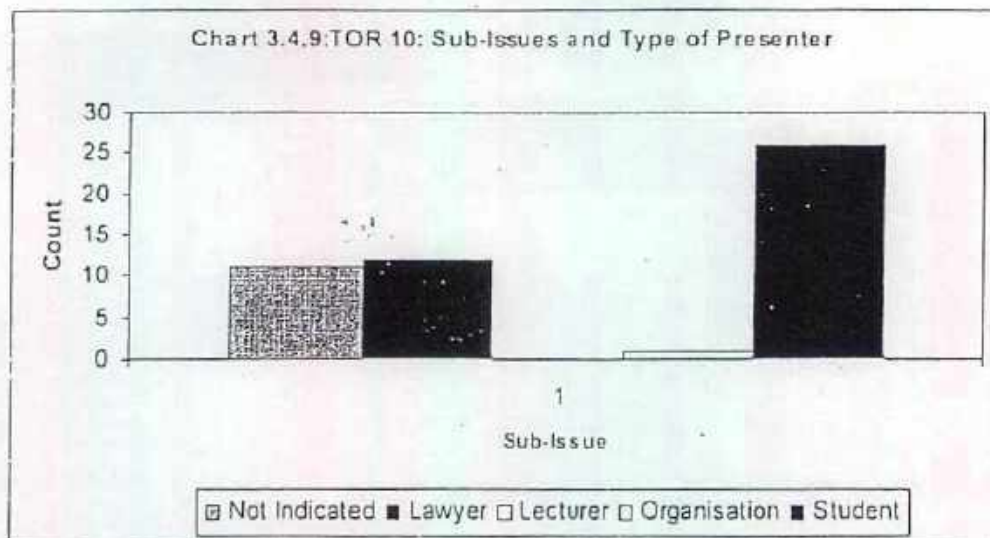
- The issue as to the institution(s) that is best suited to undertake continuing legal education received 35.7% of the submissions from lawyers and 14.3% from the student fraternity. Organizational representatives gave 7.1% of the submissions. The rest of the submissions (42.9%) came from persons whose professions were not specified.
- The issue pertaining to the programmes and course offerings that need be introduced to foster a viable continuing legal education programme received 22.2% from lawyers while organizational representatives and students each gave 11.1% of the submissions on this sub-issue. 55.6% of the submissions came from persons who did not specify their professional background.



TOR10

- The issue pertaining to any other matters or needs that have to be taken into account to make legal education and training more effectual received overwhelming submissions amounting to 52.0% from the student fraternity and 24.0% from lawyers. 22.0% of the submissions came from persons who did not specify their professional background.

Chart 3.4.9: TOR 10: Sub-Issues and Type of Presenter



APPENDIX III

THE LEGAL EDUCATION BILL, 2005

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1 –Short title
- 2 –Interpretation

PART II—REGULATION OF LEGAL EDUCATION

- 3 –Objects of the Act
- 4 –Licensing of certain legal education providers
- 5 –Provisional licence for existing legal education providers
- 6 –Application procedure
- 7 –Issue of licence
- 8 –Notice of Registration
- 9 –Variation, suspension or revocation of licence

PART III—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COUNCIL OF LEGAL EDUCATION

- 10 –Establishment and membership of the Council
- 11 –The secretary
- 12 –Headquarters
- 13 –Objects and functions of the Council
- 14 –Independence of the Council and compliance with Government policy
- 15 –Cooperation with other organizations

- 16 –Powers of the Council
- 17 –Delegation by the Council
- 18 –Common seal of the Council
- 19 –Regulations by the Council
- 20 –Legal education levy
- 21 –The Legal Education Fund

PART IV - LEGAL EDUCATION APPEALS TRIBUNAL

- 22 –Establishment of the Legal Education Appeals Tribunal
- 23 –Vacancy in office of member
- 24 –Jurisdiction of Tribunal
- 25 –Appeals from action by the Council
- 26 Procedure of Tribunal
- 27 –Conflict of interest
- 28 –Powers of Tribunal on appeal
- 29 –Status quo upon appeal
- 30 –Award of costs
- 31 –Rules governing appeals
- 32 –Appeals to the High Court
- 33 –Remuneration of Tribunal members

PART V—LEGAL EDUCATION AT CERTIFICATE, DIPLOMA AND DEGREE LEVEL

- 34 –Certificate and diploma courses
- 35 –Core degree courses

PART VI—LEGAL EDUCATION EXAMINATIONS

- 36 --Council examinations
- 37 --Legal Education Examinations Board
- 38 --Functions of the Examinations Board
- 39 --Bar examinations
- 40 --Pre-bar examinations

PART VII—FINANCIAL PROVISIONS

- 41 --Investment of funds
- 42 --Financial year
- 43 --Annual estimates
- 44 --Accounts and audit

PART VIII—MISCELLANEOUS PROVISIONS

- 45 --Staff of the Council
- 46 --Invitation of experts
- 47 --Protection from personal liability
- 48 --Change in status of legal education provider
- 49 --Reciprocal agreements
- 50 --Offences
- 51 --Offences by body corporates
- 52 --General penalty

PART IX—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

- 53 --Savings and transitional
- 54 --Amendment of Advocates Act
- 55 --Repeals

SCHEDULES

First Schedule	-	Proceedings of the Council of Legal Education
Second Schedule	-	Bar Courses
Third Schedule	-	Procedure of the Examinations Board
Fourth Schedule	-	Core Courses at Certificate and Diploma Level
Fifth Schedule	-	Core Courses at Degree Level

A Bill for

AN ACT of Parliament to provide for the regulation of legal education and training and for connected purposes.

ENACTED by the Parliament of Kenya as follows -

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Legal Education Act, 2005.

Interpretation.

