THE COMMISSION FOR HIGHER EDUCATION IN KENYA: A CASE STUDY REGARDING THE ESTABLISHMENT, ROLE AND OPERATIONS OF AN INTERMEDIARY BODY IN THE HIGHER EDUCATION SYSTEM OF A DEVELOPING NATION.

by

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A thesis submitted in conformity with the requirements for the degree Doctor of Education
Ontario Institute for Studies in Education (Theory and Policy Studies)
University of Toronto

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Abstract

THE COMMISSION FOR HIGHER EDUCATION IN KENYA: A CASE STUDY REGARDING THE ESTABLISHMENT, ROLE AND OPERATIONS OF AN INTERMEDIARY BODY IN THE HIGHER EDUCATION SYSTEM OF A DEVELOPING NATION.

Doctor of Education 2009

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For a developing nation like Kenya, an effective higher education system is essential for its national development. Often intermediary bodies, such as the Commission for Higher Education in Kenya, are established and mandated to oversee higher education systems. As a “buffer” agency between the state and the universities, the Commission is strategically placed to ensure an effective and productive higher education system that serves the Kenyan society and advances the development of the nation.

The purpose of this research is to investigate and describe the contribution of an intermediary body responsible for the coordination of the higher education system in a developing nation. The research describes the legal framework for the establishment of the Commission for Higher Education in Kenya and focuses on the three main functions of this intermediary agency: planning, program review and budget review. The research uses a historical case-study design that includes extensive documentation analysis coupled with interviews in order to understand the experience of the Commission for Higher Education in Kenya from its establishment in 1985 up to the present.
The main objectives of the research are:

   a) To describe the legal framework for the establishment of the Commission for Higher Education for Kenya and analyze its mandate and terms of reference;
   b) To investigate and describe the experience of the Commission for Higher Education for Kenya with reference to the following primary functions of intermediary bodies: planning, budget review and program review.

In addition to describing the legal framework that established the Commission and its work in planning, program review and budget review, the research provides recommendations for improved effectiveness as a buffer agency. Chief among these is the need for legislative change that would create an empowering legal framework. Specific recommendations for improvements in core function service areas (planning, program review and budget review) are also provided. The study is important because it addresses service improvement issues in a context where the development agenda demands effective and efficient leadership in the higher education sector.
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With sincere appreciation

Kirk Kauffeldt
Table of Contents

Abstract ii
Acknowledgements iv
Table of Contents v
List of Tables ix
List of Abbreviations x

Chapter One Introduction to Study
1.1 INTRODUCTION 1
1.1.1 Purpose Statement
1.2 HIGHER EDUCATION IN SUB-SAHARAN AFRICA: CHALLENGES 3
1.3 RESEARCH DESIGN, OBJECTIVES, AND METHODOLOGY 5
1.3.1 Statement of Objectives
1.3.2 Methodology

Chapter Two Review of Literature
2.1 INTRODUCTION TO THE USE OF LITERATURE 10
2.2 BUILDING THE CONTEXT FOR RESEARCH 12
2.2.1 Higher Education Trends in Sub-Saharan Africa
  2.2.1.1 Lack of Resources
  2.2.1.2 Lack of Good Governance
  2.2.1.3 Lack of National and International Relevance
2.2.2 The Role of the University in the Task of Development
  2.2.2.1 The Task of Development
  2.2.2.2 Development Education
  2.2.2.3 Developmental Research
  2.2.2.4 Limiting Research
  2.2.2.5 External Stakeholders in Development: The Donor Community
2.2.3 Historical Development of Higher Education in Kenya
## Chapter Three  
**Research Design and Methodology**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 INTRODUCTION</td>
<td>70</td>
</tr>
<tr>
<td>3.2 RESEARCH DESIGN</td>
<td>71</td>
</tr>
<tr>
<td>3.3 THEORETICAL FOUNDATIONS FOR STUDY APPROACH</td>
<td>76</td>
</tr>
<tr>
<td>3.3.1 Planning</td>
<td></td>
</tr>
<tr>
<td>3.3.2 Budget Review</td>
<td></td>
</tr>
<tr>
<td>3.3.3 Program Review</td>
<td></td>
</tr>
<tr>
<td>3.3.4 General Observations on Intermediary Bodies</td>
<td></td>
</tr>
<tr>
<td>3.4 METHODOLOGY</td>
<td>87</td>
</tr>
<tr>
<td>3.5 SUMMARY AND LIMITATIONS</td>
<td>92</td>
</tr>
</tbody>
</table>

## Chapter Four  
**The Legal Framework for the Commission for Higher Education in Kenya**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 INTRODUCTION</td>
<td>94</td>
</tr>
<tr>
<td>4.2 THE UNIVERSITIES ACT – 1985</td>
<td>96</td>
</tr>
<tr>
<td>4.3 THE KAMUNGE REPORT</td>
<td>101</td>
</tr>
<tr>
<td>4.4 THE UNIVERSITIES RULES ACT – 1989</td>
<td>106</td>
</tr>
<tr>
<td>4.5 THE UNIVERSITIES RULES ACT – 2004</td>
<td>112</td>
</tr>
<tr>
<td>4.6 THE COMMISSION FOR HIGHER EDUCATION BILL – 1997</td>
<td>115</td>
</tr>
<tr>
<td>4.7 CONCLUSION</td>
<td>118</td>
</tr>
</tbody>
</table>

## Chapter Five  
**The Function of Planning and the Commission for Higher Education in Kenya**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 INTRODUCTION</td>
<td>120</td>
</tr>
<tr>
<td>5.2 REVIEW OF PLANNING FOR KENYA HIGHER EDUCATION</td>
<td>125</td>
</tr>
<tr>
<td>5.2.1 The Master Plan on Education and Training 1997-2010</td>
<td></td>
</tr>
<tr>
<td>5.2.2 The National Strategy for University Education 2007-2015</td>
<td></td>
</tr>
<tr>
<td>5.2.2.1 Increased Access</td>
<td></td>
</tr>
<tr>
<td>5.2.2.2 Quality and Relevance</td>
<td></td>
</tr>
</tbody>
</table>
List of Tables

### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHE</td>
<td>Commission for Higher Education</td>
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<td>CHESP</td>
<td>Commission for Higher Education Strategic Plan</td>
</tr>
<tr>
<td>EASCO</td>
<td>East Africa Common Services Organization</td>
</tr>
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<td>EQA</td>
<td>External Quality Assurance</td>
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<td>GER</td>
<td>Gross Enrolment Ratio</td>
</tr>
<tr>
<td>HE</td>
<td>Higher Education</td>
</tr>
<tr>
<td>HELB</td>
<td>Higher Education Loans Board</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>INQAAHE</td>
<td>International Network of Quality Assurance Agencies in Higher Education</td>
</tr>
<tr>
<td>KANU</td>
<td>Kenya African National Union</td>
</tr>
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<td>MPET</td>
<td>Master Plan on Education and Training</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
</tr>
<tr>
<td>NSUE</td>
<td>National Strategy for University Education</td>
</tr>
<tr>
<td>PSSI</td>
<td>Post Secondary School Institution</td>
</tr>
<tr>
<td>SWOT</td>
<td>Assessment of strengths, weaknesses, opportunities and threats</td>
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<tr>
<td>UGC</td>
<td>University Grants Committee</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
</tbody>
</table>
Chapter One
Introduction to Study

1.1 INTRODUCTION

The operation of an established and stable higher education system is vital for a nation’s well being. The knowledge production and training that post secondary education provides shapes the well being of the society and ensures a measure of growth potential and viability in the modern global environment. The dynamic of the current information-age requires great attention to this sector to ensure that effective delivery of post secondary education contributes towards the goals and aspirations of a nation’s policy makers in their efforts to design and deliver services that meet societal needs. Research, teaching and community service are the typical functions that the university is committed to and responsible for while other types of post-secondary institutions generally focus on training and practical skill development. Societies are diverse consequently a variety of institutions is required in order to provide for the higher education needs that are represented. Each system needs to consider issues related to diversification within institutions (the types of programs offered) and the diversity of post secondary institutions (the types of institutions developed and their variance in mission and purpose) through careful attention and planning. Leadership is necessary so that the higher education sector can be designed to deliver the services necessary in a sustainable and efficient manner.

In most jurisdictions the state is responsible for playing the lead role in shaping the mandate and boundaries of its higher education system though there are countries where private higher education predominates. This public commitment has been closely associated with the mandate to ensure adequate funding for higher education. Measures to ensure that the higher education sector is able to make its valued contribution to society, in a manner that is responsive to the demands and opportunities that are present, and doing so in a cost effective manner, need to be identified and implemented.
Leadership and management of higher education is common in most jurisdictions and is generally expected to define the desired outcomes and expectations of the system in response to the needs of society and to ensure the best use of public resources towards those ends. It also ensures appropriate levels of accountability within the system both in terms of finances and with regard to outcomes. Good planning enables higher education sectors to ensure that the desired profile of post-secondary opportunities is developed through guiding the diversification and diversity of the system. The challenges that have been noted above provide additional incentive to make sure that the higher education sector in developing countries functions and expands in the most effective and cost efficient manner possible while keeping a sharp focus on the desired outcomes and expectations. Effective leadership, coordination and management are critical for effective higher education delivery in the nations that make up Sub-Saharan Africa.

Commitment to quality leadership and management for the higher education sector leads to concern regarding how this vital objective is realized. Who does this work and what structures are put in place to make sure that desired outcomes are achieved? Each jurisdiction is responsible to determine how the coordination process will be conducted.

Intermediary bodies have emerged as important agents in providing leadership for the development and functioning of higher education systems. The terms ‘intermediary body’ or ‘buffer organization’ describe their location between the state and the institutions. They “act as a zone of negotiation between universities as consumers of public resources and the government as the provider” (Neave, 1992, p.11). While various forms of classification are possible there are three general types of intermediary bodies: those that have powers of resource allocation (primary), those that advise and coordinate (secondary) and those that serve as arenas for debate and discussion. These functions are not mutually exclusive and most agencies while having a particular emphasis will be engaged in all three of these functions. However, the primary and secondary intermediary agencies, those that are concerned with allocation, advice and coordination are strategically significant (Neave, 1992, p. 10).

A common tension in this deliberation has to do with the relationship between institutional autonomy and the public interest. Institutional autonomy and academic freedom are pillars of higher education, yet the state has a key stakeholder role and as such must ensure that
its leadership and influence are protected. It is the need to mediate this tension that has been significant in the establishment of intermediary bodies in many jurisdictions to act as buffers in relations between the state and the post-secondary institutions. These agencies are typically established to assist in the coordination of a higher education system through the core functions of planning, program review and budget review. They are established to make sure that both the state and the higher education institutions are well served and coexist in a mutually beneficial manner. These intermediary bodies exist and function in many different ways with various roles, powers and expressions developed to suit the needs and realities of the jurisdiction that they serve. The Government of Kenya has created such an intermediary body in the form of the Commission for Higher Education which was established in 1985.

1.1.1 Purpose Statement

The purpose of this research is to investigate and describe the contribution of an intermediary body responsible for the coordination of the higher education system in a developing nation. The study describes the role of the Commission for Higher Education in Kenya. The research conducted focuses on the three main functions of such an intermediary agency: planning, budget review and program review using a historical case-study design with regards to the experience of the Commission for Higher Education in Kenya from its establishment in 1985 up to the present.

1.2 HIGHER EDUCATION IN SUB-SAHARAN AFRICA: CHALLENGES

The critical importance of leadership and management of the higher education system is particularly true in the context of the developing nations in Sub-Saharan Africa. These are emerging nations; those that by Western standards are ‘underdeveloped’. In the Sub-Saharan region of Africa the development of a quality higher education system faces particular challenges. These include: the recent establishment of universities compared with the west, fiscal limitation, societal unrest and the challenge of contextualization.
While universities and formal higher education institutions have long been established in the societies of the west, they are a relatively new phenomenon in Sub-Saharan Africa. Higher education arrived along with the colonial conquest of the continent during the late nineteenth century. Although they have not had the benefit of centuries of experience, the current expectation for the higher education sectors in Sub-Saharan Africa is that they produce graduates that are able to compete in a global economy with those that are a product of the well established western systems. This is an imposing challenge. The expected standards of performance are very high considering the relative newness of this sector. It is a credit to these institutions that they have been able to step onto the world stage at all, attempting to glean and apply all that they can from the history of others, without the benefit of incremental growth and development over an extended period of time.

A second challenge is fiscal limitation. Higher education worldwide demands significant levels of financing. Developing countries in Sub-Saharan Africa that are attempting to build their higher education systems find the greatest limiting factor to development is the expense involved. The standards that have been established for the delivery of quality post secondary education and research demand the infusion of finances. The challenge that policy makers in developing nations face is how to manage the competing demands for the very limited resources that are available. How should the need and priority for funding of higher education be determined relative to the needs in society for primary and secondary education, healthcare, infrastructure development, security, law and order and perhaps most importantly poverty reduction?

A third challenge for the development of higher education systems in the region is political and economic uncertainty. Social unrest and mass action against the state are often associated with the young intellectuals in developing nations. The universities have become fairly politicized and are often the sites for the expression of dissonance with the state. The threat that this can pose has resulted in a greater than usual measure of state control of the higher education sector in Sub-Saharan Africa compared with other jurisdictions, particularly in the West. The pursuit of knowledge building and development does not occur in the sheltered greenhouse of academe but is required to find its way amidst the distractions of the tensions
being played out in the drama of the society. This challenge is a contributing factor to the ‘brain drain’ that is being experienced in Sub-Saharan African higher education systems. The ongoing problems that are present in the higher education system of the developing nation make opportunities available elsewhere seem very attractive. As a result the best academics, that have the means to do so, leave the system that they should have a natural affinity to for greener pastures overseas. Occasionally competent academics are ‘pushed’ out for various reasons, often political, and through various means as they are a perceived threat to the establishment. Some return with the benefit of what they have learned to contribute to nation building but many are recruited and remain ‘overseas’.

Perhaps the greatest challenge that the higher education sectors in developing countries of Sub-Saharan Africa face is the issue of contextualization. External forces play a great role in shaping the delivery of higher education in this context. Some of these forces are formal such as the conditions associated with receiving foreign financial assistance. Some are informal such as the biases and protocols that have come to be associated with notions of quality in the area of higher education, almost all of which have developed in the Western context. It is a great challenge to have the freedom to build and develop an indigenous higher education sector. The globalization of higher education has resulted in the expansion and dominance of western higher education rather than the blending and assimilation of non-western expressions of higher education.

1.3 RESEARCH DESIGN, OBJECTIVES, AND METHODOLOGY

While a fairly significant body of research and analysis has been conducted regarding the roles and functioning of intermediary bodies in developed nations, there is a need to describe the unique experiences of such bodies in a developing nation context and in particular those in Sub-Saharan Africa. Surveys of literature describing research on higher education in Sub-Saharan Africa such as the one provided by Guedegbe (1997) reveal that there is limited research on higher education in general. “The scarcity of research at this level results from the fact that higher education is not yet an established area of study in education departments in universities in Sub-Saharan Africa” (Guedegbe, 1997, p. 28). Research on the role and functions
of intermediary agencies is very limited in scope. What exists tends to be comparative in nature and often produced by international donor agencies for the purposes of policy development. A good example of this is the World Bank publication “Higher Education Quality Assurance in Sub-Saharan Africa” by Materu (Materu, 2009). This research focuses specifically on the role and function of an intermediary agency of a specific country, Kenya. Through historical research of the Commission for Higher Education in Kenya it is possible to achieve a greater understanding of the role that an intermediary body can play in the development of the higher education in the Sub-Saharan context. There is a need to carefully describe the contribution made by an existing intermediary body (i.e. The Commission for Higher Education) to understand more completely the following: its mandate, staffing and membership; its role in planning; its role in program review; and its role in budget review.

This analysis will allow for assessment of the following outcomes: the effectiveness of the intermediary body, the contribution provided to the development of the higher education system, the degree to which it is fulfilling its expected role and the factors that have contributed to its achievements or limited its ability to perform as expected. It will also identify, in a preliminary manner, the conditions necessary to ensure that the intermediary body is able to perform at an optimal level.

1.3.1 Statement of Objectives

The following are the objectives of the research:

- To describe the establishment of the Commission for Higher Education for Kenya and analyze its mandate, terms of reference, membership and staffing.
- To investigate and describe the experience of the Commission for Higher Education for Kenya with reference to the following primary functions of intermediary bodies: planning, program review and budget review.
1.3.2 Methodology

The research proposed is qualitative and historical case-study in design. As such, standard procedures for this type of research will be utilized, namely literature review, document analysis and interview. The specifics of the research design approach and the research method are described in Chapter Three.

A comprehensive literature review serves to ground the research in contemporary academic theory. The review of literature builds a context for the research by discussing current higher education trends in Sub-Saharan Africa, the role of the university in the task of development and the historical development of higher education in Kenya. In addition to setting the context for the study the review of literature continues to shape the research design by establishing the theoretical basis for the research with considerable reference to the main function of intermediary agencies as described discussing by Berdahl. This research identifies and discusses the key roles of the intermediary body for higher education in Kenya by considering its legal framework and its role in planning, program review and budget review.

The research primarily involved the careful analysis of documents related to the Commission for Higher Education for Kenya. These include, but are not limited to: the acts of parliament that established the Commission as well as other pertinent legislation; the Annual Reports prepared by the Commission; and research and Reports published by the Commission and housed in the Commission's Archives.

This research also involved interaction with individuals that provided understanding regarding the documentation, and effectively comments on the experience of the Commission for Higher Education for Kenya. The author of this study was the Vice Chancellor (President) of a private university in Kenya and as such was well acquainted with the participants in the study. This status provided enhanced access to documentation and participants however it was necessary to remain professionally objective. As an administrator in the system it would be possible to prejudge the work of the Commission based on experience however a careful and professional research perspective was diligently maintained in order to avoid any effect of
personal bias. This relationship provided opportunity for meaningful access to the operations of the Commission. The participants included the Commissioners (former and current), the Commission staff, and the institutional leaders (Chancellors and Vice Chancellors of the public and private universities). This interaction took place in the form of survey interviewing. This research was conducted under the auspices of the University of Toronto in Canada, and in affiliation with Kenyatta University in Kenya. The highest possible protocol for academic research was followed. Further the research was conducted upon the approval of the Office of the President for Kenya, and all of the requirements associated with this approval have been diligently adhered to.

The purpose of this research is to provide a broad overview of the Commission for Higher Education as an intermediary agency in the higher education system of the developing nation of Kenya. This overview has focused on the establishment of the Commission and the particular functions of planning, program review and budget review. The focus of the research was on the specific role of the intermediary agency in various core functions rather than an in-depth analysis of particular aspects of its mandate. For instance the focus is on the Commission’s role in program assessment rather than program assessment. While an adequate analysis of each of these particular areas has been provided to serve the intended purposes of this study, it must be pointed out that separate in depth analyses of each of these areas would merit further research.

The following will summarize the organization of the study and describe the following chapters:

- Chapter Two provides a comprehensive review of literature related to current trends in higher education in Sub-Saharan Africa, followed by discussion of the development of higher education in Kenya;
- Chapter Three continues with literature review in order to set the theoretical base for the study and develop the research design. This chapter continues to describe the methodology for the research;
- Chapter Four describes the legal framework and related for the establishment of the Commission for Higher Education in Kenya;
• Chapter Five discusses the Commission for Higher Education and the function of planning for higher education in Kenya;
• Chapter Six discusses the Commission for Higher Education and the function of program review for higher education in Kenya
• Chapter Seven discusses the Commission for Higher Education and the function of budget review for higher education in Kenya
• The final chapter contains a summary of findings and conclusions that arise from the research.

In addition to the narrative of the research study there are a number of appendices that serve to provide specific detail related to the research.
Chapter Two
Review of Literature

2.1 INTRODUCTION TO THE USE OF LITERATURE

The use of literature will serve two critical functions in this study on the role and functions of the Commission for Higher Education in Kenya: it will frame the research by providing a context for the study, and it will ground the analysis that will be undertaken on a strong theoretical framework. This chapter addresses the first of these two functions, providing a context for the study, and is divided into two sections: a review of literature related to trends and issues in higher education of Sub-Saharan Africa, and a review of the historical development of higher education in Kenya. These serve to build a context for the study by looking at selected topics that aid in that process. The second section of the review of literature continues in the next chapter and provides a theoretical and methodological framework, or roadmap, for the study by reviewing general literature on intermediary agencies with special emphasis on the Berdahl study that contributes significantly to the research design.

In order to discuss the role and functions of the Commission for Higher Education in Kenya, it is necessary to appreciate, as fully as possible, the context in which the Commission functions. A task such as this requires selection and delimitation. There are many possible themes that could arguably be regarded as relevant for the focus of this research. However, three broad perspectives have been chosen. Each of these three perspectives contains a number of sub-topics. The composite effect is the establishment of a context for analysis of the role of the Commission for Higher Education in Kenya. The first perspective is the description of the broad contemporary scene for higher education in Sub-Saharan Africa. The second is also a broad perspective which describes the underlying philosophical expectations for the higher education system in Sub-Saharan Africa. The third is more narrowly focused and describes the historical development of higher education in Kenya. Thus to provide this context for the study through the use of literature the three areas have been selected: 1) Current higher education trends in
In the first section on current higher education trends in Sub-Saharan Africa, literature related to three topics is discussed. These three topics represent the major challenges facing higher education in Sub-Saharan Africa: lack of resources, lack of good governance and lack of relevance. The next section discusses the role of the university in development in Sub-Saharan Africa. After introducing the key concepts of development, the functions of university development education and university development research for this region is discussed. The experience and influence of external stakeholders in the task of development is introduced by reviewing the contribution of the World Bank to higher education in Sub-Saharan Africa. Finally, in order to build a context for this research the historical development of higher education in Kenya is reviewed. This review discusses the key historical events and issues for higher education during the colonial experience and then the years since Kenyan independence.

The selection of these categories is an attempt to provide a basis for understanding the current state of affairs regarding higher education in Kenya and in doing so build a contextual frame for the study. This list is not exhaustive and other foci could have been identified; however, the selected areas will serve their intended purpose for this study. It should be noted that the three areas are interrelated and though concentration is given in each section to the major themes they are interdependent. The composite effect of this part of the use of literature then is to set the context.

After setting the context, the next chapter continues to review literature by reviewing literature on the functions of intermediary agencies that forms the key theoretical grounding for this study on the Commission for Higher Education in Kenya. This approach is taken to link the orientation of the study design and methodology to this literature. Seminal in this is regard is Statewide Coordination of Higher Education (Berdahl, 1971). The Berdahl study, and related literature, is the research framework that this analysis of the Commission for Higher Education in Kenya is based upon. In his study, Berdahl provides a thorough analysis of the delicate relationship between the state, coordinating agencies and the higher education institutions. The
study identifies the philosophical issues that characterize this relationship, academic freedom and institutional autonomy, though focus is given to the mediation role of a coordinating agency. The coordinating agency is to ensure that the state-higher educational institution relationship is mutually beneficial. After identifying different types of coordinating agencies and commenting on the membership and staffing of such agencies, Berdahl turns to examine the three areas that he suggests have the greatest impact on substantive development of the higher education system. These three areas are planning, budget review and program review.

Statewide Coordination of Higher Education along with other relevant works provides the theoretical and methodological template for the analysis of the Commission for Higher Education in Kenya. They identify the nature and types of coordinating agency that the Commission represents as well as provides. They also guide the research by identifying three critical areas of concern for a coordinating agency in its role as an intermediary body responsible to facilitate substantive development of the higher education system. Finally, they provide a reference regarding best practices.

2.2 BUILDING THE CONTEXT FOR RESEARCH

2.2.1 Higher Education Trends in Sub-Saharan Africa

This section will help to establish an understanding of the context in which higher education in Kenya is offered, by looking at the broad trends and issues that commentators have observed in the recent experience of higher education in the developing world and particularly Sub-Saharan Africa. As one reviews the literature, two things become quite obvious: first, that there is generally consensus regarding what the key themes and issues are, and second, that little is changing. In a recent comprehensive analysis discussing higher education in developing countries, Peril and Promise (Bloom and Ahmad, 2000), the authors insightfully titled the section describing current trends ‘Longstanding Problems and New Realities’. It seems that not much has changed over the past three decades. The lists of issues facing higher education in the
Sub-Saharan Africa in the 1970’s and 1980’s and those written twenty or thirty years later only differ in the manner that they are presented; the content is essentially the same.

For the most part the experience of higher education in developing countries has been disappointing to date. Its contribution to ‘social and economic development has not mirrored its accomplishments in developed countries’ (Bloom and Ahmad, 2000, p. 93). Perhaps this is just a consequence of the greater challenges that face developing countries, particularly those in Africa. Africa has been described as an undifferentiated continent of poverty and economic decline, political instability, and authoritarian rule. Accomplishments have been lost in the more dramatic accounts of drought, famine, and military coups. Government mismanagement and corruption have exacerbated the deteriorating situation. “What does the short term future hold for Africa? Undoubtedly ethnic, religious, and ideological factionalism will continue as well as economic impoverishment” (Omeara and Winchester, 1987, p. 93). This is not an encouraging environment for any social institution, particularly higher education, to function in. In the 2000 report, the Task Force on Higher Education and Society suggested that there is a need to not only identify the problems, but to understand their underlying roots and then develop strategies for addressing them. The report suggested four underlying root causes for the obstacles that have contributed to a disappointing experience to date of higher education in Sub-Saharan Africa:

1. The absence of vision. The social and economic importance of higher education systems, and of individual institutions within those systems, is insufficiently appreciated.

2. Lack of political and financial commitment. Policymakers face a host of pressing problems under severe resource constraints and highly competitive political settings. It is no surprise that higher education often misses out.

3. Conditions of initial disadvantage. Higher education in developing countries is severely disadvantaged by its poor baseline. Escaping this low-level trap necessarily requires substantial and wide ranging improvements, rather than the all too frequent patchy and incremental steps.

4. The disruptions of globalization. The best and brightest faculty and students will continue to be attracted to the wealthier countries and competition for quality graduates will remain fierce (Bloom and Ahmad, 2000, p. 94).
Higher education in the region is said to be in a crisis. “The optimistic point of view that the expansion of the higher education system is a major condition for furthering modernization and economic growth has lost its attraction” (Neave and van Vught, 1994, p. 1). Early progress that was made in the area of institutional establishment and increasing the number and quality of students and staff sparked some optimism, but over time this has dwindled.

This analysis of the current trends for higher education in Sub-Saharan Africa will consider three longstanding problems: lack of resources, lack of good governance, and lack of national and international relevance

2.2.1.1 Lack of Resources

Most important to the success of higher education institutions are the educational resources. Sometimes referred to as inputs, educational resources are the people, buildings and equipment necessary to be able to offer well-designed academic programs. Vital in this area are highly qualified faculty and sufficient resources to support their efforts. Most institutions in the developing worlds, and particularly those in Africa, suffer severe deficiencies in these areas.

The faculty face particular problems. They are vital to the task of higher education but frequently are not paid accordingly, and consequently need to dilute their energies through non-university work. They have limited autonomy and often work without access to essential components of university work, e.g. academic journals etc. (Morsy and Altbach, 1993, p. 5). Faculty in these settings have been described as under-qualified, practicing outdated teaching methods that rely heavily on rote learning and lacking creativity, under-valued and under-paid. Faculty pay is generally very low and there is often no incentive or reward for good performance. These conditions make it difficult to recruit and retain good scholars in their fields as there are often more lucrative opportunities in the business world. Internal political conditions that work against academic freedom and independent scholarship compound the problem. Limited access to research funding and to publication in recognized journals are also serious
disincentives. As a result of the undervaluing of faculty they are forced to apply their energies elsewhere.

Many faculty work part time at several institutions, devote little attention to research or to improving their teaching and play little or no role in the life of the institution employing them. Faculty members are often more interested in teaching another course – often at an unaccredited school – rather than increasing their presence and commitment to the main institutions with which they are affiliated. With wages so low, it is difficult to condemn such behavior. (Bloom and Ahmad, 2000, p. 24)

The inability to secure, sustain and develop quality faculty is one problem that is rooted in a lack of financial resources. Another condition is that of the physical facilities and physical resources that support higher education. Sub-Saharan African universities are ‘littered’ with deteriorating buildings, inadequate libraries, computer laboratories that are rarely open, and scientific equipment that can not be used for want of supplies and parts. There is little funding available for adequate maintenance of the facilities let alone the necessary ongoing development. There are insufficient funds to sustain a meaningful research capacity in the institutions. The universities are severely under-funded. It is no wonder that the quality of education suffers. This is not a very surprising condition given that we are discussing higher education in developing countries, which by definition are countries with limited resources. However, there have been other factors that have made the situation even more serious (p. 25).

Problems of lack of resources and subsequent lack of quality have been intensified by the concurrent expansion of the higher education system. More students than ever are wishing to participate in higher education. This is an outcome of positive progress that has been realized in increasing the participation rates for primary and secondary education in these developing countries. The donor community rallied behind the policy makers in many newly independent African countries who sought to see the establishment of universities. There was an initial inflow of capital for the higher education systems in the 1970s. Soon though, attention was turned to the need to address the low participation rates at the primary and secondary levels. This direction received further momentum when analysts began to realize that the universities could still be described as serving the elites of the country’s population due to the under representation of the broader society at the primary and secondary level. A study of educational
policy in the 1980s and early 1990s will support the fact that donor funds, the capital that was shaping the education systems in these developing countries, shifted from higher education to primary and secondary education. This meant that the universities were left to function by relying more on government funding at a level that would not allow for any growth. During this time countries in Sub-Saharan Africa experienced dramatic expansion in higher education coupled with growing economic difficulties. This meant that the per-student expenditure dropped significantly, contributing to a marked deterioration in academic standards in the higher education system (Morsy and Altbach, 1993, p. 22).

The net result of the shift to greater numbers of secondary school graduates meant more people who would wish to enter higher education, even if the proportion progressing remained the same. The substantial widening of access to primary and secondary-education has resulted in a rapid increase in the number of people at the traditional age available to attend post secondary study. The severity of unemployment among secondary school leavers also adds pressure on post-secondary enrolment. The higher percentage wishing to do so has impelled the expansion of the higher education system (Bloom and Ahmad, 2000, p. 27). Universities in Sub-Saharan Africa face an incredible challenge – maintaining a viable academic culture in deteriorating conditions. They also must deal with the demand to increase enrollments while working under greater budgetary constraint. The expansion of the higher education system has not been matched with a proportional expansion in revenues, which has had the net effect of significantly reducing quality. Enrolment has increased dramatically but finances have lagged far behind. The level of quality of teaching and research is declining as a result of overcrowding, inadequate staffing, deteriorating physical facilities, poor library resources, and insufficient equipment (Neave and van Vught, 1994, p. 2).

2.2.1.2. **Lack of Good Governance**

An important aspect of the crisis of higher education in developing countries has to do with the ways governments in these countries try to steer the higher education system. The issue of governance is key to understanding the context for higher education in Sub-Saharan Africa. Scarce or limited resources necessitate good governance for the performance of the higher
education systems in developing countries. Unfortunately, principles of good governance are not often observed in developing countries. The following are the qualities that have been identified as principles of good governance and how they are being experienced in Sub-Saharan Africa:

1. **Academic Freedom.** Described as the right of scholars to teach and publish without controls or restraints from the institutions that hire them or the primary stakeholder (governments). On this score there seems to be sufficient evidence to suggest that there is regular political intervention that occurs for university personnel in institutions in the developing world.

2. **Shared Governance.** This principle involves notions of cooperative governance and participation in critical decision-making by all those involved in the higher education task. It expresses the need for faculty and student representation and participation in decision-making. Again the record here for universities in the developing world illustrates the politicization of the appointment process in particular and the lack of cooperation in institutional governance.

3. **Clear Rights and Responsibilities.** Mutually agreed conditions for university operations that provide a stable condition for decision-making. Legislation has often been drafted and passed but events still occur outside of or around the policy framework creating a culture of uncertainty.

4. **Meritocratic Selection.** Higher education can only function if the selection and promotion of faculty, administrators and students is based on broadly defined merit. Once again political intervention has a negative effect in the full implementation of this principle.

5. **Financial Stability.** The earlier discussion on lack of resources has illustrated that higher education in the developing world often functions in turbulent financial conditions.

6. **Accountability.** Regular testing of standards and close cooperation. This is an area where some progress has been made and agencies established to carry out the accrediting functions. There is still, however, a fair degree of state and higher education system enmeshment that leaves little space for these agencies to operate with the independence necessary to actualize true accountability (Bloom and Ahmad, 2000, p. 61).
These principles describe the conditions for good governance of higher education systems. It is abundantly clear that these principles are routinely violated with great frequency in developing countries in Sub-Saharan Africa. An important component of the crisis of higher education in developing countries has to do with the ways governments in these countries try to steer the higher education system (Neave and van Vught, 1994, p. 3). The primary motivation for many of the violations of the principles of good governance is political intervention. Universities are perceived as a potential threat to fragile and often not well-established political systems. Consequently they are closely monitored. Thus, rather than being seen as promoting political integration, the universities are often viewed as a threat (Saha, 1993, p. 85). The response then is hands-on control by the state. The principles of academic freedom and institutional autonomy are regularly challenged in Sub-Saharan Africa. This is because early colonial administrations did not allow for institutional autonomy and existing governments are threatened by autonomy. Since the financial commitment by government to higher education is significant, there is an expected demand to govern expenditure and manpower needs in the system through government input (Altbach, 1987, p. 13). “The tendency of politicians to intervene in higher education has left many institutions hostage to factional policies, with decisions on student selection, faculty appointments and promotions, curriculum design and similar matters being made on political grounds rather than on merit” (Bloom and Ahmad, 2000, p. 63).

In addition to the violations of principles of good governance, there is the condition of securing legitimacy by governments in Sub-Saharan Africa. In his article Legitimation, Higher Education and the Post Colonial State (1994), Rees Hughes provides a specific case of political interference with reference to the Kenyan higher education experience. He begins by discussing the political process of securing legitimacy; the implicit or explicit consent of the people to be governed. Hughes describes the various aspects of this social theory highlighting the efforts that weak governments take to establish legitimacy through actions or decisions designed solely to appease the people in order to gain consent to be governed. According to Hughes, politicians in developing countries such as Kenya use the higher education system to achieve political legitimation in three ways: expansion of opportunity, maintenance of low fees and high subsidies and perceived commitment to meritocratic selection process. Hughes suggests that all
three of these uses of the higher education system to secure legitimacy can be seen in the experience of Kenyan higher education. In 1988 the Kenya post-secondary system faced a crisis. The universities were prepared to enroll 7000 qualified candidates based on capacity considerations. The President mandated that 13,000 qualified candidates be enrolled. This kind of expansion of opportunity without regard for quality and capacity is legitimation. Everybody wants his or her son or daughter to have a university education, which makes this kind of an act very attractive to a weak state seeking legitimacy. Low fees symbolize the Kenya government’s commitment to access. In a country where people are poor, low fees are described as enabling some of them to send their children to university. Until 1991 university education in Kenya was free and each student received a substantial allowance which was several times the per capita income. Kenya’s history is rich with ineffectual attempts to cost-share; these scenarios are characterized by rhetoric that generally melted with the first sign of opposition. Despite severe financial difficulties, Kenya has maintained a policy of low fees and high subsidies as a strategy for ‘purchasing’ legitimation. The third mechanism is the perceived commitment to a meritocratic selection process. While noble in intent, (i.e. advancement) through achievement, the meritocratic system in Kenya is compromised by the following:

a) a rigorous system of examinations where there is a clear cut inter-relationship between marks achieved and economic status (i.e. the best student come almost exclusively from the upper class having attended the best schools)

b) the tremendous effort to sustain the credibility of the exam process

c) reliance exclusively on the external examination process (Hughes, 1994, p.195).

The perception of fairness and equal treatment on the basis of merit has retained tremendous symbolic power and broad popular support and serves as an invaluable source of legitimation. In the context of political survival, the educational system can be clearly manipulated to support the political elite. As a result political involvement and interest investment in higher education is considerable. It follows that the greater the investment, the more politicized educational decisions will be and the more intrusive politicians will be in the educational process. It has been equally difficult for the Kenyan government to resist the temptation to become directly involved by tinkering with the workings of its institutions. In fact Kenya’s President serves as the Chancellor of each public university. As Mwiria (1992) and
Omari (1994) assert, in Sub-Saharan Africa politics intrudes into higher education to the point of hiring key administrators and releasing troublesome faculty. The education system is manipulated to help legitimize the State and fulfill its political goals. When weak state political leaders choose to purchase legitimacy, there arises a series of policy paradoxes: the phenomena of expansion of higher education opportunity in a context of rising graduate unemployment; a continuation of low fees/high subsidies to individuals who become a part of society’s most privileged group and a diminution of the role played by educators in higher education policy development as post-secondary education becomes more critical to society.

Clearly government must play a leadership role in the development of the higher education system, but in doing so it ought not to act directly against principles of good governance through inappropriate intervention. The question then is whether specific forms of government regulation can help to solve the crisis of higher education in the developing world of Sub-Saharan Africa better than other forms of government regulations.

Government regulation can be described as the efforts of government to steer the decisions and actions of specific societal actors according to the objectives the government has set at its disposal. Governments are necessarily involved in the operations and development of higher education in order to ensure efficiency, appropriate distribution of services and programs and to protect socio-cultural objectives (Skolnik, 1987, p. 60). The spectrum of government influence ranges from rational planning and central control characterized by centralized decision making and a large amount of state control, to self-regulation where the government limits its role to monitoring performance (Neave and van Vught, 1994, p. 5). The autonomy, control and coordination of higher education has been described by Clark (1983) as characterized by an interplay of three forces:

a) Market Forces – In the absence of any regulatory limitations, market forces are those factors that determine the employment opportunities for graduates, the funding by the private sector of university operations including scholarships, chairs, etc.

b) Government – State regulations are established to control and coordinate the governance of higher education through funding, appointments and policies that steer the decisions of societal actors.
c) Academic Oligarchy – The influence exerted by the academic community

This triangle of coordination is a helpful way of describing the interactive forces that shape the higher education system. In the developing countries of Sub-Saharan Africa, the market forces are not sufficiently robust and the academic community does not have the confidence of the government, so the state tends to assume a major role in control and coordination of higher education. Often the greatest areas of tension are between the state and the universities (Omari, 1994, p. 55).

Neave and van Vught (1994) suggest that there are two general government strategies that characterize relations with higher education: rational planning and control and self-regulation. With this understanding then two basic models of government relations can be identified. These are the state control model and the state supervisory model. The state control model, referred to as the continental or European model, sees very clear state control combined with a strong authority at the level of senior-chaired professors who exercise control at the lower level of the system. The state-supervisory model has its roots in the US system and the British system. Each institution is responsible for its own management, setting its own standards and procedures. Influence by the state is weaker than in the state control model (Neave and van Vught, 1994, p. 11). Higher education systems in the Sub Saharan Africa have acquired their basic characteristics by means of transference from models in the western world. The forced transplantation of these models coupled with the transition from colonial control to independence has created many difficult problems. These problems are largely caused by the fact that the transplanted systems were alien to the social structure and culture of the newly independent nations (p. 12). In many cases the reaction has been to further increase the influence of the government and the predominance of state controlled models in developing nations.

The effect of this forced adaptation has been the predominance of the state control model in several developing nations, often leading to rather an authoritarian government attitude towards higher education institutions. Even in several countries where initially the British model was introduced, the state control model now has superseded the state supervisory model. In many African countries state authorities have a large influence in the dynamics of higher education systems (p.13).
Perhaps given the ‘crisis’ nature of this sector at this time, the state control model offers the most optimistic, or perhaps the only, way forward.

Neave and van Vught suggest that the state supervising model is more appropriate in the present day situation of crises in higher education than the state control model. This is because, given the social and economic conditions in many countries, the state supervisory model is better able to trigger the innovative behaviour of higher education institutions.

Compared to the model of state control, we expect the state supervising model to offer a better fit. This model seems to be better equipped to be used as a general incitement towards innovations in a higher education system. It addresses these systems while taking their fundamental characteristics seriously. It leaves sufficient room for the semi-autonomous professionals and basic units and it does not try to coordinate the large variety of a higher education system in a limited set of rules (p. 19).

Innovative solutions need to be designed and implemented. “African universities have been called upon to become more enterprising, innovative and imaginative in utilizing their limited resources in producing more and more graduates, society-related research output and also in providing services to the communities” (p. 14).

These conclusions are consistent with the recommendations put forward by the 2000 World Bank task force. They suggest that the tools for achieving good governance include the following: effective faculty and governing councils, transparent budget practices and financial management, data for decision making, election of academic leaders and external peer review for faculty appointments and promotion, security of employment, increased compensation and responsibility for faculty, accreditation agencies, and institutional charters and handbooks (Bloom and Ahmad, 2000, p. 64-67). These conditions are more consistent with a state supervisory role rather than a state controlled environment.

Lack of good governance is a trend that characterizes higher education in Sub-Saharan Africa. This is seen in the failure to practice the principles of good governance (academic freedom, shared governance etc.), the use of higher education in the practice of legitimation, and in the predominant use of the state controlled approach instead of a state supervisory approach.
2.2.1.3 **Lack of National and International Relevance**

Not only is higher education in the Sub-Saharan Africa characterized by a lack of resources and lack of good governance, there is an increasing lack of relevance both in the local (national) context and in the global context. This lack of relevance has developed as a consequence of the great challenges and difficulties the systems face particularly in light of the two critical gaps in resources and governance that have already been discussed.

Within the local context the universities in the developing world do not seem to have established a status whereby they are greatly treasured for the role that they play in society. The general public seems to be out of touch with the higher education system. Perhaps this is because the institutions remain disconnected from the realities of the societies in which they exist. No nation has moved dramatically from the basic western model of the university often inherited from the colonial past. They are based on western historical models and are therefore in a sense foreign institutions in their own countries. Their norms and values often clash with traditional societies (Altbach, 1987, p. 7). This experience is common. In fact, “There is only one common academic model world wide. The basic European University model…remains the universal pattern of higher education” (Morsy and Altbach, 1993, p. 1). The issue is one of adaptation. Higher education systems world-wide do have a significant level of common experience; however, the systems in developed countries have managed to adapt the basic western model and suit it to their local context. Adaptation has not really occurred in the context of the universities in Sub-Saharan Africa. The universities continue to disseminate the traditions, beliefs and practices of western civilization (Ashby, 1964, p. 96). This issue affects determination of the developmental priorities for the modern African University. For the majority of the population of a developing country like Kenya, the university seems remote from social realities and is apparently becoming increasingly irrelevant. Other factors that exasperate this sense are the limited number of qualified students that are able to be served by the system and the fact that even today students come disproportionately from privileged sectors of society and are studying in oversubscribed areas and face poor student services. The systems serve a small proportion of the relevant age groups (under 5% and usually 1%) and still primarily the elite (Altbach, 1987, p. 3). This trend in Kenya is supported by data included in the

Not only are higher education institutions in Sub-Saharan Africa locally disconnected, they are also out of touch with the global higher education environment. Universities in the developing world find themselves at a disadvantage in the international knowledge network. Industrialized nations have great influence because they produce most of the world’s knowledge, they supply most of the education for African lecturers who study overseas and they have set the standards and now expect the developing country’s institutions to compete (p. 10). The relations between the industrialized nations and the developing world are unequal (described as dependent and neocolonial). These inequalities contribute to a servitude of the mind, making the struggle to build independent sources of intellectual power long and difficult (p. 81). Industrial countries have been by far the greatest contributors and beneficiaries of the knowledge revolution. To the extent that this trend continues, the income gap between industrial and developing countries will widen further. This trend has major implications for both developing countries and their higher education institutions. In addition to the growing gap between industrialized and developing countries, there is the potential that even within countries there will develop a greater gap between those connected to the knowledge network and those who are not. Higher education in Sub-Saharan Africa must do what it can to address these issues. New technology-based tools for gathering knowledge must become central elements of the curriculum, so that students can learn how keep their knowledge up to date. This will also require specialized training and perhaps even specialized institutions. These must become a priority in order to reverse the current very negative trend (Bloom and Ahmad, 2000, p. 35). The North-South scientific gap is large and growing. This must be reversed. Higher education in the developing world must have access to high-quality laboratory equipment and supplies, well-trained teachers, links with the international scientific community, and access to the global stock of up to date knowledge. This entails significant capital investment for physical and technical resources, human resources, and strategies for scientific development. The problem, though, is that we are brought back to the fundamental challenge for higher education in the developing world – a lack of resources necessary to do what needs to be done.
The problems are well known and well documented. In this section on current trends in higher education in Sub-Saharan Africa we have discussed lack of resources, lack of good governance and lack of local and global relevance. Spain (1992) summarized these issues as follows: enrollments are increasing faster than the capacity to plan for and accommodate this growth; a pattern of higher education expenditures which are unsustainable in many cases; educational quality is declining and universities are becoming less relevant to national needs. The challenges are great, but the need for positive solutions is greater.

2.2.2. The Role of the University in the Task of Development

What is the role of higher education? In the developing world, it is quite clear that the primary function of the higher education system is in nation building and development. Kenya is a part of a collection of countries in the world that are referred to as developing nations or underdeveloped nations. This is a comparative assessment based on primarily economic performance relative to the global community. There was a time when the descriptor for these nations was ‘Third World’. This label was used to describe developing countries in South America, Asia and Africa when the developed west was the First World and the communist countries were the Second World. It would be fair to say that from a global economic perspective, both Asia and South America have made significant advances in recent history. Africa, and particularly Sub-Saharan Africa, has not. In fact, the region has regressed both in absolute terms and especially relative to the progress that has been achieved in the modern, developed countries. To some extent, Sub-Saharan Africa’s economic woes can be blamed on difficult climatic and geographic factors and on the continent’s heavy dependence on the depressed international market. But most analysts of African development agree that domestic policy and managerial inadequacies have exacerbated enormously the problems flowing from adverse terms of trade and poor ecological conditions. Africa is now living with the cumulative effects of nepotism and political patronage, poor management, overprotection of industry, and strong biases against agriculture in price and tax policies (Moock, 1984, p. 223). While there remains considerable challenges there are some recent examples where economic growth is being realized. This is usually reported as a percent increase for the previous years and the percentages are notable. However even this growth, considering how far nations have to go to
move to greater quality of life for all, has limited effect. This section will review various aspects of the development agenda for the higher education sector as a means to provide an extensive background to the research.

2.2.2.1. The Task of Development

It is simplistic to assert that every underdeveloped nation, like Kenya, has as its chief concern the goal of development. Although national leaders would describe their purpose as a government is to facilitate the development of the nation, this is probably more often heralded than acted upon. Critics would suggest that talk of development is simply meant to appease the public, while personal and self interested agendas are in fact the true motivational force of those in leadership. Nevertheless, it is generally agreed that one of the primary tools or agencies for national development is the higher education system. The term development refers to the desires and activity to transform societies and economies into modern ones. Most development theories suggest that there are stages of development and that technological advances explain the different rates that countries move through these same stages. Higher education’s role then is to develop technologies so that they can be implemented in a society and that society can progress to the next stage. Consequently, the universities are regarded as having a vital role in the development of a country (Mosha, 1986, p. 115). Africa is in the midst of crises, plagued by hunger, disease, poverty and a heavy debt burden. Africa must look for solutions from within its own context and institutions like universities must play a leading role in this process. This noble ideal is captured by sentiments such as the following:

The emergent African university must, henceforth, be much more than an institution for teaching, research and dissemination of higher learning. It must be accountable to, and serve, the vast majority of people who live in rural areas. The African university must be committed to active participation in social transformation, economic modernization, and the training and upgrading of the total human resources, not just of a small elite (Sherman, 1989, p. 4).

This lofty expectation is not a recent development, but can be traced to the optimism that characterized the immediate postcolonial era.
In an important conference on higher education in Africa sponsored by UNESCO in Tananarive in 1962, the following expectation regarding the role of the African university in development was stated:

The African university must maintain an unswerving loyalty to the international intellectual community, transmit an appreciation of intellectual values, uphold academic standards, become a center of intellectual mobilization and remain a focal point from which ideas and thoughts radiate. The principles of academic freedom are the basic tenets of university existence without which all true values in the academic community are lost. The African university must, therefore, preserve those principles inviolate, assure their prerogatives and defend them without regard to pecuniary considerations (UNESCO, 1962, p.17).

In addition to its traditional functions and obligations to teach and to advance knowledge through research, the role of higher education in the social, cultural and economic development of Africa must be:

1. To maintain adherence and loyalty to world academic standards
2. To ensure unification of Africa
3. To encourage elucidation of, and appreciation for African culture and heritage and to dispel misconceptions of Africa through research and teaching of African studies
4. To develop completely the human resources for meeting manpower needs
5. To train the ‘whole man’ for nation building
6. To evolve over the years a truly African pattern of higher learning dedicated to Africa and its people yet promoting a bond of kinship to the larger human society (p.19).

This approach is known as the modernization approach to the issue of development, that is, the university is responsible to store and disseminate existing knowledge and technologies (through teaching), develop new knowledge (through research) and have a positive influence in their society (through service). When the university is discussed with regards to its role in development, it is this process that is typically referenced. Alternative approaches such as the under-development theory suggest a number of strategies for development including greater investment in the rural economy, creation of markets in developing countries, integration of social and economic aspects, emphasis on small scale agriculture and encouragement of cooperation and self reliance (Mosha, 1986, p. 117). The modernization approach, though, is
presumed for the purposes of this discussion since it is the common perspective for much of the discussion relating to higher education and development.

Statements regarding the importance of the university in the task of development often note that academic freedom is necessary for the university to effectively play its role in development. Further concepts of development go beyond simple economic terms to include cultural and social values. This is explicitly stated by advocates like Agblemagnon who suggests, “Human rights are the fundamental project and daily inspiration of African universities… all their preoccupations are bound up with human rights” (Agblemagnon, 1984, p. 40). The university is responsible to be the instrument of a new social philosophy as the carrier of the dream of social democracy illustrated by everybody’s equality in the presence of education in general and higher education in particular. These are also lofty and idealistic expectations placed on the African university.

One characteristic of university education in Sub-Saharan Africa, including Kenya, is that it is generally the domain for the elite of the society. University education and membership in the university community is for the privileged. The close relationship between most university systems and the government places the university’s interest and focus as undistinguishable from that of the government - national development through service to the public. It is fair to say that the African university is blessed with the perhaps largest single collection of highly specialized people compared with other sectors of African society. This talent must be used to serve national needs. The fact that many public universities in Africa involve government at the most senior levels of institutional governance provides the mandate for the university to serve society. This opinion presumes that the government is altruistically oriented and that its members that interface with the universities come with that orientation. If the universities are characterized by a strong commitment to public service that is so often cited as one of the main purposes for its existence in society, then perhaps the universities can be a positive influence on government officials it interacts with. “If the university’s own procedures are exemplary, they are most likely to rub-off on to the permanent secretaries who sit on its committees and this in turn may gently persuade those who sit in the corridors of power to live by the precepts the university is attempting to teach” (Husen, 1994, p. 68).
In spite of the problems the contemporary African university faces, it is still expected to play a key role in national development through the functions of teaching and research, and extension or community service. It is expected to promote respect for learning and pursuit of truth and prepare individuals for service by training for high-level manpower requirements, and it is expected to serve as a research and consulting institution undertaking fundamental and applied research. A closer look at each of these two functions, development education and development research, will allow for some assessment to be done regarding the performance of the African university is fulfilling its destiny as a primary agent for national development.

2.2.2.2 Development Education

Development education requires universities to plan and implement programs and projects that are relevant to the national needs. Often development education is linked with humanitarian agendas such as literacy and cultural development. When it comes to higher education in particular, there is a specific defined need for development education in two key areas that shape modern development: globalization and modern technology. “Universities become fundamental tools of development, but in a different way to what used to be proposed by the humanistic approach, in terms of improving literacy and fulfilling the cultural needs of the Third World. Knowledge, particularly scientific and technological knowledge is the key. Universities are the agents upon which the development process must rely” (Castells, 1994, p. 15). The fact that development is dependent on the technological potential of each country has serious consequences since there is a very uneven distribution in the world that places the developing countries at an even greater disadvantage. Development education has as a primary role promoting social modernization and inculcating skills and knowledge requisite for participation in modern economic enterprise.

However, at the same time there are immediate basic and practical developmental needs that must be addressed. Attention must be given to the problems of a country. Julius Nyerere, former president of Tanzania, stated that “the university must endeavor to prepare students to understand society, and know the problems of their country so that it can arm them with the right weapons to engage with the three key enemies – poverty, ignorance and disease – whose
names have become common, but which oppress us more than ever” (cited in Mosha, 1986, p. 117). African universities face a dual challenge. Not only are they to address issues of modernization, they are faced with the responsibility to address the problems of underdevelopment. The educational process must stimulate the student to critically address the needs of the society. The requirement for universities to be actively involved in development seems to be a self-evident truth. There is no way that the university can shun this responsibility. “The African university must be responsive to the dictates of its nation’s development needs. It must educate useful leaders and participants in the development effort” (Husen, 1994, p. 65).

The development university makes the entire university learning experience more relevant to the indigenous culture and the practical problems of development. “Without a thorough knowledge on the rural poor through a scientifically valid situation analysis, agricultural colleges and universities will not be able to effectively participate in the combat of rural poverty and to achieve an impact of some significance” (Hoffman, 1988).

There are many challenges in the pursuit of development education. Current educational practices in developing countries have deficiencies which impact negatively on democracy and development. Problems exist in the area of student enrollment and retention, quality of teaching, the relationship of the curriculum to culture and economic needs, sufficiency of resources, system outputs, inequalities of access or opportunity and the overall relevance of schooling for democracy and development (Woolman, 1997, p.11). It is necessary for policy makers to implement necessary reforms in order to improve access to educational opportunities, realize curriculum reform, find greater relevance, and modernize teaching styles. There are two options for meeting these higher education needs: strengthen indigenous domestic universities, or rely on external resources by recruiting expatriate faculty and administrators or providing scholarships for foreign study. Developing nations have tended towards the first option as the long-term solution and the second as a pragmatic short-term solution. Since the 1970s, focus has been on developing home-based universities to cater for the higher education needs of citizens. The shortage of skilled manpower, the inability to meet the demand and the funding challenges continue to make overseas training a viable option (Moock, 1984, p. 223). Whether a student is trained overseas or locally, he or she can be expected to have little impact on strengthening
national institutions, if provisions are not made for effective utilization of acquired skills (p. 224).

2.2.2.3 Development Research

In addition to development education, development research is an important role that the university can play in order to lead a nation’s development. Long-term solutions to the continental challenges will depend on the accomplishment of research and subsequent design of technologies tailored to the unique situations of the various African countries. The main research challenge is to initiate a coordinated integrated approach and strengthen research capacity in order to achieve developmental goals. The African university was established with heavy reliance on curricula, academic resources and staff from overseas. Little attempt has been made to address the contextual relevancy issue, particularly when it came to research. At the early stages there was also a strong emphasis on ‘standards’, which turned the university into an elitist institution. Africans scholars who were products of these institutions have been unable to re-conceptualize the model into one more relevant for Africa’s development needs (Rathgeber, 1988, p. 400).

Once the universities were established, research became an understood function. During the colonial times most of the research that was conducted was geared to the immediate needs of supporting the plantation economies. This resulted in an emphasis, for example, on agricultural research on cash crops rather than the more widespread needs of subsistence food production by individual family units. As the university based research role grew, independent NGO sponsored research diminished. This latter form of research often was more practically focused. After independence, these groups disappeared as a consequence of lack of funding, occasionally being replaced by international agencies. The end result is that “African governments, international research centers and African universities all participate in scientific research but each has a different set of priorities which are not necessarily complimentary” (p. 402).
Rathgeber (1988) cogently summarizes the reasons why the research findings generated by the African university have not been taken seriously by the governments, those primarily responsible for national development:

1. *The university – government dichotomy*

   Relationships between African academics and policymakers can be best described as mutually suspicious. There is little formal interaction. African academics have tended to maintain a certain degree of detachment from government as a survival strategy. The combination of the uncertain political scene and the fact that much of the research done actually paints policymakers in a negative light make the relationship perilous.

2. *The elite – mass dichotomy*

   There is a significant and growing gap between the researchers and the intended beneficiaries of the research. Researchers rarely involve in their efforts the grassroots of their society. They have become part of the elite and are increasingly separated from on the ground realities. In light of the tremendous needs in Africa this type of separation is not acceptable.

