



REPUBLIC OF KENYA

**REPORT OF THE WORKING COMMITTEE ON LEGAL
EDUCATION SECTOR REFORMS**

SUBMITTED TO

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HONOURABLE ATTORNEY-GENERAL, REPUBLIC OF KENYA

MARCH 2025

LETTER OF TRANSMISSION

The Working Committee on Legal Education Sector Reforms (the Committee) was set up by the Honourable Attorney-General, Dorcas Oduor, SC, OGW, EBS on 28th August 2024, to consider and harmonise the concerns and issues raised by students and stakeholders with respect to the legal education sector.

The specific terms of reference of the Committee were to evaluate, review and make recommendations on actionable reforms and implementation proposals with regard to:

- a) The current legal education framework on entry qualifications to the Advocates Training Programme (ATP);
- b) ATP Examination processes and other assessment methods for the ATP; and
- c) Review and evaluate financial sustainability measures for the legal education sector institutions, specifically Kenya School of Law (KSL) and Council of Legal Education (CLE), including the current training and examination fees structure for the ATP, financial support for students joining and/or undertaking the ATP and budgetary allocation to KSL and CLE.

The Committee was required to complete its work and submit its final report to the Hon. Attorney-General within two months from the date of its appointment. The Committee sought extensions of time to submit the Report which were granted. Following the submission of its draft Report to the Hon. Attorney General on 30th January 2025, the Committee made a presentation of the draft Report to the Hon. Attorney General on 13th March 2025.

The Committee now submits the final report to the Hon. Attorney-General.



CHRISTINE A. AGIMBA

CHAIRPERSON OF THE WORKING COMMITTEE

Dated this Twenty-seventh day of March 2025

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Abbreviations and Acronyms

AIA	Annual Investment Allowance
ACSEE	Advanced Certificate of Secondary Education Examination
BEL	Bar Examination Loan
EAC	East African Community
EBK	Engineers Board of Kenya
ATP	Advocates Training Programme
CHE	Commission for Higher Education
CLE	Council of Legal Education
CPD	Continuous Professional Development
CSEE	Certificate of Secondary Education Examination
CUE	Commission for University Education
GOK	Government of Kenya
HELB	Higher Education Loans Board
ICT	Information and communications technology
ILPD	Institute of Legal Practice and Development
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Education
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KLRC	Kenya Law Reform Commission
KMPDC	Kenya Medical Practitioners and Dentists Council
KNEC	Kenya National Education Council
KNQA	Kenya National Qualifications Authority
KSL	Kenya School of Law
KSL Act	Kenya School of Law Act
LEA	Legal Education Act

LEPs	Legal Education Providers
LL.B	Bachelor of Laws (Legum Baccalaureus)
LDC	Legal Development Centre
LSAC	Law School Admissions Council
LSAT	Law School Admission Test
LSK	Law Society of Kenya
LST	Law School of Tanzania
MEE	Multistate Essay Exam
MPT	Multistate Performance Test
MRAs	Mutual Recognition Agreements
NSC	National Senior Certificate
OAG & DOJ	Office of the Attorney-General and Department of Justice
TORs	Terms of Reference
PTP	Paralegal Training Programme
UBE	Uniform Bar Exam

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Executive Summary

This Report highlights the key issues that the Working Committee on Legal Education Sector Reforms (the Committee) set up by the Honourable Attorney-General on 28th August 2024, considered to harmonise the concerns and issues raised by students and stakeholders with respect to the legal education sector.

The Committee evaluated, reviewed and made recommendations for actionable reforms with regard to the current legal framework for the entry qualifications criteria to the Advocates Training Programme (ATP) and for admission as an Advocate in Kenya; the ATP examination process; and financial sustainability measures for the Kenya School of Law (KSL) and the Council of Legal Education (CLE), including the current training and examination fee structure and financial support for students.

Chapter 1 provides background on the importance of the legal education sector, the inquiries and recommendations that have guided the development of legal education throughout the years, leading to the appointment of this Committee, and its specific terms of reference to investigate the issues and challenges currently facing the legal education sector in Kenya.

Chapter 2 interrogates the legal framework for entry qualifications for admission to the ATP, noting the nexus between these entry requirements and admission to the Bar. The Committee reflected on the inconsistencies in the legal provisions relating to admission to the ATP at the KSL and noted that the KSL Act, the Legal Education Act (LEA) and the Advocates Act have conflicting provisions and that this has been the subject of frequent litigation. The Committee recommends that to ensure clarity and consistency in the entry requirements to the ATP, there is need for the CLE to prescribe the entry requirements pursuant to its powers under the LEA and to make clear regulations to set out the admission requirements to both the undergraduate law degree course and the ATP. It is necessary to amend both KSL Act and LEA to give effect to this.

The Committee took note that academic progression is recognized in other professions in Kenya and globally and recommends that the CLE develops a policy and necessary regulations on prior learning and academic progression which establish well-defined academic pathways for students to progress from lower levels to the undergraduate study of law and subsequently gain admission to the ATP pursuant to section 8(3)(a) of LEA.

The Committee also recommends the development of a framework to implement a pre-bar examination as a measure to allow admission to the ATP by graduates who have

pursued undergraduate law studies following different pathways but could not be admitted to the ATP as they did not meet the entry requirements set out in the KSL Act.

The Committee also took note of the need to amend sections 12 and 13 of the Advocates Act to provide clarity in the academic and professional qualifications for admission as an Advocate and to recognize the eligibility of citizens of all EAC Partner States for admission as advocates in Kenya, subject to the reciprocal admission of Kenyans as advocates in the EAC Partner States.

Chapter 3 considers the concerns of past and present students and key actors regarding the administration of the ATP examinations and performance of students in the ATP examinations. The Committee observed that CLE has progressively taken measures to improve the quality of the ATP examinations as well as protect the integrity of the examination process and recommends enhanced collaboration between the KSL and the CLE in the conduct and administration of the ATP examination, and in curriculum reviews, to ensure alignment of the ATP curriculum to the examinations.

Chapter 4 interrogates the financial challenges faced by the legal education sector institutions and proposes financial sustainability measures specifically the KSL and the CLE, and financial assistance for students of the ATP. The Committee acknowledged the students' concerns regarding the high tuition and examination fees for the ATP, while also recognizing the financial challenges faced by the KSL and the CLE, key institutions in the legal education sector that rely heavily on these fees to meet their operational costs. The Committee recommends that the Government reinstate financial support to both KSL and CLE to enable them to effectively fulfil their mandate without burdening students with increased fees.

Addressing the concerns expressed by students about access to the ATP, the Committee recommends a structured engagement between all key actors and stakeholders on the proposed decentralization of KSL and the liberalization of the ATP, and their implications on the quality of legal education.

The recommendations outlined in this Report are summarised in Chapter 5. The Committee highlights the urgent need to finalize the formulation of a comprehensive legal education policy and to implement the proposed legislative measures to streamline the policy, legal and regulatory framework for the legal education sector, as well as administrative measures to enhance efficiency by the KSL and CLE. If the implementation of the recommendations is undertaken collaboratively by the key actors, the proposed reform interventions will help improve efficacy in the legal education sector.

CHAPTER 1: INTRODUCTION

Background

1. The legal and justice system is a cornerstone of a country's social, economic, and political framework. Lawyers are vital to a just and equitable society. They uphold the rule of law, ensure access to justice, and shape a legal framework that promotes social and economic progress. Strong legal education is crucial for developing competent lawyers. To effectively serve society, legal education must adapt to emerging issues and address evolving societal needs. This requires constant vigilance and a commitment to ongoing reform.
2. The Government of Kenya has, over the years demonstrated a sustained commitment to ensuring a robust legal education system, recognizing its vital role in shaping the nation's legal, economic and social landscape. This commitment is evident in the continuous process of growth and adaptation within legal education, ensuring its responsiveness to the evolving needs of the Kenyan society.
3. Key to this progress has been a proactive approach to review and reform. The government has consistently engaged in critical evaluation of its legal education system, leading to the development and implementation of targeted laws, policies and strategies for enhancement. This commitment is further re-enforced by a series of important inquiries and recommendation that have guided the development of legal education throughout the years: Some of the inquiries include the Report of the Committee on Legal Education for Students from Africa Lord Denning's Report (1961), Report of the Task Force on the Status and Management of the Kenya School of Law (1995) (Akiwumi Report), the Report of the Committee on the Administration of Justice, 1998 (Kwach Committee), the Taskforce on the Development of a Policy and Legal Framework for Legal Education in Kenya (2005) (Muigai Report) and the Taskforce on Legal Sector Reforms (2018) (Ojiambo Report).
4. These inquiries provided a comprehensive approach to reform legal education and the sector. Key recommendations included offering practical training opportunities and fostering collaborations. They also emphasized the need to separate regulatory and supervisory functions from training activities, improve access to justice through legal aid and community justice programmes, strengthen judicial independence and accountability, reform legal education to better prepare lawyers for modern practice, promote technology use to enhance efficiency and transparency, and address

corruption within the legal profession. These measures aimed to create a robust, efficient, and transparent legal system responsive to the evolving needs of society.

5. While Kenya has demonstrated a sustained commitment to enhancing its legal education system, certain complexities have at times impacted the pace of progress. Feedback from students and stakeholders has highlighted key areas for improvement within Kenya's legal education system.
6. Factors such as the need to harmonize recommendations from various committees, navigate legal complexities, and address emerging issues have presented opportunities for further refinement and strengthening of the country's legal education system. In response, the government through the Attorney-General established the Working Committee on Legal Education Sector Reforms. The Committee is tasked with analyzing these complexities and proposing solutions, underscoring the government's dedication to building a responsive and relevant legal education system.

Appointment and Terms of Reference of the Working Committee

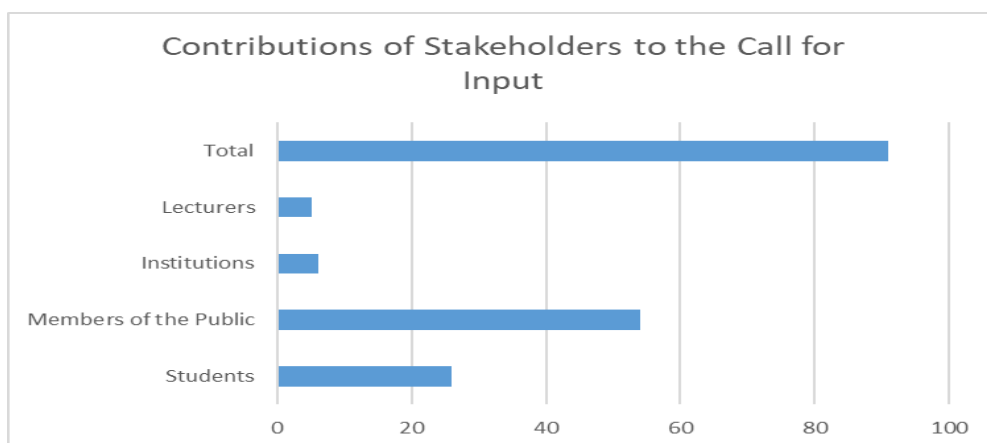
7. Noting the urgent need to address concerns raised by stakeholders, the Attorney-General established the Working Committee on Legal Education Sector Reforms (the Committee) on 28th August 2024 to consider and harmonize the concerns and issues raised by students and stakeholders with respect to the legal education sector in three critical areas:
 - (a) Current legal framework for the entry qualifications criteria to the Advocates Training Programme (ATP) and for admission as an Advocate;
 - (b) Examination process for the ATP; and
 - (c) Financial sustainability measures for the legal education sector institutions, specifically the Kenya School of Law (KSL) and the Council of Legal Education (CLE), including the current training and examination fee structure and financial support for students.
8. The Committee was chaired by the Kenya Law Reform Commission with members drawn from the CLE, the KSL, the Office of the Attorney-General and Department of Justice (OG & DOJ) and the Law Society of Kenya (LSK).
9. In this Report, the Committee outlines the issues and challenges arising from each thematic area of the Terms of Reference (TOR) and proposes policy, legislative, institutional and administrative recommendations to address the identified issues and

challenges. The Members of the Committee and TORs are set out in detail in **Appendix 1**.

