

Report of the
Task Force on the Status
and Management
of the
Kenya School of Law

2014-460

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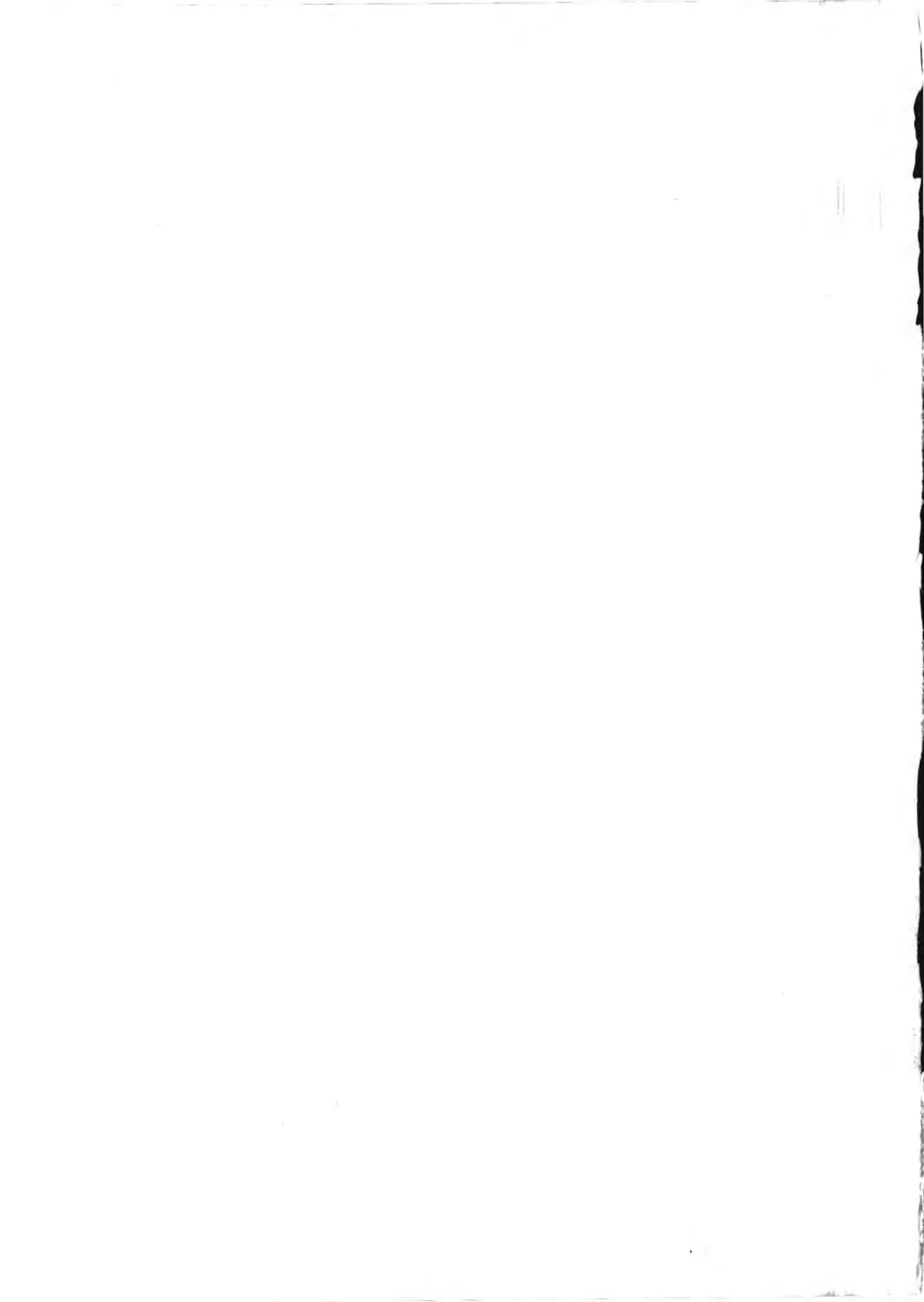


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Task Force on the Status
and Management of the
Kenya School of Law,
NAIROBI.

AUGUST, 1994

Hon. S. A. Wako, EBS, EGH, MP.
The Attorney-General,
State Law Office,
NAIROBI.

Hon. The Attorney-General,

You appointed us on the 9th December, 1993 to review the legal status and management of the Kenya School of Law. The specific terms of reference that you gave us were:

- (A) To review and make recommendations on the legal status and management of the Kenya School of Law, taking into account its urgent development needs and with a view of enhancing its contribution in the field of professional legal education; and
- (B) To make recommendations on such other matters which are related to or incidental to the foregoing.

We have carried out and completed the task in accordance with the terms of reference. We now have the honour to submit our report and to thank you for the trust you have bestowed on us.

Accept, Sir, the assurances of our highest regard.

We are yours faithfully,

The Hon. Justice A.M. Akiwumi
Mr. B.P. Kubo
Dr. W. Mutunga
Mr. L. Muthoga
Mr. J.W. Okwach
Prof. K. Kibwana
Mr. E.M. Ndiritu
Mr. L. Njagi
Mrs. M.N. Nzioka

Chairman
Member
Member
Member
Member
Member
Member
Joint Secretary
Joint Secretary



Chapter 1

INTRODUCTION

- 1 Thirty one years ago, at the time when Kenya attained her independence, there were only a few Kenyan legal practitioners, all of whom had received their legal education outside the country, mainly in Britain and India. Part of the explanation for this paucity of legally qualified professionals was that throughout the colonial period, there were no facilities for the training of lawyers within the country, and proceeding outside the country to study law was not only beyond the means of most Kenyans but was also actively discouraged by the colonial authorities. The Kenya School of Law was established in 1963 to provide such facilities, initially for articled clerks and afterwards for law graduates during the vocational stage of their legal education.
- 2 The School operates under various provisions of the Advocates Act, but does not itself have a legal personality. It is answerable to two different authorities. In relation to its academic functions, it is responsible through the Principal to the Council of Legal Education, which has statutory mandate to exercise general supervision and control over legal education in Kenya and to advise the government on such matters. In relation to administration and management, however, control is exercised by the Office of the Attorney-General through which both the School as well as the Council of Legal Education are funded by the Government.
- 3 As the only institution with the statutory mandate to train lawyers in the professional stage of legal education, the School plays a crucial role in the production of legal professionals in the country. Indeed, in the thirty years of its existence, it has trained over 2400 lawyers who are now performing varied but important roles in the national economy - in the judiciary, public service and the private sector.

- 4 Throughout its history, the School has been afflicted by a number of problems some of which have lately become extremely acute. These problems include inadequate and improperly designed physical facilities. Originally designed as a maternity hospital, the premises used by the School were in 1964 modified for use as a law school with a capacity for only 78 students, obviously inadequate for the army of students who have to use them today. The law curriculum at the School has not been reviewed in thirty years even though the kind of law jobs that lawyers are expected to perform today require new skills. Added to these are a dearth of welfare facilities for students, understaffing and chronic underfunding. These problems have to some extent adversely affected the capacity of the School to provide legal education of the quality expected of an institution of its calibre.
- 5 There is a widespread feeling that the apparent inability of the School to deal effectively with these problems has partly to do with its current status and its management system which have made it difficult for the School to respond appropriately to the changes that have taken place in its socio-economic milieu since it was founded.
- 6 Taking the foregoing into account, the Honourable Attorney-General, by Gazette Notice No. 6768 of 1993, appointed a Task Force to consider and make recommendations on the status and management of the School.

COMPOSITION OF THE TASK FORCE

The Task Force comprised:

- | | |
|---|-----------------|
| (a) The Hon. Mr. Justice A. M. Akiwumi, Judge of the Court of Appeal | Chairman |
| (b) Mr B. P. Kubo, Advocate, E.B.S., Solicitor-General | Member |
| (c) Prof. Kivutha Kibwana, Professor and Dean, Faculty of Law, University of Nairobi | Member |
| (d) Dr. Willy Mutunga, Advocate and Chairman, The Law Society of Kenya | Member |
| (e) L. G. Muthoga, Esq., Advocate | Member |
| (f) M. Kilonzo, Esq., Advocate | Member* |
| (g) Joe W. Okwach, Esq. Advocate | Member |
| (h) E.M. Ndiritu, Esq., Advocate, Senior Lecturer, Faculty of Law, University of Nairobi | Member |
| (i) Njagi, Esq. Advocate, Principal Kenya School of Law | Joint Secretary |
| (j) Mrs. Margaret N. Nzioka, Advocate, Senior Parliamentary Counsel and Secretary, Council of Legal Education | Joint Secretary |

TERMS OF REFERENCE OF THE TASK FORCE

- 7 As noted earlier, the Task Force was given the following terms of reference:
- To review and make recommendations on the legal status and management of the Kenya School of Law, taking into account its urgent development needs and with a view of enhancing its contribution in the field of professional legal education; and
 - To make recommendations on such other matters which are related to or incidental to the foregoing.
- 8 After extensive discussions, the Task Force interpreted the terms of reference as giving it the mandate

* This member was unable to participate in the work of the Task Force

- a) to consider what the School's legal status should be in light of its basic objectives and its curriculum,
- b) to consider the role of the School in the training of personnel involved in the delivery of legal services
- c) to consider its administrative structure
- d) to consider the resource base of the School i.e. human, physical and financial resources, and
- e) consider the School's law curriculum.

METHODOLOGY OF THE TASK FORCE

- 9 The Task Force decided soon after it was appointed that information on the School should be sought not only from the School itself but also from members of the public (who are after all the consumers of legal services rendered by those trained at the institution) and legal professionals, most of whom are former students of the School and who would, consequently, have first hand experience of students' life at the School.
- 10 Primary data was gathered by means of a questionnaire, personal interviews and observation. The questionnaire was structured so as to elicit views about the School's management, financing, role, curriculum and staffing. A total of 400 copies of the questionnaire were distributed. Of these, 161 were completed and returned to the Secretariat.
- 11 Administrators of the School, including the Principal and the Librarian, were interviewed and, using this method, extremely useful information was gathered. Selected lawyers were also interviewed both in Nairobi and in other major urban centres. In many cases, those interviewed had already responded to the questionnaire, but the interview afforded them an opportunity to elaborate on the views they had expressed in the questionnaire.
- 12 Members of the Task Force visited the facilities at the School and

were able to view the classrooms, offices, the Library (where all the meetings took place), the dining room and some student rooms.

- 13 Secondary data was gathered from documents availed to the Task Force by the School and those obtained from elsewhere.
- 14 Some members of the Task Force visited the Law Development Centre in Kampala, Uganda; the Nigeria Law School, Lagos, Nigeria; the Inns of Court of Law, London, England; the College of Law, Guildford, England; the Institute of Legal Executives, Bedford, England and the Legal Practice Institute, Lusaka, Zambia. These visits enabled the Task Force, using the personal interview and observation methods to gather comparative data on the status, management, and the teaching approach at these institutions which, like the Kenya School of Law, are involved in the teaching of law in the vocation stage. During the visits, senior administrators and academic staff of the institutions visited were interviewed and relevant statutes and other documents perused.
- 15 The information gathered was synthesized the basis of this report.

Chapter Two

HISTORICAL BACKGROUND OF THE KENYA SCHOOL OF LAW

- 16 The Kenya School of Law was established by the Government of Kenya in 1963 for the purpose of providing legal education within Kenya for those who wished to qualify for admission into the Roll of Advocates.
- 17 Prior to the School's establishment, a committee under the Chairmanship of Lord Denning had been appointed by the Lord Chancellor of Great Britain to consider facilities that were necessary for the training of lawyers educated in the United Kingdom to make them fit to practise in African countries and also to consider the form of assistance that could be given to African countries in providing legal education locally to their inhabitants. The report of the committee (hereinafter referred to as the Denning Report) described two models of legal education that might be adopted by African countries viz., University legal education leading to the award of the Bachelor of Laws (LL.B.) degree, followed by a year's post graduation practical training, or a system of training articled clerks who would be apprenticed to an experienced advocate and also undertake law courses at a vocational law school established for the purpose.
- 18 There was, of course, a third alternative system in operation in the United States of America under which all legal education took place in law faculties in universities, with Bar associations in the various states organising professional law examinations for the purpose of certification of the law graduates for practice, but this model was not discussed. The Denning Committee recommended the first alternative, and even suggested that for purposes of legal education in the post graduation stage, a single law school should be

established where all law graduates from the East African countries would receive practical training prior to their admission to practise. The Committee envisaged that the law school would eventually "develop into an Inn of Court where the students would not only receive practical instruction but also build up a corporate life as members of the profession." The Committee also suggested that standards for qualification to practise should be coordinated throughout the East African region and commended the efforts then underway to set up a Council for this purpose.