   A particular example of this disconnect between the elite and the mass is the area of agricultural research. Given the dominant agrarian nature of typical African society this is an area that bears special attention. While the universities are the leading science producing institutions they are not well integrated into the agricultural sectors of the economies of most African countries. Research is done but there is little chance that research findings will be implemented. Attempts to assist small scale farmers has had limited success because:

   a) university researchers are entrenched in the elites of African society and have lost contact with their rural origins
   b) research is carried out by male researchers but most of the small scale farmers are women
   c) little effort is given to diffusion of research results
   d) government funding for research is geared towards cash crops
   e) African researchers prefer to make contribution similar to the research being carried out in the western research framework (p. 403).

   The development university should make the entire university learning experience more relevant to the indigenous culture and the practical problems of development.
3. Sources of Research Support

The greatest issue affecting university-based research is funding. This is true for all aspects of a university’s operation, not just research. The university infrastructure is grossly under-funded. African governments give little attention to university needs and outcomes. Universities are under great pressure to compete for scarce resources in order to fulfill their two roles of human resource development and research. They are continually dependent on external funding (Rathgeber, 1988, p. 397).

Essentially there is little articulation between policy and research and so there is a disconnect between the state and university research. This is an outcome of the fact that when the universities were established, they chose not to be practically focused and work to solve the immediate problems of development, but instead followed the traditional ‘metropolitan’ detached scholarly analysis approach (p. 398).

2.2.2.4. Limiting Factors

The role that the African university is called to play, in the development process, through education and research is clear. The expectations are high and the need is great. Unless certain limitations that have been recognized based on the performance to date in this area are addressed, one cannot be overly optimistic about the potential for the higher education sector to have much impact in the future. There are multiple contributing factors. Consider this list:

- Slow incremental changes have been made
- Most universities are embryonic
- Inherited colonial models are yet to be dismantled
- Not enough emphasis has been given to severing dependence
- Academic staff are recruited from many different countries
- Tribalism and other prejudices are extensive
- Education has been irrelevant to the objective need of society
- Dependence on external teaching and learning materials (servitude of the mind)
- Lack of contextualization, i.e. little modification for cultural characteristics
- Insistence on examinations and rote learning
- Undue influence of external accrediting/examiners and expatriate staff
- Acute shortages of resources
- Political interference with little regard for academic merit (Mosha, 1986, p. 119).

This list is not exhaustive. For the sake of summary, the factors that limit the African university from an effective role in development may be considered under three general areas: capacity, priorities, and politics.

Progressive higher education advocates often cite capacity limitation as a key limitation. Virtually every institution would like to have more money and better-qualified personnel in order to fulfill its mission. However, it does not take much analysis to conclude that African higher education is grossly under funded and limited by untrained professionals at many levels. Adequate funds and trained professionals are necessary for the systems to have the capacity to fulfill the development expectations discussed earlier. There is a shortage of human resources – a lack of qualified professors and researchers working as a cohesive unit. Some commentators are very direct on this topic suggesting that there is a serious lack of leadership. “The characteristics [of university leadership] are basically backwardness and perpetuation of colonial mentality that works against any original indigenous idea – thus making innovation of the system almost impossible” (Husen, 1994, p. 70). There is inept managerial and administrative staff – partly a product of government appointments and/or the sensitive roles that administrators are asked to play. They need to recognize that objectivity and merit are true reflections of democracy and avoid nepotism, patronage and totalitarianism (Mosha, 1986, p. 120). There is an acute shortage of highly qualified indigenous professionals with the skills that are critical to devising and carrying out effective strategies for national development (Moock, 1984, p. 220).

Continuing on the topic of capacity, there is a shortage of material and financial resources and hence inability to secure up to date textbooks, essential journals and apparatus, equipment and chemicals for experimentation. A critical capacity issue is technology. For
technology to impact the development process in a meaningful manner the following elements are required:

- adequate communications and telecommunications at the world level
- an integrated productive structure where supplies and markets operate at a similar technological level
- a skilled labor force of workers and technicians able to reprogram their skills continuously in order to adapt to the fast pace of technological change
- a research system able to assimilate the discoveries taking place in the most advanced areas of the world
- an institutional system able to establish the link between scientific research, technical applications, and the training of the labor force in the context of technology transfer

Without the fulfillment of these conditions it is very difficult to sustain a process of technological development that will be assimilated by society (Castells, 1994, p. 24). This fundamental incapacity when it comes to technology means that the quality of education has deteriorated. The following quote from an African professor describes the challenge:

For several months now we have been expected to run a physics laboratory without electricity, perform biology and zoology experiments without water and get accurate readings from microscopes blinded by use and age. Chemicals are unimaginably short. The result of all this is a chemistry laboratory that cannot produce distilled water and hundreds of science graduates lacking the benefits of practical demonstration (Van den Bor and Shute, 1991, p. 4).

It is clear that institutions of higher education are critical in the process of technological development. They must provide the labor force that is necessary for the process of technological transfer and technological development (Castells, 1994, p. 25). However, to do this extensive capacity building within the university itself must occur.

A second area that limits the university from playing a meaningful role in development is the issue of priority. There are competing agendas when it comes to establishing the mission of the university. African universities are like universities worldwide in that they are committed to disinterested pursuit and advancement of knowledge.

The African University is a product of the modern world, yet the environment which inherited it is largely traditional, pre-industrial and agrarian. A product of the Western
world, the African university was born a stranger to its own environment, and its main links were with institutions that were strangers to this environment and with the countries to which those universities belong. Thus the African University became heir to a dual setting – the traditional African environment in which it was to be rooted and the modern Western sector from which it received its orientation (Sherman, 1990, p. 371).

The African university is expected to be a force both in modernization and technological advancement, while at the same time being charged to preserve traditional culture and pride in Africa’s heritage. Often what ends up happening is westernization without modernization i.e. western lifestyle without the scientific and technological skills for modernization (Sherman, 1989, p. 7). Commentators such as Sherman argue that the African university needs to become more closely related to the traditional environment, for in it are embedded the roots of African culture and civilization. It must also forge ahead as a primary agent of modernization. “The African university has the twin responsibility of fostering cultural development and achieving modernization” (Sherman, 1990, p. 373). Perhaps it is the failure to address the necessary issue of cultural development in a manner that includes the attachment of traditional Africans to the land, fostering African languages, and emphasizing African values such as family solidarity, group cohesiveness, cooperation and social commitment and the role of women, while pushing ahead with modernization, that has resulted in the inability of the university in Africa to integrate herself into the life of the continent (p. 374). These demands and competing agendas are a tension that can stall the university from fulfilling its developmental role. What is to be developed? The embracing of the increasingly western dominated modern global technological world or the recapturing of those values that make Africa what she is and diligent avoidance of any economic, cultural, intellectual and psychological dependence. Can modern national development take place concurrently with the task of fostering cultural development in order to fend off Western and Islamic cultures? (Sherman, 1989, p. 5) It is noteworthy that only a few African universities have attempted radical reforms in their curricula to be more relevant and contextual, or severed relations with western universities in order to develop independent and more relevant programs (Mosha, 1986, p. 129).

A third limiting factor is the issue of politics. The lead role of government in African higher education is clearly established. “The general view was that whatever the position in the more developed countries, the university in Africa occupied too critical a position of importance
to be left alone to determine its own priorities. The university is generally set up on the initiative, and at the expense, of the government to meet certain objectives. The government, by virtue of its position of leadership in the task of planning and execution of economic and social programs, seems the best placed to determine the priorities of the university. The African university should, in normal circumstances, therefore, accept the hegemony of the government” (Husen, 1994 p. 81). The lack of university autonomy, which may extend to limited academic freedom, places the African university in a context where it is highly influenced by the turbulence that naturally occurs in the political arena. In general it can be said that there is not a mutually beneficial relationship between the state and the university. In many countries there is an ongoing and necessary process of political reform, but even this produces an atmosphere of instability. The tensions are felt at the institutional level. “African universities can not teach freedom of thought and inquiry, concepts of democracy and egalitarianism and encourage originality and initiative when incongruities with these principles and concepts abound in the environments in which the institution functions and the students live” (Sherman, 1989, p. 9).

Universities in the developing world have to cope with severe problems originating from both national policy conditions and institutional weaknesses. They are not in a condition where they can be seriously regarded as an instrument for development, yet they are considered to be of prime importance (Van den Bor and Shute, 1991, p. 2). Despite the surge in university education in the 1960s and 1970s, contemporary Africa is experiencing economic stagnation, mass poverty, high illiteracy, disease and low productivity in agriculture. The challenges are great and the expectations are high. Presently it appears that the African university is failing in meeting its expected role of national development, albeit for a variety of significant internal and external limiting factors.

Universities in the developing world are making dramatic progress in quantitative terms but are still unable to perform their developmental function. If developing world countries are also to enter the information age, rejecting an increasingly marginal role in the world system, developmental policies must include the impulse and transformation of higher education systems (Castells, 1994, p. 34). Higher education has had little impact in taking a leading role in the educational system because universities are relatively young, they are primarily teaching
institutions, they are severely under-funded, and they are too far removed from society. The critical question though remains that of motivation and intention. If it is true that above all, institutions of higher learning do not have the political will to bring about major renovations in their societies” (Husen, 1994, p. 77), then there will not be any realization of the African university playing an effective role in development. The following steps have been recommended in order to help address this problem:

1. Improve quality by addressing learning needs, e.g. curricula, libraries, equipment, facilities; however, personnel needs must also be addressed.

2. Increase efficiency through reduction of unit costs, i.e. train more for the same money; however, this is not just an administrative exercise but must include a comprehensive understanding of the situation.

3. Constrain output by selecting to train only in areas where there were viable employment opportunities; however, the social and market demands as well as diploma disease will make this very difficult to do without major opposition.

4. Expand cost sharing through greater privatization; however, this may contribute even more to the social polarization that is present (Van den Bor and Shute, 1991, p. 7-9).

2.2.2.5 External Stakeholders in Development: The Donor Community

An important factor in the role of higher education in the task of development has been the relationship and experience with external sponsors of development. The donor community has been a stakeholder in the development of higher education in Sub-Saharan Africa. The chief agent in this regard has been the World Bank. This section concludes the discussion of the university’s role in development and will look at the World Bank’s involvement in funding higher education in developing countries in Sub-Saharan Africa, particularly Kenya. The choice to focus on the activity of the World Bank is because it has been engaged for an extended period of time in the region and has a broad scope in its support of development in the education sector.

The donor community came into its role in the region with the emergence of the newly independent countries at a time when these countries required capital for development including development of educational systems. In the first decade (mid 1960s to 1970s), priority was
given to secondary and tertiary education. This was for three reasons. First to create a high-grade national elite that would guarantee the immediate future of the newly independent nations and more importantly replace the upper and middle level foreign personnel who were directing administration and commerce. The second reason for this focus was to reach targets set for economic growth. This required qualified and technical personnel, which the higher education system could deliver. The third reason was to respond to the irresistible pressure from the citizens that long denied higher education be made available through expansion (Sifuna, 1983, p. 482).

Developing countries spent a significant amount in education to strengthen their national capacity for scientific knowledge and thereby improve economic performance, and to create and preserve a sense of national cultural identity (p. 481). Although the World Bank generally provided loans for projects that showed economic rates of return, the diversity of its lending reflects a concern for strengthening all aspects of human and social development (p. 482). There were five broad principles that guided educational lending during this first decade: expansion of basic education, reduction of educational inequalities, cost effective improvements in the transfer of knowledge, provision of required manpower skills, and development of national analytic capacities in management and administration (Habte and Heyneman, 1983, p. 482). The donor community’s educational lending policy during this first decade was influenced by various policy directives including the “Report of the Conference of African States on the Development of Education in Africa” (Chinapah, 1989). The themes of this conference were greater educational opportunities, academic reform, and the need for skilled manpower. In 1963 a subsequent meeting was sponsored by UNESCO under the auspices of the Economic Commission for Africa and held in Paris. There was also a related conference in Tananarive on the Development of Higher Education. These meetings were held to implement the agreed upon themes from 1961. In Kenya in 1963 the Ominde Commission surveyed the existing educational resources in Kenya and advised the government, and the donor community, in the formulation and implementation of national policies for Kenya. This commission recommended secondary, technical and higher education as areas of priority since the key posts of national life required such preparation. The cumulative effect of these summits and reports guided the World Bank and other donors to direct funds to higher education. During this period donor assistance was applied to secondary and higher education. This assistance came in the form of direct funding
for institutions, grants for overseas training of personnel and placement of foreign personnel to the extent that by 1970 expatriate staff was close to 70%.

The main criticism of the aid received during this period was that it tended to magnify and perpetuate the educational system that had been established during the colonial period. Many were concerned that donors seemed intent to diffuse their own culture, and secure economic gains. It was suggested for example that this tendency prevented Kenya from achieving true political and economic independence. The lack of qualified indigenous planners necessitated heavy reliance on expatriates and the building of an indigenous organizational capacity was miserably slow (Sifuna, 1983, p. 485).

A notable shift in emphasis occurred in the 1980s. In the 1960s and 1970s the assistance provided focused on establishing universities and training local staff and much of the funding was directed towards higher education. In the 1980s donor support shifted to primary and secondary education for two reasons. The expectation was that local universities would receive greater funding support from the state. It was also becoming increasingly clear that equity goals could not be achieved through higher education unless the primary and secondary systems were in good health and serving the broad needs of society. By its own analysis, the World Bank determined that educational funding policies were not working and the desired effect was not realized. After the first decade, donor documents indicated a significant shift from higher education and technical training to basic education for all, especially the long held goal of universal primary education. “The need for basic education and democratization of educational opportunities to enhance socioeconomic development were emphasized” (p. 489). The ideals of this second phase of developmental assistance would prove to be similarly dissatisfying. “The proposal that reform be undertaken through basic education and rural development is quite sound, but little has been done. There are many documented examples in Kenya where Africans opposed rural education because they saw it as a calculated move to keep them ‘down on the farm’ or saw it as a way of blocking and foreclosing their opportunity for advancement into the modern sectors” (p. 491).
With the reduced funding for higher education came careful analysis of how the funds that were to flow to this sector should be used and what the desired outcomes should be. In the years that followed, several policy documents and research reports were published to describe conditions and objectives for World Bank higher education funding policy.

The following section provides a summary analysis of the major publications produced by the World Bank since 1980, with a particular focus on their relation to higher education in Sub-Saharan Africa. In some cases follow up comments and analyses of these reports are noted.

1. *Financing Education in Developing Countries*

   This report was produced in 1986 by Psacharopoulos, Tan and Jimenez. The main contribution of this publication was the suggestion of three financing policy options that should be considered for developing countries. First, recovering some of the public cost of higher education and reallocating the resources towards the primary education (where social rates of return are higher). Second, establishing a credit market (student loans) together with selective scholarships for higher education, and third, decentralizing the management of public education while at the same time expanding the private sector (Psacharopoulos, Tan and Jimenez, 1986).

2. *Education in Sub-Saharan Africa: Policies for Adjustment, Revitalization and Expansion*

   This World Bank publication presented a major reassessment of education in Sub-Saharan Africa. “The Bank which had lent funds for educational programs in Africa, was interested to know why progress had fallen short of expectations, particularly when Africa was compared to many Asian nations and Latin American countries” (Eshiwani, 1989, p. 93). Indigenous education among all groups was regarded as an important transmitter of cultural identity from one generation to the next. The report suggested that the education systems inherited by African nations at the time of independence were inadequate to meet the needs for self-governance and rapid economic growth. While some progress had been made, the main challenges were the stagnation of enrolment growth while population growth continues, and the erosion of quality. Countries were urged to develop comprehensive educational policies to provide a framework for the donor community. These policies should be characterized by adjustment, revitalization and selective expansion.
Adjustment referred to diversifying sources of finance for education (cost recovery and privatization) and the need for unit cost containment (efficiency). Revitalization referred to the restoration of quality through a renewed commitment to academic standards, restoration of an efficient mix of inputs in education (textbooks and resources) and greater investment in facilities and operation. Selective expansion, which could only be addressed once the other two areas were dealt with, referred to progress towards universal primary education, distance education (alternate delivery methods), training for those who had already entered the labor force, research and post-graduate education. The report noted that higher education’s contribution to development was limited because of four inter-related weaknesses: Higher education was producing too many graduates from programs of dubious quality and relevance and generating too little new knowledge. Secondly, there were clear signs that the fundamental effectiveness of the post-secondary institutions was doubtful. Third, the costs of higher education were needlessly high and finally, the pattern of financing education is socially inequitable and financially inefficient. It was recommended that further support from the donor community should be targeted to assist in the development of educational policy, facilitate greater interaction and collaboration among countries, and provide high quality specialized technical expertise. Beyond its assistance in policy design, the international donor community (World Bank) should help finance the implementation of sound programs. “Greater investment at this time can be expected to yield broad economic benefits” (Eshiwani, 1989, p. 103).

The 1988 report generated a variety of reactions. Some were positive and affirmed the essence of the report. “There will doubtless be negative reaction to the study from those academics or African leaders who feel that any policy document emanating from the World Bank must be viewed as another sinister attempt to establish educational hegemony and coerce Africa states to pursue policies contrary to their true interests but I have little time for such posturing. This is essentially an advisory document that African governments are free to reject but, if they do so, then they are bound to come forward with realistic alternative strategies, and I believe that realism is not a highly prized commodity in contemporary Africa” (Eshiwani, 1989, p. 105). Similar sentiments were expressed regarding the amount of political influence brought to bear on the higher education sector in these countries.
Africa’s present difficulties are not primarily due to a shortage of educated manpower, nor indeed, to deficiencies in educational quality, substantial though these may be. Nor are they overwhelmingly the result of recent natural catastrophes, rising oil prices, or the self-serving interests of the developed world. They are often the consequence of self-defeating economic policies pursued largely for short-term political reasons. These policies which have favored existing and largely urban elites at the expense of the rural masses, have included strategies involving a degree of centralized planning far beyond the capacity of governments to implement them, the maintenance of unrealistic exchange rates, the control of food prices that benefit politically volatile urban minorities rather than the rural majority and a consistent favoring of the public over a market driven private sector (Eshiwani, 1989, p. 106).

George Eshiwani, a prominent Kenyan educationalist, further suggested that not enough attention was paid in the report to the economic hardships being experienced in the region and encouraged the World Bank to consider direct support of recurrent costs such as teacher salaries if it wanted to see an immediate benefit. He commented on the implementation of the major themes of adjustment, revitalization and expansion and then proceeded to suggest twenty-six specific policies to address the educational issues in Kenya and bring about the desired reform (p. 121).

Chinapah (1989) notes Wright’s extensive analysis of the 1988 World Bank study and argument that the study had several shortcomings including controversial interpretation of data.

Thus the bank mentions strategies for protecting disadvantaged groups from the worst effect of its recommended cost sharing methods in education, but fails to address the issue of how to prevent such laudable intentions from being thwarted by the manipulations of powerful interest groups. The Bank can rest assured that the worst effects of its cost sharing measures in education will somehow be passed on to the weakest socio-economic groups, thereby reversing the hard won gains in the democratization of educational opportunities (Chinapah, 1989, p. 9).

3. Why Educational Policies Can Fail: An Overview of Selected African Experiences

This publication by Psacharopoulos provided a critical overview of education policies and their implementation in Sub-Saharan Africa by looking at the experiences of eight different countries in the region. The focus of the analysis included educational policies and their implementation for all levels of education. Reference is made to the state of implementation of
the 1961 educational policies developed at the UNESCO conference of African States and the Development of Education in Africa conference. Reasons for the non-implementation of these policies were noted as neglect, incomplete implementation or implementation but failure to achieve the desired result. The recommendations from this analysis were that future educational funding policy must be concrete, achievable and based on research proven cause-effect relationships (Psacharopoulos, 1990).

4. *Comparative African Experiences in Implementing Educational Policies*

This paper by Craig also looked at the implementation of education policies in Africa. Policy implementation was noted as being of great importance so that in the end any educational policy could be seen to reach its intended goal. An exhaustive review of literature regarding policy analysis provided a strong theoretical basis for the discussion that followed on the variables that affect policy implementation: the policy message, political factors, resource constraints, the bureaucrats, the administration, and the client populations (Craig, 1990).

5. *Implementing Educational Policies in Kenya*

This publication by Eshiwani is one of eight in-depth studies for the following countries: Ethiopia, Kenya, Tanzania, Lesotho, Swaziland, Uganda, Zambia and Zimbabwe. Kenyan educational policy objectives were briefly analyzed against four national development plans and various educational policy reports. Kenya was reported to have demonstrated tremendous success in implementing policies related to universal free primary education, expanded schooling and the restructuring of the school system. Eshiwani suggested, though, that the desired educational reforms had not been fully realized. For example the number of primary graduates that continue their schooling was seen to be too low (less that 60%), nor was there sufficient high-level production in the area of science and technology (Eshiwani, 1990).

6. *Universities in Africa: Strategies for Stabilization and Revitalization*

This publication by Saint presented various recommendations to address the perceived crisis of quality, relevance and finance that exists in higher education in sub-Saharan Africa. It built on the 1988 policy study but focused exclusively on the higher education sector. In addition to reinforcing the policy directives coming out of the 1988 document, it highlighted the
efforts taken by various institutions and jurisdictions to actualize the reforms and identified the challenges that could be expected. To address the principal issues of African higher education (quality, relevance, financing, efficiency, equity and governance) the following recommendations were made:

- Managing the social demand for higher education would be best achieved by expanding access through a differentiated higher education system, composed of public and private institutions with diverse missions, that offers students a range of choices and study regimes, and by controlling access to this system through the use of competitive entrance examinations.

- In order to increase access, maintain standards of educational quality and insure institutional stability, universities should diversify their financial bases, particularly through cost-recovery for non-academic services, the introduction of targeted fees, and a calculated expansion of income generating activities.

- Universities should seize the initiative in order to achieve their own stabilization and revitalization. This could be done by each university undertaking an institutional self-study to update their mission statement that could then be used to build the internal and external consensus needed to undertake reforms.

- Greater autonomy from government, particularly in financial administration, would be required by universities if they desire to become more entrepreneurial, and if they were to provide the incentives necessary to encourage quality performance and management efficiencies.

- Universities should invest in themselves if they were to remain viable centers of higher learning; this means that they should provide yearly budget allocations for educational materials, library acquisitions, research, staff development and the maintenance of buildings and equipment.

- More professional management at all levels – through staff training, strategic hiring and computerized management information systems – was suggested as the best short-term strategy for freeing resources (through improved efficiency) to meet university needs.

Saint suggested that the most useful role for the World Bank was to support the development of long-term institutional building strategies. Activities consistent with this approach include the preparation of updated mission statements, efforts to strengthen and professionalize
management, institutional linkage arrangements to bolster particular departments, and research on higher education policies and performance. In settings of acute institutional deterioration, donors should consider contributions towards recurrent costs, particularly for education inputs, library acquisitions, equipment and building maintenance, and efficiency enhancing operating expenses (Saint, 1992).

7. The World Bank’s Role in Human Resource Development in Sub-Saharan Africa

This publication by Ridker (1994) contains a section that specifically addressed higher education and its contribution to training and human resource development. The report included tables showing educational achievements and expenditures for each country in the region. The general summary was that the failure of the educational systems to expand without loss of quality has been shrinking budgets, increased expenses and inefficiency. It was noted that the fundamental reason why Africa remains heavily dependent on foreign experts is because the higher education systems have not produced the personnel to replace these experts (p. 61). Quality of education was described as poor due to the rapid increase of enrolments in non-science disciplines, budget cutbacks and the high operating costs (a consequence of internal inefficiency). Low student teaching ratios and large teaching staffs were noted as further contributing factors. Universities have responded to the pressure to increase access by inflating enrolments in the arts and humanities. Ridker commented that World Bank investment in African higher education had been low. The World Bank had allocated only 11 percent of its higher education allocation to higher education in Africa. The low investment of late was because of the feeling that African universities were spending too large a portion of their budget on low priority subjects and activities. This position was reinforced by publication of a study that indicated that the rates of return on donor funds were lower for higher education than other areas (secondary and primary). However, the conditions of the African universities had deteriorated so much that the choice to not invest in African higher education needed to be reconsidered. Funding that might be once again directed to higher education should follow the recommended directives: programs that promote cost sharing, facility and equipment upgrading and privatization.
8. Higher Education: The Lessons of Experience

This work published in 1994 is comprehensive and specifically analyzed and made recommendations regarding the World Bank’s investments in higher education. The paper was the third in a series with the other two focusing on primary education and vocational and technical education. Much of the report was directed to the conditions of higher education in developing countries of Africa. This discussion followed comparative comments regarding enrolment ratios in developed and developing countries. Higher education in developing countries was described as being in a crisis, heavily dependent on government funding during a time of fiscal constraint. Consequently the quality of higher education was reported to be deteriorating. In Sub-Saharan Africa the per-student expenditure had decreased from about $6,300 to $1,500 for the period 1980 to 1988. This was not a product of efficiency as in the same period the quality of teaching and research had notably deteriorated. “In these countries higher education institutions are required to operate under adverse conditions: overcrowding, deteriorating physical facilities, and lack of resources for non-salary expenditures such as textbooks, educational materials and laboratory consumables and maintenance” (Salmi, 1994, p. 2). Higher education in developing countries was seen to be characterized by low student staff ratios, underutilized facilities, duplicative programs, high dropout and repetition rates and a very large part of the budget devoted to non-educational expenditures (e.g. subsidized housing). In contrast, higher education in developed countries seemed to have responded to the public fiscal challenges though innovative initiatives. The solution for Sub-Saharan Africa would not be greater public investment in higher education, especially where access and equality have not been achieved at the primary and secondary levels. Clearly quality would have to be achieved without any increase in public funding. The lessons of experience of higher education in developed countries were documented to show how developing countries can achieve goals of greater efficiency, equality and equity in higher education. Four key directions for reform were outlined: a) encouraging greater differentiation of institutions including the development of private institutions, b) providing incentives for public universities to diversify sources of funding including cost sharing with students and linking government funding closely to performance, c) redefining the role of government in higher education and d) introducing polices explicitly designed to give priority to quality and equity objectives (p. 4). Each of these reforms were extensively discussed and advocated. The implications for the World Bank were
that any future investment should only be directed to sectors where these reforms were being actively pursued by policy makers in developing nations.

The publication *Learning from Experience: Policy and Practice in Aid to Higher Education*, edited by Buchert and King (1995), provided a complete collection of responses. This monograph contained fourteen papers stimulated by the 1994 World Bank paper on higher education. The discussion was generally a very fair critique of the recommended reforms and the expected call for greater precision of the substance of these reforms. Perhaps the most interesting question raised was that of the fundamental philosophical underpinning of the proposed reforms. Commentators pointed out that the writers had leaned heavily on the educational ‘best practices’ and experience of developed countries in coming up with a set of reforms for higher education in the developing world. One commentator asked the question “What lessons? Whose experience?” (p. 117). It may be pure speculation that reforms developed in a completely different context would be constructive in the volatile context that is the developing world.

9. *Peril to Promise*

The Task Force on Higher Education in Developing Countries convened by the World Bank and the United Nations Education, Scientific and Cultural Organizations published its work *Higher Education in Developing Countries: Peril and Promise* in 2000. This report is a significant contribution for the understanding of the current situation of higher education in Sub-Saharan Africa. The focus of the report is around three core questions: “What is the role of higher education in supporting and enhancing the process of economic and social development? What are the major obstacles that higher education faces in developing countries? How can these obstacles best be overcome?” (Bloom and Ahmad, 2000, p. 91) These critical questions are handled by a comprehensive investigation on the experience of higher education in developing countries guided by the following topics: Longstanding Problems and New Realities; Higher Education and the Public Interest; Systems of Higher Education; Governance; Science and Technology; and The Importance of General Education.
Higher education is seen to be fundamentally important to the task of development because of the contribution it makes to income growth, enlightenment of leaders, expansion of choice for individuals, and development and increase of relevant skills necessary for development (p. 92). Unfortunately the contribution of higher education in developing countries has been disappointing. The reasons (‘major obstacles’) for this failure as identified by the Task Force are: absence of vision, lack of political and financial commitment, conditions of initial disadvantage, and the disruptions of globalization (p. 94). The recommendations provided to address these obstacles fall into two broad categories: those that are an effort to increase resources and those that are an effort to improve efficiency. Several specific recommendations are made along these lines (p. 95). The report concludes by guiding donors regarding investment policy and suggests that the donor community would do well to support programs that catalyze self-reliant sustainability in higher education systems, provide international public good produced as a consequence of research efforts and promote equity within and between countries.

For this reason the Task Force urges policymakers and donors – public and private, national and international – to waste no time. They must work with educational leaders and other key stakeholders to reposition higher education in developing countries. Only then will it produce larger and better trained pools of graduates and research of higher quality. The chance is simply too great to miss. (p. 97)

Summary and Conclusion:

Universities in the developing countries of Sub Saharan Africa received significant resources from donor agencies such as the World Bank. Generally speaking, in the years immediately following independence this assistance focused on establishing universities and training local staff. In the 1980s donor support shifted from higher education to primary and secondary schooling with an understanding that the higher education sector would receive greater funding support from the state. This funding was not forthcoming and the ensuing funding crisis for the sector contributed to compromise in the quality of education delivered. Donor support for higher education may once again be available; however, the effect of the present mode of assistance is seen by some to be negative. This is due in part to: donor retention of fund management control rather than using the financial systems of African universities, donor retention of procurement rather than rebuilding university procurement capacity, insistence on reporting timetables that are not integrated with university timetables, complex
monitoring and evaluation systems, insistence on individual project reports rather than collective institutional reports. For things to improve donors must be committed to ongoing institutional reform and great sensitivity to the institution’s own strategies and management practices. “The next few years are crucial for the future of African higher education, and the nature of donor-university relations may be a key to that future. Donors cannot coordinate themselves. Donor acceptance of coordination is essential if Africa is to ‘think out’ its own course and model of development” (Wield, 1997, p. 53). Education systems in Sub-Saharan Africa still seem to require donor assistance due to the demands of population and the under-developed educational services. Economic and financial difficulties limit state resources for education. At the same time, efficiency (better use of existing resources) and new sources of funding are required. Donor assistance is appropriate since there are clearly continuing financial constraints and education is an economic investment that has long-term effects for development. This investment is particularly needed in a time of crisis in order to contribute to the reestablishment of adequate economic growth. Unique country specific solutions need to be found as there is no single solution. Regrettably much of the potential donor investment has been withheld of late over concerns regarding corruption and mismanagement. Donor agencies are in the process of working with governments in order to establish terms for the provision of donor assistance, a process that some African commentators describe as neo-colonialism. This tension has effectively stalled many worthy development projects.

2.2.3 Historical Development of Higher Education in Kenya

The specific focus of this work is the role of the Commission for Higher Education in Kenya, East Africa. The current situation for higher education in Kenya is a consequence of a variety of factors that have impacted not only that country but also the region as a whole. There is a significant amount of shared experience and history in the broader region commonly referred to as Sub-Saharan Africa. Before narrowing the focus to Kenya it is helpful to capture a general sense of understanding regarding the history of the development of higher education in the East Africa region in particular. The purpose of this overview is to introduce the key themes and developments that have had a bearing on the current state of affairs. What follows is not a
comprehensive historical analysis of the history of higher education in this region. Rather, it is a good summary of what has taken place since the beginning of colonialism and, where applicable, the legacy and lasting affect of events and decisions that form part of the historical record. This historical review is divided into two distinct periods: the colonial years and post-colonial or independence years.

2.2.3.1 The Colonial Years

The historical development of any social institution in Sub-Saharan Africa is dramatically affected by the colonialism that the region experienced. The scramble in East Africa by the then dominant western European powers, England and Germany, began as early as the late 1800s when the Sultan of Oman offered the region to an entrepreneurial British businessman. By 1891 boundary lines of demarcation were drawn and in 1895 the Protectorate of British East Africa was established. The British set about settling the territory moving from the coastal regions inward by building a railway from Mombasa to Lake Victoria during the years from 1896 to 1901. By 1912 under the leadership of Lord Delamere, the Protectorate was paying its own way on the basis on a mixed agricultural economy. In 1920 the white population had grown to around 9000 and the territory was designated the Colony of Kenya. Colonial rule continued until the granting of independence in June 1963. This followed the independence movement that was led by Jomo Kenyatta, the man who was to be asked to lead the government of newly independent Kenya.

There are few records describing the experience of higher education in East Africa under the colonial rule of England but perhaps the most comprehensive work is Eric Ashby’s analysis Universities: British, Indian and African. In this benchmark work Ashby provides a detailed history of British colonial education. Prior to colonization indigenous education was provided by the extended family and served the need of that community with focus on character training, instruction in crafts and duties to the community (Nwauwa, 1996, p. xiii). Parts of Africa (e.g. Egypt and Morocco) have had a long history of higher education before the colonial powers came to the continent but the modern African universities have no relationship to this heritage. The modern African universities are rooted in a system brought from the west (Ashby, 1966, p.
Early colonial education had three goals: converting the people to Christianity, making them intelligible to the Europeans and civilizing their way of life (Nwaura, 1996, p. xiii). In Kenya the missionary movement in the first decade of the twentieth century had tremendous impact on the development of the educational system. The scramble for influence by the various church agencies resulted in the establishment of formal western schooling. The colonial administration responsible for the region established a department of education in 1911 and so the first official schools for Africans were begun.

In 1918 the government and the various mission agencies agreed to form a partnership in the area of education. This was motivated by a shortage of resources. The government supplied land and sometimes buildings while the missions supplied staff, buildings and some of their own money (Eshiwani, 1993, p. 16). In a short while there were African schools, Asian schools and European schools. The quality of education among these levels was drastically different with the best educational resources and services reserved for the privileged Europeans while the African schools were left to flounder. "The colonial education was not only segregative, but also exploitative. After realizing that the colonial government, under the influence of the white settlers, was not ready to change and develop the education system for the benefit of all races, Africans started questioning the existing education system and demanding that it should be made beneficial to them" (p. 17). The stratification of colonial education into European, Asian and African, in that order of superiority, was an offense to the Africans. They were also against the constant attacks on their traditional way of life. One of the responses was that Africans began to establish their own independent schools, which were run for Africans by Africans. Eshiwani feels that the impact of this school movement was 'great'. "The schools demonstrated the African's dissatisfaction with the colonial education and the need for proper educational development in Kenya" (p. 18). More important was the symbolic message that was sent, namely that Africans could organize themselves, a step towards socioeconomic and political independence. It is noteworthy to point out that early in the genesis of Kenyan education, post independence, the focus was utilitarian. "Immediately after independence, emphasis at all levels was on academic subjects rather than practical skills. Parents and school goers saw education as a tool to equip the youths with a certificate which would lead them to social and economic advancement" (p. 30).
The experience of educational development in East Africa was part of a much wider legacy of colonialism. The common center was British imperialism and even though the locations varied, much of the policy and strategy was the same wherever the colonizers chose to settle. Central to understanding the dynamic forces at play is realizing the objectives and purposes for education of the colonial policy makers. There was no urgency in the early colonial years to establish any expression of higher education in the newly settled territories. Although the British government had begun to express policy directions for colonial higher education in the early part of the twentieth century, colonial leaders and the Colonial Office were generally opposed to this idea prior to 1948. British officials were expected to carry out the mandates of the Colonial Office and it was up to the officials in their local context to comply with orders. In fact the eventual British establishment of universities in tropical Africa in the 1950s followed almost a century where the British had systematically ignored demands by educated Africans for the provision of university education (Nwauwa, 1996, p. xi). When initial attempts at higher education were undertaken the purposes and motivation for these were quite specific.

Just as in India the decision was to train a ‘class of persons Indian in blood and color, but English in tastes, in opinions and in intellect’, so in Africa the decision was to give the Negro an English education. The only difference was that in India the decision was taken deliberately, after a period of fierce controversy, whilst in Africa it was taken instinctively, on the assumption that no other course was open” (Ashby, 1966, p. 148).

This ethnocentrism was combined with the pragmatics of governance in the colony and the practice of indirect rule. Indirect rule was the identification, selection, training and establishment of indigenous leaders that would serve to carry out the technical matters of governance and control, working with a steadfast loyal commitment to the colonial state and its agents. “Clearly the history of higher education in the British territories of Africa is one of delay and neglect. This is a result of a combination of racism, where Africans were regarded as primitive and backward and hence there was no urgency for education, and the impact of indirect rule, which encouraged cooperation with a traditional elite rather than the creation of talented able and educated young indigenous leadership that could become subversive” (Southall, 1974, p. 22). The British commitment to indirect rule meant that the product and process of education would focus on what role the educated African should occupy in the
This stimulus for the development of local education was limited in expression since there was the need to maintain a certain level that the trained African could not rise above. The higher-level positions were exclusively reserved for the expatriate colonial elite. The British rulers did not want to educate Africans for positions that they themselves occupied. Indirect rule had no place for highly educated Africans hence there was no perceived need for a fully developed higher education system.

Before looking further at the historical benchmarks of this period it is important to highlight the long lasting effects of the colonial experience as they relate to higher education. It has been argued that the colonial government used the education system in an attempt to strengthen their political and economic power over the African majority (Ashby, 1966, p. 261). Colonial Kenyan society was organized on the basis of race with three social classes: Africans, Asians, and Europeans. Though the Africans composed about 97% of the population they were at the bottom of the social ladder. Three school systems were developed with unequal distribution of educational expenditure, a structure designed to keep the Africans down (p. 263). The system was set up to allow the elite of the day to continue in their dominant role. Whatever efforts were presented as evidence to argue for fairness in the system based on meritocracy were simply shrouds to cover a sophisticated pattern intended to maintain the status quo. Advancement on the basis of examinations were part of the restrictive machinery to deny Africans formal education, and to deliberately limit the number of Africans attaining academic education (p. 265). Forty years after colonization there were only two African secondary schools. The curriculum was oppressive, stressing vocational and religious education as well as the supremacy of the cultural values of the colonizer (p. 268). In spite of this oppression local independent schools came to serve the needs of the African population even though rules were put in place by Britain to curtail the development of any education introduced through African initiative (Mwiria, 1992, p. 261-268). There was significant resistance to providing for the higher education needs of the African. While the development of African primary and secondary education was embraced fairly early on in the social fabric of the colony, the same is not true of higher education, despite the fact that by this time higher education in other parts of the world had become fairly well established. The legacy of colonialism is enduring, and in the minds of many African commentators the period is characterized by a sinister racist conspiracy that
sought to exploit, dominate and control. While the colonizers would speak of the civilization and the modernizing benefit that they were bringing to the ‘Dark Continent’ through initiatives such as those in the area of education, a closer look at the facts might allow one to conclude that these claims were hollow. In contrast to this point of view however are the observations of others who argue that the policies of colonization were largely accidental and that the colonizers had few preconceived ideas of what they would do or understanding about how their decisions would impact societies. In other words they were simply pragmatists and not conspirators (Whitehead, 1993, p. 85). Essentially the colonizers muddled along without much vision or strategy. It is suggested that there is little evidence to support a deliberate attempt to divide and rule. Evaluation that concludes otherwise is often not objective. Rather, the main problem that affected African education during the colonial years was poverty. This tension is a particularly important one to highlight. It fueled the priority need at the time of independence to indiginize the universities. The dynamics of the colonial relationship between the west and Sub-Saharan Africa is an enduring theme that continues to affect policy making. The relationship between the higher education systems of the developed world, and those in the developing world, and the sense that there continues to be significant cultural dominance and influence of the west on indigenous African universities is, in part, an extension of the experience of the colonial past. Even the actions and recommendation of the ‘benevolent’ donor agencies are regarded with some suspicion and even claims of neo- colonialism.

In the East Africa region, a key political factor that affected the development of higher education was the relationship between the countries now known as Kenya, Uganda and Tanzania. While each is now an independent and autonomous country, since early colonial times there have been various federation arrangements. Consequently the history of higher education in Kenya must begin with an analysis of regional affairs.

The earliest formal action to establish higher education in East Africa was taken in 1920 when Winston Churchill, then the Secretary of State for the colonies, approved the establishment of a ‘native technical school’ in Kampala, the site being Makerere Hill, the present location of Makerere University. The Currie committee, established in January 1933, marked the dawn of positive thinking regarding higher education in Africa (Nwauwa, 1996, p.
The work of the Currie committee in 1933 marked the drive to formulate a consistent policy and funding scheme for higher education in Africa. Their report called for a rethinking of traditional educational policies in the colonies. It acknowledged that pupils were completing secondary school and were clearly capable and desirous of further education. As there were no post-secondary options on the continent these individuals would be forced to consider overseas study. The most obvious options were North America or England. One of the interesting themes in the report was the notion that an American education would likely undermine colonial interests and be harmful to British rule. This would happen as students were exposed to teaching that would assist them to be able to identify racism while at the same time fostering nationalism (p. 74). Regardless of the motives a cogent post secondary education strategy would soon emerge. In 1935 the three governors of East Africa met to discuss the implications for the region of the Currie report.

The De La Warr Commission was established in 1936 to look into the question of higher education in the British African dependencies and reported in September 1937 (p. 88). The main contribution of this commission’s report was the introduction of inter-territorial cooperation between the three countries of Kenya, Uganda and Tanzania. The De La Warr commission advanced a radical proposal for the provision of university facilities in East Africa. In 1937 the De La Warr commission visited Makerere (Kampala, Uganda) where some modest post-secondary work mainly in technical studies was being done. The majority of commission members recommended that the college should in fact cease to do post-secondary work based on limitations regarding site expansion. However an important minority report was published by Dr. John Murray that proposed a transition to a full institution of higher education (Southall, 1974, p. 24). In the final commission report Makerere College was to become the Higher College of East Africa and to work in affiliation with the University of London. The colonial administration adopted the recommendations of the De La Warr report and recommendations were to be effected without delay (Nwauwa, 1996, p. 92). The early expression of what developed at Makerere however was not fully what the Currie or De La Warr Commission had envisioned, but instead was a higher college that offered diplomas and certificates and satisfied the government’s need for a supply of middle level manpower (p. 100). Soon after the De La Warr report the Colonial Development and Welfare Act of 1940 made provision for financing
colonial development. The establishment of universities constituted an essential part of the reform process. Oliver Stanley, the Secretary of State in November 1942, linked the role of universities to training colonial leaders for post-war reconstruction and development (p. 207).

The next major benchmark in the development of higher education in East Africa during the colonial era was the work between 1943 and 1945 of the Asquith Commission. Its terms of reference required the commission to enunciate principles to guide the promotion of higher education, learning and research and the development of universities in the colonies and to explore how universities and other appropriate bodies in the United Kingdom might assist this effort. The Asquith Report formed the basis for all future development of universities in the colonies. The Asquith Commission outlined a procedure that was to guide the development of higher education in British dependencies until the time these nations became independent. The process involved the granting of external degrees by London University. The university prescribed minimum qualifications necessary for an individual to be accepted as an external student, the minimum time before the final exam might be entered, and inspections of institutions that aspired to instruct in preparation for the examination. For the colonial settings London University required that the aspiring colleges should have the buildings and staff appropriate for teaching to the degree level and an academic body specifically charged with promoting a liberal approach to education (Southall, 1974, p. 26). The reports of the commission proposed that colonial universities should be excellent centers of teaching and research and that British Universities should guide their development – this was the beginning of the Inter-University Council for Higher Education in the colonies consisting of representatives from the various British universities (Nwauwa, 1996, p. 207). The Labor government implemented the recommendations of the Asquith commission.

In 1949 Makerere became the University College of East Africa by an Act of the East Africa Central Legislative Assembly. Its governing council included representation from the East Africa High Commission, The Inter-University Council (England) and individuals represented the interests of neighboring Kenya and Tanzania. It also established an Academic Board. Makerere entered into a ‘Special Relationship’ with London University in 1950, and the first degree students graduated in 1953. Entrance requirements were raised in 1958 and 1961
and financial provision allowed the university to grow. In 1960 Makerere offered degrees in Economics, Geography, History, Math and Science, with diplomas in Medicine and Veterinary Science (Southall, 1974, p. 28).

Across the region there developed a recognition and awareness of the lack of technical skills among the African population (evidenced by the experiences of the Second World War) and so in Kenya the government established a Development Committee to look in to the formation of a Technical and Commercial Institute in Nairobi. This committee under the chairmanship of Mr. G. P. Willoughby reported to the Governor in March 1949. Included in the Willoughby Report recommendations was the establishment of the technical college and a six-stage process for development from a technical institute to a university. As early as 1949 there was ambition in Kenya for an institution of university status even though colonial policy was that Makerere should develop into a unitary inter-territorial university. In 1952 the Royal Technical College was established with the clear hope that one day it may qualify for the grant of a Royal Charter and achieve the equivalent of university status. Public opinion was that the Royal Technical College and Makerere together were the beginning of what would develop as the University of East Africa (Southall, 1974, p. 31).

The aspiration of the Kenyan constituency for an institution of university status, coupled with the introduction of non-technical courses (e.g. Economics), created difficulty in the relationship between the Royal Technical College in Nairobi and Makerere in Kampala. After appeal the colonial office appointed a Working Party (task force) chaired by Alexander Carr Saunders in 1955. The Saunders report was to mark the end of the notion that Makerere should become the unitary University of East Africa. The recommendations of the report were as follows:

a) there should be established a new University College in Nairobi
b) university planning should be at the inter-territorial level so as to avoid duplication between new establishments and Makerere and
c) the university college to be founded in Tanganyika be held back until development at Makerere was nearly complete. The Saunders report lacked clear guidelines and
directions for implementation and so a second Working Party was commissioned in 1958 (p. 35).

The second Working Party was led by John Lockewood and was charged with two main tasks: to consider the need for additional institutions of higher education and to consider the case for a federal University of East Africa. It was the report of the Lockewood committee that formed the blueprint for the development of inter-territorial higher education in East Africa. It proposed to transform Royal Technical College into a degree granting university to be known as Royal College that would have an affiliation with London University and the same structure of governance as Makerere. The report was very concrete and developed with the understanding that what was required in the region to address all of the concerns was a University of East Africa which associated the various colleges. This federation of colleges was compatible with the political forces that were being played out for the establishment of an East African Federation. The university would exist in its colleges with the central organization very small (a registrar and a complement of support staff). The Lockwood report was accepted in-toto in 1958, but the proposals contained were so far reaching that they took time to process. An announcement was made in 1959 that the governments had accepted in principle the proposal to establish a University of East Africa in 1966. There was pressure to move up the date of the inauguration of the new university and so it was in 1963 that the University of East Africa was established. The objects and functions of the university were clearly spelled out in the University of East Africa Act (1962):

a) to assist in the preservation, transmission and increase of knowledge and in the stimulation of the intellectual life and cultural development of East Africa, to preserve academic freedom and in particular the right of a university, or university college to determine who may teach, what may be taught, how it shall be taught and who may be admitted to study therein;

b) to assume responsibility for university education within East Africa; to cooperate with governments or other appropriate bodies in the planned development of higher education. (East Africa Legislative Assembly, 1962, p. 3-4).
In 1963 Kenya became an independent country under the leadership of its first President Jomo Kenyata. The independence of Kenya was congruent with the formal establishment in Nairobi of a university level institution. The colonial era had come to an end. The effects of colonialism would continue to be felt in all aspects of society including higher education. In summary it had taken the British almost one hundred years before they could see their way to provide facilities for university education in Africa. Between 1860 and 1948 the pressure came almost exclusively from Africans (Nwauwa, 1996, p. 201). Indirect rule shaped thinking on higher education. University education remained an anathema to those who did not want to see an expansion of the class of highly educated Africans. In the latter years the underlying racism of British colonialism continued. Nevertheless Africans still seemed to prefer overseas education, not trusting what was being provided for them locally (p. 204).

2.2.3.2 The Independent (Post Colonial) Era

In 1963 Kenya achieved independence amidst a climate of optimism about its future. It had successfully wrestled the reins of power from the colonial British and was poised to move into its destiny in the modern world. That year the government ruling party, Kenya African National Union (KANU), spelled out its aspirations for education in the newly independent state. What was made clear was that "education should be geared to prepare youths for the building of an independent, self reliant and truly African nation" (Eshiwani, 1993, p. 19). This sentiment was even more precisely defined in a paper published by KANU in 1965 on the application of African Socialism in Kenya. Education was seen as primarily an economic service and the "principal means for relieving the shortage of domestic skilled manpower and equalizing opportunities among all citizens". Soon after independence the Kenya Education Commission (1964) under the leadership of Ominde recommended the following nine objectives for education in Kenya:

- Foster a sense of nationhood
- Serve the needs of all Kenyans
- Respect all religious convictions
- Respect the cultural traditions of the peoples of Kenya
- Function in a non-competitive environment (respect the value of all participants)
- Prepare children for the modern world while fostering respect for others
- Serve the needs of national development
- Promote social equality regardless of race, tribe or religion
- Foster adaptability to change

"The Ominde Commission Report was a masterpiece in that it was the only one that catered for utilitarian, cultural and personal goals of education" (p. 27).

Politically the East Africa High Commission that had administered the government services that served Kenya, Uganda and Tanzania had been set-aside in 1961 in favor of the East Africa Common Services Organization (EASCO). The leadership of Uganda and Tanzania, which had each become independent prior to 1963, were pressing the emerging leadership in Kenya prior to independence to see the countries either working very closely together or ideally in a full-blown federation. This aspiration was reflected in the University of East Africa and its three constituent colleges. Ultimately federation negotiations failed due to strong separatist trends in the area of common services and the challenges of internal politics. While the countries agreed to cooperate as expressed in the Treaty of East Africa Cooperation, they each went their own direction. A similar fate was to be realized by the University of East Africa.

The University of East Africa was established in 1963 out of the recommendations of the Lockwood Report. The University consisted of three constituent colleges: Makerere University in Uganda, Royal College in Kenya, and University College in Tanzania. The governance of the college was arranged as follows. The University Council and University Senate, each of which was constituted to provide broad regional representation, provided general governance. Each college’s College Council and Academic Board provided local governance. The university was responsible to: preserve academic freedom, assume responsibility for university education in East Africa, examine proposals for new faculties, departments, degree courses, and to grant degrees diplomas, etc. The colleges were responsible to carry out the activities related to running the college, teaching, and research. This arrangement was subject to various interpretations. The most ambiguous area was that of planning. Even though there was the establishment of a University Development Committee and a University Development Plan,
government interference and local college aspirations thwarted the central planning process. As a result planning activity ceased in 1965.

In addition to the planning challenges, issues of academic freedom created some tension within the University of East Africa. The fundamentals of academic freedom – the right to determine who may teach, what may be taught and who may be admitted – were vested in the governance of the university instead of the colleges (Southall, 1974, p. 98). This was a cause for concern to the politicians who felt like they did not have complete control of their own colleges in such an important matter. The critical issue was the extent that the individual governments had the right to determine who should be admitted to pursue degree courses - the admissions function. The desire of the university was to manipulate the posting of admitted students so that the best were distributed among the colleges. Student’s preference would be secondary. While recommendations were made to send students for the general programs to their own constituent institution, the University rejected these. It also rejected the freedom of students to choose, presuming everybody would try to get into Makerere since it had the best reputation. Eventually the pressure forced the Joint Admissions Board to allow for students to attend their own country’s institution and gave the admission decision-making powers to the local colleges. This effectively gave the power over to the governments rather than the University. The Kenyan and Tanzanian governments were regularly informing the university about how many students in each program they were prepared to support. A further encroachment into the academic freedom domain came regarding the right of the government to interfere with a student’s studies. The government of Kenya dismissed students that had demonstrated in opposition to aspects of government policy (p. 109). The university turned out to be an ineffective organ for promoting academic autonomy. It abandoned its federal responsibility in this regard and surrendered this responsibility over to the colleges.

Eventually it became clear that the notion of a federated university should be regarded as a transitional phase to the eventual establishment of stand-alone universities in each of the three countries. “The coincidence between the attainment of independence and the establishment of a fully fledged university set a new stage for a disputatious relationship between the university and each of the three governments” (Omari, 1994, p. 58). The call for relevance became the
justification for state control. This was done in part to strengthen the government’s direct control over their institutions, rather than having to negotiate their political and developmental aspirations through cooperative planning. This sentiment is seen in the comments of the then Minister of Education for Uganda, J.S.L. Zakes:

I consider it highly desirable that each country should be free to develop its own program according to the desires and aspirations of its own people. It is entirely wrong in principle to leave the powers of determining a country’s development to some agency like the Development Committee or the University Council over which that country has no complete control. In effect, I suggest that each country should be free to devise the machinery for training its manpower in the way it chooses and at the rate it likes. In consequence of this, I propose that the University of East Africa as it is now known, should dissolve. (Southall, 1974, p. 84)

Another factor of influence was the beginning of the shift among the donor community, that until this time had focused on higher education investment, to instead focus on primary and secondary education. The obvious duplication that was developing made funding decisions tricky. Finally there was the issue of undesirable foreign influence at the universities. “The lack of trust in an intellectual group, most of them foreigners or trained in the western liberal university traditions (such as institutional autonomy and academic freedom) exacerbated the frictions” (Omari, 1994, p. 58). In 1968 a working party on higher education in East Africa was established under the leadership of George Stoddard and the three college principals. It reported in 1969. The main recommendations were:

a) Each college should become a University in its own right.

b) An inter-university committee for East Africa should be established to maintain cooperation.

c) A university grants committee should be established in each country to examine financial needs. In July 1970 the official announcement to enact these changes was made (p. 96).

In 1970 an Act of Parliament created the University of Nairobi as an independent post-secondary institution with Kenyatta University College as a constituent college specializing in the area of Education. Kenyan higher education was now independently established and an important symbol of national independence was in place. During its inauguration in 1971, the president of Kenya expressed his aspiration for the university:
The Nairobi University must both serve and reflect its surrounding society. The university is aided by its close association with the government. It is very necessary for the government and the university, working as a team, to consider ways that national progress might be speeded up. This obligation, goal and duty of the university has to be reflected in its priorities for research, teaching and extension work. (Omari, 1994, p. 59).

These comments sent a clear signal to the university that it must be relevant and active in the development of the new nation. They suggest a noble aspiration, although it must be kept in mind that the governments in the region at that time were not terribly predisposed to the university and were somewhat suspicious of it. There was tension between the universities and the political elite and a struggle for control of resources and political influence. Some of the political elite of the time castigated universities as being irrelevant to the immediate needs of society. The state introduced various control and domination mechanisms, including making the head of state the Chancellor of the university with powers to appoint the senior officials of the university and several key council members, whose loyalty and accountability was to the head of state rather than the university (p. 59). Clearly the university was to be an agent of the government in the task of nation building and development.

The development of the higher education system in Kenya was fairly robust during the 1970s and 1980s. This was in part because of a strong economy during those years and the provision of foreign financial assistance through development agencies. The undergraduate enrolment at the University of Nairobi in 1970 was 3137 students. By the late 1980s (1987) enrolment in the public university system had grown to 18,883 students. However, from 1970 onward the number of school leavers started to increase faster than the available job opportunities. Unemployment rates among university graduates increased and eventually there was an outcry regarding the failure of the higher education system to deliver on the expectations that were entrenched. The curriculum was criticized and reform was demanded. In 1985 the goals for education were redefined as follows:

1. National Unity - education must foster a sense of nationhood and promote national unity.
2. National Development - education should meet the economic and social needs of the nation, producing citizens with skills to support the economy and the social qualities necessary to manage the social revolution that is underway.
3. Personal Development - education should allow for individuals to realize their personal full potential.
4. Social Equality - education should promote social equality.
5. Cultural Development - education should respect and foster Kenya's diverse cultural heritage.

Three additional public universities were established during this time: Moi University through the Moi University Act 1984, Kenyatta University through the Kenyatta University Act 1985 and Egerton University through the Egerton University College Act 1986. There were also ongoing struggles for control of university affairs between the universities and the state. In 1982 the University of Nairobi was accused of being a sanctuary for political activists associated with an attempted political coup. The university was closed for a year. The consequence was that the state instituted even more serious legislation to control university affairs including the banning of university publications, detention of staff and students without trial and banning of student unions and political parties. To further fragment the perceived threat, the University of Nairobi act of 1986 decentralized the university by introducing semi-autonomous constituent colleges. These colleges set to distribute more broadly any spheres of power or influence that the larger institution possessed. “Ultimately, decentralization, while intended to improve efficiency in the management and operations of the University, aimed at dividing students and staff into colleges and faculties in a classical case of ‘divide and rule’ ” (Omari, 1994, p. 61).

