



**TASK FORCE ON THE DEVELOPMENT OF A POLICY AND LEGAL
FRAMEWORK FOR LEGAL EDUCATION IN KENYA.**

**LEGAL EDUCATION AND TRAINING IN KENYA: A
SITUATION ANALYSIS OF THE SPECIFIED INDIVIDUAL
TERMS OF REFERENCE AND QUESTIONS ARISING
THEREUNDER.**

INTRODUCTION AND BACKGROUND

The Task Force on Policy and Framework on Legal Education and Training in Kenya was appointed by the Minister for Justice and Constitutional Affairs, Hon. Kiraitu Murungi, EGH, MP, on the 11th January 2005, with the Terms of Reference canvassed in this Paper. These Terms of Reference include the thorough scrutiny of the recommendations of the Mombasa workshop, interview relevant stakeholders and collate all relevant material and to make recommendation as to:

1. The form structure, role and functions of the Council of Legal Education as a regulator of all aspects of legal education in Kenya.
2. The de-linking of the Kenya School of Law from the Council of Legal Education, its form, structure, role and functions as the training agency of Government in the legal sphere,
3. The admission criteria for joining various training institutions licensed by the Council of legal Education for dispensing legal education,
4. The recognition and accreditation of foreign universities for purposes of admittance to the advocacy training programme in Kenya,
5. The promulgation of various programmes and development of curricular to be followed during the various stages development of legal profession.
6. The establishment of bar examinations, including pre-bar examinations and establishment of the necessary secretariat to run and manage the said examinations.
7. Collaboration with other legal institutions within the region on training matters.
8. 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.
9. Promulgate and develop continuing and paralegal education and training programmes for various stages in the development of legal professionals.
10. Any other matter or issue incidental to the above.

The Task Force has interpreted these Terms of Reference and adopted a detailed itinerary of activities that it proposes to engage in. To enable the Task Force answer to these Terms of Reference, this Paper has been developed to summarize existing literature on the matters at hand. It is anticipated that this paper presents an opportunity to all stakeholders generally to readily and substantively respond to the issues raised herein.

By way of general background, it is necessary to point out that legal education in Kenya pre-dates independence. Efforts to structure a home-grown legal profession started in 1960 when the Lord Denning Committee was set up to consider the best models for legal training in Africa. This led to the promulgation of the 1961 Advocates Ordinance and the subsequent establishment of the Council

of Legal Education and the Kenya School of Law. These two institutions have had a close symbiotic relationship since establishment, though the School does not have a defined legal personality of its own. Since its establishment at the dawn of independence in 1963, the Kenya School of Law has always been answerable to two institutions - the Council and the Government in the person of the Office of the Attorney General (at first, and now), the Ministry of Justice and Constitutional Affairs. This early dualistic approach to the administration of legal education in Kenya has largely defined the administration of justice in this country.

The objectives of legal education have never been in doubt from the start, however. It is and has been generally agreed that legal education ought to be geared towards training the kind of professional legal personnel which the country needs in its social-economic and political endeavors spanning many legal disciplines and without attempting to close the generic forms): counsel to government ministries and departments; judges and magistrates; and private practitioners. It has also generally been the understanding of both the CLE and the KSL that in planning legal education, attention should be given to the skills and skills development within a national educational planning and manpower context and skills development in various aspects of the practice of the law. Some of the variables which impact on issues of skills development include:¹

- a) Development public policies and the perception and use of the law in the political economy;
- b) Educational planning policy on manpower needs;
- c) Development of human resource needs within the legal system;
- d) The character of the legal profession and the role of the lawyer in society;
- e) The career patterns and mobility of professional lawyers, e.g. the extent to which they move into positions in politics, public service and business;
- f) The socialization functions of university education; and
- g) Conditions within which the national educational system affects the quality and quantity of legal education.