Methodology

10. The Committee employed several methods to investigate the issues and challenges facing the legal education sector in Kenya and make recommendations on actionable reforms and implementation proposals with regards to the three critical issues outlined in the committee's terms of reference.
11. Firstly, the Committee made a call for submission of memoranda on 9th September, 2024 to seek views from all stakeholders and members of the public to inform its terms of reference. Written submissions were received from the following stakeholders:
 - (a) the LSK and individual lawyers;
 - (b) former and current students of KSL;
 - (c) students pursuing their law degrees at various public and private universities;
 - (d) law graduates who have failed to meet the entry requirements stipulated in the Kenya School of Law Act (KSL Act);
 - (e) law lecturers from both public and private institutions; and
 - (f) members of the public.

Table 1: Memoranda received from Stakeholders



12. Secondly, the Committee held physical and virtual engagements with stakeholders. The stakeholders included:

- (a) Students from the KSL;
- (b) Representatives of law graduates who have failed to meet the entry requirements stipulated in the KSL Act;
- (c) Lecturers from the KSL;
- (d) Deans of various Schools of Law in Kenya;
- (e) The Engineers Board of Kenya (EBK); and
- (f) Kenya Medical Practitioners and Dentists Council (KMPDC).

13. Thirdly, the Committee reviewed the existing legal framework for legal education, legal education policies, curricula and relevant documentation, and relevant court decisions, with a specific focus on how these documents inform the three critical issues outlined in the Committee's terms of reference.

14. Finally, the Committee also examined the recommendations made in previous reports to address the stated challenges facing the legal education sector with a view to recommend implementation strategies and proposals.

CHAPTER 2: ENTRY QUALIFICATIONS FOR ADMISSION TO THE ADVOCATES TRAINING PROGRAMME AND ADMISSION AS AN ADVOCATE

Introduction

15. This chapter outlines the current legal framework for entry requirements to the Advocates Training Programme (ATP) and reviews the criteria for admission as an Advocate of the High Court of Kenya, noting the nexus between legal education requirements and admission to the Bar. The chapter also highlights the issues and challenges that have been raised and proposes recommendations.

Laws governing entry requirements to the ATP

16. **The Kenya School of Law Act, Cap. 16C (KSL Act):** Section 4(1) establishes the KSL as a public legal education provider responsible for the provision of professional legal training as an agent of the Government. KSL derives its mandate under Section 4(2) which obliges the School to train persons to be advocates, ensure continuing professional development for the legal profession, provide para-legal training, provide other specialized training and undertake projects, research and consultancies.

17. Section 16 of the KSL Act provides that a person shall not qualify for admission to a course of study at the School unless that person has met the admission requirements set out in the Second Schedule for that course.

18. The Second Schedule of the KSL Act outlines the specific entry requirements for the ATP. It states:

(1) *"A person shall be admitted to the School if—*

(a) having passed the relevant examination of any recognized university in Kenya, or of any university, university college or other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution;

or

(b) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—

(i) attained a minimum entry requirement for admission to a university in Kenya; and

- (ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and*
- (iii) has sat and passed the pre-Bar examination set by the school."*

19. The Legal Education Act, Cap. 16 B (LEA): Section 4 establishes the CLE as a body corporate with perpetual succession and a common seal. Section 8, outlines the functions of the CLE to include regulating, licensing, and supervising legal education providers, advising the government on legal education, recognizing and approving foreign qualifications for admission to the bar and administering professional examinations as prescribed under the Advocates Act. Section 8(2), grants the CLE the responsibility for accreditation of legal education providers for the purposes of licensing, curricula and mode of instruction, mode and quality of examinations, harmonization of legal education programmes; and monitoring and evaluation of legal education providers and programmes. Section 8(3)(a) grants the CLE authority to: regulate admission requirements for legal education programmes, establish criteria for recognizing and equating academic qualifications in legal education, and develop a system to recognize prior learning and experience in law, enabling progression from lower to higher levels of legal education.

20. The Advocates Act, Cap. 16: Section 12, sets out the qualification for admission as advocate and provides that;

"Subject to this Act, no person shall be admitted as an advocate unless—

(a) he is a citizen of Kenya, Rwanda, Burundi, Uganda or Tanzania;

and

(b) he is duly qualified in accordance with section 13."

21. Section 13, sets out the professional and academic qualifications as follows;

(a) having passed the relevant examinations of any recognized university in Kenya he holds, or has become eligible for the conferment of, a degree in law of that university; or

(b) having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in each particular case approve; and thereafter both—

(i) he has attended as a pupil and received from an advocate of such class as may be prescribed, instruction in the proper business, practice and

- employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed eighteen months; and*
- (ii) he has passed such examinations as the Council of Legal Education may prescribe; or*
- (c) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education;*
- (d) he is an Advocate for the time being of the High Court of Uganda, the High Court of Rwanda, the High Court of Burundi or the High Court of Tanzania;*
- (e) he is for the time being admitted as an advocate of the superior court of a country within the Commonwealth and—*
- (i) has practiced as such in that country for a period of not less than five years; and*
- (ii) is a member in good standing of the relevant professional body in that country:*

Provided that the Council may, in addition, require that a person to whom this paragraph applies undergo such training, for a period not exceeding three months, as the Council may prescribe for the purpose of adapting to the practice of law in Kenya.

(2) The Council of Legal Education may exempt any person from any or all of the requirements prescribed for the purposes of paragraph (i) or paragraph (ii) of subsection (1) upon such conditions, if any, as the Council may impose.

Issues and Challenges

22. From a review of the legal provisions setting out admission requirements and the submissions received from stakeholders, the Committee identified the following issues:

- (a) the conflict between the LEA and the KSL Act;
- (b) students who do not meet the minimum requirements for admission to the ATP;
- (c) pre-university assessment and pre-bar examination;
- (d) admission of foreign students to undergraduate LL.B and ATP; and
- (e) admission as an advocate and the principle of reciprocity.

The Conflict between the Provisions of the LEA and the KSL Act

23. The laws governing the entry requirements to the ATP present inconsistencies and ambiguities. This lack of clarity stems from conflicting provisions in the KSL Act and the LEA and its subsidiary legislation. The two pieces of legislation prescribe different pathways for entry into the ATP.
24. The Second Schedule of the KSL Act sets out the following minimum qualifications for admission to the ATP as follows—
- (1) having passed the relevant examination of any recognized university in Kenya, or of any university, university college or other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution; or*
 - (2) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—*
 - (i) attained a minimum entry requirement for admission to a university in Kenya; and*
 - (ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and*
 - (iii) has sat and passed the pre-Bar examination set by the school.*
25. Pursuant to section 8(3) of LEA, the CLE introduced the regulations setting out the requirements for the admission of persons seeking to enroll in legal education programmes. The specific requirements were:
- (a) Bachelor of Laws (LLB) degree from a recognized university.*
 - (b) If applicable, a certificate of completion of a remedial programme.*
 - (c) Proof of academic progression as defined in paragraphs 3 and 4 of the Schedule.*
26. The provisions of the Legal Education (Accreditation and Quality Assurance) Regulations included an alternative pathway to the ATP outlined in Part II, paragraph 6 of the Third Schedule. The regulations introduced the following minimum admission requirements to a certificate legal education programme:

- (a) a mean grade of C- (Minus) in the Kenya Certificate of Secondary Education examination or its equivalent with at least a C (Plain) in English or Kiswahili;*
- (b) at least a Division III in the Kenya National Certificate of Education examination plus proof of work experience in the field of law of not less than five years; or*
- (c) a certificate of experiential learning issued by the Council of Legal Education.*

27. The regulations also introduced the following minimum admission requirements to a diploma legal education programme:

- (a) a mean grade of C (Plain) in the Kenya Certificate of Secondary Education examination or its equivalent with at least a C+ (Plus) in English or Kiswahili;*
- (b) at least one Principal Pass at the Kenya Advanced Certificate of Education examination;*
- (c) a Pass in a certificate of law course offered at an accredited legal education provider; or*
- (d) a certificate of experiential learning issued by the Council of Legal Education.*

28. These regulations allowed students who did not meet the KCSE requirements for admission to an undergraduate law programme in a Kenyan university to gain admission through the diploma pathway. The requirements for entry into ATP as set out in the regulations were held to be in conflict with the entry requirements set out in the KSL Act. This has led to several lawsuits challenging the KSL's admission criteria, highlighting the inconsistencies between the regulations and the Act.

29. The Regulations, which recognized academic progression from certificate and diploma levels to undergraduate studies, were later invalidated by the Court of Appeal in ***Javan Kiche Otieno & another v Council of Legal Education***¹ on 30th January 2018 for failure to have the law passed into law in accordance with the procedures set out in section 11(4) of the Statutory Instrument Act, 2013.

30. The 2022 Court of Appeal decision in ***Kenya School of Law v Otene Richard Akomo & 41 Others***² ruled that regulations could not override the provisions of an Act of Parliament as subsidiary legislation cannot supersede the provisions of the principal statute. This judgment also clarified that the requirements for admission to the ATP, are as set out in the KSL Act.

¹ Court of Appeal decision in Nakuru Civil Appeal 38 of 2018 Otieno & another v Council of Legal Education available at <https://kenyalaw.org/caselaw/cases/view/225679/>

² Court of Appeal decision in Nairobi Civil Appeal No. E472 of 2021, Kenya School of Law v Otene Richard Akomo & 41 Others available at <https://new.kenyalaw.org/akn/ke/judgment/keca/2022/1132/eng@2022-10-21>

31. The current inconsistencies between the KSL Act and the LEA regarding admission criteria for the ATP pose a significant obstacle to achieving a fair and inclusive legal education system in Kenya. To address this, immediate legislative action is required to harmonize these two acts and to establish a clear, consistent, and transparent entry requirement for admission to the ATP. Harmonizing the two statutes will lead to:
- (a) certainty in the requirements for admission to ATP;
 - (b) confidence in the legal system and its institutions; and
 - (c) fewer resources spent by the KSL and CLE on litigation.
32. The main issue lies in identifying the appropriate legal framework for establishing admission criteria to the ATP. Section 8(3) (a) of the LEA explicitly empowers the CLE to regulate legal education in Kenya. This includes setting standards for admission to legal education programmes, making it the logical authority to determine ATP admission criteria.
33. The Ojiambo Taskforce Report also recommended the review and amendment of applicable laws and regulations to ensure consistency and harmonized admission requirements. The Taskforce further recommended that the admission requirements should be anchored in the LEA³.

RECOMMENDATION 1

- (a) The Committee recommends that the KSL Act and LEA be amended to consolidate and harmonize the entry requirements, ultimately housing them within the LEA to ensure clarity and consistency in the admission to the ATP.
- (b) The Committee recommends that the CLE, pursuant to its mandate section 8(2) and (3) LEA, makes regulations to set out the admission requirements to the ATP.
- (c) The Committee recommends that the entry requirements set out under the KSL Act be deleted.

³ Para 80 of the Ojiambo Taskforce Report

Students who do not meet the minimum requirements for Admission to the ATP as set out in the KSL Act

34. Before the KSL Act, Cap. 16C came into force in 2012, the admission requirements to the ATP and undergraduate LL.B programmes were contained in the following instruments:

- (a) L.N. 169 of 2009 - admission into the Advocates Training Programme; and
- (b) L.N. 170 of 2009 - admission to the undergraduate LL.B

35. Both of these regulations were issued under the Council of Legal Education Act, Cap. 16A (repealed). Importantly, LN 169/2009 recognized prior learning for purposes of progression to the LL.B and thereafter ATP. Regulation 5 (c) and (d) provided the admission requirements to the ATP which required LL.B from a recognized university and:

- (a) a minimum grade of C+ (C plus) in English and a minimum aggregate grade of C (plain) in the Kenya Certificate of Secondary Examination, holds a higher qualification e.g. "A" levels, "IB", relevant "Diploma", other "undergraduate degree" or has attained a higher degree in Law after the undergraduate studies in the Bachelor of Laws Programme; or*
- (b) a minimum grade of C- (C minus) in English and a minimum of an aggregate grade of C- (C minus) in the Kenya Certificate of Secondary Examination sits and passes the Pre-Bar Examination set by the Council of Legal Education as a pre-condition for admission.*

36. In **Kevin Mwiti & others vs KSL**,⁴ the court ruled that individuals admitted to LL.B programmes before the KSL Act's enactment were to be treated according to pre-2012 standards. As a result, two distinct admission criteria have operated over time:

- (a) **Pre-KSL Act (prior to 2012):** LL.B students admitted through prior learning or academic progression were eligible for ATP under Legal Notice 169 of 2009.
- (b) **Post-KSL Act (2012 onward):** LL.B students are subject to Section 16 and the Second Schedule of the KSL Act for ATP admission.

