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# LEGAL EDUCATION AND LAWYERS

Patricia Kameri-Mbote

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THE LEGAL PROFESSION  
AND THE NEW CONSTITUTIONAL  
ORDER IN KENYA

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Yash Pal Ghai  
Jill Cottrell Ghai

Editors

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## Introduction

It may come as a surprise to know that there was no university education in law in Kenya until 1970 (other than service courses for other programmes). During the colonial period the British were reluctant to provide for legal education for Africans, even overseas, convinced they would turn into political trouble makers, like Gandhi and Nehru.<sup>1</sup> Nyerere's commitment to getting African lawyers led to a very rapid implementation of the Denning Report recommendations on *Legal Education for Students from Africa*,<sup>2</sup> with the University College in Dar es Salaam starting in 1961, with law as its only discipline, with 12 students, of whom at least 4 were Kenyan. But Kenyan lawyers had even been opposed to the idea of the Dar es Salaam law school, preferring the system of articles, a form of apprenticeship, followed by a period of formal training – at a time when this method of training lawyers was dying out in England.<sup>3</sup> There is a growing feeling<sup>4</sup> that legal education needs to change to keep up with the times especially in the context of new age constitutions, regional integration and globalization.

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<sup>1</sup> See e.g. Yash Ghai, "Law and Lawyers in Kenya and Tanzania: Some Political Economy Considerations" in CJ Dias *et al.*, *Lawyers in the Third World: Comparative and Developmental Perspectives* (Uppsala and New York: Scandinavian Inst. of African Studies and International Centre for Law in Development, 1981) 144 at p. 173-4.

<sup>2</sup> *Report of the Committee on Legal Education for Students from Africa* (The Denning Report) (London: HMSO, 1961) Cmnd 1255

<sup>3</sup> See Ghai and McAuslan, *Law and Political Change in Kenya: A study of the legal framework of government from colonial times to the present* (Nairobi: Oxford University Press, 1970), pp. 395-6.

<sup>4</sup> See e.g. Ndulo, Muna, "Legal Education in Africa in the Era of Globalization and Structural Adjustment" (2002). *Cornell Law Faculty Publications*. Paper 54. <http://scholarship.law.cornell.edu/fac-pub/54>

The articling route to qualification did not disappear in Kenya until 1989.<sup>5</sup> Since then the entrant to the profession has required a degree in law, plus a more practically oriented course, taught at the Kenya School of Law (KSL). It is with these elements in professional formation that this chapter is concerned, and not the continuing education process that a practising lawyer must undergo to retain a practising certificate. The University of Nairobi's Faculty of Law, now School of Law, is Kenya's oldest institution offering law training and was opened in 1970. Moi University Law School was established in July 1994 as the second public law school, admitting its first group of law students in September of that year. The Catholic University of East Africa Law School was established in 2004 as the first private law school.

Today, six public and six private universities are offering law degrees in Kenya. From the following Table it can be seen which universities are sufficiently well established to be feeding graduates into the KSL; columns relating to public universities are emboldened and in italics.

*Table 1: Admissions to the Advocates Training Programme between 2003 and 2014*

Year	Nairobi	Moi	Catholic	JKUAT	Kenyatta	Mt. Kenya	Foreign Universities	Totals
2003/04	206	198	N/A	N/A	N/A	N/A	121	525
2004/05	178	146	"	"	"	"	84	408
2005/06	220	156	"	"	"	"	132	508
2006/07	253	242	"	"	"	"	132	627
2007/08	252	242	"	"	"	"	126	620
2008/09	245	199	"	"	"	"	218	662
2009/10	188	289	75	"	"	"	173	725
2010/2011	181	276	118	"	"	"	185	760
2011/2012	182	385	140	"	"	"	168	875
2012/2013	259	413	139	38	"	"	216	1065
2013/2014	299	304	72	43	95	1	210	1024
2003-14	Grand Total							7799

<sup>5</sup> This system was phased out through the 1989 re-enactment of the Act. (See the Advocates Act No. 8 of 1989.)

The public universities are: University of Nairobi, Kenyatta and Moi Universities, Jomo Kenyatta University of Agriculture and Technology, and in the last few years, Egerton and Kisii universities have started law degrees. Maseno University says that it is in the process of setting up a School of Law,<sup>6</sup> Jaramogi Oginga Odinga University is also establishing a law school while Pwani University includes a law school in its 2010-20 Strategic Plan.