2. In this Act, unless the context otherwise requires—

“advocate” has the meaning assigned to it in section 2 of the Advocates Act;

“the Council” means the Council of Legal Education established by section 10;

“the Council of the Society” means the Council of the Society elected under section 13 of the Law Society of Kenya Act;

Cap 16

“bar examinations” means the examinations required to be passed by a person as a prerequisite for admission as an advocate pursuant to the Advocates Act;

“Examinations Board” means the Legal Education Examinations Board established under section 37;

“Fund” means the Legal Education Fund established under section 21;

“legal education provider” means a post-secondary school institution that is licensed to offer legal education or training for the award of a certificate, diploma or degree recognized by the Council;

“Minister” means the Minister for the time being responsible for matters relating to legal education;

“Roll” means the Roll of Advocates kept under section 16 of the Advocates Act;

- under sections 39 and 40; and
- (ii) any person offering a degree, diploma or certificate course;
- (b) the Council may by Notice in the Gazette provide that a specified course or programme being offered or provided by any person is a course or programme for which the person requires a licence under this section is required;
- (c) "degree" "diploma" and "certificate" do not include a certificate of attendance at a course, workshop, seminar or other such event or any award which is expressed in terms or by necessary implication not to be an academic or professional qualification.

Provisional licence
for existing legal
education
providers

5. (1) A person who immediately before the date of commencement of this Act was lawfully providing legal education, the provision of which a licence is required under this Act shall be deemed to have been issued with a provisional licence by the Council entitling the person to continue to provide legal education for a period of six months from such date.

- (2) A person referred to in subsection (1) shall unless he complies with this Act and is thereupon licensed by the Council to continue to provide legal education after the expiry of the provisional licence, cease to provide legal education on the expiry of the period of six months referred to in that subsection.

Application
procedure.

6. An application for a licence under this Part shall be made to the Council and shall be in such form, and shall contain, or be accompanied by, such information, documents and other material as may be prescribed.

Issuance
licence.

—of

7. (1) If after considering an application under section 4, the Council determines that the applicant is a suitable person for the issuance of a licence and the issue to that person of a licence would be in the interest of legal education, the Council may issue a licence.

- (2) In addition to any other matter which the Council may consider necessary to include in it, a licence issued to a person referred to under subsection (1) (hereinafter referred

PART II—REGULATION OF LEGAL EDUCATION

Objects of legal
education

3. The Objects of this Act are to -

- (a) promote and provide for the maintenance of the highest possible standards in legal education;
- (b) ensure that public and private institutions providing legal education meet the highest standards
- (c) provide a practical enforcement regime for the maintenance of standards in legal education
- (d) promote certainty in the public on the quality and status of legal education and legal education providers
- (e) provide for a licensing regime for providers of legal education; and
- (f) promote legal education in Kenya, generally

Licensing
certain
education
providers.

of
legal

4. (1) Any person wishing to offer or provide any course or programme of legal education in Kenya for the award of a degree, diploma or certificate in the nature of an academic or professional qualification in law shall apply to the Council for a licence.

(2) A document issued on a date after the commencement of this Act and purporting to evidence the award of a degree, diploma or certificate in law is not valid as an academic or professional qualification unless it is recognized by the Council.

(3) The Council shall be responsible for the issuance in accordance with this Act of licences authorizing the holder of the licence to carry on a legal education and training programme.

(4) For the purposes of this section-

- (a) each of the following require a licence-
 - (i) any person wishing to provide tuition for the pre-bar or bar examinations provided for

to as a "legal education provider") shall specify the course or courses which the licenced person (hereinafter referred to as a "legal education provider") is licenced to offer.

Notice
Registration.

of

8. (1) Every licensed legal education provider shall exhibit and keep exhibited in a prominent place on his registered office, and on every branch office in which the business of a legal education provider is conducted, so as to be easily read from outside that office, a notice of his name and of the fact that he is licensed as a legal education provider, together with the name or style under which he carries on business as a legal education provider.

(2) The information required by subsection (1) of this section to be specified in the notice referred to in that subsection shall also be clearly shown on and in all letters, accounts, agreements and other documents sent out, entered into, or published by or on behalf of the licensee in or in the course of or in connection with his business as a legal education provider.

Variation,
suspension
revocation
licence.

or
of

9. (1) If the Council determines that a legal education provider is not carrying out its functions in a proper manner or in breach of its licence or that it is necessary in the interests of legal education in Kenya generally, so to do, the Council may in respect of that legal education provider -

- (a) vary the terms of the licence issued;
- (b) suspend the licence for such duration as it shall specify; or
- (c) revoke the licence.

(2) Where the Council has reasonable grounds to believe that a licensee has ceased to comply with the terms of the licence, the Council may after giving the licensee the opportunity of being heard or making representation, by notice in writing require the licensee before the date specified in the notice to remedy to the satisfaction of the Council, the defects specified in the notice.

(3) If the licensee fails to comply with the requirements of a notice under subsection (2) before the date specified therein, the Council, after calling upon the licensee to show cause why the licence should not be cancelled, may cancel the licence.

PART III—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE COUNCIL OF LEGAL EDUCATION

establishment and membership of the Council.

10. (1) There is established a council to be known as the Council of Legal Education (hereinafter referred to as the "Council").

(2) The Council shall consist of the following persons appointed by the Minister -

- (a) a chairperson, who shall have at least fifteen years experience in matters relating to legal education or the legal profession generally;
- (b) the Attorney-General or his representative;
- (c) the Permanent Secretary of the Ministry for the time being responsible for legal education or his representative;
- (d) the Permanent Secretary of the Ministry for the time being responsible for finance or his representative;
- (e) a representative of the Judiciary nominated by the Chief Justice;
- (f) two advocates nominated by the Council of the Society;
- (g) two persons associated with the teaching of law in Kenya;
- (h) one representative of private sector organizations working in the legal sector; and
- (i) one representative of civil society organizations working in the legal sector.

(3) Each of the nominating bodies pursuant to paragraphs (f), (g), (h) and (i) of subsection (2), shall forward to the Minister the names of three persons, at least one of whom shall be a woman, for each nomination to which they are entitled.

(4) Before appointing members of the Council under subsection (1), the Minister shall ascertain that either gender is represented by at least one-third of the persons to be appointed and towards this end, the Minister may appoint as a member of the Council, any of the persons whose name is forwarded to him under subsection (3).

(5) A member of the Council other than a member referred to under paragraphs (b), (c), (d) and (e) of subsection (2), shall hold office for a term of three years but shall be eligible for

re-appointment for one further term:

Provided that in the case of the members of the Council first appointed under this Act, under paragraphs (f), (g), (h) and (i), three shall be appointed for a term of four years.