The objectives of this Task Force is to solicit the views of stakeholders on the critical issues that need to be strengthened to make legal education and training, the CLE, KSL and other institutions involved in the provision of legal education to become dynamic and modern institutions for the provision of key legal services for a fast growing and modern economy that the Kenya of the 21st Century should be. A brief situation analysis of each term of reference is given help in understanding the background to issues and institutions involved in legal education and their current status.

TOR 1. THE FORM, STRUCTURE, ROLE AND FUNCTIONS OF THE COUNCIL OF LEGAL EDUCATION (CLE)

The CLE dates back to the colonial times (1961, when the Advocates Ordinance was passed) and is modeled on the English system but lacks in private institutions to manage legal education in Kenya with the result that the regulation of legal education

¹ These points are sourced from 'The Final Report of the Committee on Legal Education, Training and Accreditation in Uganda', September 1995 - p.11.

has been a sad mix of self-regulation and public control.

Although the Council under its statutory mandate "*shall exercise 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*", its actual mandate has been limited to supervising the training of lawyers at the Kenya School of Law and controlling entry into the legal profession, particularly the bar.

The CLE has under current regulations delegated all its training functions to the Kenya School of Law as its agent, an institution that was established as a Department in the Attorney-General's Chambers (also in 1961) to provide legal education on behalf of Government. Currently the legal status of the School is uncertain: it is neither quite a public corporation nor a department of Government as it is legally deemed to be ran and managed by the CLE, which is ostensibly an autonomous body, though in reality it behaves more like a board of trustees for the KSL, which runs the show. The resultant experience is that the CLE and the KSL have played parallel and sometimes competing roles.

The CLE has not endeavored to establish and forge linkages with other actors in legal education and training in any meaningful way.

The CLE has no clear management, administrative cum financial structure to carry out its mandate. The Ministry of Finance via the Kenya School of Law gives funding for the CLE as a One Line Budget and the accounting process is intricate and cumbersome.

Questions and issues under TOR 1:

1. Taking into account its current form and structure, to what extent has the CLE fulfilled its statutory mandate as a regulator and provider of legal education in Kenya?
2. Are there any shortfalls in the current form and structure which impede the CLE's role and functions?
3. Should the CLE's role as a regulator continue to be exercised in tandem with its other functions, eg. as trainer or examiner?
4. What relationships should exist between the CLE and the Kenya School of Law? Is there merit in de-linking the two?
5. What relationship should exist between the CLE and other providers of legal education in Kenya?
6. Ought tertiary institutions seeking to provide legal education go through a licensing process?
7. What criteria should be devised for licensing of legal training institutions in various training categories?
8. What relationship should exist between the CLE and other regulators in the educational sphere in Kenya?
9. How may the proposed CLE be financed funded?
10. Taking into account best practice from other countries and jurisdictions, what mechanisms, form, structure, role and functions may be introduced to reform the current CLE?

11. What legal and administrative mechanisms need to be taken to make the necessary changes and to reform both the form and structure of the CLE and its role, functions and relationships?

TOR 2. DE-LINKING OF THE KENYA SCHOOL OF LAW FROM THE CLE, ITS FORM, STRUCTURE, ROLE AND FUNCTIONS

The central issue here is to determine the relationship between the CLE and the KSL and decide whether the symbiotic relationship currently existing between these institutions is useful or necessary for their role and functions. From a historical perspective, it has already been stated heretofore that pursuant to the promulgation of the Advocates' Ordinance in 1961, the CLE was set up and the KSL was subsequently established as a department in the Attorney General's Chambers. While the CLE was charged with the responsibility of supervising *inter alia* the training of lawyers and controlling entry into the legal profession, the KSL was charged with the provision of legal education, initially under the Articled Clerkship system and later (1965), to law graduates from the University of Dar-es-Salaam. The Articled Clerkship system was phased out in 1989, though the KSL started offering the Post-Graduate Diploma in Law from 1970, which diploma became the main qualification for admission into legal practice (advocacy).