In 1985 the parliament of Kenya established the Universities Act, perhaps the most significant piece of legislation for Kenyan higher education. One of the key aspects of this Act was the establishment of the Commission for Higher Education. The Commission was established in order to carry out the following functions: to coordinate the development and operations of universities; to harmonize university education; to supervise university operations; to advise the government on the establishment of new institutions of higher learning, accreditation, new courses of study, student admission, degrees, diplomas, and certificates and to advise the government on higher education policy. Commentators like Omari are quick to
point out the limitations faced by such a commission given the direct state involvement and control. While in principle the commission could play a decisive and controlling role in coordinating matters relating to higher education, it seems that in countries like Kenya, commissions have become what one professor called ‘cemeteries of disgraced Vice Chancellors’ rather than truly effective coordinating bodies. Vice Chancellors in Kenya are so powerful and independent of the commission that they can bypass it and have their issues resolved either by the appropriate minister or State House. The commissioners end up complaining that they are mere advisory bodies performing menial tasks rather than exercising executive powers. In general it remains more a symbolic institution without powers to enforce the realization of any of its functions (p. 62).

While the Ministry of Education, through the Commission for Higher Education, supposedly has full powers to coordinate higher education there are four centers of power which influence university affairs: a) there are the regular meetings of Vice Chancellors, b) the President himself, c) the permanent secretary in the President’s office (a former Vice Chancellor) and d) the Commission itself where more than two thirds of the members are appointees of the President or his proxies (p. 66). The President is the Chancellor of each of the Universities and appoints the Vice Chancellor for each on the advice of the particular Council. The Deputy Vice Chancellors are appointed by the Council after consultation with the Chancellor. The chain of command passes through the Vice Chancellor to the President and not to the Minister of Education who often becomes marginalized in key decisions. As far as budgetary process is concerned, each Vice Chancellor negotiates funding directly or through a committee with the Ministry of Education and Finance each year. Much of the activity depends on the political links between the Vice Chancellor and the Minister involved. Budgeting is done on an annual basis but release of funds is quarterly. The academic tradition in Kenya is to use external examiners to ensure quality academic performance. These are chosen by the university and tend to focus narrowly on courses and programs. Their reports do not constitute institutional review. The government, through the Ministry of Education, determines the number of places in the higher education system to be filled each year depending on resource availability and budget allocations. There are great pressures to enroll as many people as possible. This area becomes very complicated when a small number of those qualified are able to continue in their studies.
The Joint Admission Board works to coordinate the process but can be superceded by decisions of the state. The best example of this occurred in 1988 when there was an enrolment crisis in the country. The Joint Admission Board decided to raise the entry grade level to admit only the best-qualified students in response to complaints that the university system was declining in quality. In a speech the President mandated that the universities work out ways of admitting the 13,000 qualified students that would have otherwise been left out. This placed a tremendous strain on the system. There was no capacity to handle this request without major compromises in the area of quality (Omari, 1994, p. 66-68).

In response to these types of pressures, the government established a Presidential Working Party (Commission) on Education and Manpower Training for the Next Decade and Beyond. The chairman of the working party was James Mwangi Kamunge. In March 1988, just after the enrolment crisis, The Kamunge Report (1988) was presented to the President and the government. There were ten ‘Terms of Reference’ that guided the commission’s work. These included to review the whole educational philosophy, policies and objectives to ensure that they are in consonance with changing social, cultural and political demands of the country; recommend ways and means of sustaining the momentum of educational growth without sacrificing quality or relevance; recommend ways of providing greater training opportunities for the majority of candidates who do not proceed for formal education and recommend improving quality in all, public and private, institutions. The task was very broad in scope. The working party was actually constituted in 1985 and was asked to fast track its efforts in early 1988 in order to respond to the tremendous strains that were being experienced in the education sector. One chapter of the report was devoted to university education. Nineteen specific recommendations regarding Kenyan higher education were tabled. These recommendations included strategies to respond to the enrolment crisis such as creation of additional capacity in the public system while at the same time maintaining quality, and encouraging the development of private universities under controlled and guided conditions. Comment was made regarding the need for the public universities to be coordinated and harmonized to ensure complementarity with one another i.e. avoid duplication. There was to be streamlining of various functions including planning and development, financing and admission between the public universities and the Commission for Higher Education. What had been realized was that the 1985
Universities Act that established the Commission for Higher Education was not sufficiently harmonized with the individual acts for each of the public universities and duplication or overlap in responsibilities was creating some problems. Attention was also given to teaching and learning resource provision (libraries etc.) and the need for student services. Growth was sought for the area of post-graduate studies, research and professional development. This report did serve as the inspiration for many of the developments that took place in higher education in the last decade of the twentieth century. “The report focussed on belief that the indigenization of technology would be the springboard for national economic development and self reliance, grounded on education, training and research” (Omari, 1994, p. 69). It focussed on key issues such as democratization, access and financial cost sharing. It inspired a further expansion of higher education. Parliament fully endorsed the Kamunge Report; however, the actual implementation of many of the key recommendations the report contained have been squashed due to the deteriorating economic climate, the withdrawal of donor funding and the increasingly pluralistic and turbulent political climate. It is as though there is shared agreement about the objectives that need to be realized but lack of political will. This is coupled with the complexity of progressive change in the Kenyan political and economic context.

In the year following the adoption of the Kamunge Report, the Establishment of Universities (Standardization, Accreditation and Supervision) Rules Act, 1989, was passed. The purpose of this act was to spell out for those that would be active in the development of the university system in Kenya the standards that were to be realized. The 1989 Act was established to provide guidelines for the functioning of the Commission for Higher Education that had been established by the 1985 Universities Act, but realized soon after its inception the need for guidelines and policy to direct its efforts. The 1989 Rules Act set out to define the following: rules for registration of existing universities, rules for establishment of new universities, rules for institutional standards and rules and procedures for accreditation. The act is comprehensive in its dealings with each of these areas. One of the interesting aspects of this particular legislation is the specificity regarding standards for physical facilities. A schedule devoted to this topic defines the physical standards for a university. Sixty-one specific areas are listed, many with sub-topics included. Physical standards such as the number of urinals per male student population, the specific measurements of an instructor’s table (2000 x 300 x 760 mm
high) and the minimum floor space for non-academic staff (7 square meters) are provided. Since 1989 the Commission for Higher Education has been responsible to adjudicate the rules.

University education in Kenya presently consists of six public universities and twenty-three private degree-granting institutions. Eleven of these private universities are chartered. Four of these private institutions were offering degrees in Kenya before the establishment of the Commission (1985) and were issued with Certificates of Registration following the 1989 University Regulations Act. The remainder have applied to the Commission according to the 1989 rules to be established as new universities and have been assigned Letters of Interim Authority. The Commission for Higher Education is working with the last two groups through a process of accreditation and the awarding of a Charter.
Chapter Three
Research Design and Methodology

3.1 INTRODUCTION

For a nation like Kenya, an effective higher education system is essential for the development of the nation. Often intermediary bodies such as the Commission for Higher Education are established and mandated to oversee higher education. As a “buffer” agency between the state and the universities, the Commission is strategically placed to ensure an effective and productive higher education system that serves the Kenyan society, and advances the development of the nation. It is important to assess how such an intermediary agency has performed; to identify challenges and threats and to recommend service improvement strategies.

The purpose of this research is to investigate and describe the contribution of an intermediary body responsible for the coordination of the higher education system in a developing nation. The study describes the role of the Commission for Higher Education in Kenya. The research will focus on the three main functions of such an intermediary agency: planning, budget review and program review using a historical case-study design with regard to the experience of the Commission for Higher Education in Kenya from its establishment in 1985 up to the present.

The objectives of the research are:

a) To describe the establishment of the Commission for Higher Education for Kenya and analyze its mandate, terms of reference, membership and staffing.

b) To investigate and describe the experience of the Commission for Higher Education for Kenya with reference to the following primary functions of intermediary bodies: planning, budget review and program review.

This chapter will describe the manner in which the study was approached by first providing a rationale for the research method and describing the specific research activities
taken to realize the objectives. The conceptual foundation for the study will be provided through discussion of the theoretical basis for the research, and will explain why the study focuses on the legal status of the Commission for Higher Education and the core functions of planning, program review and budget review. The next section of this chapter will describe the methodology utilized which involved detailed analysis of documents and interviews.

3.2 RESEARCH DESIGN

The focus of the research is to assess the Commission for Higher Education in Kenya as an intermediary body or buffer agency through a historical case-study analysis. Given that the Commission was established almost twenty-five years ago, and is engaged in a wide variety of activities, it is critical that some attempt be made at the outset to structure the research in a manner that will provide for a comprehensive and coherent analysis. The design of this research is drawn from consideration of the literature on intermediary agencies which form the theoretical base. A key aspect of the research is understanding the core functions in the role that intermediary agencies typically play in higher education systems, and assessing the performance in that role of the Commission for Higher Education. Seminal work along on the functions of intermediary agencies has been provided by Berdahl (1971).

The essence of this study is to investigate the core functions of an intermediary agency. In order to do this some consideration of what constitutes a ‘core function’ is required. For example, it is well understood that the core functions of a modern university can be broadly summarized as teaching, research and public service. This description of the role of a university remains widely held today, a generation after Kerr described these. Much has changed since Kerr’s Harvard lectures were delivered, but the classification of these functions (teaching, research and public service) is still relevant for discussion and analysis of activities within that particular framework. In a similar manner the core functions of an intermediary agency in a higher education system are planning, program review and budget review. The literature discussing the function or role of intermediary agencies in higher education is significant but not very expansive. “There is not much known about the significance or role that a buffer organization plays because there has been little research on the topic” (De Boer, 1992, p.36).
However, there is considerable agreement on what the core functions of an intermediary agency are. These include general broad descriptions such as that provided by De Boer who suggest that the relationship as a buffer between the state and the institution allows it to do the following: protect institutions from government interference by serving as an advocate for the institutions, serve as a ‘para-political organization’ that has some responsibility for implementation of government policy, and provide support and service to institutions and the state as a service agency (p.36). Another broad description is provided by Elton: “The purpose of a buffer between the providers (institutions) and the control system (state) is to minimize the deleterious effects of the control while still preventing an abuse of trust” (Elton, 1992, p 22). There are others who have provided descriptions of the functions or roles of intermediary agencies including Glenny et al (1971), Carnegie Commission on Higher Education (1973), Education Commission of the States (1973), Glenny and Bowen (1977) and McGuiness and Paulson (1991). Elaine El-Khawas suggests that “A buffer organization has responsibility for one or more of the following purposes: a) planning and policy formation b) evaluation and monitoring c) allocation decisions for scarce resources and d) sponsorship of reform and innovation” (El-Kahwas, 1992, p.18). Frank Schmidtlein and Berdahl (1992) suggests the following expanded description regarding the functions of buffer agencies:

1. Planning – examining HE needs, establishing goals, determining resource requirements, and recommending priorities
2. Policy Analysis and Problem Resolution – conducting special studies on long-term issues e.g. funding alternatives
3. Mission Definition – defining institutional missions in terms of degrees offered, programs and clientele (state)
4. Academic Program Review – Reviewing and approving proposals for new programs, examining existing programs to curb unnecessary duplication
5. Budget Development – participating in budget formulation, developing budget processes, conducting studies of fund uses and ensuring accountability
6. Program Administration – administering state HE programs such as student financial aid, regulation of non-degree granting and out of state institutions, and infrastructure capacity e.g. libraries and computer networks
7. Information Monitoring and Accountability Systems – developing statewide information systems and using these to monitor trends and performance
8. Quality Initiatives – Developing policies and programs designed for innovation along state priorities.

McGuiness and Paulson (1991) have identified the following functions most commonly performed by intermediary agencies:

1. Planning – examining state needs, establishing goals, determining resources needed, and recommending priorities.
2. Policy analysis and problem resolution – conducting special studies on long-term issues
3. Mission definition – defining institutional missions in terms of degrees awarded, programs offered and clientele served.
4. Academic program review – reviewing and approving proposals for new programs and examining existing programs to curb unnecessary duplication.
5. Budget development – participating in budget formulation, developing budget procedures, conducting studies of fund uses and examining financial procedures to ensure accountability and economy
6. Program administration – administering state higher education programs such as student financial aid, licensing of non-degree granting and out of state institutions, and cross sector cooperative arrangements such as library and computer networks
7. Information monitoring and accountability systems – developing and maintaining databases and using these to track trends and performances of institutions
8. Quality initiatives – developing policies and administering incentive fund programs designed to stimulate or mandate institution action to state priorities

Glenny and Schmidtlein (1983) add that one other possible function relates to the number, distribution, and qualifications of students in order to seek equitable access and equal opportunity.

In addition to the classification of functions of an intermediary agency, there is similar shared understanding of the three main types of buffer agencies. Schmidtlein and Berdahl
(1992) summarize the collective work of Glenny (1959), Berdahl (1971), Millet (1984) and McGuiness and Paulson (1991) by describing the three types as follows:

1. Consolidating Governing Board – centralized governance by one board of public four-year institutions with the power and responsibility for governance and coordination.
2. Advisory Coordinating Board – does not replace institutional boards but instead operates between them and state governments in designated areas.
3. Regulatory Coordinating Board – does not replace institutional boards but is given final powers over institutions in certain specified areas (e.g. Approval of new programs).

The most recent developments in the understanding of the roles of intermediary agencies are to be found in the emergence of literature discussing quality assurance. The past fifteen years have seen several studies related to what are referred to as national external quality assurance frameworks. David Billing (2004) has provided a very comprehensive review of this literature in a comparative study that seeks to determine whether there are common features in these frameworks. His analysis includes reference to key works including Neave (1991), Kells (1995) Harman (1998), Van Damme (2000), Smeby and Stensaker (1999), Van Vught and Westerheijden (1993), Vroeijenstijn (1995) Woodhouse (1996) Brennan (1997) and Kells (1999) among others. The significance of Billing’s work for this study is three-fold: first, he makes the case, based on the comparative review of literature, that there is a commonality of purpose for external quality assurance agencies as follows:

- Improvement of quality
- Publicly available information on quality and standards
- Accreditation
- Public Accountability for standards achieved and use of money
- Contribution to the HE sector planning process (Billing, 2004)

It is notable that there is considerable overlap between the core functions Billing has noted based on this broad review of current practice, and those derived from Berdahl. The wording or descriptors have changed, but the essence of program review, budget review, and planning remain consistent. The second aspect Billing’s work which is significant for this study is the discussion related to the evolution of such agencies and how this is affected by corresponding legal frameworks. Billing describes the transition as being essentially a journey of centralised regulation by law to a more open self regulation by principle.
De-juridification is the replacement of detailed HE laws, which are obstacles to flexible higher education institution responses to their environment, by ‘framework’ laws to incite self-regulation. This situation of framework laws thus sits between centralization and decentralization, and depending on where different countries’ evolution towards it starts, they may perceive it as producing greater or less state control”. (Billing, p. 119, 2004)

This evolution is further described by the European Trading Foundation as follows:

In most countries during the transitional period from centralized to more autonomous open and free higher education systems, quality assurance was considered through ‘first generation’ legislation, rules and requirements. Clarification on the distinction between quality assurance through laws, which regulate and restrict behaviour with higher education, and quality assurance through evaluation, which makes public judgements about such behaviour, is a current task for higher education systems. (European Training Foundation, 1998)

This study will illustrate clearly the ‘first generation’ nature of the quality assurance agency in Kenya. Finally, Billing indicates that variation from the general model of external quality assurance frameworks is based on the state of evolution of the higher education system, the size and comprehensiveness of the sector, and cultural factors. The general model provides a starting point from which to map variations that arise as a consequence of contextual issues.

Having looked briefly at various descriptions of the types of intermediary bodies and descriptions of their roles, it was determined that the basic framework provided by Berdahl would be well suited for this study. This is in part due to the comprehensive and seminal nature of Berdahl’s work. Secondly, and probably more significant for this study, Berdahl has provided a Kerr-like classification for understanding the core functions of a buffer agency. The essence of this classification has persisted in the literature even through to the current understanding regarding the common purpose of external quality assurance agencies. Finally, the recent research on intermediary or external quality assurance agencies indicates that these agencies progress through a fairly common evolution. Given that the higher education sector is a comparatively recent development, and that the legal context is still centralized, and the dynamics associated with Kenyan culture, Berdahl’s framework is relevant in that context. It is for these reasons that considerable attention will be given to this work along with other more recent related literature as a theoretical framework or base for this research. In the following chapters, reference will be made to the contribution of others to the understanding of the role
and function of intermediary agencies with respect to the blueprint for this inquiry provide by Berdahl’s work.

3.3 THEORETICAL ORIENTATION FOR STUDY APPROACH

Statewide Coordination of Higher Education (Berdahl, 1971), is a comprehensive study and analysis of coordinating agencies or intermediary bodies. Berdahl describes his study as a "dispassionate examination" and a thorough analysis of the delicate relationship between the state (government) and the institutions (p. 4). It serves to guide the research and is a jumping off point for specific analysis of the coordination of higher education in Kenya. Although Berdahl’s work is an analysis of the relationship between the state governments and their higher education systems in the United States, it is useful for analyzing the context and the role of intermediary agencies in developing nations of Sub-Saharan Africa, such as Kenya. The major contribution of Berdahl’s work on intermediary or buffer agencies is that he has classified the types of agencies and identified the core, or essential, functions. In this regard his template is seminal for the literature on intermediary agencies that has followed. The relevance of his description is the ability to use this template in many different settings and educational jurisdictions.

This review of Berdahl’s study will describe the significant findings, summarizing them in a manner that provides a blueprint for the research on the Commission for Higher Education in Kenya. Berdahl begins his analysis of the role of coordinating agencies by discussing the philosophical tensions associated with the relationship between the state and higher education - academic freedom and institutional autonomy. He points out that though the two terms ‘academic freedom’ and ‘institutional autonomy’ are related, they do not necessarily need to be linked. Academic freedom is defined as follows:

..that freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts and research. The right… is not sought as a personal privilege [but] in order to enable faculty members and students to carry on their roles (p. 5).

Academic freedom is of central importance to a university’s operation and must be defended at all costs. Institutional autonomy is the ability or power of a university to govern
itself without outside controls. However, in a publicly governed higher education system there are inevitable controls and influences that are going to be wielded by the state. "The real issue with respect to autonomy then is not whether there will be interference by the state, but whether the inevitable interference will be confined to the proper topics and expressed through a suitably sensitive mechanism" (p. 9). There ought to be a dynamic tension between the government and the university. The government needs to validate the academic freedom of the university and the university ought to recognize the state's leadership role and participation in the development of higher education. What emerges from this tension and this relationship then are decisions regarding the development of the higher education system and how these decisions are engaged.

The role of a coordinating agency is to mediate in this relationship for the mutual benefit of the state and the higher education system. It is responsible for establishing a climate of mutual trust and to transmit the state's wishes for higher education to the institutions and higher education's needs and aspirations to the state. The coordinating agency is an intermediary or a buffer agency. Governments have a legitimate partnership role in making some of the decisions concerning substantive developments in higher education and that role is best expressed through a specialized agency developed with particular sensitivity for its complex task as intermediary between higher education and state government (p. 18).

Berdahl identifies three types of coordinating agencies: a voluntary association, a coordinating agency, and a single governing board. The general term that is used to describe all three of these is coordinating agency. For the United States the historical development of the state-institution relationship is described initially as a process of moving from complete institutional autonomy to the emergence of single statewide governing boards. This was followed by the creation of voluntary associations for the purpose of coordination and then formal coordinating agencies. The result was widespread establishment of intermediary coordinating agencies having public and institutional representation and increasing regulatory powers (p. 26).

In order to analyze the role of the coordinating agency, Berdahl identifies the three functions that "have the closest bearing on substantive developments in higher education" (p.
These three functions are planning, budget review and program review. The focus of the study is a look at the relationship between the state, the coordinating agency and the institution with regards to these three critical functions. Berdahl compares and contrasts how these functions are handled by the three types of coordinating agencies.

It is clear then why this study should be significant for researching the role of the Commission for Higher Education in Kenya. The Commission for Higher Education is an intermediary body, a coordinating agency with public membership and regulatory powers that serves as a buffer in the state-institution relationship. As such it is useful to identify how the Commission is involved in the three functions that most impact substantive development of higher education in Kenya: planning, budget review and program review. The approach taken in Berdahl's research provides methodological guidance. The methodology chosen was to provide an overview of the "three cornered relationship" (state, coordinating agency and institution), rather than to go in depth on administrative procedures (p. 39). This was done by using surveys that contained a small number of open-ended questions and reviewing the documents produced by the coordinating agency. In the Berdahl study, comparisons are made regarding how these functions are managed by the different types of coordinating agencies (single governing board, voluntary association and coordinating board). Because we are dealing with a single jurisdiction in Kenya which has established a coordinating board, we will focus only on the comments made relative to that mode of coordination. That mode of coordination is characterized by mediation, arbitration (serving as a broker in the political market) and leadership.

The coordinating agency functions by collecting and assembling a mass of information regarding planning, budget review and program data and reviewing it from a public interest standpoint. It then makes recommendations regarding educational policy to the government for approval and funding. It is the quality of the relationship between the state, agency and institution that will determine the coordinating agency’s success. Most agencies have institutional representation to facilitate this coordination. Communication occurs through formal and informal means with official meetings held on a fairly regular basis. Institutional representation and participation in the operations of the coordinating agency is essential. If institutions are involved in key functions such as budget review, then they will likely be
aggressive when it comes to implementation. Interaction and dialogue are essential. Political representation is also necessary although this is almost always the case, since the coordinating agency is a politically established mechanism and carries legislative clout. If there were a lack of balance then it should be weighted in the direction of state influence. However undue political interference is cautioned.

No agency which exercises substantial power over higher education should be so constituted as to come under direct control of either the administrative or legislative branch of state government, or to invite direct involvement in the heat of a partisan political campaign. Any board charged with responsibility for higher education ought to make its recommendations on the basis of its best judgment about the needs of higher education. (p. 187)

If the state is too influential the outcome is often premature decisions that cannot be realistically implemented or do not sufficiently consider educational realities.

Before looking at the three critical functions of planning, budget review and program review, Berdahl discusses membership and staffing of the coordinating agency. The performance of any agency depends on the quality of people that are engaged. As a minimum, individuals who serve on a coordinating agency should be suitably qualified for their task and on a personal level perceptive and possessing goodwill. Glenny points out the relationship between an agency's composition and the power it exercises:

The amount of legal power the board will have over the institutions will be determined primarily by the composition of the board, whether it is composed of a majority of public members or a majority of members with a direct stake in collegiate institutions. Boards controlled by public members tend to have final authority over important educational policies; those controlled by collegiate members tend to have advisory powers only (Glenny, 1967, p. 48).

When it comes to the membership of a coordinating agency Berdahl highlights the need to balance the interests of the government (public interest) and the institutions (educational interests). Both the state and the institutions should be well represented in agency membership so that the political and the educational roles can be well served.
3.3.1 Planning

Planning is the top priority of any coordinating agency. The primary concern for proper development of a system of higher education is adequate long range planning as evidenced by the establishment of statewide master plans. This process can best be described as follows:

Master planning ideally involves the identification of key problems, the accumulation of accurate data about those problems, the analysis of their interrelationships, the extrapolation of future alternatives which might emerge out of present conditions, the assessment of the probable consequences of introducing new variables, the choice of the most desirable (or least desirable), modified alternatives as the basic goals, a sequential plan for implementing the desired goals, and a built-in feedback system for periodically reevaluating both the goals selected and the means used to achieve them. (Berdahl, p. 74)

Master planning is an attempt to interrelate as many variables in a statewide higher education system and come up with a long-range policy. The critical questions around the planning function then are ‘Who plans?’, ‘Who implements?’ and ‘Who reevaluates?’ When it comes to the question of who does planning, there are three possible alternatives: external consultants, an in-state agency (or ad hoc commission), or a combination of the two. Each option has its own set of benefits and limitations. Once a plan is formalized, attention must be given to implementation. Somebody needs to make sure that plans are carried out and implemented. A coordinating agency can provide this service especially if it has influence over the related functions of budget review and program review. Associated with implementation is reevaluation. Periodic updating and reevaluation is necessary to endure flexibility and relevance (p. 79). Generally it seems that the coordinating agency is best positioned to update a master plan. However the agency alone may not be in the best position to undertake a fundamental reappraisal of critical planning goals due to the tendency to validate its own efforts. A comprehensive plan that includes both the public and private sectors is most helpful. In order to be comprehensive the following are the types of planning questions that could be considered:

1. Should the private sector be considered in planning regarding enrolment capacities?
2. How is the state prepared to provide for expansion in the system? Which institutions should be expanded? What new institutions are needed? Where should they be situated? Are they branch campuses or independent institutions? Are they public or private?
3. How could the government effect significant increase in the proportion of university aged youth that would attend university? Is this desirable?
4. What policies need to be adopted with regards to student enrolment and admission standards, tuition fees, loan programs and mix of students?
5. Are there unmet manpower needs that need to be addressed by the higher education system?
6. What is the relationship between the role and types of institutions in the system? How much diversity and differentiation is there at the institutional level?
7. What evaluation mechanisms are in place to assess the performance of the institutions and the system as a whole?
8. How can quality be improved?
9. What is the state of the physical capacity of the institutions in the system? What capital needs are there and how can these be met?
10. Is there sufficient public funding? Is diversification of revenue sources necessary?
11. What pattern of governance and coordination will best serve the public and the institutions? (p. 89-90)

Planning can involve delicate political balancing between what is educationally desirable and what is politically possible. In this regard a satisfactory compromise needs to be reached. In the function of planning the following are some of the pitfalls that should be avoided: inexactitude; subjectivity; preoccupation with short-term problems; inadequate funds and unqualified personnel; omission of a critical segment (e.g. the private sector); not being prepared for the hidden costs associated with planning and inadequate institutional participation in master planning (p. 94-97).

3.3.2. Budget Review

Budget review was once regarded as the primary agent for rationalization in a higher education system; however, this perspective has been tempered as the functions of planning and program review have gained greater significance. Appropriation, the assigning and allocation of public funds, often involves a confrontation between long cherished educational goals and
political fiscal realities. Budget constraints seem to be an increasing challenge and when educational demands exceed estimated resources, it is more likely that these requests will be rejected rather that additional revenues sourced. While the coordinating agency can have a critical role in appropriations, the government is understandably hesitant to wholly hand over this function to it or any other body. Inevitably there will be tension between the state and the publicly funded or supported institutions. In this context the coordinating agency has a particular role:

Such an agency could, at the least, perform two functions vital to effective state budgeting for higher education. It could require information from institutions and then organize these data in common categories, thus making it easier for state budget offices to judge comparative needs and costs; and it could with the help of the of the institutions undertake comprehensive planning, subject to approval by the organs of state government, which could then conduct their review of the higher education budget in such a way as to implement the agreed upon planning goals. (Berdahl, p. 104)

Some would go even further and suggest that the coordinating agency become the principal agent for reviewing the higher education budget on behalf of the public. Critical to its role as an intermediary body is whether the coordinating agency views itself as an agency of the government or as a part of the higher educational system. Institutions and the government both seem to be well served when there are established formulas and ongoing costs analyses (attempts to measure past actual costs). These need to be done in a manner that does not neglect important quality considerations and the burdens of excessive controls. A coordinating agency can play a role in the establishment of budgets and subsequent appropriations.

3.3.3 Program Review

Program review involves all activities related to development of the academic offerings of the higher education system. Once again it is a tricky matter to balance the interests of the state and the interests of the institutions when it comes to what programs should be offered, at what level, with what quality indicators, and where. Neither the state alone nor the institutions alone can properly handle program review.

Most scholars have concluded, on the basis of similar situations in other states, that neither the organs of state government nor the institutions of higher education are capable of conducting the finely balanced assessments involved in program review, the former because the issues are too complex for non-professionals to handle and the latter
because their own self-interest inhibits their objectivity. Thus coordinating agencies – because they combine a statewide perspective with specialized knowledge of higher education – have increasingly been called upon to play a central role in these decisions (p. 136).

Program review is a specific function that must be done well in order for there to be substantive development of a system of higher education. The elements of program review are described as follows:

Program review concerns itself with such decisions as the following: whether to establish new institutions, branch campuses, or professional schools, and if so where; what role and scope missions, if any, to assign to new or existing institutions; which new degree programs or courses to establish; which to reallocate or eliminate; which research and public service activities to institute; and what degree of control to exercise over programs funded from non-state sources. (p. 139)

In summary then, program review is concerned with establishing new institutions, role and scope decisions, approval of new degree programs, and reallocation or discontinuance of programs.

The establishment of new higher education institutions is a critical issue. In this matter it seems important that the coordinating agency be responsive to government initiatives rather that acting as a primary initiator. Program review also involves decisions relative to the role and scope of existing institutions. This means that they must be influential in determining an institution’s basic role or type and its curricular emphases. Institutions would like to chart their own course with the state being responsive to their aspirations and financially supporting the institutions’ initiatives. However, for the benefit of the system, ad hoc initiatives from the institution need to be compared with broader developments in the higher education system. The coordinating agency must have a role in dealing with how many tiers there are in a given system, the number of institutions at each level and how much flexibility exists for institutional transitions to be realized (p. 147). Approval of new degree programs is another element of program review. Decisions in this area relate to which programs need a coordinating agency’s approval in order to be launched, what kind of judgements go into making such a decision and how the review mechanism is handled. Three stated criteria for approval of a new program are institutional readiness, state (public) needs and state (public) ability to finance the new program (p. 143). Because of the sensitive nature of this area, any program review mechanism must be
seen as fair. A related matter is program reallocation or discontinuance. When should a program be housed at an alternate institution in the system or when should it be discontinued because it is no longer serving the public's needs? Institutions tend to cling to outworn and useless programs and are hesitant to discontinue any established program. The coordinating agency can play a vital role in rationally reallocating or discontinuing a program (p. 169).

One of the areas that Berdahl gives some attention to is the matter of private higher education. Coordinating agencies can play a role in the development of private higher education within the higher education system, since these types of institutions ought to operate within a legal (public) framework (p. 201). This role could involve budget review (appropriations) although many jurisdictions are not predisposed to direct funding of private higher education. The private sector must be considered when it comes to planning, but there may not be much of a role for a coordinating agency when it comes to aspects of implementation and reevaluation. The primary role of a coordinating agency when it comes to the private sector is in the area of program review or accreditation, since the core function of an intermediary agency is the development of a comprehensive state system of education beyond secondary education which will meet the nation’s needs. The coordinating agency can be very instrumental in setting the standards for private higher education institutions, including the establishment of new institutions, role and type considerations, and degree program approval.

3.3.4 General Observations on Intermediary Bodies

In the concluding chapter of Statewide Coordination of Higher Education, Berdahl provides analysis and makes recommendations for the operation of effective coordinating agencies. He does this by providing a short list of general conclusions followed by a list of recommendations. The following are the general conclusions:

- Public funding of higher education is indispensable. The state will always have a key role to play in the operation and development of a higher education system.
- The core values of academic freedom and institutional autonomy should be sustained.
- While institutions should maintain procedural autonomy (autonomy in the manner that they go about pursuing their goals), the state has a legitimate role to play when it comes
to substantive autonomy (what an institution’s goals are and how they mesh with the state’s needs and the broader higher education system).

- The need for the function of coordination in a higher education system is inescapable.
- A specialized agency is the most effective manner to ensure coordination in a higher education system.
- Each jurisdiction ought to choose the type of coordinating agency that best suits its need, whether that is a consolidated governing board, a voluntary association or a coordinating board (p. 239).

The following recommendations are made with regard to the function and role of a coordinating agency. Berdahl describes these as requirements for agency structure and function:

1. **Strong Powers in Planning**
   The coordinating agency must engage in continuous and long-range planning for both public and private higher education. This necessitates the ability to gather the critical data that is essential for the planning process. If there is no master plan, then it is the agency that is responsible to see that such a plan is developed. The assistance of external expertise in this process is recommended.

2. **Strong Powers in Program Review**
   All coordinating agencies must have the power to approve all new programs. The agency should also have the power to eliminate existing programs that are deemed no longer suitable or necessary. This process of program review must clearly involve the institutions in a manner that is fair and just.

3. **Strong Powers in Budget Review**
   Since the agency is strongly involved in planning and program review, it follows that it should have a similar role in the budget process since it is this process that allows influence to be directed according to determined values and priorities. While the state will have the final say, the coordinating agency must be actively involved in this process.

In addition to these three functions Berdahl notes some structural priorities that will assist an intermediary agency to play its role effectively:

   a) **Involvement with the Private Sector**
In order to serve the entire higher education system, the coordinating agency, though primarily a public body, must be active with the private higher education sector. This is particularly essential in the areas of planning and program review (p. 242).

b) Strong Membership and Staff
A strong membership and staffing of a coordinating agency requires experience in both the academic world and the sphere of government. Their strength should start at the top with a chief executive that has status and salary comparable to the most senior institutional leader in the system. Berdahl recommends that the head of a coordinating agency be appointed for two three-year terms followed by a one-year sabbatical leave. The rest of the staff at the agency through qualification and competence must win the confidence of the institutions and the government in order to provide effective coordination. There ought to be a mix of public members and institutional representatives with the majority of the membership being non-institutional or public members.

c) Strong Academic Advisory Committees
With a strong membership and staff in place, the coordinating agency ought to establish a network of academic committees to give advice on the planning and operations of the agency. “These advisory committees may range from technical ad hoc bodies, through standing committees on special subjects, to a council of presidents… The coordinating staff should aid these committees by preparing papers, circulating agenda well in advance, and so forth” (p. 245). The main benefit of this network is academic integrity of the system.

The focus of this research will be with regards to the three core functions of planning, program review and budget review, drawing on the template provide by Berdahl and the work of others that address the core functions of intermediary agencies. These will be considered in describing the establishment and operation of the Commission for Higher Education in Kenya as an intermediary agency in the higher education sector of a developing nation.
3.4 METHODOLOGY

The research conducted began first with the requisite approvals. In this case, approval for the research was received from the University of Toronto Ontario Institute for Studies in Education. This was followed by completion and approval of the Ethical Review Protocol. Graduate level research in Kenya requires permission from the relevant government authorities which in this case involved securing approval by issuance of a license from the Office of the President of Kenya. In order to secure this approval, attachment to a local public university was required. This was obtained from Kenyatta University in Nairobi. Finally, general approval for the study was provided by the Commission for Higher Education in Kenya and indicated in an official letter received from the Commission Secretary.

The primary research activity was the comprehensive analysis of public domain documents associated with the work of the Commission for Higher Education. The research involved the careful review and analysis of publically available documents related to the Commission for Higher Education for Kenya. These included but were not limited to the following: the Acts of Parliament that established the Commission as well as other pertinent government legislation; the Annual Reports prepared by the Commission; researched documentation and reports published by the Commission and housed in the Commission's documentation center; Government of Kenya reports and policy documents related to the higher education sector; various government commission and task force reports; relevant books, journals, newspaper articles, promotional materials, and letters; comparable documentation on intermediary agencies from other jurisdictions; and annual reports from public and private Kenyan universities. The documentation reviewed spanned the period of time since the Commission for Higher Education was established in 1985 to the present. Most of the specific literature on the Commission was available in the Commission’s documentation centre or obtained from officers and staff at the Commission who shared from their own collections and files. The purpose of the review of these documents was to identify the specific nature of the work of the Commission since its establishment with regard to the legal framework for the Commission, and the functions of planning, program review and budget review.
This research also involved a limited number of strategically arranged interviews for purposes of clarification and validation of research findings regarding the functions, policies and operations of the Commission with individuals that could effectively comment on the experience of the Commission for Higher Education for Kenya. These include representatives from the Commissioners (former and current), the Commission senior staff, and the institutional leaders, Chancellors and Vice Chancellors, of the public and private universities. A total of nine individuals were extensively interviewed. This group included two Commissioners, four senior (executive) staff of the Secretariat, two institutional leaders, and a staff member of the Secretariat. Priority for selection was based on seniority (serving in administrative or leadership positions) and experience (length of time in these roles). This was done to ensure that experienced experts could comment on the research topic and findings and contribute in a significant manner to the understanding of the work of the Commission for Higher Education. Their observations enhanced the analysis and understanding of the primary research findings from historical analysis of documentation. The interviews took between forty-five minutes and one hour and were held in their offices or at an agreed location. Care was given to follow prescribed ethical guidelines and protocol for academic research.

Recruitment was done in a manner sensitive to the cultural protocols in East Africa as follows: participants were invited by an email letter to participate in the study. Their email addresses and phone numbers were all publically available through the Commission for Higher Education or other directory resources. A follow up phone call was placed to confirm that they had received the email and that they were willing to consider participation in the study. Once this was confirmed an interview was scheduled (location, date and time). A second email was sent to confirm the appointment in writing. A letter of informed consent was attached to this email so that the participants could review and consider the expectation and terms of their involvement prior to the scheduled interview. The letter of consent contained the relevant information that participants needed to know in order to sign the consent form. The letter included the title of the project and contact information of the researcher and the supervisor. Participants were informed that the project would investigate the role of the Commission for Higher Education as an intermediary body in the higher education system of Kenya. They were be told that the interview would take between forty five and sixty minutes and will be conducted
at a date and place as arranged. They were also told that the session would be tape recorded for transcription and that they would be required to sign for their specific approval on this point. They were clearly told that their participation was completely voluntary and that they would be free to withdraw at any time. The letter of consent also included the fact that at no time would they be judged or evaluated, at no time would they be at risk of harm, and no value judgment would be placed on their responses. They were informed that they may also refuse to answer any questions that they were not comfortable with. Finally they were informed that the information would be retained in a secure location and kept confidential and their names would not be used in the study in reports, publications or presentations.

Once the groundwork for the interview was done the work of meeting with and interviewing the selected participants began. The letter of informed consent was signed at the beginning of each of the interviews and the participant kept a copy of the letter for future reference. Participants were given assurance that they may withdraw at any time without consequence, penalty or judgment and that they may refuse to answer any question in the interview or terminate the interview at any time. It had been determined that if a participant withdrew in the middle of the interview, their information would not be included. Details about the participant’s right to withdraw from the study and the process for this were outlined in the letter of consent. In addition all data collected from subjects that had wished to withdraw would be destroyed immediately when the request to withdraw from the study was received by the researcher. As it turned out these contingencies did not need to be taken. All of the interviews went well and none of the subjects chose to withdraw. The data collected were sorted and compiled for use in the study. Only the researcher and the supervisor have access to the data. Interview documentation was securely stored in a locked cupboard at the researcher’s residence for the duration of the study and will be destroyed five years from the time the research project is complete and the project is published. Should the information be used for additional reports, publications or public presentations, the information will be confidential in those reports as well.

The following questions were used for the interviews. Not all applied to every person. Questions from this list for specific individuals were selected based on their relevance to the specific role or responsibility that they had at that time:
1. General questions regarding the Commission for Higher Education and the Kenya higher education system and its legal establishment:
   a) Describe the higher education system in Kenya and the specific role of the Commission for Higher Education?
   b) What is the nature of the relationship in Kenya between the state and the universities?
   c) To what extent do Kenyan universities experience academic freedom and institutional autonomy?
   d) What differences are there in the way that the Commission for Higher Education relates to private universities compared with the public universities?
   e) How effective is the Commission for Higher Education at implementing the government’s directives and initiatives for the post-secondary education sector?
   f) Describe the balance of power in Kenyan higher education between the state, the Commission for Higher Education and the universities?
   g) What measures are taken to ensure that the most qualified staff are hired/appointed to the Commission for Higher Education positions?

2. Questions related to the role of the Commission for Higher Education and planning:
   a) Is there a ‘master plan’ for the development of the Kenyan higher education system? If yes, how relevant is the current plan at addressing the current needs and priorities in higher education?
   b) What roles, if any, do the following have in planning for the development of Kenyan higher education: the state, the Commission for Higher Education, public universities, and private universities?
   c) How is the state prepared to provide for expansion in the higher education system in Kenya? What role does the Commission for Higher Education have in this regard?
   d) What is the relationship between the roles and types of institutions in the system? How much diversity and differentiation is there at the institutional level? Does the Commission for Higher Education intentionally address diversity and differentiation issues?
e) What evaluation mechanisms are in place to assess the performance of the institution’s and the system as a whole? What can the Commission for Higher Education do to improve the quality of the Kenyan higher education system?

3. Questions related to the role of the Commission for Higher Education and budget review:
   a) How is funding provided for post-secondary education in Kenya? What is the specific role of the Commission for Higher Education with regard to budget review and allocation?
   b) Does the Commission for Higher Education have any responsibility in the area of budget review for private universities?
   c) What are the critical decision making factors that determine budget allocation and review? How does the Commission for Higher Education address or report on these factors?
   d) How does the Commission collect important data for use in financial decisions relative to the higher education system?
   e) What financial accountability measures are in place to ensure effective fiscal management? Is the Commission for Higher Education responsible for financial accountability in the Kenyan higher education system?

4. Questions related to the role of the Commission for Higher Education and program review:
   a) What is the specific role of the Commission for Higher Education in program review?
   b) How does the Commission for Higher Education manage the following tasks related to program review, and to what extent has the Commission been effective:
      - Establishment of new public institutions, campuses, and professional schools
      - Determining the role and scope of institutions
      - Establishment of new programs
      - Reallocation or elimination of existing programs
      - Closure of unauthorized (illegal) post secondary institutions
c) Is there a difference between the responsibilities of the Commission for program review between the public and private sector?

d) How does the Commission’s work in the area of program review relate to comprehensive planning for the higher education system in Kenya?

e) What is the Commission’s scope of authority in the area of program review for the increasing privatization being experienced in Kenyan public universities (e.g. “parallel programs”)?

3.5 SUMMARY AND LIMITATIONS

The research design and methodology chosen and followed are well suited for an historical case study on the role, functions and operations of the Commission for Higher Education in Kenya. The primary research activity for this study consisted of a comprehensive review and analysis of documents related to the work of the Commission. This was supported through interviews with key figures that served to further explain, corroborate, validate and enlighten the researched documentation. The design of the study was to focus on the core functions of an intermediary agency; planning, program review and budget review. The work that follows indicates that the design and methodology of the research served to achieve the stated objectives of the study. The following are a couple of points to note regarding limitations of the study. Firstly, an historical case study can only provide specific insight to the context and the agency studied. As a result the findings may inform other settings but may not be wholly generalized to every similar context. Principles may be observed and lessons learnt but they come out of a very defined and specific environment. Secondly, the intent of the research is to focus on the core functions of an intermediary body. Each of these functions or aspects of work associated with each of these functions could constitute a major research task on its own. For instance, there is a rich and significant literature on program assessment and review. To adequately cover the topic of program assessment would be beyond the scope of this research. The focus of this research is not on program assessment, but rather on what an intermediary agency role, function and activities in program assessment involves. More detailed work on the specific tasks and objectives of the three core functions are topics for further research. The chapters that follow will discuss the research findings and discuss the legal framework for the
Commission for Higher Education in Kenya, its role as an intermediary body in planning, in program review and in budget review.
Chapter Four
The Legal Framework for the Commission for Higher Education in Kenya

4.1 INTRODUCTION

The state coordination of its higher education system is fundamentally an extension of its governance as described through legislation established by the duly constituted authority, which in the case of the Republic of Kenya, is the parliament. The Acts of parliament that reference higher education, define the Laws of Kenya that pertain to that sector. The history of the development of the Kenya higher education system has been described earlier including description of the legal actions that shaped that history. A summary of benchmark legislation will be presented in this introduction followed by detailed analysis of the key pieces of legislation that provides the legal framework for the work of the Commission for Higher Education in Kenya.

At the time of Kenyan independence in 1963, the higher education system in Kenya consisted of one constituent college of the University of East Africa which was Royal College in Nairobi. In 1970, following the recommendation of the Stoddard Working Party, a commission was established to make recommendations for the development of higher education in the new independent Africa states of East Africa. The University of Nairobi Act legally established the first university in the Republic of Kenya. Included in that Act was the establishment of the constituent college, Kenyatta University College which specialized in the area of Education. After a period of incremental growth and the establishment of the primary and secondary education systems, there was increased demand in the early 1980’s for additional post-secondary institutions. There was also concern expressed by the public regarding the capacity of the university to meet the growing demands being placed on the institution to develop new training programs to meet workforce needs. As a result three additional universities were established: 1984 Moi University Act, 1985 Kenyatta University Act, and 1986 Egerton
University College Act. In the midst of this legislation the 1985 University of Nairobi Act was established “to amend and consolidate the law providing for the establishment of the University of Nairobi and its control, government and administration for connected purposes” (University of Nairobi Act, 1985, p. 3).

The most comprehensive piece of legislation at this foundational stage of the establishment of the higher education sector in Kenya was the 1985 Universities Act which was described as follows: “An Act of Parliament to make better provisions for the advancement of university education in Kenya and for connected purposes” (Universities Act, 1985, p. 3). This was the Act of Parliament that established the Commission for Higher Education and defined its constitution, functions, terms and powers. The Commission was established in order to carry out the following functions: to coordinate the development and operations of universities; to harmonize university education; to supervise university operations; to advise the government on the establishment of new institutions of higher learning, accreditation, new courses of study, student admission, degrees, diplomas, and certificates, and to advise the government on higher education policy. This Act is of particular relevance for this study and will be discussed in detail later in this chapter.

By 1985 the foundations of a legal framework for the higher education system in Kenya had been established. At the same time, another commission was established to address concerns regarding the education system in Kenya. The commission was chaired by James Mwangi Kamunge and was given clear guidelines for its work. Following political pressure to table its findings, the Kamunge Report was submitted and adopted by the government in 1988. The Kamunge report was instrumental in the implementation of major education reform in Kenya. Though it focussed primarily on the elementary and secondary systems, it also addressed the higher education sector. In the year following the adoption of the Kamunge Report, the Establishment of Universities (Standardization, Accreditation and Supervision) Rules Act, 1989, were gazetted. The purpose of this act was to spell out, for those that would be active in the development of the university system in Kenya, the standards that were to be realized. The 1989 Act was gazetted to provide guidelines for the functioning of the Commission for Higher Education that had been passed by the 1985 Universities Act, but realized soon after its
inception the need for guidelines and policy to direct its efforts. The 1989 Rules Act set out to define the following: rules for registration of existing universities, rules for establishment of new universities, rules for institutional standards, and rules and procedures for accreditation.

In order to properly understand the working of the Commission, and in particular its role in the core functions of an intermediary agency (planning, program review and budget review), the legal framework for the Commission for Higher Education will be discussed by looking more closely at critical pieces of legislation. This discussion will review and comment on the legislation that forms the legal framework for its operations: a) The Universities Act -1985 b) The Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond – 1988, commonly referred to as the Kamunge Report c) The Establishment of Universities (Standardization, Accreditation and Supervision) Rules Act - 1989 which is more commonly referred to as the University Rules Act, and d) The Universities (Coordination of Post Secondary School Institutions For University Education) Rules Act – 2004. Finally, The Commission for Higher Education Bill - 1997, will be discussed. This was tabled but not passed and reflects the government’s initiative at that time to amend the legal framework for the Commission.

4.2 THE UNIVERSITIES ACT 1985

The expressed purpose of the 1985 Universities Act Chapter 210b Laws of Kenya is stated as follows: “An Act of Parliament to make better provisions for the advancement of university education in Kenya and for connected purposes” (p. 3). The legislation was passed effective August 1, 1985 to address the need for quality assurance in Kenya’s higher education system. The particular feature of the Act was the establishment of the Commission for Higher Education in Kenya as a permanent intermediary body to ensure the development of a quality higher education system in Kenya. The Commission for Higher Education was to oversee this sector since post-secondary education was deemed critical for national unity and development.

The Universities Act 1985 (Appendix I), is fairly brief and contains five parts covering 21 sections. Part I is the preliminary section where the title of the Act is named and the
interpretation of terms is noted. Though interpretation of terms is usually a ‘housekeeping’ aspect at the beginning of legislation, there is an important item in the interpretation of terms that is worth pointing out. Part 1 Section 2 includes the following: “‘university’” means the University of Nairobi established by the University of Nairobi Act, Moi University established by the Moi University Act, and any other university, whether public or private, established after the commencement of this Act” (p. 3). The section goes on to differentiate between public and private universities with public referring to institutions that are established or assisted out of public funds. The reason for pointing out this detail of the legislation is because of the manner that the Act has been interpreted regarding the scope of influence provided to the Commission. This will be discussed in further detail following the description of Part III of the Act.

Part II of the Universities Act contains the sections that deal with the establishment of the Commission for Higher Education, perhaps the most important aspect of this legislation. Section 4 of Part II defines the constitution of the Commission. The Commission is to consist of no less than 24 members and no more than 28 members. A significant feature of the profile of the Commission membership is the strong role of the President. Sixty-two percent (62%) of the members, including the Chairman and the Vice Chairman, are appointed by the President of Kenya. A further eighteen percent (18%) are Ministry of Education Appointments, ten percent (10%) represent government executive or administrative staff, and ten percent (10%) are members co-opted by the Commission itself. There is clearly strong Executive influence over the Commission, with the Presidential power in the affairs of the higher education system strongly entrenched. The section does not provide for broad guidelines related to the criteria for inclusion of members, such as experience in university education and research, or any efforts to represent other aspects of the higher education sector. Instead there seems to be a strong bias to accommodate political appointments that may not necessarily serve the advancement of university education.

The functions of the Commission are listed in Section 6. Since these functions are so central to this research they are listed below in totality:

a) To promote the objectives of university education, namely the development, processing, storage and dissemination of knowledge for the benefit of mankind;
b) To advise the Minister on the establishment of public universities;

c) To accredit universities

d) To coordinate the long-term planning, staff development, scholarship and physical
development of university education;

e) To promote national unity and identity in universities;

f) To liaise with Government departments and the public and private sectors of the
economy in matters related to overall national manpower development and
requirements;

g) To cooperate with the Government in the planned development of university
education;

h) To examine and approve proposals for courses of study and course regulations
submitted to it by private universities;

i) To receive and consider applications from persons seeking to establish private
universities in Kenya and make recommendations thereon to the Minister;

j) To make regulations in respect of admissions of persons seeking to enrol in
universities and to provide a central admissions service to public universities;

k) To ensure the maintenance of standards for courses of study and examinations in the
universities;

l) To advise and make recommendations to the Government on matters relating to
university education and research requiring the consideration of the Government;

m) To collect, examine and publish information relating to university education and
research;

n) To plan and provide for the financial needs of university education and research,
including the recurrent and non-recurrent needs of universities;

o) To determine and recommend to the Minister the allocation of grants of money for
appropriation by Parliament to meet the needs of university education and research
and review expenditure by universities of monies appropriated by Parliament;

p) To advise the Government on the standardization, recognition and equation of
degrees diplomas, and certificates, conferred or awarded by foreign and private
universities;
q) To coordinate education and training courses offered in post-secondary school institutions for the purposes of higher education and university admission;

r) To arrange for regular visitations and inspection of private universities;

s) To perform and exercise all other functions and powers conferred on it by this Act.

These functions define the mandate of the Commission for Higher Education in its role as an intermediary or buffer agency in the higher education system for Kenya. They are comprehensive in nature and describe the state’s expectation for the agency. The functions listed serve as the legal framework for the initiatives and actions of the Commission. The specific details of these functions will be discussed in following chapters in the context of the major roles of intermediary agencies namely planning, program review and budget review. For now, however, there are a couple of important observations to point out.

The scope of the Commission’s authority is unclear with regards to public and private universities. Many of the sections include the word ‘universities’ in a manner which seems to be inclusive i.e. they apply to all universities in Kenya, both public and private. There are also sections for which differentiation is provided so that the prescribed function applies only to public or private universities as the case may be. This leaves some details open to interpretation. Consider the potential ambiguity in relation to the function of accreditation: The Commission is mandated ‘To accredit universities’ and ‘To ensure the maintenance of standards for courses of study and examinations in the universities’. This seems to apply to all universities but later there is distinction made for private universities where the Commission is ‘To examine and approve proposals for courses of study and course regulations submitted to it by private universities’. The first two statements imply a clear expectation for the Commission related to quality control. However, the activities that are typically put into action, in order to carry out this role, (approval of proposed courses of study) are selectively designated for private universities only. One must ask how the Commission is expected to accredit and ensure maintenance of standards for courses of study in public universities. As it turns out, the interpretation is that quality assurance and accreditation by the Commission, is to be applied only to private institutions. This is an early example of what will be identified as perhaps the greatest weakness of the Universities Act. From the outset it seems that the legislation does not adequately address the authority of the
Commission over the public universities, while providing strong oversight for the private universities.

Part III and Part IV of the Universities Act further complicate the issue of scope for the Commission of Higher Education. Part III of the Act describes the ‘Provisions Relating to Public Universities’. It contains two short sections, 9 and 10, which basically restricts the role of the Commission to an advisory function. The ‘establishment and progressive development’ of public universities is left to the Minister of Education upon ‘the advice of the Commission’. Even the planning for the expansion of public universities is moved from the Commission to the Minister of Education. In stark contrast, Section IV includes detailed legislation regarding the ‘Establishment of Private Universities’. The Sections in that part of the Act include the fact that every private university must be established by a charter from the President. The charter is to outline the aims and objectives of the university, its governance, its right to make policies, financial control mechanisms, and the establishment as a legal entity. Application for the grant of a charter is to be submitted to the Commission, who is responsible to vet these and make recommendations to the Minister who will submit the application to the President along with the Commission’s recommendations. The procedures are clearly defined and comprehensive in nature. A key characteristic is the significant role of the Head of State, the President, who is responsible for awarding the charter and also has the power to vary or revoke a previously granted charter under the terms of the Act.

The final section of the Universities Act is titled ‘Miscellaneous Provisions’ and deals with aspects of the Commission’s establishment such as determination of financial estimates (budget) for the Commission, areas for expenditure of the Commission, and provisions for record keeping and financial accountability (audit). This final section of the Act provides the authority for the Minister to establish rules that will allow for the carrying into effect of the provisions of the Act including the interesting provision to “prescribe anything which may be prescribed under this Act”.

The principle legislation that relates to the establishment and operation of the Commission for Higher Education as an intermediary, or buffer agency, between the state and
the higher education sector is the 1985 Universities Act which established the Commission. A fundamental limitation inherent in the legislation was the fact that it did not address the issue of the existing public universities and the legislation that had established them and so the Commission became an intermediary agency primarily for the private universities, which in the overall picture, is a small part of the total higher education sector.

4.3 THE KAMUNGE REPORT

In August 1985, concurrent with the establishment of the Universities Act, a comprehensive report on the Kenyan education system was commissioned by the President and government (Kenya Gazette Notice 3743 and 669). This report was to address the Education sector and make recommendations for its future development. The timing of the report was interesting in that the mandate for this work was commissioned just after a major educational reform with the transition from the traditional 7-4-2-3 (seven years primary, four secondary, two advanced secondary and three university) education system to the 8-4-4 (eight primary, four secondary and four university) system. Notably the report was commissioned just after the CHE had been established. In addition, the enrolment crisis that had resulted in the doubling of new university students at the mandate of the president had just occurred. Clearly the state leaders needed to demonstrate that the decisions and actions taken were in the best interests of development of education in the country and a serious commission report would not only validate what had been done but also lay a strategic path for the future. Reference was made in the report to the ideas expressed in a broader policy framework titled *African Socialism and its Application to Planning in Kenya*. For example “A national education system should always aim at removing social injustice and disparities and also prepare and re-orientate the youth and to practice the norms and values of society” (Ministry of Education, 1988, p.7). A clear philosophy of education was laid out with the stated national objectives for the system as follows:

a) Education must serve to foster national unity

b) Education must prepare and equip the youth with knowledge and skills and expertise to enable them to play an effective role in the life of the nation

c) Education must serve the needs of national development
d) Education must provide for the full development of talents and personality

e) Education must promote social justice and morality, social obligations and responsibilities

f) Education must foster positive attitudes and consciousness towards other nations (p. 7).

This positioned the report as a forward looking document. Given the major transformations that had already rocked the status quo of the education sector in Kenya, it may be fair to suggest that the Presidential Commission was established to legitimize the decisions that had already been made. In hindsight it may have been better to complete the research and make the broad sweeping policy changes based on the recommendations of a commission. In the case of the Universities Act, this process may have yielded better legislation. The chairman for the working party was James Mwangi Kamunge and in March 1988, under some duress from the government to complete its work in a timely manner, the Report of the Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond, was received and published.

The working party was given a broad mandate. The ten specified terms of reference for the commission listed below seem to have been quite general in nature:

1. Review generally the whole educational Philosophy, Policies and Objectives to ensure that they are in consonance with changing social, cultural, economic and political demands of the country.