⁴ *Kevin Mwiti & others vs KSL & 2 others* [2015] eKLR

37. Following the enactment of the KSL Act and the LEA in 2012, differences in entry qualifications for the ATP emerged. In 2016, the CLE introduced the following minimum qualifications for undergraduate law admission in Part II, third schedule of the regulations:

- (a) A mean grade of C+ in KCSE or its equivalent, with a B plain in English or Kiswahili;*
- (b) At least three principal passes in the Kenya Advanced Certificate of Education (KACE);*
- (c) A degree from a recognized university; or*
- (d) A credit pass in a diploma in law from an accredited institution.*

38. While the LEA and its subsidiary regulations recognized prior learning and academic progression as pathways for entry to the undergraduate law programme and subsequently to the ATP, the KSL Act does not.

39. Some students seeking admission to the ATP face challenges due to these disparities between the admission requirements for LL.B and those for the ATP under the KSL Act. These students are in the following categories:

- (a) students seeking admission to the ATP having obtained admission to the LL.B programme on the basis of academic progression; and
- (b) students seeking admission to the ATP having obtained admission to the LL.B programme on the basis of other degrees/prior learning.

Students seeking admission to the ATP having obtained admission to the LL.B programme on the basis of academic progression

40. The LEA promotes a flexible approach to legal education, acknowledging diverse pathways to acquiring legal knowledge and qualifications. This includes recognizing academic progression which refers to the natural advancement of a student through increasing levels of study within a programme or field of study such as law. It involves moving from a lower to a higher level of academic qualification such as from Diploma to Undergraduate Bachelor level. Academic progression provides a pathway for a student to progress to undergraduate law study on the assumption that the diploma qualifications will have cured any deficiencies arising out of having not met the direct entry requirements to the undergraduate programme.

41. Under the Second Schedule of the KSL Act, to be admitted to the ATP one must hold an LL.B degree, achieved a minimum grade of C+ overall and at least a B in English or Kiswahili in the Kenya Certificate of Secondary Education (KCSE) exams; and passed the pre-Bar examination administered by the KSL. The KSL Act includes language proficiency entry requirements that are not met by the majority of students who obtained their degrees through academic progression. The regulations, however included an alternative pathway to the ATP outlined in Part II, paragraph 6 of the Third Schedule. The specific requirements were:

- (a) Bachelor of Laws (LL.B) degree from a recognized university;*
- (b) if applicable, a certificate of completion of a remedial programme; and*
- (c) proof of academic progression as defined in paragraphs 3 and 4 of the Schedule.*

42. Recognizing academic progression in legal education has many advantages. It not only promotes inclusivity, but also acknowledges diverse paths to legal qualifications. Academic progression is a globally recognized best practice in education, enabling individuals to advance their learning based on previously acquired knowledge and skills.

43. The Committee held sittings with the KMPDC and the EBK and noted that, generally, progression is recognized across various professional programmes in Kenya such as medicine and engineering. For instance, Regulation 5 of the Medical Practitioners and Dentists (Training, Assessment and Registration) Rules provides that a student shall be eligible for admission to the Bachelor of Medicine and Bachelor of Surgery degree, and Bachelor of Dental Surgery degree programme if that student satisfies the following requirement:

- (a)*
- (e) in the case of Diploma holders of medical sciences, a minimum of "O" level Division II pass on K.A.C.E or C+ (plus) mean grade and a credit C+ pass in the cluster subjects in K.C.S.E., in addition to a three-year diploma with a minimum credit of pass from a training institution recognized by the Council; or*
- (f.) in the case of clinical medicine, medical sciences, and community health practitioners a degree or diploma, where applicable.*

44. The EBK also requires that engineering programmes be accredited, ensuring that diploma holders meet the necessary academic and technical standards before transitioning to degree programmes. However, specific admission requirements vary

across universities, with most requiring at least a credit pass in the diploma for direct entry into a degree programme.

45. The CLE supports recognition of academic progression for purposes of advancement towards obtaining an LL.B Degree, noting that recognition of academic progression as a means of progressing through levels of study is also part of global best practice in education generally.
46. In deliberating this issue, the report of the Ojiambo Taskforce recommended conceptualizing two distinct types of diploma in law qualifications: an academic diploma in law qualification and a professional diploma in law qualification. The academic diploma with a credit pass would be recognized as a qualification for direct progression to the LL.B Degree programme. The professional diploma in law for developing a cadre of legal support staff would allow the holders of the professional diploma with three years of work experience to pursue the LL.B programme⁵.
47. Academic progression is recognized in Tanzania and Uganda, where legal education entry requirements provide pathways for students with diverse academic backgrounds. For instance, at the University of Dar es Salaam School of Law, candidates can qualify for admission with two or more principal level passes. Applicants without principal passes in History and English at the Advanced Certificate of Secondary Education Examination (ACSEE) must, however, have credit passes in these subjects at the Certificate of Secondary Education Examination (CSEE).
48. The University also considers equivalent entry pathways including:
- (a) holding an appropriate diploma obtained over at least two years with an Upper Second Class from an accredited institution;
 - (b) a Certificate in Law from the University of Dar es Salaam passed with distinction, or
 - (c) a bachelor's degree in a non-law discipline (excluding Bachelor of Divinity or Islamic Studies)⁶.
49. Similarly, Makerere University in Uganda offers comparable entry requirements, further demonstrating the region's inclusive approach to academic progression in legal education.

⁵ Para 78 of the Ojiambo Taskforce Report

⁶ https://www.udsm.ac.tz/web/index.php/colleges/sol/programmes/Bachelor_of_Laws_76

50. The foregoing suggests that academic progression is a valid pathway to legal education and admission to the ATP and there is need for a clear policy and regulations in this regard. Currently, according to the CLE, approximately 4,500 students have been admitted to the Diploma in Law programme offered by some institutions including Kisii University, Mount Kenya University, Catholic University of East Africa as well as the Kenya School of Law since 2009 and proceeded to the undergraduate study of law.
51. This number is likely to rise as Universities have continued to admit students to LL.B programmes on the strength of diplomas in law accredited by the CLE. The Commission for University Education (CUE) standards for recognition and equation of qualifications provide the admission requirements for undergraduate studies which provides for academic progression by recognizing an accredited and recognized relevant diploma from an accredited and recognized institution for the pursuit of a bachelor's degree⁷.
52. The students who pursued diploma pathways and subsequently completed their LL.B programmes now find that despite fulfilling the requirements for a law degree, they are unable to join the ATP due to the entry requirements stipulated in the KSL Act. The KSL Act prioritizes specific KCSE grades, effectively locking out these graduates who gained admission to their LL. B programmes through alternative pathways. This has sparked debate and calls for reform, with the pre-Bar examination being suggested as a transitional measure to address this impasse.
53. Students, particularly the diploma holders who obtained LL.B degrees have called for a pre-Bar examination to assess their suitability for admission to the ATP. The pre-Bar could be modelled after the impugned regulation 6 of the Kenya School of Law (Training Programmes) Regulations, 2015.

Students seeking admission to the ATP having obtained admission to study Law on the basis of other Degrees

54. Some law students were admitted to the LL.B programme on the basis of having obtained a previous degree without meeting the criteria set out in Section 16, as read together with the Second Schedule of the KSL Act. A graduate of a degree programme will have met the minimum university entry requirements set by CUE of a mean grade of C+ or its equivalent. However, the ATP admission requirements demand a minimum

⁷ <https://imis.cue.or.ke/RecognitionAndEquationforQualifications/downloads/Guidelines.pdf>

grade of B plain in English or Kiswahili in addition to a mean grade of C+ in KCSE or its equivalent. As a result, law graduates who gained admission to LL.B programmes based on meeting general university entry qualifications or holding prior degrees may face barriers to ATP admission if they do not meet the specific KCSE language requirements of a B plain in either English or Kiswahili.

55. Students expressed concern that the current admission requirements in the KSL Act places undue emphasis on grades obtained during secondary education as a determinant for ATP admission. This fails to recognize students who gained entry to the LL.B degree programme on the strength of obtaining an initial degree in another field but did not have the B plain in English or Kiswahili in KCSE.

RECOMMENDATION 2

- (a) The Committee recommends that the CLE develops a policy on prior learning and academic progression to establish well-defined and comprehensive pathways for students to progress to the undergraduate study of law and subsequently gain admission to the ATP. This should include clear guidelines on diploma qualifications, recognition of other degrees as prior learning and proficiency in English and Kiswahili.
- (b) The Committee recommends that the CLE reviews the existing legal framework and proposes regulations for recognizing prior learning and academic progression to facilitate advancement in legal education pursuant to section 8(3)(a) of LEA.
- (c) The Committee recommends that the Attorney General considers proposing the amendment of both the KSL Act and LEA to address the inconsistencies in the entry requirements to undergraduate law programmes and the ATP and to set out clear entry requirements pursuant to the LEA.
- (d) The Committee recommends that the proposals in (c) above include legislative proposals to facilitate the implementation of a comprehensive pre-bar examination for graduates who have pursued LL.B studies following different pathways. This exam should assess core legal knowledge, legal research and writing skills, ethical understanding and incorporate a robust language proficiency assessment within the pre-bar examination or as a separate requirement. This ensures that candidates possess the necessary language skills for effective legal practice.
- (e) The Committee recommends that the Attorney General seeks the withdrawal of existing bills including the KSL (Amendment) Bill, 2023 and the KSL (Amendment) Bill,

2024 to pave the way for consolidated proposals for the amendment of the KSL Act and LEA to set out entry requirements to the admission of the ATP.

Pre-University entry assessments and Pre-Bar examination

56. Concerns have been expressed about the quality of legal education and the preparedness of students entering the ATP. The main challenge is determining the most effective way to assess the suitability of aspiring lawyers before they begin the LL.B studies and seek admission to the ATP. This involves evaluating whether a pre-university assessment or pre-Bar examination is necessary for all, some, or none, and whether alternative assessments might be more appropriate.
57. The Muigai Taskforce Report (2005) recommended the standardization of admission to the ATP and recommended the introduction of the Bar examination. The pre-Bar examination was introduced to require both local and foreign law graduates to sit the pre-bar examination pursuant to an amendment to the KSL Act through the enactment of the Statute Law (Miscellaneous) Amendment Act, 2014.
58. The High Court in **Adrian Kamotho Njenga v Kenya School of Law**⁸ ruled that local LL.B graduates were not subject to the pre-Bar examination, limiting the requirement to foreign law graduates. The Court in the above case considered and nullified Regulation 6 of the Kenya School of Law (Training) Regulations, 2015, which required local LL. B graduates to sit for the pre-Bar examination for being inconsistent with the KSL Act. According to KSL, the pre-bar examination is now only administered to foreign law graduates.
59. The Report of the Ojiambo Taskforce questioned the necessity of the pre-Bar examination and advocated for pre-university assessments instead. It argued that its contribution to ensuring quality in legal education was minimal, given the existing accreditation standards and remedial programmes by CLE. The Ojiambo Taskforce advocated for pre-university assessments to evaluate applicants' character, aptitude, and moral values before admission into LL. B programmes. It posited that robust pre-university screening by Legal Education Providers (LEPs) would eliminate the need for the pre-Bar examination.

⁸ Petition No. 398 of 2017 available at <https://new.kenyalaw.org/akn/ke/judgment/kehrc/2017/2158/eng@2017-11-06>

60. The Ojiambo Taskforce emphasized the need for stringent regulation of LEPs and recommended enhancing the CLE's capacity to execute its mandate effectively. It identified the absence of pre-university assessments by most LEPs as a barrier to embedding strong values such as ethics and integrity within the legal profession⁹. However, the Taskforce cautioned against poorly structured assessments, emphasizing that, "...the accuracy of pre-university screening is not infallible. The process may be subjective and risk not delivering required results. However, if properly designed and implemented, its risks and weaknesses can be minimized while ensuring that only suitably qualified students are enrolled in undergraduate law programmes¹⁰."
61. International practices offer models for pre-university admission evaluations. In Uganda, pre-university assessments are not mandatory, but universities like Makerere University administer admission tests evaluating aptitude, analytical skills and communication¹¹. In Kenya, Strathmore University conducts a similar admission test. In the United States, the Law School Admission Test (LSAT) is a standardized entry test for law schools.
62. While it is essential to assess students' character and moral aptitude for legal studies, such assessments should occur at the beginning of their legal education journey, supporting the case for pre-university evaluations.

