

**THE ETHICAL AND QUALITY IMPLICATIONS OF LEGAL EDUCATION IN KENYA**

**DANIEL W. MUTHEE  
DEPARTMENT OF LIBRARY & INFORMATION SCIENCE  
&  
ELIZABETH W. WAMBIRI  
LAW SCHOOL  
KENYATTA UNIVERSITY**

This paper is an assessment of the implications of teaching and training Legal Education (LE) in Kenya in terms of fostering ethical and quality standards. The paper's main question is whether training of LE in Kenya is in tandem with the expected ethical norms and quality standards? What are the ethical and quality implications? To answer this question, the paper revolves around two main objectives: To assess the management strategies and profile the current trends in training and teaching of LE in Kenya; to examine the emerging trends. The source of the data for the paper is a combination of secondary and primary data from interviews and secondary data from government documents. The data was collected from 20 lecturers and trainees from the University of Nairobi, Kenyatta and Mt. Kenya Universities. The findings indicate that while the training of legal education is above average and has had several achievements, the exponential growth in students enrolment due to desire by students to join the "lucrative" profession and the existence of the fast growing module II students, the training is fraught with multifarious ethical and quality challenges. Some of the legal trainers and trainees are ill prepared for the profession due to poor training, lack of suitable intellectual capacity, inadequate resources and poor perception. Absenteeism was identified as a major unethical practice rampant among both lecturers and students. Absenteeism is mainly caused by engagement with "side hassles", moonlights and personal staff professional developments particularly search for higher degrees. The recommends several raft of measures such as stricter monitoring and evaluation of the LE program, staff capacity building, utilization of adjunct lecturers, attention to students feedback and student lecturer evaluation, adoption of ICT in teaching and training among many others.

Key Words: Ethical, quality, legal, education, implications

# **THE ETHICAL AND QUALITY IMPLICATIONS OF LEGAL EDUCATION IN KENYA**

## **Introduction**

The history of legal education in Kenya traces back to the genesis of the first university in Kenya. Previously, training of legal professionals took place in the University of Dar es salaam or other parts of the world such as India and Britain. At the eve of Independence, the government converted the previous Royal College into the University of Nairobi. It is here that the first Legal education (LE) in Kenya took place. It has since expanded to other public and private tertiary institutions within the country.

From a glimpse, LE in Kenya has been a success story for many years. The first LE was taught by top notch scholars from all over the world and admitted the best brains fondly referred to as the crème of the society. Consequently, LE has achieved a lot of milestones such as prudent management of the law schools, production of high caliber top notch legal scholars and minds, maintenance of ethical standards and values. The dress code is one ethical and professional code the legal training has maintained over the years. Another milestone has been the exponential students' enrollment in legal studies as well as the opening of several law institutions in the country. This is the hall mark of an admirable career and role modeling.

This notwithstanding, ethical and quality issues and implications have been serious contestations particularly when there is exponential student enrollment. The questions of sustainability of ethical and quality standards amidst high student enrollment, spiraling budgetary constraints and inadequate trainers is of major concern.

The exponential students' enrollment in the law schools is an inevitable fact. The government's desire is to open up more training opportunities for all qualified students. This is at the background of massive enrollments at primary schools and secondary schools which was occasioned by the Free Primary (FPE) and Free Day Secondary School Education (FDSE). Somehow, the high enrollment is a resultant of the high enrollments at the pre university and pre tertiary levels of education and it is on this premise that the government has opened up massive training at tertiary institutions. Currently, there are several institutions offering legal education in Kenya up from the former University of Nairobi and Moi University. The new institutions offering legal education are Kenyatta University, Mt. Kenya University, Catholic University of Eastern Africa (CUEA), Jomo Kenyatta University of Agriculture and Technology (JKUAT), Kenya School of Law and the far flung universities of Jaramogi Oginga Odinga and Kisii. The expanded training opportunities in legal education have had its own share of challenges.

Among the key challenges identified is budgetary constraints and building staff capacity to deal with the challenges. The government has made critical strides particularly in supporting students from poor socio economic backgrounds, special needs, regional and gender disparities. Without such a strong proactive and affirmative support, it would be impossible for students with poor background to study legal education. Legal education is expensive and costly. All the institutions offering legal education with exemption of University of Nairobi have no hostels and even so, the hostels in the University of Nairobi are not enough for the unprecedented high enrollment.

