

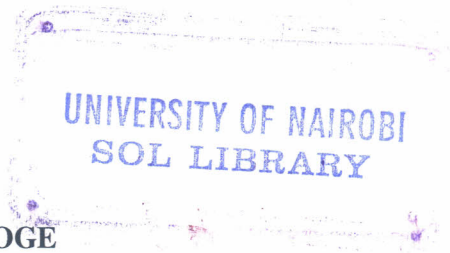
**UNIVERSITY OF NAIROBI  
SCHOOL OF LAW**

**MASTER OF LAWS (LLM) THESIS**

**WORK-LIFE BALANCE IN KENYA: AN  
ANALYSIS OF THE LEGISLATIVE FRAMEWORK  
AND THE PERCEPTIONS OF YOUNG  
ADVOCATES IN NAIROBI**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
AWARD OF THE MASTER OF LAWS DEGREE OF THE UNIVERSITY OF NAIROBI**

**BY**



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**NOVEMBER 2014**



## DECLARATION

I, **MELISSA WANJIKU NJOROGE**, of registration number G62/80274/2012, do hereby declare this thesis is my original work, and that it has not been submitted elsewhere, nor is it due for submission for a degree in any other University.

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## **DEDICATION**

I dedicate this work to my great pillars of strength my dear husband Damian Muindi and beautiful daughter Amelia Kavete, and to my parents Wachuka Njoroge, Steve Gachie, Monica Maingi and Peter Maingi, as well as my siblings Alvin, Isaac, Alex, Romana, Nicholas, Caroline and Emmanuel, for their unceasing love and support.

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1. Children Act 2001
2. Constitution of Kenya 2010
3. Employment Act 2007
4. Labour Institutions Act 2007
5. Public Service Code of Regulations 2006
6. Regulation of Wages (General) Order 1982
7. Regulation of Wages (Laundry, Cleaning and Dyeing Trades) Order 1971
8. Regulation of Wages (Hotel and Catering Trades) Order 1981
9. Regulation of Wages (Protective Security Services) Order 1998
10. Regulation of Wages (Road Transport) Order 1972

### **United Kingdom Legislation**

1. The Social Security Contributions and Benefits Act 1992
2. The Maternity (Compulsory Leave) Regulations 1994
3. The Employment Rights Act 1996
4. The Maternity and Parental Leave etc. Regulations 1999
5. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
6. The Maternity and Parental Leave (Amendment) Regulations 2001
7. The Maternity and Parental Leave (Amendment) Regulations 2002
8. The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002
9. The Flexible Working (Procedural Requirements) Regulations 2002
10. The Working Time Regulations 2003
11. Income Tax (Earnings and Pensions) Act 2003
12. The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006
13. The Work and Families Act 2006
14. The Childcare Act 2006
15. The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008
16. The Parental Leave (EU Directive) Regulations 2013
17. The Children and Families Act 2014

### **International Instruments**

1. Charter of Fundamental Rights of the European Union
2. International Covenant on Economic, Social and Cultural Rights
3. Revised European Social Charter
4. Universal Declaration of Human Rights

## **ILO Conventions**

1. ILO Convention No. 1: Hours of Work (Industry) Convention, 1919
2. ILO Convention No. 3: Maternity Protection Convention, 1919
3. ILO Convention No. 14: Weekly Rest (Industry) Convention, 1921
4. ILO Convention No. 30: Hours of Work (Commerce and Offices) Convention, 1930
5. ILO Convention No. 47: Forty-Hour Week Convention, 1935
6. ILO Convention No. 103: Maternity Protection Convention (Revised), 1952
7. ILO Convention No. 106: Weekly Rest (Commerce and Offices) Convention, 1957
8. ILO Convention No. 140: Paid Education Leave Convention, 1974
9. ILO Convention No. 156: Workers with Family Responsibilities Convention, 1981
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*Kenya National Private Security Workers' Union v. Kenya Kazi Security Services Limited* [2013]  
eKLR