From this developmental process, the seeds of institutional dualism in the control and provision of legal education in Kenya were firmly planted. With the passage of time and growing experience, the two institutions appreciated their overlapping and sometimes conflicting mandates, triggering a review process that culminated in the 1995 Justice Akiwumi Report which saw the enactment of the Council for Legal Education Act. Nonetheless, the CLE and the KSL continue to play parallel and sometimes competing roles, and the need to review and update the current policy on legal education remains.

Although it is the CLE that is statutorily recognized as the legal *persona* charged with regulating, supervising and the training functions of the Government under the CLE Act, the reality is that the KSL exercises all these functions on its behalf as agent. Until recently, the KSL was operationally a Department of the AG's Chambers. Operationally, the KSL is still largely operating as a Department of MOJCA, accountable to it administratively and financially, and most of its staff is seconded to it either from the AG's Chambers or the Ministry. Furthermore, it receives a One Line budget from the Ministry of Finance, but has no legal *persona* of its own. Neither does it have an internal management structure and has for along time operated without defined institutional framework in terms of internal management, with a great deal of influence from the Office of the Attorney-General. There is an urgent need to clearly define both the legal status and operations of the KSL.

Questions and Issues under TOR 2:

1. Ought there be an independent tertiary legal training institution (post-university) in the form in which the current Kenya School of Law exists?
2. What form, structure and functions should such an institution take?
3. What relationships should the institution referred to in 1 above have

- with the CLE? with Government (main departments with stakeholder status in legal education)? With other providers of legal education (mainly Faculties of Law) in Kenya?
4. How may such an institution be financed and funded?
 5. Taking into account best practice from other countries and jurisdictions what mechanisms may be introduced to reform the current Kenya School of Law?
 6. What legal and administrative mechanisms need to be introduced to reform the current status, form, structure, role and functions of the current Kenya School of Law?

TOR 3. ADMISSION CRITERIA (INCLUDING PRE-BAR EXAMINATIONS) TO TRAIN IN INSTITUTIONS OF LEGAL EDUCATION.

Other than for purposes of the advocacy programme, there are in Kenya 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 programme. This presents no problem until these students then seek to join the advocacy programme through the KSL. Some students also obtain diplomas in non-legal or para-legal fields, which they then use to enter into law degree programmes at universities and thereafter seek entry into the advocacy programme as graduates in law.

The issues that arise from this reality are as follows:

- Should the KSL dig into the academic history of students holding degrees in law to establish whether pre-university academic standards were met? Currently there are students admitted to the KSL from public universities in Kenya who did not meet the pre-university academic standards set down by Legal Notice No.357 of 1997.
- Does the CLE recognize all universities in Kenya that are recognized by the Commission for Higher Education? These would also be the same universities recognized under the regulations outlined under **TOR 4**. In the accreditation process, should the CLE play any role, or should the practice of the CHE doing so alone continue? If the CLE is to play a role, what would that role be?
- The Joint Admissions Boards (JAB) (a body composed of representatives from all public universities) sets different criteria for entry into public universities every year, and further sets differing entry marks for entry into law Faculties of the two public universities. The question is, what is the rationale of maintaining an entry requirement that was in use by the **JAB in 1997**? Besides, is this practice a best practice?
- For persons seeking to be enrolled into the advocacy programme, the admission criteria both at the Pre-degree level and after is the thrust of the entry/admission criteria into the School of Law, and this admission criteria is as

set down in *Legal Notice Number 357 of 1997* that, a person shall be admitted to the School if -

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

Having passed the relevant examinations of a university, university college or other institution prescribed by the Council, he holds or has become eligible for the conferment of a degree in law in the grant of that university, university college or other institution, and had prior to enrolling at that university, university college or other institution -

Attained the minimum entry requirements for admission to a public university in Kenya; and

Obtained a minimum grade of 'B' (plain) in English Language in the Kenya Certificate of Secondary Examination or its equivalent;

He possesses any other qualifications, which are acceptable to and recognized by the Council.

It would appear from the preceding 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.