RECOMMENDATION 3

The Committee recommends that CLE and LEPs studies local, regional and international pre-university assessment models and consider adopting suitable practices for pre-entry assessments for potential students seeking admission into undergraduate law programmes.

Students with other degrees besides LL.B

63. Kenya's legal education system has faced challenges in recognizing and accommodating law-related degrees that differ from the traditional Bachelor of Laws (LL.B) degree. Students with non-LL.B degrees appealed for recognition, arguing that their qualifications are comparable to LL.B degrees and cover the core legal content.

⁹ Paras 101-104 of the Ojiambo Taskforce Report

¹⁰ Para 86 of the Ojiambo Taskforce Report

¹¹ <https://law.mak.ac.ug/pre-entry-examinations-for-admission-to-bachelor-of-laws-2024-25-academic-year/>

The issue of nomenclature was interrogated by the Ojiambo Taskforce. The Taskforce noted that the KSL Act and the Legal Education Regulations (as they then stood) mandated an LL.B degree for ATP admission, excluding graduates with other law-related qualifications, such as a Bachelor of Arts (Law) or Bachelor of Academic Laws.

64. The CLE has since established criteria for the recognition and approval of non-LL.B degrees. The CLE considers their qualifications on a case-by-case basis, evaluates the core courses covered and whether the degree qualifies for legal practice in the awarding jurisdiction¹².
65. The Committee notes that the CLE has developed appropriate criteria for recognizing undergraduate law degree qualifications. The Committee notes that Law qualifications that are not LL.B as required by the KSL Act, are only recognized if they meet the equivalence criteria set by the CLE. This flexible approach aligns with global best practice and seeks to balance the need for maintaining professional standards with the imperative to provide equitable access to legal education and training.

Admission of foreign students to undergraduate LL. B and the ATP

66. The Committee recommends Concern has been raised about the entry of foreign lawyers in the Kenyan legal market, and the potential impact on employment opportunities for Kenyan practitioners. This includes the admission of foreign students to pursue LL.B studies in Kenyan universities, or their admission to the ATP and subsequent admission to the Bar.
67. The Ojiambo Taskforce Report addressed the admission of foreign students at both undergraduate and graduate levels. The Report emphasized the need to manage expectations of foreign students, who are not East Africans, pursuing legal education and professional training in Kenya. The Taskforce underscored that undertaking such education in Kenya should not automatically guarantee one the right of admission to the Roll of Advocates in Kenya, or the right to practice law in Kenya, which is subject to the provisions of section 12 of the Advocates Act, Cap. 16 which currently limits admission as an advocate to citizens of Uganda and Tanzania.
68. Concern has also been raised regarding the admission of Kenyan students with foreign high school and university qualifications as they seek admission to the ATP. Many

¹² Para 83 of the Ojiambo Taskforce Report

applicants with foreign qualifications struggle to access the ATP in Kenya because they do not meet the minimum KCSE qualifications or their recognized equivalents.

69. Such foreign qualifications are subject to equation and recognition by the CLE which has powers to recognize and approve foreign qualifications in law for purposes of admission to the ATP and the roll of advocates under section 13 of the Advocates Act and Section 8 (1)(e) of the LEA.

70. The CLE only recognizes qualifications from institutions that meet specific accreditation standards. Kenyan students who graduate from institutions that fail to meet established standards find their qualifications unrecognized, which disqualifies them from pursuing the ATP in Kenya. The CLE thereby plays a critical role in aligning foreign qualifications with Kenyan standards and global benchmarks to ensure equivalence and quality.

RECOMMENDATION 4

The Committee recommends that the CLE develops, by way of regulations, a framework for the admission of foreign students to LL.B and ATP. The regulations should be clear that admission to these programmes does not grant an automatic right for admission to the Bar or a right to practice law in Kenya subject to the principle of reciprocity and adherence to applicable immigration laws.

Admission as an Advocate and the Principle of Reciprocity

71. Various stakeholders have provided submissions to the Committee regarding the issue of admission as an advocate in Kenya and the principle of reciprocity identifying the following key issues:

(a) Who can be admitted as an advocate pursuant to sections 12 and 13 of the Advocates Act, Cap. 16

(b) Eligibility for non-Kenyans who are already admitted to practice law in the EAC or the Commonwealth and beyond before seeking admission to practice law in Kenya

72. The Advocates Act establishes the legal requirements for admission as an advocate in Kenya. Section 12 of the Act specifies nationality requirements, limiting eligibility for

admission to the Roll of Advocates to citizens of Kenya, Uganda, Tanzania, Rwanda and Burundi. Section 13 further outlines the minimum academic and professional qualifications necessary for admission to the Kenyan Bar.

73. The Advocates Act was amended through the Statute Law (Miscellaneous Amendments) Act, 2012 to include the eligibility of citizens of Rwanda and Burundi for admission as an advocate in Kenya. This amendment was nullified by the Court of Appeal in the case of **Law Society of Kenya v Attorney General & 2 others (2019) eKLR**. The Court of Appeal held that the Legislature overreached in passing substantive amendments in an un-procedural non-participatory manner. Consequently, only qualified citizens from Uganda and Tanzania remain eligible for admission to the Kenyan Bar as the applicant for admission to the Kenyan Bar must first and foremost be a citizen of the member country (Uganda and Tanzania).
74. Stakeholders have expressed the need for a comprehensive re-examination of the Advocates Act with a view to bringing more clarity to the qualifications for admission to practice law in Kenya. In particular, the Judiciary proposes the amendment of section 12 of the Advocates Act with regards to nationality so that all EAC Partner States are treated in the same manner rather than amending the law each time a new member is admitted or expelled.
75. Pursuant to the provisions of the Treaty for the Establishment of the East African Community (EAC) Kenya has made significant strides in allowing the integration of foreign counsel into local practice. Stakeholders have however, raised concern about the lack of reciprocity by East African Nations. Kenyan lawyers continue to face unreasonable constraints in their efforts to practice in neighbouring countries.
76. The EAC Common Market Protocol, under Article 11, advocates for labour mobility within the Community through the harmonization and mutual recognition of academic and professional qualifications. To this end, Partner States have negotiated and signed Mutual Recognition Agreements (MRAs) in fields such as accountancy, engineering, architecture, and veterinary science. However, an MRA for the legal profession remains elusive, highlighting the need for further collaboration and harmonization within the EAC.
77. Sections 12 and 13 (1) (d) and (e) provides eligibility for non-Kenyans who are already admitted to practice law in the EAC (Uganda and Tanzania) or the Commonwealth before seeking admission to practice law in Kenya.

78. Noting the lack of a framework governing civil law jurisdictions, the Ojiambo Taskforce Report found that there was a need to beef up the process of recognition and approval of foreign qualifications in law by having clear regulations for recognition and approval of foreign law qualifications, particularly for those from civil law jurisdictions¹³.

79. Citizens of Uganda and Tanzania have four distinct pathways for admission as Advocates in Kenya:

- (a) Those with academic qualifications obtained from a Kenyan university and subsequently complete the ATP qualify for admission.
- (b) Those with academic qualifications obtained from foreign universities or institutions approved by the CLE only must undertake Pupillage and the ATP examination to qualify for admission.
- (c) Those already admitted either as advocates in Uganda or Tanzania may be eligible for direct admission to the role of advocates in Kenya if they're in good standing in the countries of admission.
- (d) Finally, citizens of Uganda or Tanzania admitted as advocates in a Commonwealth country may be eligible to be admitted as advocates in Kenya if they have at least five years' experience and are in good standing.

80. However, the CLE informed the Committee that review of the laws governing the admission of persons, in particular foreigners, to the legal professions across Uganda, Tanzania, Rwanda, and Burundi reveals significant disparities and varying degrees of harmonization. While Kenyans can access training institutions in Partner States, this accessibility has not translated to eligibility for admission in the legal professions of various Partner States due to existing restrictions and barriers within national laws.

81. Submissions from the stakeholders, including the LSK which authenticates foreign advocates' credentials, have noted with concern the lack of reciprocity in considering applications by Kenyan advocates in EAC Partner States. The issue was also canvassed in the Ojiambo Taskforce Report. The Taskforce noted that despite Kenya's efforts to recognize qualifications from other Partner States, similar measures have not been adopted by other countries.

¹³ Para 130 of the Ojiambo Taskforce Report

RECOMMENDATION 5

- (a) The Committee recommends that the Attorney General considers initiating engagement with Partner States of the East African Community to revive the development of Mutual Recognition Agreements (MRAs) aimed at recognizing academic and professional qualifications, along with associated experiences, licenses, and certifications in relation to cross-border law practice. This includes the conclusion of discussions on harmonisation and mutual recognition of academic and professional qualifications by Partner States.
- (b) The Committee recommends the amendment of section 12 and 13 of the Advocates Act to recognize the eligibility of citizens of all EAC Partner States for admission as advocates in Kenya subject to the reciprocal admission of Kenyans as advocates in the EAC Partner States.
- (c) The Committee recommends that CLE and LSK develop clear Regulations for recognition and approval of foreign law qualifications for admission to the bar in Kenya and to practice law in Kenya, particularly for those from civil law jurisdictions.
- (d) The Committee recommends that the process of recognition and approval of foreign qualifications in law should also consider the relevant countries' mutual reciprocity.

CHAPTER 3: EXAMINATIONS PROCESS FOR THE ADVOCATES TRAINING PROGRAMME

Introduction

82. In Kenya's legal framework, the ATP coursework is taught by the KSL but the examination is administered by the CLE. The ATP is an eighteen-month programme that comprises twelve months of classroom teaching and six months of pupillage. The examination, which follows the twelve-month classwork in the ATP, is a mandatory requirement for admission to the Bar under section 13(1) of the Advocates Act, Cap. 16.
83. The CLE administers the examination twice every year. The examination has three components written examination which contributes 60% of the final score, oral examination which contributes 20% of the score; and project work which contributes 20%.
84. The pass mark for all the subjects in the examination is 50%. It is important to note that for a regular candidate, all three components are considered when calculating the final score. For candidates taking a resit examination only the written component is considered while computing the final score. For candidates who do not score 50%, CLE provides them with an opportunity to appeal through the remark system. A candidate is given 30 days to apply for the remark. The results of a remark signal the end of a particular examination series.

Relevant Legal Frameworks

85. The mandate of the CLE to administer ATP examinations is drawn from section 8(1)(f) of the Legal Education Act, Cap 16B, which provides that the Council shall administer such professional examinations as may be prescribed under section 13 of the Advocates Act.
86. The mandate of the CLE to administer ATP examinations is further emphasized under section 13(1)(a/b)(ii) of the Advocates Act, Cap. 16, which provides that a person shall be duly qualified if he has passed such examinations as the Council of Legal Education may prescribe.
87. The CLE had set out the examination process in regulation 15 of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. While these regulations were invalidated by the Court, the CLE continues to administer the examinations based

on standards adopted by the Council as they develop more comprehensive regulations to guide the ATP examination process.

Issues and Challenges

88. Stakeholders raised two primary issues relating to examinations:

- (a) Administration of the examinations
- (b) Performance in the examinations

Administration of the Examinations

89. Stakeholders raised several issues regarding the administration of the ATP examination. These include:

- (a) collaboration between KSL and CLE
- (b) examination fees
- (c) transparency in the examination process; and
- (d) timely release of results

Collaboration between CLE and KSL

90. Stakeholders informed the Committee that there appeared to be a lack of collaboration and coordination between the CLE and KSL in the conduct and administration of examinations. Stakeholders proposed that the CLE and KSL need to conduct a post-examination analysis of results to identify trends in performance and areas for improvement.

91. The KIPPR Report found that there were inconsistencies between the examinations, the course curriculum, and the content taught. The Report recommends that curriculum should be aligned to what is to be tested through increased coordination between KSL and CLE. The Report further recommends that periodic evaluations could be carried out to assess the status of implementation of the syllabus. Expectations and outcomes between both institutions need to be clear.¹⁴

92. As the function of teaching and administering the ATP examinations is carried out by separate entities, the Committee noted the critical need for enhanced collaboration and coordination.

¹⁴ Paragraph 348 of the KIPPR Report.

RECOMMENDATION 6

The Committee recommends that the CLE and the KSL cooperate in the implementation of the recommendations of the KIPPRA report to enhance collaboration and coordination in the conduct and administration of the ATP examinations.