*Seth Namunyanyi Mahiga v. Healthy U 2000 Limited* [2013] eKLR

## LIST OF ABBREVIATIONS

ABA	American Bar Association
ANOVA	Analysis of Variation
CLE	Continuing Legal Education
FWAs	Flexible Work Arrangements
ILO	International Labour Organization
NICs	National Insurance Contributions
RWO	Regulation of Wages Order
SD	Standard Deviation
SPSS	Statistical Package for Social Sciences
UHDR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
WLB	Work-Life Balance
WLC	Work-Life Conflict



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## DEFINITION OF TERMS

- Family:** The individuals that one is related to as a function of biological ties, marriage, or adoption.
- Organizational Culture:** The basic patterns of shared assumptions, values and beliefs that permeate an institution or group, such as a company. It constitutes the organizational customs and traditions which influence the organizational ethos, and includes the standard number of working hours, the workplace environment, hierarchy and the management procedures.
- Role:** The specific function played by a person in a social context, which involves certain responsibilities and obligations. A person may have various roles in life, for example those related to work (e.g. employee, manager etc), to family (e.g. parent, spouse, sibling etc) or to personal pursuits (e.g. hobbies, personal development, religion).
- Work:** Instrumental activities that provide goods and services to support life.
- Work-Life Balance:** Satisfaction and good functioning at work and personal life with minimum role conflict. Achieving a suitable balance helps a person maintain an overall sense of harmony in life.
- Work-Life Balance Initiatives:** Working time policies that an organization can implement to enable employees strike a balance between employment and personal commitments that is equitable and beneficial to both the organization and the employee.
- Work-Life Conflict:** (also known as work-life imbalance) A form of inter-role conflict in which work and personal life demands are mutually incompatible so that meeting the demands of one role makes it difficult to meet demands in the other roles. An example is when

time spent in one role (e.g. work) reduces the time available for other roles (e.g. family) or when pressures from one role create a preoccupation with that role when one is trying to meet the demands of other roles.

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background to the study

The work-life balance (WLB) debate arose at the beginning of the 21<sup>st</sup> century in Europe and the United States of America with the argument that young working mothers were having a problem balancing between what they wanted to do, that is, caring for their families, and their careers at the workplace.<sup>1</sup> At the beginning of the debate, women were viewed as the most affected due to these duo roles.<sup>2</sup> Consequently activists began to push for a reduction of national working hours in the affected countries, arguing that individuals spent too much time at work. The argument was that such pressures encumbered other aspects of the individual's lives. The other aspects were collectively categorized as life.

There were also counter-arguments that women did not necessarily prefer caring obligations over work demands. Cowling<sup>3</sup> argues that women who have more than two children prefer to have longer working hours as a way to escape family-related stresses. Other authors<sup>4</sup> argued that work can provide a greater sense of purpose hence long working hours do not necessarily lead to a sense of work-life conflict (WLC).

David Guest<sup>5</sup> has identified various factors that he attributes to the increase in work-related pressures including information technology advances, increased access to information, the ever-growing demand for prompt responses and the requirements for constant and improved customer service. The general assumption is that proper service to clients involves total accessibility.<sup>6</sup> The result of this is that work demands have increasingly taken a prominent position, causing a negative impact on family life, community life and personal interests. This lack of quality time

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<sup>1</sup> These arguments are expounded in Juliet Schor, *The Overworked American: The Unexpected Decline of Leisure* (Basic Books 1991); Pietro Basso, *Modern Times, Ancient Hours: Working Lives in the Twenty-First Century* (Verso 2003); Madeleine Bunting, *Willing Slaves: How the Overwork Culture is Ruling Our Lives* (Harper Collins 2004); Jeanne Fagnani and Marie-Thérèse Letablier, 'Work and Family Life Balance: the impact of the 35-hour laws in France' (2004) 18 *Work, Employment and Society* 551.

<sup>2</sup> Doris Ruth Eikhof, Chris Warhurst and Axel Haunschild, 'Introduction: What work? What life? What balance? Critical reflections on the work-life balance debate' (2007) 49 *Employee Relations* 325, 327.

<sup>3</sup> Marc Cowling, 'Still At Work? An Empirical Test of Competing Theories of Long Hours Culture' (2007) *Institute for Employment Studies* <<http://mpira.ub.uni-muenchen.de/1614/>> accessed 5 November 2014.