However, there is still very high demand for legal studies in the country. Population in Kenya now stands at 44,000,000 people and the ratio of the population per lawyer is still very low. This has given the universities strong impetus to for higher institutions to start legal studies, albeit with sub standard infrastructure and poorly trained legal trainers. The focus is on raising students' numbers as a source of revenue for bridging the serious budget gaps from dwindling government allocations. This in the process also leads to disregard for the legal studies as a highly intellectual engagement that requires highest qualifications. They end up going for the minimum qualifications as long as the students can pay.

What therefore seems to emerge is that there is serious ethical and quality issues and implications in the provision of legal education. It is against this Background that the paper focuses on interrogating the ethical and quality implications as derived from training of LE.

### **Background information**

The expansive growth of university education in Kenya is meant to address the previous low transition rate from secondary school into tertiary institutions (Republic of Kenya, 2005). It is a catapult to deal with massive numbers of students transitioning into secondary schools and eventually into universities and other tertiary institutions. The chickens have come home to roost with the completion of the primary and secondary cycle for the free primary education (FPE) and Free Day Secondary School (FDSE). The FPE has had a strong trigger effect on training needs in Kenya. The government was at a cross road when the big enrollment triggered by FPE transitioned into secondary schools. The FDSE also ushered a large transition rate into tertiary institutions. Though the FPE and FDSE started as political exigencies and expediencies, the initiatives had widespread ethical and quality ramifications (Ohba, 2009). The efforts are the justifiable as they in a way tried to bridge the inequitable access to legal studies (formerly an area select few). It however, bled pockets of unethical practices in an effort to increase numbers and to compete with others. This slowly ended up as the sacrificial alter of quality training (Oketch and Ngware, 2013; Brookings Institution, 2013).

The Kenyan government has put up significant strategies to expand legal education in pursuant of the National philosophy, vision and mission of the Kenya government (Republic of Kenya, 2012). The philosophy guides and directs the ideals of the Ministry of Education. Human and economic development is critical in the growth of a nation since it puts the country on a vintage and significant higher pedestal for a long time. LE is expected to instill knowledge and lifelong skills particularly in the country's jurisprudence and justice systems (Republic of Kenya, 2013; United Nations, 2013).

A preview of relevant international conventions and protocols shows Kenya is a signatory to conventions and protocols which emphasize a holistic training and quality education. The acceptance of holistic education implies acceptance and recognition of multidisciplinary societal values that encompass issues such as honesty, tolerance, mutual respect, equality of human beings, peaceful coexistence and hard work (Odhiambo, 2012; Republic of Kenya, 2012; United Nations 2013). These are the ultimate goals expected of LE.

Sample studies on implementation of FPE and FDSE indicated several challenges. The challenges faced had a trickle-down effect on training and teaching of other programs in the tertiary institutions such as universities and other institutes of higher learning. The trickle-down effect was notably heaviest in programs such as the training of legal studies, medicine and science. The approach in teaching and training these courses requires high precision and greater adherence to ethical standards and quality maintenance. That is why challenges were significantly noted in the implementation of the different phases of the FPE, FDSE and eventually university education. Though university education is not free as such in Kenya, the students admitted under the defunct Joint Admissions Board or the current Kenya Universities and Colleges Central Placement service (KUCCPS) pay minimal amount as compared to module two students. They precisely pay fewer fees annually than they would pay in one term in secondary schools (Republic of Kenya, 2005; UNESCO 2005). The university fees were introduced in 1995 as an education cost sharing measure between the government and the students/parents. This explains why the fees have remained the same since 1995 (twenty years down the line) despite high inflation rates. Apparently, the low fees by KUCCPS students have brought the unstated preference for the module two students since they pay high fees. The universities and colleges teaching highly specialized courses such as law and medicine silently opt for as many as possible students in module two. This is because they help the universities and colleges meet the deficit from the government

A UNESCO study in 2005 and subsequent study in 2010 identified myriad challenges in teaching of several programs in primary and secondary schools as well as tertiary institutions. The identified challenges include challenges associated with massive student enrollment. Among these identified challenges are un-proportional trainer student ratios, inadequate trainers and lecturers against increased responsibilities for the staff, inadequate physical resources and teaching materials. Others are low and poor students entry behavior as well as low motivation for both staff and students. All these challenges are despite the several milestones the country has made in improving quality, equity and ethical standards (Republic of Kenya, 2013).