- 19 In line with the recommendations of the Denning Committee, a faculty of law was established at the University College of Dar-es-Salaam in 1961 for the purpose of providing facilities for university education, leading to the award of the Bachelor of Laws degree. The University College at Dar-es-Salaam was then a constituent college of the University of East Africa, and it was envisaged that just as Makerere University College and University College, Nairobi, were to be the regional centres for training in Medicine and Engineering, respectively, so would Dar-es-Salaam be the centre for legal education in East Africa.
- 20 In Kenya, however, the government did not accept that the model of legal education recommended by the Denning Committee should be the sole route for qualifying for practice. Nor did it accept the views of the Law Society which at the time favoured the articulated clerkship system as the only acceptable system of legal education. Instead, the Government adopted the two systems described in the Denning Report and in 1961 set up the Council of Legal Education whose mandate was "to exercise general supervision and control over legal education in Kenya for the purposes of the [Advocates] Act and to advise the Government in relation to all aspects thereof".
- 21 The Kenya School of Law was established to facilitate the provision of legal education under the two schemes provided for qualifying for practice as stipulated in the Advocates Act. A person who had a non-

law degree was required to serve as an articled clerk for a minimum period of three years, one with the "A" level certificate for four years, and one with the "O" level certificate for five years. In addition, such persons were required to undergo a course of legal education at the School of Law and pass examinations set by the Council of Legal Education. A law graduate, on the other hand, was required to serve pupillage for a period of one year, during which time he would also attend a course of legal education at the School and pass examinations in those subjects that he had not been exempted from, by the Council.

- 22 For the first eight years of its existence, the School's main pre-occupation was the training of articled clerks - law graduates from the Faculty of Law, University of Dar-es-Salaam were almost invariably exempted from attendance at the School. This is reflected in the fact that a fairly detailed curriculum for the education of articled clerks was provided for in the Advocates (Admission) Regulations. In contrast, the curriculum for the post-graduate practical training was not well articulated. For example, the subjects that the individual law graduate had to study and the examinations he was required to pass depended on decisions of the exemptions panel of the Council of Legal Education made shortly before the graduate was admitted into the School. The problems about how the two systems would be coordinated were not properly addressed.
- 23 In 1970, the Faculty of Law of the University of Nairobi was established following an apparent change in policy in favour of acceptance of university legal education followed by a period of post-graduation practical training as the main route for qualifying to practise as an Advocate of the High Court of Kenya. The establishment of the Faculty was preceded by tripartite discussions between the Government, the Law Society and the University on the roles of the new faculty and the Kenya School of Law in the education of prospective lawyers. These discussions resulted in an

informal understanding that possession of the Bachelor of Laws degree of the University followed by a one year practical course in law at the School would henceforth be the normal system for qualifying for admission into the Roll of Advocates. It was also agreed that certain subjects (mainly procedural ones e.g. Conveyancing, Civil Procedure, Criminal Procedure, Accounts and Professional Ethics) would not be included in the Bachelor of Laws degree curriculum but would be taught at the School. The change in policy, however, was not reflected in the statutory provisions relating to qualification for practice. These provisions still allowed qualification through the articulated clerk system. The informal agreement about the subjects taught at the Faculty of Law was strictly honoured by the Faculty until the advent of the 8:4:4 law curriculum.

- 24 In 1971, the Council of Legal Education appointed a committee to consider and make recommendations on *inter alia* the content of the post-graduate practical training course at the School and the duration of this course. This Committee recommended that the curriculum for the post-graduation phase of legal education include the following core courses, viz.,

Accounts

Costs and Advocates Remuneration Rules

Criminal Procedure

Conveyancing

Registration of Documents and Stamp Duties

Professional Ethics & Practice

Law of Office Management

Legal Drafting & Construction of Documents.

- 25 They further recommended that the training programme at the School should be residential, that the students be financially

supported by means of Government bursaries and that the programme lasts for one academic year, from March to December. Only law graduates who had already successfully served pupillage for one year would be eligible to join the programme and only those who passed the Council of Legal Education's written examinations would become eligible to petition the Chief Justice for admission to the Roll of Advocates.

- 26 These recommendations of the Committee were the first serious attempt at the development of a definite curriculum for the practical training of law graduates at the School of Law. Unfortunately, its recommendations were not accepted, with the consequence that the period of pupillage and studies at the School continued to be telescoped into one calendar year after graduation. Another consequence was that the course taken by each student continued to depend on decisions of the exemptions panel of the Council, thus making planning of teaching programmes difficult.
- 27 The 1989 Advocates Act omitted provisions relating to the articulated clerkship system of education, thereby abolishing the system. From 1989, therefore, only those possessing law degrees from recognized Kenyan universities or from foreign universities which the Council of Legal Education has approved would be admitted into the School. The Act may, therefore, be regarded as the culmination of the development towards phasing out the apprenticeship system and the full acceptance of the model of legal education recommended by the Denning Committee viz., a university degree in law followed by post graduation practical training, as the only route for qualifying for admission into the legal profession.
- 28 Since it was established, the School has trained a total of 2450 lawyers and the yearly output has been as indicated in the table in Appendix 1.

Chapter 3

THE STATUS OF THE SCHOOL

- 29 The status of any public institution depends to a large extent on the purposes for which it is established and the scope of autonomy which the state is prepared to concede to it to enable it perform its functions effectively.
- 30 The purpose for which the School of Law was founded may be gathered from the pertinent provisions of the Advocates Act and the subsidiary legislation made thereunder. The Act prescribes the conditions which a law graduate must satisfy before he becomes eligible for admission into the Roll of Advocates. Among these requirements is one stipulating that he must attend "such course of tuition as may be prescribed ...". That the course of tuition is to be given at the Kenya School of Law is made clear by the *Advocates Admission Regulations* which explicitly provide that "no person shall be duly qualified under the Act unless he has completed a course of legal education in the School of Law in preparation for the examinations specified as to such attendance." For the purpose of regulations, "School of Law" means "the School of Law provided by the Council of Legal Education in Nairobi". The purpose for which the Kenya School of Law exists today therefore, is to provide post-graduation professional legal education to law graduates who wish to practise law in Kenya.
- 31 Unlike many similar institutions in the Commonwealth, the School does not enjoy autonomy from the Government or have corporate status enabling it to hold property, enter into contractual relations, or sue and be sued in its own name. Since its inception, the School has been administered as a section in the Office of the Attorney-General. Although the Advocates (Admission) Regulations seem to imply that

the School would be established and managed by the Council of Legal Education, it is in fact the Government of Kenya that established the School, provides it with funds, and employs all its staff.

- 32 There has, it is true, been an attempt to separate the academic functions from the Office of the Attorney-General by the statutory assignment of responsibility for supervision and control of legal education in general, and for the running of courses and examinations at the School in particular, to the Council of Legal Education. In practice, this has not been wholly successful. The Council is a regulatory agency set up under the Advocates Act and given the mandate to regulate and control legal education for the purposes of qualifying to practise law in Kenya. The Executive and Judicial arms of government, the legal profession as well as the legal academics are all represented on the Council with the legal profession having the largest block of representatives. It has some policy-making powers in relation to legal education, but it has no legal personality. However, although the Council has been separated from mainstream civil service, it does not at the moment enjoy autonomy from the Office of the Attorney-General. Having no staff of its own, it depends on civil servants in the Attorney-General's Chambers for execution of its decisions. It is also wholly dependent on the Attorney-General for funding and such money as is voted for it by Parliament is not paid into an account operated by the Council but is instead channelled through the Office of the Attorney-General who exercises tight control over its expenditure. As a result of these factors, the Council, in the exercise of its regulatory functions and in supervising academic programmes at the School of Law, is subject to heavy influence from the civil servants in the Office of the Attorney-General.
- 33 As a section within the Office of the Attorney-General, the School is subject to the usual civil service mode of operation. Its full time

employees, including the Principal and all full time teachers are employees in the public service and, consequently, subject to the terms and conditions generally applicable to civil servants.

- 34 It may be argued that the current position of the School as a section within the Office of the Attorney-General has some advantages. The fact that it lacks corporate status may be said to be advantageous in that it is not capable of incurring liability in its own name and, consequently, it cannot be sued.
- 35 Another advantage that might be cited is that being an integral part of a government department, the School is funded directly by the government both in terms of capital as well as recurrent expenditure. Provided its projects and programmes are considered high in the order of budgetary priorities of the Chambers, the School will enjoy the full clout of the Attorney-General in securing funding from the Treasury.
- 36 But there are serious disadvantages as well. It is generally accepted that educational institutions, especially at the higher education levels, should enjoy as much academic freedom as is practically possible. It was perhaps this concern that led to the placing of responsibility for the academic function of the School in the Council of Legal Education. But, as has been indicated in the foregoing paragraphs, the Council is itself heavily dependent on the Attorney-General for support facilities and funding. This could allow an Attorney-General who was so minded to encroach on academic freedom of the School.
- 37 Lack of corporate status of the school means that the School cannot borrow from financial institutions, or approach local and/or foreign donors for funding of its development projects. It must, consequently, tailor its programmes according to the availability of funds from the government. When government funds are in short supply or when proposals for development projects at the School are given low rating, then such proposals cannot be implemented. Perhaps it is this over-dependence on government funding that has

- stalled the proposed re-development of the School at its new site in Embakasi.
- 38 The funds voted for the School in the government's annual budget are not paid into an account operated by the School or the Council of Legal Education. Instead, expenditure of such funds is controlled from the Chambers. Consequently, even the purchase of small items must be sanctioned by the officers in the Chambers. This system whereby orders for supply of goods and services to the School must first be sanctioned, and thereafter payment made, by the Chambers, inevitably causes delay.
- 39 It may be noted that even publicly funded secondary schools have, through their governing bodies - the Boards of Governors - the legal capacity to enter into contracts, a capacity that is denied to the School at the moment.
- 40 Administrative control of the School (and indirectly control of its academic functions) by the Attorney-General has also meant that the influence of the legal profession on legal education at the School has been considerably weakened. This is a significant deviation from the model followed in the majority of Commonwealth countries where the legal professions have a significant role in the education of aspiring legal professionals at the vocational stage.
- 41 It is apparent, therefore, that the current status of the School as a section within the Office of the Attorney-General has more disadvantages than advantages for the School and for professional legal education in general. It is probably this that influenced most of the respondents to the questionnaire to suggest that the School should be administered by an institution other than the Office of the Attorney-General.

FUTURE STATUS

- 42 Underlying the question of the status of the School is the central issue of who should have control over legal education in the post-

graduation, vocational stage, and how this control is to be exercised. It is an issue which has been the subject of controversy in many jurisdictions. In Kenya, as we have seen, it is the Government, through the Attorney-General, that has since independence exercised effective control over professional legal education at the vocational stage. Since this has been found to be unsatisfactory, it is necessary that an alternative system be worked out.

- 43 From the responses to the questionnaire and the memoranda received, it appears that there are four main options: (i) Merging the school with the Faculty of Law, University of Nairobi, (ii) Handing over the School to the Law Society, (iii) Incorporating the school as a parastatal with its own board; (iv) Incorporating the Council of Legal Education and giving it statutory authority to administer the School.
- 44 If the first option were adopted, the School would be handed over to the University of Nairobi and either merged with the Faculty of Law or run as a separate institution within the university system. Preference for this option was shown by only a fairly small number of respondents to the questionnaire (approximately 11%). But the suggestion is not entirely new. As early as 1967 a judge of the High Court of Kenya (later to become the Chief Justice) expressed the view that most of the problems then afflicting the School could be solved if the School were made part of the University College, Nairobi (now the University of Nairobi). This view was not supported by the then Principal and, indeed, future principals who have on the whole expressed support for retention of administrative control over the School in the Office of the Attorney-General. Only the current Principal, however, has clearly articulated plausible reasons for opposing the merger of the school with the University, among them the possibility of dilution of the professional character of legal education in the post graduation vocation stage.
- 45 It is true that there may be advantages in teaching law in the vocation stage in a university setting. These include availability of

staff who are able and willing to devote a lot of time to the education task, better library and other facilities as well as the fact that a university is probably better placed to attract donor funding than other educational institutions.