<sup>4</sup> Helen Trinca and Catherine Fox, *Better than Sex: How a Whole Generation Got Hooked on Work* (Random House Australia 2004) 18.

<sup>5</sup> David E Guest, 'Perspectives on the Study of Work-Life Balance' (2002) 41 *Social Science Information* 255, 257.

<sup>6</sup> Deborah L Rhode, 'Balanced Lives for Lawyers' (2000) 70 *Fordham Law Review* 2207, 2211.



for personal life has been linked with an increase in juvenile crime and drug abuse, as well as a decline in concern for the community.<sup>7</sup>

The various roles that may compete for a person's time include work, family and personal interests. WLB is about striking a balance between the roles at work and those within personal life. Although life at work and outside work is often linked, there sometimes can be a mismatch, leading to a sense of WLC. The concept of WLB arises from the need to respond to the varying dynamics in the workplace, which include *inter alia* the increase in the number of women in the labour force, information technology advances and customer-service demands. Employment legislation and regulatory standards impact the way in which organizations conduct business, and can, therefore, be an effective mechanism to enhance WLB and consequently reduce WLC.

According to Patel and Cunningham<sup>8</sup>, WLC manifests when work and life (family and personal life) demands are incompatible. This conflict occurs when time devoted to one role hinders the fulfillment of another role. WLC is positively related to the number of hours worked per week. It has also been associated with the amount and frequency of overtime, and the inflexibility of the work schedule.<sup>9</sup>

Konrad and Mangel<sup>10</sup> assert that organizations with flexible policies can attract the best recruits in the market. Further, Comfort *et al*<sup>11</sup> argue that WLB initiatives create more job satisfaction, which leads to a reduction in absenteeism. The organizational culture may promote WLB by adopting initiatives such as flexible working arrangements (FWAs) and the occasional time off work. Conversely, the organizational culture may create WLC by demanding long hours and being insensitive to employees' needs for time to take care of family emergencies. The annual UK Chartered Institute of Personnel and Development surveys conducted in 1998 and 2000 reported a strong correlation between working for longer hours and the perception of WLC.<sup>12</sup> The 2000 study depicted that 13 percent of the 1000 people surveyed were unable to deal with

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<sup>7</sup> Guest (n 5).

<sup>8</sup> Shivani P Patel and Christopher J L Cunningham, 'Religion, Resources and Work-Family Balance' (2012) 15 *Mental Health, Religion and Culture* 389, 390.

<sup>9</sup> Jeffrey H Greenhaus and Nicholas J Beutell, 'Sources of Conflict between Work and Family Roles' (1985) 10 *Academy of Management Review* 76, 78.

<sup>10</sup> Alison M Konrad and Robert Mangel, 'The Impact of Work-Life Programs on Firm Productivity' (2000) 21 *Strategic Management Journal* 1225.

<sup>11</sup> Derrick Comfort, Karen Johnson and David Wallace, 'Part-time Work and Family Friendly Practices in Canadian Workplaces' (2003) *The Evolving Workplace Series*.

<sup>12</sup> Guest (n 5) 268.

important personal life commitments 'a great deal of the time' because of work demands. A further 27 percent admitted that such a situation arises 'some of the time'.

According to Jean Wallace<sup>13</sup>, the legal profession is one that encourages advocates to work practically from dawn to midnight, for days on end. It is considered usual for advocates to work on into the evenings and on weekends, leading to an increase in overall working hours. Law firms tend to place high time demands on advocates. Moreover, Sturges *et al*<sup>14</sup> found that even though young employees are not eager to take on long working hours, with time they end up doing so. Rhode<sup>15</sup> linked these extensive working hours in law firms to high rates of stress, reproductive disorders and mental problems, which in turn leads to performance problems. Long working hours also leads to work interfering with personal life.

Further, Alterman *et al*<sup>16</sup> found that WLC is more prevalent among employees aged between 30 and 44 years, compared with other age groups. Therefore, this study considered the age group just below this so that remedial action can be taken. This study focused on both work interference with the family domain and the personal interests domain. In this way, the researcher was able to examine single, childless advocates, as well as those who were married with children.