Examination Fees

93. Stakeholders raised two points regarding examination fees: concerns about the ATP examinations fee and the refund of remark fee.
94. Students were of the view that the ATP examination fee, especially the remark and resit fees, was high. A student pays KES. 45,000/- for the nine examination papers. The CLE charges fifteen thousand Kenya Shillings (KES. 15, 000) for a remark and ten thousand Kenya Shillings (KES. 10, 000) for a resit per paper. Comparatively, Deans of Law Schools in their engagement with the Committee indicated that most universities charge a thousand shillings (KES. 1000) for resits and do not charge remarks.
95. The CLE, however, informed the Committee that examination fees are set in Part C of the Second Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations 2016. The Regulations were invalidated by the Court, but the fees still apply through a council resolution adopting the standards set in the Regulations. The fee structure has never been revised since.
96. The CLE conducted a comparative study with comparable examination bodies and submitted a report to the Committee. The table below shows a summary of the comparative analysis.

Table 2: Comparative analysis of examination fees

No	Institution	Exam Type	Service	Regular Candidate (Kshs.)	Level	Re-sitting Candidate (Kshs.)	Remark
1.	CLE	ATP	Examination Fee	5,000 per paper.		10, 000 per paper.	15, 000
2.	KNEC	KCSE	Registration Fee	5,800 for 9 papers		6,300 for 9 papers	
3.	KASNEB	CPA	Registration Fee	3,600 per paper	Advanced	3,600 per paper	
4.	KISM	CPSP-K	Registration fee	5,500			
			Reinstatement	1,500			
			Renewal fee	5,500			
			Research paper	15,000			

97. The CLE further informed the Committee that the current fee structure cannot sustain the administration of examination, especially since the institution no longer receives financial support from the National Treasury. The CLE stated that without financial support, a review of the fees would be upwards, not downwards.

98. Stakeholders also proposed that students who seek a remark of their scripts and are successful should get a refund of the remark fee. The CLE, however, informed the Committee that even where a student is successful in a remark, the administrative costs of the remarking the examination have to be offset.

RECOMMENDATION 7

- (a) The Committee recommends the harmonization of resit, remark fees and regular examination fees.
- (b) The Committee recommends that the CLE anchors the examination fees in the proposed regulations.
- (c) The Committee does not recommend a refund of the remark fee since there are administrative costs to be covered.

Transparency in the Examination Process

99. Students informed the Committee that there seemed to be a perception of a lack of transparency in the marking of examinations and proposed that the CLE should release marked examination scripts to them
100. The CLE informed the Committee that it is not standard practice for examination bodies to release marked examination scripts. By comparison, other examination bodies including the Kenya National Examination Council (KNEC) and the Kenya Accountants and Secretaries National Examinations Board (KASNEB) do not release marked examination scripts to students.
101. The CLE further informed the Committee that it established an ad hoc examinations reforms committee that evaluated the entire examination process and recommended mechanisms to address concerns around the integrity of examinations. The CLE has since implemented those recommendations.

RECOMMENDATION 8

- (a) The Committee recommends that CLE publishes its revised examination guidelines.
- (b) The Committee does not recommend the release of the examination scripts as this is not the practice of other examinations bodies.

Timely Release of Results

102. Stakeholders were concerned about the time taken for the release of the results. Under current guidelines, the CLE is expected to release results within three months. This period compares favorably to the time taken to release examination results by other examination bodies such as KNEC and KASNEB.
103. The CLE informed the Committee that measures were in place to fast-track the processing of examination results. The Committee noted that results for the November 2024 examination series, which was completed on 26 November 2024, were released on 21 December 2024.

Performance in the Examination

104. Stakeholders raised concerns over the perceived high failure rate in the examinations. To be considered as having passed the Bar examinations in Kenya, a student is required to have passed all the stipulated nine units.
105. The CLE submitted to the Committee a summary of the results for the last five years indicating the number of candidates who passed all the nine units in the first sitting during the particular examination series.

Table 3: Summary of ATP examinations between 2019 and 2024

Cohort	Examination Series	Registered Number	Candidates who passed all units on 1st sitting	%
2019/2020	November 2019	1622	554	34.2
2020/2021	June 2021	1856	923	49.7
2021/2022	April 2022	1546	919	59.4
2022/2023	March 2023	1453	743	51.1
2023/2024	November 2023	1619	664	41
2024/2025	November 2024	1790	716	40

106. The Committee noted that the pass rate remained below fifty percent and also noted that the average Pass Rate (%) for first time candidates who sat and passed all units from 2019-2024 was 45.9%. The CLE also informed the Committee that Commercial Transactions, Conveyancing and Legal Writing and Drafting as the units with the highest rate of failure.
107. During the Committee's engagement with stakeholders, two factors were raised as the reasons for the perceived high failure rates. These include:
- (a) structure of oral examinations and project work; and
 - (b) administration of written examinations;

Structure of Oral Examinations and Project Work

108. Stakeholders raised two main issues concerning oral examinations and project work. These are:

- (a) There are no guidelines governing the administration of oral examinations and project work.
 - (b) Resit examinations do not factor in oral examination and project marks in computation of the final score.
109. Some stakeholders were of the view that marks earned in the oral examination and project work should be factored in the final resit score.
110. Stakeholders also informed the Committee that the current structure of oral examinations could be disadvantageous to students as they could be tested on an area they were not familiar with.
111. The KIPPRA Report (2019) notes that while it is a critical component of the ATP and contributes 20% of the final grade, there are no guidelines for the oral examinations and the scope of questions posed to candidates is wide and undefined. The Report recommends the development of clear guidelines for the oral examinations. The Report further recommends that the scope of coverage and parameters for the oral examination needs to be defined and students informed of the same prior to their examination. Further, the oral examinations ought to be restricted to topics in law within the ATP.¹⁵ Pursuant to the KIPPRA report the KSL informed the Committee that it has developed Guidelines on the conduct of the oral examinations.
112. The Ojiambo Report, on the other hand, recommends that orals and project examination components as modes of assessment should be abolished and be integrated into the training methodologies for the ATP at the KSL.¹⁶ Following the Ojiambo Report, the CLE and KSL informed the Committee that they had taken note of this recommendation and would be considered in the course of the ongoing curriculum review process.
113. Many of the stakeholders that the Committee engaged were in support of the retention of the oral examination, but were in agreement with the KIPPRA Report that there was need to establish clear guidelines on its conduct. Some of the proposals made to the Committee include:
- (a) the scope of the oral examination should be limited to subjects taught at the KSL; and
 - (b) the oral examination should be administered in a moot court style.

¹⁵ KIPPRA Report at paragraph 352.

¹⁶ Recommendation 2 (b) of the Ojiambo Report.

114. In Uganda, the rules spell out the subjects that can be examined during the oral examination. Rule 12 of the Rules Governing the LDC Bar¹⁷ Course provides that each student shall appear before a panel of three or more examiners and shall be examined in the following subjects:

- (a) Civil Litigation
- (b) Corporate and Commercial Law Practice
- (c) Criminal Proceedings
- (d) Family Law Practice
- (e) Land Transactions

115. In Tanzania, Rule 9 of the By-Laws provides that questions for the oral practical examination shall focus on practical legal areas as per the curriculum.

RECOMMENDATION 9

- (a) The Committee recommends the retention of oral examinations and project work;
- (b) The Committee does not recommend the factoring of marks from oral examinations and project work during the computation of resit marks.
- (c) The Committee recommends that the CLE develops comprehensive examination regulations which include a clear framework for the administration of oral examinations and project work.

Administration of Written Examinations

116. Stakeholders submitted to the Committee three issues related to written examinations:

- (a) lack of past papers for revision;
- (b) length of questions;
- (c) administration of open book examinations
- (d) scope of ATP units and their alignment with the LL.B curriculum; and
- (e) written examinations calendar.

¹⁷ The Law School of Tanzania (Examination and Appeals) By-Laws, 2024

<[file:///C:/Users/user/Downloads/Subsidiary%20legislation%20\(THE%20LAW%20SCHOOL%20OF%20TANZANIA%20\(EXAMINATION%20AND%20APPEALS\)%20BY-LAWS,%202024\).pdf](file:///C:/Users/user/Downloads/Subsidiary%20legislation%20(THE%20LAW%20SCHOOL%20OF%20TANZANIA%20(EXAMINATION%20AND%20APPEALS)%20BY-LAWS,%202024).pdf)> accessed 28/11/2024.

Lack of Past Papers for Revision

117. The Committee was informed that students do not perform well in ATP written examinations because they do not have access to past papers for revision. Students pointed out that other examination bodies such as KNEC and KASNEB make past papers available and these help them to understand the expectations of examiners.
118. The CLE informed the Committee that it has since established a portal where students can access past papers.

Length of Questions

119. Stakeholders informed the Committee that some examination questions were too long and therefore students spent a long time reading and understanding them, leaving them with insufficient time to answer the questions. The CLE, however, notified the Committee that this issue had since been resolved. In response to concerns raised by stakeholders, the CLE submitted to the Committee that it has implemented quality assurance interventions that include standardization of the questions to ensure they are more concise addressing the concerns raised.

Administration of Open Book Examinations

120. Stakeholders submitted that students could benefit from the administration of open book examinations. Proponents of this thought, including KSL lecturers, submitted that since lawyers are allowed to refer when preparing cases, there is no reason why student lawyers cannot refer during examination. It was further pointed out that the Criminal Procedure examination is already partially open book because students are allowed to carry copies of the Penal Code, Cap. 63 to the examination room.
121. In Tanzania, Rule 8 of the Law School of Tanzania (Examination and Appeals) By-Laws, 2024 allows students to research in the examination, using materials authorized into the examination room.
122. The CLE can consider the merits of administering open book examinations during curriculum review.

Scope of ATP Units and their alignment with the LL.B Curriculum

123. Stakeholders informed the Committee that some units, particularly, Commercial Transactions, were too broad, and therefore it was not possible to cover them sufficiently during the ATP period. This position is supported by the KIPPRA Report¹⁸.
124. The KSL submitted to the Committee that the number of subjects in the Commercial Transactions unit had been reduced in a curriculum review. The Committee, however, noted that a further review may be necessary. The Committee also noted that other units, such as Conveyancing and Legal Writing and Drafting, were too technical for the students who had not attained practical experience. A curriculum review could also help to incorporate practical aspects of teaching into these units.
125. The Committee further noted that there is a need to align the ATP curriculum with the LL.B curriculum to avoid duplications. There is a need for a tripartite engagement between KSL, CLE and universities.

Written Examinations Calendar

126. Students expressed concerns with the examinations calendar where exams were administered daily, and therefore students did not get a chance to prepare adequately. In response to this, the CLE informed the Committee that spacing out examinations would lead to unnecessary administrative costs.
127. On this issue, the KIPPRA Report notes that: "Stakeholders reported that examination days are not spread out to give students enough time for revision as one is required to sit for a paper daily. Nonetheless, cognizance is made of the fact that CLE is required to hire external venues for the written examinations and increasing the intervals between examinations may have implications on the cost of hiring the venue to cater for additional days. This may consequently also have an implication on the examination fee which is charged by CLE."
128. In addition, the Committee was informed that other examination bodies, such as the KNEC and KASNEB hold up to two examinations in a day. The administration of examinations daily is therefore reasonable and in line with the practice of other examination bodies.

¹⁸ Paragraph 193 of the KIPPRA Report.

RECOMMENDATION 10

- (a) The Committee recommends that the CLE and KSL conduct curriculum reviews to among others enhance practical training in the ATP in consultation with all relevant stakeholders and experts.
- (b) The Committee recommends that the CLE considers the question of conducting open book examinations while conducting a review of the ATP curriculum.

CHAPTER 4: FINANCIAL SUSTAINABILITY MEASURES FOR THE KENYA SCHOOL OF LAW AND COUNCIL OF LEGAL EDUCATION

Introduction

129. This chapter considers the financial sustainability needs of the CLE and KSL and their budgetary allocations. It also considers the financial constraints faced by students undertaking the ATP and proposed support measures.
130. The CLE and KSL play vital roles in the legal education landscape in Kenya. The KSL is the sole institution that offers the ATP in the country while the CLE is the regulator of legal education in Kenya, and oversees the operations of all legal education providers. It also administers the ATP examination.
131. Legal professionals are the cornerstone of the legal and justice system, serving as advocates, advisors, and custodians of justice. Their role ensures that the rule of law is upheld, rights are protected, and disputes are resolved equitably. Given the significance of quality legal education in the economic and social development of any society, it is imperative for the government to support the legal education sector. The financial stability of these two institutions is crucial for maintaining the quality and accessibility of legal training, which directly affects the caliber of legal practitioners serving society.

