The Speech Delivered by the Solicitor General of the Republic of Kenya, Kennedy Ogetto, EBS, During the Launch of the Kenya School of Law Strategic Plan, 2018-2022, on 31st January 2019

The Chairperson of the Kenya School of Law Board, Professor Fatuma Chege,

Members of the Kenya School of Law Board,

The Director, Kenya School of Law, Dr Henry Mutai,

Distinguished Guests,

Ladies and Gentlemen,

It is my great pleasure to join you today at this auspicious occasion for the launch of the Kenya School of Law Strategic Plan for the period 2018 -2022.

I am here today on behalf of the Attorney General of the Republic of Kenya, the Hon. Justice (Rtd) Kihara Kariuki, who

was unable to attend today's occasion because of other duties of State that required his person attention.

May I express his profound gratitude for your invitation to him as the Guest of Honour during this important occasion when the Kenya School of Law is launching its road map towards the next four (4) years.

It is a great honour and special pleasure.

Ladies and Gentlemen, legal education and training in Kenya has undergone transformation over the years.

Much has changed since independence.

The changes have been in both the manner of training, and even the structure of the legal profession.

Just this week, we marked fifty (50) years since the death of Argwings Kodhek, who, in addition to the many other

feathers in his cap, was the first indigenous African Kenyan lawyer.

In just over half a century since the late Kodhek was called to the bar, today, thousands of Kenyans have gone on to train and qualify as lawyers, and taken up various legal and multidisciplinary roles in the public and private sectors.

In the nascent years of our country's independence, those who desired legal education had to travel beyond our borders, the closest destinations in that regard being what are now the University of Dar es Salam in Tanzania and Makerere University in Tanzania.

At some point, articled clerkship was a well-accepted mode of gaining entry into legal practice, and a law degree was not a pre-requisite.

Today, Kenya boasts of over ten (10) local universities offering undergraduate courses in law. Several of them offer, or are in the process of beginning to offer, postgraduate courses at Masters and PhD levels.

It is now a requirement for admission to the bar that one must have a law degree from a recognised university.

The Kenya School of Law has occupied a pivotal position in legal education in Kenya.

While it began as a vocational training school for barristers in 1963, the Kenya School of Law has for years now occupied a central position as Kenya's only bar school, preparing thousands of men and women for the practice of law in Kenya and beyond.

The socio-political and economic environment within which the Kenya School of Law now operates has significantly changed over the years.

The increase in the number of universities offering undergraduate courses in law means that demand for places at the School has grown.

This increased demand for places at the School in turn means demand for more facilities at the School.

The growing complexity and sophistication of our socio-political and economic affairs as Kenya continues to develop in these respects necessarily means that the lawyer of today requires a different preparation from that demanded by the lawyers of yesteryears.

Fairly recently, specializing in an area of legal practice seemed like a distant luxury.

Many lawyers in private practice were general practitioners, taking whatever instructions from whatever area of law that came their way.

For the few that specialised, specialisation to them meant covering areas of law that today are so broad and substantively unrelated, that the label of specialisation would clearly be a misnomer.

Today, lawyers are eager to market themselves as having a niche in specific areas of law.

Areas and aspects of law that seemed to hardly have any place in our legal landscape are today the buzzwords in our legal parlance.

Subjects like intellectual property law, public procurement, oil and gas law, construction law, international criminal law and information and technology law seemed so peripheral

that many lawyers of a particular generation in our country hardly knew anything of these subject areas.

Today, these areas received much focus at many levels of legal practice.

Not so long ago, cross-border disputes seldom featured in our lawyers' diaries. Most of the work that they did was purely domestic, or raised only questions of municipal law.

As a result of regional integration initiatives – leading to freer movement of people and goods; more international trade partnerships and increased Foreign Direct Investment, the volume of cross-border disputes has grown tremendously.

The increase in the dockets of international courts and tribunals also means that there are more opportunities for our lawyers today to engage with such courts and tribunals.

More of our lawyers are today called upon to work on disputes and transactions that involve parties from beyond our borders, and which raise legal questions that involve more than just our law.

The default method of dispute resolution for which certain generations of our lawyers were prepared for was court-room litigation.

Today, the need to look beyond courtroom litigation cannot be gainsaid.

The phrase Alternative Dispute Resolution (ADR), is no longer a vocabulary in our dispute resolution parlance.

The number of lawyers and other individuals seeking to qualify as mediators and other ADR experts continues to grow by the day. The days when many would just be content building a career as courtroom litigators or

transactional lawyers, or members of the bench, are fast fading into the past.

More and more disputes continue to be referred to alternative dispute resolution. Parties to contracts are increasingly finding it desirable, and perhaps necessary, to include in their contracts dispute resolution clauses that impose alternative dispute resolution procedures as a condition antecedent to court room litigation, in the event of a dispute.