(6) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of -

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

(7) The conduct and regulation of the business and affairs of the Council shall be as provided for in the First Schedule.

The secretary and officers and staff of the Council

11. (1) The Council shall appoint as secretary to the Council, and chief executive officer of the Council, a person nominated by the Commission for Higher Education.

(2) The secretary to the Council shall be an ex-officio member of the Board without the right to vote.

(3) The Council shall appoint such other officers and staff as are necessary for the proper discharge of the functions of the Council under this Act.

Headquarters.

12. The Headquarters of the Council shall be in Nairobi.

Objects, functions and the Council.

13. (1) The object and purpose for which the Council is established is to be the principal regulatory authority in relation to legal education and training in Kenya and to exercise general supervision and control over legal education and training and advise the Government in relation to all aspects thereof.

(2) The Council shall in respect of legal education be responsible for setting and enforcing standards in relation to -

- (a) recognition and licensing of legal education

- providers;
- (b) accreditation of legal education providers;
- (c) curricula and mode of instruction;
- (d) mode and quality of examinations;
- (e) harmonization of legal education programmes;
- (f) coordination of legal education providers;
- (g) monitoring and evaluation of legal education providers and programmes; and
- (h) award of certificates, diplomas, degrees and such other awards as may be prescribed.

(3) Without prejudice to the generality of subsections (1) and (2) the Council shall -

- (a) in consultation with the Commission for Higher Education -
 - (i) make Regulations in respect of entry requirements for the admission of persons seeking to enroll in legal education programmes;
 - (ii) establish criteria and mechanisms for the recognition, accreditation and continuous monitoring and evaluation of foreign institutions offering legal education and the programmes of those institutions;
- (b) formulate a system recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels;
- (c) establish a system of equivalencies of legal educational qualifications and credit transfers;
- (d) advise and make recommendations to the Government and other appropriate authorities on matters relating to legal education and training requiring the consideration of the Government;
- (e) collect, examine and publish information relating to legal education and training;
- (f) advise the Government on the standardization, recognition and equation of legal education qualifications awarded by foreign institutions; and
- (g) arrange for regular visitations and inspection of legal education providers, and perform and exercise all other functions and powers conferred on it by this Act.

Independence of the Council and compliance with Government policy.

14. In the exercise of its functions the Council shall not be subject to the control of any other person or authority, but shall comply with the general policy of the Government with respect to legal education and training.

Cooperation with other organizations.

15. The Council shall, to the greatest possible extent consistent with its duties, in the discharge of its functions, consult, collaborate and co-operate with -
- (a) the Commission for Higher Education and other regulators in the field of education generally;
 - (b) the Law Society of Kenya;
 - (c) departments and agencies of Government, statutory bodies, and other bodies and institutions having functions or aims or objects related to the functions of the Council.

Powers of the Council.

16. (1) The Council shall have all the powers necessary or expedient for the performance of its functions under this Act and in particular, the Council shall have the power to -
- (a) control, supervise and administer its assets in such manner and for such purposes as best promote the purpose for which the Council is established;
 - (b) control and administer the Fund;
 - (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
 - (d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Council is established;
 - (e) open a banking account or banking accounts for the funds of the Council; and
 - (f) invest the funds of the Council not currently required for its purposes in the manner provided in section 40.

- (2) The Council may require any person to furnish, within such time as is specified by the Council, any returns or information in relation to legal education and training that is in the opinion of the Council required to enable the Council to perform its functions or exercise its powers under this Act.

Delegation by the Council.

17. The Council may, by resolution, either generally or in any particular case, delegate to any of its committees or to any member, officer, employee or agent of the Council, the

exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Common seal of
the Council.

18. (1) The common seal of the Council shall be kept in such custody as the Council directs and shall not be used except on the order of the Council.

(2) The common seal of the Council when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of the Council under this section shall be presumed to have been duly given.

Regulations by the
Council.

19. (1) The Council, with the approval of the Minister, may make Regulations for the purposes of giving effect to the provisions of this Act, and in particular, such Regulations may -
- (a) make provision with respect to the engagement and training of pupils and their conduct, duties and responsibilities;
 - (b) provide, in respect of pupillage, for supervision and transfer of credit and time where a pupil serves in more than one establishment;
 - (c) provide for engaging pupils in the provision of legal aid to indigent persons;
 - (d) develop a framework for the implementation of a programme for continuing legal education aiming at the professional development and maintenance of standards in all cadres of the legal profession;
 - (e) make provision for assessment criteria to be used by the Council in consultation with the local bar associations in other jurisdictions, in accrediting foreign programmes;
 - (f) in consultation with Commission for Higher Education establish mechanisms for the continuous monitoring and evaluation of the programmes foreign universities recognized by the Council;
 - (g) authorize the charging by the Council of fees in respect of any application, licence or other service under this Act; -
 - (h) make provision for the establishment of training institutions;
 - (i) prescribe rules for the conduct of pre-bar, bar and other examinations under this Act;
 - (j) prescribe the requirements for the award of diploma certificates and other academic awards of the

- Council;
- (k) revise the Second, Fourth or Fifth Schedule by altering the bar courses and the core courses required for the certificate, diploma or degree levels of legal education;
 - (l) provide for the description of diplomas, certificates and other academic awards of the Council;
 - (m) provide for the settlement of the terms and conditions of service, including the appointment, dismissal, remuneration and retiring benefits of the members of staff of the Council; and
 - (n) prescribe any other thing required or permitted to be prescribed for the better carrying out of the objects of this Act.

(2) Regulations under this Act may grant or provide for the granting of exemptions from any of the provisions of the Regulations, either unconditionally or subject to conditions.

Legal
levy.

education

20. (1) The Minister may, on the recommendation of the Council by order published in the Gazette, impose a legal education levy on any or all services rendered by advocates or legal education providers.

(2) A levy imposed under this section shall be payable at such rate as may be specified in the order.

(3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due and the penalty for nonpayment.

(4) All moneys received in respect of the levy shall be paid into the Fund and if not paid on or before the date prescribed by the order, the amount due and any penalty prescribed under subsection (3) shall be a civil debt recoverable summarily by the Council.

The Legal
Education Fund.

21. (1) There is established a fund to be known as the Legal Education Fund which shall vest in the Council.