Relevant Legal Framework

Council of Legal Education

132. Section 24 of the LEA provides for the financing of the CLE and establishes the Legal Education Fund. Subsection (2) provides that, there shall be paid into the Fund—
- (a) such moneys as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under the Act;*
 - (b) such sums as may be payable to the Council pursuant to the Act or any other written law, or pursuant to any gift or trust;*
 - (c) such sums as may be granted to the Council by the Cabinet Secretary pursuant to subsection (3); and*
 - (d) all moneys from any other source provided for or donated or lent to the Council.*

133. Section 24 (3) of the LEA provides for the making of grants to the CLE, out of moneys provided by the Parliament, towards the expenditure incurred by the CLE in the exercise of its powers or the performance of its functions under the LEA.
134. Section 25 (1) of the LEA authorizes the CLE to invest any of its funds in securities in which trustees may by law invest trust funds, or in any other securities, which the National Treasury may from time to time approve for that purpose.
135. Section 46 (1) (d) of the LEA authorizes the Cabinet Secretary to make Regulations to authorize the charging by the Council of fees in respect of any application, licence or other service under the Act.

Kenya School of Law

136. The KSL Act grants the Kenya School of Law the power to collect fees and generate income from other sources. Section 5 (b) of the Act provides that the Kenya School of Law shall have power to charge reasonable fees and other charges for services rendered, and liaise with appropriate bodies to extend loans and other assistance to enable and assist needy students to meet their fees obligations.
137. Section 7(2) of the KSL Act provides for the functions of the Board of Directors of the Kenya School of Law to include inter alia, administer the property and funds of the Kenya School of Law in a transparent and accountable manner and for such purpose as shall promote the functions of the Kenya School of Law. In so doing, the Board of Directors is authorized to borrow money and charge property subject to the approval of the Cabinet Secretary for the time being responsible for finance.
138. In the performance of its functions, the Board is authorized under section 7(2)(h) to receive, on behalf of the Kenya School of Law, grants-in-aid, gifts, donations, fees, subscriptions or other monies. Section 21 of the KSL Act provides that the funds and resources of the Kenya School of Law shall consist of—
- (a) such moneys as may be appropriated by Parliament for the purpose;*
 - (b) all moneys paid to the School by way of grants, subsidies donations, gifts, subscriptions, fees, rent or interest; and*
 - (c) any moneys or properties which may become payable to or vest in the School in respect of the performance of its functions.*

139. Section 24 (1) and (2) of the KSL Act provides that the Board may invest any of the funds of the Kenya School of Law 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 and it may place on deposit with such bank or banks as it may determine any moneys not immediately required for the purposes of the School.
140. Section 28(2)(d) (e) of the KSL Act provides for the enactment of Regulations to provide for the determination of fees and other charges for services rendered by the Kenya School of Law and for payment of fees and other charges for services rendered by the School.

Issues and Challenges

141. The following are the financial challenges affecting the legal education sector:
- (a) Financial sustainability of the Council of Legal Education;
 - (b) Financial Sustainability of the Kenya School of Law; and
 - (c) Financial Support for ATP students.

Financial Sustainability of the Council of Legal Education

142. The CLE's primary sources of revenue are;
- (a) Government subvention;
 - (b) Collections from its A-I-A primarily from; administration of the ATP examination registration, examination resits and remarks, foreign qualification equation, and accreditation of legal education providers.

Table 4: The CLE budgetary allocation and expenditure trend for the past three (3) years

Financial Year	Actual GoK Subvention	Budgeted AIA	Actual AIA Collected	Approved Total Budget	Revised Budget due to under collection of AIA	Actual Expenditure
2024/2025	NIL	170,100,000	112,078,848 as at 31 st Dec 2024	170,100,000	-	161,062,851 as at 31 st Dec 2024
2023/2024	200,250,000	170,100,000	146,128,229	370,350,000	346,378,229	346,344,247
2022/2023	171,770,000	170,100,000	138,891,075	341,870,000	310,661,075	346,870,052
2021/2022	177,770,000	170,100,000	145,606,984	347,870,000	323,376,984	323,237,626

143. The pressing financial issue affecting the CLE is the reduction of its budgetary allocation by the Government following the withdrawal of government subvention of Ksh. 202,750,000.00 in FY 2024/25. This is a reduction from Ksh. 370,350,000.00 in FY 2023/2024 to Ksh. 170,000,000.00 in the current FY 2024/2025 which has crippled the CLE in the performance of its core mandate of administering the ATP examinations, supervision and accreditation of legal service providers, recognition of foreign qualifications. In addition, CLE will not be able to cover for the non-discretionary expenses including; personnel emoluments, rent, ICT related costs, board expenses, contracted services and insurance.

144. CLE conducts two (2) examination series per year, in November and April. With the budget reduction, CLE will not have the funds to conduct the April, 2025 examinations. This will affect ATP candidates who have a legitimate expectation to sit for the examination in April. The budget for November exams should be the one affected.

RECOMMENDATION 11

(a) The Committee recommends the reinstatement of CLE's budget for the financial year 2024/2025 amounting to Ksh. 202,750,000.00 to enable it discharge its core mandate.

(b) The Committee recommends that the CLE considers increasing the examination fees.

- (c) The Committee recommends that the CLE considers increasing fees for the services offered in its regulatory mandate.
- (d) The Committee recommends that the CLE considers the use of technology to administer the ATP Examinations.

Financial Sustainability of the Kenya School of Law

- 145. The KSL is established under section 3 of the KSL Act. It is mandated under section 4 of the Act to provide professional legal training as an agent of the government. The primary financial issue affecting the institution is the reduction of its budgetary allocation by the government and the subsequent withdrawal of government subvention in FY 2024/25.
- 146. The KSL is mandated by section 4 of the KSL Act to train persons to be advocates under the Advocates Act, ensure continuing professional development for all cadres of the legal profession, provide paralegal training and other specialized training in the legal sector and develop curricular, training manuals, conduct examinations and confer academic awards, and undertake projects, research and consultancies.
- 147. The KSL derives its revenues primarily from the fees paid by students for various academic courses, training and consultancies provided by the CPD department and services offered by its hospitality and conferencing facilities.
- 148. Fees charged by KSL for the various academic courses provide the bulk of its internally generated revenues. The fees structure has not been revised for the last fifteen years due to the need to ensure that legal education remains affordable to Kenyan citizens. KSL's A-I-A has largely remained flat over the last five years as illustrated in the table below.

Table 5: The KSL budgetary allocation and expenditure trend for the past (5) years five years

FINANCIAL YEAR	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
REVENUE						
Government Subvention	213,890,000	195,027,462	191,110,000	184,110,000	151,310,000	151,310,000
AIA	377,481,600	377,480,000	377,480,000	377,480,000	377,480,000	377,480,000
Development Grant	70,500,000	10,000,000	53,500,000	56,500,000	0	56,500,000
TOTAL	661,871,600	582,507,462	622,090,000	618,090,000	528,790,000	377,480,000
RECURRENT EXPENDITURE						
Total Recurrent	494,290,000	572,507,462	568,590,000	561,907,000	528,790,000	377,480,000
DEVELOPMENT EXPENDITURE						
Total Development	96,430,175	33,000,000	77,900,000	96,500,000	40,000,000	0

149. The Government has historically funded 35% of KSL's annual budget. However, the KSL submitted to the Committee that according to the government financial estimates for the FY 2024/2025, KSL would not receive any government subvention.

150. KSL informed the Committee that without adequate government funding, KSL will not be able to discharge its core mandate of training ATP students, subscribe to online databases, provide library services, carry out legal aid activities and has had to minimize on non-discretionary services such as security, maintenance of vehicles and buildings, purchase of fuel and upgrading of various ICT hardware and software materials which are essential to its operations.

151. KSL has in the past boosted its revenue by enrolling students from countries like Malawi and Nigeria. Unlike their East African counterparts, international students were required to pay fees at an enhanced rate to undertake the ATP in Kenya.

RECOMMENDATION 12

- (a) The Committee recommends that the reinstatement of subvention amounting to Kshs. 213,890,000 to the KSL to enable it discharge its core mandate.
- (b) The Committee recommends that the KSL considers increasing the ATP fees.
- (c) The Committee recommends that the KSL to offers more CPD courses hospitality services, undertakes legal consultancies and projects and conducts research projects in line with its mandate provided through a separate legal entity.
- (d) The Committee recommends that the KSL explores collaborations with law firms, local companies and international development partners.
- (e) The Committee recommends that the KSL considers admitting foreign students to the ATP to boost revenue, provided that this aligns with the limitations on admission to the Bar and the principle of reciprocity discussed in chapter 2.

Financial Assistance to ATP Students by KSL and CLE

- 152. Students submitted that a significant number of qualified students for admission to the ATP cannot afford to pay the tuition and examination fees. The students also decried the attached costs to attending physical classes at KSL. Currently, KSL can only accommodate a small number of students.
- 153. The KSL charges tuition fees of Kenya Shillings one hundred and forty-five thousand for the ATP. Various stakeholders submitted that this amount is unaffordable for many qualified students.
- 154. The KSL established the Kenya School of Law Tuition Loan and partnered with the Higher Education Loans Board (HELB) to administer the Loan pursuant to a memorandum of understanding. KSL submitted that the initial seed capital injected into the Fund was Kshs. 10m. From the FY 2020/21 to date, this amount has grown to Kshs. 45M. In the FY 2024/2025, the KSL did not set aside any amount towards the fund due to budget cuts by the national government.
- 155. This loan is available to students enrolled in the ATP at the Kenya School of Law as a revolving fund. The school offers students a grace period of one year after completion of their ATP course before they can start repaying the loan. The first cohort of beneficiaries of the Fund are starting to repay the loans in the FY 2024/2025.

156. The Committee noted that the loan offered by KSL Tuition Loan is insufficient as it only covers up to a maximum of Kshs. 80,000 against the Kshs. 145,000 that is charged as tuition fees. In January, 2025, KSL issued a notice stating that the institution is no longer able to offer the tuition loan to incoming ATP students for FY 2025/26 due to current budgetary constraints.
157. The Committee observed that ATP Students are ineligible for the HELB Fund in light of the provisions of section 11(2) of the HELB Act. Cap 213 which states that the object and the purpose of the Fund shall be to provide funds to be used for granting loans to assist Kenyan students to pursue higher education at such institutions within and outside Kenya, recognized by the Commission for Higher Education.
158. To enable needy students register and sit for the ATP examination, the CLE established the Bar Examination Loan (BEL) in June 2019. The CLE entered into a service contract with the Higher Education Loans Board (HELB) on 27th June 2019 to assist in the administration of the loan scheme. While the CLE offers capitation and oversight for the scheme, the role of the HELB is to administer the loans and recover mature funds.
159. The Council of Legal Education injected a seed capital of Kshs. 119,000,000 towards the Bar Examinations Loan. Since its inception, the BEL has benefited a total of 1686 ATP students to date. The Committee noted that BEL only applies to ATP students sitting examinations for the first time.

RECOMMENDATION 13

- (a) The Committee recommends that the Higher Education Loans Management Board grants loans to students pursuing the ATP.
- (b) The Committee recommends that the government provides adequate budgetary allocation to KSL and CLE to enable them continue providing financial assistance to needy students to pay for tuition and examination fees.
- (c) The Committee recommends that law firms, benevolent individuals and institutions consider supporting KSL and CLE to enable them continue providing financial assistance to needy students.
- (d) The Committee recommends that the KSL and CLE consider a flexible fee payment plan to students.

Access to ATP

160. Students decried that the location of KSL in Nairobi makes it expensive for students who are not from Nairobi and its environs to access it. The School informed the Committee that with the introduction of online classes, students have been able to access the ATP.
161. It was noted that CLE currently administers examinations in Nairobi only. Its attempt to offer examinations in Nakuru to make it accessible to students from outside Nairobi did not attract a significant number of candidates to justify an examination centre outside Nairobi. The CLE indicated that it may consider offering online examinations.
162. It was also submitted to the Committee that the ATP should be liberalized to potentially make it more affordable and accessible. The Committee noted that such a liberalization policy would require a robust regulatory framework to ensure that the quality of legal education is maintained. The Committee also noted that the recommendations of the Ojiambo Taskforce Report on the liberalization and decentralization of the provision of the ATP recommended that decentralization and liberalization would require a comprehensive regulatory framework providing for the licensing and regulation of the ATP, with a view to developing a market driven, skills and competency based Bar programme.