Questions and Issues under TOR 3:

1. Should there be and entry criteria imposed on those seeking entry into various stages of the legal profession, whether: Certificate, Diploma, Degree or Advocacy training?
2. Taking into account our overall education system, what should such entry criteria or benchmark be for: Certificate, Diploma, Degree and Advocacy training programmes?
3. Is it necessary or prudent to distinguish between training criteria for those seeking admission into the Advocacy programme and those admitted into general law programmes?
4. What selection process (pre-bar examinations?) should be put in place for admission into the Advocacy training programme?
5. Is it necessary or prudent to discriminate between various categories of applicants for admission into the advocacy programme on the basis of where the applicant graduated from? Or whether local or foreign?
6. Who should set these criteria or standards: the CLE? the training institutions to which candidates are admitted? Or, some other regulator such as the Commission for Higher Education?
7. Should candidates seeking to study law, whether they are admitted to local or foreign institutions have the same benchmark entry qualifications?

Relationship ought to be fostered between the CLE/KSL and other policy instruments such as the Commission for Higher Education and the Ministry of Education in fashioning overall education admission?

Legal or administrative mechanisms ought to be brought to bear to facilitate the proposed changes or reforms?

THE RECOGNITION AND ACCREDITATION OF FOREIGN QUALIFICATIONS FOR SPECIFIC AND GENERAL PURPOSES

There is no clear process by which foreign Universities are accredited for purposes of acceptance of their graduates into the advocacy-training programme in Kenya. To date, only persons who are citizens of any of the three East African countries are deemed eligible to pursue admission into the advocacy programme in Kenya under section 12 of the Advocates Act Chapter 16 Laws of Kenya. This law came into force on 15th December 1989.

Secondly, the Act has carried over the Advocates (Degree Qualifications) Regulations that were promulgated through Legal Notice number 475 of 1963 as amended in 1965, 1968 and 1971. These regulations and the Schedule there-under are the only guide as to which degrees are acceptable to the Council for Legal Education for purposes of section 13(1) (b) of the Advocates Act, which provides that:

"A person shall be duly qualified (to be admitted as an advocate of the High Court of Kenya) if-

- (a) 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*
- (b) 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.*

And thereafter both -

he has attended as a pupil and received from an advocate of such class as may be prescribed, instruction in the proper business, practice and employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed one year; and

- (ii) he has passed such examinations as the Council of Legal Education may prescribe; or*
- (c.) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education.*

- (d) he is an Advocate for the time being of the High Court of Uganda or the High court of Tanzania.
- (2) The Council of Legal Education may exempt any person from any or all of the requirements prescribed for the purposes of paragraph (i) or paragraph (ii) of subsection (1) upon such conditions, if any, as the Council may impose.

Schedule

1. The LL.B degree and higher degrees in law awarded by any of the following Universities or university colleges

- | | |
|--|---|
| 1) University of Aberdeen | 13) National University of Ireland |
| 2) University Aberystwyth | 14) University of Leeds |
| 3) The Queens University of Belfast | 15) University of Liverpool |
| 4) University of Birmingham | 16) University of London |
| 5) University of Bristol | 17) Victoria University of Manchester |
| 6) University of Cambridge | 18) University of Oxford |
| 7) University of Dublin, trinity College | 19) University of St Andrews |
| 8) University of Burham | 20) University of Sheffield |
| 9) University of Edinburgh | 21) University of Southampton |
| 10) University of Exeter | 22) Other degrees that are recognized as hereunder; |
| 11) University of Glasgow | |
| 12) University of Hull | |

2. Degrees:

- The B.A degree In Law, University of Cambridge
The B.A degree in Legal Science, University of Dublin, Trinity college
The B.C.L. degree, National University of Ireland.
The B.A. (Law) degree, Nottingham University
The B.L. degree, Universities of Aberdeen, Edinburgh, St. Andrews and Glasgow.
The B.A. degree In Jurisprudence, University of Oxford
The B. Jur degree, University of Sheffield
The B. A. (Law) degree, University of Southampton
The degree of LL.B (London) for students of Makerere University College (Faculty of Laws at Dar es Salaam).
The degree of LL.B, University of East Africa
The degree of LL.B, University of Makerere
The degree of LL.B. University of Nairobi

However, the CLE may from time to time approve degrees from Universities and University colleges or institution not in the schedule as provided for in the Act at Section 13(1) (b) and 13 (c) and under the regulations as hereunder.