## **1.2 Statement of the Problem**

There are an increasing number of employees, especially those in the legal profession, who although they have achieved great professional success, have at the same time experienced family and personal failure. These employees seem to have valued professional triumphs at the expense of family and personal life. The problem this research proposed to address was whether the legislative framework for WLB in Kenya contributes to the increase of WLC among employees in Kenya, especially among practicing advocates.

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<sup>13</sup> Jean E Wallace, 'Work-to-Nonwork Conflict among Married Male and Female Lawyers' (1999) 20 *Journal of Organizational Behavior* 797, 802.

<sup>14</sup> Jane Sturges, David Guest, and Kate Mackenzie Davey, 'Who's in Charge? Graduates' Attitudes to and Experiences of Career Management and their Relationship with Organizational Commitment' (2000) 9 *European Journal of Work and Organizational Psychology* 351.

<sup>15</sup> Rhode (n 6) 2208.

<sup>16</sup> Toni Alterman, Sara E Luckhaupt, James M Dahlhamer, Brian W Ward and Geoffrey M Calvert, 'Job Insecurity, Work-Family Imbalance, and Hostile Work Environment: Prevalence Data from the 2010 National Health Interview Survey' (2013) 56 *American Journal of Industrial Medicine* 660.

The overall goal of this study was to address these gaps by first examining the legislative framework governing WLB in Kenya. The aim was to establish the status of the law and determine whether it enables WLB. As part of the study, interviews were conducted amongst a sample of young advocates practicing in Nairobi to establish their work and life culture. The study also sought to examine whether there was awareness, acceptance and a facilitative legislative framework in Kenya for WLB. In addition, the study examined options for reforms in an effort to come up with a legislative framework that effectively enhances an appropriate WLB culture in Kenya.

### 1.3 Theoretical Framework

This study was grounded on the stakeholder theory as opposed to the shareholder theory of corporate governance, as well as the principles of human rights.

The corporate governance debate began in the United States in 1932 as the result of the work of Berle on the one hand and Dodd on the other, as they attempted to define the objectives of the corporation. According to Berle<sup>17</sup>, the corporation should serve solely the interest of the shareholders (shareholder theory). Dodd<sup>18</sup>, on the other hand, argued that the corporation should serve the wider constituency of stakeholders (stakeholder theory).

Christopher Bruner<sup>19</sup> builds on Berle's thesis of shareholder primacy. Bruner asserts that the interests of shareholders are unquestionably the sole legitimate aim of the company. The company should be run so as to maximize shareholders' wealth. In addition to the authors who argue for this position, there are also decisions from the United States and the United Kingdom. The strongest American case that defends this position is *Dodge v Ford Motor Company*.<sup>20</sup> The main English decision that points in the same direction is *Parke v Daily News Ltd*.<sup>21</sup>

It is debatable whether or not this should be the ultimate goal of corporations. This is especially in light of the wave of corporate scandals that rocked American business between late 2001 and throughout 2002. These scandals involved leading firms like Enron, Arthur Andersen,

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<sup>17</sup> Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Macmillan 1932).

<sup>18</sup> Merrick E Dodd, 'For Whom are Corporate Managers Trustees?' (1932) 45 *Harvard Law Review* 1145.

<sup>19</sup> Christopher Bruner, *Corporate Governance in the Common-Law World: The Political Foundations of Shareholder Power* (Cambridge University Press 2013) 61-62.

<sup>20</sup>[1919] 204 Mich. 459, 170 N.W. 668.

<sup>21</sup>[1962] Ch 927 160.

WorldCom, General Electric and Merrill Lynch. The danger of this theory is that short-term wealth maximization may be perceived as being equal to shareholder primacy.<sup>22</sup> Such arguments are what eventually gave rise to an alternate theory of corporate governance: the stakeholder theory.

Proponents of the stakeholder theory argue that shareholders are merely one of the stakeholder groups. Therefore, the scope of the duties of management should extend beyond shareholders.<sup>23</sup> According to this theory, other groups of people also have a stake in the company. Therefore, in the same way that the company owes special and particular duties to the shareholders, it also has duties to the other various groups of stakeholders.<sup>24</sup> As such, the interests of the employees should also be taken into account. One of these interests is the achievement of WLB.