RECOMMENDATION 14

- (a) The Committee recommends that KSL strengthens the delivery of its online classes to enhance access to the ATP.
- (b) The Committee recommends that CLE explores the administration of online examinations.
- (c) The Committee recommends the funding of the ATP tuition and examinations to maintain quality of training and examinations.
- (d) The Committee recommends a structured engagement between stakeholders on the proposed decentralization of KSL and liberalization of the ATP and its implication on the quality of legal education and training.

CHAPTER 5: SUMMARY OF RECOMMENDATIONS AND CONCLUSION

This chapter consolidates the recommendations for actional reforms proposed by the Committee to address the concerns and issues raised by students and stakeholders with respect to the legal education sector, after critically considering the key issues with regard to the:

- (a) Current legal framework for the entry qualifications criteria to the Advocates Training Programme and for admission as an Advocate in Kenya;
- (b) Examination process for the Advocates Training Programme (ATP); and
- (c) Financial sustainability measures for the legal education sector institutions, specifically the Kenya School of Law (KSL) and the Council of Legal Education (CLE), including the current training and examination fee structure and financial support for students.

1. ENTRY QUALIFICATIONS FOR ADMISSION TO THE ADVOCATES TRAINING PROGRAMME AND ADMISSION AS AN ADVOCATE

- (a) The Committee recommends that the KSL Act and LEA should be amended to consolidate and harmonize the entry requirements, ultimately housing them within the LEA to ensure clarity and consistency in the admission to the ATP.
- (b) The Committee recommends that the CLE, pursuant to its mandate section 8(2) and (3) LEA which empowers CLE to 'make regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes should make regulations to set out the admission requirements to the ATP.
- (c) The Committee further recommends that the entry requirements set out under the KSL Act should be deleted.
- (d) The Committee recommends that the CLE develops a policy on prior learning and academic progression which establishes well-defined and comprehensive pathways for students to progress to the undergraduate study of law and subsequently gain admission to the ATP. This should include clear guidelines on diploma qualifications, recognition of other degrees as prior learning and proficiency in English and Kiswahili.
- (e) The Committee recommends that the CLE reviews the existing legal framework and proposes regulations for recognizing prior learning and academic progression to facilitate advancement in legal education pursuant to section 8(3)(a) of LEA.

- (f) The Committee recommends that the Attorney General considers proposing the amendment of both the KSL Act and LEA to address the inconsistencies in the entry requirements to undergraduate law programmes and the ATP and to set out clear entry requirements pursuant to the LEA.
- (g) The Committee recommends that the Attorney General seeks the withdrawal of the KSL (Amendment) Bill, 2024 to pave the way for consolidated proposals for the amendment of the KSL Act and LEA to set out entry requirements to the admission of the ATP.
- (h) The Committee recommends that the proposals may include provisions to facilitate the implementation of a comprehensive pre-bar examination for graduates who have pursued LL.B studies following different pathways. This exam should assess core legal knowledge, legal research and writing skills, ethical understanding and incorporate a robust language proficiency assessment within the pre-bar examination or as a separate requirement. This ensures that candidates possess the necessary language skills for effective legal practice.
- (i) The Committee recommends that CLE and LEPs should study local, regional and international pre-university assessment models and consider adopting suitable practices for pre-entry assessments for potential students seeking admission into undergraduate law programmes.
- (j) The Committee recommends that the CLE should develop, by way of regulations, a framework for the admission of foreign students to LL. B and ATP. The regulations should be clear that admission to these programmes does not grant an automatic right for admission to the Bar or a right to practice law in Kenya subject to the principle of reciprocity and adherence to applicable immigration laws.
- (k) The Committee recommends that the Attorney General should consider initiating engagement with Partner States of the East African Community to revive the development of Mutual Recognition Agreements (MRAs) aimed at recognizing academic and professional qualifications, along with associated experiences, licenses, and certifications in relation to cross-border law practice. This includes the conclusion of discussions on harmonisation and mutual recognition of academic and professional qualifications by Partner States.
- (l) The Committee recommends the amendment of section 12 and 13 of the Advocates Act to recognize the eligibility of citizens of all EAC Partner States for admission as an

advocate in Kenya subject to the reciprocal admission of Kenyans as advocates in the EAC Partner States.

- (m) The Committee recommends that CLE and LSK develop clear Regulations for recognition and approval of foreign law qualifications for admission to the bar in Kenya and to practice law in Kenya, particularly for those from civil law jurisdictions.
- (n) The Committee recommends that the process of recognition and approval of foreign qualifications in law should also consider the relevant countries' mutual reciprocity.

2. EXAMINATIONS PROCESS FOR THE ADVOCATES TRAINING PROGRAMME

- (a) The Committee recommends that the CLE and the KSL cooperate in the implementation of the recommendations of the KIPPRA report to enhance collaboration and coordination in the conduct and administration of the ATP examinations.
- (b) The Committee recommends the harmonization of resit, remark fees and regular examination fees.
- (c) The Committee recommends that the CLE anchors the examination fees in the proposed regulations.
- (d) The Committee does not recommend a refund of the remark fee since there are administrative costs to be covered.
- (e) The Committee recommends that CLE publishes its revised examination guidelines.
- (f) The Committee does not recommend the release of the examination scripts as this is not the practice of other examinations bodies.
- (g) The Committee recommends the retention of oral examinations and project work;
- (h) The Committee does not recommend the factoring of marks from oral examinations and project work during the computation of resit marks.
- (i) The Committee recommends that the CLE develops comprehensive examination regulations which include a clear framework for the administration of oral examinations and project work.
- (j) The Committee recommends that the CLE and KSL conduct curriculum reviews to among others enhance practical training in the ATP in consultation with all relevant stakeholders and experts.

- (k) The Committee recommends that the CLE considers the question of conducting open book examinations while conducting a review of the ATP curriculum.

3. FINANCIAL SUSTAINABILITY MEASURES FOR THE KENYA SCHOOL OF LAW AND COUNCIL OF LEGAL EDUCATION

- (a) The Committee recommends the reinstatement of CLE's budget for the financial year 2024/2025 amounting to Ksh. 202,750,000.00 for it to sustain its core mandate.
- (b) The Committee recommends CLE to consider increasing the examination fees.
- (c) The Committee recommends CLE to consider increasing fees for the services offered in its regulatory mandate.
- (d) The Committee recommends CLE to consider the use of technology to administer the ATP Examinations.
- (e) The Committee recommends that Government should reinstate the subvention to Kshs. 280,000,000 to enable KSL to discharge its core mandate.
- (f) The Committee recommends that KSL may consider increasing the ATP fees
- (g) The Committee recommends KSL to offer more CPD courses hospitality services, undertake legal consultancies and projects and conduct research projects in line with its mandate provided through a separate legal entity.
- (h) The Committee recommends KSL to explore collaborations with law firms, local companies and international development partners.
- (i) The Committee recommends KSL to consider admitting foreign students to the ATP to boost revenue, provided that this aligns with the limitations on admission to the Bar and the principle of reciprocity discussed in chapter 2.
- (j) The Committee recommends that the Higher Education Loans Management Board should grant loans to students pursuing the ATP.
- (k) The Committee recommends that Government should provide adequate budgetary allocation to KSL and CLE to continue providing financial assistance to needy students to pay for tuition and examination fees.
- (l) The Committee recommends that law firms, benevolent individuals and institutions to consider supporting KSL and CLE to continue providing financial assistance to needy students.

- (m) The Committee recommends that KSL and CLE should consider a flexible fee payment plan to students.
- (n) The Committee recommends that KSL should strengthen the delivery of its online classes to enhance access to the ATP.
- (o) The Committee recommends that CLE should explore the administration of online examinations.
- (p) The Committee recommends the funding of the ATP tuition and examinations to maintain quality of training and examinations.
- (q) The Committee recommends a structured engagement between stakeholders on the proposed decentralization of KSL and liberalization of the ATP and its implication on the quality of legal education and training.

The recommendations for specific legislative interventions are summarized in **Appendix 2** of the Report, for ease of reference.

The Committee observed the numerous disputes that have arisen and continue to arise from the inconsistencies and conflicts in the legal framework for the legal education sector and that have resulted in conflicting court decisions. There is urgent need to harmonize the LEA, KSL Act, Advocates Act, and the Law of Society Act and other attendant legislation to ensure clarity and consistency in the entry requirements to the ATP and the academic and professional requirements for admission as an Advocate of Kenya.

To address the issues and challenges and to streamline the legal education sector, the Committee recommends that priority must be given to the finalization of the formulation of a comprehensive legal education policy and the comprehensive harmonization of the legal and regulatory framework for the legal education sector.

Appendices

Appendix 1: The Terms of Reference and Members of the Working Committee On Legal Education Sector Reforms

Terms of Reference

1. Introduction

The Working Committee is expected to deliver a report to the Hon. Attorney General that will inform the implementation of the Taskforce Report on Legal Education Reforms. The committee will play a pivotal role in identifying and recommending feasible reform interventions including recommendations to implement the Taskforce on Legal Sector Reforms ('Ojiambo' Taskforce) Report.

2. Composition

The Working Committee shall comprise:

2.1 Members

- (a) Kenya Law Reform Commission – *Chair*
- (b) Council of Legal Education – *Member*
- (c) Kenya School of Law – *Member*
- (d) Law Society of Kenya – *Member*
- (e) Office of the Attorney General and Department of Justice (OAG &DOJ) – *Member*

2.2 Secretariat

- (a) Office of the Attorney General and Department of Justice
- (b) Kenya Law Reform Commission

3. Methodology of work

- (a) The Committee may co-opt any person whose knowledge, experience and skills it considers necessary for the effective discharge of its mandate.
- (b) The Committee may invite to its meetings any subject matter expert, senior technical officer and representatives of key stakeholders.

4. Terms of Reference

The terms of reference of the Committee shall be to evaluate, review and make recommendations on actionable reforms and implementation proposals with regard to –

- (a) The current legal education framework on entry qualifications to the Advocates Training Programme (ATP);
- (b) ATP Examination processes and other assessment methods for the ATP; and

- (c) Review and evaluate financial sustainability measures for the legal education sector institutions, specifically KSL and CLE, including the current training and examination fees structure for the ATP, financial support for students joining and/or undertaking the ATP and budgetary allocation to KSL and CLE.

5. Scope of Work

In the performance of its functions, the Committee shall undertake the following:

- (a) Identify, review and analyse existing laws, court decisions and curricula review to the extent of examinations;
- (b) Stakeholder engagement- invite persons knowledgeable in the subject of legal education;
- (c) Make appropriate proposals to inform the implementation of the Taskforce Report;
- (d) Make appropriate recommendations to enhance the financial sustainability of KSL and CLE, and recommend feasible financial support mechanisms for students joining the ATP and those already enrolled in the ATP;

6. Deliverables

The Working Committee shall deliver a final report outlining the policy, legislative, institutional and administrative reform proposals for each identified challenge area, with a detailed implementation strategy ranking the proposals in terms of priority and urgency and the timeline for implementation, including roles and responsibilities of various stakeholders.

7. Timelines

The Working Committee shall complete its work and submit its final report to the Hon. Attorney-General not later than sixty (60) days from the date of its first appointment. The Attorney-General may, when necessary, extend the period.

8. Work plan, Resources and Budget

The Committee shall develop a detailed work plan of activities and be provided with the necessary resources, including administrative support, access to relevant data, and a budget to facilitate its activities, including stakeholder engagement and research.

9. Meetings

The Committee shall hold such number of meetings in such places and at such times as shall be considered necessary to properly discharge its mandate. Meetings may be held in person or virtually as determined members.

Members and Secretariat of the Working Committee

The Working Committee Members comprised of:

- (a) Ms. Christine A. Agimba – Chairperson, Kenya Law Reform Commission and Chair of the Committee
- (b) Prof. Collins Odote - Chairperson, Council of Legal Education – Member
Representatives: Mr. Sam Alosa (Council Member) and Ms. Jennifer Gitiri (Acting Chief Executive Officer, CLE)
- (c) Prof. Joseph Mworio Wamutitu, Chairperson, Kenya School of Law – Member
Representative: Dr. Henry Mutai (Chief Executive Officer, KSL)
- (e) Ms. Faith Odhiambo – President, Law Society of Kenya – Member
Representative: Ms. Mary Mwathi Kitonga (Deputy Chief Executive Officer, LSK)
- (f) Mrs. Emily Chweya, Deputy Solicitor General, Office of the Attorney General and Department of Justice – Member

The Committee members attended the meetings either in person or through representatives.