As at June 2013 the Commission for University Education reported that it had approved the offering of law programmes by the following private universities:

- Proposed Umma University (Bachelor of Arts in Islamic Sharia approved 25/06/2012)
- Riara University (Bachelor of Laws approved 25/09/2012)
- Kabarak (Bachelor of Laws approved 24/03/2010)
- Strathmore (Bachelor of Laws approved 14/12/2012)
- \*Africa Nazarene University (Bachelor of Laws approved 16/11/2009)
- Daystar University (Bachelor of Commerce: Law Option approved 17/12/2008)
- \*Catholic University of Eastern Africa (Bachelor of Laws approved 30/06/2008)
- \*Mount Kenya University LL.B.

Of these we have seen that the ones asterisked have already begun to graduate students who have gained admission to the KSL. Riara, Kabarak and Strathmore have active degree programmes. Africa Nazarene had their first batch of students admitted to KSL in 2014. Umma University, Presbyterian University of Eastern Africa and Daystar University are yet to graduate law students.

Most of the law schools, no matter where the university is based, are to be found in Nairobi: this is true of Mount Kenya University (Moi Avenue), JKUAT (Karen), Kenyatta (Parklands), while Nairobi, Riara, Strathmore, African Nazarene and Catholic Universities are based in or near the capital. However, Nairobi has campuses teaching law in Mombasa and Kisumu. The rise in the number of schools and campuses offering law courses has to be seen within the context of the enhancing access to higher education. Many universities have viewed law as a low investment course that is easy to mount. Many universities view law schools

<sup>6</sup> Newsletter September 2013.

as cash cows and pressure them to become profit centres. The offering of parallel law degree courses<sup>7</sup> in public universities is fuelled largely by this pressure. These programmes have grown exponentially and now account for close to seventy per cent of students studying law in some public universities. Private universities have no parallel courses as their students are all self-sponsored. The pressure on nascent law schools to break even and generate resources for their universities has seen these schools double or triple their intakes within a very short time. For quality to be maintained, increases in law students must be accompanied by increases in teaching and infrastructural resources such as staff and library among others which in most instances has not happened. The role of the Council of Legal Education becomes very critical here to ensure that growth of student numbers does not compromise the quality of instruction.

### Regulating Legal Education

Formal and institutionalized regulation of legal education in Kenya is traceable to the colonial days when the Advocates Ordinance 1961 was enacted.<sup>8</sup> Under that framework the Council of Legal Education (CLE) was an administrative body and its function was limited to the vetting of candidates for admission to the roll of advocates. The Akiwumi Report expanded the mandate and status of the Council.<sup>9</sup> It detailed the structural, organizational and operational problems of both the Council of Legal Education and the Kenya School of Law and suggested radical but practical changes. However, it missed the point in failing to see the two facets of the development of legal education as it treated the Council and the School as one and the same institution (Akiwumi Report p. 6). It imposed operational and training mandates on the Council thus making it impossible for it to exercise its oversight role. The Muigai Report is heralded as the most comprehensive report on legal education in Kenya. It formed the basis for the existing legislation which delinks training on law from its regulation.

The Council of Legal Education Act was passed in 1995, but various changes were made under it by regulations, until new legislation could be passed. The CLE was established under the new law as the regulator and tasked, in collaboration with others, to regulate all aspects of legal education including accrediting and licens-

<sup>7</sup> Referred as parallel to the courses for students on government sponsorship.

<sup>8</sup> Report of the *Ministerial Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya*, (Nairobi: GoK, August 2005) (Muigai Report), para.31, p.5.

<sup>9</sup> *Report on Status and Management of the Kenya School of Law* (Nairobi: Government Printer, 1994).

ing providers and prescribing the core course structure for legal education at the university level and the training of lawyers at the Kenya School of Law. The Advocates Training Programme (ATP) was redesigned to make it a vocational, practical mandatory training programme in 2006 and reviewed in 2009. In 2007 regulations were made to separate the CLE function of accreditation from KSL training sharpening the regulatory role of the CLE. Regulations on Accreditation of Training Institutions were made in 2009.<sup>10</sup>

As noted above, CLE and Kenya School of Law were for a long time essentially one and the same thing. Most of the functions of CLE had been delegated to the Kenya School of Law. This meant that CLE did not have any meaningful framework for establishing links with other actors in the legal education whether as trainers or regulators. Consequently, CLE did not perform the role of licensing or supervising the training of law by either public and private universities and largely operated as the board of the KSL until the regulatory role of CLE was carved out as distinct from management of the KSL (Muigai Report p. 13). There was thus a need to subject KSL to the full rigour of the regulatory and supervisory mandate of the CLE just like any other provider of legal education (p. 18). This has been attained through the severance of the Siamese twin relationship that existed between the Council and KSL by the passage of the Legal Education Act (governing CLE) and the Kenya School of Law Act. The latter is now under a board