3. *Any degree in law of a university or university college not otherwise mentioned in these Regulations, so long as such degree and such university or university college, as the case may be, are for the time being approved by the Council of Legal Education.*

How the CLE does this without any criteria remains a big issue and some rules have in the past been mooted for promulgation. At the moment the approval process is highly opaque.

Questions and Issues under TOR 4:

1. What ought the overall Kenyan policy on accreditation of foreign universities and certification for either specific or general purposes be?
2. Ought there be a policy on accreditation of foreign universities and legal certification for general purposes and for admission into the Advocacy training programme in Kenya?
3. Who should devise and enforce the accreditation policy in Kenya with regards to legal matters: the Commission for Higher Education? the CLE? the KSL? or individual training institutions?
4. What form should such a policy take: a permanent listing of accredited institutions or should it be carried out on an *ad hoc* and case to case basis?
5. What criteria should be devised to accredit a foreign institution as a competent legal trainer for purposes of admission of its graduates to various forms legal practice in Kenya?
6. In the light of recent efforts at economic integration in East Africa, how ought training institutions in East African countries be treated on issues of accreditation?
7. Beyond East African countries, what reciprocal and *quid pro quo* arrangements ought to be made to accredit Kenyan trained graduates to practice in foreign jurisdictions?
8. What legal and administrative mechanisms need to be taken into account to make the necessary changes and implement this policy on accreditation?

**TOR 5. CURRICULAR DEVELOPMENT FOR LEGAL EDUCATION - INCLUDING
PARALEGAL EDUCATION:**

Government and other stakeholders are cognizant of the fact that the quality of legal education in Kenya has declined significantly and the delivery of services in all categories of the legal profession has been negatively affected. Traditionally, the mark of a good advocate can only be judged through his/her professional competence, efficiency, courage, integrity and probity in his/her relationship with his/her clients, the court and the disciplinary process. These characteristics are the product of training that a lawyer undergoes in his/her formative years.

The conduct of Legal education in Kenya has remained two-pronged, that is, students first undergo programmes conducted within the respective

universities, then proceed for a post-graduate diploma at the Kenya School of Law which includes a one-year practical internship/pupilage at a Lawyer's firm.

There are various players in the making of a lawyer in Kenya: the universities; the Council for Legal Education; the Kenya School of Law; the law firms; and, the lawyer him/herself, as a graduate of a local or foreign university.

The Universities

The faculties of law at Moi and Nairobi Universities are the institutions responsible for offering legal education at degree level in Kenya. Instructional features comprise of:

- Taking of courses that lead to a Bachelor's degree in law. Both universities admit two categories of students: "regular" (government subsidized) students and "parallel" (privately sponsored) students.
- Instruction is the traditional classroom/discussion/lecture method.
- Faculties also run clinical programmes under which students undertake attachment at subordinate courts.
- Programmes are undertaken for four years - each made up of 2 semesters. At the end of each semester students are assessed by way of written exams.
- In the final year, an optional dissertation paper is written on a chosen topic and evaluations are done on the basis of coursework, assignments and written exams on the subjects taught.
- After they graduation, students from local universities, are exempted from attending the Kenya School of Law, and embark on a one-year pupilage programme at respective advocates firms.
- Student who graduate from foreign universities, have to enroll in the training programme at the Kenya School of Law, which training encompasses several courses under the auspices of the Council of Legal Education.