- 46 But there are, in our view, strong arguments against this option. The proponents have not clearly indicated what the proposal entails, whether the current vocational courses at the School should in future be run as an additional programme within the Faculty of Law (additional to its current LL.B. and postgraduate programmes) or whether the School should be set up as a separate institute (like the Institute of African Studies, for example,) or whether the idea is that all legal education necessary for qualifying for admission to the Roll of Advocates should take place at the Faculty as part of the Bachelor of Laws degree programme.
- 47 If the latter is the case then the proposal represents a radical departure from the model of legal education followed in most common law jurisdictions in Africa. Under this model, legal education progresses through four phases, viz., academic training in law at a university, vocational training in professional skills, apprenticeship and post-admission continuing legal education. The School of Law is involved in the teaching of law in the vocational stage.
- 48 Although in some common law jurisdictions such as the United States of America all legal education takes place in law faculties of universities with the law graduates only being required to pass a State Bar Association administered examination for purposes of admission to practise, there are arguments against the adoption of such a scheme at the moment. In the first place doubts have been expressed whether a university faculty of law is the proper place to teach vocational courses and practical skills and whether the universities would even wish to undertake this task. Even in the U.S.A., there is a widespread feeling among academics in Law faculties that practice oriented courses should be taught elsewhere

other than in the university law faculties to avoid diverting the university from its academic mission.

- 49 Secondly, if the training at the vocational stage were handed over to the universities, the influence of the legal profession on legal education would be further reduced as the universities would insist on the unfettered exercise of their accepted discretion to decide what to teach and how to teach it.
- 50 Finally, it would be difficult to justify handing over the School to the University of Nairobi since other universities may in future establish their own law faculties. We are persuaded that law graduates from the various universities should in the vocation stages study in one institution so that they might develop a corporate life as members of the profession as the Denning Committee once recommended.
- 51 Another possible option would be to let the legal profession, i.e. the Law Society of Kenya, run the School. A sizeable number of respondents to the questionnaire (about 15%) were in favour of this. The profession has an immediate interest in the proper training of aspiring legal practitioners not only because upon admission these practitioners become full fledged members, but also because the Law Society has a statutory duty "to maintain and improve the standards of conduct and learning of the legal profession in Kenya." England is a good example of common law jurisdiction where the professional training of aspiring practitioners is controlled by the legal profession. Thus the Inns of Court School of Law where barristers are trained is run by the Council of Legal Education on which the Bar and the Inns of Court are represented. Similarly, the College of Law at Guildford for the training of solicitors is heavily influenced by the Law Society in relation to its academic functions.
- 52 It is not clear, however, whether, at the moment, the Law Society of Kenya is in a position financially and otherwise, to assume the onerous responsibility of running a professional school of law. The Society was not able to fund and run the School when it was

launched, so the government took control of it, and there is some legitimate doubt as to whether the Society can effectively administer the School.

- 53 The third option is to incorporate the school by statute as an autonomous institution managed by an independent board. It would have appropriate links to the Bench, the Bar, the Government and the faculties of law in universities, through representation of these institutions on the School's board. About 18% of respondents to the questionnaire favoured this option. The option is substantially similar to the model followed by Uganda's Law Development Centre in Kampala set up by an Act of the Ugandan Parliament. The main advantage of this approach is that by incorporation the School itself would acquire a legal personality and the legal capacity defined by the incorporating statute. It would have the statutory power to teach, examine and award diplomas, employ staff and borrow or solicit funds in its own name.
- 54 One consequence of the adoption of this model would be that the School would be separated from the Council of Legal Education whose functions would be confined to vetting of applications for admission to the Bar. From the perspective of the need to have checks and balances in the legal education system it would be an advantage to separate the School itself from the institution having overall responsibility for safeguarding standards of the legal education. However, since the two must be financed by the Government there may be objection on the basis of added expense.
- 55 A variation of the model described in the foregoing paragraph constitutes the fourth option. Instead of incorporating the School itself, the Council of Legal Education would be incorporated and given statutory authority to establish and manage a school of law in addition to its other responsibilities. The incorporating statute would transfer the existing school with all the assets associated with it to the Council. More respondents (41%) favoured this model than any

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other. One important advantage of adopting this model is that the Council of Legal Education, the institution, having the statutory mandate of exercising supervision over legal education for the purpose of ensuring that those admitted to practise have attained the requisite standard of proficiency would have the full academic as well as administrative responsibility for the school, where legal education at the vocation stage takes place. It would, therefore, be in a position to shape the policies of the school and the academic programmes in a way that ensures that training is focussed on the development in the students of the skills and attitudes that they will need in their future careers in applying law for the solution of legal problems. This model has been successfully tried in Nigeria where the Council of Legal Education, a statutory corporation, has overall responsibility for legal education and for running the Nigerian Law School. It is also used in Zambia, where the professional law school, the Legal Practice Institute, is administered by the Council of Legal Education, a body corporate.

- 56 It is recommended that the Council of Legal Education be incorporated by an Act of Parliament and that, in addition to its current responsibilities, it be given the statutory mandate to manage the Kenya School of Law. It is further recommended that the Council be expanded in the manner indicated in the paragraph below so as to provide appropriate links to institutions having an interest in legal education.

THE ROLE OF THE SCHOOL

- 57 As indicated above, the current role of the Kenya School of Law is the provision of facilities for professional legal education for those who wish to practice law in Kenya. Since 1989 when the articulated clerkship system was abolished, the facilities for professional education have been available only to those who already possess a degree in law from recognized Kenyan universities or from approved foreign universities.

- 58 Provision of facilities for professional legal education in the post-graduation vocational stage is obviously going to continue to be the primary role of the School. As argued below, however, the approach to teaching may have to be modified so as to emphasise the teaching of practical skills such as advocacy, drafting, negotiations, office and business management, counselling and professional ethics. The law graduates admitted into the School should already have studied core law subjects at the university, thus enabling the School to concentrate on preparing the graduates for practice.
- 59 It has been suggested that in addition to providing facilities for professional education to aspiring advocates, the School's role should be expanded to include facilities for provision of continuing legal education to those already admitted as advocates and also facilities for the training of para-legals.
- 60 In relation to continuing legal education, it may be noted that it is now generally accepted in many countries that legal education at law school should not be regarded as terminal, and that practising lawyers should participate in continuing legal education programmes in order to improve and sustain their proficiency as legal professionals. This is beneficial not only for the lawyers and their clients but for society as a whole. In some American jurisdictions, a practising lawyer must accumulate a stipulated minimum number of credits in the continuing legal education course before he qualifies to renew his practising certificate.
- 61 In Kenya at the moment continuing legal education is managed by a committee of the Law Society. Although the committee has done a commendable job of organising lectures by prominent members of the Bench and Bar, it is handicapped by lack of physical and human resources. The committee has expressed the view that the Kenya School of Law should be the permanent institutional home for the continuing legal education programmes. These programmes could be organised by the School in cooperation with the Law Society and

the faculties of law, and be run at the present campus which is ideal due to its proximity to the city centre.

- 62 It has also been suggested that the School should provide facilities for the training of para-legals. This phrase is used to describe persons who are not advocates but who are employed in law firms, in the courts or in the State Law Office and who are, therefore, involved as support staff in the delivery of legal services. In the U.S.A. they are sometimes referred to as legal para-professionals and in England as legal executives. They are analogous to para-medics in the medical profession.
- 63 So far, there has been no organised and co-ordinated training scheme for the support staff in legal services. In government legal services, for instance, in-service courses for clerical officers cover general subjects like English, Mathematics, Current Affairs, Government Procedures, Office Practice or Accounts or Stores. Progression to Executive Assistant grades is not possible without one passing any examination. Progressing to Executive Officers II, I and Senior Executive Officer, is tied up with the undertaking of studies and examinations under the Certified Public Secretaryship (CPS) programme. These in-service courses do not focus on the specialised and technical nature of the operations of a law establishment. It has, therefore, been left to the initiative of the individual members of support staff to pick up such knowledge and guiding principles behind the operations of the law and legal procedures as he/she cares to pick up. Yet the "para- legal" staff are supposed to provide the back-bone services in a law establishment, i.e. deal with routine administrative and procedural matters and leave lawyers free to devote their time to substantive professional work.
- 64 Modern day demands for high quality legal services dictate that there be established a training programme and scheme of service for the category of personnel who render basic support services to professional legal practitioners in order to equip the said support

staff with requisite technical skills. In this Report, the term "para-legal" is deemed to mean, *inter alia*, a category of staff with a basic knowledge of major legal principles and a functional knowledge of procedural and evidentiary laws plus such knowledge of management of law establishments as to make them effective "handmaidens" of the professional legal practitioners to whom they may render technical support services.

- 65 Para-legals may also be viewed from a more generalised angle, i.e., as front-office managers in the legal system, charged with the task of initially informing the people in broad terms of their basic rights and obligations under the law; helping to assert those rights and, where appropriate or necessary, to assist them to contact lawyers for professional services.
- 66 The lower ranks may comprise various categories of para-legal support staff, undertaking a variety of technical assignments and progressing to legal executives in the higher echelons of this cadre of staff.
- 67 Attention is also drawn to Part X of the Advocates Act which provides for a Complaints Commission "for the *purpose of enquiring into complaints against any advocate, firm of advocates, or any member or employees thereof*". This imports the notion that members or employees of advocates firms (whether single advocate or multiple-advocates firms) are treated as part and parcel of law establishments. Advocates have a code of ethics to govern their conduct. It is recommended that the training programme for para-legals should incorporate a code of ethics for them so that both the professional legal practitioners and their "handmaidens" are guided by a common set of values and governed by a code or codes of ethics and practice which espouse those values."
- 68 **It is recommended,**
- (a) **that the primary role of the School should continue to be the**

provision of facilities for the legal education of law graduates who wish to qualify for the practice of law in Kenya;

- (b) that in addition the School should, in cooperation with the Law Society and faculties of law, organise continuing legal education courses for practising members of the Bar and Bench;
- (c) that the School should run a programme for the training of para-legals so as to enhance their ability to assist in the delivery of legal services.

Chapter 4

D ADMINISTRATIVE STRUCTURE

- 69 The administration of a professional school should be structured in a way that facilitates the attainment of the educational objectives of the school. The structure should ensure appropriate decentralisation, allowing for participation in decision making by those who are involved in the educational function of the school i.e. the teachers. Involvement in decision making is likely to enhance the commitment of the teachers to the school. At the same time there should be an adequate system of internal checks in order to ensure that the education delivered to the students is of the highest standard possible.
- 70 At the moment the Principal is the only authority at the Kenya School of Law. He reports to the Council of Legal Education on academic matters and to the Attorney-General through the Solicitor-General on administrative matters. This system not only means that the Principal is thoroughly overworked but also that within the School there are few institutional checks and balances. For example, in relation to examinations, there is no board of examiners that considers results before they are submitted to the Council for final approval. In relation to academic programmes, there is no organ within the School itself that has the mandate to consider proposals for new courses or other changes in the existing curriculum. This is unlike the situation in similar institutions of higher learning, where such internal organs as the boards of examiners and boards of studies composed largely of the teachers (who after all are experts in the various subjects that they teach) provide the necessary system of internal checks on teaching and examination for the purpose of maintaining standards.

71 As suggested above, the Council of Legal Education should be the governing body of the School. The Council should, therefore, occupy the apex of the administrative pyramid. The Council, which will be the policy making organ of the School, should be constituted in such a way as to provide links between the School and other institutions that have an interest in legal education. To this end, institutions such as the Law Society, the faculties of law in Kenyan universities, the Attorney-General, the Judiciary, and the School's academic staff should all be represented. The Council should be chaired by the Chief Justice.