Ethical standards and quality education is the base line for sustainable socio-economic and political developments. Equity, ethics and quality in education is the core of professionalism and career growth. This is what should define LE and increased access to LE should be defined along ethical and quality standards (Republic of Kenya/UNESCO, 2012).

Promotion of ethical culture and enhancement of quality service and products throughout the world is the basis for ability to operate and sell products and services throughout the world. LE is a global commodity. Whatever values and ethical considerations are in one country applies to the rest of the countries. This means that increased student enrollment and constraints in budgetary allocations should not mean low quality products and negligent on otherwise valued ethical norms particularly in teaching, researching and training in LE. LE is the hallmark of sustainable justice and governance systems throughout the world. The emphasis on ethical values and quality service and products in LE is of utmost important in developing countries whose governance and justice systems are pretty young and at the nascent stages.

## **Theoretical Framework**

This paper is anchored on the capital theory according to Hargreaves (2001). Hargreaves Theory emphasizes on effectiveness and improvement in schooling. Definitely, knowledge and skills acquisition as well as ethical values and enhancement of quality service to humanity are part of the effectiveness and improvement in schooling Hargreaves espouses. According to Hargreaves, cognitive and moral values build a sound intellectual base. It is upon the intellectual base that moral societies and communities spring from. The proverbial oral narratives all talked all had moral lessons to teach and to pass to the world and societies so that the world could prosper, harness its resources well, share equitably whatever was available and dispense justice fairly and wisely. This is what capital advocates and envisages in LE.

All societies from time immemorial have passed down to the future generations moral values that spell societal expectations. These are universal values but as much as they are universal, certain disciplines have certain ethical values associated with them. For instance, teachers are expected to hold the highest moral values as role models to the students they teach and spend a lot of time with. Professionals involved in LE are equally expected to hold highest ethical values in cognizance of their roles as part of the much respected world judicial systems. Unfortunately, these ethical standards and quality expectations are not automatic. They have to be nurtured, cultivated and promoted through effective schooling systems and continuous improvements. Quality service is a daily experience that involves continues struggles towards better service and products coupled with ethical expectations. They have to be safeguarded through effective structures and frameworks such as performance appraisals, benchmarks, regulatory bodies dealing with maintenance of standards, professional codes of conduct safety and occupational standards among many others. These are difficult systems to maintain if they are not well safeguarded and policed. This is why Hargreaves talks of effectiveness and improvement in schooling if societies are to gain maximally in social capital. Years of effective schooling in ethics and quality service yields valuable moral values such as honesty, faithfulness, loyalty, honesty, patience, and love for mankind, peace, hard work and respect for others among many others. This theory is therefore appropriate in this paper since it propagates the need to enhance schooling of ethical values and considerations in the teaching and training of LE.

## **Statement of the problem**

Kenya has registered high student enrollment for the last ten years since the inception of FP, FDSE and the inevitable expanded universities and colleges training programs. This expansion in training programs has had its own share of challenges.

First, training in LE has had ethical and quality challenges. Law is about dispensing justice. There is temptation to tamper with justice in societies as has been witnessed over the years. Tampering with justice is both unethical and inequality. The LE lays foundation for the quality of legal professionals that will be charged with the justice systems.

In Kenya, there has been a big upsurge in student enrollment in law schools. This is despite the increase in the law schools form the traditional two schools to ten schools. The increase is inevitable considering that the law schools have grown deep appetite for money from the lucrative module two students. As

earlier argued, the module two students pay more fees and enable the law schools to curb the deficit in budgetary allocations. This notwithstanding, the ethical and quality sustenance challenges are insurmountable. The issues of overworked and demoralized staff, ill prepared staff, admission of students with low intellectual capacity to pursue strenuous LE course, temptations to have short cuts by students and staff are rampant. It is against this background that the paper has attempted to look at the expected ethical and quality implications in dealing with LE and particularly in the face of inevitable widespread expansion of LE.