The Secretariat comprised of:

- a) Wachira Nguyo - Office of the Attorney General and Department of Justice
- b) Grace Mutindi - Office of the Attorney General and Department of Justice
- c) Mercy Mutuuri - Kenya Law Reform Commission
- d) Edward Maroncha - Kenya Law Reform Commission
- e) Safo Ahmed - Office of the Attorney General and Department of Justice
- f) Thomas Kibunja - Office of the Attorney General and Department of Justice

Appendix 2: Summary of Proposed Legislative Interventions

PART I – THE COMMITTEE’S RECOMMENDATIONS

A. Recommendation 1: Address the conflicts in the provisions of the Kenya School of Law Act and the Legal Education Act with regard to admission requirements to the ATP

Issue

There are conflicts and inconsistencies in the law in relation to the entry requirement for admission of students to the Advocates Training Programme (ATP). The Second Schedule of the Kenya School of Law Act, Cap. 16C (KSL Act) sets out the admission criteria to ATP pursuant to section 16 of the Act. Section 8(3) of the Legal Education Act, Cap. 16B (LEA) empowers the CLE *"to make Regulations in respect of requirements for the admission of persons seeking to enrol in legal education programmes"*. Pursuant to this section, the Council of Legal Education (CLE) introduced the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 (the Regulations).

The Regulations were, however, invalidated by the Court of Appeal on 17 December 2021 in ***Civil Appeal 38 of 2018, Javan Kiche Otieno & another v Council of Legal Education*** for failure to follow the procedures set out in section 11(4) of the Statutory Instrument Act. They were found to lack parliamentary approval. The Court also found that the CLE cannot, through subsidiary legislation, override the provisions of the KSL Act. This 2021 Court of Appeal judgment held that the entry requirement for admission of students to the ATP are as stated in the KSL Act.

The provisions of the KSL Act and the Regulations have been found to be in conflict, and this has led to litigation in relation to legal education. It is necessary to develop a coherent and consistent legal framework for legal education, reinforcing the statutory role of the CLE as regulator of legal education.

Committee’s Recommendations

1. The KSL Act and LEA should be amended to consolidate and harmonize the entry requirements, ultimately housing them within the LEA.
2. The CLE should make regulations to set out the admission requirements to the ATP.
3. The entry requirements set out under the KSL Act should be deleted.

B. Recommendation 2: Review of the existing legal framework and development of regulations to facilitate advancement in Legal Education

Issue

The now invalidated Regulations had provided for an alternative pathway to the ATP as outlined in Part II, paragraph 6 of the Third Schedule of the Regulations. The pathway allowed students who did not meet the Kenya Certificate of Secondary Education requirements for admission to an undergraduate law program in a Kenyan university to gain admission through the diploma route.

The requirements for entry into ATP as set out in the Regulations were held to conflict with the entry requirements set out in the KSL Act by the Court of Appeal on 21 October 2022 in ***Civil Appeal No. E472 of 2021 Kenya School of Law v Otene Richard Akomo & 41 others***. The Court held that the Kenya School of Law Act did not provide for academic progression therefore it was not applicable.

Following this decision, many students who were hoping to join the ATP through the diploma route were barred from doing so.

Committee's Recommendations

1. The CLE should review the existing legal framework and propose regulations formulating a system for recognizing prior learning and academic progression to facilitate advancement in legal education pursuant to section 8(3)(a) of LEA.
2. The Attorney-General considers proposing the amendment of both the KSL Act and LEA to address the inconsistencies in the entry requirements to undergraduate law programmes and the ATP and to set out clear entry requirements pursuant to the LEA.
3. The Attorney General seeks the withdrawal of the KSL (Amendment) Bill, 2024 to pave the way for consolidated proposals for the amendment of the KSL Act and LEA to set out entry requirements to the admission of the ATP.
4. The consolidated proposals referred to in recommendation 3 may include provisions to facilitate the implementation of a comprehensive pre-Bar examination for graduates who have pursued LL.B studies following different pathways. This examination should assess core legal knowledge, legal research and writing skills, ethical understanding and incorporate a robust language proficiency assessment within the pre-Bar examination or as a separate requirement.

C. Recommendation 4: Admission of foreign students to the Bachelor of Laws Programme and the ATP

Issue

The proposed legal framework should be clear that admission to the Bachelor of Laws (LL.B) programme and the ATP does not grant an automatic right for admission to the Bar or a right to practice law in Kenya which is subject to the principle of reciprocity and adherence to applicable immigration laws.

Committee's Recommendation

The CLE should develop, by way of regulations, a framework for the admission of foreign students to the LL.B Programme and the ATP. The regulations should be clear that admission to these programmes does not grant an automatic right for admission to the Bar or a right to practice law in Kenya subject to the principle of reciprocity and adherence to applicable immigration laws.

D. Recommendation 5: Admission as an Advocate in Kenya and the Principle of Reciprocity

Issue

There should be clarity with regard to who can be admitted as an advocate pursuant to sections 12 and 13 of the Advocates Act, Cap. 16. There is also need to clarify the eligibility for non-Kenyans who are already admitted to practice law in the EAC Partner States or the Commonwealth and beyond before seeking admission to practice law in Kenya.

Committee's Recommendations

1. Amendment of sections 12 and 13 of the Advocates Act to recognize the eligibility of citizens of all EAC Partner States for admission as an advocate in Kenya, subject to the reciprocal admission of Kenyans as advocates in the said EAC Partner States.
2. Development of regulations by CLE and LSK for recognition and approval of foreign law qualifications for admission to the Bar in Kenya and to practice law in Kenya, particularly for those from civil law jurisdictions.
3. The process of recognition and approval of foreign qualifications in law should include the consideration of the relevant countries' mutual reciprocity.

E. Recommendation 7: Regulations on Examination Fees

Issue

The students raised concern that the ATP examination fees, especially the remark and resit fees, were high.

Committee's Recommendations

The CLE should harmonize resit, remark fees and regular examination fees and anchor them in the proposed regulations.

F. Recommendation 9: Development of Regulations on Examinations under the LEA

Issue

The CLE had set out the examination process in regulation 15 of the now invalidated Regulations. The CLE continues to administer the examinations based on standards adopted by the Council as they develop more comprehensive regulations to guide the ATP examination process.

Committee's Recommendation

The CLE should develop comprehensive regulations on examinations which include a clear framework for the administration of oral examinations and project work.

G. Recommendation 13: Financial Assistance to Students admitted to the ATP

Issue

Students admitted to the ATP should be eligible to apply to the Higher Education Loans Fund (the Fund). These students are currently denied access to the Fund due to the restrictive provisions in the Higher Education Loans Board Act, Cap. 213.

Committee's Recommendation

The provisions of the Higher Education Loans Board Act should be amended, including section 11(2) which limits the application of the Higher Education Loans Fund to institutions that are recognised under Higher Education Loans Board Act.

PART II - PROPOSED LEGISLATION IN REGARD TO THE LEGAL EDUCATION SECTOR

A. The following are highlights of Bills that are currently before or previously presented to the Parliament to address issues relating to legal education, which touch on the issues that the Committee has considered under its terms of reference.

1. Kenya School of Law (Amendment) Bill, 2024

The KSL (Amendment) Bill, 2023, sponsored by Hon. Babu Owino, seeks to amend the KSL Act to confer upon the CLE the power to prescribe admission requirements to courses of study at the KSL. This Bill is intended to streamline the admission requirements and have them in a single legislation to create a harmonized framework for legal education.

The Bill does not appear in the National Assembly's Bill tracker as at 13th February 2025.

2. Kenya School of Law (Amendment) Bill, 2023

The KSL (Amendment) Bill, 2023, sponsored by Hon. Njeri Maina, proposes to amend the Second Schedule of the KSL Act, to enable ATP admission for those who meet the minimum requirements for a diploma in law and have completed an LL.B. undergraduate degree.

The Bill is yet to go through the first reading.

3. Advocates (Amendment) Bill, 2023

The Advocates (Amendment) Bill, 2023, sponsored by Hon. Owen Baya, seeks to amend section 12 of the Advocates Act to include nationals of Rwanda and Burundi as they are members of the East African Community and should be accorded equal treatment as Uganda and Tanzania.

Rwanda and Burundi had been included in the Advocates Act through the Statute Law (Miscellaneous Amendments) Act, 2012. However, the amendment was nullified by the Court of Appeal¹⁹ which held that Parliament had exceeded its mandate by making substantive amendments through an unprocedural and non-participatory process.

The Bill does not appear in the National Assembly's Bill tracker as at 13 February 2025.

¹⁹ Law Society of Kenya v Attorney-General & 2 others (2019) eKLR

4. Legal Education (Amendment) Bill, 2022

The Bill, sponsored by the Leader of Majority, proposed to amend section 8 of the Legal Education Act to provide for accreditation of legal education providers for the purpose of licensing of the ATP. The proposed amendment, if enacted, would authorize other institutions to offer the ATP. CLE would also have been required to prescribe through Regulations, the admission requirements for persons seeking to enrol in all legal education programmes.

The Bill lapsed following the dissolution of Parliament in 2022.

5. Kenya School of Law (Amendment) Bill, 2022

The Bill, sponsored by the Leader of Majority, sought to amend the Kenya School of Law Act to confer upon the CLE the power to prescribe admission requirements to courses of study at the KSL. It proposed to amend section 16 of the KSL Act to require persons to meet the admission requirements prescribed by the CLE to qualify for admission to a course of study at the Kenya School of Law.

It also provided for the repeal of the Second Schedule to the Act which prescribes admission requirements for courses offered by the KSL and proposed that the admission requirements be prescribed by CLE.

The Bill lapsed following the dissolution of Parliament in 2022.

B. The following are ongoing and past efforts to propose legislative amendments to the laws relating to legal education or the legal profession. These should be considered and harmonised with the proposed recommendations to ensure that the legal framework for legal education is consistent with anticipated developments in the legal profession.

1. Legal Education (Accreditation and Quality Assurance) Regulations, 2025

Following the invalidation of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 by the Court of Appeal, the CLE is developing the Legal Education (Accreditation and Quality Assurance) Regulations, 2025 which, among others, proposes to recognize academic progression from certificate and diploma levels to undergraduate studies; provide the legal framework for recognition and approval of foreign qualifications for Kenyan legal practitioners trained abroad; and sets out various requirements that a legal education provider must meet to ensure that it provides quality legal education.

2. Legal Sector Laws (Amendments) Bill, 2019

The Attorney-General in 2016 appointed the Taskforce on Legal Sector Reforms to interrogate all the issues concerning the legal profession with a view to recommending appropriate interventions to raise standards in the profession. It was chaired by Mr. Fred Ojiambo, SC and its membership comprised of representation from, among others, the Office of the Attorney-General, the Judiciary, Office of the Director of Public Prosecutions and Kenya Law Reform Commission (KLRC) among other institutions.

Following the submission of the Ojiambo Taskforce report to the Attorney-General in 2018, the Solicitor-General requested KLRC to develop the requisite proposals to implement the legislative recommendations. KLRC developed and submitted the Legal Sector Laws (Amendments) Bill, 2019 to the Solicitor General. Three legislative proposals, sought, inter alia, to amend the KSL Act to differentiate the terms “academic programme” and “professional programme” to provide clarity on the admissibility of persons in every segment of academic programmes and in the professional programme; to remove the admission requirements into the ATP in the KSL Act and have them stipulated in the LEA instead.

3. Advocates Bill, 2019

In 2014, the Attorney-General requested the KLRC to review the Advocates Act with a view of reforming and updating it or making proposals for its repeal and re-enactment. A Committee to review the Advocates Act, convened by the KLRC, was set up to undertake this exercise with membership similar to that of the Ojiambo Taskforce set out above.

The Committee developed draft legislative proposals that sought to resolve the new challenges in the training and regulation of the legal services sector. These include conformity to the EAC Treaty by allowing cross-border practice within the East African Partner States; the introduction of a category of foreign advocates; and the introduction of the principle of reciprocity.

The legislative proposal is currently with the Law Society of Kenya as the Attorney-General, upon receipt of the draft Bill from KLRC, subsequently forwarded it for members’ input.