## **Legal Education Act**

The Act establishes the Council of Legal Education and the Legal Education Appeals Tribunal, and provides for the regulation and licensing of legal education providers and for connected purposes.<sup>11</sup> The objective of the Act is to promote legal education and maintain the highest possible standards in legal education, and to provide a system of guaranteeing the quality of legal education and legal education providers (s.3). The functions of the Council are to regulate legal education and training in Kenya; license legal education providers; supervise legal education providers, and advise the Government on matters relating to legal education and training (s. 8(1)). It also has the mandates of setting and enforcing standards relating to the accreditation of legal education providers for the purpose of licensing, prescribing curricula and mode of instruction and mode and quality of examina-

<sup>10</sup> LN 170 of 2009

<sup>11</sup> Legal Education Act, Act. No. 27 of 2012.

tions, harmonization of legal education programmes and the monitoring and evaluation of legal education providers and programmes (s. 8(2)). The Council also has the role of making regulations in respect of requirements for admission into various legal education programmes, establishing criteria for recognition and equation of academic qualification in legal education and advising the government on the standardization, recognition and equation of legal education qualifications awarded by foreign institutions (s. 8(3)).

The Council is a body with roughly equal membership from or nominated by government, and from the profession. Though the Chair is to be a senior counsel, he or she is nominated by the Attorney-General (the legal advisor to the government), and other members of the Council are the Attorney-General, the Principal Secretaries of the Ministries responsible for legal education and for finance, the Chief Justice, four advocates nominated by the Law Society and one academic (s. (5)). This makes for a body that may have little understanding of legal education, and particularly unlikely to know much about modern developments in the field. At least at present both the Attorney General and the Chief Justice are former academics, but this is likely to be rare.

### **Accreditation of Legal Education Institutions**

Accreditation is a public confirmation that an institution continues to maintain minimum standards for delivery of quality programmes.<sup>12</sup> It is thus an assurance to stakeholders that a particular accredited provider is in a position to offer legal education that is relevant and of quality and ensures that graduates are adequately possessed of skills that will make them competitive both locally and globally (p. 8). Accreditation provides an opportunity for supervised self-discovery for purposes of improvement. And lastly, it provides a benchmark in legal education and training (pp. 15-16). In undertaking accreditation, CLE is guided by principles that ensure fairness, merit and equity and institutional autonomy, that accreditation is a collegial process and that accreditation is done for the common good (pp. 12-13). It is done for purposes of licensing, quality assurance and for enforcement of the CLE regulations. It is a mechanism for imposing, supervising and maintaining standards in legal education and training. Accreditation for quality assurance encourages institutions to mainstream quality assurance (p. 18) and to ensure that the rules and

<sup>12</sup> Council of Legal Education, *Handbook for Legal Education Accreditation* (Nairobi: the Council, July 2011), p.7.

regulations are adhered to and respected. It also ensures that any illegal legal education provider is shut down or programme discontinued (p. 19).

CLE also issued guidelines for accreditation which are broad but not exhaustive. Any document prepared for purposes of compliance must include an introduction (form, nature of existence, character and other relevant information), the institution's vision and mission, its objectives, and details of its governance, quality control and maintenance, curriculum development and student assessment, student services and support, staffing, staff qualifications and ethics, research and publications, and infrastructure and academic resources (pp. 21-28). Essentially, therefore accreditation should be understood to require a continuous process of self-analysis, inspection, re-evaluation and improvement which, when complete, should ensure improved programme contents, mode of delivery and supporting resources (p. 13).

Most legal education providers have not met the stringent requirements for accreditation. Only relatively new schools of law - Kenyatta University, Riara University, Strathmore University and Kisii University College - are fully accredited to offer degree programmes in law.<sup>13</sup> Despite the advantages of accreditation, public confidence can be eroded when renowned and older institutions such as the University of Nairobi, Moi University and Catholic University of Eastern Africa are yet to get full accreditation and continue to operate under provisional accreditation notwithstanding their long existence and proven track record in terms of trail blazing alumnae, solid academic programmes and faculty to deliver the programmes. Indeed accreditation seems to work against large and older institutions that have students already going through the law programme. In fact Moi University and Presbyterian University (private) were listed by the CLE as having been provisionally accredited, but having their status under review for "non-compliance" (Presbyterian University is experiencing difficulties in connection with its accreditation generally). Kabarak, African Nazarene, Catholic and JKUAT are also listed as "provisionally accredited". The CLE also indicates that it is "in discussion" with other institutions.<sup>14</sup>