72 It is, therefore, recommended that the Council of Legal Education be reconstituted so as to be comprised of:

the Chief Justice as chairman;

a judge of the High Court or Court of Appeal nominated by the Chief Justice;

the Attorney-General or his representative;

the Deans of Faculties of Law of Kenyan Universities approved by the Commission for Higher Education;

the Principal of the Kenya School of Law as ex-officio member;

Senior Counsel appointed by the Attorney-General;

a person associated with the teaching of Law in Kenya appointed by the Attorney-General;

the Permanent Secretary, Ministry of Education or his representative;

five advocates nominated by the Council of the Law Society of Kenya

73 Below the Council and reporting to it should be established two boards, viz., the Board of Studies of which all full time teachers will be members, and a Board of Management whose membership will be drawn from chairmen of all departments. The Principal will chair both boards.

- 74 The Board of Studies is the organ that will have the responsibility for the academic functions of the School. Such matters as the development of syllabi for courses, teaching, pupilage, examinations, and students' welfare will be within its jurisdiction.
- 75 Studies in universities are traditionally organised around the department, which is normally the grassroots unit in the organisation. Departments are important since it is within them that education programmes are initially discussed, and the teaching and examinations vetted. The School, too, should have academic departments organised in terms of the teaching programmes likely to be run by the School. Thus initially, three academic departments could be established, viz. the Department of Professional Legal Studies, Department of Para Legal Studies, and the Department of Clinical and Continuing Legal Education. Any proposals for new courses or for changes in existing ones should first be discussed in the relevant department and then presented for approval by the Board of Studies and thereafter submitted to the Council for final approval. In this way, the proposals will be subjected to thorough vetting by the experts before they are taken to Council.
- 76 Similarly, examination results should initially be considered by the Board of Studies sitting as a board of examiners before the results are submitted to the Council for approval. The external moderators will attend and participate in discussions in the Board of examiners. Any issues pertaining to the examination whose results are under discussion can be more easily addressed at the Board of Examiners meeting where both the internal and external examiners will be present. This system has been used successfully in similar professional schools in Nigeria, Zambia, England and Uganda and at universities the world over.
- 77 The Board of Management should assume responsibility for such administrative matters as finance, personnel, annual budget and the physical assets of the School. The Principal will chair this Board whose

membership will consist of Chairmen of the academic and administrative departments. Thus there will be the necessary links between the academic and administrative wings of the School.

- 78 Such administrative departments may be established as will ensure the proper and efficient discharge by the School of its administrative functions. It is suggested that initially there should be established the departments of Administration and Finance, and Library services.
- 79 **It is recommended, therefore, that an administrative structure along the lines suggested in paragraphs 71 to 77 be put in place.**

Chapter 5

FACILITIES AT THE SCHOOL

(i) Teaching Facilities

- 80 The School is located on a four acre plot at the junction of Valley Road and Ralph Bunche Road. Apart from the lecture room, the other buildings are very old and were formerly used as a maternity hospital - the Maia Carbery Maternity Wing of the Nairobi Hospital. The brave attempts made at modifying the former hospital by knocking down some party walls and erecting partitions in some sections resulted in the premises currently occupied by the School. Since the plot was acquired for the School in 1963, there has been only one addition to the original buildings viz., the lecture room.
- 81 There is only one lecture room used for all the teaching that takes place at the School. This room cannot comfortably accommodate even the about 160 graduates of the University of Nairobi admitted into the School every year. Recently, smaller desks were purchased for use by the students in an attempt to squeeze in all students into the room. The situation has been aggravated by the large number of law graduates from foreign universities who are admitted in addition to the University of Nairobi ones and the School has had to divide the students into two streams for teaching purposes.
- 82 There are no tutorial or seminar rooms where instruction of, or discussion by, small groups, can take place. Lack of these facilities seriously hampers attempts at practice oriented teaching of law. Obviously, the proposal made below, that in future teaching should emphasise training in professional skills, cannot be successfully implemented unless seminar and moot court rooms are made available.
- 83 Although it is recognised that the problem of lack of space cannot be

satisfactorily solved until a purposely designed school has been built, it is recommended that short term measures be taken to facilitate the teaching of students in smaller groups. Such measures include the conversion of the student rooms between the library and the main entrance of the School into seminar rooms.

(ii) Library Facilities

- 84 A well equipped library is essential for a post graduate institution whose main mission is the training of law graduates in the vocation stage. The observation in relation to university education that quality education is impossible without a quality library applies equally to legal education at an institution such as the Kenya School of Law.
- 85 Although those running the School and the library have done their best, the School library cannot accurately be described as a quality library as judged by the standards for law libraries set by the British and Irish Association of Law Librarians which are generally used by Kenyan librarians.
- 86 The library is located in a rectangular room in the 'Main Block' next to the lecture room. It has sufficient space for only about 40 readers at a time. The accepted standard is that a library at a polytechnic teaching social sciences should have reading and studying space for one student for every three registered students; for universities, the recommended standard is one sitting space for every two students. This library obviously does not satisfy these standards. It must be borne in mind that the study of law is more library dependent than other social sciences and for this reason, a law library should have more sitting space than an ordinary social sciences library.
- 87 The bookshelves in the existing library are located along the walls, against the windows. The accepted modern practice is that shelves should so far as possible be situated in the middle, with the reading spaces and desks on the sides. Such an arrangement minimises disturbances to readers as a person wishing to get to the shelves does

not have to wade through other readers. Perhaps it is not possible to rearrange shelving in this ideal way since the windows - the main source of light - are on one side only.

- 88 The library does not have a special reference section: rare materials are placed on a special shelf (which, however is not manned) within the library. Control over these materials is, therefore, difficult. There is neither storage nor cataloguing area and no bindery. Lack of these facilities, which is due to lack of shortage of space, is a serious handicap to the smooth operation of the library. The librarian has a small office which has no telephone.
- 89 The library has a book-stock of 4,800 volumes. Although the main subjects taught at the School are fairly well covered, the newer editions of many textbooks are not available as no new books have been acquired since about 1987. The library is, however, generally up to date on locally available materials such as local statutes and law reports. It used to receive unreported judgments from the High Court and Court of Appeal but for reasons which are not clear, the courts are no longer sending unreported judgments to the library. In view of the fact that no local law reports are currently being published on a regular basis, it is important that the arrangements under which courts sent judgments to the Library be revived so that students can keep abreast of the latest developments in law.
- 90 In a law library of an institution that teaches law based on the English common law, one would expect to find the main English law reports. This, unfortunately, is not the case with the School's library as, apart from the *All England Reports* only a few of the other reports are in stock and these go only up to 1985. There are no law reports from neighbouring jurisdictions.
- 91 A major omission is in relation to law journals. The library of a law school should have law journals since it is in such journals that the latest development in the law are first reported and commented upon. Yet, apart from a few copies of the *Commonwealth Bulletin* and

of the *Law Gazette*, there are no other journals, and the library has not been on the subscription list of any journal.

92 The Library does not offer other services usually associated with libraries. For example, it does not offer photo copying facilities. Such facilities would considerably reduce the high demand for borrowing books and perhaps also reduce the risk of mutilation and theft of books. The Library could considerably assist students gain access to materials which it does not own by entering into inter-library borrowing arrangements with other libraries within Nairobi.

93 **It is recommended,**

(a) that a new library be built as part of the proposed redevelopment of the School and that the construction be done according to accepted specifications for a law library.

(b) that immediate steps be taken to improve the existing library at the School by up-dating the existing books, subscribing for at least the more important law journals, arranging for the regular acquisition of judgements of the High Court and Court of Appeal, and making arrangements for provision of photocopying facilities.

(iii) **Office Space**

94 There are only two offices at the School, one for the Principal and the other one for the Bursar. These offices are far too small and are, consequently, overcrowded. There should be a separate machine room where the photocopier and duplicating machine should be placed. In addition, the Principal's office should have a board room where meetings of the proposed Board of Studies and Board of Management as well as those of the Council might take place. The present arrangement whereby meetings of the Council are held in the library is unsatisfactory as it interferes with library users.

(iv) **Students' Welfare**

95 One of the many problems that have afflicted the School in recent

years has been lack of residential accommodation for most of the students admitted into it. The School was intended to be a residential institution. Unfortunately, it has accommodation for only 78 students, which is woefully inadequate for the large number admitted every year. The problem has arisen due to the recent rapid increase in the number of law graduates from the University of Nairobi and from foreign universities, and inability (owing to lack of funds) of those responsible for the management of the School to implement plans for its expansion.

- 96 The solution to this problem lies in the building of the proposed new campus of the School at Embakasi. Differing views have been offered on what should be done in the interim period. The Principal has expressed the opinion that the School should be non-residential as this would obviate the need to decide the difficult issue of who should be accommodated and who should not. This view is shared by about 25% of respondents to the questionnaire. However, a large number of respondents (about 69%) thought that the School should continue to be residential and the majority of them thought that those to be accommodated should be selected on the basis of need, with priority being given to disabled students.
- 97 It is noteworthy that only an insignificant number of respondents thought that the number of students admitted into the School should be pegged to the available accommodation. This conforms to the views of many knowledgeable people. For example, the *Report of the Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond* (popularly known as the "Kamunge Report") recommended in relation to university education that rather than limit admission into universities to numbers that can be accommodated as boarders, the government should adopt a policy of admitting qualified students as day scholars and concentrate financial resources in *inter alia* improving tuition facilities and equipment and in employing qualified staff. In line with this policy,

the School should, pending the construction of the new campus, give priority to tuition facilities and office accommodation for academic staff.

98 It is consequently recommended,

(a) that in using existing premises, priority be given to tuition facilities and office accommodation for academic staff.

(b) that the Main Block should be used exclusively for these purposes.

(c) that such boarding facilities as continue to be available should be allocated only to students who genuinely need the accommodation and who are prepared to pay for the facilities.

99 It is generally accepted that a school, especially one that is residential, should not only facilitate learning by students but also cater for their social welfare. In this regard minimum health and recreation facilities should be set up. At the School, health facilities for students and the rest of the community are totally non-existent. It is somewhat ironic that premises formerly used as a hospital should be so lacking in basic health amenities. It may be that the School's proximity to the Nairobi Hospital and Kenyatta National Hospital may have contributed to the failure to address the issue. Minor ailments should be handled at the School and there should be facilities for dealing with medical emergencies before they are referred to hospital.

100 The School lacks recreational facilities for students. Due to the small size of the present site, there is no space for the development of such outdoor sports facilities as soccer pitches, tennis courts or swimming pool. But there appears to be no good reasons why suitable basketball, volleyball and netball facilities have never been developed.

101 There are no indoor games facilities either. Indeed, there is no common room where students may socialise in or where such games may be located. Apart from watching television, boarders have few other means of relaxation and socializing.

102 It is recommended that health as well as recreation facilities be provided as soon as possible.

Chapter 6

D STAFFING

- 103 Adequate staffing is crucial to the attainment of the objectives of an educational institution. Not only should the institution be staffed by competent and committed teachers, but the total number of the academic staff should be such that an acceptable staff/student ratio is attained. It is generally accepted within the Commonwealth that the correct staff/student ratio for a university is 1:15. Such a staffing position allows for effective teaching of students in small groups. This is especially important for the type of training in lawyery skills that is envisaged for a professional school such as the Kenya School of Law.
- 104 As previously stated the School has established positions for 12 academic staff. Assuming a student population of 200 as projected by a recent study, and assuming that all positions had been filled, the staff/student ratio would be roughly 1:17, which is higher than the 1:15 generally accepted in the Commonwealth. In fact, the staffing position at the School is much worse. For indeed, apart from the Principal, all the other 11 academic positions have remained vacant for a long time.
- 105 Although serious efforts have been made to recruit permanent staff, these have not borne fruit, apparently because the remuneration packages, including fringe benefits offered have not been attractive enough. Indeed, most respondents to the questionnaire thought that salaries currently paid to lecturers at the School are very low. It is probably impossible to pay salaries that effectively compete with the earnings of legal professionals in the private sector. But an effort can be made to try and narrow the gap by first avoiding pegging salaries to civil service scales.
- 106 One approach is to ensure that the salaries and fringe benefits paid to

academic staff at the school are comparable to those paid to academic staff at the faculties of law in public universities. The staff should also be afforded opportunities to improve their academic status by being given study leave to study for higher degrees. Another way, which has been tried with some success in one jurisdiction, is to allow teachers to undertake private practice while still employed on full time basis at the School. This obviously requires careful time-tabling to ensure that teaching programmes do not suffer as a result of staff's over commitment to private practice.