Below are course offerings taught in Moi and Nairobi universities respectively: -

Moi University

- i. Social foundation of the Law'
- ii. Contemporary Legal Issues and Practice
- iii. Law of Contracts
- iv. Principals of Tort Law
- v. Legal Systems
- vi. Criminal Law
- vii. Civil and Criminal Procedure
- viii. Law of Evidence
- ix. Constitutional Law

- x. Legal problems and Client Counseling
- xi. Family Law
- xii. Professional Ethics and Responsibility
- xiii. Sale of goods and agency
- xiv. Legal Analysis and ADR
- xv. Law of Succession
- xvi. Customary Law Property Law
- xvii. Equity
- xviii. Administrative Law
- xix. Commercial Law
- xx. Banking Law
- xxi. Islamic Law
- xxii. Public International Law
- xxiii. Disability Law
- xxiv. Information Law
- xxv. Proprietary Rights and Transactions
- xxvi. Environmental and Natural Resource Law
- xxvii. Law of Business Transactions
- xxviii. Fundamental Rights And Freedoms
- xxix. Law of Cooperatives And partnerships
- xxx. Law of Insurance
- xxxi. Gender and Law
- xxxii. Tax Law
- xxxiii. Labour Law
- xxxiv. White collar and Corporate Crime
- xxxv. Accounting for Lawyers
- xxxvi. Law of the Sea
- xxxvii. Comparative legal Systems of E. Africa
- xxxviii. Jurisprudence
- xxxix. International Commercial Transactions
- xl. Children and the Law
- xli. Bankruptcy law Conflicts of Laws
- xl. Health Laws

University Of Nairobi

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|-------------------------------|---------------------------------|
| i. Legal research and writing | xiv. Procedures |
| ii. Torts | xv. Criminology and penology |
| iii. Contracts | xvi. Administrative Law |
| iv. Social Foundation of Law | xvii. Property theory |
| v. Constitutional Law | xviii. Sales of Good and Agency |
| vi. Criminal Law | xix. Jurisprudence |
| vii. Criminal Procedure | xx. Public International Law |
| viii. Evidence | xxi. Equity |
| ix. Civil Procedure | xxii. Insurance Law |
| x. Administrative Law 11 | xxiii. Family Law |
| xi. Legal practice | xxiv. Banking |
| xii. Advocacy | xxv. Accounting for Lawyers |
| xiii. Legal Systems and Legal | xxvi. Customary LAW |
| | xxvi. Law of Trusts |

xxvii.	Land use Law	xxxvi.	Intellectual Property Law
xxviii.	ADR	xxxvii.	International Trade Law
xxix.	Humanitarian Law	xxxviii.	International Human Rights Law
xxx.	Securities Regulations	xxxix.	Professional Ethics and Responsibility
xxxi.	Contemporary Legal Problems	xl.	Consumer Protection Law
xxxii.	Bankruptcy and Commercial Securities	xli.	Law of the Sea
xxxiii.	Labour Law	xlii.	Law of Succession
xxxiv.	Islamic Law	xlili.	East African community Law
xxxv.	Environmental ;Law	xliv.	Energy Law

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The changes made to the Faculty of Law curriculum At the University Of Nairobi in 1990 - 1991 were in anticipation of the first intake of the new students under the 8-4-4- system of education.

The Council of Legal Education

The Council of Legal Education Act establishes the Council of Legal Education, which is a body corporate endowed with perpetual succession. It exercises general supervision and control over legal education in Kenya and advises the Government in relation to all aspects thereof. It is this body which tasked with the responsibility of controlling standards of training and the quality of legal education in Kenya.

The Council of Legal Education through the Kenya School of Law *inter alia* organizes and conducts courses for the acquisition of legal knowledge, professional skills and experience by persons seeking admission to the Roll of Advocates in Kenya.

The Kenya School of Law

Although it was initially established as a Department within the AG's Chambers, the KSL has been in the process of incorporation as a state corporation since 2001. From its inception the KSL has been mainly involved in the training and nurturing of a professional cadre in this country - advocates. The Council of Legal Education "uses" the Kenya School of Law as its agency for carrying out this mandate. This is where the students are enrolled into the post-graduate diploma programme after graduating from the law faculties.