(2) There shall be paid into the Fund -

- (a) all proceeds of the legal education levy established by section 30;
- (b) such moneys as may accrue to or vest in the Council

- in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) such sums as may be payable to the Council pursuant to this Act or any other written law, or pursuant to any gift or trust;
 - (d) such sums as may be granted to the Council by the Minister pursuant to subsection (3); and
 - (e) all moneys from any other source provided for or donated or lent to the Council.

(3) There shall be made to the Council, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

(4) There shall be paid out of the Fund any expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

PART IV—LEGAL EDUCATION APPEALS TRIBUNAL

Establishment of
the Legal
Education Appeals
Tribunal.

22. (1) There is established a tribunal to be known as the Legal Education Appeals Tribunal (hereinafter referred to as the "Tribunal") which shall consist of the following members and the secretary appointed by the Minister -

- (a) a chairperson who at the time of appointment shall be an advocate of not less than ten years standing or a person who has not less than ten years experience in the field of legal education or the teaching of law;
- (b) one person who at the time of appointment shall be an advocate of not less than ten years standing or a person who has not less than ten years experience in the field of legal education or the teaching of law;
- (c) three persons who have demonstrated competence in the field of legal education generally or in a specialized thereof; and
- (d) the registrar who shall be an advocate with at least five years' experience.

(2) All appointments to the Tribunal under subsection (1) shall be by the Notice in the Gazette issued by the Minister and shall be for a period of three years.

Vacancy in office
of member.

23. The office of a member of the Tribunal shall become

vacant -

- (g) at the expiration of three years from the date of his appointment;
- (h) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment of the office of a member of the Tribunal;
- (i) if he is removed from membership of the Tribunal by the Minister for failure to attend three consecutive meetings of the Tribunal or is unable to discharge the functions of the his office (whether arising from infirmity of body or mind or from an other cause) or for misbehavior; and
- (j) if he resigns the office of a member of the Tribunal.

Jurisdiction
Tribunal.

of

24. (1) The Tribunal shall, upon an appeal made to it in writing by any party or a reference made to it by the Council or by any committee or officer of the Council, on any matter relating to this Act, inquire into the matter and make an award thereupon, and every award made shall be notified by the Tribunal to the parties concerned, the Council or any committee or officer thereof, as the case may be.

(2) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.

(3) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay or any other special reasons so to do, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.

(4) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.

Appeals
action
Council.

by

from
the

25. (1) Any person aggrieved by any decision given by the Council -

- (a) refusing to grant a licence;
- (b) imposing limitations or restrictions on a licence;
- (c) suspending or revoking a licence,

may appeal the Tribunal against such decisions within thirty days from the date on which the decision was communicated to such person.

(2) The Tribunal may require the Council to furnish it with the reasons for its action, and may affirm or, after affording the Council an opportunity of being heard, set aside the Council's decision.

Procedure
Tribunal.

of

26. (1) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of such party.

(2) The Tribunal shall sit at such times and in such places as it may prescribe.

(3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(4) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedures.

(5) For the purposes of hearing and determining any cause or matter under this Act, the chairperson and two members of the Tribunal form a quorum.

Conflict
interest.

of

27. A member of the Tribunal who has an interest in any matter which is the subject of the proceedings of the Tribunal shall not take part in those proceedings.

Powers of Tribunal
on appeal.

28.

Upon any appeal, the Tribunal may -

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Council or any of its committees in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order, for costs, as it may deem just.

Status quo upon
appeal.

29.

Upon any appeal to the Tribunal under this section the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

appeals.

Award of costs.

30. (1) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(2) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

Remuneration
Tribunal

(3) Every certificate issued under subsection (2) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

Appeals to the
High Court.

31. (1) Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.

Certificate
diploma

(2) The Tribunal may of its own motion or on the application of an interested person, if it considers it appropriate in the circumstances, grant a stay of execution of its award until the time for lodging an appeal has expired or where an appeal has been commenced until the appeal has been determined.

(3) Upon the hearing of an appeal under this section, the High Court may -

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal of earlier proceedings in the matter before the Tribunal.

Core
court

Rules governing

32.

The Chief Justice may make rules governing the making

appeals.

of appeals to the Tribunal, and from the Tribunal to the High Court and such rules may provide for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply, in the case of an appeal to the High Court, as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.

Remuneration of Tribunal members.

33. (1) There shall be paid to the chairperson, registrar and the members of the Tribunal, such remuneration and allowances as the Minister shall, from time to time, determine.

(2) All expenses of the Legal Education Appeals Tribunal shall be charged to the Legal Education Fund.

~~PART V~~ LEGAL EDUCATION AT CERTIFICATE, DIPLOMA AND DEGREE LEVEL

Certificate and diploma courses.

34. (1) For purposes of the award of a certificate or diploma in law, a person must undergo-
- (a) in the case of the certificate course, at least one year of instruction; and
 - (b) in the case of the diploma course, at least two years of instruction

and sit and pass examinations in the core courses set out in the Fourth Schedule.

(2) A legal education provider may offer other courses to persons pursuing a certificate or diploma course in addition to those set out in the Fourth Schedule.

Core degree courses.

35. (1) A legal education provider offering a degree course for purposes of this Act shall in addition to any other courses offered, provide instruction and examination in each of the courses set out in the Fifth Schedule.

(2) Subsection (1) does not bar a legal education provider from offering other programmes that may be considered necessary taking into account developments in the law and society generally.

PART VI—LEGAL EDUCATION EXAMINATIONS

Council
examinations.

36. The Council shall be the examining body for purposes of each of the following-
- (a) examinations leading to the award of a certificate in law;
 - (b) examinations leading to the award of a diploma in law;
 - (c) pre-bar examinations; and
 - (d) bar examinations

Legal Education
Examinations
Board.

37. (1) For the purposes of examinations under this Act, the Council shall establish a board to be known as the Legal Education Examinations Board (hereinafter referred to as the "Examinations Board").
- (2) The Examinations Board shall consist of persons who have knowledge and experience in matters relating to legal education examinations, appointed by the Council.
- (3) The Secretary to the Council shall be the Secretary to the Examinations Board.
- (4) The provisions of the Third Schedule shall have effect with respect to the Examinations Board.

Functions of the
Examinations
Board.