2. Recommend ways and means of sustaining the momentum of educational growth without sacrificing quality or relevance.

3. Recommend ways and means of providing, at both post-primary and post-secondary levels, greater training opportunities for the majority of candidates who do not proceed for further formal education.

4. Recommend ways and means of improving quality of education in all public, harambee and private institutions. These should include strategies for more efficient use of existing human, physical and fiscal resources; the production and distribution of all the basic learning and teaching resources; and proper administration, management and supervision in all educational and training institutions.
5. Recommend ways and means of coordinating and harmonising curriculum, examinations and certification for all educational and training institutions on a national basis.

6. Recommend ways and means of making optimum use of existing facilities and personnel in education and training institutions.

7. Recommend ways and means of financing education and training at all levels.

8. Recommend ways and means of expanding and strengthening special education.

9. Recommend ways and means of establishing and developing a centre of excellence in education, training and research with a view to enhancing artistic, scientific and technological potential in Kenya.

10. Recommend ways and means of orientating education and training increasingly towards learning for life and creative productivity (p. vii).

As can be seen above, the scope of the work requested was very broad and touched on all aspects of education in Kenya including primary, secondary and post-secondary education. Chapter 10 of the report dealt specifically with universities. The discussion on post-secondary education was positioned in light of the following expressed objectives for university education in addition to the broad position statement that “Universities are also charged with the role to teach, undertake research, develop and advance knowledge, store and disseminate such knowledge” (Gichaga and Wainaina, 2005, p. 30), the specific objectives of university education were noted as follows:

a) To develop, advance, preserve and disseminate knowledge and to stimulate intellectual life

b) To train and prepare high level manpower needed for development

c) To promote cultural development and the highest ideals and values of society

d) To provide, through research and consultancy, knowledge, skills and services to the community by helping solve problems facing the society

e) To assist the government in achieving its planned development of higher education (Ministry of Education, 1988, p. 30).

In the discussion and documentation of the working party, two related themes characterize the specific recommendations made: capacity development in the higher education
system, coupled with quality assurance. The tone of the discussion and a number of recommendations indicate that the Kamunge commission was particularly concerned with the need to increase the capacity of the post-secondary education system. It is clear that student demand for university education was far beyond the supply of available places in the system. The following statement captures the essence of this concern: “It was however noted that great strain has been put on existing resources and that there is need to provide universities with additional facilities, equipment and staff to match students enrolment in order to sustain the quality and relevance in university teaching, research and scholarship” (Ministry of Education, 1988, p. 70). This overarching concern is seen in the general recommendations regarding post secondary education contained in the Kamunge Report which include:

- The growth in university student enrolment be matched with commensurate provision of appropriate resources in order to maintain high standards, quality and relevance of university education, training, research and scholarship.
- Some of the existing training and research institutions be developed as university institutions offering degrees of Kenyan public universities.
- The establishment of private and ‘harambee’ institutions be encouraged but controlled and guided to ensure they offer courses relevant to the needs of Kenya and maintain acceptable standards.
- The development of public universities be coordinated and harmonized to ensure complementarity in the provision of university education.
- Universities should ensure that their teaching staff establishments are adequate and vacancies are filled promptly
- Universities should consider recruiting holders of Masters degrees into substantive university teaching posts and to facilitate them to acquire higher qualifications
- Universities should establish ways and means of raising funds from the public and private sectors to strengthen university research
- University libraries be provided with adequate funds and be equipped with up to date books, journals, periodicals and technical services to effectively support teaching, learning and research.
- A university press should be established to meet the publishing needs of the universities and to be managed on a commercial basis.
- Schools and universities provide necessary guidance and counseling to university applicants to enable them to make the right subject and course choices
- Universities should recognize and give credit for education and training acquired from post-secondary institutions and to institute flexibility in the admission to university programs
- The admission of students to public universities, except under special circumstances, should be as day university students
- The management and administration of the students’ boarding and feeding services be streamlined and provided separately from the management and administration of the universities
- Universities be provided with adequate funds to expand post-graduate programs to met the demands for national manpower training and promotion of research; ensure that post-graduate students, tutorial and research fellows devote adequate time on their studies and research in order to complete their programs on time; endeavour to train their academic staff in the basic concepts of university teaching, methodology and in guidance and counseling;
- Adequate capacity and capability be developed in Kenyan universities to enable them to train national manpower in all specialized areas.

The Kamunge Report included strong sentiment that the higher education system be dramatically expanded to increase the capacity to serve the national interests. The strategy outline implied three main actions: develop and expand existing public institutions, create additional public institutions and establish new private institutions. “In addition, it is the view of the Working Party that future expansion of university education can be done through the utilization of the existing training and research institutions being allowed to develop as university institutions” (Ministry of Education, 1988, p. 70). A strong bias for quality and standards in this expansion was also expressed. This value can be seen in the subtext or implications of the recommendations made. The growth needed was not to take place without careful attention to quality. It was clear that state coordination of the higher education system was needed and recognized that the Commission for Higher Education that had been established in 1985 was positioned to play the strategic role of managing growth while ensuring quality.
However the Kamunge commission was also quick to recognize an inherent problem that existed in the legal framework established by the Universities Act 1985.

The Working Party welcomed the establishment of the Commission for Higher Education as an important step in the control and guidance especially of the establishment of private university institutions. It was, however, noted that the Commission’s functions of planning and development of universities, staff development, financing and admission of students appear to be similar to the functions of individual public universities as provided by the Acts that have established them. There is need, therefore, to review the relevant legislation with a view to streamlining these functions. (Kamunge, 1988, p. 72)

As early as three years after the establishment of the Commission for Higher Education, official public concern was expressed by education experts accountable to the state, that oversight and effective coordination of the higher education system was limited by the lack of harmony between the Commission and existing public institutions that had been established by their own charters. This led to the most pointed recommendation contained in the Kamunge Report regarding the Commission for Higher Education. “The functions of the Commission for Higher Education and the public universities, in university planning and development, staff development, financing and admission of students, be reviewed with a view to streamlining their responsibilities” (Ministry of Education, 1988, p. 31).

4.4 THE UNIVERSITIES RULES ACT 1989

Following quickly on the heels for the Kamunge report was The Universities (Establishment of Universities, Standardization, Accreditation and Supervision) Rules, 1989 Act (Appendix II). This was a pivotal piece of legislation as it set forth into law the specific regulations that were to govern the establishment of universities in Kenya. The Universities Act established the Commission for Higher Education in Kenya and mandated it to make provisions for the supervised advancement of higher education in the country. Soon after the Commission had been established, the landmark Kamunge Report set clear expectations for the dramatic expansion of the higher education system in large part through the establishment of new universities in a manner that would ensure quality expectations in line with national interests. The Commission for Higher Education was positioned to play a very strategic role, notwithstanding its inability to oversee the large sector of the system represented in the existing
public universities. What was needed at this point was a codified set of standards and expectations that the Commission could use in its work of establishing, standardizing, accrediting and supervising post secondary education. The 1989 University Rules Act was established to serve this purpose.

There are seven parts to the legislation and three schedules. The following list of the contents indicates the scope and focus of the legislation and its significance for the mandate of the Commission for Higher Education:

- Part I – Preliminary
- Part II – Registration of Existing Universities
- Part III – Establishment of New Universities
- Part IV – Preparation of Institutional Standards
- Part V – The Process of Accreditation
- Part VI – Institutional Rights and Obligations
- Part VII – Miscellaneous Provisions
- First Schedule – Application Forms
- Second Schedule – Institutional Standards
- Third Schedule – Fees

The University Rules legislation flows directly out of section 21 of the Universities Act and is an exercise of the powers afforded to the Ministry of Education after consultation with the Commission.

When the Universities Act was passed in 1985 there were three public universities that were established by the government through award of Charter. There were also a number of private universities that had begun to offer degree level programs. In order to begin to regulate the private sector, the University Rules Act required that all private universities that had graduated at least one class, apply for registration with the Commission. The Commission then determined which of the universities should appear on the register of all universities. Furthermore, any ‘university’ that did not appear on the register was to cease to operate or perform functions consistent with those of a university. A Certificate of Registration was to be
issued which would constitute the authority until such time as it was accredited (chartered). The following private universities were officially registered by the Commission for Higher Education according to Part II of the University rules Act:

- Catholic University of East Africa (1985)
- Daystar University (1989)
- East Africa School of Theology (1989)
- Kenya Highlands Bible College (1989)
- Nairobi Evangelical Graduate School of Theology (1989)
- Nairobi International School of Theology (1989)
- Pan Africa Christian College (1985)
- Scott Theological College (1988)
- St Paul’s Theological College (1985)
- United States International University (1989)

The next section of the University Rules Act proceeds to describe how a new university was to be established. The registration process in Part I covered existing universities but there were a number of private institutions that sought to establish themselves in Kenya. Part III details the step by step process whereby a new institution could meet the expectations and be evaluated by the Commission in order to be qualified to operate under a Letter of Interim Authority. This interim authority is to allow universities to operate for an indefinite period of time “until such time as it is suspended or revoked, or until accreditation is granted” (Part III, 9.1). The desired systematization of the higher education sector had begun with these important parts of the University Rules Act. Legitimate and qualified private universities that were in existence when the University Act was passed were officially registered and instructed to begin the process of working towards accreditation. The establishment of new private universities was catered for through the issuance of a Letter of Interim Authority also to be followed by a process of working towards accreditation. It is notable that a major emphasis of the Commission, in light of these two clauses from the University Rules Act, was going to be program review and quality assurance leading to accreditation as expressed in the award of a Charter.
Part IV of the University Rules Act discusses the preparation of Institutional Standards that were to “govern the performance, operation and general conduct of all universities authorized to operate under these rules” (Part IV, 11,1). The following were listed as the particular focus of the Rules or Institutional Standards:

a) The minimum entry requirements for admission to any certificate, diploma, or degree programs being or to be offered at such university;

b) The minimum number and duration of programs at the certificate, diploma or degree level that ought to be offered;

c) The minimum and maximum number of students which must be enrolled in each program before it can be offered or efficiently maintained;

d) The standards of proficiency assessed in terms of content and contact hours, which students are expected to attain in respect of a certificate, diploma or degree program;

e) The level of academic training which persons seeking recruitment into the teaching staff of the university at the certificate, diploma or degree level should possess;

f) Detailed specifications concerning the space requirements and concomitant services for each class size and for the absolute number of students expected to be enrolled in, or activity to be carried out in an institution providing university education and services; and

g) The basic ethical standards that should regulate the conduct of all members of the university (Part IV, 11.2).

The standards as described above are fairly comprehensive in nature and seem to touch on areas that would be quality assurance factors. Reference is made in this section of the University Rules Act to the Second Schedule contained in the Act that they “have been prepared and published in accordance with the guidelines above” (Part IV, 13.1). Further, the Commission may add to or delete, or otherwise amend, the Second Schedule, however, provided that any amendments made in accordance with this paragraph shall be published in the Gazette. Before discussing the rest of the parts of the University Rules Act it is necessary to describe the Second Schedule as it appeared when the Act was gazetted in 1989.
The Second Schedule, which was intended to be a comprehensive list of criteria to meet the Institutional Standards noted above, in fact only addressed one of the focus areas for the standards. The title of the Second Schedule is “Standards for Physical Facilities”. The schedule contains 61 complex descriptions of standards for physical facilities which together seem to relate to item (g) in Part IV 11.2. The sections of the schedule include a section on public health, public safety, physical facilities, and spatial requirement. A reading of the schedule soon allows one to discern the incredible details that are contained. A few examples will serve to illustrate this point. Regarding classroom space, the minimum classroom floor area per student for 30-39 students is 1.9 square meters with desk and chair or 1.4 meters for chair only (Part IV, 16). “The total usable space provided for classrooms shall be at the minimum rate of .65 square meters per full time student equivalent” (Part IV, 17). Regarding offices, the minimum floor area for heads of departments is 18 square meters, academic staff 13 square meters and non-academic staff 7 square meters (Part IV, 21c). Regarding the Library, “the main reader area shall be equal to 30% of FTSE and each reader station shall not be less than 1.9 square meters (Part IV, 23a). Regarding Laboratories, each lab shall provide built in furniture and equipment including an instructor’s table measuring 2000 x 300 x 706 mm high (Part IV, 26f). Regarding toilet facilities there shall be one urinal for every 10 students and one wash hand basin for every 10 students (Part IV, 51 c and d). Regarding recreational facilities access is to be provided to at least one standard athletics track enclosing a football pitch, at least one standard lawn tennis pitch, one standard volleyball pitch, one standard badminton or tenniquoit pitch, and one standard netball court (Part IV, 60). With this schedule the Commission was positioned to begin the process of legitimizing existing private universities and setting up a framework for approving new universities. This rules contained in Schedule II were to be the first of a set. A senior Commission staff member explained that in light of the difficult experience trying to enforce the second schedule on physical facilities the Commission opted to approved ungazetted guidelines instead. Plans for similar legislation for areas including library guidelines, curriculum guidelines, guidelines for proposals to establish universities and guidelines for university charters and statutes were set aside. Instead the guidelines were developed as policy rather than law and so the Commission was able to have greater flexibility in their application and alteration.
Before looking briefly at the last aspects of the legal framework that shapes the present role of the Commission for Higher Education, it is prudent to provide a summary of the implications of the Universities Rules (1989) as they affect the work of the Commission:

1. The 1985 University Rules and in particular Schedule II, do not seem to address the primary issues outlined for standards (Part IV, 11.1). The following were stated as the particular focus of the Rules or Institutional Standards: minimum entry requirements for admission to any certificate, diploma, or degree programs being offered, or to be offered, at such university; The minimum number and duration of programs at the certificate, diploma or degree level that ought to be offered; The minimum and maximum number of students which must be enrolled in each program before it can be offered or efficiently maintained; The standards of proficiency assessed in terms of content and contact hours, which students are expected to attain in respect of a certificate, diploma or degree program; The level of academic training which persons seeking recruitment into the teaching staff of the university at the certificate, diploma or degree level should possess; Detailed specifications concerning the space requirements and concomitant services for each class size and for the absolute number of students expected to be enrolled in, or activity to be carried out in an institution providing university education and services; and The basic ethical standards that should regulate the conduct of all members of the university (Part IV, 11.2). The only focus that is addressed in part by the exhaustive details included in Schedule II is expectation for the detailed specification concerning space requirements.

2. The fact that other important quality assurance areas have not been included with specificity in the legal framework means that there are evaluation criteria that have a heavier weighting in the accreditation process than others. Focus areas for quality assurance, apart from physical facilities, as a result have been developed by the Commission as policy or best practices guidelines not having the same weight as the specifications that have been established as legal requirements. For example standards of proficiency in terms of content and contact hours are treatable as judgments based on policy and/or practice. However, the number of acres required to function as a university is a non-negotiable legal matter according to Schedule II. This reality skews
accreditation matters to areas that might have less to do with quality assurance in accreditation than what seem to be more important aspects.

3. The net effect of the Universities Rules, especially with the inclusion of the troublesome Schedule II, is to drive the Kenya higher education system to uniformity through conformity to the specific guidelines established. There is a clear dampening force for a system that aspires to reflect diversity and innovation. It can be interpreted that the nature of the impact from the legislation is that universities in Kenya will be more or less the same. This is a subtle but important distinction between establishing a system where key principle factors are established in a manner that assures quality but fosters desired diversification in the system.

4. The stringent nature of the Schedule II standards presented a greater challenge to the existing universities that were registered with the Commission and worked towards a Charter, than to those that were to establish themselves after the Rules were published. For example the greatest challenge to meeting the accreditation rules for existing universities was/is the land requirement. These institutions had established themselves in the absence of such a specific rule and were now expected to comply in order to meet accreditation demands. This requirement overshadowed any other evaluation of whether the institution met most or all of the other criteria for quality assurance.

5. Perhaps the most important aspect to note on this topic is the exclusive scope of the legislation to the private university sector of the higher education system. The Universities Rules were to be enforced by the Commission only among private universities. The greater part of the total system, the public institutions, which represent virtually all of the state’s resource investment in higher education, and most of the total university enrolments, was exempted from meeting the Universities Rules or being assessed on the same by the Commission for Higher Education.

4.5 THE UNIVERSITIES RULES ACT, 2004

The most recent legislation that regulates the work of the Commission for Higher Education in Kenya is The Universities (Coordination of Post Secondary School Institutions For University Education) Rules Act 2004 (Appendix III). This builds upon section 21 of the
Universities Act which empowers the Minister of Education to “make rules generally for better carrying into effect the provisions of this Act” (Universities Act Section 21). The 2004 Rules focus particularly on “post secondary institutions” which by definition from section 2 of the Act means “an institution registered or recognized under any law and which offers diploma or other courses for purposes of admission to a degree program” (2004 Rules Part 2). The 2004 Universities Rules has little to do with universities per se but instead provides a set of guidelines and procedures whereby non-degree granting post secondary institutions may a) offer programs that are officially validated by the Commission and b) be approved to collaborate with a university to offer degree programs.

Subject to the terms of the 2004 Rules post secondary institutions may apply for validation of its programs by the Commission for Higher Education. This validation is done through submission of an application accompanied by a detailed statement that covers the following areas: vision, mission and objectives; registration; governance; description of programs; student support services; qualifications of staff; enrolment profile; description of library resources; description of financial resources; and details regarding physical facilities (2004 Rules Section 3 (2)). The submission of this application will cause the Commission to establish an Inspection Committee that will evaluate the application, verify the veracity of the particulars, make other necessary inquiries and submit a “factual and evaluative report of its findings...within six months of the date of its appointment” (2004 Rules 4 (2)). Provision is made for the awarding of a certificate of validation. In addition the Commission is mandated to maintain a register of institutions who’s programs have been validated and furthermore to be published in the gazette. The next key aspect of the legislation has to do with the permission for ‘validated’ institutions to collaborate. “Subject to these Rules, an institution whose programs have been validated by the Commission shall be eligible to apply for authority of the Commission to collaborate with other post secondary school institutions or universities for purposes of offering validated or degree programs” (Rules 2004 7 (3)). The terms for evaluating permission to collaborate include an application accompanied by a detailed statement that outlines the following: terms of the contract; mode of teaching; mode of assessment; rights and obligations of the post secondary institution; resources devoted to the program; management of the program; and accreditation. The criterion regarding accreditation is very specific, and makes
reference to “the accreditation status of the institution or university in its country of origin and the accreditation status of the programs in the institution or university” (Rules 2004 12 (4)). It is possible to detect one of the major intents of the legislation as being to monitor collaborative programs where for example a diploma level institution is offering degree in collaboration with an international degree granting agency that may lack credibility (degree mills). In this manner the Commission is looking out for the public interest for university education.

There are two key implications of the Universities Rules 2004 to take note of:

1. Unlike the Universities Rules of 1989, the 2004 legislation gives clear room for the Commission to govern with some autonomy when it comes to post secondary institutions. In addition with the specific mandate to prepare and publish standards and terms for validation and collaboration, the Act gives legitimacy for the Commission to act in a professional self regulating manner. For instance, “The Commission may, on application by an institution or of its own motion, vary the terms and conditions upon which a certificate of validation was granted if it is of the opinion that such variation is in the interests of education in Kenya or that such variation shall assist the institution to carry out its functions in a more effective manner” (Rules 2004 8 (1)). A similar clause is provided for the purposes of approving collaborative programs. This language is qualitatively different from the tone set in the 1989 Rules where the Commission seems to be more restricted in its freedom to use judgment and act accordingly.

2. The 2004 Rules expand the scope of the Commissions’ responsibilities in an incredible manner. The expectations are that they will be active in validating post secondary institutions in Kenya. There are many such institutions, which, if they engage the requirements of the legislation, would present an impossible workload for the Commission to manage. Rather than just addressing the issue of collaborative programs for offering degrees, the validation process is available to any and every type of post secondary institution. More significantly, the scope issues that arise from the 1989 Rules (i.e. not including public universities in the Commission quality assurance mandate) is further relegated as now the Commission has the onerous responsibility to manage the non-degree sector of the higher education system. As noble as this might be, it misses the point of addressing the greater need for the higher education sector which is the
performance of the public university sector. The Commission for Higher Education would be better named as the Commission for Private University and Post Secondary Institution (diploma) Training.

4.6 THE COMMISSION FOR HIGHER EDUCATION BILL, 1997

It has been noted that as early as 1988, only three years after the Universities Act was established, the government’s own commission led by James M. Kamunge concluded that there was a need to address problems in the 1985 Act.

The Working Party welcomed the establishment of the Commission for Higher Education as an important step in the control and guidance especially of the establishment of private university institutions. It was, however, noted that the Commission’s functions of planning and development of universities, staff development, financing and admission of students appear to be similar to the functions of individual public universities as provided by the Acts that have established them. There is need, therefore, to review the relevant legislation with a view to streamlining these functions (Kamunge Report, p. 72).

The recommendation that was made at that time was that the functions of the Commission for Higher Education and those of public universities, in university planning and development, staff development, financing and admission of students, be reviewed with a view to streamlining their responsibilities. This would mean that the Commission would be re-established to serve as a genuine intermediary agency with oversight responsibilities for both the public and the private sectors of the higher education system.

The strong opposition to this idea on the part of the public universities, and in particular from the Vice Chancellors of those institutions, delayed any effort to address this matter for almost a decade. Finally, in 1997, the Attorney General introduced the Commission for Higher Education Bill (Appendix IV) with the following included in the memorandum of objects and reasons:

“However, upon the establishment of the Commission it was realized that it was not possible to implement its functions because similar powers and functions had also been
given to the existing public universities constituted under the relevant Acts. Consequently, laws relating to university education were reviewed with a view to harmonizing the areas of conflicts, weaknesses, and omissions in the Universities Act (Cap.210B) and other laws relating to the public universities. It is therefore, proposed to enact a new legislation harmonizing the powers and functions of the Commission for Higher Education and the public universities” (1997 Bill, p. 362).

The significant changes contained in the 1997 Bill compared with the 1985 Act are as follows:

1. Composition of Commissioners
   The composition of the Commission is adjusted. Instead of between eleven to fifteen members appointed by the President, the number of such appointments is reduced to between three and five. Representatives from key government portfolios are added including the Head of the Public Service, Permanent Secretary for Technical Training, Permanent Secretary for Planning and National Development, and the Director of Personnel Management. The Commission would also include two Vice Chancellors from the public universities, one from the private universities and one Head of a Post Secondary School Institution.

2. Terms for Commission Secretary
   The 1997 Act provided a six year term for the Commission Secretary and made explicit that he/she was responsible for the operation of the Secretariat.

3. Functions of the Commission
   The most significant changes are noted in the revised functions for the Commission. In addition to those included in the 1985 Act the Commission was now also responsible for the following:
   - Leadership and greater responsibilities in planning for both the public and private sector and preparation of a national development plan for university education
   - Accreditation of post secondary school institutions
   - To undertake inspections of both public and private universities
- To raise funds for public universities and to plan and provide for the financial needs of the universities
- To account to the Minister for all of the monies disbursed for purposes of funding public universities as well as establish financial performance targets

4. Establishment of Working Committees
   To assist in the work of the Commission and its Secretariat the Bill included provision for the establishment of the following working committees: the Policy Committee, and the Planning, Programming, Budgeting and Finance Committee.

5. Responsibilities for Public Universities
   Part III of the Bill delineates the provisions relating to the public universities. This section represents a net addition to the provision of the earlier Act and set the Commission in a role similar to what had been defined for private universities.

6. Responsibilities of Post Secondary School Institutions
   This section consolidates the role of the Commission as understood from the 2004 University Rules Act.

   A major change in this section has to do with the role the Commission would now play in preparing and submitting the annual budgets for the public universities. This is a dramatic shift from the practice established by the early 1985 Act.

These substantial changes were met with strong opposition by the leaders of the public universities who resented the fact that they were now going to become subject to the Commission for Higher Education in key areas including planning, quality assurance (program review) and finance. Political efforts were taken to quash the Bill including the mobilizing of students. “We know that the VC’s provoked students to become active in order to defeat the Bill by raising the spectre of higher fees. The resulting student unrest and riots meant that the Bill could not pass” (Interview). The piece of legislation intended to position the Commission for
Higher Education as a true and legitimate intermediary agency was not passed. More recent attempts to address this dilemma have also suffered at the hands of political forces eager to maintain the status quo. The lack of an enabling legal framework continues to limit the effectiveness of the Commission to this day.

4.7 CONCLUSION

As stated at the start of this chapter, the state coordination of its higher education system is fundamentally an extension of its governance as described through various legislation established by the duly constituted authority, which in the case of the Republic of Kenya is the parliament. The various pieces of legislation that relate to the establishment and operation of the Commission for Higher Education as an intermediary, or buffer agency, between the state and the higher education sector have been described. The principal legislation is the 1985 Universities Act which established the Commission. A fundamental limitation inherent in the legislation was the fact that it did not address the issue of the existing public universities and the legislation that had established them and so the Commission became an intermediary agency primarily for the private universities, which in the overall picture, is a small part of the total higher education sector. Additional legislation was included the University Rules Acts in 1989 and 2004. These clarified and addressed the role of the Commission with regards to accreditation of the private universities and post secondary school institutions but did not address the issue of the public universities. As a result the net effect of the legal framework for the operation of the Commission for Higher Education is that it is greatly limited in function in the private university context. The chief task with private universities has been to oversee the establishment of new private universities and the accreditation of existing private universities. The special focus given to accreditation (program review), and the lack of a clear mandate with regard to broader higher education system needs, has meant that hardly any work is done in the area of planning and budget review – two of the key functions for an intermediary agency. When it comes to the task of establishing and accrediting private universities, the terms of reference as contained in the university rules make these tasks overwhelming. Apart from all of the details and work required, there are too many legal standards, as opposed to policy directives, that are inflexible and work against innovation. Furthermore, they demand extensive
human capital investment to be implemented. The result is that the private university sector, which experiences the full effect of these regulations, feels taxed to measure up while at the same time victims of discrimination as their publically funded peers face no such oversight efforts. The skewed nature of the legal framework is acknowledged by government but, to date, there has not been enough political will to address this. The proposed 1997 Commission for Higher Education Bill goes a very long way to address these issues and re-establish the Commission as a fully fledged intermediary agency. Despite the continued expressions of commissioned reports for the government, and the inclusion of the need for a new legal framework in the master plans for education that have been developed since 1985, the needed change remains unaddressed.
Chapter Five

The Function of Planning and the Commission for Higher Education in Kenya

5.1 INTRODUCTION

Planning has been regarded as the top priority of any coordinating agency. It is the foundational function of planning that gives meaning to the tasks of program review and budget review. Long range planning provides the vital direction for intentional system development. The outcome of comprehensive long range planning is typically the production of a master plan. Once the master plan is in place appropriate guidelines and directions for the growth and development of the system have been established. Recent developments in higher education have brought a greater emphasis to quality assurance and a move away from planning for specifics such as curricula, enrolment and budgets (Stahle, 2005, p. 1). This is in contrast with much earlier perspective from scholars like Brumbauger (1963) that regarded long-range planning as the central function of a coordinating agency and describe the essential qualities required for planning to be done effectively. The focus seems to be shifting from inputs to process and outputs. While there are some agencies that are involved in planning, many are more engaged in quality assurance (Temple, 2003, p. 243). Even with these developments the significance of planning remains. Comprehensive planning provides the framework for quality assurance to take place. Some point of reference for quality is required and that comes from the product of planning. The focus of planning may be shifting but the priority remains. The planning process attempts to consider all of the variables in a state wide system of higher education, establish long range policy recommendations and targets and an appropriate course of action.

The task of planning for an intermediary agency can be considered by reflection on three basic questions: Who plans? Who implements? And who reevaluates? When it comes to who does the planning required by the coordinating agency, there are three possibilities: agency personnel (staff), external consultants, or a mix of both internal and external expertise. The
decision on who plans is largely dependent on the capacity of the coordinating agency. If the internal capacity exists within the agency, then sufficient expertise is present for the planning to be conducted by the agency’s personnel. Often there is a gap between the skills needed for establishing and monitoring a master plan, and the capacity of the agency, and external consultants are brought on board to assist. The presence of this expertise is helpful both because of the skills that are brought to bear on the task of planning, and the objective perspective that comes with outside expertise. The importance of planning virtually prohibits that this task could be given over completely to outside consultants, without agency involvement.

When it comes to implementation the intermediary agency is well positioned to oversee the implementation of planning because of its powers or responsibilities in program review and budget review. Implementation is a critical aspect of planning. “It is at this point that many, if not most, plans fail. Plans are not self-enforcing or fulfilling any more than any other activities of government. Concerted effort and coordination among the public agencies is essential in order to overcome the myriad of obstacles that confront the plans objectives”. (Glenny, 1967, p.7) In order for the plan to be dynamic instead of static or rigid, periodic reevaluation must take place. This may result in the updating of a master plan but should not involve a fundamental reappraisal of the basic planning goals and structure of governance and coordination established by the master plan. The intermediary agency is able to reappraise planning goals and monitor the assessment of the actions that come out of the master plan; however, this form of self monitoring can result in a potential conflict of interest and self justification.

A strong master plan for a higher educational system should have the broadest scope possible taking into account both public and private institutions of higher education and the various levels of post-secondary training available. While the focus may be on state sponsored institutions some accommodation must be made for other types of institutions. Good planning includes both short term and long term objectives. Long term planning is essential and should guide and inform the development of the short term planning which tends to be more dynamic and useful particularly when it comes to budget allocation decisions. Master planning involves institutional, regional, and national interests. The nature of the content of a master plan will
depend on the scope considered. Narrow issues will tend to be addressed and focused at an institutional level, whereas broader issues will be addressed by a regional or national master plan. When it comes to the content or scope of a master plan that an intermediary agency would develop and carry out, the following topics or planning questions need to be considered (Berdahl, 1971, p.88-91):

1. Should the plan incorporate both the public and private sectors of the higher education system?
2. How will the system respond to the demand for higher education and accompanying increased enrollments? Will this involve establishing new institutions, expanding existing institutions or both? Where will new institutions be situated and what kind of institutions will they be?
3. Is there a need to increase the participation rates or improve access to higher education? What implications does this have for building capacity in the system to accommodate enrollment growth and increase services?
4. What policy framework should be developed to assist the system to work more effectively? What are the macros polices for areas such as admission standards, tuition charges, financial assistance, student loans, student diversity (underrepresented groups), academic standards etc.?
5. What role and scope decisions need to be assigned to institutions, especially new ones? Who decides what these decisions are and how are they enforced?
6. What academic programs need to be added to address unmet needs currently being experienced in the system? What level of study are these programs needed in (Bachelors, masters or doctoral) and who should offer them? What duplication is there in the system that needs to be addressed?
7. Are there critical research and public service areas that need to be included in the formulation of the master plan?
8. How is the quality of higher education offered by the system measured and improved? What actions need to be taken in order to ensure the delivery of quality higher education across the system? What innovations need to be realized? Will attempts to grow be initiated at the cost of maintaining quality?
9. Given the anticipated needs for expansion and commitments to quality how will faculty be recruited and retained? How can the quality of faculty in the system be improved?

10. What facility needs exist within the system and how will these be addressed? How should priority for funding capital initiatives be assigned?

11. What should be the state and agencies role in the planning and development of institutions that are a part of the private sector?

12. What are the anticipated financial costs and revenues that are likely to be experienced by the system for the duration of the plan? What policies and actions need to be implemented to ensure the fiscal well-being of the system?

13. What patterns of governance and coordination are needed that will best serve the public interest and the interest of the higher education institutions? How is power distributed across the system?

The common tension that characterizes the planning process is the tension between what is educationally desirable, and what is politically possible. Ideally, education experts ought to set or establish the educational priorities and determine which of these issues require analysis and inclusion in a master plan. The political forces tend to ground the planning so that the objectives and policies will fall within feasibility and pragmatic boundaries. “No master plan means anything unless it is realizable financially. The easiest task in the world is to dream great dreams and not have to worry about where the money is coming from. This attitude is dreaming. It is not planning” (Berdahl, 1971, p. 91). Ultimately the two perspectives need to be balanced. This requires some level of compromise along the way. Politicians must be careful not to minimize planning to simply being the means to save money, and educators must be careful not to regard planning as blue-sky dreaming. Careful decision making needs to be applied during the development of the master plan.

Good planning can be evaluated against a set of criteria. Evaluating planning goes beyond making an assessment of the policies and procedures used in the planning process. The following are areas where comprehensive planning typically encounters difficulties:
1. Inexactitude – even though planning for the future involves a given degree of uncertainty good planning produces specific targets and objectives. It is preferable to be as specific as possible rather than overcautious and vague.

2. Subjectivity – planning can not rely on subjective data and assumptions. As much as possible objective data must feed the planning.

3. Preoccupation with Short-term Quantitative Details – too much attention can be given to issues such as demographics and distribution at the expense of substantive issues such as curriculum and delivery

4. Pseudoscience – even with all of the data and quantitative analysis the planning must still reflect imagination, intuition and wisdom.

5. Inadequate Funds and Unqualified Personnel – time, money and qualified people must be allocated to the planning process.

6. Not Comprehensive – good system planning must be comprehensive and include all sectors of the higher education system

7. Inadequate Institutional Participation – good planning must involve those actively engaged in the task of higher education, the individual institutions.

It can be argued that perhaps the most important among the responsibilities of the intermediary agency is the task of planning. In light of the above introductory observations, the following questions serve as a guide for understanding the design, function and operation of the Commission for Higher Education in Kenya (CHE) as an intermediary body when it comes to the task of planning:

- Is there a Master Plan for the Kenyan Higher Education system? Who produced it? When?
- Where does the responsibility for system planning fall to in the CHE? Who does the planning and what are their qualifications for this critical task?
- Are there external consultants brought in to assist with planning?
- Does the planning department guide and instruct the other aspects of the agency’s work? Is planning a priority for the CHE?
• Who implements’ planning that is done? What leverage is there to get institutions to heed the master plan?
• Who reevaluates the plan? How often does this happen?
• How comprehensive is the plan? Is the private sector fully included? What about other post-secondary training besides degree studies?
• What is the time frame for planning?
• Who determines the priorities for planning?
• Is the planning that is done systems focused or is it institutionally focused?
• How does the CHE handle each of the 13 common planning questions?
• What political forces are experienced in the planning process?
• How is educational expertise utilized?
• What is the balance between goals and funding?

5.2 REVIEW OF PLANNING FOR KENYA HIGHER EDUCATION

There are two major pieces of work that have been done related to planning for the Kenya Higher Education Sector since the establishment of the Commission for Higher Education: The Master Plan on Education and Training 1997 – 2010, and The National Strategy for University Education 2007 – 2015. In order to properly evaluate the role of the Commission for Higher Education in planning it is necessary to review and comment on each of these major products related to system planning in Kenya. In addition, The Commission for Higher Education has produced the Commission for Higher Education Strategic Plan 2005 – 2010. This work will also be reviewed. One of the Commission senior staff interview summarized planning efforts as follows: “We have good plans. They are well written and very thorough. Implementation is another matter but the plans are well done” (Interview).

5.2.1 The Master Plan on Education and Training 1997 – 2010

The Master Plan on Education and Training (MPET) report was produced in September 1998. The significance of this date is that it is one decade after the set of major educational reforms that radically changed the education sector as a whole and at the same time established the Commission for Higher Education. The Executive Summary of the Report indicates this
significant benchmark and notes that there continues to be contentious debate over the education reforms of the mid and late 1980’s and in particular the introduction of the 8-4-4 system (MPET, ix). The report makes very explicit that the intent of the MPET is to press on in the spirit of the earlier reforms and to reinforce commitment to the intrinsic link between education development and economic development:

Economic advance should feed into the following interrelated processes which comprise overall development: a) provision of basic needs through equitable distribution of material wealth b) conservation of the environment c) enhancement of a social fabric based on wholesome ideas, beliefs, values and practices d) evolution of governance which utilizes the citizenry’s proactive role in duties and rights in efforts to guarantee security and sovereignty, and to provide the infrastructure necessary for continued overall advance. (MPET, ix).

The intent of the MPET is not to introduce or generate reform but rather to focus on the need for improved effectiveness and efficiency in order to achieve improved participation rates in higher education. Improvements then are to be seen in the context of a continuation from the prevailing guidance of the 1980 reforms. It is important to point out that the MPET deals with the entire scope of the Kenyan education system and covers all aspects of education and training from primary through to post secondary.

The essence of the theme for the master plan is captured in the phrase “Efficiency and Effectiveness for Improved Participation.” Improved participation is discussed in terms of (i) expanded access, particularly reversal of the current decline in school enrolment rates and reduction of regional and gender disparities (ii) improved persistence/retention; and (iii) increased relevance and quality (MPET, x). The factors that are noted as contributing to the realization of these areas include: improved planning and management, devolved planning and management, integrated external funding, better national coordination, balanced state funding, manageable household costs, and streamlined curriculum processes (MPET, xi). These major themes are presented as solutions to efficiency and effectiveness which, if addressed, will result in improved participation. These macro themes are weaved into a planning document that addresses the entire scope of the education sector in Kenya. One can reasonably conclude that the nature of the planning specifics and recommendations that will emerge, based on this
philosophical framework, will be broad and general and limited in their ability to directly address the state of affairs.

Seven specific activities are listed that intend to resolve issues that arise from the relationship between the need to improve participation levels and the prevailing limiting factors:

1. Develop and streamline the legal and regulatory framework for education and training, (including that for the Commission for Higher Education and the Universities’ Acts);
2. Carry out research and development on specific aspects of education and training;
3. Pilot devolution of authority and power to the local level and institutions;
4. Address issues in the provision and delivery of education and training to the disabled and disadvantaged communities and regions;
5. Develop schemes of service at all levels;
6. Develop education management information systems in all key education and training functions at the central government and local levels;
7. Establish a culture of repair and maintenance in all learning institutions (MPET, xiii – xv).

The MPET is presented in twelve chapters with half of the chapters devoted to general discussion on the broad themes described above and the other half of the chapters addressing these themes from a sub-sector perspective. Chapter seven focuses specifically on University Education and Training. The composition of the bodies associated with the development of the plan will serve to underscore the limited role of the Commission for Higher Education in the formation of this Master Plan. A list of participants is provided for the members of each of the following: The MPET Steering Committee, The MPET Task Force, The MPET Drafting Committee, The Editorial Sub Committee of the Drafting Committee, The Secretariat, and The Consultants. These represent the various working groups that developed the plan. Since planning is a foundational activity of an intermediary body, it is worth noting that the participation of individuals representing the Commission for Higher Education is minimal. Of the twenty-nine members on the Steering Committee, only one of them is from the Commission for Higher Education. The same individual is the only representative on the twenty-one member Task Force. The only other Commission for Higher Education participant is an individual who
served on the Drafting Committee. This profile of participation highlights the limited role that the Commission for Higher Education is afforded when it comes to the task of planning. Even though planning is a central and vital function of intermediary bodies, and it is also a legally mandated function of the Commission, the MPET was produced with limited Commission for Higher Education input let alone direction. The fact that the level of participation on the steering committee (one member) is equivalent to the representation provided for external agencies such as The World Bank, UNESCO, UNICEF, British International Development (one member each) manifests the orientation held by the state regarding the contribution of the Commission for Higher Education to the Planning Process. In addition to the individual member from the Commission on the Steering Committee, there are five heads (Vice Chancellors) from various public universities, a situation which reflects the awkwardness of the role of the Commission as established by the prevailing legal framework. While the involvement of the institutional representatives is useful, the Commission has been relegated to a role of insignificance when it comes to system planning.

Chapter seven of the Master Plan for Education and Training (1998) specifically focuses on University Education and Training. Recognition is given to the strategic role that university education, described as teaching/learning and research, plays in the broader education sector. University education is described as “the apex of learning in the formal sector” and critical for national development (MPET, p. 90). In addition to the identification of strategic initiatives that are intended to address current needs, the chapter includes a presentation of the guiding objectives for the sector as well as a recommended policy framework. The objectives for the higher education sector are identified as follows:

1. To develop in students and scholars the ability to think independently, critically and creatively
2. To adapt, develop, advance, preserve and disseminate knowledge and desirable values, and to stimulate intellectual life.
3. To educate and train the high level human capital needed for accelerating development through industrialization of the economy.
4. To nurture the internalization of universal knowledge, including key technological advances, with a view to harnessing it for national development.
5. To provide, through basic and policy research, knowledge, skills and services that help solve the problems facing society.

6. To help create a society in which merit, based on diverse talents and equity in development, is recognized and nurtured (MPET, p. 91).

The objectives are what might be expected for any higher education sector in any jurisdiction. They are very general and quite idealistic. The next section on policies is much more specific. The policies put forth are tied to the objectives in the following manner:

The policy framework will be geared to expanding access and participation in university through approaches which raise relevance and quality, increase efficiency through rationalized location of accountability in the mobilization and application of resources, and enhance equity (MPET, p. 91).

Of interest is the reference to the key areas that are identified in the analysis and recommendations that flow from that. The plan will address issues of access, quality, accountability and resources and make many specific recommendations on these areas. However before these are discussed, a policy framework is presented “in order to achieve the foregoing objectives”. It is stated that “Development will be based on the following specific objectives” (MPET, p. 91). The identification of the policy framework in advance of the overview of the current status and the resulting formation of strategies seems to infer that the agenda for planning was established before the actual planning work was done. It would be more typical for the sequence in a master plan to move from vision and objectives to current analysis, then to strategies followed by establishment of an enabling policy framework in light of the strategies. If in fact the policy development preceded and pre-empted the planning process, then the objective integrity of the planning could be questionable.

The following are the specific policies that form the policy framework for planning in the higher education sector:

1. The university sub-sector will be reviewed with the aim of making the programs offered central to the development of the country’s human resource base in general.
2. The establishment and maintenance of quality will be given priority rather than focus on expansion that largely satisfies social demand,

3. The management and financing of university education will be streamlined such that Commission for Higher Education and the governance of the individual universities will become fully responsible for implementation of programs, and are accountable for the planning outcomes.

4. Each university’s budget will be based on allocation norms which take into account different resource requirements for different departments and programs.

5. Grants from the public budget will continue to be a major source of university funding. However, in order for an increased share of the total public allocation to be made available to basic education, universities will be expected to raise an increasing proportion of the financial resources they require.

6. In order to ensure equity and access, delayed cost-sharing through Higher Education Loans Board student loans will be developed as the main approach in tapping household financial contribution to university education and training.

7. A proportion of Higher Education Loans Boards funding will be earmarked to encourage female enrolment in math/science based technological courses.

8. Through carefully considered incentives, the Government of Kenya will encourage private universities to expand and increasingly gear their courses to the requirements of the economy (MPET, p.92).

The context and analysis described in the MPET is characterized by one major theme. “The most salient feature of university education has been the rapid quantitative growth in the number of institutions and enrolments particularly during the 1980s and early 1990s” (MPET, p. 92).

This decision to admit almost 21,000 new students [in 1990/91] to the public university System resulted in pushing the varsities beyond their capacity. Large classes of over 500 students were not unusual and the tutorial system was on the route to becoming a thing of the past. As a result of the two periods of double intakes [1987/88 and 1990/91], controversy and problems with the introduction of the 8-4-4 system, and the frequent and unscheduled closures of the universities, the net result...has been a decline in academic
quality. Unfortunately, in some instances, a common form of teaching has become the dictation of notes in a rote-like manner. One viewpoint is that the teaching of skills in critical thinking and ability to reason are not widely in evidence (Deloite and Touche, 1994, p. 7).

Specific details of the growth and the corresponding demographics for the higher education sector are provided. The demonstrated expansion is seen to be a critical factor for the other major themes identified as dominating the current status for university education: a decline in relevance and quality, a challenge to financing of university education, and ineffective management both at the sector and institutional levels. The following observations were provided in order to describe the current state of affairs in the university or higher education sector at the time the MPET was produced:

- Rapid quantitative growth has been associated with a downturn in the relevance and quality of university education. The growth has not been accompanied by commensurate increase in essential resources. As a result, in their attempt to tailor resource constraints to increased enrolments, the universities have resorted to putting emphasis on development of arts-based courses in general and in particular teaching degrees in arts subjects. The outcome of bowing to social demand through tilting the balance in favour of arts-based courses has been exacerbation of mismatch between formal education and requirements of the workplace, a factor associated with growing unemployment or underemployment of university graduates.

- Staff morale and motivation have been eroded by the declining purchasing power of their salaries and unsatisfactory conditions in their place of work including work overload in most departments and inadequacy of essential provisions.

- An unsettled situation in university campuses has developed. This would appear to be associated with inadequacies in the provision of essential resources, the social pressures exerted by large numbers in classes, low morale among staff, increasing inability of households to meet direct costs of university education, rising unemployment of university graduates, and perceptions of limited academic freedom.

- The rapid growth of university enrolments has coincided with rising constraints in the public budget, resulting in the state’s inability to adequately cater for social services such as education. Universities have continued to experience inadequacies in the maintenance
of infrastructure including physical facilities. Development projects aimed at addressing inadequacies in physical facilities have stalled largely because of insufficient funding. The universities also suffer from inability to balance their operating budgets.

- The loan scheme launched to assist needy students, the Higher Education Loans Board (HELB), is beleaguered by a number of problems. First, the resources available to HELB are below what is required to satisfactorily meet the funding of students. Second, the under-capitalization of HELB is partly explained by low rates of loan recovery since the scheme was enunciated in 1974. Third, complaints by students and households about procedures in awarding loans and bursaries would seem to indicate room for improvement in the administration of the scheme.

- There is a lack of general managerial skill in universities. Three factors are indicative of shortcomings in university management. First, systematic planning is greatly hampered by a backlog in the audit of accounts. Second, the roles of university governance – the council, senate, faculty and department – have become somewhat blurred. Third, the expected balance between state authority and power over universities on one hand and on the other, university autonomy and accountability would seem to have tilted in favour of the state.

- The establishment of the Commission for Higher Education as an apex body of higher education is a positive move toward solving management problems in universities. The Commission has been charged with responsibilities for policy formulation, planning, budgeting, financing and investment planning. However the legal infrastructure reflecting these responsibilities is not adequate, and the human resource capacity and infrastructure necessary for the Commission to effectively perform all its functions need to be developed (MPET, p. 92-99).

The most significant aspects of a master plan are the strategies that are identified and presented. As a result of the analysis of the current status, and perhaps in response to the established policy framework, a clear set of strategies is presented. The strategies are clustered in three complementary sets around critical themes. Following the strategies a detailed list of programs and activities is described which address the work to be done in addressing the legal framework, relevance of university education, expansion of the higher education sector,
improved staff morale, quality assurance, improved university management and improved efficiency and effectiveness in financing of university education. The following are the strategies for university education and training presented as part of the Master Plan on Education and Training 1997 – 2010;

1. To increase access and participation:
   a) Relate expansion of university education to the availability of essential requirements;
   b) Develop cheaper approaches in expanding university education;
   c) Encourage private universities to expand;
   d) Reduce gender disparity in university enrolments and enable poor households to participate.

2. To improve relevance and quality:
   a) Restructure university programs and courses so as to take account of projected manpower needs of the economy;
   b) Ensure universities adhere to their stated missions and review the missions in light of socioeconomic developments;
   c) Provide universities with adequate physical facilities, and teaching-learning and research technologies;
   d) Improve the material and non-material rewards of professional staff;
   e) Improve approaches to teaching, research, assessment of student learning, and student guidance and counselling;
   f) Establish linkages between universities and employers in general, and in particular, industry;
   g) Harmonise university curricula with those of secondary schools and post-secondary VOC-TEC training institutions.

3. To improve resource mobilization, allocation and utilization, and to enhance accountability:
   a) Enable and encourage the university community to carry out its responsibilities as laid down in the respective Acts of Parliament;
b) Base state grants on comprehensive norms developed by CHE in collaboration with the universities, and discussed and agreed upon with the relevant Government of Kenya ministries;

c) Increase the non-public proportion of university revenues in order to (i) give the state more manoeuvre in financing other Education and Training sub-sectors, (ii) raise the salience of university autonomy, and (iii) augment the universities’ capacity to offer quality education;

d) Enhance equity through strengthening HELB and thus, making the loan scheme a viable revolving fund;

e) Delink the funding and management of tuition from accommodation and catering, and rationalise the staffing of the latter departments;

f) Delineate the roles played by various organs of the university, bearing in mind the need for collegiality and accountability in the management of universities;

g) Improve dialogue between university authorities and students;

h) Improve the quality of management through (i) appropriate training of all staff in charge of various functions in the university community; and (ii) provision of a modern management information system; and (iii) give incentives to private universities but relate the former to development of programs and courses that are relevant to the needs of the economy;

i) Develop and enhance the utilisation of research (MPET, p. 99-100).

The final section of the master plan for the higher education sector identifies a number of specific activities that are to guide the development of the university sector for the period of the plan. The pursuit of these strategies is further developed and described in the specific identification of programs and activities “the combined effect of which is expected to improve the efficiency and effectiveness in the delivery of university education and training” (MPET, p. 101). Rather than provide a detailed summary of all of these, there are two aspects of this section that will be discussed in light of the focus on the role of planning and the Commission for Higher Education: the provision for a new legal framework and the stated or implied expectations for the Commission for Higher Education contained in the mandated activities.
One of the early challenges to the effectiveness of the Commission for Higher Education since its inception has been the limiting legal framework that was inherent in its creation. This was pointed out soon after the Acts that established the Commission in the Kamunge Report 1998. The Master Plan for Education and Training addresses this issue very directly. There are two specific activities that are mandated in order to harmonize and coordinate policy development and planning for the university system:

1. The management of Education and Training will be streamlined under one Act of Parliament which will cover all aspects of the sector including those currently placed under the Education Act. Under the new law, a National Education and Training Commission will be set up to inter-alia advise the Government of Kenya on policy formulation and planning for the sector. The Commission for Higher Education will be the legal link between the university sub-sector and The National Education and Training Commission.

2. An Act of Parliament to harmonize the functions of the Commission for Higher Education and those of universities will be enacted giving the Commission for Higher Education full responsibility in coordinating financing, planning, budgeting and quality assurance in universities.

Two important initiatives are mandated. The first relates to the entire education sector and calls for the establishment of a new ‘buffer’ agency, the National Education Training Commission, to work in-between the government and the entire education sector. It is further proposed that the Commission for Higher Education become the legal link between the university subsector and this new buffer agency. The major impact of this proposal is the moving of the intermediary agency for higher education one significant step further away from government. Essentially what is proposed is a sub-sector buffer agency to report to a sector buffer agency that in turn mediates between the state and the entire education sector. The rationale for this arrangement is not described in the section of the master plan that deals with university education; however, it seems to be a consequence of issues that are pressing in other aspects of the education sector where there are no intermediary agencies similar to the Commission in its role with the higher education sub-sector. The initiative reflects again the
challenge that the higher education sector has when it is included in the plans for the entire education sector.

The second initiative is one that has been recommended almost since the establishment of the Commission for Higher Education. The limited authority the existing legislation provides is addressed by ensuring that the Commission has ‘full responsibility’ for the whole higher education sector. This is a critical initiative if the Commission for Higher Education is to play its legitimate role as an intermediary or buffer agency. The establishment of the new legal framework has significant implications for the remainder of the initiatives that are discussed. It is clear that the Commission working in a leadership role with the institutions would be fully responsible for planning, implementation and accountability of outcomes. Many areas that relate directly to the broader scope of the three strategic initiatives are discussed in the plan at some length. Of interest are the expectations of the master plan that are implied or explicitly stated in the outline of activities. In order to address the strategies outlined, the Commission is expected to provide leadership or directly address the following:

- Review the missions of the public universities in order to rationalize programs, eliminating programs where there is duplication and/or little demand, or restructuring them to make them relevant.
- Address the over-emphasis on arts programs as compared with math-science programs
- Redesign teacher education to provide for an academic degree followed by a year of post-graduate training in pedagogy rather than an integrated B.Ed. degree alone.
- Reduce social demand for ‘unmarketable’ degrees by reallocating funding to math-science and technological programs.
- Establish a committee on extra-university linkages to enhance the relationship between the universities, government and industry.
- Address short comings in assessment methods (e.g. over reliance on tests) and improve the reliability of marking and grading.
- Enhance accessibility through provision of evening programs, distance education approaches, and expansion of post-graduate studies.
• Work with post secondary institutions (diploma level) to establish collaborative programs for degree completion and upgrading of the programs they offer to degree level.
• Establish a greater emphasis on research and ensure funding for the same.
• Provide on the job training for university staff and faculty. Review terms of service for university personnel and encourage financial incentives for university staff.
• Undertake inspections at least once in every four years of each public institution.
• Encourage validation of programs by peers in non-Kenyan universities.
• Build academic communication between staff and students including student evaluation of teaching.
• Establish a system of contractual terms of service rather that permanent tenure as a means to improve productivity.
• Introduce performance measure and outcomes assessments
• Systematically and continuously identify training needs for management and organize seminars, workshops and longer courses.
• Establish a management information system based on modern information technology to facilitate management in each university and networking between universities.
• Streamline university finances by clearing the backlog in the audit of accounts, liquidate existing debt, provide for facility upgrades and maintenance, and strengthen the relationship between financial and development plans.
• Work out a norms-based formula for funding universities which will determine ideal unit costs per program and encourage departments to be accountable for output.
• Outsource non-core areas of operations such as catering to allow for more university funds to be directed to teaching/learning and research.
• Diversify the revenue streams for universities by developing a comprehensive loans scheme and sourcing non-government revenues (MPET, p. 101-111).

The summary above indicates the numerous expectations for the Commission for Higher Education. Not only are there many specific activities mandated in the plan, but the amount of work and effort required to achieve several of them is daunting if not completely unrealistic. Two conclusions can be drawn from evaluation of the activities and programs described to meet
the strategic objectives for university education: First, in order to play a leadership role the legal framework for such is a prerequisite. Second, once this is in place the Commission is to serve as the apex body of higher education and provide key leadership towards the realization of the master plan’s objectives i.e. a fully functional intermediary body. Unfortunately, according to senior Commission staff, there was no serious intent to fully implement the plan. The quality of the planning done was commendable and it does identify and address the key issues. However, the need to correct the legislative framework and to strengthen the Commission in term of human resources and finances in order to carry out the work associated were major barriers to implementation. There was no political will for proper implementation.

5.2.2 The National Strategy for University Education, 2007 – 2015

In 2003 the Education Sector began reform initiatives that would build on the work of the previous Master Plan for Education and Training. The Sessional Paper No. 1 of 2005 “A Policy Framework for Education, Training and Research” outlined the government’s education policy that was developed at the November 2003 National Conference on Education and Training. It was anticipated that the introduction of free primary and secondary education would mean that by 2015 the university sector could move to a position of strength in order to meet the increased demand for quality post-secondary study. The National Strategy for University Education (NSUE) was positioned as the guiding document for the development of the higher education sub-sector. “The overall objective of the strategy was to ensure the development of a higher education sub-sector that is relevant, sustainable, inclusive, community-centered, and truly world-class” (NSUE, xxiv). The development of the NSUE follows the work of two other seminal reports: A Policy Framework for Education, Training and Research: Meeting the Challenge of Education Training and Research in the 21st Century (Sessional Paper No 1 of Kenya Education Sector Support Program 2005) and the report of the Public Universities Inspection Board (2006). Many of the recommendations contained in the NSUE are derived from the work done in these two reports. The content of the NSUE is presented as a national strategy document rather than a master plan even though what it contains is consistent with that of a master plan (that is, strategies, goals, objectives, logistical frameworks, timelines, costing
and responsibilities). Nevertheless the approach taken was described by the Minister for Higher Education, Science and Technology, Hon. Dr. Sally Kosgei:

I would like to emphasize that the strategy is not a prescriptive document but a framework that should inform the universities reform process, institutional strategic plans and performance contracts in a creative and innovative manner while maintaining individual institutional character and culture. (NSUE, xxiv)

While the document may be pitched in this manner it is clear that very specific targets are to be realized and the comprehensive details contained in the 345 pages represent the de-facto master plan for Kenyan higher education. The terms of reference state that the report is “To formulate and develop goals, specific objectives, strategies, and specific targets and outputs in the university education sub-sector, taking into account the relevant reports and other sources of information” (NSUE, p.1). It is also important to point out that this master plan differs in a significant way from the previous master plan (MPET) in that it is singularly focused on higher education rather than the whole education sector. The following sections will review and summarize the important contents of the NSUE, highlighting where appropriate the relation of this master plan to the work of the Commission for Higher Education.