The Council of Legal Education may recommend any person wishing to be admitted to practice law in Kenya to read for and pass examination leading to the award of the post-graduate Diploma in Law. The exams shall comprise the syllabus of examination subjects and scheme of examination, to wit:

- | | | | |
|------|--|-------|--------------------|
| i. | Constitutional Law and Legal Practice in Kenya | v. | Law of Succession |
| ii. | The Law of Contract | vi. | Law of Torts |
| iii. | Criminal Law | vii. | Accounts |
| iv. | Family Law | viii. | Civil Procedure |
| | | ix. | Criminal Procedure |
| | | x. | Commercial Law |
| | | xi. | Law of Business |

- xii. Associations
- xiii. Equity
- xiv. Evidence Law
- Land Law

- xv. Conveyancing
- xvi. Professional Ethics and Practice

Teaching Methodology

Instruction at University level in Kenya is by way of traditional lecture method, which is mainly theoretical with little or no attention being paid to the practical aspects of law and the needs of the legal profession. Course content is pegged at merely assisting students with theoretical examinations, and rarely seek to analyze and synthesize social and economic issues on the part of graduates. The curriculum fails to explore and inquire into the foundations of the law and the role of the law in the development process.

A lot of emphasis is put on the private aspects of the legal profession. This has resulted in little or no attention being accorded the public and social aspects of the law. For this reason, there is need to introduce courses on the social sphere such as:

- African History and politics
- Social and political change in Kenya
- Psychology
- Studies of the economies of Africa

Although teaching at the Kenya School of Law is supposed to be practice-oriented, in fact the teaching approach differs from the faculties of law only in its being more positivistic. There has recently emerged new thinking in the common law world which favours focus on skills training. Little emphasis is put on skills development courses in the teaching of law in Kenya and subjects such as: advocacy skills, communication, negotiation are non-existent.

The law curriculum at the KSL has not been reviewed in thirty years. In addition, many changes have occurred in the present curriculum at the law faculties to accommodate the 8:4:4 system of education. These changes coupled with the exemption of the local graduates from the attending KSL mean that few law graduates from the two universities are required to study law subjects at the KSL.

The staff at the School is inadequate and ill motivated to vigorously pursue the goals of legal education. Teaching staff is recruited on an ad-hoc basis hence there is no consistency in the evaluation of general programmes and learning.

Questions and Issues under TOR 5:

1. What should be taught at each level of legal training in Kenya? Which institution(s) should teach at what level of legal training?
2. What relationship should be built into individual training programmes to ensure efficiency and continuity of programmes?
3. What form and place should be assigned to the development of a para-legal training infrastructure in this general training matrix?
4. Is it necessary or prudent to have a generic programme which benchmarks the core courses to be taught at each level of legal training?

5. What should be role of the Commission for Higher Education? CLE? KSL? or individual training institutions in benchmarking core courses at each level of training?
6. What mode of instruction ought to be espoused at each training level in our legal education?
7. Who should devise curricular to be taught at each level of legal training: the Commission for Higher Education? the CLE? the KSL? Or individual training institutions?
8. Who will have overall oversight for curricular development and improvement at individual training institutions?
9. When and by whom is practical/clinical/internship legal education training to be dispensed in the training sequence of legal education in Kenya?
10. What form should this practical/clinical/internship training take?
11. What funding mechanisms ought to be put in place to make such training viable?
12. What legal and administrative mechanisms ought to implemented to enforce these reforms?

TOR 6. THE INTRODUCTION OF BAR EXAMINATIONS INCLUDING SECRETARIAT TO RUN AND MANAGE EXAMINATIONS

The CLE sets and marks examinations which are basis of admission as an advocate in Kenya. Like all other mandates of the CLE, the examination process is administered by the KSL on behalf of the CLE. The requirement of sitting CLE examinations was hitherto compulsory to all students wishing to be admitted to the Roll of Advocates. However, the local universities (Nairobi and Moi) have since included in their curricula most of the courses taught at the KSL, and the current practice is to exempt local graduates from the CLE examinations.

Students graduating from ALL foreign universities and who wish to practice law in Kenya, MUST without exception sit and pass examinations set by the CLE at the KSL. By this process there exists a varied scheme of admission both to the KSL and the Advocacy profession depending on whether you were locally or trained abroad.