- 107 Due to the serious understaffing described above, the School relies very heavily on part-time lecturers. It would be very difficult for the School to successfully introduce and operate a curriculum that emphasises training in lawyerly skills unless it is able to attract, hire and retain for a reasonable period, qualified staff. Unless this happens, the School certainly cannot undertake the training of para-legals or assume responsibility for continuing legal education programmes.
- 108 As a short term measure the school should hire qualified staff on short term contracts. This would enable the school to take advantage of professionals, both local and foreign, who though not willing to give up their current occupation permanently may take time off to teach at the School for short periods. Such a system already exists in universities where academic staff on sabbatical leave from their universities are employed by other universities during the period of their leave.
- 109 **It is recommended**
- (a) that more academic staff should be recruited so as to bring the staff/student ratio to an acceptable level.
 - (b) that the academic staff be paid salaries and fringe benefits that adequately remunerate them as professionals teaching in a post-graduate school.

- (c) that the academic staff should be permitted to engage in limited part time private practice so long as such engagement does not interfere with the discharge of the teacher's contractual obligations at the the school.
- (d) that a system for hiring academic staff on short term contracts be introduced so as to facilitate the employment for short periods of qualified academic staff who are on leave from institutions where they work on permanent terms.

Chapter 7

E FUNDING

- 110 In 1989, it was estimated that the cost of maintaining a student at the Kenya School of Law was Shs. 25,000 per year. If the increase in the cost of living since then is taken into account, the cost today would be conservatively estimated at about Shs. 75,000/= per student per year. In the past, the Government has directly paid all the running costs of the School. The students, in addition to receiving free legal education and boarding facilities, were also paid a monthly allowance. If a student was not able to find accommodation at the School or freely chose to live off campus, he was paid a non-resident allowance.
- 111 Since 1988, following the Kamunge Report, the policy of the Government has been that of cost sharing under which, while the Government finances "the provision of educational administration and professional services" in public training institutions, the beneficiaries of boarding facilities should meet the full cost of such facilities. In order to implement this policy, the Council of Legal Education in 1991 in a rare foray into management affairs of the School, resolved that payment of allowances to students should be discontinued; that the resident students should pay the full cost of boarding and feeding; and that a loan scheme similar to the one existing for university students be introduced to assist needy students. In view of the new policy, it is envisaged that the School will in future have two principal sources of funds, viz. Government grants and the fees paid by students.
- 112 Since, however, the funds from the Government and the fees paid by law graduates as part of cost sharing are unlikely to be adequate for all the school's capital and recurrent expenditure, the school must look for ways and means of generating additional income. Such

means include the setting up of a fund to which the Government, the profession, the business community and the general public could be asked to contribute. The School should also engage in income generating activities managed in accordance with sound business practices. For example, if the persons who register for the proposed continuing legal education and paralegal programmes were charged full fees the School would raise considerable revenue. Similarly the School could earn additional income by charging fees for use by outsiders of the School's library and other facilities. These income generating activities will enhance the financial standing of the School.

113 As indicated above, the legal profession has an immediate interest in the proper legal education of future lawyers especially during the vocation stage. Yet hitherto there has existed no institutional system by which the Profession might assist in funding legal education. It is recommended that a training levy to be collected by the Law Society and to be used in financing the running of the Kenya School of Law be introduced.

114 It is recommended:

- (a) that the recommendations of the Council of Legal Education in relation to the implementation of the cost sharing policy be fully implemented and that in particular, the proposals for a loan scheme for students at the Kenya School of Law be implemented without any further delay.
- (b) that the School explore the possibility of engaging in income generating activities so as to generate additional revenue.
- (c) that the Government should not treat such revenue as appropriation in aid but as supplementation of the allocation from the Exchequer; nor should any unspent balance from the allocation be required to be returned to the Treasury at the end of the financial year.
- (d) that a legal education levy to be used in financing the running

of the School be introduced.

- (e) **that a fund for financing legal education at the School to which the Government, community and the general public will be requested to contribute the set up.**

- 115 The current procedures for securing government funding for the School and for use of the funds once allocated are cumbersome. The School, like any other section, prepares estimates for the coming financial year and forwards them to the Office of the Attorney-General. This Office in turn submits these estimates along with those of the other sections to the Treasury. Quite often, the School's estimates are amended without reference to the School, thus making planning very difficult.
- 116 Since the School does not have its own account, it has no control over the expenditure of such funds as are voted for it by Parliament. Use of such funds is controlled from the Office of the Attorney-General. Orders for goods or services must first be approved by the Attorney-General and once the supply has been effected, again it is the officers in the Attorney-General's Chambers who effect the payment. These procedures are cumbersome and dilatory and are totally unsuitable for the acquisition of certain items such as books and periodicals for the library.
- 117 **It is recommended that all funds allocated to the School by the Government, fees collected by the School, and any other income accruing to the School, should be paid into an account operated by the School. This will in any event have to be done once the School, through the Council of Legal Education, has acquired corporate status as recommended above. Expenditure of these funds should be subject to the usual checks and controls for parastatal organisations.**
- 118 As indicated above many of the problems relating to the physical facilities at the School will not be solved until the proposed redevelopment of the School as the Institute of Professional Legal

Studies at the plot at Embakasi allocated for this purpose has been undertaken. The estimated cost of this project was shs. 508,200,000.00 in 1990 and obviously since then the cost has gone up. Funding has not yet been secured. Since the project proposal including its costing have already been done international donors should be approached for funding. Other ways of raising money for the project should be considered.

119 It is recommended

- (a) that international donors be approached with a view to securing funding for the re-building of the School at the plot allocated for this purpose at Embakasi.
- (b) that the possibility of raising money locally for the project by using the plot where the School is currently located for income generating activities be considered.

Chapter 8

F THE CURRICULUM FOR THE PROFESSIONAL LAW COURSE

- 120 As indicated in the introductory section of this report, two systems for qualifying for admission to the Bar were introduced into Kenya soon after independence, viz., the articulated clerkship system and the system, first tried at the Nigerian Law School at Lagos and sometimes referred to as the "Lagos" model or "Gower" model under which the aspiring advocate is required to complete the LL.B. degree programme at a university, thereafter undertake a practical or vocational law course at a professional school, and complete his pre-admission legal education by undergoing a period of apprenticeship. In Kenya, the Lagos model was modified so that the period of training at the professional school and the period of apprenticeship were telescoped into one year during which the law graduate was expected to serve as a pupil with an experienced advocate and also complete a course of "practical" legal studies at a professional school.
- 121 The School of Law was established to facilitate the training of lawyers under the two schemes. It is noteworthy, however, that the articulated clerkship system was introduced at the School first, and the curriculum, naturally, was designed to cater primarily for the training of lawyers under this system. The minimum admission requirement under the system was possession of the "O" level certificate at credit standard, but admission was also open to those with the "A" level and even to non law graduates. The minimum period prescribed for completion of the course varied depending on whether the student was admitted at "O" level (5 years), "A" level (4 years) or graduate (3 years). There was no prescribed maximum period for completion, so that a weak but determined student could repeat as many times as he wished and ultimately limp his way to qualification.

- 122 The importance of the system of articulated clerkship diminished considerably with the establishment of the Faculty of Law at University of Nairobi in 1970, but it was not formally abolished until 1989. Since 1979, the main route, and since 1989 the only route, for qualifying for the practice of law has been through the Lagos model as applied at the Kenya School of Law. The relevant statutory provisions prescribe the LL.B. degree from an approved university as the minimum requirement for admission into the School. The minimum period of registration at the School is one calendar year during which time the student must serve pupillage with an advocate of not less than five years' standing and also undergo a course of legal education and pass examinations in Constitutional Law and Legal System of Kenya, Law of Contract, Law of Torts, Criminal Law, Family Law, Law of Succession, Accounts, Civil Procedure, Criminal Procedure, Commercial Law, The Law of Business Associations, Equity, Law of Evidence, Land Law, Conveyancing and Professional Ethics and Practice. The Council of Legal Education has the power to exempt a person from examinations in any of the above subjects if in its opinion such a person has adequately covered the subject in his LL.B. degree course and many students in fact benefit from the exercise in their favour of this power so that they end up taking only a few of the above listed subjects. Indeed, theoretically, it is possible for a student to be exempted from examinations in all subjects, i.e. there are no compulsory subjects.
- 123 One observation that can be made about the content of the curriculum is that it is geared towards filling perceived gaps in the students' knowledge of substantive and procedural law subjects. That is why the Council of Legal Education normally requires students to study only the subjects listed in the *Advocates (Admission) Regulations*, which a student has not successfully studied in the course of his LL.B. degree programme. Another observation is that although teaching at the School is supposed to be practical or rather practice oriented, in actual fact the teaching approach differs from that in the Faculty of

Law, University of Nairobi only in its being more positivistic. A former Principal of the School has declared that a professional legal education must emphasise the acquisition of detailed knowledge of law and training in the application of that knowledge to practical realities, but in practice it is the teaching of detailed rules that appears to have hitherto been emphasised. It is indeed true to say that the emphasis has been on the teaching of practical law subjects rather than teaching law in a practice oriented manner.

- 124 We are of the view that the curriculum should be reviewed. There are many reasons why it is necessary to review the School's law curriculum. The general one is that periodic re evaluation of a curriculum in order, *inter alia*, to accommodate changes in the real world in which the knowledge and skills learnt are utilised is necessary for good management of legal education. Many changes have occurred since the present curriculum was introduced and although, surprisingly, a majority of respondents to the questionnaire (about 60%) thought that the curriculum was adequate enough as it is, the better view in our opinion is that of the minority, that the curriculum needs to be reviewed.
- 125 A more urgent reason for review is that the School's main 'catchment area', the Faculty of Law of the University of Nairobi, recently fundamentally restructured its law curriculum in order to accommodate the new 8:4:4 system of education introduced following the report of "The Presidential Working Party on the Second University" (The Mackay Report). The new, semesterised law curriculum has introduced new law courses, making it possible for a law student at the Faculty to cover all the subjects listed in the *Advocates (Admission) Regulations*. In addition, the new (1989) Advocates Act (s.13(i)(b)(ii)) seems to make it mandatory for the Council of Legal Education to exempt law graduates from subjects studied and passed in course of the LL.B. degree programmes of approved local universities. These two factors mean that in the

future, few law graduates from the University of Nairobi will be required to study substantive or procedural law subjects at the School. Unless the School is going to be used only by law graduates from foreign universities, a fresh thinking on, and fundamental review of, the curriculum is necessary.

- 126 The final, and perhaps the most important, reason for suggesting the review of the curriculum is that now, when the status and role of the School are being re-examined, is the best time to consider the possibility of changing the teaching approach at the School from emphasis on learning rules of substantive and procedural law to emphasis on the training of aspiring lawyers in practice skills. There has recently emerged in the common law world new thinking on approaches to legal education in the vocational stage which favours focus on skills training. The major skills that are considered to be highly relevant to a successful career in law practice are advocacy, communication, drafting, negotiation and analysis. To this list might be added other skills which, though not centrally related to law practice, are considered extremely useful in the modern world. These include use of computers, and business management.
- 127 As has been pointed out by writers on the subject, in some respects the teaching approach is not entirely new. It probably represents the acceptance and translation into actual teaching practice, of the idea well known in the context of teaching the Legal Method course, that it is beyond the capacity of anyone, however gifted, to know all the rules of law and that consequently, once the student has acquired the necessary foundation of legal knowledge, it is much more useful to develop his competency in finding the law and in using the law to solve concrete problems. Such an approach, since it would ensure that the graduate of the School will be fully equipped in terms of professional skills, is eminently in conformity with the national objectives of "equipping young people with the knowledge, skills and expertise necessary to enable them play an effective role in the

life of the nation ..."