There are eight strategic issues identified and addressed in the NSUE: access and equity; quality and relevance; financing university education; science, technology and innovation; student and staff welfare; ICT in university education; university linkages and partnerships; and governance and management. For each of these areas overarching strategic goals are identified, followed by more specific strategic objectives. A list of corresponding strategies is then outlined. These strategies are then captured in a ‘log frame’ (table) that provides details for each strategy including the following: outcomes, projects/activities, indicators, time-frame, assumptions, and responsibility. The comprehensive nature of the planning is quite impressive and the specificity is commendable. To understand the role of the Commission for Higher Education vis-à-vis these eight areas of the plan, it is necessary to summarize the goals, and strategic objectives, provide comment on these, and then comment on the defined role for the Commission for Higher Education.
5.2.2.1 Increased Access

The strategic goal for increasing access to university education is: “To increase the Gross Enrolment Ratio (GER) of university Students from the present 3% to 10% by 2015” (NSUE, p.35) The strategic goal for equity in university education is: “To attain equity in university education enrolment to reflect the national diversity by 2015” (NSUE, p.35). The related strategic objectives are as follows:

- Expand open and distance learning
- Expansion of capacity of existing public universities
- Expansion of existing private universities
- Establishment of new universities and colleges
- Expand postgraduate and international students programs
- Modernize, expand, and upgrade existing middle level colleges
- Coordinate university admission process
- Increase gender parity
- Increase the enrolment of students with special needs
- Increase the enrolment of socioeconomically disadvantaged students

There are ten specific strategies identified that will address these goals and objectives including introduction of a quota admissions system and establishment of a national higher education management system. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity, the Commission for Higher Education is tasked as responsible for forty two of the sixty nine mandated projects and/or activities from the strategies on access and equity (NSUE, p. 20-64).

5.2.2.2 Quality and Relevance

The strategic goal for increasing improved quality and relevance is stated as: “To improve quality and relevance of learning and research for socio-economic transformation by 2015.” The related strategic objectives are as follows:

- Establish and/or strengthen admission mechanisms
- Develop and/or strengthen mechanisms that allow students to pursue courses of their choice for which they qualify
• Produce high calibre, well prepared, and suitable graduates with requisite knowledge, skills, competencies, and right values, attitudes and integrity.
• Improve the retention and graduation rates of university students and strengthen graduate education.
• Develop student academic support systems and monitor progress of students.
• Recruit, develop, and retain Ph.D. or equivalent qualified academic staff in all disciplines.
• Increase the quantity and quality of research output.
• Provide sufficient teaching facilities, equipment and materials
• Provide high standard and modern learning environment.
• Review curriculum to make it current and relevant.
• Establish and/or strengthen internal quality assurance mechanism.
• Strengthen and restructure the CHE to be the quality assurance body for all institutions of higher learning
• Provide incentives for institutions that demonstrate improved quality.

There are seven specific strategies identified that will address these goals and objectives including drafting new legislation to replace the Universities Act and strong accreditation initiatives. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity the Commission for Higher Education is tasked as responsible for eighty five of the one hundred and thirty three mandated projects and/or activities from the strategies on quality and relevance (NSUE, p. 65-124).

5.2.2.3 Financing of University Education

The strategic goal for financing of university education is stated as: “To establish reliable, diversified, sustainable and accountable mechanisms for financing of university education.” The related strategic objectives are as follows:

• Review and implement the unit cost as a basis for funding public univeristies in Kenya and establish guidelines for objective determination of the unit cost based on zero budgeting principles.
• Mobilize sufficient funds, internally and externally, to implement the strategic reforms.
• Establish diversified, reliable and sustainable sources of financing university education.
• Develop a sustainable model for supporting students and for funding specific academic, capital and human resources development projects in the university sub-sector.
• Establish a suitable framework and an autonomous national agency for raising and distributing research funds (NRF).

There are ten specific strategies identified that will address these goals and objectives including restructuring the Higher Education Loans Board to become a broad based funding scheme and establishing a National Higher Education Endowment Fund supported through tax contributions. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity the Commission for Higher Education is tasked as responsible for nine of thirty two mandated projects and/or activities from the strategies on financing university education (NSUE, p. 125-151).

5.2.2.4 Student and Staff Welfare

The strategic goals for student and staff welfare are stated as: “To improve retention, well-being and productivity of university students.” and “To improve retention, well-being and productivity of university staff.” The related strategic objectives are as follows:
• Streamline admission process to ensure that quality students are admitted appropriately in an equitable manner.
• Improve student financing for retention and completion.
• Improve student advising, guidance and counseling.
• Improve planning and performance of student registration and orientation process.
• Improve catering, accommodation and recreation facilities, and
• Improve the learning, teaching and research environment.
• Recruit, motivate and retain highly qualified staff
• The deliberate choice and training of managers in Human Resource Management and the employment of qualified human resource managers.
• Expand and regularly maintain infrastructure.
• Source extra funds to help in the organization, attendance and facilitation of locally organized and international staff development programs.

• Develop guidelines for giving incentives to academic staff, who publish papers, supervise students, engage in research as well as participate in community service.

• The development of clear guidelines on the handling and safeguard of confidential material with respect to third parties.

• Institutionalize deliberate measures to ensure respect of Intellectual Property Rights for both the academic staff and universities.

• Provide attractive tax-free tuition waivers for family members of staff.

There are six specific strategies identified that will address these goals and objectives. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity the Commission for Higher Education is tasked as responsible for thirty two of forty-seven mandated projects and/or activities from the strategies on student and staff welfare (NSUE, p. 152 - 180).

5.2.2.5 Science and Technology

The strategic goal for science and technology innovation is stated as: “To create a culture of knowledge, generation, adaptation, application and innovation in Kenyan universities.” The related strategic objectives are as follows:

• Improve science and technology innovation governance at all levels.

• Enhance innovation systems.

• Increase investment in science and technology innovation.

There are nine specific strategies identified that will address these goals and objectives including to increase the science and technology student population in the universities, and to integrate related subjects in all undergraduate degree programs. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity the Commission for Higher Education is tasked as responsible for fourteen of fifty nine mandated projects and/or activities from the strategies for science and technology innovation (NSUE, p. 181-215).
5.2.2.6 Information and Communication Technology

The strategic goal for information and communication technology (ICT) is stated as: “To integrate ICT into university education and increase ICT innovation and research output of Kenyan Universities.” The related strategic objectives are as follows:

- Develop institutional ICT policies and strategic plans.
- Strengthen the ICT human capacity in all universities.
- Network all university campuses and provide basic applications for learning and management.
- Increase the quality of the national ICT human capacity.

There are eleven specific strategies identified that will address these goals and objectives including to enhance broadband services for every university campus and to develop e-learning content for degree studies. These are then each divided into composite sub-sections and handled in detail. In the log frame for access and equity the Commission for Higher Education is tasked as responsible for fifteen of forty two mandated projects and/or activities from the strategies for information and communication technology (NSUE, p. 216 -249).

5.2.2.7 Linkages and Partnerships

The overarching strategic goal for linkages and partnerships is to: “Develop strong university linkages and partnerships that enhance mutual learning, research and innovation.” The related strategic objectives are as follows:

- Establish a conducive policy environment for university-industry linkages and partnerships.
- Promote university-industry linkages and partnerships.
- Develop and strengthen university-university linkages and partnerships.
- Promote university-research institutes middle-level colleges linkages and partnerships.
- Promote university-international/multinational organizations linkages and partnerships.
- Strengthen university-community linkages and partnerships.
The specific strategies for creation of a conducive policy environment are discussed followed by strategies for each of the various types of partner relationships described in the objectives. Most of the strategies are very general and simply express intention to promote various types of linkages. Perhaps the most innovative strategy is the intent to integrate community service into university degree programs and align research to projects related to community development. In the log frame for linkages and partnerships the Commission for Higher Education is tasked as responsible for only four of the twenty nine mandated projects and/or activities from the strategies for information and communication technology (NSUE, p. 250 -268).

5.2.2.8 Governance and Management

The final section of the National Strategy for University Education, 2007-2015 deals with the subject of governance and management of university education. The problematic legal framework for the sector is noted early on in the discussion as the plan points out the conflict between the legislation that established the public universities and the legislation that established the Commission for Higher Education and the rules for operation of the private universities. The strategic objective for this area is as follows: “Enhance governance and management for efficiency and effectiveness of universities and their contribution to Kenya’s socio-economic development.” Unlike the other areas discussed in this plan, there are no specific strategies to address this objective, Instead there is discussion of selected aspects of the governance structures. The recommendations that are included are as follows:

- The universities should conduct annual ‘Congregations’ where they report on their achievements and outline challenges and future plans to all stakeholders.
- The appointment of Chancellors should be on merit through a consultative process as opposed to the traditional Presidential appointment process.
- Vice Chancellors should also be appointed through a process of open competition.
- The number of Commissioners on the Commission for Higher Education needs to be significantly reduced and should include impartial and independent individuals rather than primarily institutional representatives.
- The appointment of the Chief Executive Officer for the Commission for Higher Education should be based on managerial skills rather than a patronage appointment.
• The size of university councils needs to be reduced from the present level of around 30 members to a maximum of 15 members.
• Student representation is recommended at both the Council and Senate.
• Private universities are encouraged to reflect ‘democratic principles’ i.e. reduced foreign or international representation at the governance levels.
• Overall effectiveness is encouraged through efforts that include succession planning, risk management, change management, and accountability.

In the log frame for governance and management of university education the Commission for Higher Education is tasked as responsible for all seventeen of the mandated projects and/or activities from the strategies for information and communication technology (NSUE, p. 269 -278).

5.2.2.9 Summary – National Strategy for University Education

The National Strategy for University Education represents a tremendous amount of work and effort to provide a planning base for the operation of the higher education sector in Kenya. The final document is 345 pages long and filled with details. To understand the scope of the plan one simply needs to look at the final tables where the estimated costs for the various strategies are listed and total just under two hundred and fifty million US dollars. In addition to the fact that this level of financing is quite unrealistic, the plan is problematic in a couple of key areas. Firstly, despite the prominence given to the Commission in the plan, there was very little involvement of the CHE in the production of the plan. The Commission did not have a key role in development of the master plan for the higher education sector. Secondly, the plan is thematic instead of practical. It addresses objectives that are very broad in scope. It may function as a strategic issues plan but it does not really serve as a master plan for the sector. The lack of a practical master plan means that the objectives may or may not be matched to the practical and pragmatic issues in the sector. The third issue, which is very pertinent to this research, is the unrealistic expectation placed on the Commission for Higher Education to action the strategies identified. The sheer number of tasks assigned is challenging, but this coupled with the lack of legal justification and legitimate authority to make things happen, and the limited resources provided to the Commission for its work, sets the Commission in an untenable position.
This issue proves to be a major source of frustration for leadership at the Commission for Higher Education.

The unwillingness to strengthen the Commission for Higher Education while at the same time loading it with numerous responsibilities is one of the major weaknesses of planning for higher education in Kenya. This coupled with the unwillingness to rationalize the legislative framework make all the planning in this sub-sector appear like the movement of musical chairs. The work is also becoming repetitive. Practically all of the goals listed in the national strategy have been listed in previous documents. Good serious work has been done to harmonize the Universities Act and the Acts of individual universities but nothing has come of it! (Interview).

This sense of frustration was common to most of the Commission participants in this study and was expressed at some point in the interviews conducted. These professionals are eager to perform responsibly in their mandated responsibilities but fully aware that the ‘system’ does not allow for this to be done in a holistic sense. There are areas that need intervention but are outside of the Commission’s mandate. As a result work is done to the point that it can be, but the inevitable restrictive legal framework results in the work being ‘shelved’. Later the task is picked up again and the cycle repeats.

5.2.3 Commission for Higher Education Strategic Plan 2005 – 2010

The final document to be reviewed that relates to planning for the higher education sector in Kenya is the Commission for Higher Education Strategic Plan 2005 – 2010. This is the first strategic plan developed by the Commission at a time when the Commission “braces itself for the new and emerging challenges” and seeks to “re-position and re-invent itself” (CHESP, iv). The development of this strategic plan parallels the development of the National Strategy for University Education. The document makes reference to four pieces of legislation that will likely impact the work of the Commission at some point in the plan period: “In this connection, first the expected adoption of the Government’s Sessional Paper on Education, Training and Research, second the completion of the Master Plan for Higher Education, third the completion of the work of the Public Universities Inspection Board and, finally, the expected enactment of the proposed Higher Education Bill” (CHESP, p. 2). The anticipation that these four landmark acts will change the role and extent of the Commission’s mandate is clearly expressed. In light
of these facts and with regard to the vision, mission and objectives of the Commission, a strategic plan has been developed.

The plan begins as most strategic planning documents do with a presentation of the Commission’s establishment and mandate, structure, vision, mission, corporate values and functions. The next section provides insight in the situation analysis through notation of the prevailing philosophy of education in Kenya, and conduction of a SWOT analysis. The result of the situation analysis is the twelve strategic objectives that are identified:

- To enhance information and communication technology capacity of the Commission.
- To expand access and ensure equity in higher education in Kenya.
- To realize a rationalized and effective governance system for the Commission, including an enabling legal framework.
- To achieve sustainable level of funding for the Commission including an enhanced, diversified and rationalized financial base for higher education in Kenya.
- To realize a rationalized, efficient and effective management systems and structures for the Commission.
- To enhance the corporate identity and image of the Commission including improved communication with the public.
- To realize a committed, motivated, efficient and effective work force (staff) for the Commission.
- To relocate the office for the Commission to a new facility in Gigiri, Nairobi.
- To achieve sustainable partnerships and linkages at both national and international levels.
- To achieve synergistic stakeholder involvement and relationships.
- To ensure that Kenya’s higher education institutions achieve the highest levels of excellence relevant to the country’s development needs.
- To develop and implement world-class standards for quality management and enhancement in Kenya (CHESP, p. 13-14).

Specific strategies, expected outcomes, performance indicators, and targets are developed for each of the twelve strategic objectives in a performance plan. The work-plan is
well developed and addresses the key components of the strategic objectives that were identified. A concern is the lack of interface between the Commission’s Strategic Plan and the government’s master plan. Of the twelve objectives identified in the Commission’s strategic plan, only one relates directly into a strategic objective from the National Strategy for University Education. There may be two reasons for this: first, the plan is to guide the operation of the Commission and is focused on the strategic issues that the Commission faces rather than the broader higher education sector strategic issues. Second, it is possible that the lack of scope for the Commission provided by the restrictive legal framework means that it cannot really become a strategic agent until this is addressed. The potential problem is that the National Strategy presumes a significant role from the Commission, one which the Commission does not yet have any potential to meet.

5.3 CONCLUSION

Planning is a central function of an intermediary body responsible for the development of a higher education system. Effective planning assures success in the task of intentional system development. This chapter has looked at the various planning activities for higher education in Kenya. Central to these efforts were the Master Plan for Education and Training (1998) and the National Strategy for University Education (2008). Each of these has been described in detail. This summary will assess and evaluate the planning for the higher education sector in Kenya and in particular the role of the Commission for Higher Education in the work that has been done.

5.3.1 Role of the Commission for Higher Education in Planning

The Commission for Higher Education was established as an intermediary body for the higher education sector in Kenya as part of an Act of Parliament “to make better provisions for the advancement of university education in Kenya and for connected purposes” (University Act, 1985). On the issue of planning, the Commission is mandated to “co-ordinate the long term planning, staff development, scholarship, and physical development of university education” (University Act, 6d), and to “cooperate with the Government in the planned development of university education” (6g). Clearly the intent was for the Commission for Higher Education to have a central role in the area of planning. The summary of the planning efforts and products
that have been reviewed indicates that when it comes to planning, the Commission as an intermediary agency has been pre-empted and in fact has had a very limited role in planning. The plans that have been developed have been produced by the state through the Ministry of Education. There was no leadership in these efforts from the Commission. There is little evidence that the Commission was even involved in coordination of the planning. In fact their participation in the production of the two major plans is minimal. The planning group that produced the MPET included a total of twenty-nine representatives. Of that group only one member from the Commission was placed on the steering committee and another on the drafting committee. The NSUE, the second major planning document for the higher education system in Kenya, had similar levels of involvement of Commission for Higher Education personnel. The fact that the planning for the higher education sector was not initiated and led by the Commission for Higher Education means that system planning is, in fact, not vested in the state’s intermediary agency but in the state itself.

A second observation that is seen from the analysis of the work done for the sector on university planning is that even though planning is not vested in the Commission for Higher Education, it is clear that implementation falls to the Commission. It has been demonstrated that the MPET contains several implementation expectations for the Commission (MPET, p. 101 – 111). Not only are there several expectations, but the amount of work associated with each one is extensive. The demands seem to be quite unrealistic in light of the limitations of the Commission’s mandate with regard to publically funded universities. The mixed message communicated is found in the extensive work for the Commission that is described but the lack of legal mandate to carry out much of the work. In the NSUE a similar situation is noted. In the detailed log frame where responsibility for tasks has been assigned, the Commission is noted as responsible for two hundred and eighteen tasks, almost half of the total number of requirements. Even though the Commission is not responsible for the planning that has been done, it finds itself highly responsible for implementation. At the same time it is unlikely that the Commission will be able to take responsibility and implement the plans since it is handicapped by a legal framework that prevents it from serving as the intermediary body it was established to be. In short, the Commission is mandated to lead in planning but its role has been usurped by the state. As the state plans it becomes clear that implementation will need to be led by the Commission
for Higher Education and so the plans refer the task of implementation to the Commission. However, each of the plans indicates that the current legal framework does not allow the Commission to do its work as an intermediary agency. Consequently implementation is threatened, and re-evaluation or outcomes assessment of the plan in unlikely to happen. Senior leadership of the Commission acknowledge this reality and are quick to point out the things that could be done to improve this situation. When questioned on this point one individual quickly listed the following steps:

- Rationalize the legislative framework
- Strengthen the Commission’s capacity (funding, staffing, IT)
- Greater involvement of the Commission Secretary in ministerial decisions
- Reverse World Bank policies that focus so little on higher education
- Competitive appointment of the CEO for the Commission rather than politics
- Great efficiency in work done by the Commission
- Performance based terms of service for Commission staff
- Removal of so much duplication between ministries and the Commission

The list may not be fully developed or comprehensive but it does demonstrate a clear sense of urgency that something needs to be done.

5.3.2 Critical Analysis of the Planning To Date

Notwithstanding the limited role of the Commission for Higher Education, it is clear that considerable work has been done and that there are core planning documents for the higher education sector. This section will discuss the extent to which the planning that has been conducted meets the expectations and demands of effective system planning as described at the beginning of this chapter. In a sense what follows will serve as a general outcomes assessment against the performance indicators discussed earlier.

It has been noted that good system planning follows a basic pattern for effectiveness: identification of key problems, accumulation of accurate data, analysis of interrelationships, extrapolation of possible consequences of options, and the choice of the most desirable option. Both the MPET and the NSUE are master planning documents that do not follow this pattern. Each starts with a particular set of objectives or an agenda and then moves from there to identify
issues and problems in light of that perspective. This approach is more typical of strategic planning where the outcome is a list of strategic initiative in response to strategic issues. To be fair, the NSUE does present itself as more of a strategic plan than that of a master plan, but the details of the initiative move from strategic planning to operation planning and as such serve as the ‘master plan’ for the stated time period.

A key limitation in each of the major planning documents is the lack of accumulated researched data. Apart from broad demographic statistics there is little evidence that the planning perspective and the objectives are grounded in researched facts. In each of the two major planning initiatives the base for planning is not an addressing of needs that arise from comprehensive research base but instead a particular reform agenda. As a result the plan may not address or include all of the variables that need to be considered. Even though the plans are not grounded in research they each acknowledge the need for research. For example, the MPET contains recommendations for improved planning and management for all sectors of education, including the higher education sector. Specifically the recommendations include a demand for research and development, devolution of authority (improved communication), improved management information systems and the establishment of a culture of continuous improvement (MPET, xiii –xv). As a foundational document the MPET may be excused for lack of a strong research base. However it is disappointing that ten years later the NSUE is produced without the benefit of grounded research and the identification of key problems that arise out of a comprehensive research base.

Comprehensive system planning for higher education can encounter several difficulties. In many ways, as comprehensive as the planning for higher education in Kenya has been, it has encountered several of the typical problems that system planning experiences. In the first case the planning for the system is very broad and general rather than exact. Production of strategic initiatives or directions has not progressed to detailed specific operational plans for the system. The master plans lack the specificity required to shape and form a productive higher education sector. There is no specific regarding numbers of institutions needed, and the role and scope of these institutions. Consequently the focus of the plans is very broad. The expressed objective of the MPET is to improve efficiency and effectiveness. The NSUE is also very broad and general,
though it focuses specifically on higher education, it sets out broad strategies instead of specific and measureable targets. Comment has already been made on the political agendas that have been at the heart of the planning process. These introduce a measure of bias beyond the fact that the state is driving the planning process and limits the meaningful contribution of stakeholders in the system. Planning is a central function of an intermediary body. In the case of the Kenyan higher education system, it seems that well intended work has been done but not under the leadership of the intermediary agency that has been mandated with this responsibility. It also is reasonable to conclude that the ability of the Commission to implement the plan remains aborted by the lack of an effective legal framework. Finally, the plans that have been produced represent broad statements of strategic intent rather than fully developed master plans which will be challenged by lack of buy in, lack of accountability for implementation, and lack of sufficient funding.
Chapter Six
The Function of Program Review and the Commission for Higher Education in Kenya

6.1 INTRODUCTION

The term ‘program review’ refers to all decisions and activities related to the substantive development of a jurisdiction’s higher education system (Berdahl, 1971, p. 135). A broader description of the function of an intermediary agency in this area is provided by McGuiness and Paulson (1991). They describe the function of program review as inclusive of the following: defining institution missions and scope; reviewing and approving proposals for new programs and regular examination of existing programs; licensure and regulation of non-degree granting and out of state institutions; development of cross sector cooperative arrangements in areas such as library services and information technology. The needs addressed in this regard include not only what programs should be offered in which locations, but perhaps more importantly how programs offered meet quality standards. This concern regarding program standards is referred to as accreditation. These are two significant demands that must be filled by the intermediary body. When it comes to the question of quality, the critical decisions have to do with what one defines that quality looks like, how quality is measured, and what to do with programs or institutions that do not meet fundamental standards. The issue of programs distribution is complex enough on its own, but is also politically affected since both the state and the institution have strong interests in this area. Whose agenda is most important, the state or the individual institution? Who initiates the development of new programs and according to which criteria? Which programs must the state support? How are these decisions made?

“Most scholars have concluded that neither the organs of the state nor the institutions of higher education are capable of conducting the finely balanced assessments involved in program review, the former because the issues are too complex for nonprofessionals to handle and the latter because their own self-interest often inhibits their objectivity. Thus coordinating agencies – because they combine a statewide perspective with specialized knowledge of higher education – have increasingly been called upon to play a central role in these decisions” (Berdahl, 1971, p.136).
This scenario requires that both the state and the institutions yield control over this sensitive area. The leverage used to make this arrangement work is the fact that program development is often tied to the task of budget review as well as planning. Notwithstanding the important relationship between this area and budget and planning, program review and the mechanisms utilized by an intermediary agency, is a core responsibility. According to Berdahl, program review involves six particular functions, three of which are considered to be major areas and three that are less significant. The major areas are as follows:

1. Whether to establish new institutions, branch campuses and professional schools
2. What role and scope of mission, if any, to assign to new and/or existing institutions
3. Which new programs or courses to establish

The minor areas are:

4. Which existing programs to reallocate or eliminate
5. Which research and public services to institute
6. The degree of control over private (non-state funded) programs

Something that is not explicit in this list is the function of quality assurance in these decisions. On their own these issues seem to be more concerned with planning. However each of the tasks listed implies some identified and informed criteria for decision making. The quality threshold for the establishment of a new university, or the establishment of a new program, or the elimination of an existing program, is critical. The literature indicates a shift in terminology from program review to quality assurance which serves to highlight the specific contribution of this core function.

One of the main responsibilities of the intermediary agency is the task of program review. This involves decisions and actions to approve new institutions of higher education, assign role and scope responsibilities, approve new programs, reallocate programs, review public service programs and approve non-state funded programs. In light of the above discussion of program review the following questions serve as a guide for understanding the design, function and operation of the Commission for Higher Education in Kenya (CHE) as an intermediary body when it comes to the task of Program Review:
• What is the CHE’s relationship between the function of program review and accreditation?
• What is the nature of decision making regarding the establishment of new higher education institutions. Who decides which new public universities are needed, where they are located, what their role and scope is?
• What does the program review process look like for private higher education? Does it address private (self funded) programs offered by public institutions?
• How does the CHE program review process assess the criteria of institutional readiness, state needs, and state ability to finance proposed programs?
• What is the nature of the coordination between program review, budget review and planning?
• How does the CHE address institutional diversity and differentiation in the area of program review.
• What is the nature of the political forces that influence the program review process?
• In the context of the Kenyan higher education system, is the CHE’s role in the area of program review reactive or proactive. Does it play a leadership role, stewardship role or passive role?
• What criteria are used to aid the process of program review? How effective and workable are the criteria?
• What consideration is being given to address unnecessary duplication of programs within the system, particularly when it comes to state funded programs?
• What are the mechanisms used to conduct program review?
• Are existing programs reviewed?
• Is the process of program review regarded as fair
• Has the task of program review ever resulted in the closure or reallocation of existing programs?
• Does the CHE involve itself in the review of public service programs?

These questions will serve as a backdrop for the consideration of the role of the Commission for Higher Education in Kenya as an intermediary agency in the area of program review – a descriptor that has evolved to the broader term ‘quality assurance’.
There are two ways that the public can be assured about quality in higher education services provided – they can trust the providers (the universities) or they can set up some kind of external quality assurance service. The purpose of a buffer agency is to provide a balance between these two options “The purpose of a buffer between the providers and the control system is to minimize the deleterious effects of the control while still preventing an abuse of trust” (Elton, 1992, p.36). It is noteworthy that the slogan for the Commission for Higher Education that appears on most of their public relations documentation contains the phrase ‘Assuring Quality in Higher Education’. In the context of Kenyan higher education it is the Commission that has the specified role of quality assurance. “As the sole regulatory body charged with the responsibility of planning and coordinating the growth and expansion of higher education in the country, the Commission is duty bound to guide and advise the public on those universities authorized to operate in the country” (EA Manufacturers and Commercial News, May- June 2006, p. 12). The Universities Act (1985), that established the Commission, makes clear the mandate of the Commission when it comes to the area of quality assurance for academic programs. The following specific functions of the Commission in the Act, that established the Commission for Higher Education, articulate the specific functions of the Commission relative to program review and quality assurance:

- To advise the Minister on the establishment of public universities.
- To accredit universities.
- To cooperate with the government in the planned development of university education.
- To examine and approve proposals for courses of study and course regulations submitted to it by private universities.
- To receive and consider application from persons seeking to establish private universities in Kenya and make recommendations thereon to the Minister.
- To ensure the maintenance of standards for courses of study and examinations in the universities.
- To advise the government on the standardization, recognition and equation of degrees, diplomas, and certificates conferred or awarded by foreign and private universities.
- To arrange for regular visitations and inspection of private universities (Universities Act 1985, section 6).
These eight functions clearly indicate the priority for the Commission of program review for the Kenyan higher education system.

Adrian Verspoor (1994) comments that the challenge in developing countries, such as Kenya, is that the higher education systems are not adequately meeting the needs for genuine economic and societal development to take place. Verspoor identifies six lessons following detailed analysis by several experts on the following: relationship between economic development and higher education, the recent trends in higher education, options for reform in financing and in governance, enhanced ability to monitor performance of these institutions. Included in this list are lessons that specifically relate to quality assurance, including the following:

a) “The crisis in higher education is first and foremost a crisis of quality.” On the whole universities face a major challenge to reach the level of quality approaching the international standard. Financial constraint will make this a challenge that is very difficult to meet without clear strategic and selective investments.

b) “The challenges of improvement and innovation that face higher education throughout the developing world cannot be limited to financial reform alone; they also call for rethinking of the traditional relationship between government and universities. Central planning and control of higher education has resulted in uniformity, rigidity and politicization of the system at a time when diversity, responsiveness to evolving development demands and relevance are essential” (p.7). Governments should provide the general (not so detailed) rules within which institutions can use their autonomy and within which the market can function. The institutions should try to maximise their innovative capacities within the context provided by government. The market should let the societal needs come to the fore. This thinking needs to be applied in a systems orientation that includes the symbiotic relationship between public and private universities.

c) “The emphasis on quality means that evaluation of teaching and research in terms of processes and outcomes becomes critically important. There is a need to realize an “evaluation culture”.
d) The reforms needed can best be implemented through application of genuine strategic planning (as opposed to master/operational planning) that understands the nature of continuous changes.

The essential reason that higher education systems in developing countries are not making the expected contribution to development is largely a result of a “crisis of quality” and the need for effective and efficient mechanisms to assure quality. It is the need for quality in higher education that reportedly established the need for the Commission in the first place. One senior officer at the Commission clearly stated that the concern about quality that arose because of the emergence of private universities prompted the state to respond and put in place an agency that would protect the Kenyan public from being exploited by these new institution (Interview). Maintaining quality in higher education is seen as a solemn civic duty. The concern for quality raises the significance of the function of program review for an intermediary agency in such a context. In order to look at the role of the Commission for Higher Education with regard to program review, the functions of an intermediary agency in this regard will be discussed: establishment of new institutions; role scope and mission; establishment of new programs; reallocation or elimination of existing programs; research and public service institutes; and control of private programs. Before discussing these key aspects it is necessary, once again, to note the major implication of the legal framework for the Commission of Higher Education in this area. It has previously been established that the Commission, in its current state, essentially serves to provide quality assurance to private universities and programs and does not have the same responsibility for public universities. This means that any activity that has to do with quality assurance is almost exclusively in the domain of the private higher education sector of Kenya. This is a significant limiting factor of the effective role of the Commission as an intermediary agency to fulfill its mandate in a meaningful manner. While there is some engagement of the Commission in the public sector, most of the Commission’s work on quality assurance relates to the private sector only. The work being done in this area for the public sector is a fairly recent development and has come as a result of the expansion of the public system through the establishment of satellite campuses and the raising of constituent colleges to become universities.
This chapter will describe the work of the Commission for Higher education in the area of program review by discussing in detail the three major functions of program review for an intermediary agency: establishing new institutions, addressing role and scope issues within the system, and approval of new programs. It will also briefly discuss the three minor roles that have been identified: reallocation and elimination of programs, public service programs, and non state funded programs.

6.2 ESTABLISHMENT OF NEW INSTITUTIONS

The program review issues that have to be addressed by the intermediary body when it comes to new institutions relate directly to the complex area of institutional diversity and differentiation within the higher education system. What types of institutions are needed in the higher education system? Where should these institutions be established? Should new universities be created or would a branch campus of an existing university be preferable? It is in this area that the intermediary agency tends to be more reactive than proactive. The pressures associated with these decisions from political forces and institutional forces affect the context for decision making. Generally the agency is caught up in the midst of a stakeholder’s agenda. “The central agencies often are passive; they do not take a stand and do not lend advice on the matter without specific request from the legislature” (Glenny, p. 208). The nature of the societal forces at work generally means that it is the state that determines the establishment of new public universities. The establishment of private universities is also an area where the agency is more reactive then proactive. While there will be policy regarding the benchmarks, or standards, that a private university needs to attain for recognition (accreditation) it is a private enterprise that initiates interest in starting a new institution and the intermediary agency responds and reacts accordingly.

In the case of the Kenya higher education sector the new universities that have been established have been mostly in the private sector. In this group there are two different types of institutions. The first group is those private universities that were in existence and offering degrees before the Commission was established. With the enacting of the Universities Act (1985) these pre-existing universities were required to register with the Commission and then begin a process of quality assessment that would allow them to be awarded a Charter. The
University Act and the University Rules established conditions whereby the Commission for Higher Education could work with interested parties to start a new private university, provided they met established criteria. Once established these ‘new’ universities would be awarded a Letter of Interim Authority to operate for a period of time and work with the Commission towards the granting of a Charter. The frameworks established for these processes allow for description and discussion of the program review process by the Commission for Higher Education for the private university sector. The same cannot be provided for the public university sector since there is no reference involving the Commission for Higher Education to conduct program review under the existing legal framework. Though the act does refer to the involvement of the Commission for Higher Education, by making recommendations to the Minister for the establishment of new public universities, this is set aside. As one interviewee noted: “They never really do consult us or ask us to be a part of the process of establishing a new public university. If this happens it is simply a rubber stamp thing whereby we are used to further the political agenda that is really driving the process (Interview). In any event since the establishment of the Commission most, if not all, of the new public universities already existed as constituent colleges and so the new status allowed for these colleges that were already part of the public system to become fully fledged universities. More recently however, as one Commission staff member noted, the Commission has been asked to inspect middle level (Diploma) colleges. As a result these colleges have been recommended for, or upgraded to become, constituent colleges (Interview). The complication in this scenario is that the two year institutions are registered with a different ministry that the universities. This creates a lot of confusion. As one senior executive described it “There is typically a lot of politics involved and pressure to approve for upgrading to degree granting status but when we see a middle level college that is not up to standard we cannot do anything as their registration is with another ministry. It is not good” (Interview).

An analysis of the work of the Commission for Higher Education on the matter of establishing new private universities illustrates that there is a comprehensive, rigorous and detailed process for the establishment of new private universities. This may reflect the fact that one of the strong motivations for establishing the Commission in the first place was to regulate and control the emerging private university sector. It may also be a consequence of the reality
that the only domain where the Commission is in a legitimate intermediary role is in the private sector of the higher education system.

The following are the sequence of activities related to the establishment of a new private university by the Commission for Higher Education:

Application
The stakeholders for the proposed new university begin the process of establishing the university by completing a standard application form that is provided by the Commission and submitting it along with the application processing fee (about $750 US). These are submitted to the Commission secretariat.

a) Preparation of the Proposal
The proposal document is also required for submission along with the application fee and form. This is a comprehensive document that provides the following details:

- Chapter 1: The historical background indicating the various perspectives that have shaped the idea of the new university and the persons involved. A description of the experience of the sponsor in operating a university. The identification of other related institutions operated by the same sponsors. A description of the justification for the proposed university as well as a clear outlining of the vision, mission, and philosophy of the institution.

- Chapter 2: The proposed name, location and academic character of the institution as well as the projected initial student enrolment.

- Chapter 3: The aims and objectives of the proposed university and the strategies for achieving the same.

- Chapter 4: A description of the governance of the proposed university including the Trustees, Council, Chancellor, Vice Chancellor, Senate, Management Board, Faculty and Department Boards and Student Body.

- Chapter 5: Academic Programs. A complete listing of proposed academic programs along with a timeline for introduction, and justification for the program in light of the institutions aims.

- Chapter 6: A complete listing of the academic resources (human, physical and library).
Chapter 7: A timetable outlining the course requirements and sequence of courses for each of the programs.

In addition to the general summary described above there are specific expectations required in the proposal for the four key evaluation areas: rules and regulations, curriculum, physical facilities and finances, and library services. For each of these major areas there are guidelines provided that outlines very specifically the format and requirements for proposal submissions in each of these areas. The curriculum documentation is very detailed as well as the report on physical facilities and finance. The specific and daunting demands of the University Rules (1989), which have been described earlier, make up the framework of the report on facilities and finance. The results of these are four comprehensive standardized reports that accompany the main proposal along with the application.

b) Evaluation of the Proposal

The proposal is carefully evaluated by the secretariat of the Commission and additional work and reporting is requested, if necessary, in order to determine that the university meets the standard for the establishment of a private university.

c) Inspection of the Institution

Successful completion of the documentation stage results in a site visit by members of the Commission. The team that is put together for such a site visit is comprised of experts in each of the four major areas (legal, academic, physical and technical and library). Due to the stringent requirements of the University Rules, the technical group of the inspection team often visits on its own, and before the rest of the site inspection members.

d) Approval by the Commissioners

If the proposal is acceptable and the site visit verifies that the institution is on the way to meeting the requirements, according to the reports of the secretariat, the Commissioners approve the establishment of the new university.

e) Award of Letter of Interim Authority

At a public ceremony a Letter of Interim Authority is granted so that the university can legally function as a university. Following the award of the interim authority the university is expected to continue to work toward meeting the remaining requirements
for full recognition which is the Award of Charter. In the course of establishment, the reports have resulted in a number of requirements and recommendations that have been spelled out by the Commission which the institution must address in order to be granted a Charter. Typically meeting these requirements will take between four and six years.

f) Preparation of Inspection Report for Award of Charter

At such time as the now established university determines that it is ready for consideration of Award of Charter another round of rigorous assessment is undertaken. The ‘readiness’ factor typically is based on the achievement of the recommendations from the report findings, during the Letter of Interim Authority process, and compliance with the requirements of the University Rules. The Inspection Report format is prescribed by the Commission and now includes a general overview and summary (similar to the proposal) and detailed reporting in four key areas: Curriculum (including verification of curriculum report), preparation of Charter and Statutes, Physical Facilities and Finance, and Library.

g) Final Inspection

Upon receipt and evaluation of the Inspection Report through the Secretariat to the Commission, a Final Inspection by the Commissioners is conducted. This is often a routine inspection since the Secretariat would have worked at great length with the institution to make sure that the institution would successfully meet the expectations of a final inspection.

h) Accreditation Report

A comprehensive Accreditation Report is prepared that includes all of the relevant documentation from both the proposal and the inspection report (including all of the component parts). For example, the inspection report requires the submission of a master plan and strategic plan for the operation of the university. This accreditation report represents the sum total of all of the work done to verify the credibility and compliance for the establishment of a new private university. This report is bound and kept in the Commission’s records.
i) Approval by Commissioners
The Commissioners review and approve the Accreditation Report and forward their recommendation to the Minister for Education. At the same time the Charter and Statutes are forwarded to the Attorney General’s office for processing.

j) Approval by Minister
The Ministry of Education officials receive, adopt and approve the approval and begin to work with the relevant government offices, including the Head of State’s office, to prepare for Award of Charter.

k) Award of Charter
A formal Charter ceremony represents the culmination of a long process and the final act of establishing a new private university. The Charter is awarded by the President in a ceremony that is coordinated by the Commission for Higher Education.

The process is clear but it does take a long time to unfold. When asked about the length of time from application to award of Charter the response provided was between five to eight years (Interview).

6.3 ROLE AND SCOPE ASSIGNMENTS
This responsibility refers to determining an institution’s basic type, and its curricular emphasis. There are broad general classifications of institutional type. A fundamental assumption in this regard is the value of diversity and differentiation, that is, the intermediary agency, working with the state and with the institutions, values a systems approach where intentional choices are made regarding institutional type and scope. Generally institutions wish to choose and direct their own destiny and seek to persuade the state to endorse or support their aspirations. This approach is unsatisfying from a government perspective because of concerns over rationality and distribution of resources. Will the developmental agenda of a particular institution contribute to the well-being of the whole system without adversely affecting other institutions in the system? Ideally both state and institutional objectives need to be addressed in a manner that is mutually beneficial. It is this dynamic tension that creates an opportunity for an intermediary agency to play an important role.
There are two main questions when it comes to the task of allocation: a) How diverse is the system and what are the tier patterns to look like (2 or 4 year), liberal arts, professional programs. This means that each institution is assigned to a particular niche in the system to meet particular demands. b) How flexible are these tier decision assignments? In other words how easy is it for an institution to move from one level or layer to another? How these questions are addressed depends in large part on philosophical assumptions inherent in the system design. An across the board approach would lean on the directions established in a master plan to stipulate and assign an institutions role and scope. A selective approach would allow capacity and demand to address these issues, in other words standards would be set and control would come out of these standards. Each institution would be given the freedom to decide role and scope provided it met the established criteria and standards.

The Commission for Higher Education can be said to be heavily focused on universities rather than other forms of post secondary training. There exists in Kenya a two tiered system: 1) universities and 2) all others considered a Post Secondary School Institution (PSSI). This is a very broad category which covers a great diversity of institution types. Most of the Commission’s focus when it comes to program review is almost exclusively in the university sector and more specifically the private university sector. This was explained by a senior officer at the Commission who pointed out that the two year institutions are the mandated responsibility of the Ministry of Higher Education (Interview). As far as PSSI’s are concerned there are two functions that the Commission is engaged in: the validation of programs, and the validation of collaborations. The validation of programs is the official recognition of the program by the Commission for Higher Education. Validating collaborations refers to the official recognition provided for degree programs in a PSSI that are done in partnership with an external university, normally one that is outside of the country. The process is quite similar in design to the process for establishing new institutions. A proposal is submitted to the PSSI department at the Commission where department staff checks the proposal for completeness and compliance with set guidelines. If compliant and complete (that is, all necessary supporting documentation is provided) then approval is granted and the PSSI commissions resource persons to physically inspect the institution and produce an evaluation report. A second visit by resource people concerned with curriculum is also conducted. The PSSI committee considers the evaluations
reports for approval. If approval is granted then the sponsor is notified and a certificate of validation is awarded by the Commission. In the case where a degree is being offered in collaboration with another university by the PSSI, the same process is followed with the final award being a certificate of collaboration.

An analysis of the process for PSSI validation or collaboration compared to the process for establishing a new university clearly shows that there is great rigor involved in the process for universities compared with that for PSSI. The process is similar, but greatly watered down. In part this has to do with the fact that there are few established guidelines for PSSI, and certainly nothing comparable to the University Rules standards. The PSSI process is handled internally by a department of the Commission without the need for consideration or assent by the Commissioners. Where this creates some problems is in the collaborations that are approved. It is clear that a quicker path for an institution wishing to offer a degree program in Kenya is to register as a PSSI and then collaborate with another university to offer a degree. The accreditation and legitimate quality of the collaborating university is not under the CHE’s charge. When asked about the Commission’s ability to address non-performing or non-compliant collaborations, the response from a senior executive was “We really do not have any authority to close them down since they are registered by the Ministry. At best we can make suggestions but without legitimate authority to intervene” (Interview).

It is clear that not much attention, if any, is being given at this time to intentional design of the higher education system in Kenya when it comes to role and scope issues. A thorough program review policy is in place for the private university part of the university sector and a procedural review policy is in place for the PSSI sector. A measure of the effectiveness of the policy for PSSI’s is that a relatively small percentage of them are in fact validated by the Commission. There is no clear provision for intentional design for the work of the Commission in the university sector. Public universities are free to add new programs at their own volition provided they are approved by the institution’s Senate (that is, no Commission engagement). Private universities are similarly free to develop new programs without limitation or guidance from the Commission with regard to role and scope provided they meet the guidelines for offering such programs. The result is a number of universities that are virtually identical in
program offering, and very similar in profile. Ultimately this leads to a surplus of qualified graduates in the same fields and at the same levels for a job market which is unable to accommodate the supply. This situation is impacted by the increasing number of constituent colleges in the public university systems that are becoming fully fledged universities, and then offer similar programs as all of the other universities. Little thought, and even less action and leadership, is being provided for meaningful decision making in the Kenya higher education system with regard to role and scope issues and the responsibility of an intermediary agency for program review.

6.4 APPROVAL OF NEW PROGRAMS

The Commission for Higher Education in Kenya is known in the region for being specialist at program accreditation. Private universities are required to have every program approved before it can be offered regardless of whether or not they are Chartered. This ‘double accreditation’ is seen to increase the level of quality assurance. There are two aspects that need to be considered when it comes to the approval of new programs of study. The first is the scope of the approval process, i.e. is the intermediary agency in its capacity as the central coordinating body for the system responsible to endorse or approve all programs or only certain ones. The issue of scope goes beyond the nature of the programs that need to be approved to consider where those programs are situated. Is the agency restricted in its scope to only programs in public institutions, or to programs beyond a certain level of study example only bachelor degree programs and above? These questions are generally handled in a manner that ensures the least judgment about whether or not the agency ought to have a role. In most, if not all, jurisdictions where there is an intermediary coordinating agency, the reality is that this agency must review and approve all programs offered within the system. This is one area where there seems to be across the board agreement. The second aspect of program approval has to do with the criteria used for judging whether a particular program ought to be approved or not. The questions and choices in this regard are more complex and often reflect philosophical values and assumptions about what a ‘good’, ‘worthy’, ‘valued’ or ‘necessary’ program looks like. How does a coordinating agency make such a choice? There are generally three main considerations that serve as criteria in this task: institutional readiness, state needs and financial viability.
Institutional readiness takes into consideration that adequacy of the faculty, institutional facilities, funding, and learning resources necessary are in order to start and sustain a proposed program at a high quality standard. This can be a fairly subjective decision despite the availability of quantitative data involved. Applying a set of pre-established criteria broadly across the diversity of a system proves to be a challenge since institutions vary in their degree of readiness. Seasoned and mature institutions have a head start in meeting many of these targets. Emerging and developing institutions, where it could be argued that new programs will have the greatest effect in institutional advancement, may not be as good but likely meet a minimum standard. The question is where the bar should be set; at the highest standard or at a minimum standard?

Program review and approval must take into account the state’s needs. This requires the state to have conducted a careful assessment and projection of its needs and assumes that the state is committed to capacity building in response to the projected needs. This area is a complex one and it is difficult to do an effective job of forecasting manpower needs. The underlying assumption is that unnecessary duplication of programs ought to be rigorously avoided so as not to waste limited resources. Student interest and institutional aspirations do not constitute a state need. Even if there would be healthy student enrollment and interest and a particular institution that may be very eager to offer a particular program, if it does not fit into the state’s list of desirable offering for new programs it should not be approved. Of course too narrow a perspective in this regard can be problematic. The state may only be able to forecast and anticipate needs within its particular boundaries but what of regional, national or global opportunities that may need to be considered?

As is usual in discussions of state versus institutional interest, when it comes to higher education, often the determining factor is financial. The state’s ability to finance a particular program is often a decisive factor. Even if the institution has the capacity to offer the program at a high level of quality, and the state has predetermined that it is a need, limited financial resources may delay, defer, or kill altogether approval for a new program. The role of the coordinating agency then is to assess the state’s and the institution’s needs against a grid of fiscal responsibility to come to a final determination regarding approval of a program of study.
One of the areas that make this difficult is the limited ability to abandon programs that once were significant and vital but have become fairly dormant. Where there are limited finances, sometimes the capacity to offer a new program can only be secured once a dying or dead program has been removed. This process is not easy as institutional forces are designed to sustain the establishment. According to a Commission official there are many irrelevant and dead programs in Kenya because of the prevailing approach (Interview).

The procedures associated with program review often place an incredible administrative demand on the agency. There are personnel with expertise needed to assess the specifics of the program including the courses, curriculum, faculty, academic guidance, and learning resources associated with a particular program. The process typically involves staff analysis and likely involvement of external consultants in order to prepare a report for committee consideration and recommendation. The review process must be fair and firm and perceived by those engaging the process as such.

It can be fairly stated that currently the major work of the Commission is in the area of program review and approval and that this is seen to constitute the strength of the Commission as a quality assurance agency. However, the scope of the review work being done is once again strictly within the private university sector. No program approval mechanism that engages the Commission is required for any public university programs, including those that are fully privatized within the public university. All programs at all levels that are being offered by a private university must be approved by the Commission for Higher Education. Private institutions are not allowed to advertise let alone offer programs that have not been approved. The approval process concentrates exclusively on institutional readiness and does not take into consideration state needs or financial viability.

Institutional readiness for curriculum approval is managed by a very detailed and thorough process. Every program is required to complete the same procedures in order for the program to be approved. The process begins with an application and the submission of a proposed curriculum to the Curriculum Department in the Accreditation and Quality Assurance section of the Commission. The proposal must follow a specific template as defined by the
Curriculum Standards policy document. The proposal must provide details on the following: aims and objectives of the program, admission requirements, and description of the program, duration of the course, areas of specialization, structure of the course, graduation requirements, and process of on-going evaluation of the curriculum. The proposal is received by the curriculum department and then reviewed for completeness and basic compliance with general regulations. This is done by a Commission evaluator. Once checked the proposal is forwarded to an external expert who is requested to evaluate the proposal and submit an evaluation report. A second review is conducted by another external reviewer and once those reports are received, the Curriculum Approval Committee meets to consider the two reports. If the reports are generally favorable then the curriculum is recommended for approval and a verification of academic resources process is engaged. This requires a detailed report from the university and a site visit to verify facilities, equipment and teaching materials, core texts and journals, and teaching staff. The process of academic verification is facilitated by the production of a major document that provides extensive details on the areas mentioned above. After the completion of the above, then the committee is in a position to approve the curriculum and inform the sponsor. This full process is required for every program at every level that every private university intends to launch.

There are three major challenges that arise from the manner in which the Commission is currently handling program approval. First, the fact that this is restricted to private universities only is seen as unfair or even discriminatory. Public institutions enjoy far greater freedom in the ability to launch new programs, even ones that are self-sponsored i.e. privately funded by students. Secondly, the process can take a very long time and there is often a major time lag between submission and approval. The main cause for this is cited as the involvement of the external reviewers of the program. As one interviewee noted: “They are not paid very much for the service they are requested to provide and hence there is little incentive for them to handle the work in a timely manner – they are not motivated” (Interview). Some proposals are sent out to external experts and never returned. This is exacerbated in the need to have a second opinion from a second external reviewer once the first review is received. The involvement of external reviewers presents two other complications. These reviewers are necessarily from ‘competitor’ institutions. While an appeal to professionalism can be made, the fact remains that they can slow
down the development of a competing program at a private university by not being very responsive in the evaluation stage. It would be more tolerable if the evaluators were more neutral, that is, part of the Commission Secretariat, even if capacity for such service needed to be expanded. The second implication, which perhaps is broader than the engagement of external reviewers, but can be said about the whole approach to program approval, is that it tends to support the familiar and dampen the innovative. There is a danger that emphasis on uniform standards can degenerate into uniformity. This tendency is seen clearly in the production by the Commission in 1990 of a Model Curricula for University Education in Kenya. The contents of that publication outline a standard model, including courses and sequence, for every program a university intends to offer (CHE 1990). While this has been set aside, there is still an overriding perspective in the use of established experts that gives more weight to the traditional rather than the innovative. New ideas on curriculum and innovative approaches to program delivery are not well supported by the bureaucratic process that is currently being practiced. The implication is that the end result will not only be replication in the market of programs but that the system as a whole will lack diversity to be globally competitive.

The experience of higher education can lead to one main conclusion with regard to innovation in terms of operational effectiveness and efficiency. It will need to come from an external impetus. This is where the buffer organization can play an important role. It is incumbent on such an agency to foster innovation or it is unlikely that the higher education system will be globally competitive. (Spooney, 1992, p. 24)

It is these types of concerns that led to consultants to the Commission for Higher Education to make the following comments:

It is clear that the advent of the CHE, the University’s Act and the accreditation process have all led to a sharpness in this decision making process. How it has affected innovation, risk taking and entrepreneurship in the private side of higher education is unknown. However, it is fair to speculate that the concept of “less is more” appears to be operative. This, of course, has hopefully led to higher quality programs and graduates based on the CHE’s self-evaluation and program approval/accreditation process. (Deloitte and Touche, 1994, p.24)

Further, “The overwhelming response about the strength of the Acts centred on their raising the standards and quality of all affected institutions”. The major weakness of the Acts centred on the imposition of a ‘general mould’ which does not consider individual institutional identities and which tends to lead to unrealistic expectations” (p. 31). This situation may be a consequence of
a system that is focussed on quality control rather than quality management (assurance). Quality control is input oriented and inspection oriented. The systems in place are designed not primarily to assure quality but to certify the quality. Quality management systems are designed to assure quality through the verification of appropriate processes for the management and monitoring of operations. In the case of program approval, the Commission could be said to be engaging a quality assurance approach if it concerns itself with assessment of the structure, systems and operations of the institution and monitored at that level rather than a quality control process of assessing every proposed program. In effect within the Kenyan higher education system, the public universities are able to operate in a quality management (assurance) paradigm while the private universities, even ones that are chartered, are required to operate in a quality control paradigm. “It has been proposed that once a private university is chartered it should enjoy the same privileges as its peers in the public universities where they can offer new programs in a careful and deliberate manner but without the need for approval by the Commission” (Interview). This approach would not only add a great deal of efficiency for the private universities but it would also encourage greater innovation and program differentiation, a result that would bring greater strength to the system as a whole and increase global competitiveness.

6.5 PROGRAM REALLOCATION, PUBLIC SERVICE AND NON-STATE FUNDED PROGRAMS

While the approval of new institutions, role and scope assignments and approval of new programs constitute the major functions of program review, there are other aspects of this area that need to be identified. The first of these is the issue of program reallocation. In the previous discussion regarding program approval it was mentioned that institutions are very reluctant to see existing programs discontinued even though demand has diminished. On occasion reallocation is an option. This is usually done in combination with efforts to combine programs and consolidate resources. Where demand has diminished, parts of programs, or programs unable to stand on their own can be amalgamated. This is less challenging than elimination of programs. There is no evidence to support the consideration of program reallocation or elimination in the context of the work of the Commission for Higher Education is Kenya. While
allusions to consolidation within the system are included in planning reports, there are no mechanisms nor is there any current intent to move to this level of system design. As one individual noted, “We do not do anything like that. It would be impossible anyway given the politics that are in the public university sector. Every institution wants to do what it wants to do and does not want to be told by anyone what it cannot or should not do” (Interview).

In addition to academic programs, which are the main focus of program review, there is sometimes a need to assess and evaluate the non-academic programs that institutions provide. The informal curriculum often associated with the student life and student development components of the institutions may be subject to review. Often the public service programs that are subjected to review can be closely tied to the state’s broader objectives to address social needs or concerns, for example, issues related to student diversity, learning needs, access for students with disabilities, and outcomes assessment, among other issues. Though this may not be the primary focus for the task of program review, the state’s vested interest in these areas can add significance and demand to the task. In this regard there have been two broad initiatives that the Commission has been involved in: HIV/AIDS awareness and gender equity. In each of these cases short-term interventions accompanied with state funding for approved programs were conducted through the oversight of a task force at the Commission. While the effects were encouraging, concern was expressed by Commission staff that the impact and outcomes may only have lasted as long as the funding and program were in effect. Further study is needed to see if there were any long term effects from the programs.

On occasion a new program, academic (teaching or research) or public service may be proposed or initiated as a result of private funding through endowments, gifts or grants. An argument could be made that such a particular program or service may eventually need to be taken over by the state so the approval process still is necessary. Others argue that if a program is completely privately funded then no program review is required. The questions here can be complex. For example if only government funded programs require review, then private institutions should be exempt and free to offer programs without review and approval. This is one area where there has been a significant recent development that presents a major challenge to the Commission for Higher Education. In the late 1990’s public universities began to offer
Parallel Programs in various disciplines. The term Parallel Program simply refers to existing academic programs, specifically for students that would fully fund the operation through tuition fees. No public funding is said to be directed to these programs and as such they are private programs offered by the public universities. The increased revenue that these programs generated for the cash-strapped public institutions made them extremely popular, and enrolment and program offerings increased exponentially. They are now considered to be essential in the operations of the universities. Critics of these programs point out that the influence of the new found revenue stream is causing significant compromise in the quality of the education offered. “The expansion of public universities into small campuses through collaboration or purchasing new premises has had a negative effect on quality” (Interview). There is little oversight within the public universities as these programs are often run as businesses or enterprises of the university. “Some public universities are now understating their actual capacity to the government so that they can take in an increased number of parallel program students and earn greater revenues for the universities” (Interview). The inability of the Commission to be instrumental in any quality assurance, or even quality control for these ‘private’ programs is striking. From the perspective of the private higher education institutions, the effect of an uneven playing field in the market is unjust.