The legal position under the Act is that a person graduating with a degree from a non-accredited institution is not eligible for admission to the KSL. CLE

<sup>13</sup> The CLE's notification of accreditation is on the Riara University website at <http://www.riarauniversity.ac.ke/accreditation-legal-education-institutions-kenya/>

<sup>14</sup> Listed as Bondo University College (now Jaramogi Oginga Odinga University), Chuka College (now University), Elgon View College, now Pioneer College, Nairobi Aviation College, Kiriri Women University, Foundation Institute of Africa Limited, MIS Centre, College of Management, KCA University, Leader Institute and Inoorero University (International University of Professional Studies).

has extended its reach to universities outside Kenya and visited universities offering university education to Kenyan students seeking admission to KSL. It has for instance, barred KSL from admitting students from some universities in Uganda on account of the non-conformance of their institutions with requirements of CLE.

How has this happened? The benchmarks set by CLE for accreditation include lecturer-student ratio (currently set at 1:15) and core text: student ratio (currently at one copy of each core text to five students). These favour smaller nascent institutions. The setting of the lecturer-student ratio does not seem to take into consideration the aggregate number of law teachers available. There are not many committed law teachers in Kenya, and private practice remains more appealing for many. The opening up of opportunities for lawyers with graduate degrees in constitutional commissions and the judiciary with the promulgation of the 2010 Constitution has robbed the academy of a sizeable pool of qualified law teachers, further aggravating the shortage.

Indeed, as new institutions grow, they are likely to cease to satisfy the criteria because, as noted above, while many law schools start with one classroom stream, they expand to a double or triple stream within a very short span without matching the student population growth to the staff, teaching and other necessary resources. In Table 1 above, it is interesting to note that Moi University has a larger output of students – almost doubling between 2010 and 2013 - than Nairobi which has arguably the largest and most sturdy staff contingent. CLE needs to establish the number of schools that can be sustained by the number of law teachers available to ensure that quality legal education is offered. Absent this, all universities will establish law schools without the requisite staff as these are seen as needing least investment in terms of infrastructure and this will affect quality in the long run.

Another issue with regard to the role of CLE is that it may overlap with that of the Commission for University Education (CUE) established under the Universities' Act No. 42 of 2012. The Act seeks to provide for the development of university education; and the establishment, accreditation and governance of universities. Private universities are required to get accreditation from CUE to start new courses and those that have established law schools have had their accreditation by CUE pegged to accreditation by CLE. It is however not clear how CUE and CLE synergise their accreditation processes and issues may arise where a University gets the nod to start a law school from CLE and proceeds without going back to CUE. CUE usually visits law schools after CLE and it is not clear what the former is looking for in addition to what the latter inspected.

## Programmes and Curriculum

The Legal Education Act does not define “legal education” but its specific provisions seem to contemplate only programmes that lead to the award of a certificate, diploma and post-graduate diploma or bachelor’s degree in law that are intended to be professional qualifications in law (s. 22, Second Schedule, and s. 18). Legal education for this purpose does not seem to extend to Masters and PhD programmes which are offered in some universities. It is suggested that this is desirable: there seems no good reason why a body set up to improve the quality of those admitted to the profession should be concerned with programmes not serving that function. This would be an unjustified restraint on the constitutional right of academic freedom (Article 33(1) (c)). It is suggested that the universities and the CUE are the bodies to maintain standards in other courses.

The legislation is very stringent in terms of curriculum content. At the degree level the core courses are outlined in Part II of the Second Schedule. Core courses at the post-graduate diploma (provided by the KSL) level are in Part III of the Second Schedule.<sup>15</sup> Part I of the Second Schedule outlines the core courses at certificate and diploma levels, which are programmes offered for paralegals.

The core courses for an LLB degree are: Legal Research, Tort, Contract, Legal System and Method, Criminal Law, Family Law and Succession, Evidence, Commercial Law (including sale of goods, hire purchase and agency), Law of Business Association, Administrative Law, Constitutional Law, Jurisprudence, Equity and Trusts, Property Law, Public International Law and Labour Law. It is interesting to compare this list with that currently applied to English law programmes, since the whole concept of core courses originated there: i) Public Law (including Constitutional Law, Administrative Law and Human Rights); ii) Law of the European Union; iii) Criminal Law; iv) Obligations (including Contract, Restitution and Tort); v) Property Law; vi) Equity and the Law of Trusts. The English requirements include that law study comprise at least two years of a three or four year degree, including some during the final year (this makes it possible for a student to do a joint “law and another subject” degree). There are requirements about the nature of legal skills to have been acquired during the programme.<sup>16</sup> And the student must

<sup>15</sup> They include Civil Litigation, Criminal Litigation, Probate and Administration, Legal Writing and Drafting, Trial Advocacy (including clinical programme), Professional Ethics, Legal Practice Management, Conveyancing, Commercial Transactions and Pupillage (six months attachment).