- 128 In England, both at the Inns of Court School of Law and at the College of Law, teaching emphasises training in practice skills. Similarly in Canada, Australia and New Zealand, training in lawyerly skills has taken a firm root. Close to home, at the Law Development Centre, Kampala, Uganda, the law curriculum emphasises the development in the student of the skills that he will need as a practising lawyer (this is done through simulation as well as attachment to practising advocates). To enable the Centre to concentrate on the training in skills, it admits only those who have successfully studied all the core subjects; those who have not are required to register at the Faculty of Law, Makerere University so as to complete the course or courses.
- 129 The new movement is based on the assumption that these skills can be taught. The pedagogical approach to skills in the western world have necessitated heavy investment in expensive teaching devices such as videos. This may be considered an impediment to the introduction of the approach in cash strapped third world countries. Nevertheless, the experience at the Law Development Centre in Kampala seems to indicate that training in practice skills is possible even without use of expensive equipment.
- 130 We are convinced that a properly designed and taught course on practice skills might considerably enhance the standard of training of law graduates at the School, and that this might be at least a partial answer to the concerns recently expressed about the low standard of proficiency among newly admitted advocates.
- 131 For the School, the introduction of the new, semesterised law curriculum at the Faculty of Law of the University of Nairobi, from where most of the School's students are drawn should be a welcome development as it will enable law graduates to study all the core subjects before they are admitted into the School. This will enable the School to concentrate on practice oriented subjects and training in the

skills needed for a successful career in law practice. This, indeed, ought to have been its main mission from the beginning.

132 It is recommended:

- (a) that the law curriculum be reviewed so as to focus education at the School on training in lawyerly skills;
- (b) that it be made one of the requirements for qualification for admission into the School that the applicant must have successfully completed study of all the core law subjects indicated in the Advocates (Admission) Regulations. Suitable arrangements should be made with the University of Nairobi to enable law graduates who do not satisfy this requirement to register as occasional students of the Faculty of Law. Only after successfully completing the course or courses would the law graduates become eligible for admission.

133 In reviewing the curriculum, a number of issues should be addressed. One of them is the admissions policy. Hitherto, the School has operated with what has been referred to as an "open door policy". Every Kenyan who has a law degree from an approved university is entitled to be admitted. There is a school of thought among the existing legal practitioners that Kenya is already producing too many lawyers. A large majority of respondents to the questionnaire suggested that the number admitted into the School should be limited but there was great diversity of opinion as to what this number should be, and on the method of selection, assuming there were more applicants with the LL.B. degree than the maximum number prescribed.

134 The case for reduction cannot plausibly be based on the number of lawyers the market can absorb. A recent study, the "Project Report on the Proposed Kenya Institute of Professional Legal Studies", indicates that the Kenyan market for lawyers is far from saturated. But an argument for reduction can be made based on the need to

match the intake to existing facilities in order to ensure quality training. This is especially important if the School decides to shift its teaching approach and emphasise training in lawyers skills, for this cannot be effectively done unless the class is divided into small groups of, say, 20 students.

- 135 When School's proposed new campus is built, it will have a capacity for training 350 law students, and that should be the maximum number to be admitted per year. Until the new campus is ready, the School has no choice but to continue using existing facilities which, as indicated above, can comfortably accommodate 78 students only. It is perhaps possible, however, by reducing the residential accommodation facilities, to increase the teaching area so as to enable the School to effectively teach about 150 students. Most respondents to the questionnaire suggested that the number of students be limited to between 100 and 200 per year, so the number we are suggesting based on the capacity of existing tuition facilities is basically within the same range as that suggested by the majority of respondents.
- 136 How are the students to be admitted to be selected? Since the School is publicly funded, it is important that the criterion for selection chosen is seen to be rational and fair to all applicants. Respondents to the questionnaire suggested a variety of systems for selection. Some suggested that law graduates from local universities should be given priority over those from foreign universities. This suggestion has some merit in that those who join local law faculties are selected on merit on the basis of individual performance in national examinations - indeed the Faculty of Law at the University of Nairobi has in the past admitted the academically best students as judged by the K.C.S.E. results. It may also be argued that those admitted into the local law faculties are the ones within the national manpower development plan and should, therefore, be guaranteed admission at the School. Use of this criterion might mean that law graduates from

foreign universities might not get a chance or might get only reduced chances of admission. Bearing in mind that these are also Kenyans who have struggled, often at great financial sacrifice, to acquire a law degree and should, therefore, not be shut out of the legal profession, a different system that gives all law graduates with degrees approved by the Council of Legal Education an equal chance should be used.

- 137 Other systems suggested are first come first served, balloting and selection on merit. Most respondents were in favour of a system based on merit as judged either by the quality of the LL.B. degree or a test administered by the School. Since the system for classifying degrees varies from university to university, it would be difficult to use the quality of the LL.B. as the basis for selection. Perhaps the most visibly fair system is one based on the results of an admission test administered by the School itself. Only applicants whose LL.B. degrees have been approved by the Council of Legal Education may register for the test.
- 138 One other issue that needs to be looked into is the minimum period of registration, and the maximum period within which a person must complete the course and pass all examinations including re-sits, if any. At the moment, the students, though required to be registered for at least one year actually spend only about 4 months receiving tuition at the School, the balance of the registration period being spent on pupillage in advocates chambers. This period of tuition is too short especially in view of the suggestion that a course in lawyerly skills should be introduced. The period of actual tuition should be lengthened to at least six months, followed by pupillage.
- 139 The vast majority of respondents to the questionnaire expressed the view that a maximum period within which a student must complete the course at the School and pass all the examinations should be set. The School is probably alone among educational institutions in allowing students to re-sit its examinations *ad infinitum*. Perhaps a

period of three years from the date of registration would be a fair period within which a person must complete the course and pass examinations.

140 The management of the clinical component of the course at the School, otherwise known as pupillage, should be reconsidered. As stated in the introduction to this report, the quality of instruction during pupillage varies greatly from one pupil master to another, with the result that although the pupil is supposed to receive "instruction in the proper business, practice and employment of an advocate", there is no common standard against which the success or otherwise of the educational effort during pupillage can be gauged. In some jurisdictions, pupils and their masters are given guide-lines on what is expected during pupillage. It is suggested that a similar system be adopted, and that the School be much more actively involved in monitoring students' progress during pupillage. As suggested above, students should embark on pupillage only after they have completed the practical course at the School. This way, they are likely to derive maximum benefits from working in advocates chambers.

141 It is recommended that a review of the curriculum be undertaken so as to provide *inter alia* for:

- (a) An admissions test to be used for purposes of selecting for admission law graduates whose degrees have been approved by the Council of Legal Education;
- (b) The training of students in lawyerly skills;
- (c) Course descriptions for the various courses to be offered at the School;
- (d) Setting the period of one year as the requisite minimum period of registration for the course of tuition at the School and pupillage;
- (e) New examination regulations providing, *inter alia* conditions

upon which a candidate will be permitted to register for an examination, a maximum period of three years within which a person must complete all examinations including any re-sits. The regulation should also provide for the consideration and approval of examination results by the Board of Examiners and the Council.

G POST ADMISSION SUPERVISION

- 142 The 1989 Advocates Act introduced a new requirement of a two year post admission supervision for newly qualified advocates before they are permitted to practise on their own. The relevant section (s.32(1)) provides:

"Notwithstanding that an Advocate has been issued with a practising certificate under this Act, he shall not engage in practice on his own behalf either full-time or part-time unless he has practised in Kenya continuously on a full time basis for a period of not less than two years after obtaining the first practising certificate in a salaried post, either as an employee in the Office of the Attorney-General, or an organization approved by the Council of Legal Education, or an advocate who has been engaged in continuous full time private practice for a period of not less than five years."

- 143 The section is not yet in operation but can be brought into operation on a date which the Attorney-General appoints by notice in the Kenya Gazette. This section was included in the Act to force newly admitted advocates to postpone setting up their own practices until they had been shown the ropes. The idea that a newly qualified advocate should work under an experienced professional before setting up his own office is sound and, in practice, such advocates have to seek salaried employment in any event since usually they do not have the capital to set up offices immediately on admission.
- 144 Most respondents to the questionnaire supported the policy of post admission supervision and gave the reason that the supervision

period would be beneficial to the young advocate and his clients in that it would give such an advocate time to mature and to gain relevant experience in running a law office.

145 Therefore, although we have already recommended a review in the law curriculum, and a better design and monitoring of the pupillage scheme - changes that are likely to improve the quality of the pre-admission training, we suggest that the policy of the post admission supervision be retained.

146 It is recommended that s.32(1) of the Advocates Act be brought into effect as soon as modalities for its operation have been finalised.

H DEVELOPING A CURRICULUM FOR TRAINING PARA-LEGALS

147 In the section on the role of the school it was recommended that the school should introduce a programme for training para legals. As used in that section this term para legals refers to persons who work as support staff in the course of the delivery of professional legal services. Since they have not qualified as advocates they cannot take up professional work of counselling clients on law or representing them in judicial proceedings. Nevertheless, there is no doubt that para legals as court clerks, advocates clerks or legal clerks in the State Law Office and in other capacities constitute an indispensable arm of support in the provision of legal services in public and private sectors of the economy. They require some knowledge of law but the breadth and depth of the knowledge required depends on the roles they are expected to play in the provision of legal services and on their general career prospects.

148 In some countries para legals have a recognised status in the legal system. For example, in the United States of America, para legals or para professionals (or legal assistants) as they are sometimes referred to in that country have been permitted in some states to represent clients in some administrative tribunals. In England, para legals (in

that country they are known as legal executives) have a limited right of audience in the lower courts in civil matters. They can even progress and ultimately qualify as solicitors. In such countries it is relatively easy to design courses for training of para legals for their status is basically a stage on the road to qualification as full fledged legal professionals and, consequently, the legal education they require is essentially the same as that required for preparing future legal professionals. In our country para legal training cannot be used as a route for entry into the legal profession in view of the existing statutory provisions pertaining to admission to the roll of advocates. Even though their status in the Kenyan legal system has not been formally determined it is a well known fact that advocates delegate certain aspects of their work to their clerks while remaining ultimately responsible to their clients.

The para legals therefore, should be trained in law and in particular in those subjects relating to procedure, simple drafting, the legal system, and professional ethics and practice.

149 It is, therefore, recommended

- a) that a law curriculum for the training of para-legals be developed.
- b) that those who successfully complete the course be awarded a certificate in para-legal studies and that the award of this certificate be accepted as a basis for upward mobility of the holder in the civil service.
- c) that a career structure for para-legals working in the civil service be worked out.

LIST OF MAIN RECOMMENDATIONS

Chapter 2 - The Status of the School

Paragraph 56 - That the Council of Legal Education be incorporated by statute and be given the statutory mandate to manage the Kenya School of Law and that the Council be expanded so as to provide appropriate links to institutions that have an interest in legal education.

Paragraph 68

- (a) That the primary role of the School continue to be the provision of facilities for the practical training of law graduates who wish to qualify for admission into the Roll of Advocates.
- (b) That in addition, the School should, in cooperation with the Law Society and faculties of law in Kenyan universities, organise continuing legal education courses for members of the Bar and the Bench.
- (c) That the School should, as soon as is practicable, launch a programme for training of para legals so as to enhance their ability to assist legal professionals in the delivering of legal services.

Chapter 3 - Administrative Structure

Paragraph 72 - That the Council of Legal Education be reconstituted so as to comprise:-

- (a) The Chief Justice or a Judge nominated by him as Chairman;
- (b) A judge of the High Court or Court of Appeal nominated by the Chief Justice;
- (c) The Attorney-General or his representative;
- (d) The Deans of Faculties of Law of Kenyan Universities approved by the Commission for Higher Education;
- (e) The Principal of the Kenya School of Law as ex officio member;
- (f) Senior Counsel appointed by the Attorney-General;

- (g) A person associated with the teaching of law in Kenya, appointed by the Attorney-General
- (h) The Permanent Secretary, Ministry of Education or his representative
- (i) Five advocates nominated by the Law Society of Kenya.