6.6 CONCLUSION

It is a fair assessment to suggest that the greatest area of strength in the Commission for Higher Education in Kenya is its role with regard to program review. This function allows it to be instrumental in the establishment of new universities and accreditation of new programs of study. It is the reputation for effectiveness in quality assurance that has earned the Commission for Higher Education respect in the region and on the continent and allowed it to play a consulting role in the establishment of other such agencies. At the same time there remains a significant issue from an objective and system-wide perspective. The fact that it has no input or oversight at all in any of the programs offered at the public universities, and no say in the establishment of new public universities, means that it is extremely capable but largely ineffective on the whole as public institutions are not within its purview. The accreditation demands are very challenging and require arduous effort on the part of the private institutions who are the beneficiaries in the end but have legitimate discrimination concerns. The most
positive scenario for the sake of quality education in Kenya is that the skill and experience in quality assurance that the Commission has developed to date will soon be exercised for the benefit of the whole higher education system in Kenya.
Chapter Seven
The Function of Budget Review and the Commission for Higher Education in Kenya

7.1 INTRODUCTION

Early orientations to the issue of coordination of a higher education system were based on a need to provide a framework for allocation of funding. Fiscal rationalization was a central responsibility of the coordinating agency and as such it was given heavy responsibility for budget review. The nature of the intermediary agency is often defined, in part, based on the extent of influence or authority it has when it comes to allocation of resources. “There is a qualitative difference between buffers that have the responsibility and right to allocate resources and those that simply play an advisory role” (Frackman, 1992, p. 14). This approach reflects the chief interest of the state in the state-institution-intermediary agency relationship. The basic and primal need of the state is to allocate and be accountable for distribution of public funds. More recently a better balance has been achieved. The importance of good planning and program review has become a prerequisite for the process of budget review and appropriations. In some ways this area is more of an outcome of the other two, and has become deemphasized as a chief responsibility of the coordinating agency. The funding challenge for the intermediary agency is to achieve equity and efficiency (Tan, 1994, 248). This requires great care in a developing country context. Gray describes the strong debate in Kenya over allocation of resources to science and technology versus arts and humanities. The former is more expensive but strategic while the latter affects a greater proportion of the potential student population (Gray and Credle, 1996, p. 50). Tan comments on the complexity brought into these decisions by the overall quality of primary and secondary education: “The financing of higher education is greatly complicated by the inequality in higher education preparation and financial ability of potential students. In most developing countries a large proportion of students cannot afford to pay for higher education even if they perceive them to provide a high rate of return” (Tan, 1994, p.249).

The process of budget review and allocations is a very dynamic and political process in Kenya. Determining the amount of public funding an institution or programs should be awarded
(appropriations) is often a conflict between cherished plans and aspirations on the part of the institutions of higher education, and the limitation of public funding. More often requests exceed resources and in these situations the common approach is to reject a certain number of requests rather than determine how to raise the additional resources needed. Ultimately the state financial authorities make the final decision leaving the higher education institutions lobbying and negotiating for funds. The role of the coordinating agency can be likened to that of a broker, attempting to find a suitable compromise. The process is fraught with all of the characteristics of negotiation. This includes a measure of misinformation as institutions play the game to end up at a point they can live with. There can also be considerable lobbying and favor seeking which can on occasion pit institutions against each other in the scramble for funding. From the higher education perspective the process is an adversarial one, and the belief is that the state decision-makers do not understand the intricacies of the higher education system and its needs. They also regard the process as unpredictable as the appropriations battle occurs at the beginning of each budget cycle and the forces involved can change dramatically from budget to budget.

It is important that the function of budget review be carefully linked with planning. In this line of thought the coordinating agency can serve a very useful purpose in the task of allocating funds across the system in an equitable and effective manner. The role of the intermediary agency is to develop a comprehensive plan for the system. The system-wide perspective of the plan would transcend the interests of any one particular institution and yet be sensitive to the interests and needs of the system as a whole, having been developed with the input of specialized knowledge from the system itself. The intermediary agency then has a very specific function in the area of budget review:

Such an agency could, at the least perform two functions vital to effective state budgeting for higher education: It could require information from institutions and then organize these data in common categories, thus making it easier for the state budget offices to judge comparative needs and costs; and it could, with the help of the institutions, undertake comprehensive planning, subject to approval by the organs of state government, which would then conduct their review of the higher education budget in such a way as to implement the agreed-upon planning goals. (James L. Miller, “Budgeting Processes” Financing Higher Education – proceedings of the fifteenth annual legislative work conference, southern regional education board, Ashville, NC July 27-30, 1966, p. 29 --- 104 in Berdahl)
It is possible to consider an ever greater role for the intermediary agency whereby it becomes the primary decision maker regarding the allocation of a selected amount of public funds. The agency becomes the principle agent in conducting the budget review and appropriations process.

There are various levels of involvement with different levels of ownership and engagement on the part of the agency. The variety in the types of agencies results in a variety of roles when it comes to this process. The coordinating agency may be very highly involved and make key fiscal decisions. Alternately it may be a bridge and broker in the process, or may even be sidelined with very little influence or say in the funding decisions that need to be made. The factors that seem to determine the level of involvement are: the intensity and effectiveness or thoroughness of the state budget review process, the regard that the state has for higher education, the role that has been defined for the intermediary agency, and its capacity to play a meaningful role in the budget review process (Glenny, 1967, p. 118 – 120).

The common practice for budget review involves the establishment of formulas (that is, costs based on enrolment factors) or costs analyses (costs based on areas or units). These common approaches have some built in weaknesses in that they generally do not give enough attention to quality, they only have the appearance of objectivity (but not in fact) and they can be manipulated (Berdahl, p. 126-128). Berdahl suggests a planning to programming budgeting system:

1. Program units are defined by purposes
2. Estimated costs for a given program are identified on a multi-year (five) basis
3. The anticipated benefits of the program are explicitly described and criteria to measure performance are established
4. Information systems that will provide a steady flow of data on program costs and benefits are established
5. Program alternatives with accompanying cost and benefit analyses are presented to decision makers
6. Funding is ultimately based on performance

This approach comes with a significant workload and specific challenges such as the need to explicitly identify the benefits of a particular program. Perhaps a more intentional and objectives
based approach to the funding of higher education is needed, and the intermediary agency can have a very significant part to play in shaping this process in the best interests of higher education services provided by the system.

In light of these broad policy and procedural issues, the following are some of the key questions that facilitate an analysis of the function of budget review as it relates to the intermediary role of the Commission for Higher Education:

- What is the funding and appropriations procedure in Kenya? Who makes the budget decisions? When and how are these decisions made?
- What is the specific role of the CHE in this process? What is the relationship and involvement of the agency with the individual institutions and with the state? How directly is the funding aligned to planning?
- Does the allocation process follow a formula or cost analysis approach?
- Is the practice of program budgeting and the measure of expected result, measurement and accountability followed?
- Are there aspects of institutional revenue that fall outside of the budgeting process and controls?

7.2 CURRENT FUNDING PRACTICE FOR PUBLIC UNIVERSITY EDUCATION

Kenya, like most newly independent African countries, at the time of independence provided free university education for university students. This meant that the primary mode of funding was based on full sponsorship of each student. The funds were sent directly to the institution. The grants given provided the students with the full cost of tuition as well as the provision of living allowances. As demand for university education increased, the government became less able to fund students at the same levels and so in 1974 the University Students Loans Scheme was introduced (Mugenda, p. 1). The transition from full bursary to these funds being received as student loans was not fully appreciated or accepted by students. At the same time the government took steps to establish direct funding to public universities through budgeted allocations. The system of financing the universities ran into problems, particularly with loan recovery, and so a new loan structure, the Higher Education Loans Board, was put in
place in 1995 to assist students to acquire funds for university fees. What had been established as a matter of history through these decisions was an understanding that in the public university sector, the government carries a major responsibility to finance university education through the provision of direct funding to the universities and through provision of student loans.

Currently, public universities in Kenya receive their funding from a variety of sources but the most significant factor is the funding that comes from the state. When it comes to the funding of public universities, as is the case in many other jurisdictions, Kenya is subject to commonly experienced trends: the amount of government funding is decreasing while at the same time the demand for higher education is increasing. The fast growth of university enrolments has not been matched with similar growth in resources. In fact, there has been a decline in public support on a per-student basis (Wandiga, 1996, p. 6). The resulting pressure has created a climate where stakeholders are looking for greater accountability from the institutions along with transparent mechanisms of allocating and accounting for the finances that flow to the higher education system. Traditionally the desired fairness in sharing funds is achieved by using specific funding formulas, which are agreed procedures of determining funding requirements of a university, using measurable and objective parameters such as student numbers and types of academic programs.

Public universities in Kenya are currently allocated government funds as single line budget based on estimates developed by the universities. The level of recurrent funding is fundamentally determined by the number of government sponsored students based on a uniform rate regardless of the unit cost of programs. This method of funding universities disadvantages those offering expensive courses such as dentistry, engineering and medicine. (NSUE, p. 125)

In addition to the public support provided by the state, the public universities secure other sources of income through various forms of revenue generating activities. They are also able to access funds that they obtain through private donor support. The most significant aspect of the private generation of funds for university operations by the public universities in Kenya is the development in the late 1990’s of ‘self sponsored students’. These are students who attend what are called ‘parallel programs’ offered by the public universities. The students in the parallel programs are charged the ‘full cost’ of the program rather than the government
subsidized cost. This has brought a significant amount of new revenue into the public university system. At the same time there are some concerns. “One of the major concerns with regard to accountability is the way that these additional funds are managed. The management of these additional funds is not transparent and there is no clear policy for appropriation especially the funds from self sponsored student fees” (NSUE, p. 126).

It has been established that the current practice, with regard to public support of the higher education system, is that the government provides finance through direct tuition grants to the universities and through loans and bursaries to students provided by the Higher Education Loans Board. The table below indicates the level of support from the government as a percentage of the total income received. It illustrates that, in an increasing measure, public universities are relying on non-public (government) sources of revenue. “Most of these internally generated funds are raised via the self-sponsored degree programs, whose enrollments correlate with the extent of disengagement from reliance on Government funding” (p. 127). One of the factors in the trend that is being observed is that with this shift, there is increased reliance on private or “household” income while at the same time the government share has decreased. Another of the significant issues is the hidden costs related to infrastructure. The practice does not seem to be supported by developing policies on the distribution of the funds which takes into account maintenance of facilities and proper remuneration of employees who support the various programs.


<table>
<thead>
<tr>
<th>UNIVERSITY</th>
<th>Income - % Public funds from Govt.</th>
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<tbody>
<tr>
<td></td>
<td>2001</td>
</tr>
<tr>
<td>Nairobi</td>
<td>50%</td>
</tr>
<tr>
<td>Kenyatta</td>
<td>67%</td>
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<tr>
<td>Egerton</td>
<td>94%</td>
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<tr>
<td>JKUAT</td>
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<tr>
<td>Maseno</td>
<td>70%</td>
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<td>Masinde Muliro University</td>
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An evaluation of the use of public funding received by the universities shows that the majority of the government spending for public universities, between eighty and ninety percent, goes to pay salaries and allowances leaving only ten to twenty percent for operations and maintenance. The key expenditure items in the university budget include staff salaries, maintenance costs, development of library, equipment and facilities, staff development and research.

In the analysis of the present state of funding for public universities in Kenya, conducted as part of the development of a national plan or strategy for higher education in Kenya, the following three funding challenges were noted:

a) The Government’s Policy Regarding University Funding

The universities have been given clear direction that they should explore new, alternative and diversified sources of income. “The Government declared in session paper No. 1 of 2005 that public universities should not expect to receive unrestricted funding from the Government in future. Consequently, the universities need to devise innovative ways of managing the available limited resources in order to trigger private sector players to invest in higher education” (NSUE, p. 130). A review of policies on higher education in Kenya reveals that a shift has taken place from government dominated funding to cost-sharing revenue generation (Wandiga, 1996, p. 2). The unaddressed issue is whether values related to equity and access will be sacrificed in the process. The policy seems to imply that in the future, access to university education will largely depend on the ability of the student to pay. “The scramble to open access while raising funds has generated an additional dilemma, since the access is being opened to those who can afford to pay. The disadvantaged communities will continue to suffer limited access to university education” (NSUE, p. 132).

b) The Demands of Enrolment Growth

The government’s policy is expressed at a time when there is expected to be a dramatic increase in the number of students seeking opportunity to study in university. Conservative estimates are that demand will more than double as a result of the
education reforms taking place in the primary and secondary sectors, and as a result there will be a corresponding dramatic increased number of qualified students for university study. In the context of these rising numbers, the strategic development of university education in Kenya should be guided by the fundamental principles of ensuring expanded access, provision of quality academic programs, and intensified research. The state must continue to invest in greater measure in order to address these challenges. This is a consequence of a situation where the principal financier of public universities is the government which provides funds for the initial infrastructural facilities and recurrent funding for teaching and research.

c) The Management of University Funds

“Public universities are perceived to be inefficient and wasteful in the management of resources. The high unit cost proposed by public universities for their courses is a reflection of inefficient use of financial resources. Such inefficiencies have been attributed to bloated administration and management of available resources in the public universities” (p. 131). This strong perspective suggests that more accountability is needed in the allocation of funds to public universities. Greater transparency is needed for the total financial picture of the institutions, particularly with regard to the income generating activities. In addition the state ought to make sure that the manner in which the funds are used reflects government priorities.

In addition to operational funding for universities there is also a need for funding of university research.

Research is the systematic approach of identifying options for creating wealth by adding value to natural resources as well as developing human resources. It is the best way of mobilizing knowledge and scientific assets to drive economic transformation and reduce poverty. The level of development of any country is correlated to the relative investment in research and development in the public and private sector (p. 134).

Research is critical for the development of a university. “The recognition that knowledge contributes to economic competitiveness and social well-being has increased the attention focussed on the role of universities in the production and dissemination of knowledge”
Unfortunately the funding for the research agenda of universities in Kenya is very limited. “Lack of a precise research and science policy has hindered the formulation of coherent national research agendas, which in turn has generated very few linkages with the economic sector for utilization of research findings. There are also limited equipment and diminishing motivation for researchers” (NSUE, p. 134).

### 7.3 ROLE OF THE COMMISSION FOR HIGHER EDUCATION IN BUDGET REVIEW

The specific mandate of the Commission for Higher Education with regard to budget review and oversight is part of the stated functions of the Commission. Specifically, the Commission is mandated to do the following: “To plan and provide for the financial needs of university education and research, including the recurrent and non-recurrent needs of universities” (University Act, 1985, p. 6). Further, the Commission is “To determine and recommend to the Minister the allocation of grants of money for appropriation by Parliament to meet the needs of university education and research and review expenditure by universities of moneys appropriated by Parliament” (University Act, 1985, p. 6). There is one further reference to the responsibility for budget review later in the legislation where reference is made to the establishment of a Universities Grants Committee (section 8). The inclusion of the University Grants Committee as a standing committee of the Commission, provides insight into the development and expectations of the Commission for Higher Education in the area of budget review.

A University Grants Committee was first instituted in 1971 to serve the newly established University of Nairobi (First Report of Grants Committee 1981). This was a committee composed of external experts along with university officials. The purpose of the 1971 Grants Committee was to assist with the finance related to development of the University of Nairobi. The Grants Committee was given two biannual terms and the Committee expired in 1975 without being reinstituted. Between 1975 and 1981 the University was left on its own to prepare annual estimates (budgets) with the Ministry of Education. In 1981 the University Grants Committee was re-established by the President, who was also the Chancellor, for a three year term. It was clear that the felt need was for planning along with clear financial projections
and estimates based on that planning. The terms of reference for the University Grants Committee included the following: to examine estimates of income and spending; to consider staffing proposals and costings; to consider the scale of expansion to be undertaken; to consider development of constituent colleges; to consider launching of new programs; and to make recommendations regarding student financing (viii). All of these were to be assessed and then the Committee was to make recommendation to the government regarding finances needed by the university. The clear connection between planning and funding is explicit. The Grants Committee served both the need for planning as well as budget review. The scope of the oversight included all development planning and expenditure along with financial projections, fee schedules, loan amounts for students, and all capital development projections. The First Report of the 1980 – 1983 University Grants Committee provides substantive details on matters within its terms of reference along with forty-nine policy recommendations for the state. The Second Report of the 1980 – 1983 University Grants Committee was submitted at a time of significant transition in the education system as a result of the reforms that were in process in the total education system. The political unrest that was experienced along with the perceived role of the University and student unrest caused it to be closed by the President. This context explains the different tone in the second report than the tone of the first. Rather than the cold science of planning and financial projections, a significant amount of social reengineering is woven into the recommendations of the Committee. Issues raised include the need for qualified manpower that would collectively serve the national objectives. While there are financial projections, they are in the context of a need to address cultural priorities, social values, ethics and sound values. The second season of the University Grants Committee expired in 1984.

By way of review, the first tenure of a University Grants Committee was from 1970 – 1975 and the second was from 1980 – 1983. With this in mind, the Universities Act, 1985, that established the Commission for Higher Education, made it responsible for the establishment of a new Universities Grants Commission (note plural). In October 1985 the new version of the Universities Grants Committee established by the Commission held a joint meeting with the former University Grants Commission (CHE Report of the University Grants Commission, 1991, p. 4). At that meeting is was noted that the recommendations of the former Grants Committee were not followed and that Ministry continued to provide direct funding to the
university thus setting aside the relevance of the University Grants Committee (p.4). There was expectation that now, with the more complete context of the Commission for Higher Education, the Universities Grants Commission would have more legitimacy in fulfilling its role. The Commission established University Grants Committee was mandated to carry out the following functions:

- To plan for financial needs of university education and research, including the recurrent and non-recurrent needs of universities
- To coordinate the long term planning, staff development, scholarships and physical development of university education.
- To provide liaison with Government departments and public and private sectors of the economy in matters relating to overall national manpower development and requirements
- To make recommendations to the Commission regarding planned development of university education
- To determine and recommend to the Commission allocation by Parliament to meet the needs of university education and research, and to review the expenditure by universities of monies appropriated by Parliament
- To liaise closely with the National Council for Science and Technology and other potential sources of funds
- To prepare from time to time in consultation with individual universities, triennial budgets for its maintenance and development
- To make recommendations to the Minister as to the nature and amount of grants, out of public funds which it is desirable or necessary to make to each university
- To inquire into or investigate from time to time the financial needs of each university
- To determine in consultation with each individual university the total number of students which should be admitted annually to each university and the apportionment of that number to different courses of study.
These directives were framed in a described environment where, at the time, resources for university education were not keeping up with the pace of enrolment growth, and when there existed a lack of coordination and planning (p. 7). The 1991 report illustrates the necessity for clear integration of planning and budget review. The comprehensive nature of the report touches on most aspects of provision for university education.

The 1991 report of the Universities Grants Committee also highlights the Achilles Heel of the legislation that established the Commission for Higher Education:

At the moment it is observed that some of the functions of the Commission Universities Grant Committee, if discharged according to the Universities Act, 1985, would duplicate those of individual universities.... So unless individual University Acts are repealed/ammended, there will continue to exist areas of possible overlaps of conflicts between the Commission and the universities. There is therefore an urgent need for the Government to review and refine the operating legislation with a view to ensuring that the Commission is enabled to act as a buffer for coordination of planning the development of public universities. (p.55)

A specific recommendation regarding the same issue is presented “..with a view to enabling the Commission for Higher Education to assume full responsibility for admission of students, staff development, planning, programming, budgeting and funding for the development of public universities” (p. 56). The 1991 report likely marked the beginning of the end for the active role of the Commission for Higher Education as an instrument of budget review. Once again the limiting legal framework brought the Commission into direct conflict with the established public university leadership who were more satisfied with the status quo and the powers that they enjoyed than reformation of higher education policy and practice. The Commission’s Universities Grants Committee made the slow transition from a posture of influence to service and eventually to irrelevance. For a period of time the Ministry engaged the Commission in the process of collecting and passing on data between the universities and the ministries in the preparation of annual budgets but the role was more clerical than influential. For some time the designated university funds used to pass through the CHE as a conduit but it was soon realized that the administrative charges associated with the transfer of these funds meant that the clerical task was costing the Commission. The current status is that the CHE is not meaningfully involved in budget review, and certainly not to the level of expectation that is so clearly stated in the Universities Act. The ‘culprit’ is seen as the legal framework, however
the real issue is the unwillingness or lack of political will among the leadership of the public institutions to relinquish what it regards as vital powers. Beyond this reality, however, are two significant issues that will affect the development of the Kenyan higher education sector. First, the present scenario means that the integration of system planning and financing is no longer practiced. There is a disconnect between any planning done for the system and the backing of that planning by the strategic allocation of resources. Secondly, a system wide perspective on issues of planning and finance has been set aside. Annual estimates are not tied to a master plan for the system but rather master plans of individual institutions. The result is a limited ability to rationalize spending and prioritize on the basis of the total needs of the system.

7.4 PROPOSED BUDGET REVIEW PRACTICE

The National Strategy for University Education 2007 – 2015 (NSUE) presents clear recommendations regarding the function of funding universities. Its recommendations fall into four main categories: the development of diversified funding for public universities, the need to provide government support for university programs and research, the need for a new basis for establishing this funding, and the role of intermediary agencies to coordinate funding.

The NSUE make clear that the principal sources of funds will remain the Government and households but advocates for a broad and inclusive approach to funding for universities. This is a clear commitment to diversified funding of public institutions. Proposed alternate sources for funding mentioned include the private sector, such as banks, and philanthropy, and the universities’ internal income generating activities. The model proposed identifies the creation of various innovative schemes for mobilizing additional funds such as bonds, a lottery system and funds through an insurance program. Funding from international partners was also cited as an avenue for potential revenue. This is a progressive response to the limits of public funding that recognizes the limited capacity of any government to fund higher education beyond certain thresholds. In all of these new sources of funding the government would have a key role to play in order to create an enabling environment for the generation of these revenues. This policy means that households are seen to continue to be responsible for contributing a major
portion (about half) of the public universities’ financial needs. Once again, the creation of an enabling context for this to happen is noted as necessary:

   The contribution of the households should be continued and their contribution be paid directly to the universities. Universities should in addition be able to access funds from commercial banks and other financial institutions via acceptable financial arrangements. These arrangements may include parents borrowing money from these sources for the education of their children, the universities taking loans for capital or academic development projects. Similarly, universities may borrow money from these financial institutions through government guaranteed loans for capital development. (p. 136)

   The private sector is regarded as a potential source of university funding. The government was commended for recognizing the potential contribution of the private sector and individual philanthropy through provision of tax relief for charitable donations to universities. “This major innovation in Kenya’s financial system should be exploited to enhance university funding” (p. 137). Another source of ‘private’ funding for public universities is through the income generating enterprises that are owned and operated by the institution and its activities. During the last ten years public universities have greatly diversified their income generating activities. The diversified sources of funding have increased the level of public universities income to about fifty percent of their financial expenditures. This is largely as a result of the introduction of self-sponsored study programs in the university. The strategy for the public university in regard to funding is to become innovative and creative in how it establishes a diversified revenue base for operation that complements continued government funding.

   The second notable strategy proposed for university finance and budget review is the need to provide not only operation and program funds for university work but also a significant investment in research.

   The quality and standards of any university’s academic programs cannot be determined independently of its research output. To enhance the quality of programs in public universities in Kenya, the government and the private sector should allocate funds for research, while lecturers must commit themselves to defining the research agenda and undertaking research projects vigorously. The research enterprise in Kenya is constrained by the poor coordination and harmonization between researchers and research institutes, and the limited funding allocated to research. (p. 135)

   This strategy calls for investment in strategic laboratories and other infrastructure for carrying out cutting-edge research across a broad field of study but with emphasis in science.
The access to funding for research is not limited to select institutions but “should be shared fairly among all competent universities” (p. 135). However, mention is made of establishing centres of excellence where specialized laboratories in particular fields of study are established for a lead institution in that field of study. This rationale implies some level of planning and decision making with regard to program review. The recognition of the critical role of research for the development of a university system is a fresh perspective on the traditional push and pull over operational funding demands.

For both public university program operations and research, a third feature of the strategic recommendations is presented. For each of these areas the need for a revised funding formula is presented. “Equity and fairness is achieved by using specific funding formulae, which are agreed procedures of determining funding requirements of a university using measurable parameters such as student number and types of academic programs” (p. 125). It has been noted that at present the public universities are allocated funds at a uniform rate based solely on the number of students regardless of the costs of the programs. The contention of institutions that offer technical or ‘expensive’ programs such as dentistry, engineering or medicine is that the uniform rate per student does not take into account the actual cost variations among programs. “The development and implementation of a realistic unit cost based on zero budgeting principle will mitigate the unfairness in public universities funding” (p. 126). The introduction of unit cost based funding requires at the outset a complete analysis of the cost variations for programs so that these can be taken into consideration in the allocation of funds. To date this research has not been done across the system. A fairness and equity approach is also recommended for the funding of research. Though the basis for fund allocation would be quite different, the need to disperse research funds in a systematic manner that involves some form of formula is recommended. “Funding for research in universities should be based on competitive criteria, which should be used to assess the quality of the proposed research projects. The PhD degree being the driver for research, government subsidies could be tied to the number of PhD throughputs in a university” (p. 135). According to a senior Commission staff member for the last two or three years the Commission has started to operate a fairly significant research fund for universities and the bidding has been highly competitive (Interview). The need to address the perceived unfairness in funding for universities is coupled with an expectation of greater
accountability. It is recommended that public universities should be compelled to account to the public for all of their expenditures in order to generate trust among the potential providers of additional funds. The current allocation of funds to universities is perceived as inconsistent with the size and academic programs offered in each university. It also appears to favor certain universities over the others. To address these issues as well as issues of coordination, the NSUE proposes that suitable independent agencies be created to develop objective criteria for funding universities and provide oversight.

Perhaps the most interesting recommendation, with respect to the focus of this research, is the need for intermediary bodies to provide budget review. “The key element of this model is the role of intermediary bodies to manage and regulate the flow of funds from the diversified sources to the recipients” (p. 136). There are three such agencies that are identified: the Higher Education Loans Board, the National Research Foundation, and the Universities Grants Commission. The Higher Education Loans Board is described as the service provider for management and regulation of loans to students to assist with the cost of their university studies. It also loans funds to universities in order to assist with expensive facility construction or equipment acquisition or to help them address strategic state initiatives. The NSUE proposal includes the recommendation for the establishment of the National Research Foundation of Kenya. It is described as “a suitable autonomous agency, ..for judging the quality of research proposals and for allocating research funds from government and other sources” (p. 136). The responsibilities of the National Research Foundation would be to:

i. Fund research especially at the PhD level at universities
ii. Co-ordinate knowledge acquisition, application and direction of research frontiers in all fields
iii. Inform and communicate research achievements and directions to the policy makers and the public
iv. Promote scouting for new knowledge, technologies and academic programs that are strategic to national development and promote research on the same
v. Mobilize and distribute research funds
vi. Promote university-private sector linkages and partnerships as well as innovation activities (p. 139).
The third intermediary agency recommended is the re-establishment of the Universities Grants Commission. This is a significant recommendation since the same national strategy has also recommended the harmonization of the legal framework for the work of the Commission for Higher Education. It implies an intent to realize the spirit of the Universities Act.

The University Grants Committee (UGC) existed at the initial stages of the establishment of the University of Nairobi. The Universities Act Cap 210B recognizes it although no such body has been operationalized by CHE. The Taskforce is of the view that this body is still necessary for the coordination of funding of higher education. The University Grants Committee is suitably positioned to manage government funds and incentives grants given to universities. Such incentives include exemption of VAT to the universities, equitable distribution of special project funds and specific funding for strategic national priority academic area (p. 142).

It appears that the initial intent of the Universities Act, 1985, and the core function of the Commission for Higher Education in the area of managing and regulating funding for universities, based on planning, is an essential strategy for the future funding of universities in Kenya.

7.5 CONCLUSION

Budget review is a core function for an intermediary agency tasked with the responsibility to regulate and manage the higher education system. When the Commission for Higher Education was established it set out specific expectations regarding this function. The Commission for Higher Education was intended to be a critical agent in the provision of funding for public universities. Specifically, the Commission was mandated to do the following: “To plan and provide for the financial needs of university education and research, including the recurrent and non-recurrent needs of universities” Further, the Commission was expected “To determine and recommend to the Minister the allocation of grants of money for appropriation by Parliament to meet the needs of university education and research and review expenditure by universities of moneys appropriated by Parliament” (University Act, 1985, p. 6). The mode for doing this was to be through the Universities Grants Committee, an official committee noted in the legislation and a reference to precedent bodies that had served to coordinate planning and funding for the university sector prior to 1985. Previous Grants Committees had been formally established with clear responsibility for university development. Their success in these efforts may be debatable but the principles for their establishment are sound. The seeds of
marginalization for such a buffer function are evident even before the establishment of the Commission for Higher Education. It is no great surprise then that the Universities Act, by failing to reign in the public university sector, provided no legitimacy from the public sector’s perspective for comprehensive system wide planning and budget allocations accordingly. Early attempts were made but soon the Commission seems to have moved from a position of influence and leadership to service provision for mutual benefit and eventually to clerical and administrative assistance. As a result, the budget review process is not system wide or system sensitive, but a composition of individual public university plans. The present analysis of budget review is that the process is characterized by the real need to diversify sources of funding coupled with the increased pressure due to growing enrolments. The National Strategy for University Education supports the policy of diversified funding along with a need for both operational and research funds to be systematically and equitably distributed. To achieve this it does seek the establishment of buffer agencies: a loans board for lending funds to students and institutions, a research council and the re-establishment of the Universities Grants Committee that would regulate and manage funding from all of the various sources to public institutions. Once again, however, the major hurdle is sufficient political will to amend the existing legal framework so that the Commission can take its place as a meaningful intermediary body.
Chapter Eight
Summary of Findings and Conclusions

8.1 INTRODUCTION

Leadership is critically needed for the higher education systems of developing countries in sub-Saharan African countries like Kenya. The forces that are being experienced in the education sector of these nations requires a careful, strategic and deliberate response. At one level the broad philosophical underpinnings of higher education is sub-Saharan Africa are being questioned. The mission (purpose/role) of the university in Africa has changed over the years. In the colonial period the mission was the emancipation from colonial rule to self governance, in the period following colonialism the role of the university became meshed with that of the state – bringing a nation into being. The expectation that the university was an instrument of nation building was widely accepted. “A major problem with this understanding of the university’s mission, or role, or goal was not that it was too wide, but that neither the state nor the university was in control of the specifications at any given time” (Guedegbe, 1997, p. 188). Universities in this context need to be challenged to redefine their mission. “Such definitions should no longer be based on the assumption that the mission of the university is co-equal with that of the state. The functions of a university must be limited. Their area of specialization is higher education” (p. 189). The emphasis must now be on quality, creativity and relevance. “There can be no doubt as to the need for the African university to remain committed to its developmental role in the future. But in order to fulfil this role more adequately than hitherto, the first responsibility of the university is to educate itself to be development conscious and development orientated (p. 203).

In addition to the need for a more contemporary paradigm for the African university there is also the reality of the current operational challenges. These include the following: diminishing financial resources, stagnation and deterioration of physical resources, the well being of human resources, the inefficiency of the universities, the need for academic innovation, relevant financing strategies, stakeholder ambivalence, limited accessibility, campus politics and a resistance to change (Ade Ajaui, 1996, p. 146). There is a current crisis in African Higher Education which goes beyond the financial challenges that they face. They have become
‘victims’ of the prevailing state of affairs in their countries, a condition that is not likely to change for some time. There is a need for leadership that is able to do more with less. “On the contrary, they must take up the task of finding ways of pushing aside obstacles in order to make room for academic innovation and creativeness, despite the constraints on resources. This might become the essential challenge for Africa’s institutions of higher education in the years to come” (p. 155). Education should be an instrument for change, preparing people for necessary adjustment to political and social reforms. Education has a powerful role to play in initiating the process of change in a society. Generally there remains a lack of consensus regarding the best way forward and considerable tensions in the system. “There is a gap between research and policymaking which is not conducive to the use of research to effect changes”. Two important questions must be addressed by research: What must the mission of higher education be in the twenty-first century Africa? And, what measures should be taken within and outside higher education to ensure fulfillment of this mission? (Guedegbe, 1997, p. 43)

This research has been directed to the second of Guedegbe’s ‘important questions’ in that is has analyzed a key measure taken to ensure fulfillment of the mission for higher education in Africa, and specifically the nation of Kenya. The establishment and operation of an intermediary agency, as a buffer between the state and the higher education system for the purposes of state coordination, is specifically for the purpose of ensuring that the higher education system effectively meets its mission in nation building and development. The three fundamental activities that are associated with this function are planning, program review and budget review. The Commission for Higher Education in Kenya is such an agency. The expressed purpose of the Commission is to “ensure increased provision of sustainable quality higher education and training through planning, coordination, resource mobilization, quality assurance and enhancement, and information service” (CHE General Information Brochure, 2008).

The purpose of this research was to investigate and describe the contribution of an intermediary body responsible for the coordination of the higher education system in a developing nation. The study described the role of the Commission for Higher Education in Kenya. The research conducted focused on the three main functions of such an intermediary
agency: planning, budget review, and program review, and used a historical case-study design with regard to the experience of the Commission for Higher Education in Kenya from its establishment in 1985 up to the present. The following were the stated objectives of the research:

- To describe the establishment of the Commission for Higher Education for Kenya and analyze its mandate, terms of reference, membership and staffing.
- To investigate and describe the experience of the Commission for Higher Education for Kenya with reference to the following primary functions of intermediary bodies: planning, budget review, and program review.
- To identify the strengths of the Commission for Higher Education for Kenya and its contribution to the development and growth of higher education in Kenya and to determine the conditions that led to these positive factors.
- To identify the challenges of the Commission for Higher Education for Kenya where the performance of the Commission has been less than expected and to determine the conditions that contributed to these challenges and suggest strategies to address concerns.

This has been accomplished through study that focused on the establishment of the Commission for Higher Education by looking at the legal framework in which it operates. Following the analysis of the legal framework, a detailed review has been provided of the experience of the Commission in the three foundational areas of performance for an intermediary agency: planning, program review, and budget review. This chapter will summarize the main findings for each of these and provide select broad based recommendations.

8.2 LEGAL FRAMEWORK

The most critical issue regarding the work of the Commission for Higher Education in Kenya relates to the legal framework that is associated with its establishment. The state coordination of its higher education system is fundamentally an extension of its governance as described through various legislation established by the duly constituted authority, which in the case of the Republic of Kenya, is the parliament. The various pieces of legislation that relate to
the establishment and operation of the Commission for Higher Education as an intermediary or buffer agency between the state and the higher education sector have been described. The principal legislation is the 1985 Universities Act which established the Commission. It has been noted that a fundamental limitation inherent in this legislation was the fact that it did not address the issue of the existing public universities and the legislation that had established them. The Commission, therefore, became an intermediary agency primarily for the private universities and other non-university level post secondary institutions, which in the overall picture is a small part of the total higher education sector. The public university sector positioned itself separate and outside of the quality assurance oversight of the Commission and in doing so radically limited the function and effectiveness of the Commission as an intermediary agency. Almost immediately after the establishment of the Commission, experts, including state commissioned consultants, noted the gravity of the issue.

The Kamunge Report (1985) was the first to recommend that the functions of the Commission for Higher Education and those of public universities, in university planning and development, staff development, financing, and admission of students, be reviewed with a view to streamlining their responsibilities. This would position the Commission as an intermediary agency for the entire higher education sector and allow it to serve in an effective manner. Virtually every other documented analysis has pointed to the same issue and made the same recommendation including the major master plan documents, the Master Plan for Education and Training (1998) and the National Strategy for University Education (2008). Efforts to address this fundamental issue have been collectively quashed by political forces that represent the interests of the public universities. The legislative attempts that have been made were part of broader educational reforms that were complex and so inclusive of reform in other areas of the broader education system that they became burdensome to pass. The current political climate in Kenya does not offer much hope that things will be very different in the future. The Nation Newspaper in a recent Special Report listed the current priorities for legislative reform. The list included the following: constitutional reform, judicial reform, police reform, civil service reform, and land reform. In addition, the following critical crises were noted as priorities for legislators: addressing poverty; inequality and regional imbalances; unemployment particularly among the youth; national unity and cohesion; and transparency, accountability and impunity
Given the immensity of the legislative agenda and the fact that at present, and likely until the next general election of 2012, Kenya is ruled by a fractious coalition government, it is extremely unlikely that the legislation necessary to rectify the problem created in 1985 will be achieved. Even if it was developed, there is little hope that sufficient political will could overcome the forces that have perpetuated the status quo since 1985. The higher education system in Kenya will lack effective and coherent leadership because of the existing legal framework that, according to the opinion of most analysts, is unacceptable. In addition to the Universities Act (1985), additional legislation related to the work of the Commission for Higher Education includes the University Rules Acts in 1989 and 2004. These clarified and addressed the role of the Commission with regard to accreditation of the private universities and post secondary school institutions (non-university level). The chief task with private universities has been to oversee the establishment of new private universities and the accreditation of existing private universities.

What was needed following the establishment of the Commission in 1985 was a codified set of standards and expectations that the Commission could use in its work of establishing, standardizing, accrediting and supervising post secondary education. The 1989 University Rules Act was gazetted to serve this purpose. The legislation, however, narrowly focused on establishing standards for physical facilities. The 1989 University Rules and in particular Schedule II, do not seem to address the primary issues outlined for standards including entrance requirements for students, program requirements, enrolment levels and class size, qualifications of teaching staff, and so on. Many of the guidelines that the Commission presently uses have been established through best practices or policy development. The Commission is able to exercise influence based on these standards. However, when it comes to the standards for physical facilities that are not policy defined but rather legal requirements, the Commission is limited to the letter of the law. The fact that other important quality assurance areas have not been included with specificity in the legal framework means that there are evaluation criteria that have a heavier weighting in the accreditation process than others. Focus areas for quality assurance, apart from physical facilities, as a result have been developed by the Commission as policy or best practices guidelines not having the same weight as the specifications that have been established as legal requirements. For example standards of proficiency in terms of content
and contact hours are treatable as judgements based on policy and/or practice. However, the number of acres required to function as a university is a non-negotiable legal matter according to Schedule II. This reality skews the bias of accreditation matters to areas that might have less to do with quality assurance in accreditation than what seem to be more important aspects.

The net effect of the 1989 Universities Rules, especially with the inclusion of the troublesome Schedule II, is to drive the Kenya higher education system to uniformity through conformity to the specific guidelines established. There is a clear dampening force for a system that aspires to reflect diversity and innovation. It can be interpreted that the nature of the impact from the legislation is that universities in Kenya will be more or less the same. This is a subtle but important distinction between establishing a system where key principal factors are established in a manner that assures quality but fosters desired diversification in the system. The stringent nature of the Schedule II standards presented a greater challenge to the existing universities that were registered with the Commission and worked towards a Charter, than to those that were to establish themselves after the Rules were published. For example the greatest challenge to meeting the accreditation rules for existing universities was/is the land requirement. These institutions had established themselves in the absence of such a specific rule and were now expected to comply in order to meet accreditation demands. This requirement overshadowed any other evaluation of whether the institution met most of all of the other criteria for quality assurance. Perhaps the most important aspect to note on this topic is the exclusive scope of the legislation to the private university sector of the higher education system. The Universities Rules are enforceable by the Commission only among private universities. The greater part of the total system, the public institutions, which represent virtually all of the state’s resource investment in higher education and most of the total university enrolment, was exempted from meeting the Universities Rules or being assessed on the same by the Commission for Higher Education.

The special focus given to accreditation (program review), and the lack of a clear mandate with regard to the entire higher education system needs, has meant that hardly any work is done in the area of planning and budget review – two of the key functions for an intermediary agency. When it comes to the task of establishing and accreditation of private
universities, the terms of reference as contained in the University Rules make these tasks burdensome. In addition to all of the details and expectations for the work required, there are also too many legal standards, as opposed to policy directives, that are inflexible and work against innovation. Furthermore, they demand extensive human capital investment to be implemented. The result is that the private university sector, which experiences the full effect of these regulations, feels taxed to measure up while at the same time victims of discrimination as their publically funded peers face no such oversight efforts. The skewed nature of the legal framework is noted but there has not been enough political will to address this. The proposed 1997 Commission for Higher Education Bill goes a very long way to address these issues and re-establish the Commission as a full fledged intermediary agency. Despite the continued expressions of commissioned reports for the government, and master planning documents that articulate the need for a new legal framework, the much needed change remains unaddressed.

There are two key implications of the Universities Rules 2004 to take note of: Unlike the Universities Rules of 1989, the 2004 legislation gives clear room for the Commission to govern with some autonomy when it comes to non-university level post secondary institutions. Inclusion of the specific mandate to prepare and publish standards and terms for validation of post secondary school institutions, and collaboration provided by the Act, gives legitimacy for the Commission to act in a professional self-regulating manner. The 2004 Rules also dramatically expanded the scope of the Commission’s responsibilities. The expectations are that the Commission will be active in validating all non-university post-secondary institutions in Kenya. There are many such institutions which, if they chose to engage the process defined by the legislation, would present an impossible workload for the Commission to manage. More significantly, the limited scope issues that arise from the 1989 Rules (this is, not including public universities in the Commission quality assurance mandate) is further relegated as now the Commission has the onerous responsibility to manage the non-degree sector of the higher education system. As noble as this might be, it misses the point of addressing the greater need for the higher education sector which is the performance of the public university sector. The Commission for Higher Education might be more aptly named as the Commission for Private University and Post Secondary Institution (diploma) Training. The legislation needed to position the Commission for Higher Education as a true and legitimate intermediary agency has not
passed. Recent attempts to address this dilemma have suffered at the hands of political forces eager to maintain the status quo. The lack of an enabling legal framework continues to limit the effectiveness of the Commission to this day. It has particularly affected the agency’s work in planning, program review and budget review.

8.3 PLANNING

In discussions regarding the function of intermediary or buffer agencies, the function of planning is highlighted as the preeminent function. It is out of the planning for a higher education system, that questions and decisions regarding programs, and the allocation of funding take place. The ‘review’ component of program review and budget review has to do with an analysis of the current state of affairs in light of defined preferred futures for programs and budgets. This preferred future is identified, established, and articulated through the work of planning. Planning is perhaps the central function of an intermediary agency. The work and experience of the Commission for Higher Education with regard to planning has been described earlier by looking at the two main planning efforts for higher education in Kenya since the establishment of the Commission for Higher Education: the Master Plan for Education and Training (1998) and the National Strategy for University Education (2008).

The intent of the Master Plan for Education and Training was not to introduce or generate reform, but rather to focus on the need for improved effectiveness and efficiency in order to achieve improved participation rates in higher education. Improved participation is discussed in terms of (i) expanded access, particularly reversal of the current decline in school enrolment rates and reduction of regional and gender disparities (ii) improved persistence/retention; and (iii) increased relevance and quality. The report makes very explicit that the intent of the MPET is to press on in the spirit of the earlier reforms and to reinforce commitment to the intrinsic link between education and development and economic development. Critical for this discussion is the fact that the plan was not initiated by the Commission for Higher Education but by the state. In fact the participation of individuals representing the Commission for Higher Education is minimal. This profile of participation highlights the limited role that the Commission for Higher Education is afforded when it comes to the task of planning. This, despite the fact that planning is a central and vital function of an
intermediary body, and that planning is a legally mandated function of the Commission. The plan is clearly a product of the state, and in particular the Ministry of Education. It is not surprising then that there is a clear state agenda that found its expression in the establishment of a policy framework for the plan. The identification of the policy framework in advance of the overview of the current status, and the resulting formation of strategies, seems to infer that the agenda for planning was established before the actual planning work was done.

There are two aspects of the Master Plan for Education and Training that are pertinent to the objectives of this research. The first is the determination that the Commission for Higher Education should be properly constituted as a fully fledged intermediary agency. The specified establishment of the Commission for Higher Education as an apex body of higher education is regarded as a positive move toward solving management problems in universities. The Commission has been charged with responsibilities for policy formulation, planning, budgeting, financing and investment planning. However, the legal infrastructure reflecting these responsibilities is not adequate, and the human resource capacity and infrastructure necessary for the Commission to effectively perform all its functions need to be developed (MPET, p. 92-99). This is to happen through the introduction of appropriate legislation; an Act of Parliament to harmonize the functions of the Commission for Higher Education and those of universities, will be enacted giving the Commission for Higher Education full responsibility in coordinating financing, planning, budgeting and quality assurance in universities. The second aspect of the Master Plan for Education and Training is that even though the Commission for Higher Education did not author the plan, the Commission is primarily responsible for the outcomes of the plan. Virtually every strategy mandates or engages the Commission in some manner. The expectations are extensive. Unfortunately many of them presume that the key recommendation regarding a fully empowered Commission is achieved and can be regarded as conditional upon that achievement. Since this has not been realized, there is no accountability for implementation regarding the recommendation in the plan.

The National Strategy for University Education represents a tremendous amount of work and effort to provide a planning base for the operation of the higher education sector in Kenya. To understand the scope of the plan one simply needs to look at the final tables where the
estimated costs for the various strategies are listed and total just under two hundred and fifty million US dollars. In addition to the fact that this level of financing is quite unrealistic, the plan is problematic in a couple of key areas. Firstly, similar to the Master Plan for Education and Training, there was very little involvement of the Commission for Higher Education in the production of the plan. The Commission did not have a key role in development of the master plan for the higher education sector. Secondly, the plan is thematic instead of practical. It addresses objectives that are very broad in scope. It may function as a strategic issues plan but it does not really serve as a master plan for the sector. The lack of a practical master plan means that the objectives may or may not be matched to the practical and pragmatic issues in the sector. The third issue, which is very pertinent to this research, is the unrealistic expectation, similar to the earlier master plan, placed on the Commission for Higher Education to action the strategies identified. There are numerous strategic recommendations, and adequately addressing them represents a major challenge. This coupled with the lack of legal justification and clout to make things happen and the limited resources provided to the Commission for its work, sets the Commission in an untenable position.

The review of the planning efforts and products that have been reviewed indicates that when it comes to planning, the Commission as an intermediary agency has been pre-empted by the state and in fact has had a very limited role in planning. The plans that have been developed have been produced by the state through the Ministry of Education. There was no leadership in these efforts from the Commission. There is little evidence that the Commission was even involved in coordination of the planning. In fact, its participation in the production of the two major plans is minimal. A second observation that is seen from the analysis of the work done for the sector on university planning is that even though planning is not vested in the Commission for Higher Education, it is clear that implementation falls to the Commission. Even though the Commission is not responsible for the planning that has been done, it finds itself highly responsible for implementation. At the same time it is unlikely that the Commission will be able to take responsibility and implement the plans since it is handicapped by a legal framework, and resources, that prevents it from serving as the intermediary body it was established to be.
A notable limitation in each of the major planning documents is the lack of accumulated researched data. Apart from broad demographic statistics, there is little evidence that the planning perspective and the objectives are grounded in researched facts. In each of the two major planning initiatives the motive for planning is not addressing needs that arise from a comprehensive research base. Instead they start from a particular reform agenda. As a result, the plans may not address or include all of the variables that need to be considered. Even though the plans are not grounded in research they each acknowledge the need for research. As comprehensive as the planning for higher education in Kenya has been, it has encountered several of the typical problems that system planning experiences. In the first case the planning for the system is very broad and general rather than exact. Production of strategic initiatives or directions has not progressed to detailed specific operational plans for the system. The master plans lack the specificity required to shape and form a productive higher education sector. There is no specific regarding numbers of institutions needed and the role and scope of these. Consequently the focus of the plans is very broad. The expressed objective of the MPET is to improve efficiency and effectiveness. The NSUE is also very broad and general. Though it focuses specifically on higher education, it sets out broad strategies instead of specific and measureable targets. Comment has already been made on the political agendas that have been at the heart of the planning process. These introduce a measure of bias beyond the fact that the state is driving the planning process and limits the meaningful contribution of stakeholders in the system.

Planning is a central function of an intermediary body. In the case of the Kenyan higher education system, it seems that well intended work has been done but not under the leadership of the intermediary agency that has been mandated with this responsibility. It is also reasonable to conclude that the ability of the Commission to implement the plan remains aborted by the lack of an effective legal framework. Finally, the plans that have been produced represent broad statements of strategic intent rather than fully developed master plans which will be challenged by lack of buy in, lack of accountability for implementation, and lack of sufficient funding. The cumulative effect has been that little, if any, strategic decision making in planning has been done. Related to this is the reality that even the plans that have been made lack the legal framework necessary for implementation. It is clear that there has been dramatic expansion of
the educational opportunities in Kenya but the composition of the types of education delivered is an indication of the lack of policy enforcement. There has been accommodation to the Kenyan population rather than adherence to a designed plan. “What we have seen is a gradual shift from a structured policy for infrastructure enhancement to the practical reality of accommodation to the Kenyan population” (Gray, 1996, p. 57). An example of the government’s lack of follow through on its higher education policies is in the case of Moi University. The report to establish Moi indicates that: “the proposed second university (Moi) should be technology oriented and produce graduates of professional disciplines to serve in the rural areas” (p. 51). The evidence from analysis of enrolment is clear, and regulations prescribed do not reflect the actual results. Stated differently, there is a major discrepancy in the proportion of education and arts majors inconsistent with the Government demands. The result of the inability to plan effectively and then enforce policy is a lack of quality in the educational delivery system. There needs to be clear coherent policy for the planned growth of the nation’s higher education sector. The policy needs to be analysed and evaluated over time as to its applicability to national needs.

8.4 PROGRAM REVIEW

The greatest area of strength in the Commission for Higher Education in Kenya is its role with regard to program review. It is in the work of program review that one can see a systematic set of policies and procedures strategically designed to deliver desired results. The cumulative effect is impressive and worthy of commendation. This function allows it to be instrumental in the establishment of new universities and accreditation of new programs of study. It is the reputation for effectiveness in quality assurance that has earned the Commission for Higher Education respect in the region, and on the continent, and allowed it to play a consulting role in the establishment of such agencies on the continent. At the same time there remains a significant issue from an objective and system-wide perspective. The fact that it has no input or oversight at all in any of the programs offered at the public universities, and no say in the establishment of new public universities, means that it is extremely capable but largely ineffective on the whole since public institutions are not within its purview.

The specific functions of the Commission relative to program review and quality assurance include the following:
To advise the Minister on the establishment of public universities
To accredit universities
To cooperate with the government in the planned development of university education
To examine and approve proposals for courses of study and course regulations submitted to it by private universities
To receive and consider application from persons seeking to establish private universities in Kenya and make recommendations thereon to the Minister
To ensure the maintenance of standards for courses of study and examinations in the universities
To advise the government on the standardization, recognition and equation of degrees, diplomas, and certificates conferred or awarded by foreign and private universities
To arrange for regular visitations and inspection of private universities (Universities Act 1985, section 6)

These eight functions clearly indicate the priority for the Commission of program review for the Kenyan higher education system. The major work of the Commission is in the area of program review and approval and that this is seen to constitute the strength of the Commission as a quality assurance agency. However, the scope of the review work being done is once again strictly within the private university sector. No program approval mechanism that engages the Commission is required for any public university programs, including those that are fully privatized within the public university. The frameworks established for these processes limit the program review process by the Commission for Higher Education to the private university sector. The same cannot be provided for the public university sector since there is no framework involving the Commission for Higher Education to conduct program review under the existing legal framework. This may reflect the fact that one of the strong motivations for establishing the Commission in the first place was to regulate and control the emerging private university sector. It may also be a consequence of the reality that the only domain where the Commission is in a legitimate intermediary role is in the private sector of the higher education system.

This is an area that is proposed to be addressed by the National Strategy for University Education. Despite these good intentions, it is clear that not much attention, if any, is being given at this time to intentional design of the higher education system in Kenya when it comes
to role and scope issues. The system is divided into two tiers: universities, and post secondary school institutions. A thorough program review policy is in place for the private university part of the university sector, and a procedural review policy is in place for the non-university level Post Secondary School Institutions sector. The procedures associated with program review often place an incredible administrative demand on the agency. A measure of the lack of effectiveness of the policy for post secondary school institutions is that a relatively small percentage of them are in fact validated by the Commission.

Notwithstanding the good work that the Commission has done, the manner in which it sets out to accomplish its task can be faulted as intensely bureaucratic and overly reliant on traditional forms. The standard for approval can be summarized by what has been done in the past. There are three major challenges that arise from the manner in which the Commission is currently handling program approval. First, the fact that the program approval is restricted to private universities only is seen as discriminatory. The second implication arising from the whole approach to program approval is that it tends to support the familiar and dampen the innovative. The implication is that the end result will not only be replication in the market of programs, but that the system as a whole will lack diversity to be globally competitive. The uniform approach to standards also means that at the end of the day all of the institutions that pass through the process look quite similar. The result is a number of universities that are virtually identical in program offering and very similar in profile. Ultimately this leads to a surplus of qualified graduates in the same fields and at the same levels for a job market which is unable to accommodate the supply. A more significant and dangerous consequence is the unfriendly environment for innovation. Spooney suggests that one of the important roles of a buffer agency is to foster innovation.

The experience of higher education can lead to one main conclusion with regard to innovation in terms of operational effectiveness and efficiency. It will need to come from an external impetus. This is where the buffer organization can play an important role. It is incumbent on such an agency to foster innovation or it is unlikely that the higher education system will be globally competitive. (Spooney, 1992, p. 24)

This is particularly important in a developing national context. What is required is an approach to quality assurance that is based on principles rather than policy. Such an approach creates boundaries for decision making and development of programs based on established principles
without prescribing by policy the specific nature of the program. Verspoor alludes to this notion when he suggests “Governments should provide the general (not so detailed) rules within which institutions can use their autonomy and within which the market can function. The institutions should try to maximize their innovative capacities within the context provided by the government” (Verspoor, 1994, p. 10). In an interview with an officer at the Commission it was noted that a number of other African countries are following the Commission for Higher Education in Kenya’s example and carry out detailed program review. At the same time the Commission is engaged in an intense debate on dropping this practice and replacing it with a review of institutional procedures. “It is clear that we can not cope with detailed program review with the growth of new institutions and even more so if the public universities are brought into our orbit. A new procedure has to be adopted” (Interview).

8.5 BUDGET REVIEW

Kenya is exhibiting trends in higher education that are commonly experienced in a developing nation context: the amount of government funding is decreasing while at the same time the demand for higher education is increasing. The fast growth of university enrolments has not been matched with similar growth in resources. Consequently, the universities need to devise innovative ways of managing the available limited resources in order to trigger private sector players to invest in higher education. The most significant aspect of the private generation of funds for university operations by the public universities in Kenya is the development in the late 1990’s of ‘self sponsored students’. The scramble to open access while raising funds has generated an additional dilemma, since the access is being opened to those who can afford to pay

The current status is that the CHE is not meaningfully involved in budget review, and certainly not to the level of expectation that is so clearly stated in the Universities Act. The ‘culprit’ is seen as the legal framework however the real issue is the unwillingness or lack of political will among the leadership of the public institutions to relinquish what it regards as vital powers. The result is a limited ability to rationalize spending and prioritize on the basis of the total needs of the system. When the Commission for Higher Education was established, it set out specific expectations regarding this function. The Commission for Higher Education was
intended to be a critical agent in the provision of funding for public universities. Specifically, the Commission was mandated to do the following: “To plan and provide for the financial needs of university education and research, including the recurrent and non-recurrent needs of universities”. Further, the Commission was expected “To determine and recommend to the Minister the allocation of grants of money for appropriation by Parliament to meet the needs of universities education and research, and review expenditure by universities of moneys appropriated by Parliament” (University Act, 1985, p. 6). The mode for doing this was to be through the Universities Grants Committee. The limiting legal framework brought the Commission into direct conflict with the established public university leadership who were more satisfied with the status quo of direct funding and the powers that they enjoyed than reformation of higher education policy and practice. The Commission’s Universities Grants Committee made the slow transition from a posture of influence, to service and eventually to irrelevance. The function of budget review ought to be carefully linked with planning. This allows the coordinating agency to serve a very useful purpose in the task of allocating funds across the system in an equitable and effective manner. However, the research has found that the Commission for Higher Education has only had a limited role in planning so it is not surprising that it has a similar role in the area of budget review as well.

Elton suggests that without an effective buffer agency in place, it is the state that typically steps in and exerts greater government control when it comes to financing for education (Elton, 1992, p. 24). This is true in Kenya but there are other factors that have dampened government control. As has been discussed earlier, higher education in developing countries is in a crisis. Universities in Kenya are unable to obtain sustainable funding for research and development activities but their contribution is needed to develop new knowledge through research (Gichaga, 2005, viii). An important aspect of this crisis is the manner in which the governments in such countries try to steer the higher education system. Decisions about the higher education budget, about the expansion of the higher education system, about the enrolment policies, and about the costs of higher education are usually taken at the governmental level. Government regulation influences decisions and actions of the higher education system (Van Vught, 1992, p. 327). This is done without the benefit of a buffer agency. The present analysis of budget review is that the process is characterized by the real
need to diversify sources of funding coupled with the increased pressure due to growing enrolments. The strategy for the public university in regard to funding is to become innovative and creative in how to establish a diversified revenue base for operation that complements continued government funding. This has largely come through the privatization of its programs to self-sponsored students. This means that the higher education system in Kenya does not have an effective buffer agency with responsibility for guiding financing nor does it have complete control since it has allowed and even encouraged the privatization of ‘public’ institutions. Unfortunately public universities are perceived to be inefficient and wasteful in the management of resources. The high unit cost proposed by public universities for their courses is a reflection of inefficient use of financial resources. Such inefficiencies have been attributed to bloated administration and management of available resources in the public universities. This strong perspective suggests that more accountability is needed in the allocation of funds to public universities. Such accountability could be achieved through a fully vested intermediary agency, which is what the Commission for Higher Education was intended to be but has never had the chance to become.