38. The Examinations Board shall, under the direction and control and in the name of the Council, be responsible for all aspects of the examinations for which the Council is responsible under this Act.

Bar examinations.
Cap. 16

39. (1) Subject to section 13 of the Advocates Act, a person is not eligible for admission as an advocate unless the person has passed the bar examinations administered by the Council.
- (2) A person is eligible to sit the bar examinations if the person -
- (a) has passed the relevant examinations of a licensed local university or an accredited foreign university, holds or has become eligible for the conferment of a degree in law of that university; or
 - (b) has passed the pre-bar examinations referred to under section 39; and
 - (c) has undergone a course of tuition at the Kenya School of

Law established under the Kenya School of Law Act, 2005 or any other legal education provider.

- (3) The bar examinations shall consist of -
- (a) a written examination in each of the bar courses set out in the Second Schedule; and
 - (b) a supervised and examinable pupillage programme served for a period of six months with such law firm or firms or other establishment or institution as the Council may prescribe.

(4) If the person supervising a pupil under paragraph (b) of subsection (3) advises the Council that the performance of the pupil has not been satisfactory, the Council may after affording the pupil an opportunity to be heard, and after considering all the circumstances, extend the period of pupillage for that particular pupil for a period not exceeding six months.

(5) The bar examinations must be passed on the first sitting or on any of not more than four further attempts undertaken within four years of the first sitting.

(6) A person who having once sat the bar examinations has not passed each of the units comprising the bar examinations after the expiry of four years from the date of the first sitting is not eligible to sit the bar examinations again.

Pre-bar
examinations.

40. (1) The pre-bar examinations shall be administered to a person to whom paragraph (a) of subsection (2) of section 39 does not apply, if the person proves to the satisfaction of the Council that the person, having passed the relevant examinations of a university holds or has become eligible for the conferment of, a degree in law of that university.

(2) A person who having once sat the pre-bar examinations has not passed those examinations on the first sitting or on any of not more than two further attempts is not eligible to sit the pre-bar examinations again.

(3) The pre-bar examinations shall consist of a paper in each of the core courses at degree level set out in Fifth Schedule and shall be of a standard calculated to determine that a person's understanding of the law is at least such as is to be reasonably

24

expected of a person to whom paragraph (a) of subsection (2) of section 39 applies.

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funds.

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PART VII—FINANCIAL PROVISIONS

- Investment funds. of 41. (1) The Council may invest any of its funds in securities in which for the time being trustees may by law invest trust funds or in any other securities which the Treasury may from time to time approve for that purpose.
- (2) The Council may place on deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of the Council.
- Financial year. 42. The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.
- Annual estimates. 43. (1) Before the commencement of every financial year, the Council shall cause to be prepared estimates of revenue and expenditure of the Council for that year.
- (2) The annual estimates referred to in subsection (1) shall make provision for all the estimated expenditure of the Council for the financial year and in particular, the estimates shall provide—
- (a) for the payment of the salaries, allowances and other charges in respect of the staff of the Council;
 - (b) for the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of the Council;
 - (c) for the proper maintenance of the building and grounds of the Council;
 - (d) for the maintenance, repair and replacement of the equipment and other property of the Council;
 - (e) all expenditure incurred in relation to the establishment, equipment or management or any training institution by the Council; and
 - (f) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of building or equipment, or in respect of such other matter as the Council may deem appropriate.
- Accounts audit. and 44. (1) The Council shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Council.

(2) Within a period of four months from the end of each financial year, the Council shall submit to the Auditor-General or an auditor appointed under this section, the accounts of the Council together with -

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Council on the last day of that day.

(3) The accounts of the Council shall be audited and reported upon as prescribed by law by the Auditor-General or by an auditor appointed by the Council under the authority of the Auditor-General.

PART VIII—MISCELLANEOUS PROVISIONS

Staff of the Council.

45. The Council may appoint such officers or servants as are necessary for the proper discharge of its functions under this Act upon such terms and conditions of service as the Council may determine.

Invitation of experts.

46. (1) The Council may invite any public officer or other person or any representative of any body, who in the opinion of the Council, has expert knowledge concerning the functions of the Council which is likely to be of assistance to the Council to attend any meeting of the Council and take part in the proceedings.

(2) Any person attending a meeting under this section may, if invited take part in any discussion at the meeting but may not vote.

Protection from personal liability.

47. No matter or thing done by a member of the Council or any officer, employee or agent of the Council shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Council, render the member, officer, employee or agent or any person acting by his or her directions personally liable to any action, claim or demand whatsoever.

Change in status of legal education provider.

48. (1) Where a legal education provider is a body corporate, then if at any time a change occurs -

- (a) in the persons who are directors of that body corporate, or
 - (b) in the persons in accordance with whose directions or instructions the directors of that body corporate are accustomed to act,
- the body corporate shall within seven days after that time serve on the Council, a notice giving particulars of the change.

(2) A body corporate which fails to comply with the preceding sub-paragraph commits an offence.

Reciprocal
agreements.

49. (1) The Council may recommend to appropriate authorities the conclusion by Kenya of reciprocal arrangements with the Government of any country in the interests of and in furtherance legal education in Kenya.

(2) Without prejudice to the generality of subsection (1) the reciprocal arrangements referred to in that subsection may include arrangements relating to-

- (a) credit transfers between a legal education provider in Kenya and a legal education provider in another country;
- (b) liaison between the Council and a regulator of legal education in another country; and
- (c) harmonization of the curricula of legal education in Kenya with those in another country.

(3) For the purpose of giving effect to any reciprocal arrangement under this section, the Minister, on the advice of the Council, may make Regulations for giving effect in Kenya to any such arrangements and for modifying or adapting this Act in its application to cases affected by such arrangements.

Offences.

50. (1) A person commits an offence if -

- (a) for the purpose of procuring the registration of himself or another person as a legal education provider, or for any other purpose under this Act knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular;
- (b) being a registered legal education-provider he has a place of business other than that specified in the

licence and carries on business as a legal education provider at that place; or

- (c) offers, purports to offer or holds himself out as offering legal education, otherwise than in accordance with this Act.

(2) A person who commits an offence under this section is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

Offences by body
corporates.