Paragraph 79

- (a) That the Council of Legal Education be the governing body of the School
- (b) That a Board of Studies comprising the Principal as chairman and all the full time academic staff of the School be established
- (c) That a Board of Management comprising all chairmen of departments and chaired by the Principal be established
- (d) That the departments of Professional Legal Studies, Para-legal studies, Clinical and Continuing Legal Education, Administration and Finance, and Library services be established.

Chapter 4 - Facilities at the School

Paragraph 83 - That short term measures be taken to facilitate the teaching of students in smaller groups

Paragraph 93

- (a) That a new library be built as part of the proposed redevelopment of the School, and that the construction be done according to accepted specifications for a law library;
- (b) That immediate steps be taken to improve the existing library at the School by up-dating the existing books, subscribing for at least the more important law journals, arranging for the regular acquisition of judgments of the High Court and the Court of Appeal, and making arrangements for provision of photocopying facilities and for computerisation.

Paragraph 98

- (a) That in using existing premises, priority should be given to tuition facilities and office accommodation for academic staff
- (b) That the main block should be used exclusively for tuition and administration
- (c) That such boarding facilities as continue to be available should be allocated only to students who genuinely need the accommodation and who are prepared to pay for the facilities.

Paragraph 102 - That health as well as recreation facilities be provided as soon as possible.

Chapter 5 - Staffing

Paragraph 109

- (a) That more academic staff should be recruited so as to bring the staff/student ratio to an acceptable level
- (b) That the academic staff be paid salaries and fringe benefits that adequately remunerate them as professionals teaching in a post graduate institution
- (c) That the academic staff should be permitted to engage in limited part-time private practice so long as such engagement does not interfere with the discharge of the teachers' contractual obligations at the School.
- (d) That a system for hiring academic staff on short-term contracts be introduced so as to facilitate the employment for short periods of qualified academic staff who are on leave from institutions where they work on permanent terms.

Chapter 6 - Funding

Paragraph 114

- (a) That the recommendation of the Council of Legal Education that the cost sharing policy be fully implemented, and in

particular, the proposals for a loan scheme for students at the Kenya School of Law, be implemented without any further delay;

- (b) That the School should explore the the possibility of engaging in income generating activities so as to generate additional revenue;
- (c) That the Government should *not* treat income generated by the School as appropriation in aid but as supplementation of the allocation from the Exchequer; nor should any unspent balance from the allocation be required to be returned to the Treasury at the end of the financial year;
- (d) That a legal education levy to be used in financing the running of the School be introduced.
- (e) That a fund for financing legal education at the School to which the Government, the community and the general public will be requested to contribute be set up.

Paragraph 117 - That all funds allocated to the School by the Treasury, fees collected and any other income accruing to the School, should be paid into an account operated by the School under the authority of the Council, but the expenditure of these funds should be subject to the checks and controls usual for parastatal organisations.

Paragraph 119

- (a) That international donors be approached with a view to securing funding for the re-building of the School at the plot allocated for this purpose at Embakasi;
- (b) That the possibility of raising money locally for the project by using the plot where the School is currently located for income generating activities be considered.

Chapter 7 - The curriculum for the Law Course

Paragraph 132

- (a) That the law curriculum be reviewed so as to focus legal education at the School on training in lawyerly skills
- (b) That one of the requirements for qualification for admission into the School be that the applicant must have successfully completed study of all the core subjects indicated in the Advocates (Admission) Regulations. Suitable arrangements should be made with the University of Nairobi to enable law graduates who, at the time of application, do not satisfy this requirement, to register as occasional students of the Faculty of Law for the purpose of studying and taking examination in any core subject they might not have successfully completed.

Paragraph 141 - That a review of the curriculum be undertaken so as to provide *inter alia* for

- (a) An admission test to be used for purposes of selecting for admission law graduates whose degrees have been approved by the Council of Legal Education;
- (b) The training of students in lawyerly skills;
- (c) Course descriptions for the various courses to be taught at the School;
- (d) Setting the period of one year as the requisite minimum period of registration for the course of tuition at the School and pupillage;
- (e) New examination regulations providing *inter alia*, conditions upon which a candidate will be permitted to register for an examination, a maximum period of three years within which a person must complete all examinations including re-sits, the appointment of internal examiners and external moderators, invigilation and grading of examinations, and the processing of the results.

Paragraph 146 - That s. 32(1) of the Advocates Act be brought into force as soon as modalities for its enforcement have been finalised.

Paragraph 149

- (a) That a law curriculum for the training of para-legals be developed;
- (b) That those who successfully complete the course be awarded a certificate in para-legal studies and that the award of this certificate be accepted as a basis for upward mobility of the holder in the civil service;
- (c) That a career structure for para-legals working in the civil service be worked out.

APPENDIX 1

Annual Output of lawyers from the School (1963-1993)

Year	Student Output	Year	Student Output
1963	10	1977	103
1964	31	1978	99
1965	19	1979	47
1966	19	1980/82	140
1967	25	1983	105
1968	25	1984	109
1969	40	1985	110
1970	28	1986	180
1971-73	66	1987	199
1974	66	1988	148
1975	58	1989	169
1976	46	1990	174
		1991	308
		1992	228
		1993	72
Total			2450

Source: Mr. L. Njagi, Principal Kenya School of Law, Nairobi

A background paper on the proposed Kenya Institute for Professional Studies (K.I.P.S.)

APPENDIX II



(DRAFT)

THE COUNCIL OF LEGAL EDUCATION BILL, 1994 ARRANGEMENT OF CLAUSES

Clause:

- 1 - Short title.
- 2 - Interpretation.
- 3 - Establishment and membership of the Council.
- 4 - Headquarters.
- 5 - Duration of membership of the Council.
- 6 - Objects and functions of the Council.
- 7 - Powers of the Council.
- 8 - Delegation by the Council.
- 9 - Transfer of Government property to the Council.
- 10 - The common seal of the Council.
- 11 - Protection from personal liability.
- 12 - Liability of the Council for damages.
- 13 - The secretary.
- 14 - Staff of the Council.
- 15 - Regulations.
- 16 - Legal education levy.
- 17 - Legal education fund.
- 18 - Investment of funds.
- 19 - Financial year.
- 20 - Annual estimates.
- 21 - Accounts and audit.
- 22 - Amendment of Cap. 16.
- 23 - Transitional and saving provisions.

SCHEDULES:

FIRST SCHEDULE - Proceedings of the Council of Legal Education.

SECOND SCHEDULE - Transitional and saving provisions.

THE COUNCIL OF LEGAL EDUCATION

BILL, 1994

A Bill for

An Act of Parliament to provide for the establishment and incorporation of the Council of Legal Education and for connected purposes

ENACTED by the Parliament of Kenya as follows :-

Short title.

1. This Act may be cited as the Council of Legal Education Act, 1994.

Interpretation.

2. In this Act, unless the context otherwise requires "the Council" means the Council of Legal Education established by section 3;

Cap. 18

"the Council of the Society" means the Council of the Society elected under section 13 of the Law Society of Kenya Act

"Fund" means the legal education fund established by section 17;

"para-legal" means any person who has successfully completed a course for para-legals prescribed under Section 6(2) and holds a certificate of attendance awarded by the Council.

Cap. 16

"Roll" means the Roll of Advocates kept under section 16 of the Advocates Act;

"Senior Counsel" has the meaning assigned to it in section 2 of the Advocates Act.

Establishment and membership of the Council.

3(1) There is established a Council to be known as the Council of Legal Education which shall consist of-

- (a) the Chief Justice who shall be chairman;
- (b) a judge to be appointed by the Chief Justice;
- (c) the Attorney-General or his representative;
- (d) five advocates nominated by the Council of the Society;
- (e) the head of the faculty of law of any recognised University in Kenya whose law degree is approved by the Council for the purposes of section 13 of the Advocates Act;
- (f) the head of any training institution established by the Council under section 6;
- (g) a Senior Counsel appointed by the Attorney-General;
- (h) one person associated with the teaching of law in Kenya appointed by the Attorney-General
 - (i) the Permanent Secretary of the Ministry for the time - being responsible for higher education or his representative.

(2) 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.

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

Headquarters.

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

Duration of membership of the Council.

5. The members of the Council nominated under paragraph (d) of section 3(1) shall hold office for four years but shall be eligible for renomination.

Objects and functions of the Council.

6(1) The object and purpose for which the Council is established is to exercise general supervision and control over legal education in Kenya and to advise the Government in relation to all aspects thereof

(2) Without prejudice to the generality of the foregoing, the functions of the Council shall be -

- (i) to organise and conduct courses of instruction for the acquisition of legal knowledge, professional skills and experience by persons seeking admission to the Roll of Advocates in Kenya, in such subjects as the Council may prescribe;
- (ii) to organise and conduct courses in legislative drafting;
- (iii) to organise and conduct courses for magistrates and for persons provisionally selected for appointment as such;

- (iv) to organise and conduct courses for officers of the Government with a view to promoting a better understanding of the law;
- (v) to organise and conduct such courses for para-legals as the Council may prescribe;
- (vi) to organise and conduct continuing legal education courses;
- (vii) to hold seminars and conferences on legal matters and problems;
- (viii) to organise and conduct such other courses as the Council may from time to time prescribe;
- (b) to conduct examinations for the grant of such academic awards as may be prescribed;
- (d) to award certificates, fellowship, scholarships, bursaries and such other awards as may be prescribed .

Powers of the
Council.

7. 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 power to-
- (a) control, supervise and administer the assets of the Council 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 organisations 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;
- (f) invest the funds of the Council not currently required for its purposes in the manner provided in section 18.

Delegation by the Council.

8. The Council may, by resolution, either generally or in any particular case, delegate to any committee of the Council of 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.

Transfer of Government property to the Council.

- 9(1) Subject to subsection (2), the Minister may, by order published in the Gazette, transfer to the Council any property belonging to the Government which appears to him to be necessary for the performance of the Council's functions under this Act, which property shall vest in Council by virtue of the order without further assurance.
- (2) An order under subsection (1) may contain such incidental, consequential or supplementary provisions as the Minister thinks necessary or expedient.

The common seal of the Council.

- 10(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 .
- Protection from personal liability. 11. 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 *bona fide* for executing the functions, powers or duties of the Council, render the member, officer, employee or agent or any person acting by his directions, personally liable to any action, claim or demand whatsoever
- Liability of the Council for damages. 12 The provisions of this Act shall not relieve the Council 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, of any works
- The Secretary. 13. The Council shall appoint a secretary to the Council
- Staff of the Council. 14. 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.
- Regulations. 15. 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, the regulations may -

- (a) make provision with respect to the engagement and training of pupils by advocates and their respective conduct, duties and responsibilities;
- (b) make different provision for different circumstances;
- (c) authorize the charging by the Council of fees;
- (d) make provision for the establishment of training institutions by the Council;
- (e) prescribe the requirements for the award of diplomas, certificates and other academic awards of the Council;
- (f) provide for the description of diplomas, certificates and other academic awards of the Council;
- (g) 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,
- (h) prescribe anything which may be prescribed under this Act.

Legal education
levy.

- 16(1) The Minister may, by order published in the Gazette, require payment by advocates of a legal education levy
- (2) An order under subsection (1) may provide for the amendment of any previous order and may make different provisions in relation to different categories of advocates.

- (3) An order under this section may contain provision as to the evidence by which a person's liability to the levy, or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due.
- (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 sum payable under subsection (5) shall be a civil debt recoverable summarily by the Council.
- (5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the levy order, a sum equal to five per centum of the amount shall be added in the amount due for each month or part thereof during which the amount due remains unpaid.

The legal education fund.

- 17(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 16;
 - (b) such moneys or assets 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 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);
- (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 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.

Investment of funds.

18(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.

19. The financial year of the Council shall be period of twelve months ending on the thirtieth June in each year.

Annual estimates.

20(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 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, allowance and other charges in respect of the staff of the Council;
 - (b) for the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Council;
 - (c) for the proper maintenance of the buildings and grounds of the Council;
 - (d) for the maintenance, repair and replacement of the Council;
 - (e) all expenditure incurred in relation to the establishment, equipment or management of any training institution by the Council;
 - (f) for the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate .
- (3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate, and shall be submitted to the Minister for approval and after his approval, ' the Council shall not increase the annual estimates without the consent of the Minister.

(4) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under this section or in pursuance of an authorization of the Council given with the prior approval of the Minister.