8.6 CONCLUSION AND RECOMMENDATIONS

This research study has contributed greatly to the understanding of the experience of the Commission for Higher Education in Kenya in its capacity as an intermediary agency. The review of the legal framework for the Commission, its role in planning, its role in program review and its role in budget review have served to describe the core functions associated with its role as an intermediary agency in the Kenyan higher education system. The findings and issues have been discussed in detail. In summary, it has been suggested that the Commission be vitally responsible for planning and that, as a priority, data collection for informed planning be engaged. More effective approaches to program review have also been recommended including that the current program accreditation approach is set aside to provide an environment that would ensure innovation. The current lack of involvement by the Commission in budget review reduces the meaningful authority of the Commission and needs to be addressed. The prevailing political climate and the challenges posed by a faulty legal framework have been great hindrances to the potential effectiveness of the Commission. In spite of these macro challenges
the Commission has served to provide coordination of the system as best it could and is genuinely putting into practice the structures and strategies that would allow it to serve as an effective buffer agency.

The research has also served to help understand the particular dynamics associated with the coordination and development of a state’s higher education sector by an intermediary agency in a developing country context. Such environments are characterized by great expectations and demands on the sector to lead or contribute greatly to development, very strong state control in management of the sector, great financial challenges resulting in scarce resources, and great demand for access post-secondary training. In this kind of an environment the intermediary agency is expected to accomplish a task that is probably beyond its ability to deliver because of the great gap between the expectation and the capacity to achieve those expectations. This study has illustrated that the needs for planning, program review and budget review are known and strategies for addressing these have been undertaken but in a very disparate manner with the intermediary agency involved to certain extents in all areas but without legitimate authority to provide leadership in any. This state of affairs coupled with major under capacity with regards to staffing and funding almost reduce the intermediary to a marginal role. This paradox of essential non-relevance must be addressed so that intermediary agencies such as the Commission for Higher Education in Kenya can serve as leaders in the development of a strong higher education system.

There are specific recommendations included in the study that will enhance the role of the Commission for Higher Education. Among the most important is the need for a new legal framework so that the Commission’s authority is established over the entire higher education system and not just selected sections of it. Recommendations to this effect have been made since the establishment of the Commission. Drafted and proposed legislation to this effect has been developed but still needs to be passed into law. Secondly, the Commission should set aside the double accreditation practice of institutional accreditation as well as a separate program accreditation process. Priority must be given to contributing to the development of high quality institutions which by design will produce quality programs. Finally, the three functions of planning, program review and budget review must be integrated and harmonized for greater
effectiveness and efficiency in the system. The Kenyan higher education system is fraught with too many levels of decision-making creating dissonance when it comes to public policy and practice for the higher education sector. Alignment and restructured collaborative systems must be put in place so that the primary catalyst for quality higher education development, the Commission, is central to all of the core functions – planning, program review and budget review. There are many additional recommendations that have been summarized in the body of this research but the three listed are high level recommendations that will ensure that the Commission is able to meaningfully contribute to the development of the higher education sector in Kenya.

Implementing these recommendations alone however, will not likely achieve the desired results. In fact before they can be acted on there is perhaps a fundamental prerequisite that should be taken up for the recommended action to bear fruit. This has to do with the need for a contemporary and relevant perspective on the relationship between the state and the higher education institutions in which the intermediary agency is placed to facilitate.

In the 20th century in most OECD countries, governments exercised considerable control and influence over the sector to help pursue objectives such as economic growth and social equity. Today, on the one hand, governments have a greater interest that ever in ensuring that educational institutions help meet economic and social needs, given their importance in knowledge oriented societies. On the other hand, they accept that central planning of knowledge creation, teaching and learning is often inefficient, and that a thriving society and economy require institutions to operate with a degree of independence. (OECD, 2003, p.61)

What is being suggested is education reform with a greater focus on strategy and priority setting and “less involvement in the running of the system on a day-to-day basis” (p. 62). There remains a place and purpose for an intermediary agency in this scenario, but the transition is from management to leadership and from control to influence. These new policy approaches are led by concepts such as ‘strategic management’, ‘deregulation’ and ‘accountability’ (p.62). This new lens will alter the manner in which the buffer agency mediates the state-institution relationship. There will still be need for an empowering legal framework for the intermediary agency that establishes its strategic (versus coordination or supervisory or regulatory) role in planning, program review and budget review. For instance in program review, rather than the quality control approach utilized by the Commission for Higher Education in Kenya presently
where every new program needs to be approved, conditions for quality program production in institutions would be established and evaluated by the Commission. The emphasis in this case will have shifted from output to process. Gates et al (2002) describe in detail approaches along this line of thought.

The new contemporary and relevant perspective that is needed for quality assurance in the higher education sector of Kenya, through leadership provided by the Commission for Higher Education, is consistent with international experience and global trends in this regard. The evolutionary experience of an intermediary agency has been described by Billing (2004). Further, Kells has summarized what he considers to be the two key trends in national evaluation schemes:

a) Schemes move towards more internally driven concerns, putting more emphasis on self-evaluation, self-regulatory activity and the institutional infrastructure for it;

b) Schemes become less related to government influence, and more related to improvement, management and strategy, with more feedback from clients. (Kells, 1995, p. 18)

Critical to this process are contextual realities including the nature of the legal framework for the system, the size and maturity of the higher education system, and cultural norms. The argument has been made for the emergence of an international general or common model for external quality assurance that strengthens international networking and allows for mutual recognition. Woodhouse (2004) articulates the international developments in this regard from the early 1980s up to the current decade and how quality assurance has emerged as a profession. This is seen in the formation of the International Network of Quality Assurance Agencies in Higher Education (INQAAHE), of which the Commission for Higher Education is a full member, and similar initiatives by agencies like UNESCO (Woodhouse, p. 78). The increased consensus of an international general model for quality assurance agency work is noteworthy though some like Houston (2005) and Kristoffersen (2004) have pointed out the significance of variations to address local contexts. The result is considerable shared international understanding and approach to the work of intermediary agencies in quality assurance. To that end the INQAAHE has produced the following list of desirable characteristics for an external quality assurance agency:
• Has an explicit and relevant mission;
• Evidences independent, impartial, rigorous, thorough, fair and consistent decision-making;
• Carries out its assessments in relation both to the institution’s own self-analysis and to external references;
• Respects institutional integrity and autonomy, while being supportive of the institutions;
• Includes, informs and responds to the public;
• Demonstrates public accountability by reporting openly on its institutional review decisions;
• Has explicit minimum standards, and distinguishes between accreditation (threshold) and extension (improvement);
• Makes public and explicit its policies, procedures and criteria;
• Has adequate and credible resources, both human and financial, with appropriate provision for development;
• Is economical and efficient;
• Carries out self-review, based on data collection and analysis, including consideration of its own effects and values;
• Has its own quality system that emphasises flexibility and quality improvement;
• Collaborates with other EQAs
• Provides for appeals against its decisions. (Woodhouse, p. 80)

The Commission for Higher Education is in a tension between the existing legal framework that has established it and prescribes its mandates and operations, and the current international professional trends and expectations as an external quality assurance agency. The determining factor will be whether the long overdue legal reforms will do more than address existing limitations. The philosophical shift needed for the Commission to evolve to a contemporary expression of its profession touches on sensitive issues of state control and African culture.

It is in this regard that recommendations for further research are suggested. Research in how this shift has been experienced in a developed nation context will enlighten how this might be strategically implemented in developing nation countries. More detailed research on the specific experience of intermediary agencies in developing nation contexts will provide more
data on the uniqueness of these contexts so that strategic reforms can be made with specific relevance. Research on similar trends being experienced in developing countries (i.e. strategic government oversight, deregulation, accountability and intermediary agencies) in sectors such as communication or transportation may inform the manner of reform implementation for the higher education sector. Such work is necessary to address the need for timely knowledge.

Sub-Saharan Africa, with about 740 million people, some 200 public universities, a fast increasing number of private higher education institutions and the lowest tertiary gross enrolment ratio in the world (about 5%), is now paying greater attention to issues of quality at the tertiary level. Rapid growths in enrolments amidst declining budgets during the 1980’s and 1990’s, the proliferation of private provision of higher education and pressure from a rapidly transforming labour market have combined to raise new concerns about quality. (Materu, 2009, p xiii)

It is in response to these realities that stakeholders for higher education in developing countries in nations such as Kenya must reform higher education policies and practice and strategically position intermediary agencies such as the Commission for Higher Education in Kenya to serve shared vision and values for higher education.
REFERENCES


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APPENDIX I – THE UNIVERSITIES ACT 1985
LAWS OF KENYA

The Universities Act

CHAPTER 210B
CHAPTER 210B

THE UNIVERSITIES ACT

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

1—Short title.
2—Interpretation.

PART II—THE COMMISSION FOR HIGHER EDUCATION

3—Establishment of the Commission for Higher Education.
4—Constitution of the Commission.
5—Secretary to the Commission.
6—Functions of the Commission.
7—Procedure of the Commission.
8—Committees.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

9—Powers of the Minister in relation to public universities.

PART IV—ESTABLISHMENT OF PRIVATE UNIVERSITIES

10—Application of Part.
11—Establishment of private universities.
12—Granting of charters.
13—Matters to be specified in a charter.
14—Publication of charter.
15—Protection of name.
16—Variation and revocation of charter.

PART V—MISCELLANEOUS PROVISIONS

17—Financial year.
18—Annual estimates.
19—Accounts and audit.
20—Appointment of auditor.
21—Rules.
CHAPTER 210B

THE UNIVERSITIES ACT

Commencement: 1st August, 1985

An Act of Parliament to make better provisions for the advancement of university education in Kenya and for connected purposes

PART I—PRELIMINARY

1. This Act may be cited as the Universities Act.

2. In this Act, unless the context otherwise requires—

“charter” means a charter granted by the President under this Act;

“Commission” means the Commission for Higher Education established by section 3;

“course of study” means the structure for degrees or other academic qualifications and the subjects of study in the course;

“course regulations” means any regulations or statutes of a university concerning the course of study for a degree or other academic qualification of that university;

“university” means the University of Nairobi established by the University of Nairobi Act, Moi University established by the Moi University Act, and any other university, whether public or private, established after the commencement of this Act;

“public university” means a university maintained or assisted out of public funds;

“private university” means a university established with funds other than public funds.

PART II—THE COMMISSION FOR HIGHER EDUCATION

3. (1) There is hereby established a Commission, to be known as the Commission for Higher Education, which shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall be capable in its corporate name of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing and lending money;

(d) entering into contracts; and

(e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The Commission shall consist of—

(a) a chairman and vice-chairman appointed by the President;

(b) not more than fifteen and not less than eleven members appointed by the President by virtue of their experience in university education and research;

(c) the Permanent Secretary to the Ministry for the time being responsible for university education;

(d) the Permanent Secretary to the Ministry for the time being responsible for finance;

(e) four persons appointed by the Minister to represent other areas of university education;

(f) the Chief Secretary;

(g) the Director of Personnel Management;

(h) such other persons, not more than three in number, as the Commission may co-opt.

(2) The members of the Commission, other than ex-officio members, shall hold office for a period of five years and shall then retire but shall be eligible for re-appointment.

(3) A member of the Commission other than an ex-officio member or a member appointed under section 4 (1) (e), may resign his appointment by a letter in writing addressed to the President.

(4) A member of the Commission appointed under section 4 (1) (e) may resign his appointment by a letter in writing addressed to the Minister.

(5) A member of the Commission co-opted under section 4 (h) may resign his appointment by a letter in writing addressed to the Commission.
5. (1) There shall be a secretary to the Commission who shall be appointed by the Minister and who shall be the chief executive of the Commission responsible for the management of the Commission's day-to-day business.

(2) The secretary shall be an ex-officio member of the Commission but shall have no voting rights.

6. The functions of the Commission shall be—

(a) to promote the objectives of university education, namely the development, processing, storage and dissemination of knowledge for the benefit of mankind;

(b) to advise the Minister on the establishment of public universities;

(c) to accredit universities;

(d) to co-ordinate the long-term planning, staff development, scholarship and physical development of university education;

(e) to promote national unity and identity in universities;

(f) to liaise with Government departments and the public and private sectors of the economy in matters relating to overall national manpower development and requirements;

(g) to co-operate with the Government in the planned development of university education;

(h) to examine and approve proposals for courses of study and course regulations submitted to it by private universities;

(i) to receive and consider applications from persons seeking to establish private universities in Kenya and make recommendations thereon to the Minister;

(j) to make regulations in respect of admission of persons seeking to enrol in universities and to provide a central admissions service to public universities;

(k) to ensure the maintenance of standards for courses of study and examinations in the universities;

(l) to advise and make recommendations to the Government on matters relating to university education and research requiring the consideration of the Government;
(m) to collect, examine and publish information relating to university education and research;

(n) to plan and provide for the financial needs of university education and research, including the recurrent and non-recurrent needs of universities;

(o) to determine and recommend to the Minister the allocation of grants of money for appropriation by Parliament to meet the needs of university education and research and review expenditure by universities of moneys appropriated by Parliament;

(p) to advise the Government on the standardization, recognition and equation of degrees, diplomas and certificates conferred or awarded by foreign and private universities;

(q) to co-ordinate education and training courses offered in post secondary school institutions for the purposes of higher education and university admission;

(r) to arrange for regular visitations and inspection of private universities;

(s) to perform and exercise all other functions and powers conferred on it by this Act.

7. (1) The chairman shall preside at all meetings of the Commission unless he is absent from a particular meeting in which case the vice-chairman shall preside.

(2) In the event of the chairman and the vice-chairman being absent from a meeting of the Commission the members present shall elect one of the members present at that particular meeting to preside.

(3) The Commission shall meet at least four times in each year, but the chairman may, and upon application in writing by five members shall, convene a special meeting of the Commission at any time.

(4) The quorum necessary for the transaction of the business of the Commission shall be twelve.

(5) All questions at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(6) The chairman shall have, in case of equality of votes, a casting vote in addition to his deliberative vote.

(7) The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books kept for that purpose.
(8) Subject to this Act, the Commission shall regulate its own proceedings.

8. (1) The Commission shall, by resolution, appoint a Central Universities Admissions Committee and a Universities Grants Committee.

(2) The Universities Grants Committee shall consist of such members as may be appointed by the Commission.

(3) The Central Universities Admissions Committee shall consist of—

(a) the chairman of the Commission;
(b) the vice-chancellors of the public universities;
(c) the Chief Secretary;
(d) the Permanent Secretary to the Ministry for the time being responsible for university education;
(e) the Director of Personnel Management;
(f) seven other members appointed by the Commission;

(4) The Commission shall delegate to the Universities Grants Committee such of its functions as it may determine.

(5) The Central Universities Admissions Committee shall advise the Council on the following matters—

(a) the co-ordination of admissions to public universities on a national basis;
(b) the establishment and maintenance by such means as it considers appropriate of equivalent educational standards as a prerequisite for university admission;
(c) prescribing the minimum requirements upon compliance with which a person may become academically qualified for admission to a university.

(6) The Commission may, by resolution, appoint such other committees as it may think fit.

(7) The Commission shall prescribe the powers, duties and procedures of committees appointed by it under this section and the terms of office of persons appointed to those committees.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

9. (1) The Minister shall, on the advice of the Commission, promote university education for the benefit of the
people of Kenya through the establishment and progressive development of public universities.

(2) For the purpose of exercising his powers under subsection (1), the Minister may from time to time formulate a development plan for the expansion of public universities consistent with the national plan for the economic and social development of Kenya.

PART IV—ESTABLISHMENT OF PRIVATE UNIVERSITIES

10. This Part shall apply to private universities.

11. (1) Every private university intended to be set up in Kenya shall be established by a charter granted by the President in accordance with the provisions of this Act.

(2) Any person wishing to establish a private university in Kenya shall make application in writing to the Commission in the prescribed manner, for the grant of a charter setting up the private university.

(3) An application for the grant of a charter shall be accompanied by a draft of the charter containing the matters specified under section 13.

(4) The Commission shall consider every application made under subsection (1) and submit it to the Minister together with its recommendations or observations and the Minister shall submit the application to the President together with any recommendations or observations which he may wish to make thereon.

12. If, after considering the documents submitted to him under section 11 (4), the President is of the opinion that the grant of a charter to the institution concerned may be of benefit to the future development of university education in Kenya he may grant a charter either in form of the draft submitted to him or in such other form as he may consider appropriate.

13. In addition to any other matter which the President may consider necessary, a charter shall contain the following matters—

(a) the name of the private university;

(b) the aims and objectives for which the private university is to be established;
(c) the membership and government of the private university;

(d) the extent to which, and the form in which, regulations may be made by such body of the private university as may be specified for the better functioning of the institution; and

(e) the financial control and expenditure and the administrative control of other property of the university.

14. The Minister may, by notice in the Gazette, publish the charter and with effect from the date of publication of the charter the institution established by the charter shall be a body corporate by the name cited in the charter with perpetual succession and a common seal, and shall, in that name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing and lending money;

(d) entering into contracts; and

(e) doing or performing all such other things or acts for the proper performance of its functions under the charter which may lawfully be done or performed by a body corporate.

15. (1) Notwithstanding any other written law, no public officer performing functions relating to the registration of companies, business names or trade marks shall accept for registration a name which is identical to, or so similar as to be liable to confuse the public with, the name of a private university to which a charter has been granted under this Act unless the consent of the governing body of the university has been obtained.

(2) A person who, except with the written consent of the governing body of the university concerned, uses the name of the university to which a charter has been granted under this Act in furtherance of, or as, or in connection with, an advertisement for, any trade, business, calling or profession, shall be guilty of an offence and liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

16. (1) The President may, at any time, vary the provisions of a charter if he is of the opinion that the variation is in the interests of university education in Kenya generally
or may assist the institution concerned to carry out its functions in a more efficient manner.

(2) The President may, at any time, revoke a charter granted to a university if he is of the opinion that the university concerned is not carrying out its functions in a proper manner, or is in breach of its charter, or that the revocation is in the interests of university education generally.

(3) Where a charter is revoked under subsection (2) the Minister shall forthwith cause a notice of the revocation to be published in the Gazette, and the private university concerned shall cease to be a university at the expiry of one year from the date of publication of the notice; except so however that the revocation of a charter shall not affect the validity of the degrees previously granted by the university.

PART V—MISCELLANEOUS PROVISIONS

17. (1) The financial year of the Commission shall be the period of twelve months commencing on such day in each year as the Government may determine.

(2) In the event of any change in the financial year, and for the purposes of the transition from the old financial year to the new financial year consequent upon that change, the transitional period, whether more or less than twelve months, shall be deemed for all the purposes of this Act to be a financial year.

18. (1) The Commission shall submit to the Minister an estimate of its expenditure and income during the succeeding financial year six months before the commencement of the financial year.

(2) The Minister shall communicate to the Commission his approval of the annual estimates at least one calendar month before the commencement of the financial year.

(3) The annual estimates shall make provisions for all the estimates of expenditure of the Commission for the financial year and shall provide for—

(a) the cost of administration of the Commission including payment of salaries, allowances, pensions, gratuities and other charges whatsoever payable to the staff and members of the Commission;

(b) the payment of reimbursement to the members of the Commission;

(c) the maintenance of any property vested in the Commission.
(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with the annual estimates approved under subsection (2).

19. (1) The Commission shall cause to be kept all proper books and records of accounts for the income and expenditure and assets of the Commission.

(2) Within three months from the end of each financial year, the secretary of the Commission shall submit to the Controller and Auditor-General the accounts of the Council together with—

(a) a statement of income and expenditure during the year; and

(b) a statement of the assets and liabilities of the Commission existing at the end of the year.

20. (1) The accounts of the Commission shall be audited by the Controller and Auditor-General.

(2) The Controller and Auditor-General shall present to the Commission, within a period of six months after the end of each financial year, a report of the examinations and audit of the accounts and the report shall also be forwarded to the Minister.

(3) The Minister shall lay the Commission’s report and the Controller and Auditor-General’s report before the National Assembly within thirty days after the receipt of the reports by him, or if the National Assembly is not then sitting, within fourteen days after the commencement of the next sitting.

21. The Minister may, after consultation with the Commission, make rules generally for better carrying into effect of the provisions of this Act and in particular providing for the following purposes—

(a) for the recruitment and terms and conditions of service, pension and other benefits for the employees of the Commission;

(b) enabling the Commission to make provisions for the boarding and lodging facilities for students in public universities;

(c) prescribing anything which may be prescribed under this Act.
APPENDIX II – THE UNIVERSITIES (ESTABLISHMENT OF UNIVERSITIES, STANDARDIZATION, ACCREDITATION AND SUPERVISION) RULES 1989
Kenya Subsidiary Legislation, 1989

LEGAL NOTICE No. 35

THE BANKING ACT
(Cap. 488)

IN EXERCISE of the powers conferred by section 30 of the Banking Act, the Minister for Finance exempts the Grindlays Bank International (Kenya) Limited and the Grindlays International Finance (Kenya) Limited from the provisions of section 3 (1A) (a) of the Act.

Dated the 16th February, 1989.

GEORGE SAITO, Minister for Finance.

LEGAL NOTICE No. 36

THE UNIVERSITIES (ESTABLISHMENT OF UNIVERSITIES) (STANDARDIZATION, ACCREDITATION AND SUPERVISION) RULES, 1989

ARRANGEMENT OF REGULATIONS

Regulation

PART I—PRELIMINARY

1—Short title.
2—Interpretation.
3—Application.

PART II—REGISTRATION OF EXISTING UNIVERSITIES

4—Registration procedure.
5—Preparation and effect of the register.

PART III—ESTABLISHMENT OF NEW UNIVERSITIES

6—Eligibility and application procedure.
7—Proposal as to particulars and resources.
8—Inspection and verification of resources.
9—Issue and effect of interim authority.
10—Refusal, suspension or revocation of interim authority.

PART IV—PREPARATION OF INSTITUTIONAL STANDARDS

11—Preparation of standards.
12—Evaluation of performance and supervision.
13—Declaration of institutional standards.

PART V—THE PROCESS OF ACCREDITATION

14—Criteria for accreditation.
15—Appointment of an inspection committee.
16—Deliberation of the Commission.
17—Effect of accreditation.
PART VI—INSTITUTIONAL RIGHTS AND OBLIGATIONS
18—Rights of accredited universities.
19—Obligation of accredited universities.
20—Variation of charter.

PART VII—MISCELLANEOUS PROVISIONS
21—Imposition and payment of fees.
22—Offences and penalties.
23—Appeals

FIRST SCHEDULE—Application forms, etc.
SECOND SCHEDULE—Institutional standards.
THIRD SCHEDULE—Fees.

THE UNIVERSITIES ACT
(Cap. 210B)

IN EXERCISE of the powers conferred by section 21 of the Universities Act, the Minister for Education, after consultation with the Commission, makes the following Rules:

THE UNIVERSITIES (ESTABLISHMENT OF UNIVERSITIES)
(STANDARDIZATION, ACCREDITATION AND SUPERVISION)
RULES, 1989

PART I—PRELIMINARY

1. These Rules may be cited as the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989.

2. In these Rules, unless the context otherwise requires—
   “accreditation” means public acceptance and confirmation evidenced by grant of charter under section 12 of the Act that a university meets and continues to meet the standards of academic excellence set by the Commission;
   “certificates and diplomas” means post-graduate certificates and diplomas;
   “Commission” means the Commission for Higher Education established under section 3 of the Act;
   “operating a university” includes conducting courses or programmes of study by any method of delivery, whether residential or distance, electronic or print, satellite or similar form of transmission;
   “private university” means a university established with funds other than public funds;
   “public university” means a university maintained or assisted out of public funds;
   “secretariat” means the Secretary to the Commission appointed under section 5 of the Act;
“university” means any institution or centre of learning by whatever name called, or however designated, having as one of its objects the provision of post-secondary education which intends to offer or is in fact offering courses of instruction leading to the grant of certificates, diplomas and degrees, and the expression "university education" shall be construed accordingly.

3. (1) These Rules shall apply to—

(a) any private university;

(b) any public university other than a public university established by an Act of Parliament;

(c) any university established outside Kenya; and

(d) any agent or agency of such a university as is specified in paragraphs (a), (b) and (c) operating or intending to operate as or on behalf of such university within Kenya.

(2) Except as may be expressly enacted to the contrary or otherwise provided, no university shall—

(a) advertise or continue to advertise or in any manner hold itself out to the public as a university; or

(b) admit or continue to admit students to or conduct courses or programmes of instruction leading to the award of certificates, diplomas or degrees; or

(c) otherwise embark upon or continue with any activity preparatory to the establishment of facilities for university education,

after the commencement of these Rules without the authority of the Commission or of any other person competent to grant such authority under the Act.

(3) Authority to operate in any of the ways specified in the paragraph (2) or to perform any other function consistent therewith shall not be issued except in the manner specified in these Rules.

PART II—REGISTRATION OF EXISTING UNIVERSITIES

4. All universities which had on the 1st August, 1985 graduated at least one class of students shall, within six months of the commencement of these Rules, or within such extended period as the Commission may in writing permit, submit to the secretariat an application for registration in Form ACC/CHE I set out in the First Schedule, duly completed and certified by the administrative authority of that university.

5. (1) As soon thereafter as the period of the submission of Form ACC/CHE I is over, the Commission shall prepare and publish in the Gazette, a register of all universities to which rule 4 applies and in respect of which details have been received, and shall in that publication, indicate in respect of each such university whether or not all particulars set out in the Form have been supplied.

(2) Any university which does not appear in the register prepared under paragraph (1) or whose particulars are incomplete in any respect whatsoever, or to which rule 4 does not apply shall, from the date
of publication of that register, cease to operate, or to perform functions consistent with those of a university.

(3) Notwithstanding paragraph (2), the Commission may, where good cause is shown, the onus whereof shall lie upon the applicant, permit a university whose particulars as entered in Form ACC/CHI 1 are incomplete, to operate for a further period of three months where-upon the university shall, unless all particulars are supplied cease to operate.

(4) All universities appearing in the register whose particulars are complete in terms of paragraphs (1) or (3) shall be issued with a certificate of registration in Form ACC/CHI 2 set out in the First Schedule bearing the seal of the Commission and such certificate shall constitute authority to continue operations until such time as it is suspended or revoked or until accreditation is granted in the manner set out in Part V.

(5) The provisions of rule 10 (1) (a) shall apply, mutatis mutandis, in respect of the suspension or revocation of a certificate of registration under this rule as they apply to the suspension or revocation of a letter of interim authority under that rule.

(6) Subject to Part III it shall be an offence for any person to administer or otherwise perform any function in furtherance of the aims and objects of a university whose operations have ceased in terms of paragraphs (2) and (3) of this rule.

PART III—ESTABLISHMENT OF NEW UNIVERSITIES

6. (1) The following shall be eligible to apply to the Commission for authority to establish a university or, as the case may be, to constitute itself into a university in terms of this Part—

(a) any person who—

(i) intends to be or is a sponsor of a university not being a university to which rule 3 applies; or

(ii) is a corporate body having as one of its objects the provision of university education;

(b) any post-secondary institution intending to provide university education.

(2) Any person or institution eligible to apply for authority to establish or constitute itself into a university under this rule shall do so by submitting to the secretariat an application in Form ACC/CHI 3 set out in the First Schedule, duly completed and certified by him or on its behalf by a person competent to do so.

7. (1) An application under rule 6 (2), shall be accompanied with a proposal setting out—

(a) the proposed name, location and academic character of that university;

(b) the aims and objects consistent with the needs of university education in Kenya for which the university is to be established;

(c) the form of governance through which the academic and administrative affairs of the university are to be conducted;
(d) in outline, the academic programme or programmes intended to be conducted at that university;

(e) the academic resources (including finances, staff, library services and equipment) appropriate to and adequate for the proposed academic programme or programmes to be conducted at that university which have been or can be procured and the manner in which these will be maintained on a long term basis; and

(f) a timetable indicating the steps expected to be taken in the next three years towards the realization of the aims and objects for which the university is to be established.

(2) The Commission shall not process any application under rule 6 (2) unless the requirements of paragraph (1) of this rule are complied with.

8. (1) The Commission shall schedule a meeting or series of meetings with all applicants whose proposals are received at which examination of the available documentation or evidence in respect of the resources indicated therein shall be made and verified.

(2) The Commission may, if it is not satisfied with the documentation presented by an applicant, order a detailed and independent evaluation of the resources expected to be made available and shall, in that connection have power to order the production of such further information or documentation as would enable it to make a proper assessment of the matter.

(3) All costs associated with the verification and evaluation of resources under this rule shall be borne by the applicant.

9. (1) Where after a full deliberation on the merits of each application the Commission is satisfied that—

(a) the particulars given under rule 7 (1) do not in any way reproduce or otherwise duplicate those of an existing or prospective university;

(b) the resources declared under rule 7 (1) (e) are available or are likely to be available;

(c) the applicant is following realistic plans to achieve the aims and objects for which the university is to be established;

(d) the university when established is likely to attain and maintain standards set out in Part IV on a long-term basis; and

(e) the establishment of the university is in the interest of university education in Kenya,

it may accept the proposal and issue a letter under seal in Form ACC/CHE 4 set out in the First Schedule constituting an interim authority to operate in the manner specified in paragraph (2) until such time as it is suspended or revoked, or until accreditation is granted in the manner set out in Part V.
(2) A letter in Form ACC/CHF 4 shall authorize the person or institution named therein to make preparation towards the implementation of the proposal accepted under rule 9 paragraph (1) and, in particular to—

(a) set up a governing body for the university intended to be established;
(b) commence or continue the development of physical facilities;
(c) commence or continue assembly of academic resources;
(d) advertise the programme or programmes of instruction expected to be conducted at that university; and
(e) admit students to such programme or programmes as the Commission may specify.

(3) The name and particulars of every university in respect of which a letter of interim authority is issued under this rule shall be published in the Gazette.

10. (1) The Commission may—

(a) refuse to issue a letter of interim authority if it is satisfied that the person or institution who has applied for it is unlikely to procure the academic, physical and other resources necessary for the establishment of a viable university;
(b) by notice published in the Gazette, suspend or revoke such a letter if—

(i) the person or institution named therein has not within two years of issue made substantial progress in respect of the matters set out in rule 9 (2) or notifies the Commission of its or its intention not to proceed with the establishment of a university, or is, in any event, patently incapable of complying with the standards set out in Part IV; or
(ii) in the opinion of the Commission such fundamental changes have since occurred that had such changes been in existence at the time of its deliberations under rule 9 (1) the letter would not have been issued:

Provided that the Commission shall, in all cases of suspension, indicate the steps which the holder of that letter must take before interim authority can be restored.

(2) In all cases where a letter of interim authority is refused or revoked under this rule, the Commission shall not entertain any subsequent application by the same person or institution, or in respect of the same or substantially similar proposal within two years of that refusal or revocation unless good cause is shown, the onus whereof shall lie upon the applicant.

(3) The proviso of rule 5 (6) shall apply, mutatis mutandis, in the event of a refusal to issue or revocation of an interim authority under this rule as they apply in respect of universities whose operations have ceased under that rule.
PART IV—PREPARATION OF INSTITUTIONAL STANDARDS

11. (1) The Commission shall prepare and publish in the Gazette a set of standards (herein referred to as "institutional standards") governing the performance, operations and general conduct of all universities authorized to operate under these Rules and copies thereof shall be made available at cost to any member of the public desirous of obtaining one.

(2) Notwithstanding the generality of paragraph (1), the institutional standards shall, in particular, set out—

(a) the minimum entry requirements for admission to any certificate, diploma or degree programmes being or to be offered at such university;

(b) the minimum number and duration of programmes at the certificate, diploma or degree level that ought to be offered;

(c) the minimum and maximum number of students which must be enrolled in each programme before it can be offered or efficiently maintained;

(d) the standards of proficiency assessed in terms of content and contact hours, which students are expected to attain in respect of a certificate, diploma, or degree programme;

(e) the level of academic training which persons seeking recruitment into the teaching staff of the university at the certificate, diploma or degree level should possess;

(f) detailed specifications concerning the space requirements and concomitant services for each size class and for the absolute number of students expected to be enrolled in, or activity to be carried out in an institution providing university education and services; and

(g) the basic ethical standards that should regulate the conduct of all members of the university.

(3) The Commission may, at the request of each university, indicate the specific steps to be taken towards the attainment of the standards referred to in paragraph (2).

12. (1) Every university authorized to operate under these Rules shall, as long as such authority is in force, prepare and submit to the Commission—

(a) an annual report of its activities in each year of operation; and

(b) a detailed evaluation every three years of the steps it has taken towards the achievement of the aims and objects for which it was established.

(2) The Commission shall discuss all reports submitted pursuant to paragraph (1) and may make such comments or give such other instructions thereon for action by the university concerned.
(3) Comments made or instructions given by the Commission in accordance with paragraph (2) shall specify whether or not the institutional standards published under rule 12 (1) are being complied with.

13. (1) The institutional standards contained in the Second Schedule are declared to have been prepared and published in accordance with rule 11 (1).

(2) The Commission may add to, delete or otherwise amend the contents of the Second Schedule provided, however, that any amendment made in accordance with this paragraph shall be published in the Gazette.

PART V—THE PROCESS OF ACCREDITATION

14. (1) Any university, being the holder of a certificate of registration or letter of interim authority issued in accordance with these Rules, may apply to the Commission for accreditation in the manner set out in these Rules provided that—

(a) the certificate or letter—

(i) has been held for at least three years or for such other period as the Commission may in particular cases determine, whichever is the shorter period; and

(ii) has not been suspended or revoked; and

(b) the most recent assessment of the universities self-evaluation conducted under rule 12 (1) (b) indicates that the Commission is satisfied with the progress so far made in the design, implementation, or maintenance of an academic and administrative system acceptable in terms of the institutional standards prescribed under these Rules, and relevant to the needs of university education in Kenya.

(2) An application for accreditation shall, in addition to any other details the Commission may in each case specify, be accompanied with—

(a) a draft charter containing the particulars required to be supplied by private universities under section 13 of the Act;

(b) and—

(i) a list and academic qualifications of all members of staff on or expected to be on full-time employment with the university;

(ii) a list of the total number of students that have been enrolled in each programme of instruction being offered at the university;

(iii) a statement of the size and quality of the library and equipment which have been developed for each programme being and to be offered at the university;

(iv) a statement of the financial resources that are available for the exclusive use of the university, certified by a person qualified to practise under the Accountants Act; and
(v) an inventory of the physical facilities including land that are available for the exclusive enjoyment of the university.

15. (1) The Commission shall, before considering any application under rule 14, appoint an inspection committee with the power—

(a) to make enquiry into and for the purposes of ascertaining the veracity or otherwise of the particulars submitted under rule 14 (2) (b);

(b) to make enquiry into the general academic, administrative and social affairs of the university; and

(c) make such other investigations of relevance to the application as it may deem necessary.

(2) The inspection committee shall submit a factual and evaluative report to the Commission within six months of the date of its appointment.

16. (1) As soon as the report of the inspection committee appointed under rule 15 (1) is received, the Commission shall consider all documentation relevant to the application and shall indicate what revisions or amendments, if any, the university concerned should be required to make before the merits thereof are assessed.

(2) Where after a full deliberation on the merits of each application the Commission is—

(a) satisfied that—

(i) the draft charter as submitted or amended forms a sound basis for the academic and administrative organization of the university; and

(ii) the university has effectively organized adequate human, physical, financial and other resources into an educational programme comparable to that of similar institutions authorized to operate in Kenya,

it shall recommend to the Minister that the university be accredited;

(b) not satisfied in the manner indicated in subparagraph (a), it shall refuse to recommend accreditation.

(3) The provisions of rule 10 (2) shall apply, mutatis mutandis, in respect of the refusal to recommend accreditation under this rule as they apply to the refusal or revocation of interim authority under that rule:

Provided that the Commission shall not accept or entertain any application under this paragraph if that application has twice been considered and refused.

17. (1) In addition to the status conferred by reason of publication under section 14 of the Act, the certificates, diplomas and degrees conferred in respect of programmes of instruction offered in or by a university to which accreditation has been granted under these
Rules and the Act shall be recognized as of comparable and equivalent merit to similar certificates, diplomas, and degrees awarded in respect of programmes offered in and by public universities in Kenya.

(2) The provisions of paragraph (1) shall extend and apply to all certificates, diplomas and degrees conferred by any university before the grant of accreditation as aforesaid provided that authority to operate under any of the provisions of these Rules had at no time been revoked or suspended before such grant.

(3) The Commission shall, in respect of all certificates, diplomas and degrees not covered by the provisions of paragraphs (1) and (2) establish a committee to advise on whether or not the same should be recognized in terms of those sections.

(4) Where after a full deliberation on the merits of each case transmitted to it under subparagraph (3), the Commission is satisfied that the certificates, diplomas or degrees in issue ought to be recognized, it shall publish a notice to that effect in the Gazette and such notice shall be irrevocable.

PART VI—INSTITUTIONAL RIGHTS AND OBLIGATIONS

18. (1) Subject to rule 19, every university to which accreditation is granted under these Rules and the Act shall have full autonomy in the administration of its academic affairs and shall, so long as the same is not suspended or revoked, be under no obligation to accept instructions from any person or authority unless the same is expressly stipulated in its charter.

(2) Notwithstanding the generality of paragraph (1) but subject thereto, an accredited university shall have the right—

(a) to determine who may teach and what may be taught and how it may be taught; and

(b) to decide which persons have attained such standards of proficiency as make them fit to be granted a certificate, diploma, degree or other award of the university.

19. (1) Every accredited university shall—

(a) ensure—

(i) that the institutional standards prescribed under Part IV are, at all times, maintained;

(ii) that all lawful instructions issued by the Commission or any other authority empowered to do so under the Act are complied with; and

(iii) that no new programmes of instruction are mounted and regulations in respect thereof effected without the prior consent of the Commission.

(b) submit to such other modes of supervision including inspection and visitation and at such intervals as may be determined by the Commission.

20. (1) A charter issued as evidence of accreditation to any university may be varied or revoked in the manner specified in section 16 of the Act.
(2) Subject to section 16 (3) of the Act, the provisions of rule 10 (1) (b) shall apply, mutatis mutandis, in the event of a revocation of a charter under the Act as they apply in respect of universities whose operations have ceased under that rule.

PART VII—MISCELLANEOUS PROVISIONS

21. (1) The fees specified in the second column of the Third Schedule shall be paid in respect of matters specified in the corresponding entry in the column of that Schedule.

(2) Unless the Commission otherwise agrees, fees in all cases shall be paid in cash.

(3) Fees once paid shall not be refunded.

22. (1) Any person found guilty of an offence under these Rules shall be liable to a fine not exceeding six thousand shillings or imprisonment for a term not exceeding twelve months or to both.

23. (1) Any person or institution who or which is aggrieved by an act or decision of the Commission taken in accordance with any of the provisions of these Rules, who desires to question that act or decision, or any part of it may, within thirty days of the date of such act or decision, appeal to the Minister who may give such orders or instructions as he may consider necessary.

(2) Notwithstanding the provisions of paragraph (1) the Minister shall not act on any appeal under this rule without further reference to the Commission.

(3) Any order, instruction or other decision made or issued by the Minister in accordance with this rule shall be final.
FIRST SCHEDULE

FORM ACC/CHE 1 (rr. 4 and 5)

APPLICATION FOR REGISTRATION OF AN EXISTING UNIVERSITY

1. Name of university Location(s)
2. Address Telephone
3. Name and designation of chief administrator
4. Governing body
5. Address of governing body
6. Principal academic focus or discipline
7. Number and type of programmes (i.e. certificates, diplomas, degrees):
   (a)
   (b)
   (c)
8. Principal research focus
9. Names and qualifications of staff employed:
   Permanent
   Part-time
10. Number of students
11. Residential capacity for students
12. Physical facilities: (a) buildings: Permanent
   Temporary
   (b) Land: Owned (hec.)
   Leased (hec.)
   Other (specify) (hec.)
13. Library capacity (volumes)
14. Other facilities (specify)
15. Present budget: Capital Sh.
   Recurrent Sh.
16. Primary source(s) of funding (a)
   (b)
   (c)

I hereby make application for the registration of the above university under rule 4 of the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989:

Name
Designation
Signature
Full postal address
FORM ACC/CHE 2 (s. 5)

CERTIFICATE OF REGISTRATION OF AN EXISTING UNIVERSITY

This is to certify that—

Name of university .................................................................

Administered or governed by ...................................................

Postal address ................................................ Telephone ........

being a university which had on 1st August, 1985, graduated at least one class of students is hereby registered and, by virtue thereof, authorized by the Commission to continue operations in accordance with and subject to the Universities Act (Cap. 210A), and the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989.

Registration Number ..............................................................

Gazette Notice Number ............................................................

Date ............................................................

Dated this ...................... day of ...................... 19......

COMMISSION SECRETARY

SEAL
APPLICATION TO ESTABLISH A UNIVERSITY

1. Name of applicant

2. Address Telephone

3. Name of proposed university

4. Proposed location(s)

5. Proposed principal academic focus or discipline

6. Proposed programmes (i.e. certificates, diplomas, degrees):
   (a)
   (b)
   (c)

7. Available resources: Finance Sh.
   Land (hec.)
   Buildings
   Other

8. Prospective resources: Finance Sh. source(s)
   Land (hec.)
   Buildings
   Other

I hereby make application for authority to establish a university under rule 6 and attach herewith the proposal required by rule 7 of the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989.

Name

Designation

Authorized signature

Full postal address
FIRST SCHEDULE—(Concl.)

FORM ACC/CH 4 (r. 9)

LETTER OF INTERIM AUTHORITY TO ESTABLISH A NEW UNIVERSITY

Interim Authority is hereby given to—

Name

Address ........................................................ Telephone ........................................

to commence preparations for the establishment of a new university in accordance with rule 9 of the Universities (Establishment of Universities) (Standardization, Accreditation and Supervision) Rules, 1989.

Application No. ........................................................

Gazette Notice No. ........................................................

Date ........................................................

Dated this ....................... day of ....................... 19.....

COMMISSION SECRETARY

[Seal]
SECOND SCHEDULE (rr. 11 and 13)

STANDARDS FOR PHYSICAL FACILITIES

PART 1—PRELIMINARY

1. These Standards may be cited as the Physical Facilities Standards.

2. In these Standards, unless the context otherwise requires—

   “a recognized water laboratory” means a laboratory registered with or belonging to the Public Health Department of the Ministry of Health, Ministry of Water Development, or any other public institution, person or organization duly authorized by the Government of Kenya to undertake water analysis;

   “adequate” means sufficient in relation to any set guidelines or requirements;

   “adequate water supply” means water in such quantities as would permit maintenance of a reasonable level of personal and environmental hygiene;


   “classroom” means a room accommodating several students for the purposes of instruction;

   “departmental areas” means offices occupied by teaching, administrative and secretarial staff of a teaching department of a university;

   “full time students equivalent” (FTSE) means a number of hours of teaching required by one student to fulfil the requirements of the course in an academic year;

   “masterplan” means a programme of a university showing the order of development of physical and academic aspects for a given period of time;

   “physical facilities” means any structure fixed or movable or of whatever kind and any part thereof used or intended to be used for teaching, lecturing or instructing or as a dwelling house or for recreational and all ancillary facilities thereto including drainage works, services installations and road works;

   “reader station” means space occupied by a student in a library;

   “relevant local authority” means a city council, county council, municipal council or such local authority under whose jurisdiction a university is situated;

   “research” means an investigative study of any physical, biological or social phenomenon through a systematic approach;

   “research area” means a facility where research is carried out;

   “residential university” means a university in which ten or more students are boarded;
SECOND SCHEDULE—(Conid.)

"safe water supply" means a supply of water free from any contamination;

"sewage" means spent water emanating from toilets;

"student" means a person enrolled to pursue a degree, diploma or certificate course;

"site works" means a place where construction activities are carried out;

"surface water" means any ground water, subsoil water, storm water or rain water which discharges on the ground surface;

"utility services" means any service that is connected to any building or living space through pipe or wire network for helping to convey fluids, energy and messages, in and out of any building or living space;

"waste water" means any water after it has been fouled by a variety of uses and which constitutes a combination of liquid and water carried wastes, emanating from residences, toilets, kitchens, laundries, laboratories and workshops.

3. These Standards shall apply to—

(a) all buildings or parts of buildings purposely designed and constructed for university use;

(b) any alterations and extensions of university buildings or parts of the buildings;

(c) all buildings undergoing material change of use into university buildings; and

(d) all related utility services installations, and site works for a university.

4. These Standards are prescribed in respect of the following factors—

(a) Public health—

(i) application of by-laws, the Building Code and the Public Health Act; Cap. 242.

(ii) materials used in the building;

(iii) building lighting, ventilation and sound proofing;

(iv) building hygiene and sanitation;

(v) water supply and waste disposal.

(b) Public safety—

(i) structural soundness and stability,

(ii) fire safety—fire resistance, fire protection and safety precaution, fire fighting and fire escape.
SECOND SCHEDULE—(Contd.)

(c) Physical facilities—

(i) building facilities including classrooms and lecture theatres, staff offices, research areas, seminar rooms, laboratories, workshops, studios, clinics, libraries, students residences, staff residences, communal and social service areas such as worship, kitchen, dining, common rooms, recreational facilities;

(ii) utility and other services including water supply, power, telephone, external drainage and waste water services, access roads, parking and appropriate landscaping;

(iii) land including requirements and location ownership and tenure.

(d) Spatial requirements—

(i) the minimum size and floor areas for various buildings;

(ii) the minimum unit numbers of various types of buildings;

(iii) the locational relationship of various facilities.

PART II—MINIMUM STANDARDS

5. Every university shall provide the following physical facilities to accommodate its activities—

(a) classrooms or lecture rooms;

(b) departmental areas, staff offices and seminar rooms;

(c) central administration offices;

(d) library;

(e) auditorium or lecture theatre;

(f) staff common rooms;

(g) student common rooms with indoor recreation facilities;

(h) outdoor recreation facilities in form of games or sports facilities;

(i) drainage system, proper sanitation and water supply;

(j) dispensary.

6. Every residential university, shall, in addition to facilities to be provided under paragraph (4) provide the following physical facilities—

(a) kitchen and dining facilities;

(b) student accommodation, including adequate laundry and storage facilities.

7. Every building used or intended to be used as part of the university physical facility shall comply with the requirements of the Building Code and provisions of the Public Health Act, in particular—

(a) the minimum requirements for health and safety of the public to which the premises of every university shall conform shall
SECOND SCHEDULE—(Contd.)

be those prescribed by the Local Government (Adoptive By-laws) Order, 1966, Group I or any amendments thereof, the Public Health Act and the requirements prescribed in the Schedule;

(b) any building designed and constructed for use as university building or any building altered or extended so as to be used as a university building or any building which has undergone material change of use into university building must be approved by the relevant local authority;

(a) all buildings and other physical facilities used by a university evidence of—

(i) approval of drawings of the proposed buildings,
(ii) approval of alterations or extensions, if any; or
(iii) approval of proposed change of user if any; and
(iv) a certificate of occupation for the newly constructed or altered buildings.

PART III—PUBLIC SAFETY

8. Every university shall operate in physical facilities that are safe for the public and in particular—

(a) all buildings and other physical facilities used by a university to accommodate university activities shall be serviceable and functional;

(b) the buildings shall be kept in a good state of repair and maintenance and shall be free from structural failures, excessive deflection, cracking or dilapidation of building material fabric and components.

9. Every university which erects or causes to be erected a building or any other structure intended to accommodate university activities shall employ, for the purposes of architectural design a registered architect and for the purposes of structural design thereof, a registered structural engineer, and shall retain the services of such architect or structural engineer for the purposes of supervising the erection of such building and in particular—

(a) on completion of construction of such building the architect or structural engineer shall provide a certificate that the work or works have been carried out in accordance with the design and that it complies in all respects with the provisions of the building code and the appropriate codes of practice;

(b) all drawings in respect of the structural framework of steel buildings, reinforced concrete buildings or structural timber buildings and calculations connected therewith, shall be signed by the registered structural engineer responsible for their design;

(c) where a university causes the erection of a building or structure of the type described in this paragraph it shall, in addition, employ on the site throughout the period of the construction a resident engineer who is capable of reading and
interpreting the relevant project working drawings showing
details of the design and of ensuring that the work is carried
out in accordance with drawings and with the requirements of
Building Code.

10. The standards specified in paragraph 8 shall apply to—

(a) any building or structure of two storeys or more or in which
provision may be made for future development of such
number of storeys;

(b) any building or structure of whose storey height from ground
floor to eaves level or ceiling is over 6 metres and with
roof span greater than 10 metres;

(c) any building or structure in which any suspended structural
floor panel beam or frame exceeds 6 metres in span;

(d) any building or structure in which a balcony is provided for
purposes of public assembly.

11. (1) All buildings and other physical facilities used by a
university to accommodate university activities shall provide adequate
fire safety.

(2) All buildings and other physical facilities shall conform to the
requirements of the Building Code, the Public Health Act and other
standard practices with regard to fire resistance, means of fire escape,
access from fire escape and fire fighting equipment.

12. (1) All buildings used for university activities shall be pro-
vided with adequate, reasonable and easily accessible means of
escape in the event of fire.

(2) All means of fire escape shall be properly maintained and
kept free from any obstruction.

(3) For the purposes of this paragraph the guidelines given for
Building Groups (I), (III) and (III) and (VI) specified in the appendix
to the Sixth Schedule of the Building Code shall apply.

13. In every building used by a university as a classroom, lecture
theatre, seminar room, auditorium, laboratory, library, dormitory or
residential hall, there shall be provided adequate fire fighting equip-
ment such as hose reels, portable fire extinguishers, fire buckets, dry
risers, fire hydrants, sprinklers, and water storage tanks.

14. Where a university is located outside the area covered by
Government or local authority fire station, a central fire fighting unit
shall be located in a purpose built station forming part of the university
service area; and the equipment for the fire station shall be
provided by the university for its use.

15. Every university shall be provided with a water supply
system for fire fighting; and the water supply needs for emergency
fire fighting purposes shall be drawn through the main water supply
distribution system via a series of underground hydrants located at regular intervals throughout the site of the university.

PART IV—ACADEMIC BUILDING FACILITIES

16. Every university shall provide classrooms which are adequate in number and shall be of adequate size; and in establishing the adequacy of classrooms, the minimum floor area per student specified in Table 1 shall be provided.

Table 1. Minimum classroom floor area per student

<table>
<thead>
<tr>
<th>No. of students</th>
<th>Space in square metres with desk and chair</th>
<th>Space in square metres with chairs only</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–29</td>
<td>1.9</td>
<td>1.9</td>
</tr>
<tr>
<td>30–39</td>
<td>1.9</td>
<td>1.4</td>
</tr>
<tr>
<td>40–59</td>
<td>1.7</td>
<td>1.3</td>
</tr>
<tr>
<td>60–99</td>
<td>1.7</td>
<td>1.2</td>
</tr>
<tr>
<td>100–149</td>
<td>1.7</td>
<td>1.0</td>
</tr>
<tr>
<td>150–299</td>
<td>1.5</td>
<td>0.9</td>
</tr>
</tbody>
</table>

17. The total usable space provided for classrooms shall be at the minimum rate of 0.65 square metre per full time students equivalent; and the university shall have enough classrooms for every course, provided that there shall be a minimum of two classrooms to each three year course of study.

18. Every room used as a classroom shall be of sound construction and shall be provided with windows the effective area of which shall not be less than 20 per cent of the floor area of the room and 75 per cent of the window area shall be openable to the external air.

19. No room used as a classroom shall have a height of less than 2.60 metres from floor to ceiling, or where there is no ceiling to the wall plate.

20. Every room used as a classroom shall be provided with adequate, well illuminated writing surface at each seat and a place to set books and papers.

21. Every university shall provide adequate room to accommodate academic and non-academic staff offices and seminar rooms and in determining the adequacy of departmental areas, the following factors shall be taken into consideration—

(a) the total usable space provided for use as departmental areas shall be not less than those specified in the following Table 2—
Table 2—Minimum departments usable areas per FTSE

<table>
<thead>
<tr>
<th>Course</th>
<th>Usable space in square metres per FTSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arts and Humanities based courses</td>
<td>2.8</td>
</tr>
<tr>
<td>Biological and Physical Sciences based courses</td>
<td>9.0</td>
</tr>
<tr>
<td>Human and Veterinary Medicine and related courses</td>
<td>15.0</td>
</tr>
<tr>
<td>Engineering, Surveying and related courses</td>
<td>10.0</td>
</tr>
<tr>
<td>Architecture, Planning, Building Technology, Design and related courses</td>
<td>10.0</td>
</tr>
<tr>
<td>Social Science based courses</td>
<td>2.8</td>
</tr>
</tbody>
</table>

(b) the departmental offices shall comprise of the following minimum number of offices—
   (i) one departmental office,
   (ii) one head of department office,
   (iii) one secretary's office,
   (iv) one general office for a staff secretary;
   (v) one office for every member of academic staff;

(c) academic and non-academic member of staff offices shall have the following minimum floor areas—
   (i) head of department and professors: 18 square metres,
   (ii) academic staff: 13 square metres,
   (iii) non-academic staff: 7 square metres;

22. A university shall provide adequate central administration offices to accommodate the head administrator and support staff of the university and each constituent college; and in assessing the adequacy of administration offices the following factors shall be taken into account—

(a) the total office space provided for use by administrative staff shall not be less than 0.55 square metre of usable office space for every full time student equivalent enrolled, provided the minimum total office space provided for the university's central administrative is 50 square metres;

(b) no room used as an administrative office shall be less than seven (7) square metres in area;

(c) the administrative offices shall be conveniently accessible from the main entrance to the campus so as to serve as the logical reception point for special guests as well as general visitors arriving at the campus.
3. Every university shall provide the following functional library whose adequacy shall be assessed on the basis of the following area criteria—

(a) the main reader area shall be equal to 30 per cent of FTSE and each reader station shall not be less than 1.90 square metres;

(b) each stack area shall be at least 10.75 square metres in extent per 1,000 volumes;

(c) the periodicals and reference section shall be 10.75 square metres in extent per 1,000 volumes;

(d) the minimum collection for university shall be 30 volumes per full time student for the first 5,000 full time students plus 20 per full time student for every student above 5,000 per constituent college library and 100 volumes per full time student for first 10,000 full time students for a university library;

(e) the library staff and services areas shall constitute between 18 per cent to 25 per cent of the combined stack and reader floor area;

(f) the library shall have adequate natural lighting and ventilation and in particular, the library shall be provided with windows, the effective areas of which shall not be less than 20 per cent of the floor area of the room and 75 per cent of the window area shall be openable to the external air;

(g) from a functional point of view the minimum ceiling heights of various user spaces in the library shall conform to the specifications contained in the following Table 3—

Table 3—Minimum ceiling heights

<table>
<thead>
<tr>
<th>Functional area</th>
<th>Minimum ceiling heights in metres</th>
</tr>
</thead>
<tbody>
<tr>
<td>stack areas under 10 square metres total floor area</td>
<td>2.3</td>
</tr>
<tr>
<td>stack areas over 10 square metres total floor area</td>
<td>2.9</td>
</tr>
<tr>
<td>stack area</td>
<td>...</td>
</tr>
<tr>
<td>reading area</td>
<td>...</td>
</tr>
<tr>
<td>back area</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

(1) the library shall conform to the requirements for buildings in Group IB. of the Sixth Schedule of the Building Code;

(i) every building used as a library shall provide sufficient doorways to ensure rapid exit in case of fire or other emergency.

24. Every university shall provide a building facility for public lectures or general assembly which shall be in form of an auditorium, lecture theatre or an assembly hall conforming to the following specifications—

(a) the assembly hall or auditorium shall provide adequate seating capacity for 50 per cent of the total student population enrolled, provided that the assignable space per seat shall conform to the specifications contained in the following Table 4—
Second Schedule—(Contd.)