<sup>16</sup> See the Joint Statement of the two professions at <http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>. The “skills” requirements are: “**a. Knowledge:** Students should have acquired. Knowledge and understanding of the fundamental doctrines and principles which underpin

have attained at least a lower second class degree.

The Kenyan student takes a four-year degree, during which 16 core subjects must be taken. Universities generally have their own broad courses that all students must take (University common courses) and these vary from institution to institution with some having as many as eight and others as few as one. One of the recommendations of the Akiwumi Report was that the various institutions providing legal education should identify their niche areas of operation and put more emphasis on these areas. Identifying a niche for a law school can be challenging considering that all schools must teach the 16 compulsory courses. In universities that have many university common courses, the identification of a niche can be a tall order when balanced against the time available on the time table and the fact that at undergraduate level, general and basic tenets of law are taught with specialization anticipated to be attained at post graduate levels. There is indeed little room for innovation and schools have found that in the quest to establish a niche, they have overburdened their students with very heavy course loads. Many schools are reviewing their curricula to address this issue. In Nairobi for instance, more time has been allocated to the core law courses required by CLE in the first to third years of law school with the fourth year allowing for electives along specializations grounded on the core courses taught.

Of the accredited schools, the following are the identified niches: commercial, financial and information communication technology law; education; and training for the public service. Schools have interpreted niche to mean different things with some looking at it as a specialization and others as pedagogical approach.

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the law of England and Wales particularly in the Foundations of Legal Knowledge; A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice law; The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas; The intellectual and practical skills needed to research and analyse the law from primary resources on specific matters; and to apply the findings of such work to the solution of legal problems; and The ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.

**b. General Transferable Skills:** Students should be able: To apply knowledge to complex situations; To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them; To select key relevant issues for research and to formulate them with clarity; To use standard paper and electronic resources to produce up-to-date information; To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question; To use the English language and legal terminology with care and accuracy; To conduct efficient searches of websites to locate relevant information; to exchange documents by email and manage information exchanges by email; To produce word-processed text and to present it in an appropriate form.”

Moi University, established as the second law school in Kenya, was distinguished for using clinical legal method of training where students are engaged in offering legal services to live clients under the supervision of qualified lawyers. Since the students are not qualified to appear in court, they only assist in the preparation of cases that are picked for representation in court. It retains this niche – evidenced by the stellar performance of its students in moot competitions. It is also notable that students from the School are a critical partner at the Legal Aid Centre in Eldoret (LACE) which is based at the Academic Model of Providing Access to Healthcare (AMPATH) network within the Moi Referral and Teaching Hospital. LACE represents people whose access to justice is otherwise limited, particularly people living with HIV.

The curriculum for Riara University is crafted to nurture a problem-solving lawyer, aware of the social, economic and political contexts within which the law exists and with an international perspective.<sup>17</sup> It will however be difficult for legal education providers which are faculties or departments of another institution which already has identified its niche area. This may be in discordant with the CLE's aim of equipping graduates with high quality and relevant education in any legitimate field of legal practice, and to contribute to current circumstances and prepare for future developments. The practice has been that the law schools align their niche as far as possible with the broader university niche by introducing related courses. For instance, Strathmore Law School has tailored its curriculum along the lines of business and information technology courses which are well established in the University. Another way in which law schools and faculties fit into the broader university niches is through the University common courses. Strathmore, ethics and philosophy courses are offered for all students. In universities aligned to church organizations require students to take courses in the religious books as common courses.

The CLE also requires legal education institutions to develop visions which are in line with the entire institution's objective. Many universities have global university strategic plans with clear visions and missions, teaching philosophy and objectives. They cascade these to the law school and in most cases uses them to identify a niche. For instance the vision of the University of Nairobi is 'a world class university committed to scholarly excellence'. The University of Nairobi School of Law is to be a 'world class law school' and its identified niche is to equip a highly trained cadre of legal practitioners for the nation, region and internation-

<sup>17</sup> See generally <http://www.riarauniversity.ac.ke/law-school/>, accessed on 18/01/2014.

ally in crucial spheres in the private and public sectors. The School, like the mother University also identifies its role as a mentor to upcoming law schools through training and sharing of its human resources.