Accounts and audit.

21(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 (Corporations) 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 year.

(3) The accounts of the Council shall be audited and reported upon in accordance with sections 29 and 30A of the Exchequer and Audit Act by the Auditor-General (Corporations) or by an auditor appointed by the Council' under the authority of the Auditor-General (Corporations) given in accordance with section 29 (2) (b) of the Exchequer and, Audit Act.

Cap. 412.

Amendment of

Cap. 16.

22. The Advocates Act is amended -

- (a) by deleting the definition of "the Council of Legal Education" and inserting the following new definition

"the Council of Legal Education" means the Council of Legal Education established by section 3 of the Council of Legal Education Act, 1994;

- (b) by repealing Part II;

- (c) by repealing the First Schedule to the Act.

Transitional and
saving provisions.

Cap. 2.

- 23. Without prejudice to the generality of the application of subsection (3) of section 23 and section 24 of the Interpretation and General Provisions Act, the transitional and saving provisions set out in the Second Schedule shall come into effect upon the repeal of Part II of the Advocates Act.

FIRST SCHEDULE

S.3(3)

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 chairman in consultation with the secretary shall decide that a meeting is necessary, on a date and at a time determined by the chairman.
- 3 The chairman shall on the application of at least six members, convene a special meeting of the Council.

- 4 Unless the 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 eight.
- 6 The chairman shall preside at every meeting of the Council at which he is present, and in the absence of the chairman 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 chairman.
- 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 chairman or the person presiding shall have a casting vote .
- 8 Subject to paragraph 4, no proceedings of the Council of Legal Education 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 chairman and the secretary and any document required by law to be under seal made and all decisions of the Council may be authenticated by the chairman and the secretary:

Provided that the Council shall, in the absence either the chairman 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 chairman or the secretary.
- 10 All instruments made by and decisions of the Council not required to be under seal shall be signified under the hand of the chairman and the secretary.

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

SECOND SCHEDULE (S.23)

TRANSITIONAL AND SAVING PROVISIONS

- 1 The judge who, immediately before the commencement of this Act is the chairman of the Council of Legal Education then existing, shall be deemed to be the judge appointed by the Chief Justice for the purposes of section 3(1)(b) of this Act.
- 2 The four advocates who, immediately before the commencement of this Act were members of the Council of Legal Education then existing, shall be deemed to be four out of the five advocates nominated by the Society for the purposes of section 3(1)(d) of this Act.
- 3 The person who, immediately before the commencement of this Act was the secretary to the Council of Legal Education then existing shall be deemed to be the secretary to the Council for the purposes of section 13 of this Act.
- 4 The Kenya School of Law existing immediately before the commencement of this Act shall be deemed to be an institution established, managed and controlled by the Council under section 6.

Cap 16.
(Sub-Leg).

- 5 For the avoidance of doubt, the Advocates (Admission) Regulations made before the commencement of this Act by the Council of Legal Education then existing shall remain in force until revoked by regulations under section 13 of this Act and shall be deemed for all purposes to have been made under this Act.

The definition of "the Council of Legal Education in section 2 of Cap. 16 which it is proposed to replace:

"the Council of Legal Education" means the Council of Legal Education established and constituted by section 3;

Part II of Cap. 16 which it is proposed to repeal:

PART II - THE COUNCIL OF LEGAL EDUCATION

Council of Legal
Education.

- 3(1) There is hereby established a Council of Legal Education which shall consist of -
- (a) the Chief Justice, or a judge to be appointed by the Chief Justice, who shall be chairman;
 - (b) a judge, to be appointed by the Chief Justice;
 - (c) the Solicitor-General or a person deputed by the Attorney-General;
 - (d) four advocates to be nominated by the Council of the Society; and
 - (e) one person associated with the teaching of law in Kenya, to be appointed by the Attorney-General.
- (2) The conduct and regulation of the affairs and business of the Council of Legal Education shall be as provided in the First Schedule.

Duration of
membership of the
Council.

4. The members of the Council of Legal Education nominated under paragraph (d) of section 3(1) shall hold office for four years and shall be eligible for renomination.
5. The functions of the Council of Legal Education shall be to exercise general supervision and control over legal education in Kenya for the purposes of this Act and to advise the Government in relation to all aspects thereof.
6. The Attorney-General shall appoint a public officer to be secretary to the Council.
7. The Council of Legal Education, with the approval of the Chief Justice, may make regulations for the purposes of giving effect to this Part, and without prejudice to the generality of the foregoing the relations may -
 - (a) make provisions with respect to training of pupils by advocates and their respective conduct, duties and responsibilities;
 - (b) make different provision for different circumstances;
 - (c) authorize the charging by the Council of fees; and
 - (d) prescribe anything which may be under this Part.
8. The expenses of the Council of Legal Education shall be defrayed out of moneys provided by Parliament and all fees and other moneys received by the Council shall be paid into the Consolidated Fund.

The First Schedule to Cap. 16 which it is proposed to repeal:

FIRST SCHEDULE (3(2))

PROCEEDINGS OF THE COUNCIL OF LEGAL EDUCATION

- 1 The chairman shall preside at every meeting of the Council of Legal Education at which he is present, and in the absence of the chairman 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 the powers of the chairman.
- 2 The quorum of the Council of Legal Education shall be four.
- 3 At any meeting of the Council of Legal Education the chairman shall have a casting as well as deliberative vote and subject thereto, the decision of the majority of the members present and voting at any meeting of the Council shall be deemed to be the decision of the Council.
- 4 Subject to paragraph 2, no proceedings of the Council of Legal education shall be invalid by reason only of a vacancy among the members thereof.
- 5 The chairman of the Council of Legal Education may at any time of his own motion convene a meeting of the Council and shall in any case convene a meeting within fourteen days of the receipt by him of a written request in that behalf signed by at least three members.
- 6 All instruments made by, and all decisions of the Council of Legal education shall be signified under the hand of the chairman or of the secretary.
- 7 Except as provided by this Schedule, the Council of Legal Education may regulate its own proceedings.

APPENDIX III

QUESTIONNAIRE

Please indicate the following:-

1. Your Name:
2. Age
3. Sex
4. Occupation/Profession

Management and Finance

The Kenya School of law is currently run as a Department in the Office of the Attorney General. On academic matters, the Principal reports to the Council of Legal Education. In all other matters, he reports to the Attorney General.

1. Do you think that this state of affairs should prevail?

YES/NO

- (a) If "yes" give you reasons briefly.

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- (b) If not, would you agree that there is a need for the School to be managed by one authority?

YES/NO

- (c) If so, who do you think should manage the School? (*tick one*)

The Attorney General

The Council of Legal Education

The Law Society of Kenya

The Faculty of Law

Other (specify)

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(d) If you do not agree, explain your view(s) briefly

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Hitherto, the School has been funded exclusively by the Government. Indeed, the School has no legal power to solicit funds from any other source.

2.(a) Is it pertinent that the funding of higher legal education should continue to remain the responsibility of the tax payer through the Government?

YES/NO

(b) If not, how should the School be funded?

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The School can presently accommodate 78 students. It is not possible, therefore, to run a residential course for more than 78 students at the moment. Given that the School admits a lot more than 78 students, therefore, the majority of the students have continued to be non-resident. However, the Government has set aside a 15-acre plot at Embakasi for re-siting the School.

3. Should the School be residential?

YES/NO

Do you agree that the School should move far away from the present site?

YES/NO

5. If so, do you think it is in order for the School to move to Embakasi?

YES/NO

If not, where would you prefer it to be moved to?

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6. If the School should not move, would you recommend that the existing facilities be expanded on the present site?

YES/NO

7. If so, for what student capacity should it be expanded?

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8. If no, please explain.

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9. If the School moves to a new site, what do you suggest should be the capacity of the new facility?

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10. How should financing of the project be realised?

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11. In what ways could the proposed institution generally raise funds for financing its activities?

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12. In light of the shortage of accommodation at the present site, and until the new facility is built, should any students continue to be accommodated at the present site?

YES/NO

13. If so, should the intake to the School be limited to the present capacity of 78 students per year?

YES/NO

14. If not, how should the 78 students to be accommodated be selected from among the total number of students admitted?

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15. What would happen to the rest of the students who are not accommodated at the School?

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16. If and when the School moves to a new site, to what use should the present facility be put?

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Role of the School

17. What role should the School play in order to enhance its contribution in the field of professional legal education?

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18. Currently the School trains only Advocates. Do you think it should offer other courses in addition thereto?

YES/NO

19. If so, what other courses do you think it should offer, and what should be the qualifications of the course participants?

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20. How should the running of such other courses be financed?

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The School has, since the early 70's, adopted an open-ended policy in admissions. All the students satisfying the admission criteria have been always admitted without regard to the space available. Consequently, the number of students far more outweighs the available space.

21. In the training of Advocates, should the School limit the number of students to be admitted per year?

YES/NO

22. If so, how many students would you recommend for admission annually?

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23. If the number of applicants exceeds the number you recommend, how would the selection be done?

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24. Should the School continue to admit students who obtained the qualifications from outside Kenya?

YES/NO

25. If so, what condition(s) if any, should such students satisfy?

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Before one can qualify to practise as a advocate in Kenya, the Council of Legal Education requires that one should have passed examination in the following subjects.

- Constitutional Law and Legal System 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
- Professional Ethics & Practice

Generally, many students are exempted from having to sit the Council of Legal Education qualifying examinations in some of the subjects. But the School offers tuition in nearly all the subjects.

26. Do you consider this curriculum satisfactory?

YES/NO

27. If not, what would you suggest?

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28. Do you think that there is any need to make any subject(s) compulsory?

YES/NO

29. If so, which one(s)?

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30. Any other suggestion?

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31. Do you think that there should be a time limit within which a student ought to complete studies at the Law School?

YES/NO

32. If so, within what period should a student complete his/her studies?

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33. Should there be a limit on the number of times a students may repeat examinations?

YES/NO

34. If so, how many times

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35. Should a candidate be entitle to know the actual marks which he/she scored in the examination?

YES/NO

36. Where a candidate is not satisfied with his/her examination marks should he/she be entitled to have his/her paper(s) remarked?

YES/NO

37. If so, upon what condition(s)?

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Section 32 of the Advocates Act, Cap. 16, Laws of Kenya states as follows:-

"32.(1) Notwithstanding that an advocate has been issued with a practising certificate under this Act, he shall not engage in practice on his own behalf either full time or part time unless he has practised in Kenya continuously on a full-time basis for a period of not less than two years after obtaining the first practising certificate in a salaried post either as an employee in the Office of the Attorney-General or an organization approved by the Council of Legal Education or of an advocate who has been engaged in continuous full time private practice on his own behalf in Kenya for a period of not less than five years.

(2) The person employing an advocate under this section shall in the prescribed form notify the Secretary to the Council of Legal Education and the Registrar of the High Court of the commencement and the termination of the employment at the time of commencement and at the termination.

(3) This section shall come into operation on such date as the Attorney-General may by notice in the Gazette appoint".

38. Do you agree that a newly qualified Advocate should undergo supervision for 2 years before he can set up a practice on his own?

YES/NO

39. Give your reason(s) briefly

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40. If he/she has to undergo supervision, on what date would you suggest that s.32 should come into operation?

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Terms of Service of Academic Staff

Generally, the terms and conditions of service at the Kenya School of Law are those in the Civil Service. The salary scales for academic staff are those for Professional Legal Officers in the State Law Office. These are as follows:-

Principal	£10,638 - £17,178 (JG "SL 6")
Senior Principal Lecturer	£9,951 - £15,432 (JG "SL5")
Principal Lecturer	£8,220 - £13,215 (JG "SL4")
Senior Lecturer	£7,422 - £11,871 (JG "SL3")
Lecturer I	£6,012 - £10,683 (JG "SL2")
Lecturer II	£5,094 - £9,135 (JG "SL1")

41. Do you think that these salaries are reasonably competitive?

YES/NO

42. Give your reasons briefly

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43. If you think that they are not reasonably competitive, what salary scales would you suggest for lecturers at the School?

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44. Do you think that lecturers should be entitled to any fringe benefits?

YES/NO

45. If so, enumerate them, giving their monetary values.

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