51. Where an offence is committed by any company or other body corporate or by any society, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association body of persons commits that offence and ~~liable to be punished accordingly,~~ unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

General penalty.

52. A person who commits an offence under this Act for which no penalty is specifically provided is liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year or both.

PART IX—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Savings
transitional.

and

53. (1) Subject to subsection (2) upon the coming into operation of this Act -

No. 9 of 1995

- (a) all assets and liabilities of the Council of Legal Education established under the Council of Legal Education Act, 1995 hereinafter referred to as the former Council shall be transferred to and vest in the Council without further assurance and the Council shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities;
- (b) every agreement, whether in writing or not, and every deed, bond or other instrument to which the former Council was a party or which affected the former Council, and whether or not of such a nature

that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Council were a party thereto or affected thereby instead of the former Council, and as if for every reference (however worded and whether express or implicit) therein to the former Council there were substituted in respect of anything to be done on or after such date of coming into operation a reference to the Council;

- (c) any proceedings pending immediately before such date of coming into operation to which the former Council was a party shall be continued as if the Council was a party thereto in lieu of the former Council;
- (d) all officers of the former Council shall become the corresponding officers of the Council and, subject to the provisions of any rules made under this Act, shall continue in office for the period for which they were appointed or elected as officers of the former Council.

(2) For the purposes of this section, the assets and liabilities of the Council do not include The School.

Amendment
Advocates Act.

of

54.

(1) Section 32 of the Advocates Act is repealed.

Cap 16

(2) Section 15 of the Advocates Act is amended -

- (a) in subsection (3), by inserting the words "within ninety days of the expiry of the period referred to in subsection (2)," after the words "by the Chief Justice in chambers";
- (b) by inserting a new subsection immediately after subsection (3) as follows -

"3A In reckoning the period of ninety days referred to in subsection (3), any period during which the High Court is on vacation shall be excluded."

Repeals.

No. 9 of 1995

55.

(1) The Council for Legal Education Act, 1995 (hereinafter in this section referred to as the "repealed Act") is repealed.

- (2) Notwithstanding the repeal of the repealed Act -
- (a) all subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act;
 - (b) Nothing in this repeal shall effect any instrument made or any other thing done under the former Act and every such instrument or thing shall continue in force and shall, so far as it would have been made or done under this Act, have effect as if made or done under the corresponding enactment of this Act;
 - (c) Nothing in this repeal shall adversely affect the terms and conditions on and subject to which any person held office or served immediately before the commencement of this Act.

FIRST SCHEDULE

PROCEEDINGS OF THE COUNCIL OF LEGAL EDUCATION

1. The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the one meeting and the date of the next meeting.
2. A meeting of the Council shall be held on such date and at such time as the Council shall decide or, in the absence of such decision or on any occasion on which the chairperson in consultation with the secretary shall decide that a meeting is necessary, on a date and at a time determined by the chairperson.
3. The chairperson shall, ~~on the application of at least six~~ members, convene a special meeting of the Council.
4. Unless three-quarters of the total membership of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.
5. The quorum for the conduct of business at a meeting of the Council shall be six.
6. The chairperson shall preside at every meeting of the Council at which he is present and in the absence of the chairperson at a meeting, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, ~~a decision on any~~ matter before the Council shall be by a majority of votes of the members present and in the case of an equality of votes, the chairperson of the person presiding shall have a casting vote.
8. Subject to paragraph 5, no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.
9. The seal of the Council shall be authenticated by the signature

of the chairperson and the secretary and any document required by law to be made under seal and all decisions of the Council may be authenticated by the chairperson and the secretary:

Provided that the Council shall, in the absence of either the chairperson or the secretary, in any particular case or for any particular matter, nominate one member to authenticate the seal of the Council on behalf of either the chairperson or the secretary.

10. The Council shall cause minutes of all proceedings of meetings of the Council to be entered in books kept for that purpose.
11. Except as provided by this Schedule, the Council may regulate its own proceedings.

SECOND SCHEDULE

BAR COURSES

1. Professional Ethics and Practice.
2. Accounts including Trust Accounts.
3. Advocacy and Evidence.
4. Legal Drafting.
5. Conveyancing.
6. Civil Procedure.
7. Criminal Procedure.
8. Wills, Trusts and Probate and Administration of Estates.
9. Bankruptcy and Insolvency Processes.
10. Administrative Action.
11. Alternative Dispute Resolution Mechanisms.
12. Managing Legal Practice.
13. Pupillage.

THIRD SCHEDULE

PROCEDURE OF THE EXAMINATIONS BOARD

1. The quorum at meetings of the Examinations Board and the arrangements relating to meetings shall be such as the Examinations Board may determine.
2. The person presiding at a meeting of the Examinations Board has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.
3. Minutes of the proceedings of the Examinations Board shall be kept in such manner as the Board directs, and, on the written request of the Council shall be made available to the Council or any person nominated by the Council.

FOURTH SCHEDULE

CORE COURSES AT CERTIFICATE AND DIPLOMA LEVEL

1. Elements of Contract.
2. Principles of the Law of Torts.
3. Elements of Commercial Law.
4. Elements of Property Law.
5. General Principles of Constitutional Law and Legal Systems.
6. Family Law and Succession.
7. Elements of the Law of Business Associations.
8. Civil Procedure.
9. Criminal Procedure.
10. Fundamentals of Book-keeping and Accounting.
11. Fundamentals of Office Practice and Management.

FIFTH SCHEDULE

CORE COURSES AT DEGREE LEVEL

1. Legal Research.
2. Law of Torts.
3. Law of Contract.
4. Legal Systems and Methods.
5. Criminal Law.
6. Family Law and Succession.
7. Law of Evidence.
8. Commercial Law (including Sale of Goods, Hire Purchase and Agency).
9. Law of Business Associations (to include Insolvency).
10. Administrative Law.
11. Constitutional Law.
12. Jurisprudence.
13. Equity and the Law of Trusts.
14. Property Law.
15. Public International Law.
16. Labour Law.