The examination process as is the training in respect of the clinical/pupilage component of the course at the KSL is haphazard, inconstant and varies from one pupil master to another, resulting in there been no common standard against which the success or otherwise of the programme can be gauged. In some jurisdictions pupils and their masters are given guidelines on what is expected of them during pupilage.

Under statute, the CLE is mandated with conducting examinations for the grant of academic awards, award of fellowships, scholarships and bursaries. Apart from the Advocacy programme, no serious efforts have been made to carry out this mandate by the CLE.

Examinations Process has not been run on a professional basis at by the CLE and the KSL with allegation of impropriety and mismanagement abound. There are no internal or proper structures for running this process and delay in issuing results is

the norm. Perhaps it is time to consider establishing a secretariat wholly dedicated to running and managing BAR examinations for the CLE.

Questions and Issues under TOR 6:

1. Who should set and mark examinations at the various stages of legal training? CLE? KSL? Individual training institutions?
2. Is there need to have BAR examinations as the main criterion for admission to the roll of advocates?
3. Is there need to set up an examination's board to run BAR examinations?
4. What legal and administrative mechanisms need to be set in place to realize this reform agenda?

TORS 7 & 8. COLLABORATION WITH OTHER INSTITUTIONS AND REFORMING KSL TO ENHANCE RESPONSIVENESS.

Recently the Attorney-General of Kenya published amendments to the Advocates Act allowing advocates in Uganda and Tanzania to Roll 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 somewhat minimal. Current collaborative efforts at universities is in the sourcing of external examiners from other law faculties and the holding of joint moot courts. There is need to examine more avenues for increased collaboration within the three countries, especially in enhancing the exchange of information and increased uniformity in relation to the curricula offered by the various Faculties and the Law schools.

With the economic integration of East African countries, there is need for the KSL and other national institutions engaged in legal 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 a lot of expert training on trade law and development, areas where the KSL could very well take a lead. As the implementation of the East African Community Treaty and all the derivative instruments there-under progresses, the scope for legal education will keep widening, and traditional legal education institutions cannot and do not offer such specialized training as the Community will require. This is an opportunity to be seized and maximized.

There will however require substantial human and capital resources for building institutional capacity and competences in this regard.

Questions and Issues under TORs 7 & 8:

1. What mechanisms need to be put in place to ensure that training in our local institutions conforms to international standards?
2. In what way or ways may the locally trained legal practitioner benefit from various training initiatives in legal education?
3. What reciprocal and *quid pro quo* arrangements may benefit the local legal practitioner both regionally and internationally?
4. What measures need to be taken to ensure that our legal training institutions

- are competitive and centres of excellence in their fields?
5. How may the KSL become a centre of excellence in legal training in the East African sub-region?
 6. What resources (both human and capital) are necessary to make the KSL a centre of excellence in the East African region?

TOR 9. CONTINUING LEGAL EDUCATION AND TRAINING

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 practitioner, 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 profile treatment in this country.

There is need for in-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 courses such as legal research, client counseling, information technology, among many others. This anomaly should be corrected by institutionalizing continuing legal education in various aspects of our legal practice.

Another area of legal education that has lagged behind is in Para-legal training. There is no recognizable institutional framework, programme or course offering for this all-important area of the legal sector and yet there is an abundance of demand out there.

Some of this demand may be channeled to or out-sourced to private training institutions that the CLE may deem fit and appropriate.

Questions and Issues under ToR 9:

1. What steps need to be taken to institutionalize continuing legal education in this country?
2. What or which institution(s) is best suited to undertake continuing legal education?
3. What form should training and instruction take in continuing education?
4. What programmes and course offerings need to be introduced to foster a viable continuing legal education programme?
5. What steps or mechanisms need to be put in place to implement this recommendation?

TOR 10: Any Other Matter Incidental to or Integrally Connected to the Above.

What other matter or issue needs to be taken into account to make legal education and training more effectual in Kenya?