It is therefore no surprise that for some, the abbreviation ADR has come to mean not *alternative* dispute resolution, but *appropriate* dispute resolution.

Our Constitution itself, at Article 159, cements the place of ADR as one of the principles for the exercise of judicial powers.

The entrenchment of ADR is not the only way by which our Constitution heralded a shift in what is expected of legal education and training. The supreme law now also imposes certain mandatory national values and principles of governance, and provisions on leadership and integrity, which, without a doubt, have reshaped the expectations on the kind of training that our lawyers should be exposed to.

Perhaps, the umbrella that covers all these developments and changes that I have highlighted is the fact that we live in the Age of Information.

Technology now pervades all spheres of our lives.

What this means is that the way we understand and deal with many aspects of our lives has changed because of technology.

For legal education and training, this implies several things.

For one, the substance of what is taught at school necessarily has to incorporate the legal developments occasioned by technological developments. Trainees have to be taught information technology law and information technology and the law. By information technology law, I mean the substantive law that governs information technology. By information technology and the law, I mean the interplay between the law and information technology.

This hardly needs any emphasis.

Traditional legal conceptions have changed because of technology.

Take the example of contracts.

The traditional elements of a contract, like when an offer is open or when there is an acceptance, have changed substantially with the advent of technology. Electronic

contracts, for example, bring to the fore new questions like when and where an acceptance, and therefore the contract, is made.

Orthodox intellectual property law concepts like the non-patentability of mathematical methods have engendered debates with regard to the patentability of computer software.

These are just some of the demands that our dynamic socio-political and economic structure impose on the Kenya School of Law, among other stakeholders in the legal education and training sector.

The need for a roadmap for the future of the school cannot therefore be gainsaid.

It is incumbent on the School to realign the manner it conducts its activities to the needs of the present-day Kenya, and the world.

I am therefore pleased that in launching the Strategic Plan 2018-2022, the School has put in place measures geared towards adapting it to the context in which it operates.

The contents of the Strategic Plan are themselves promising.

The strategic objectives, which include the provision of quality professional legal training for those in the Advocates Training Programme, and the provision of practical training for Continuing Professional Development, provide avenues for the School to respond to the demands of our country's legal market. These two, I think, together with the strategic objective aimed at undertaking research, consultancies and projects, will themselves go a long way in the realisation of the other strategic objectives of enhancing and

broadening the School's revenue streams, and of strengthening the School's institutional capacity for operational excellence, as well as enhancing customer satisfaction.

As you already know, the on-going reforms in the legal education sector may sooner than later result in the Kenya School of Law losing the monopoly it has in the provision of the Advocates Training Programme. What this means is that the School has to prepare for competition.

The School will be competitive if it answers to the needs of the market.

In implementing the strategic objectives spelt out in the Strategic Plan that we are launching today, focus must therefore be paid on what the market requires of today's lawyer.

As I have already indicated, it is crucial to acknowledge the place of technology in the training of our lawyers, and how we train them. New tech-savvy methods of training and learning will also have other advantages, beyond the quality they add to the trainees. They would, for example, also help reduce the pressure on the School's limited resources, in light of the growing demand for places at the School. Leveraging on ICT for the School's processes would also help ease the burden on the existing amenities, while also enhancing efficiency and productivity.

Having a training that is based on the latest cutting-edge research on the various subjects will be instrumental in the School's realisation of its strategic objective of providing quality professional education. Curricula that are in sync with the edicts of our Constitution will also be useful in

preparing lawyers for a future guided by the requirements of the supreme law.

Overall therefore, I think, we must recall that the implementation of the School's Strategic Plan must be geared towards the attainment of the School's main goal, which is to be '*the preferred centre of excellence in professional legal training, research and consultancy in the East Africa region and beyond*.'

There is need to ensure that there is no disjuncture between graduates from the School and the needs of the market.

In the words of Sally Kift, today's lawyers need to be trained around not what they 'need to know' but rather 'what lawyers need to be able to do.'[1]

In this regard, I suggest that there is need to move beyond a doctrinal-heavy focus in legal education and focus on the

[1] Sally Kift, 'A Tale of Two Sectors: Dynamic Curriculum Change for a Dynamically Changing Profession' (2003), 13th Commonwealth Law Conference, at 4.

inculcation of practical skills as well. Such skills include communication (both oral and written), team work, time management, document management and computer skills.

In fact, some pundits have argued – and I tend to agree with them from my experience as a legal practitioner – that legally specific skills, while important to private professional practice, are not the most frequently used, and that practical skills such as communication, time and document management are used more in any law-related employment.[2] These skills may be inculcated through the modes of assessment used at the School. The use of doctrinal-oriented methods of assessment such as sit-in tests has its advantages. However, there is need to balance

[2] S.Vignaendra, Australian Law Graduates Career Destinations (1998) Centre for Legal Education, Sydney at 39.

between such and group assignments and oral examinations, including moot courts and presentations.