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APPENDIX IV

THE KENYA SCHOOL OF LAW BILL, 2005

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1 –Short title
- 2 –Interpretation

PART II—THE KENYA SCHOOL OF LAW

- 3 –Establishment of The Kenya School of Law
- 4 –Objects, powers and functions of The School
- 5 –Kenya School of Law Board
- 6 –Duration of membership of the Board
- 7 –Procedure of the Board
- 8 –Delegation by the Board
- 9 –The common seal of The School
- 10 –Director, Deputy Directors and staff of The School
- 11 –Funds of The School

PART II—FINANCIAL PROVISIONS

- 12 –Investment of funds
- 13 –Financial year
- 14 –Annual estimates
- 15 –Accounts and audit

PART III—MISCELLANEOUS PROVISIONS

- 16 –Protection from personal liability
- 17 –Liability of the Board for damages
- 18 –Offences
- 19 –Regulations by the Board

PART IV—SAVINGS AND TRANSITIONAL PROVISIONS

- 20 –Savings and transitional

SCHEDULE - Proceedings of the Kenya School of Law Board

A Bill for

AN ACT of Parliament to provide for the establishment and incorporation of the Kenya School of Law and for connected purposes.

PART I—PRELIMINARY

ENACTED by the Parliament of Kenya as follows -

- Short title. 1 This Act may be cited as the Kenya School of Law Act, 2005.
- Interpretation. 2 In this Act, unless the context otherwise requires—
- "Board" means the Kenya School of Law Board established under section 5;
- "Council" means the Council of Legal Education established by section 20 of the Legal Education Act, 2005;
- "the Council of the Society" means the Board of the Society elected under section 13 of the Law Society of Kenya Act;
- "financial year" means a period of twelve months ending on the 31st day of December;
- "Minister" means the Minister for the time being responsible for matters relating to legal education;
- "Roll" means the Roll of Advocates kept under section 16 of the Advocates Act;
- "The School" means The Kenya School of Law established under section 3.

PART II—THE KENYA SCHOOL OF LAW

Establishment
of The Kenya
School of Law.

- 3 (1) There is established a school to be known as The Kenya School of Law (hereinafter in this Act referred to as "The School").

(2) The School shall -

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, be capable of suing and being sued; and
- (c) be capable of holding, purchasing and otherwise acquiring and disposing of any property, movable or immovable for the purpose of carrying out its functions under this Act.

Objects, powers
and functions of
The School.

- 4 (1) The School shall be a public legal education provider responsible for provision of professional legal education and training as an agent of the Government, and in the performance of its functions, shall, be subject to the regulatory authority of the Council of Legal Education established under the Council of Legal Education Act, 2005.

(2) Without prejudice to the generality of subsection (1), the mandate of The School shall include but not be limited to -

- (a) advocacy training;
- (b) continuing professional development targeting all cadres of the legal profession;
- (c) para-legal training;
- (d) other specialized training; and
- (e) undertaking projects, consultancies and research.

- (3) The School shall have the power to-
- (a) establish and manage such campuses or centres for research and legal education and training as are necessary for the furtherance of the objects of The School;
 - (b) fix, demand and receive fees and other charges for services rendered;
 - (c) provide subsidies and bursaries for needy students;
 - (d) regulate and supervise the discipline of students of The School;
 - (e) co-operate with institutions of higher learning in any part of the world with objects similar to those of The School, in such manner as may be conducive to the objects of The School;
 - (f) make such Regulations as may be considered necessary for regulating the affairs of The School; and
 - (g) to do all such other acts and things as The School may consider necessary, conducive or incidental to the attainment of the objects of The School.

Kenya School of
Law Board.

(1) There is established a body to be known as the Kenya School of Law Board, (hereinafter referred to as the "Board") which shall subject to this Act have general control and management of The School.

Duration
member
the Boa

(2) The Board shall consist of the following persons appointed by the Minister -

- (a) one person nominated by the Attorney-General;
- (b) one person nominated by the Permanent Secretary of the Ministry for the time being responsible for legal education;
- (c) one person nominated by the Permanent Secretary of the Ministry for the time being responsible for finance;
- (d) a representative of the Judiciary nominated by the Chief Justice;
- (e) three persons associated with the teaching of law in Kenya; and
- (f) two persons nominated by the Board to represent special interests.

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(3) The Minister shall appoint the chairperson of the Board from among the members of the Board.

(4) Each of the nominating persons pursuant to subsection (2), shall forward to the Minister the names of three persons, at least one of whom shall be a woman, for each nomination to which they are

The
seal
Sch

entitled.

(5) Each of the persons to be nominated pursuant to subsection (2) shall be a person who has had experience and has shown competence and capacity in matters relating to the provision of legal education or the administration and management of an institution such as The School.

(6) Before appointing members of the Board under subsection (1), the Minister shall ascertain that either gender is represented by at least one-third of the persons to be appointed and towards this end, the Minister may appoint as a member of the Board, any of the persons whose name is forwarded to him under subsection (4).

(6) Within two months of its appointment, the Board shall nominate for appointment by the Minister the persons referred to in paragraph (f) of subsection (2) and shall specify the special interests to be represented by those persons.

Duration of
membership of
the Board.

5 A member of the Board shall hold office for a term of three years but shall be eligible for re-appointment for one further term:

Provided that in the case of the members of the Board first appointed under this Act, three shall be appointed for a term of four years.

Procedure of
the Board.

6 (1) The Board shall meet at such times and places as the Board may deem appropriate but shall meet at least once in every three months.

(2) The conduct and regulation of the business and affairs of the Board shall be as provided for in the Schedule.

Delegation by
the Board.

7 The Board may, by resolution, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

The common
seal of The
School.

8 (1) The common seal of The School shall be kept in such custody as the Board directs and shall not be used except on the order of the

Board.

(2) The common seal of The School when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization of The School under this section shall be presumed to have been duly given.

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Director,
Deputy
Directors
staff of
School.

9 (1) There shall be a Director of The School, who shall be appointed by the Board and who shall be the chief executive officer of The School and the secretary to the Board.

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(2) The Director shall be appointed from among persons appearing to the Board to be qualified as having had experience and shown competence and capacity in matters relating to the provision of legal education or the administration and management of an institution such as The School.

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(3) There shall be such number of Deputy Directors and Assistant Directors as the Board may consider appropriate, appointed by the Board, from among persons appearing to the Board to be qualified as having had experience and shown competence and capacity in matters relating to the provision of legal education, or the administration and management of an institution such as The School, and responsible for such matters as the Board may determine;

(4) The Board shall appoint such other officers and staff as are necessary for the proper discharge of the functions of The School under this Act.