Section 22 (2) of the Legal Education Act provides that a legal education provider may, in addition to the prescribed courses, offer any other courses to persons pursuing a certificate or diploma in law. Additionally, a legal education provider offering a course for the award of a degree in law may offer any other programmes that it may consider necessary, taking into account the developments in the law and society generally (s. 23(2)).

According to the Muigai report, a properly planned and integrated education system must have a theoretical (conceptual) segment which is general and broad based; a vocational segment for dispensing specific skills, and a continuing education framework to invigorate professionals in the field (para. 31). However, most universities teaching law are focusing on the theoretical framework, while vocational and continuing professional education is mainly handled by KSL. Most of the new institutions offering law have not incorporated the theoretical, vocational and continuous education frameworks, since their law programmes are not yet fully developed and lack requisite resources. There is probably a case to be made for defining the areas that law schools should focus on as mainly academic and leave vocational and advocacy training to be addressed in the professional training at the KSL or similar institutions. Another way of addressing this issue is by adopting a diversity of pedagogical approaches in teaching at law schools. A clear definition of aims and objectives is imperative in striking the necessary balance. Most law schools have also not started offering masters and PhD programmes. This is probably due to lack of sufficient number of lecturers with a PhD qualification.

The Muigai Taskforce further recommended that the academic programmes in place should allow for progression from one level to another in order for one to be able to develop their skills and in order that they are able to refresh their memories through the continuing education process. This recommendation arose from the fact that most of these institutions only allowed for those who had done well in their secondary school examinations to be admitted for their degree programmes and those who were holders of diplomas were not able to progress naturally to upgrade their qualifications through admission into degree programmes. They would consequently be confined to performing supportive roles or the duties of paralegals. Section 8 (1) of the Kenya School of Law Act now mandates the Council to formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels. The

ATP is a form of progression in legal education from lower levels to higher levels (Denning Report).

One of the functions of the CLE is to develop curriculum. In this regard, the role of the regulator is to provide a template curriculum, and leave syllabi development with individual institutions.<sup>18</sup> CLE has set benchmarks in relation to programmes. Before developing a legal education programme, an institution must conduct a feasibility study so as to identify a niche area which will act as a justification for the establishment of the programmes (Accreditation Handbook p. 27). The programme should put emphasis on the reasoning, analytical skills and perspectives that a lawyer needs to discharge their many responsibilities.<sup>19</sup> It should also adequately prepare the student for the market. It seems that institutions already established before the drafting of these guidelines will have difficulties complying with this provision. This is because feasibility studies for these institutions may have to be done in a rather subjective manner so that they fit within their niche areas. This will be the case for universities like Moi and Nairobi.

The legal education institutions are also required to provide CLE with the course outlines used for the units they offer. This is meant to guide the students in identifying the areas they need to put more focus on and when and how the respective units are to be taught. Course outlines are to be constantly updated so as to ensure that the courses taught keep up with the constantly changing realities. This is important in light of the rigid curricula in the legal education institutions where there are no incentives to constantly update the curricula. Interestingly, in starting new law programmes, some universities have copied the curricula of other law schools with minimal changes. Such institutions may find it difficult to constantly update their curricula as it is not home grown and well internalised by the staff implementing it. The handbook also provides that legal education institutions are to offer comprehensive programmes which include the offering of all the 16 core units provided for by law and other units meant to develop the professional competencies of the students.

The institutions are also to ensure that their programmes are up to date and that the curriculum used is constantly updated. This is seen to be an important aspect in seeking to encourage research from the institutions towards the development of their programmes and thus more attention given to legal research. The

<sup>18</sup> Muigai Report p. 31.

<sup>19</sup> Samuel O. Manteaw, "Legal Education in Africa: What Type of Lawyer Does Africa Need?" available at [http://mcgeorge.edu/Documents/Publications/02\\_Manteaw\\_MasterMLR39.pdf](http://mcgeorge.edu/Documents/Publications/02_Manteaw_MasterMLR39.pdf) accessed on 18th January 2013

introduction of research-oriented courses, it is said, would enable graduates to conduct independent research on the tasks they face in practice and write meaningful and informative papers.<sup>20</sup> The development of such courses is also seen as encouraging the development of the skills a person would need in order to be competitive both locally and globally. Unfortunately, most of those who teach law have other engagements elsewhere and thus most of their time is not spent in teaching law. Most lecturers are also not qualified to supervise students taking their masters' and doctoral studies. This is because there are only a few professors in law.