### **Purpose and Objectives**

The purpose of this paper is to assess the implications of current teaching and training of LE in Kenyan legal schools. The paper is concerned with the question whether training of LE in Kenya is in tandem with the expected ethical norms and quality standards? The paper revolves around two objectives: To assess the management strategies and profile the current trends in training and teaching of LE in Kenya; to examine the emerging trends.

### **Research Methodology**

The paper employed mixed method research design. It involved both quantitative and qualitative data generated from primary sources of data such as interviews with purposely selected sample of twenty trainers and trainees in LE. The interviews were instrumental in pinpointing the emerging trends and challenges. The study also employed secondary sources that included review of government documents and institutional policies and documents. Literature review from secondary sources was done so as to give the study the background and impetus it needed.

The respondents were both trainers and trainees in LE and were drawn from the University of Nairobi, Kenyatta and Mt.Kenya Universities. The study left out trainers and trainees from Moi, Kisii, Jomo Kenyatta University of Agriculture and Technology (JKUAT) Nazarine, Catholic University of Eastern Africa (CUEA) and Kenya School of law due to time limitations.

## Results and Discussions

The study sampled twenty respondents. The data was collected through interviews and simple questionnaires requiring the respondents to list the challenges encountered and emerging trends in training and teaching of LE according to their observations. The data was collected as follows:

**Table 1: Distribution of respondents by legal schools/universities**

Legal school/university	No. of respondents	%
University of Nairobi (Parklands Campus)	8	40
Kenyatta University (Parklands Campus)	7	35
Mt. Kenya University (Parklands Campus)	5	25

One notable aspect is that the three legal schools under study are all based in the parklands neighborhood in Nairobi city. The strong coincidence is a result of the amenities associated with Parklands. Parklands is a high end neighborhood. The inhabitants are mostly middle or upper middle income earners of Asian and African descent. The neighborhood is well connected with good road networks to and from all directions of the city. Prospective students for legal studies would easily assess the campuses either driving or by public means.

### Current Management Strategies for Legal education and emerging trends

The study noted several management strategies and current trends associated with training and teaching of LE in Kenya. Among the key management strategies and trends noted are:

1. Enhancement of student enrollment particularly module two students. The motivation is to bridge the existing gap in budgetary constraints. Most of the institutions offering LE are heavily underfunded despite the need for expensive reading and physical resources. Other resources are dilapidated due to continuous use over the years. This was noted in the University of Nairobi which is a fairly old legal studies campus. Kenyatta University is a relatively young legal education school which was accredited by the CUE in 2014 while Mt. Kenya is yet to be accredited. Accreditation requires up-to-date resources, observance of the highest ethical standards and quality education as epitomized through continuous improvement of resources since accreditation is a continuous process. Continuous improvement means availing the best and most recent resources, meeting the required ethical standards, improvement of staff capacity and benchmarking with the best LE schools.
2. Improvement of staff capacity is a key management strategy. All the institutions studied had staff development programs for the teaching staff. The staffs under staff development are supposed to engage in their pursuit for higher educational qualifications as they work. This is in an effort to continuously improve the capacity and quality of their staff. It was noted that some of LE schools lacked staff that were proportional to the number of students. In such cases, the schools depend

on adjunct staffs that practice in law firms in an effort to curb the serious disproportional staff levels.

3. Judicial attachments and internships are key management strategies identified. Apart from the usual pupillage, the students undergo two judicial attachments in their 2<sup>nd</sup> and 3<sup>rd</sup> years. This is a management strategy of preparing them for the market and enabling them to have a niche over other similarly trained graduates. The study noted that while judicial field works are important activities that improve the quality of training and teaching LE, they were infrequent. This could only be attributed to cost cutting endeavors. Unlike judicial attachments and internships where students are financially responsible, the legal schools are responsible for field trips and therefore, the reasons for the cost cutting measures..
4. The promotion of Information Communication Technologies (ICTs) in the training and teaching of the LE has ensured quality education. In addition, it has ensured the availability of several online e-books and journals which would not have been available under normal circumstances.
5. Systematic monitoring and evaluation of adherence to ethical values and maintenance of quality standards. All the campuses studied are ISO certified. ISO certification requires maintenance of professional ethics and continuous improvement in all spheres of life. The study noted deliberate efforts to maintain proper records such as class attendance, complaints and compliments register.
6. In an effort to achieve international recognition, it was noted that the LE schools were all ranked in the world web metrics. For one to attain good ranking, the individual institution aspires to adhere to the stipulated standard ethical norms and maintain a strong flow in the continuous improvement path. The philosophy underlying continuous improvement is based on the fact that there is no end to improvement particularly in the face of new challenges emerging daily. The study identified the following unethical challenges shown in table 2 below and which could affect negatively the quality of LE in Kenya:

**Table 2: Factors affecting ethical and quality LE**

**N=20**

<b>Challenges identified</b>	<b>No. of responses</b>	<b>%</b>
Staff and student absenteeism	8	40
Poor syllabus coverage	7	35
Proliferation of legal schools with inadequate resources	5	25
High student enrollment	11	55
Inadequate teaching and learning resources	5	25
Ill prepared trainers/under qualified trainers	4	20
Poor regulatory frameworks	5	25
Low student/staff perception	6	30
Inadequate supervision/monitoring and evaluation	4	20
Budgetary constraints	5	25
Quality of students admitted	4	30



High student enrollment (55%) was noted as one of the leading causes of unethical practices, poor quality service and ill prepared graduates.

### **Conclusion and recommendations**

This paper has discussed the genesis of LE in Kenya and its exponential growth amidst a lot of challenges. It has discussed a plethora of unmet ethical and quality issues in provision of LE. Despite these challenges, it was noted that Kenya has produced some of the finest legal minds and scholars in the region and the world over. Among the challenges identified is the massive student enrollment which has tended to spiral over the ethical and quality issues gained. This could be contained through a systematic student enrollment that oversees a proportionate teacher student enrollment. It could also be contained through a sustained and serious staff development program. Such an aggressive staff development could easily contain the high student enrollment coupled with aggressive infrastructural staff development.

Other challenges such as staff absenteeism and poor syllabus coverage could easily be dealt with through aggressive monitoring and evaluation system as well as constant student feedback. The cumulative effect of such challenges if unchecked could adversely affect the envisaged ethical and quality LE in Kenya.

### **References**

1. *Brookings Institutions. 2013. Towards Universal learning: What every Child should learn. Brooks. Brunner, J.S. 1961. The Act of Discovery. Harvard Educational Review, Vol. No. 31 1961.*
2. *Odhiambo. 2010. Task force on realignment of education to the constitution 2010 and vision 2030 and beyond. The Government of Kenya.*
3. *Republic of Kenya. 2005b. Kenya Education Sector Support Program 2005-2010: Delivering Quality Education and Training to all Kenyans. Nairobi: MOEST.*
4. *Republic of Kenya 2007a. Gender and Education Policy in Kenya. Government Printer. Nairobi.*
5. *Republic of Kenya 2007b. Harmonization of the Legal Framework on Education Training and Research: A report of the task force on review and harmonization of the legal framework on education, training and research.*
6. *Republic of Kenya 2010a. The Constitution of Kenya, 2010. The Attorney General. Nairobi.*
7. *Republic of Kenya 2012 a. Sessional paper No 14 of 2012 on realigning education and training to the Constitution of Kenya 2010 and Vision 2030 and beyond. Ministry of Science and Technology. Nairobi. Kenya*
8. *Republic of Kenya 2012b. A policy framework for realigning education to the constitution 2010 and vision 2030 and beyond.*
9. *Republic of Kenya. 2005a. Sessional Paper No 1 on policy reforms for education, training and research: Meeting the Challenges of Education, training and research and in the 21<sup>st</sup> Century. Ministry of Education, Science and Technology (MOEST) Nairobi.*
10. *Republic of Kenya/UNICEF 2012. Education for all (EFA) End of decade Assessment (2001-2010). Ministry of Education and UNICEF. Nairobi.*

11. UNESCO 2004a. *Monitoring Report 2005 through the UNESCO International Bureau of Education, Geneva.* Anderson, L. W. 2004. *Increasing Teacher Effectiveness. 2<sup>nd</sup> ed. Paris, UNESCO International Institute for Educational Planning.*
12. UNESCO 2005b. *EFA Global Monitoring report 2005: Education for all, The Quality Imperative, UNESCO, Paris.*