(5) The terms and conditions of service of the Director, Deputy Directors, Assistant Directors and other officers and staff of The School shall be determined by the Board with the approval of the Minister.

Funds. of The
School.

10 The funds and resources of The School shall consist of -
(a) such sums as may be provided by Parliament for the purpose;
(b) all moneys paid to The School by way of grants, subsidies, donations, gifts, subscriptions, fees, rent or interest; and
(c) any moneys or property which may become payable to or vest in The School in respect of the performance of its functions.

PART II—FINANCIAL PROVISIONS

- Investment of funds. 11 (1) The Board may invest any of the funds of The School in securities in which for the time being trustees may by law invest trust funds or in any other securities which the Treasury may from time to time approve for that purpose.
- (2) The Board may place on deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of The School.
- Financial year. 13 The financial year of The School shall be the period of twelve months ending on the thirtieth June in each year.
- Annual estimates. 14 (1) Before the commencement of every financial year, the Board shall cause to be prepared estimates of revenue and expenditure of The School for that year.
- (2) The annual estimates shall make provision for all the estimated expenditure of The School for the financial year and in particular, the estimates shall provide -
- (a) for the payment of the salaries, allowances and other charges in respect of the staff of The School;
 - (b) for the payment of pensions, gratuities and other charges in respect of the retirement benefits which are payable out of the funds of The School;
 - (c) for the proper maintenance of the building and grounds of The School;
 - (d) for the maintenance, repair and replacement of the equipment and other property of The School;
 - (e) all expenditure incurred in relation to the establishment, equipment or management or any training institution by The School; and
 - (f) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of building or equipment, or in respect of such other matter as the Board may deem appropriate.

Accounts and
audit.

15 (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure and assets of The School.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or an auditor appointed under this section, the accounts of The School together with -

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of The School on the last day of that day.

(3) The accounts of The School shall be audited and reported upon as prescribed by law by the Auditor-General or by an auditor appointed by The School under the authority of the Auditor-General.

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PART III—MISCELLANEOUS PROVISIONS

Protection from
personal
liability.

16 No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting by his directions personally liable to any action, claim or demand whatsoever.

Article 1.

Liability of the
Board for
damages.

17 The provisions of this Act shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, or any works.

18 (1) A person commits an offence if -

- (a) for the purpose of procuring the registration of himself or another person as a student at The School, or for any other purpose under this Act knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in a material particular;

(2) A person who commits an offence under this section is liable to a

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fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

Regulations by
the Board.

- 19 (1) The Board shall have, in addition to all the other powers vested in it, the power to make Regulations to provide for the administration and management of the affairs of The School.
- (2) Regulations made under subsection (1) shall be subject to the approval of the Minister and may provide for -
- (a) the regulation of the proceedings of the Board, including the establishment of special and standing committees of the Board, the delegation to such committees of any of its duties and the fixing of quorums meetings of such committees; and
 - (b) the establishment of advisory committees consisting of members of the Board and persons other than members;
 - (c) the establishment of special divisions or units for the training of specified categories of public officers;
 - (d) the establishment and management of such campuses or centres for research and legal education and training as are necessary for the furtherance of the objects of The School;
 - (e) the fixing of fees and other charges for services rendered by The School;
 - (f) subsidies and bursaries for needy students;
 - (g) the supervision and discipline of students of The School;
 - (h) co-operation with institutions of higher learning in any part of the world with objects similar to those of The School, in such manner as may be conducive to the objects of The School; and
 - (i) such other matters as the Board may consider necessary, conducive or incidental to the attainment of the objects of The School

PART IV—SAVINGS AND TRANSITIONAL PROVISIONS

Savings and
transitional.

No. 9 of 1995

- 20 Upon the coming into operation of this Act -
- (a) all assets and liabilities of the Kenya School of Law existing immediately the commencement of this Act (hereinafter referred to as the former School) shall be transferred to and vest in The School without further assurance and The School shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities;
 - (b) every agreement, whether in writing or not, and every deed, bond or other instrument to which the former School was a party

- or which affected the former School, and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if The School were a party thereto or affected thereby instead of the former School, and as if for every reference (however worded and whether express or implicit) therein to the former School there were substituted in respect of anything to be done on or after such date of coming into operation a reference to The School;
- (c) any proceedings pending immediately before such date of coming into operation to which the former School was a party shall be continued as if The School was a party thereto in lieu of the former School;
 - (d) all officers of the former School shall become the corresponding officers of The School and, subject to the provisions of any rules made under this Act, shall continue in office for the period for which they were appointed or elected as officers of the former School.

(2) Notwithstanding subsection (1) -

- (a) all subsidiary legislation relating to The School and in force immediately prior to the coming into operation of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act;
- (b) Nothing in this Act shall affect any instrument made or any other thing done in relation to the former School and every such instrument or thing shall continue in force and shall, so far as it would have been made or done under this Act, have effect as if made or done under this Act;
- (c) Nothing in this Act shall adversely affect the terms and conditions on and subject to which any person held office or served immediately before the commencement of this Act.

SCHEDULE

PROCEEDINGS OF THE KENYA SCHOOL OF LAW BOARD

- (1) A meeting of the Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the chairperson in consultation with the secretary shall decide that a meeting is necessary, on a date and at a time determined by the chairperson.
- (2) The chairperson shall, on the application of at least five members, convene a special meeting of the Board.
- (3) Unless three-quarters of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of business at a meeting of the Board shall be five.
- (5) The chairperson shall preside at every meeting of the Board at which he is present and in the absence of the chairperson at a meeting, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairperson of the person presiding shall have a casting vote.
- (7) Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only a vacancy among the members thereof.
- (8) The seal of the Board shall be authenticated by the signature of the chairperson and the secretary and any document required by law to be made under seal and all decisions of the Board may be authenticated by the chairperson and the secretary:
Provided that the Board shall, in the absence of either the chairperson or the secretary, in any particular case or for any particular

matter, nominate one member to authenticate the seal of the Board on behalf of either the chairperson or the secretary.

- (9) The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books kept for that purpose.
- (10) Except as provided by this Schedule, the Board may regulate its own proceedings.