Apart from the curriculum and human resources, CLE also requires the legal education institutions to provide a list of the physical facilities available for the provision of legal education and the number of students using these facilities. Great emphasis is laid on information communication technologies. This requirement is necessary in light of the rising number of students joining universities to study law and it is intended to ensure that facilities are aligned to the number of students. This explains why large universities like Nairobi are yet to be accredited. On a positive note however, accreditation has provided these institutions with an incredible opportunity to negotiate for improved facilities, more staff and more investment in the schools generally.

### **Modes of Teaching**

The Akiwumi Report noted that legal education involved passive rather than active learning (p. 25). Modes of training in legal education are diverse. They range from lectures, tutorials (mostly in the University of Nairobi), seminars, group work and clinical approaches. The modes of assessment in universities are varied. At the University of Nairobi 30% normally comprises coursework which includes oral presentations, group work, written assignment and continuous assessment tests. At the Kenya School of Law the mode of training comprises of lectures, participation in moot courts, clinics and any other practical outputs and coursework and assignments (KSL Act s. 19(3)). Most assessment at the KSL includes oral examination constituting 20%, group work comprising 20% and a written final examination constituting 60% of the total marks. Students are required to attend at least two thirds of the lectures offered by most legal education providers.

<sup>20</sup> Muna Ndulo, "Legal Education in Africa in the Era of Globalization and Structural Adjustment" 20 Penn St. Int'l L. Rev. 487 (2001-2002) online at <http://scholarship.law.cornell.edu/facpub/54>

Notably, the accreditation process has placed a high premium on the establishment of state of the art moot court rooms at the law schools. Given the domains of legal education, there is need, as noted above, to balance the academic and professional (advocacy training). For instance most schools have had to axe procedure and professional ethics courses, which are not core subjects, from the curricula owing to the pressure for time and space on the timetable. Yet law students need to understand the relationship between substantive/normative aspects of law and procedural/adjectival ones. Leaving the procedure courses to training at KSL may already be too late.

### **Foreign Universities**

The Legal Education Act provides that CLE may recommend to appropriate authorities the conclusion by Kenya of reciprocal agreements with the government of any country in the interests of and in furtherance of legal education in Kenya (s. 42(1)). The reciprocal agreements may include arrangements for credit transfers between a legal education provider in Kenya and one in another country; liaison between the Council and a regulator of legal education in another country; and the harmonization of the curricula of legal education in Kenya with those in another country (s. 42(2)). The Kenya School of Law is empowered to cooperate with institutions of higher learning in any manner that may be conducive to the objects of the school. The school can also collaborate with local and international organizations or bodies in the furtherance of the objects of the school (KSL Act s. 5(3)). Such arrangements will make it easier for students in foreign students to transfer to institutions in Kenya; to join or continue the ATP programmes in Kenya; or to access continuous education or any other legal education programme in local institutions. Table 1 above illustrates the number of students from foreign universities admitted to the ATP. Foreign universities account for the third largest number of admissions after the two oldest law schools, Moi and Nairobi.

### **Research in Kenyan Law Schools**

The focus in most law schools has been teaching. Research is not entrenched as part of the law school agenda. This is problematic because it means that lecturers are not generating information to feed into the curriculum. Indeed, there are still far too few local legal texts written by Kenyan legal scholars. While this may be attributable to the failure of the legal education institutions to provide research resources,

it could also be a result of the engagement of law lecturers in legal practice and consultancy to supplement their income. There are very few career law teachers in Kenya. Postgraduate training is also an area that can contribute to research in law schools. This is not available in the majority of law schools and where it is available, students dedicate little time to research and are in a great hurry to complete their studies even if it means getting others to write their research papers. At the graduate level, while legal research and writing is a core course, there is no mandatory requirement that students write a research paper as part of their training.

Few law schools publish law journals regularly, which means that there is no forum for sharing research findings. It would be ideal to have law journals for students and staff to allow for generation of new knowledge as well as publication of students' research papers. It is however important to note that in schools like Nairobi, scholars have been able to raise research funds and work with students to conduct research and publish research findings. The existence of a postgraduate programme in which the top students get scholarships and are engaged as graduate assistants has provided a ready pool of researchers as well as training for the next generation of legal scholars. The dependence of promotion on research outputs as well as supervision has also spurred interest in research.

### **Challenges for Legal Education in Kenya**

Law Schools in Kenya face difficulties encountered by all higher education institutions, but there are other difficulties for them, especially the perception that financial rewards will be far higher in private practice. And those rewards will be gained without having to struggle for a PhD, or even perhaps a master's. In reality many lecturers dabble (if not more) in law practice and consultancy alongside the teaching of law with the latter being relegated to the back burner.