Table 4—Minimum space per seat in auditorium, lecture theatre and assembly hall

<table>
<thead>
<tr>
<th>No. of Seats</th>
<th>Assignable space per seat in square metres</th>
</tr>
</thead>
<tbody>
<tr>
<td>60-100</td>
<td>0.9</td>
</tr>
<tr>
<td>100-150</td>
<td>0.8</td>
</tr>
<tr>
<td>150-300</td>
<td>0.7</td>
</tr>
<tr>
<td>300</td>
<td>0.6</td>
</tr>
</tbody>
</table>

(b) the assembly hall or auditorium shall conform to the requirements for buildings in Groups IV and V in the Sixth Schedule of the Building Code.

Part IV—Teaching Laboratories, Hospitals, Workshops and Studios

25. A university conducting courses requiring the use of laboratories as part of instructional facilities shall, in addition to providing classrooms and lecture theatres provide adequate laboratory facilities.

26. In assessing the adequacy of laboratory facilities the following shall be taken into account—

(a) the provision of adequate laboratory facilities in close proximity to classroom or other teaching facilities;

(b) the provision of room for instructional workstations and each workstation per student conforming, where possible to the specifications contained in the following Table 5—

Table 5—Laboratory assignable space per FTSE

<table>
<thead>
<tr>
<th>Laboratory Speciality</th>
<th>Assignable space per FTSE in square metres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture Science Laboratory</td>
<td>2.80–3.70</td>
</tr>
<tr>
<td>Building Science Laboratory</td>
<td>3.70–4.60</td>
</tr>
<tr>
<td>Biological Health and Veterinary Science Laboratory</td>
<td>2.70–4.60</td>
</tr>
<tr>
<td>Business Management Laboratory</td>
<td>1.90–2.80</td>
</tr>
<tr>
<td>Communication Laboratory</td>
<td>2.40–3.70</td>
</tr>
<tr>
<td>Education Laboratory</td>
<td>2.40–4.60</td>
</tr>
<tr>
<td>Engineering Laboratory (excluding mechanical)</td>
<td>3.70–6.50</td>
</tr>
<tr>
<td>Engineering Laboratory (Mechanical)</td>
<td>6.50–9.30</td>
</tr>
<tr>
<td>Fine Art, Architecture and Design-Studio</td>
<td>2.80–4.60</td>
</tr>
<tr>
<td>Home Economics Laboratory</td>
<td>2.80–4.60</td>
</tr>
</tbody>
</table>
(c) the provision of storage, and preparatory rooms and a laboratory office;

(d) proper location in relation to other facilities such that the laboratory is easily accessible;

(e) the provision of the following service facilities—
   (i) adequate windows which open to outside air in order to provide proper ventilation,
   (ii) fume cupboards and fume hoods in the preparation and storage rooms,
   (iii) standard table top electrical service outlets for the instructor’s table and for each pair of students’ workstation,
   (iv) adequate lighting free of glare from exterior sunlight,
   (v) surface treatment of floors, walls and ceiling to reduce noise,
   (vi) a sink with hot and cold water service installation for the instructor’s table and for each pair of students’ workstation,
   (vii) gas for the instructor’s table and for each pair of students’ workstation;

(f) the provision of the built-in furniture and equipment—
   (i) at least one instructor’s table measuring 2000 x 300 x 760mm. high,
   (ii) at least one student table of minimum size 1500 x 560 x 760mm. high for each pair of students’ workstation with adequate bench or stools or chairs,
   (iii) chalkboard or task board, wall mounted,
   (iv) at least one corrosion resistant sink and eye wash fountain.

27. A university offering medical courses shall have the necessary basic pre-clinical sciences together with the laboratory requirements specified in paragraphs 24 to 25 plus any specialized provisions for anatomy and pathology; and the university shall also have or secure access to a teaching hospital easily accessible to students and equipped with the usual outpatient and inpatient facilities covering all specializations in medicine, surgery, obstetrics and gynaecology, paediatrics, community health, as well as support facilities such as: X-ray, radiotherapy, anaesthesics and pathology, accessible to medical students:

Provided that where the hospital is not the property of the relevant university, adequate legal and administration arrangements shall be made in respect of such access.

28. The hospital shall have the necessary resources (human, physical, technical and financial) to meet professional and academic requirements.
29. The design of the teaching hospital shall conform to the requirements of the Ministry of Health in providing relevant health services; and in addition, the hospital buildings shall conform to the requirements for buildings under Group II of the Sixth Schedule of the Building Code.

30. A university offering Fine Art shall have a studio for drawing from life, general drawing, basic design painting, ceramic and film room; and it shall also have graphic photography print making studio, life painting, composition/still life studios; textile design and weaving, and sculpture studios and the university shall also have—

(a) a ceramic glazing and testing laboratory, glass design and technology, silver smithing and jewellery and museology laboratory;

(b) workshop space for modelling casting and woodcarving;

(c) space for sculpture, garden, outdoor wood burning kilns and such other facilities as may be specified by the Commission;

(d) studio spaces and drafting room with adequate lighting;

(e) photogrammetric laboratory;

(f) remote sensing laboratory;

(g) computing laboratory;

(h) hydrographic laboratory workshop;

(i) cartographic workshop;

(j) photographic laboratory or workshop.

31. A university offering Urban and Regional Planning shall have adequate studio space for every year of study and the university shall also have a model making workshop.

32. A university offering Building or Building Technology shall have studio space for every year of study and the university shall also have—

(a) for every year of study, workshops for carpentry and joinery, mechanical works and welding, masonry and concrete works and electrical wiring and building services;

(b) laboratory space for each course of study for materials sciences, structures and services;

(c) spaces for demonstration units in various building construction techniques.

33. The facilities specified in paragraphs 29 and 31 may be shared between years of study and between courses or they may be assigned on the basis of faculties.
SECOND SCHEDULE—(Contd.)

34. A university offering Architecture shall have design studios for each class with adequate individual workspace at the rate of 2.5 square metres per work station and the university shall also have—
(a) a modelling workshop with equipment enough for at least two class years;
(b) an architectural science laboratory with sufficient equipment;
(c) a photographeic laboratory;
(d) a material testing workshop;
(e) a wood working workshop;
(f) spaces within the overall premises of the department for external activities such as those required for workshops fabrication and for erection of building components and for testing their exposure of weather activities.

35. A university offering Home Economics shall have laboratories consisting of the following user areas—
(a) food analysis to the extent of 5 square metres per student workstation;
(b) food storage and preparation to the extent of 1.5 square metres per student workstation;
(c) sewing and crafts to the extent of 4 square metres per student workstation;
(d) sewing and craft storage and dressing to the extent of one square metre per student workstation;
(e) child development with its own storage room, office, open play, cleaning up and observation rooms.

36. Every laboratory shall be provided with installations adequate for instructions in food preparation, cooking and services using a variety of cooking energy sources: electricity, gas and wood. Home care laboratories shall also be equipped with laundry and ironing facilities.

37. A university offering Agriculture shall, in addition to the laboratory specifications specified in paragraph 25, have at least ten hectares of land set aside as a university farm over and above that stipulated for an ordinary university.

PART VI—CATERING AND ACCOMMODATION

38. A residential university shall provide adequate, well lighted and ventilated accommodation for cooking, serving and eating meals.

39. In assessing the adequacy of these facilities the following factors shall be taken into account—
(a) the provision of the following functional areas
   (i) food preparation of not less than 0.50 square metre per student.
SECOND SCHEDULE—(Conid.)

(ii) dish washing and serving areas, of not less than 0.50
square metre per student;
(iii) kitchen storage of not less than 0.50 square metre per
student;
(iv) kitchen staff and services area of not less than 0.50 square
metre per student;
(v) a dining hall of not less than 1.25 square metre of floor
area per student;

(b) the provision of adequate facilities for cleaning utensils, and
of suitable and sufficient washing and sanitary facilities in
form of lavatories, shower rooms, changing and cloakrooms
for kitchen staff;

(c) the provision of sufficient doors to ensure rapid exit in case
of fire or other emergency.

40. Every university shall provide common rooms with adequate
recreational facilities for staff and students.

41. Every residential university shall provide adequately lighted
and ventilated student accommodation facilities and in particular—
(a) no open rooms used as student accommodation shall accom-
modate more than four students;
(b) the total floor area of the rooms shall not be less than the
following per student—
(i) a single room, 8.00 square metres;
(ii) double student room or cubicle, 7.00 square metres;
(iii) three or four student room 6.00 square metres;

(c) every living room in the hall shall be located so as to get
maximum benefit of outside light and air;
(d) every room or hall shall be provided with vents in the walls
in such a manner as to provide permanent ventilation;

(e) sufficient doorways shall be provided in every student hall to
ensure rapid exit in case of fire or other emergencies;

42. Every university shall have adequate water supply, installed
in accordance with the requirements of the Building Code and these
Standards.

PART VII—UTILITY SERVICES

42. Every university shall have adequate water supply, installed
in accordance with the requirements of the Building Code and these
Standards.

43. In assessing the adequacy of the water supply for the univer-
sity the following shall also be taken into account—

(a) the wholesomeness of the water and in particular the fact that
it is free from any contamination that may cause disease or
injury to health, has no objectionable taste and odour, is aesthetically acceptable and has been certified as such by a recognized water laboratory;

(b) the extent to which the quality of the water provided conforms to the requirements of the Kenya National Drinking Water Standards set out in the latest edition of the Water Supply Design Manual issued by the Ministry of Water Development;

(c) the availability of a cold water storage facility in each building for domestic purposes taken from the main supply to the buildings or a cold water storage tank in each building with sufficient capacity to meet not less than twenty four hours demand from the building's users or a minimum water demand of 150 litres per day per person;

(d) the availability of a central cold water storage facility from the main water supply to the university or of a storage facility with sufficient capacity to meet not less than three days demand from the university community or a minimum water demand of 150 litres per day per person;

(e) the availability of extra additional storage facility under sub-paragraph (d) in every university where animals are kept;

(f) the provision and maintenance of an adequate cold water storage facility for fire fighting purposes at the rate of 10 litres per second continuous flow for two hours.

44. Every university shall provide appropriate and adequate waste water collection, treatment and disposal system.

45. In assessing the adequacy of the waste water system the following shall be taken into account—

(a) the availability of a satisfactory drainage system for water;

(b) the availability of an adequate means of sewage and waste water disposal by means either of the relevant local authority main sewer or of septic tanks, conservancy tanks or stabilization ponds or cesspool constructed to specifications contained in the Building Code;

(c) in the absence of adequate means of sewage and waste disposal the extent to which the quality of effluent of natural water bodies conforms to the National Standards for Effluent Discharge to Natural Streams;

(d) evidence of approval by the relevant local authority or Ministry of Water Development or the Ministry of Health for all disposal systems other than those connected to a local authority's sewage system.

46. Notwithstanding the provisions of paragraphs 43 and 44 a university not connected to a local authority's sewage system shall have at least two hectares of land set aside for the construction of a sewage plant, and the land shall be so situated as to ensure public health and safety from effluent originating from the plant.
47. Every university shall provide an adequate surface water collection and disposal system.

48. In assessing the adequacy of the disposal system the following factors shall be taken into account—

(a) the capability to drain and dispose of surface water in such a manner as to cause the least inconveniences or nuisance to the public;

(b) the absence of surface run-off or stormwater from university buildings and related infrastructure such as roads, parking areas, and playing fields.

49. Every university shall provide, keep clean and maintain adequate and suitable sanitary conveniences, which conform in all respects to the requirements of the Building Code, for the students and all persons working in the university and where students or other persons of both sexes are accommodated or are expected to be accommodated the conveniences shall afford proper separate facilities for persons of each sex.

50. In a day university, the following well lighted and ventilated closets, urinals, washhand basins and drinking water fountains shall be provided—

(a) one W.C. for every 8 female students;

(b) one W.C. for every 10 male students;

(c) one urinal stall for every 25 male students;

(d) one washhand basin for every 16 students;

(e) one drinking water fountain for every 12 students;

(f) a sanitary disposal facility.

51. In a residential university, the following well lighted and ventilated closets, urinals, washhand basins, bathrooms and drinking water fountains shall be provided—

(a) one W.C. per every 15 male students;

(b) one W.C. per every 10 female students;

(c) one urinal per every 10 students;

(d) one washhand basin per every 10 students;

(e) one bath or shower per every 10 male students;

(f) one bath or shower per every 8 female students;

(g) one drinking water fountain for every 20 students;

(h) a sanitary disposal facility.

PART VIII—LAND REQUIREMENTS

52. Every university shall produce evidence of owning land capable of supporting a student population of at least 500 students and for the purposes of this paragraph the land area required to support a student population of 500 shall be 20 hectares.
53. Every university shall show evidence of owning land on freehold terms, or for a leasehold term of not less than 45 years, and the land shall, in addition—

(a) be free from all encumbrances other than those of a statutory nature;

(b) be vested in a trusteeship of the university, which shall own such land as a non-profit making body and in perpetual succession.

54. Each university shall be built on land parcels which are either a continuous holding or on individual land parcels that are contiguous to one another or in close proximity to each other.

Provided that in all cases where land parcels are not contiguous to one another—

(i) they shall, in cases where the student population does not exceed 500, be situated at a distance not exceeding two kilometres from one another and be connected by a motorable road;

(ii) the main university campus shall be built on a parcel of land not less than half the area required to house 500 students.

55. All parcels of land designated for university use shall be at least two hectares in size and all university buildings and facilities thereon shall conform to the minimum space and compound requirements stipulated in these Standards, the Building Code, the Public Health Act or any other legislation relating to the safeguarding of public safety and educational standards.

56. Land at the main campus and at all the other non-contiguous parcels shall be used only for university purposes, and for only such other uses as are necessary for supporting university activities; and the use shall, in addition, conform to a master plan prepared in accordance with these Standards and all applicable laws and designed in such a way that all building facilities and proposed developments are functionally related and compatible and all academic buildings, classrooms, libraries, laboratories, assembly halls, auditoriums, audiovisual centre and other facilities are in close proximity to one another.

57. The masterplan shall, in addition to any other details required by law to be included, indicate—

(a) the location of the existing and proposed university buildings;

(b) the layout of all roads and pathways serving all buildings, which shall be such that the health and safety of the occupants and users of the university is not endangered;

(c) the layout of all waste and soil drain pipes, sewers, culverts, septic tanks, stormwater drains, and run-off catchment drains so laid that the health and safety of all occupants and users of the university is not endangered;
(d) the location of all areas to be used by all other activities related to the university such as sports, fields, university farms, forests, arboretas and sewage treatment, shall be laid in a safe manner.

(e) the layout of all telephone and electricity service lines shall be laid in a safe manner.

58. All administrative buildings shall be located on the main campus and must be so situated as to be clearly visible from the road approach.

59. The minimum total area set aside for open space and car park shall not be less than two hectares which area shall not incorporate land set aside for sporting facilities.

60. A university shall have or shall have access to at least one standard athletics track enclosing a football pitch, at least one standard lawn tennis pitch, one standard volleyball pitch, one standard badminton or tennis court and one standard netball court.

61. For the purpose of paragraph 60 a university shall set aside at least five hectares of land for outdoor sports for the first five hundred students and at least two hectares for every additional two hundred students.

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### THIRD SCHEDULE

<table>
<thead>
<tr>
<th>Fees</th>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>On application for registration or establishment of a university</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>On issue of certificates of registration</td>
<td></td>
<td>5,000</td>
</tr>
<tr>
<td>On issue of a letter of interim authority</td>
<td>10,000</td>
<td></td>
</tr>
</tbody>
</table>

Made on the 23rd February, 1989.

P. O. ARINGO
Minister for Education.
APPENDIX III – THE UNIVERSITIES (COORDINATION OF POST SECONDARY SCHOOL INSTITUTIONS FOR UNIVERSITY EDUCATION) RULES 2004
LEGAL NOTICE No. 112

THE UNIVERSITIES ACT
(Cap. 210B)

IN EXERCISE of the powers conferred by section 21 of the Universities Act, the Minister for Education, Science and Technology, after consultation with the Commission for Higher Education, makes the following Rules—


1. These Rules may be cited as The Universities (Co-ordination of Post Secondary School Institutions for University Education) Rules, 2004.

2. In these Rules, unless the context otherwise requires—

"Committee" means the Inspection Committee established by rule 4;

"co-ordination" includes registration, categorization, standardization, validation, harmonisation and supervision of post secondary school institutions;

"course standards" means the standards prescribed under rule 10;

"diploma" means a qualification based on a structured course in a given discipline attained after the full cycle of secondary school education or its equivalent;

"post secondary school institution" means an institution registered or recognised under any law and which offers diploma or other courses for purposes of admission to a degree programme;

"programmes" means a course or courses of study offered by post secondary school institutions.

3. (1) A post secondary school institution may apply to the Commission for validation of its programmes.

(2) The application referred to in sub-rule (1) shall be in Form PSSUCH: I set out in the Schedule and shall be submitted together with a detailed statement setting out the—

(a) vision, mission, philosophy, aims and objects for which the institution is established;

(b) particulars of incorporation or registration of the institution under any law;
(c) form of governance through which the academic and administrative affairs of the institution shall be conducted;

(d) curriculum of programmes offered by the institution including the—
   (i) mechanism for curriculum design and development;
   (ii) evaluation and assessment; and
   (iii) quality assurance mechanism.

(e) student support services including guidance and counselling, student records and feedback mechanism;

(f) list and academic qualifications of all members of staff on or expected to be on full-time employment with the institution;

(g) list of the total number of students enrolled in each programme offered at the institution which list shall also specify the number of residential students;

(h) size and quality of the library, information communication technology and equipment which have been developed for each course offered at institution;

(i) size financial resources available for the exclusive use of the institution, including the primary sources of funding and the existing budget, certified by an accountant qualified to practise as such under the Accountants Act but who is not an employee or a sponsor of the applicant; and

(j) type number and size of the physical facilities including buildings and land available for the exclusive use of the institution.

4. (1) Upon receipt of the application referred to in rule 3, the Commission shall appoint an Inspection Committee which shall have powers to—

(a) inquire into and ascertain the veracity of the particulars submitted under rule 3;

(b) inquire into the general academic, administrative and social affairs of the institution;

(c) make such other investigations relevant to the validation process as it may deem necessary.

(2) The Committee shall submit a factual and evaluative report of its findings under sub-rule (1) to the Commission within six months of the date of its appointment.

5. (1) Upon receipt of the report under rule 4(2), the Commission shall consider the report, the application and all documentation relevant to the application and may suggest amendments to be made by the institution before the application is approved for validation.

(2) Where, after full deliberation on the merits for validation of the programmes, the Commission is satisfied that—

(a) the programmes meet the course standards; and

(b) the institution has adequate human, physical, financial and other resources to warrant validation of its programmes;

the Commission shall issue a certificate of validation in Form PSE/CHIE 2 set out in the Schedule upon such terms and conditions as it may deem necessary.

(3) Where the Commission declines to issue a certificate of validation, it shall inform the institution of the conditions the institution needs to fulfill in order to qualify for issuance of the certificate.

6. (1) The Commission shall maintain—

(a) a register of the institutions whose programmes have been validated; and

(b) a register of the institutions granted authority to collaborate with other institutions.

(2) The registers under sub-rule (1) shall contain the—

(a) name, postal and physical address of the institution;

(b) programmes validated or programmes in respect of which an institution may enter into an agreement to collaborate with other institutions;

(c) date of validation or granting authority to collaborate;

(d) terms and conditions upon which a certificate of validation or authority to collaborate was granted; and

(e) Such other information that the Commission may deem necessary.

7. (1) The Commission shall cause the certificate of validation issued under these Rules and the particulars of the programmes validated to be published in the gazette.

(2) The name of the institution whose programmes have been validated shall be entered in the register of validated programmes maintained under rule 6 and such institution shall be deemed registered with the Commission as an institution offering validated programmes.

(3) Subject to these Rules, an institution whose programmes have been validated by the Commission shall be eligible to apply for authority of the Commission to collaborate with other post secondary school institutions or universities for purposes of offering validated or degree programmes.

(4) A candidate awarded a diploma in any validated programme shall be qualified to apply for admission to a degree programme.
(5) The Commission shall, in respect of diplomas not covered by the provisions of sub-rule (4), establish a committee to advise on whether such diploma should be granted recognition under these Rules.

(6) Where after receipt of the report of the committee appointed under sub-rule (5), the Commission is satisfied that the diplomas in question ought to be recognised in terms of these Rules, it shall publish a notice to that effect in the gazette and such notice shall be irrevocable.

8.(1) (a) The Commission may, on application by an institution or of its own motion, vary the terms and conditions upon which a certificate of validation was granted if it is of the opinion that such variation is in the interest of education in Kenya or that such variation shall assist the institution to carry out its functions in a more efficient manner.

(b) The Commission may, at its discretion, not entertain an application for variation under paragraph (a) until after the expiry of four years from the date of the grant of the certificate of validation or from the date of the last variation of the terms.

(c) In every case where there is a variation of terms and conditions under these Rules, the Commission shall publish in the gazette the specific variations and shall give directions to the period of time within which the varied terms and conditions shall be implemented.

(2) The Commission may, on application by an institution or of its own motion revoke a certificate of validation granted under these Rules if it is of the opinion that—

(a) the institution has failed to comply with directions for variation of terms given under sub-rule (1) of this rule;

(b) the institution is in breach of the terms and conditions upon which the certificate of validation was issued;

(c) the institution is no longer offering the validated programmes for which the certificate was issued;

(d) the institution has ceased being a post secondary school institution;

(e) such changes have occurred which if they were in existence at the time of application for the certificate of validation, the certificate would not have been granted; or

(f) the revocation is in the interest of education in Kenya.

(3) The Commission shall not revoke a certificate of validation unless it has issued a notice to the institution in Form PSSl/CHE 3 set out in the Schedule, and the institution has, within twelve months from Schedule to the affected institution and shall cause the notice to be published in the gazette.

(5) A certificate of validation issued under these Rules shall be deemed revoked on the date of publication of the notice under sub-rule (4) but such revocation shall not—

(a) affect the validity of programmes and academic awards granted by the institution before the date of revocation; or

(b) affect the study of students admitted to the programmes before the date of revocation.

9. It shall be an offence for a person or post secondary school institution to advertise or in any other manner pass off an institution as an institution offering validated programmes if a certificate of validation has not been granted to such an institution, or after such certificate has been revoked in accordance with these Rules.

10. (1) The Commission shall prepare and publish in the gazette course standards for the purposes of co-ordination of programmes post secondary school institutions.

(2) Notwithstanding the generality of paragraph (1), the course standards shall set out—

(a) the minimum entry requirements for admission to any programmes offered at a post secondary school institution;

(b) the minimum number and duration of courses that shall be offered;

(c) the proficiency assessed in terms of content and contact hours, which students are expected to attain in respect of the programmes;

(d) the level or academic training which persons seeking recruitment into the teaching staff of the post secondary school institution shall possess;

(e) the basic ethical standards that shall regulate the conduct of all members of the post secondary school institutions.

(3) The Commission may, at the request of a post secondary school institution or of its own motion indicate the specific steps to be taken towards the attainment of the course standards referred to in sub-rule (2).

11.(1) Every post secondary school institution issued with a certificate of validation shall prepare and submit to the Commission—

(a) an annual report of its activities during the year; and

(b) a detailed self-evaluation report every three years of the steps it has taken towards the achievement of the aims and objects for
to be taken by the post secondary school institution and such comments or instructions shall specify whether or not the course standards are being complied with.

(3) The Commission may visit any institution to verify any of the matters raised in the reports under sub-rule (1).

12. (1) No person or post secondary school institution shall, without the Commission's authority, enter into collaboration with another institution or university for the purposes of offering the programmes of that institution or university.

(2) A post secondary school institution which has been awarded a certificate of validation in respect of any of its programmes may apply to the Commission for authority to collaborate with another institution or university for the purposes of offering such programmes of that institution or university as the Commission may authorize.

(3) The application referred to in sub-rule (2) shall be made in Form FSSI/CHE 5 set out in the Schedule and shall be submitted together with a copy of the proposed contract setting out the—

(a) terms of the contract;
(b) mode of teaching;
(c) mode of conducting examinations, assessment and merit in relation to issuance of academic awards in respect of the programme offered;
(d) rights and obligations of the post secondary school institution;
(e) right and obligations of the collaborating institution or university;
(f) resources devoted to the programme; and
(g) management and administration of the programme;
(h) the accreditation status of the institution or university in its country of origin and the accreditation status of the programmes in the institution or university, provided that the programme must be on offer at the university with which the post secondary school institution proposes to collaborate with.

(4) The Commission, upon confirmation that the parties to the contractual agreement referred to in sub-rule (3) meet the qualifications set out in the Act and that the contractual agreement meets the conditions set out under these Rules, shall approve the application and grant its authority to collaborate in Form FSSI/CHE 6 set out in the Schedule upon such terms and conditions as it may deem fit.

13. (1) The Commission shall by notice in the gazette publish the name of the institution granted authority to collaborate and the particulars of the programme in respect of which the authority is given.

(3) It shall be an offence for any person or post secondary school institution to collaborate with another institution or university for purposes of offering programmes without the authority of the Commission.

14. (1) The Commission may, on application of any of the collaborating parties or of its own motion vary the terms and conditions upon which the authority to collaborate was granted or revoke such authority before the expiry of the term of the collaboration contract if it is of the opinion that such variation or revocation is in the interest of education in Kenya, or may assist the institution concerned to carry out its functions in a more efficient and professional manner.

(2) In the event of variation or revocation of authority to collaborate, the provisions of rule 8 of these Rules shall apply mutatis mutandis.

15. (1) A post secondary school institution, which has been granted a certificate of validation or has been authority to collaborate shall—

(a) ensure that course standards are maintained at all times;
(b) ensure that all instructions issued by the Commission under these Rules are complied with;
(c) ensure that no new degree programme is offered or regulations in respect thereof are effective without the prior approval of the Commission; and
(d) submit to supervision by the Commission including inspection and visitation at such intervals as may be determined by the Commission.

(2) The Commission may inspect a post secondary school institution at such times as it may deem necessary.

16. The Commission may from time to time prescribe fees payable for any application made under these Rules.

17. (1) A person who commits an offence under any provisions of these Rules shall be liable to a fine exceeding six thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) A person who, without the written consent of the Commission, uses the name of the Commission in furtherance of or in connection with any advertisement for a trade, business, calling or profession, commits an offence and shall be liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months or to both.

18. (1) A person who is aggrieved by an act or decision of the Commission taken in accordance with any of the provisions of these Rules, may within thirty days of the date of the decision, apply to the Commission for a review of the decision.
APPENDIX IV – THE COMMISSION FOR HIGHER EDUCATION BILL 1997
THE COMMISSION FOR HIGHER EDUCATION BILL, 1997

ARRANGEMENT OF CLAUSES

Clause

PART I—APPLICATION AND INTERPRETATION

1—Short title and commencement.
2—Application.
3—Interpretation.

PART II—ESTABLISHMENT OF THE COMMISSION, ITS CONSTITUTION, FUNCTIONS AND ORGANS

4—Establishment of the Commission for Higher Education.
5—Constitution of the Commission.
6—Secretary to the Commission.
7—Functions of the Commission.
8—Procedures of the Commission.
9—The secretariat, committees and other organs of the Commission.
10—Establishment of Joint Admissions Board.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

11—Powers of the Minister.
12—Inspection by Order of the Chancellor.
13—Inspection by Commission.
14—Commission to maintain a register.

PART IV—PROVISIONS RELATING TO PRIVATE UNIVERSITIES

15—Establishment of a private university.
16—Matters to be specified in a charter.
17—Granting of charter and maintenance of register.
18—Publication of charter.
19—Protection of name.
20—Variation and revocation of charter.
PART V—PROVISIONS RELATING TO POST-SECONDARY INSTITUTIONS
21.—Application for accreditation.
22.—Effect of accreditation.
23.—Consultation, notification and maintenance of register.
24.—Powers and functions of post-secondary institutions.
25.—Variation and revocation of certificate.

PART VI—FINANCIAL PROVISIONS
26.—Financial year.
27.—Annual estimates.
28.—Raising and investments of funds.
29.—Accounts and audit.

PART VII—MISCELLANEOUS PROVISIONS
30.—General penalties.
31.—Regulations.
32.—Common seal and signification of documents.
33.—Protection of name.
34.—Transfer of property, assets, staff and liabilities.
35.—Repeal and savings.

A Bill for

An Act of Parliament to repeal the Universities Act, to establish the Commission for Higher Education; and the Joint Administration Board, to provide for their functions and powers and matters connected therewith

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Commission for Higher Education Act, 1997 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. This Act shall apply to all universities and post-secondary institutions, in Kenya.

3. In this Act, unless the context otherwise requires—

"accreditation" means an acceptance and confirmation in writing by the Commission that a private university or post-secondary institution has, following its application for establishment, accreditation or up-gradation, as the case may be, met the standards of academic excellence set up by the Commission in accordance with the provisions of this Act;

"Board" means the Joint Admissions Board established under section 10;

"Chairman" means the Chairman of the Commission;

"Charter" means a Charter granted by the President under section 17;

"Commission" means the Commission for Higher Education established under section 4;

"course of study" means the structure of subjects or programmes of study in a course leading to the award of a degree, diploma or any other academic qualification;

"course regulations" means any regulations governing the course of study;

"graduate" means a person upon whom a degree or other award has been conferred by a university or other body or institution empowered to award degrees or such other awards under this Act;

"inspection" means a formal inspection by the Commission of any proposed or registered university or post-secondary institution for the purpose of accreditation of academic programmes or a formal visit by the Commission to any university or post-secondary institution;

"Minister" means the Minister for the time being responsible for education;

"post-secondary training institution" means an educational, training or research institution offering certificate or other awards or training beyond the secondary school cycle but does not include universities;

"private university" means a university established under a Charter under this Act;

"public university" means a university established by an Act of Parliament;

"Secretariat" means the Secretariat of the Commission established under section 9 (1) (a);

"Secretary" means the Secretary of the Commission appointed under section 6 (1);

"university" means any institution or centre of learning by whatever name called or however designed, having, as one of its objects, the provision of post-secondary education which offers or is offering courses of instruction leading to
the grant of certificates, awards or degrees and the expression "university education" shall be construed accordingly;

"visitation" means a formal visit by the Chancellor to any public university and may include a general inquiry by the Chancellor into the conditions and circumstances of a public university.

PART II—ESTABLISHMENT OF THE COMMISSION, ITS CONSTITUTION, FUNCTIONS AND ORGANS

4. (1) There is hereby established a Commission, to be known as the Commission for Higher Education, which shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall be capable in its corporate name of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, charging and/or disposing of movable and immovable property;
(c) entering into contracts;
(d) borrowing and lending money;
(e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

5. (1) The Commission shall consist of—

(a) a Chairman appointed by the President;
(b) a Vice-Chairman appointed by the President;
(c) not more than five and not less than three persons who are not holders of public office appointed by the President by virtue of their experience and expertise in higher education, research, industrial development and employment generation;
(d) the Permanent Secretary to the Ministry for the time being responsible for education;
(e) the Permanent Secretary to the Ministry for the time being responsible for Finance;
(f) the Permanent Secretary in the Office of the President who is for the time being the Head of the Public Service;
(g) the Permanent Secretary to the Ministry for the time being responsible for technical training;
(h) the Director of Personnel Management;
(i) the Permanent Secretary to the Ministry for the time being responsible for planning and national development;
(j) two Vice-Chancellors, appointed by the President, from the Vice-Chancellors of the public universities, to represent the public universities;
(k) one Vice-Chancellor or a person of equivalent rank, appointed by the President, from the Vice-Chancellors of private universities, to represent private universities accredited in Kenya;
(l) one person appointed by the President from among the heads of accredited post-secondary institutions;
(m) such other persons, not more than three, as the Commission may co-opt from time to time;
(2) The members of the Commission, other than the ex officio members, shall hold office for a period of five years and may be eligible for re-appointment.

(3) A member of the Commission, other than an ex officio member, may resign his appointment by writing a letter to that effect addressed to the President.

(4) A co-opted member of the Commission may resign his appointment by writing a letter to that effect addressed to the Secretary.

(5) The office of a member of the Commission shall fall vacant—

(a) if, not being an ex officio member, he submits his resignation in writing under his hand to the President through the Secretary;
(b) if the Commission is satisfied that such a member is by reason of his physical or mental infirmity unable to execute the functions of his office;
(c) if he is adjudged bankrupt by a competent court of law or has committed a criminal offence which directly or otherwise reflects adversely on his status as a member of the Commission;
(d) upon his death.
(6) Where the office of a member becomes vacant under subsection (5), the Secretary shall forthwith notify the vacancy to the President for appropriate action.

6. (1) There shall be a Secretary to the Commission who shall be appointed by the President and shall be the Chief Executive of the Commission and shall be responsible for the management of the day to day affairs of the Commission.

(2) The Secretary shall hold office for a period of six years and, shall be eligible for re-appointment.

(3) The Secretary shall be the head of the Secretariat and shall be responsible in ensuring that the Secretariat satisfactorily carries out and performs functions assigned to it by the Commission under this Act.

(4) The Secretary shall be an ex officio member of the Commission but shall have no right to vote at the meetings of the Commission.

7. (c) The functions of the Commission shall be—

(a) to promote and assist in the attainment of the objectives of higher education;

(b) to advise the Minister on the establishment of new universities and up-grading of programmes in accredited institutions;

(c) to accredit and promote private universities and post-secondary institutions;

(d) to co-ordinate long-term planning, programming, budgeting, financing and student enrolment, scholarships, staff and the physical development of public universities and to set policies, guidelines including analysis of costs and input indicators;

(e) to call for, receive and review planning and programming reports from both public and private universities and to prepare a national development plan for university education;

(f) to advise the Government on the planning of higher education in accordance with manpower projections in the public and private sectors of the economy and in conformity with national skills and employment patterns of graduates, technicians and crafts persons;

(g) to receive and consider applications from persons seeking to establish private universities in Kenya and to process those applications in accordance with the provisions of this Act;

(h) to receive and consider applications from post-secondary institutions and to accredit such institutions in accordance with the provisions of this Act;

(i) to receive and consider applications from accredited post-secondary institutions wishing to have one or more of their programmes up-graded and up-grade such programmes or programmes;

(j) to advise and make recommendations to the Minister on matters relating to university education and research requiring the consideration of the Government;

(k) to provide to the Board, central services necessary for the processing of admission of students by the Board to public universities;

(l) to assess and ensure that academic standards of excellence in all universities and accredited post-secondary institutions are maintained;

(m) to examine and approve proposals of courses of study and course regulations submitted to it by private universities;

(n) to undertake inspection of public and private universities and accredited post-secondary institutions;

(o) to co-ordinate education and training courses offered in post-secondary institutions for the purposes of higher education and university admissions;

(p) to collect, analyze, examine and disseminate information relating to university education and research;

(q) to set standards for recognition and award of degrees, diplomas and certificates conferred or awarded by foreign or private universities and institutions and to accredit such degrees, diplomas and certificates accordingly;

(r) to solicit for funds for the use by public universities and the Commission, both from within and outside Kenya;
(2) The Commission shall have the power to collect such data from universities, post-secondary institutions and public or private sectors as may be necessary for the proper fulfilment of its functions under this Act.

8. (1) The Chairman and in his absence the Vice-Chairman shall preside at all the meetings of the Commission.

(2) In the event of the Chairman and the Vice-Chairman being absent the members present shall elect one amongst themselves to preside over the meeting of the Commission.

(3) The Commission shall meet at least four times in each year, but the Chairman shall, at any time on receiving the requisition in writing from not less than five members, convene a special meeting of the Commission.

(4) The quorum for the transaction of the business at the meeting of the Commission shall be not less than seven members:

Provided that the quorum at any requisitioned meeting under subsection (3) shall be not less than five members of the Commission entitled to attend such a meeting and the meeting shall be free to adopt any procedure theretofit suitable in the circumstances.

(5) All questions at a meeting of the Commission shall be determined by a simple majority of the votes of the members present and voting.

(6) The Chairman shall have, in case of equality of votes, an original and a casting vote.

(7) The Secretary shall cause minutes and proceedings of all the meetings of the Commission to be entered in the minute book kept for that purpose.

(8) Subject to this section the Commission shall regulate its own proceedings.

9. (1) The Commission shall establish a Secretariat with such divisions and units as it shall deem fit to carry out day to day functions of the Commission.

(2) The Commission shall have power to establish, by resolution, any standing or ad hoc committees as it shall deem fit for the purposes of executing its duties or exercising its powers under this Act, and shall prescribe terms and conditions under which such committees shall operate.

(3) Without prejudice to the generalities of subsection (2), the Commission shall, as soon as it is constituted, establish—

(a) the Policy Committee; and
(b) the Planning, Programming, Budgeting and Finance Committee.

(4) The Policy Committee shall consist of—

(a) the Chairman who shall be the chairman of the Committee;
(b) two Vice-Chancellors of public universities who are members of the Commission by virtue of section 5 (1) (f);
(c) two members from the members of the Commission appointed under section 5 (1) (c) to be appointed by the Chairman;
(d) the Permanent Secretary in the Ministry for the time being responsible for education;
(e) the Permanent Secretary in the Ministry for the time being responsible for technical training;
(f) the Permanent Secretary in the Ministry for the time being responsible for finance; and
(g) the Director of Personnel Management.

(5) The Policy Committee shall—
(a) deliberate and advise the Commission on all policy matters relating to, or connected with, the powers and duties of the Commission;
(b) advise the Commission on the training needs of the country based on market surveys and other indicators to enable the Commission to advise the Minister accordingly;
(c) perform such other functions as the Commission may, from time to time, delegate.

(6) The Planning, Programming, Budgeting and Finance Committee shall consist of—
(a) the Chairman who shall be the chairman of the Committee;
(b) two Vice-Chancellors of public universities who are members of the Commission by virtue of section 5 (1) (i);
(c) one member from the members appointed under section 5 (1) (c) to be appointed by the Chairman;
(d) the member of the Commission appointed under section 5 (1) (k);
(e) the member of the Commission appointed under section 5 (1) (l);
(f) the Permanent Secretary in the Ministry for the time being responsible for education;
(g) the Permanent Secretary in the Ministry for the time being responsible for finance;
(h) the Permanent Secretary in the Ministry for the time being responsible for technical training;
(i) the Permanent Secretary in the Ministry for the time being responsible for planning and national development.

(7) The Planning, Programming, Budgeting and Finance Committee shall—
(a) deliberate and advise the Commission on all matters relating to planning, programming, budgeting and financial powers and duties of the Commission under section 7;
(b) receive and approve, on behalf of the Commission all financial estimates for public universities and, through the Commission, advise the Minister appropriately;
(c) recommend to the Commission on allocation of funds to public universities;
(d) solicit for funds outside Government funding through any means it deems fit as directed by the Commission from time to time;
(e) perform such other functions as the Commission may assign.

(8) The Committees of the Commission shall be responsible to the Commission and shall report to the Commission directly.

10. (1) There is hereby established a Joint Admissions Board of public universities and Government institutions which are offering courses leading to the award of a degree.

(2) The Board shall be responsible for ensuring uniformity, equity and harmony in the standards and procedures for admission in the public universities and Government institutions leading to the award of a degree for any academic year.

(3) The Board shall consist of—
(a) Vice-Chancellors of public universities;
(b) Deputy Vice-Chancellors (Academic) or officers of equal ranks and duty;
(c) principals of constituent colleges;
(d) principals of campus colleges;
(e) Deans of Faculties and Directors of relevant schools and or institutions;
(f) Academic Registrars;
(g) two persons representing the heads of public institutions which are offering courses leading to the award of a degree;
(i) the Permanent Secretary (or his nominee) for the time being responsible for education;

(ii) the Secretary;

(iii) any other person or body that the Board may deem necessary to co-opt.

(4) In the performance of its functions, the Board shall—

(a) develop such rules including procedures for its meetings, as shall be consistent with the provisions of subsection (2);

(b) be chaired by one of the Vice-Chancellors on an annual rotational basis, in the alphabetical order in which the universities names appear;

(c) be facilitated, through a grant from the Commission, to offset its annual operating costs;

(d) identify a secretariat of not more than five persons, to serve the Board.

(5) For the purposes of the provisions of subsection (4) of this section, the grant by the Commission shall be paid to the university whose Vice-Chancellor chairs the meetings of the Board for the given year, and such Vice-Chancellor shall be responsible for accounting for the said grant to the Commission.

PART III—PROVISIONS RELATING TO PUBLIC UNIVERSITIES

11. (1) The Minister shall, on the advice of the Commission, promote university education for the benefit of the people of Kenya.

(2) For the purposes of exercising his powers under subsection (1), the Minister, in consultation with the Commission, shall from time to time, formulate a development plan for public universities consistent with the National Plan for Economic and Social Development.

12. (1) Whenever it appears to the Chancellor of the public universities that conditions and circumstances in existence in any public university are such that an inspection ought to be carried out into the activities, governance and management of, or any relevant matters relating to that university, the Chancellor may, by an Order instruct the Commission to carry out an inspection and the Commission shall proceed to do so and report thereon to the Chancellor.

(2) Whenever an inspection is ordered by the Chancellor in accordance with this section, the Commission shall have power to interview any official or servant of such public university or any other person and to call for, examine and review any documents, reports or information held or kept by the public university and any official or servant of such public university shall be under obligation to supply such document, reports or information to the Commission as and when required.

13. (1) The Commission shall, on its own motion, undertake inspection at least once every four years of each public university.

(2) In undertaking inspection under subsection (1) the Commission shall have power to inquire into the academic programmes, management or any other relevant matter of the public university.

(3) Upon completion of inspection as provided under this section, the Commission shall prepare a report thereof which shall, among other things, specify matters requiring rectification or remedy.

(4) The Commission shall submit the report prepared under subsection (3) to the Vice-Chancellor of the public university in question for appropriate action.

(5) The Commission shall, before the commencement of any inspection in accordance with this section, notify the public university of its intention to undertake inspection.

(6) The provisions of section 12 (2) shall apply mutatis mutandis to inspection conducted under this section as it applies to inspection ordered under that section.

14. The Commission shall maintain a register to be known as the Register of public universities in which the Commission shall enter such particulars in respect of each public university together with its constituent colleges, if any, as it shall consider appropriate, and the register shall be open to public inspection.

PART IV—PROVISIONS RELATING TO PRIVATE UNIVERSITIES

15. (1) Every proposed private university in Kenya shall be established by a Charter granted by the President in accordance with the provisions of this Act.
289

The Commission for Higher Education Bill, 1997

(2) Any person wishing to establish a private university in Kenya shall make an application in writing to the Commission for accreditation and grant of the Charter in the manner prescribed in the regulations.

(3) All applications for accreditation and grant of a Charter shall be accompanied by a draft of the Charter containing the matters specified under section 16 and such other matters as may be prescribed by the regulations.

(4) The Commission shall receive and consider every application made under subsection (2) and if satisfied that the application has met all the conditions required under this Act, it shall accredit such proposed private university and shall thereafter submit the application to the Minister together with its recommendations that the university has been accredited and it be granted a Charter.

(5) Upon receipt of the application from the Commission together with its recommendation the Minister shall submit the same to the President together with any observations he may wish to add.

(6) Except by authority given in writing by the Commission, it shall be an offence under this Act for any person to establish, operate or to do anything ordinarily done by a university before a Charter is granted.

16. In addition to any other matter which the Commission may by regulations stipulate, a Charter shall contain the following—

(a) the name, address and location of the proposed private university;

(b) the aims and objects for which the proposed private university is to be established;

(c) the membership and governance of the proposed private university;

(d) the extent to which, and the form in which, regulations may be made by such body of the proposed private university as may be specified for the better governance and functioning of such university;

(e) the control of the finances, expenditure and the administration of the proposed private university.

17. (1) Upon receipt of the application together with the recommendations by the Commission and the observations of the Minister thereon, if any, the President may grant a Charter either in the form of the draft submitted to him or in any other form he may consider appropriate.

(2) Notwithstanding anything contained in this Act to the contrary, no Charter shall be granted to any proposed private university, and no such university shall be established, unless it has first been accredited by the Commission in accordance with the provisions of this Act.

(3) The Commission shall maintain a register to be known as the Register of private universities in which the Commission shall specify such particulars in respect of each private university as it shall consider appropriate, and the register shall be open to public inspection.

18. (1) The Minister shall, by notice in the Gazette, publish the Charter and with effect from the date of publication the proposed private university shall become an established private university by the name cited in the Charter.

(2) When established in accordance with the provisions of this Act, the private university shall become a body corporate with perpetual succession and a common seal.

19. (1) Notwithstanding any other written law, no public officer performing functions relating to the registration of companies, business names or trade marks shall accept for registration a name which is identical to, or similar as to be liable to confuse the public with the name of the established private university to which a Charter has been granted under this Act.

(2) A person who, except with written consent of the governing body of the private university concerned, uses the name of any private university established under a Charter under this Act in furtherance of, or as, or in connection with, an advertisement for any trade, business, calling or profession, shall be guilty of an offence and shall be liable to an imprisonment for a term not exceeding twelve months or to a fine not exceeding fifty thousand shillings or to both.

20. (1) The President may at any time, upon the advice of the Commission and the Minister, vary the provisions of the Charter of an established private university, if he is of the opinion that the variation is in the interest of university education in Kenya generally, or may assist the private university concerned to carry out its functions in a more efficient manner.
PART V—PROVISIONS RELATING TO POST-SECONDARY INSTITUTIONS

21. (1) Every post-secondary institution intending to be accredited may, on its own motion or upon the advice of the Commission, apply for accreditation.

(2) The application shall be in writing, addressed to the Commission and shall state such matters as the Commission may by regulations prescribe.

22. (1) Any accredited post-secondary institution may apply for the up-grading of one or more of its academic programmes to degree level status.

(2) The application shall be in writing addressed to the Commission and shall state such matters as the Commission may by regulations prescribe.

23. (1) The Commission shall, in considering the application for accreditation and for up-grading submitted under sections 21 and 22, consult the Minister, the existing universities and any other person, institution or body whose input it considers necessary for the processing of such application.

(2) The Commission shall, after granting the certificate of accreditation or up-grading by notice in the Gazette, publish the name of the institution which has been accredited or whose programme or programmes have been up-graded.

(3) The Commission shall maintain a register to be known as a Register of Accredited and Non-accredited Post Secondary Institutions, in which it shall enter particulars as it shall consider appropriate and the register shall be open to the public inspection.

24. Every accredited post-secondary institution whose programme or programmes have been up-graded shall have the power to conduct courses of studies and examinations leading to award of degrees by the institution under the authority of the Commission.
25. (1) The Commission may at any time vary the terms and conditions upon which a certificate of accreditation or up-grading was granted, if it is of the opinion that such variation is in the interest of higher education in Kenya generally or may assist the institution concerned to carry out its functions in a more efficient manner.

(2) The Commission may revoke a certificate granted under this Act if it is of the opinion that the institution concerned is not carrying out its functions in a proper manner, or is in breach of the terms and conditions to which the granting of the certificate may have been subject, or that the revocation is in the interest of higher education generally:

Provided that before revoking a certificate under this section the Commission shall direct the post-secondary institution, to amend or correct the matter constituting the breach of the certificate within a period of twelve months and if within that period the institution fails or neglects to rectify the situation, the certificate shall be revoked in accordance with this subsection.

(3) Where any certificate is revoked the Commission shall forthwith cause a notice of such revocation to be published in the Gazette, and the institution or programmes concerned shall cease to be accredited or up-graded at the expiry of one year from the date of publication of such notice:

Provided that the revocation of a certificate shall not affect the validity of the degrees, diplomas, certificates or other academic awards previously granted by the institution:

Provided further that the revocation of a certificate shall not affect any academic programmes or matters connected therewith which had commenced prior to the date of gazettement of the revocation under this section.

(4) The institution aggrieved by the decision of the Commission to vary or revoke a certificate, shall have the right to appeal to the Minister for the review of the decision of the Commission.

26. (1) The financial year of the Commission shall be the period of twelve months commencing on such day in each year as the Minister may determine.

(2) In the event of any change in the financial year, and for the purposes of the transition from the old financial year to the new financial year consequent upon the change, the transitional period, whether more or less than twelve months, shall be deemed for all purposes of this Act to be the financial year.

27. (1) The Commission shall submit to the Minister estimates of its income and expenditure for the succeeding financial year two months before the commencement of that financial year or within such time as the Minister may require.

(2) The annual estimates shall make provisions for—

(a) the recurrent and non-recurrent costs of public universities;

(b) recurrent and non-recurrent costs of the Commission.

(3) The Commission shall receive from public universities their long term plans, programmes and estimates to enable it to fulfil the requirements of this section.

(4) No expenditure shall be incurred by the Commission except in accordance with approved estimates under this section or in pursuance of an approval of the Minister.

(5) Notwithstanding the provisions of subsection (4), the Commission shall have authority to incur expenditure on funds generated from external sources as per the proposals under which those funds were solicited.

28. (1) The Commission shall, pursuant to the provisions of section 7 (1) (e) raise funds from internal and external sources, donations, endowments, bequests and trusts on behalf of universities and for its needs to meet recurrent and non-recurrent expenditure and shall spend such monies in accordance with proposals, terms and conditions on the basis of which the funds were solicited or granted.

(2) The Commission may invest any of its funds in any securities or projects in which for the time being trustees...
may, by law, invest trust funds:

Provided that the Commission shall not invest its funds as provided in this subsection without obtaining the prior consent of the Minister.

(3) The Commission may place on deposit with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Commission.

29. (1) The Commission shall cause to be kept at proper books and records of accounts of income and expenditure, assets and liabilities of the Commission.

(2) Within a period of three months from the end of each financial year, the Commission shall submit to the Auditor-General (Corporations) or an auditor appointed under subsection (3), the accounts of the Commission together with—

(a) a statement of income and expenditure during the year; and

(b) a statement of the assets and liabilities of the Commission as at the last day of the year.

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

(4) The employment of an auditor appointed under subsection (3) shall not be terminated by the Commission without the consent of the Auditor-General (Corporations).

(5) The Auditor-General (Corporations) may give general or special directions to an auditor appointed under subsection (3) and the auditor shall comply with the directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor-General (Corporations) on any matter relating to the directions given under subsection (5).

(7) Within a period of three months from the date of the accounts of the Commission were submitted to him under subsection (2), the Auditor-General (Corporations) shall examine the contents of the accounts and shall report to the Minister the results thereof, and where the auditor has been appointed under subsection (3) he shall submit his report to the Auditor-General (Corporations).

(8) Nothing in this Act shall be construed as prohibiting the Auditor-General (Corporations) from carrying out the inspection of the accounts or records of the Commission if he so desires.

(9) Notwithstanding anything contained in this Act, the Auditor-General (Corporations) may submit to the Minister a special report on any matters incidental to his powers under this Act, and section 19 (3) and (4) of the Exchequer and Audit Act shall, mutatis mutandis, apply to any report made under this section.

(10) In the exercise of his powers and duties under this Act, the Auditor-General (Corporations) and any auditor appointed under this section shall have the same powers as those conferred on the Controller and Auditor-General by section 105 (3) and (5) of the Constitution and section 8 of the Exchequer and Audit Act.

(11) The Auditor-General (Corporations) may give directions to an auditor appointed under subsection (3) and the auditor shall comply with the directions.

(12) The fees for any auditor shall be fixed and paid by the Commission.

PART VII—MISCELLANEOUS PROVISIONS

30. Any person who commits an offence under any of the provisions of this Act for which no penalty is provided, shall be liable to pay a fine of one hundred thousand shillings and if the offence continues fifty thousand shillings for every day the offence continues.

31. (1) In the performance of the functions under this Act, the Commission shall make regulations generally for the governance, control and administration of the Commission and for better carrying into effect the purposes of this Act, and in particular for—

(a) up-graded programmes of accredited post-secondary institutions;

(b) planning, programming, budgeting and financing of public universities;
(c) the receipt, processing and approval of applications for accreditation of post-secondary institutions; up-grading of programmes thereof;

(d) accrediting and grant of charters to private universities;

(e) procedures to co-ordinate education and training courses in post-secondary institutions for the purposes of higher education and university admission;

(f) terms and conditions of service, including the appointment and benefits of members of staff of the Commission;

(g) the governance or management of any situation or matter which may be, provided or prescribed for under this Act.

32. (2) The common seal of the Commission shall be kept in such custody as the Commission may direct and shall be used as directed by the Commission from time to time.

(2) All documents, other than those required by law to be under seal, made on behalf of the Commission and a decisions of the Commission, may be signed under the hand of the Chairman, the Secretary or a Deputy Secretary or any other member of the Commission duly authorized by the Commission in that behalf.

(3) The seal shall be authenticated by the signatures of the Chairman and the Secretary and in the absence of any of them any other member or an officer of the Commission duly authorized by the Commission in that behalf.

(4) The seal, when affixed to any document and de authenticated under this section, shall be judicially not and unless and until the contrary is proved, any autho tion of the Commission signed by the affixation of the shall be presumed to have been duly given.

33. (1) Notwithstanding the provisions of any other law, no public officer performing functions relating to the registration of companies or business names shall accept for such registration any name which is similar to or the same as the name of the Commission.

(2) Any person who, except with the written consent of the Commission, uses the name of the Commission, for the furtherance of, or as, or in connection with any advertisement for any trade, business, calling or profession shall be guilty of an offence and shall be liable to an imprisonment for a term not exceeding twelve months or to a fine not exceeding fifty thousand shillings or to both.

34. (1) All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or possessed by the Commission for Higher Education under the Universities Act (hereinafter in this section referred to as the former Act) shall, by virtue of this section, vest in the Commission without further conveyance, transfer or assignment.

(2) All rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the Commission for Higher Education under the former Act are deemed to be the rights, obligations and liabilities of the Commission.

(3) All references to the Commission for Higher Education in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsections (1) and (2) and existing immediately before the commencement of this Act, shall, unless the context otherwise requires, be read as references to the Commission.

(4) Except as the Commission otherwise directs, all persons who were members of the staff of the Commission for Higher Education under the former Act shall be members of the staff of the Commission and shall be deemed to have been appointed under this Act on the terms and conditions of service applicable to them immediately before the commencement of this Act.

35. (1) The Universities Act (in this section referred to as the former Act), is hereby repealed.

(2) Notwithstanding the repeal of the former Act all acts, directions, orders, appointments, requirements, authorizations, other things given, taken or done under, and all funds assets and other property acquired by virtue of that Act, shall, so far as not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

(3) All regulations made under the former Act and in force immediately prior to the commencement of this Act shall continue to be in force but may be amended or revoked by regulations made under this Act.
MEMORANDUM OF OBJECTS AND REASONS

The Universities Act (Cap. 210B) had established the Commission for Higher Education whose mandate included, inter alia—

(a) to co-ordinate higher education;
(b) to undertake long-term planning, programming, budgeting and financing of university education;
(c) to accredit public universities; and
(d) make regulations for admissions of students into universities and to ensure standards of excellence in all universities.

However, upon the establishment of the Commission it was realized that it was not possible to implement its functions because similar powers and functions had also been given to the existing public universities constituted under the relevant Acts. Consequently, laws relating to university education were reviewed with a view to harmonizing the areas of conflicts, weaknesses and omissions in the Universities Act (Cap. 210B) and other laws relating to the public universities. It is, therefore, proposed to enact a new legislation harmonizing the powers and functions of the Commission for Higher Education and the public universities.

The present Bill, therefore, provides for the establishment of the Commission for Higher Education, its constitution, functions and organs. Clause 7 of the Bill inter alia provides for the following functions of the Commission—

(a) to promote and assist in the attainment of the objectives of higher education;
(b) to advise the Minister on the establishment of new universities and upgrading of programmes in accredited institutions;
(c) to accredit and promote private universities and post-secondary institutions;
(d) to advise the Government on the planning of higher education in accordance with manpower projections in the public and private sectors of the economy;
(e) to advise and make recommendations to the Minister on matters relating to university education and research requiring the consideration of the Government;
(f) to undertake inspection of public and private universities and accredited post-secondary institutions;
(g) to set the standards for recognition and equivalence of degrees, diplomas and certificates conferred or awarded by foreign or private universities; and
(h) to solicit for funds for use by public universities, both from within and outside Kenya.

The Bill also provides for the establishment of the Joint Admissions Board of public universities which will be responsible for ensuring uniformity, equity and harmony in the standards and procedures for admissions in the public universities and Government institutions for any academic year (vide clause 10).


S. A. WAKO,
Attorney-General.