The cost of law books is another issue, attributable mainly to the fact that most texts are imported. As noted above, there are not many local law textbooks. Now that we have a new Constitution, even the textbooks available are in dire need of revision. CLE should not just require text books, it should place a premium on local texts so as to spur the development of local texts. I have argued elsewhere that universities should also emphasise local texts in their curricula.<sup>21</sup>

<sup>21</sup> Kameri-Mbote, P., 'Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourses', Inaugural Lecture delivered on 24<sup>th</sup> January 2013 (<http://www.uonbi.ac.ke/sites/default/files/Mbote.pdf>).

With modern electronic research tools, law students are able to access online resources easily. CLE has required schools to improve their ICT infrastructure. While the acquisition of the infrastructure and online resources was way beyond the reach of most institutions, it is heartening to note that this has changed dramatically in the recent past. The price of computers has reduced and some universities now have laptop policies where all students are required to own laptops while others have invested in computer laboratories to ensure that those who do not own laptops are able to access online resources. Some schools also have e-learning platforms that enable lecturers to share materials with students easily.

While the draft requirements of CUE do not include a PhD until the higher reaches of the teaching profession are attained, public universities' own requirements include a doctorate as a basic requirement for applicants for the lecturer level. This has been a challenge in law and the bulk of many law schools' academic faculty comprises mainly holders of Master of Laws (LLM) degrees. The emphasis on doctoral qualifications and dearth of holders has distorted the ascent up the academic ladder as law schools compete for staff to implement their programmes. Some senior lecturers, in some universities, have less than two years' teaching experience; no experience of postgraduate supervision and no publications, while, in others, ascent to this grade requires at least six years' teaching experience, three publications and supervision of three to five masters' students to completion.

The phenomenon of 'nomadic' lecturers has also emerged as law academics find it possible to teach in several institutions. There are no institutionalized mechanisms for human resource sharing such as would be facilitated by joint hiring of academic staff by different schools to optimize use of the available teaching staff. And with some teachers in two or even three law schools, there is little possibility to offer seminars and tutorials.

Many new schools have impressive buildings but they lack qualified academic staff. Another investment that CLE emphasizes is the library requiring a core text: student ratio of 1 to 10. They require that print copies of at least one volume of the law reports are available on the shelves even where electronic versions are available. At the end of the day, there is need to ensure that the infrastructure, teaching and human resources are adequate to support the programmes with expansion pegged to exponential enhancement of the resources.

While tutorials and seminars are usually put out as modes of instruction, class sizes have tended to hinder effective implementation of these. Class sizes vary from 30 students to 300 students. The dearth of law teachers also affects the implementation of these modes even where numbers of students are small.

## Conclusion

Legal education at university is the foundation upon which professional training, whether at ATP level or continuing professional level builds. It is therefore imperative that a solid foundation is laid. Improvement in the justice and rule of law sectors is unlikely to be achieved if there are no investments in legal education. Over the years, concern has been raised about the quality of legal education at universities.

The introduction of the accreditation processes for legal education institutions is an important step towards improving legal education in Kenya. The requirements that prospective law students must have scored at least a B in English and that schools seeking accreditation must offer 16 mandatory courses in their curricula contribute towards standardization and uniformity in legal education. Besides the entry requirements and the curricula prescriptions, there is need to look into the processes within law schools to ensure that the broad objectives of legal education are met. Law schools should use the accreditation process as a source of empowerment and an opportunity to demand resources from their institutions. Unless universities are forced to invest in law schools, they can easily neglect them even as they are cash cows for the universities because they are perceived as low investment courses. Accreditation forces institutions to invest in infrastructure, library and human resources which benefits the law teachers and students.

Secondly, while teaching is important, there is need to institutionalize research as part of legal training by requiring that teachers devote time to research and requiring law students to write research papers. Staff should be allowed time off teaching to carry out research with the requirement that they produce research outputs at the end of the time off. Staff could also be allowed to buy time off teaching to engage in research. This raises the need for law journals in law schools as an avenue for disseminating research findings of both teachers and students.

With Kenya's new constitution, institutions should also contribute to its implementation through research and debates as well as scholarly discourses. There are many opportunities for contribution including public interest litigation, appearing as *amicus curiae* in select cases, civic education and proffering research based solutions to issues that proof intractable in the process of constitution implementation. This calls for forging partnerships between law schools *inter se* and between law schools and legal practitioners, and with non-governmental organizations and other justice sector actors.