The adoption of WLB initiatives also benefits the company because an increase of employee job satisfaction may enable the employees to give maximum output at work. Philippa Yasbek<sup>25</sup> examined the New Zealand study by Pohlen Kean (now rebranded Pohlen Partners) and found that there is a causal link between WLB initiatives in a company and the turnover rates of the organization. Yasbek also argues that WLB initiatives reduce employee turnover rates, which in turn reduces the costs of recruitment of new employees. Further, loss of employees has indirect costs such as loss of institutional knowledge. WLB initiatives are, therefore, beneficial to both the company and the employees.

A rights based approach to law making is premised on the desire to protect and promote fundamental rights of the individual. Human rights may be defined as rights possessed by people simply as, and because they are, human beings.<sup>26</sup> The term human rights, however, only come into common use in the 20<sup>th</sup> century. In the preamble of the Charter of the United Nations (UN), one of the purposes of the United Nations is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.' Subsequently, the first global recognition that all human beings are inherently

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<sup>22</sup> David Millon, 'Why is Corporate Management Obsessed with Quarterly Earnings and What Should Be Done About It?' (2002) 70 *George Washington Law Review* 890, 900-902.

<sup>23</sup> Joseph Heath and Wayne Norman, 'Stakeholder Theory, Corporate Governance and Public Management: What can the history of state-run enterprises teach us in the post-Enron era?' (2004) 53 *Journal of Business Ethics* 247.

<sup>24</sup> Kevin Gibson, 'The Moral Basis of Stakeholder Theory' (2000) 26 *Journal of Business Ethics* 245, 247.

<sup>25</sup> Philippa Yasbek, 'The Business Case for Firm-Level Work-Life Balance Policies: A Review of the Literature' (Labour Market Policy Group, Department of Labour 2004) 6.

<sup>26</sup> Brian Orend, *Human Rights: Concept and Context* (Broadview Press 2002) 41.

entitled to certain rights happened in 1948 when the UN passed the Universal Declaration of Human Rights.

Nevertheless, the idea of human rights has been in existence for a much longer time. In ancient Greece the concept of human rights was viewed as synonymous with natural rights; rights that spring from natural law. The notion of human rights is an evolution of the tenets of the natural law theory. Natural lawyers assert that there are constant objective moral principles which depend upon the nature of the universe and which are discoverable by reason.<sup>27</sup>

Human rights are grounded both in national law, such as in the Constitution of Kenya, and in international law, both in the form of treaties and as customary international law. International treaties and customary law lay down obligations for governments to act in certain ways or to refrain from certain acts, in order to promote and protect the rights and fundamental freedoms of individuals or groups.<sup>28</sup> Article 1 of the UDHR expressly provides that human rights are inherent in every human being from birth, necessary to living with dignity and to the exercise of reason and conscience. These rights invoke ideals such as justice and equality and hence are different from appeals to charity.

As expressly provided for by the constitution of the International Labour Organization (ILO), labour is not a commodity. Further, all human beings have the right to pursue material and spiritual development in conditions of dignity and equal opportunity. Consequently, this study fits well within the human rights theory as it seeks measures that will promote the wellbeing of employees through the adoption of WLB initiatives.

## **1.4 Objectives**

### **1.4.1 General objective**

The overall objective was to review the legislative framework governing WLB in Kenya and the perceptions of young advocates in Nairobi.

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<sup>27</sup> Michael Freeman, *Lloyd's Introduction to Jurisprudence* (7<sup>th</sup> edn, Sweet & Maxwell 2001) 90.

<sup>28</sup> Commission for the Implementation of the Constitution, *Implementing the Bill of Rights in the Public Service: An Implementation Guide* (CIC 2013) 3.

### **1.4.2 Specific objectives**

The following were the specific objectives:

1. To review the current legislative framework governing WLB in Kenya.
2. To evaluate the quality of work-life practices among young advocates working in law firms in Nairobi.
3. To make recommendations and propose solutions for legislative reforms necessary to enhance WLB initiatives in Kenya.

### **1.5 Research Questions**

The following were the research questions:

1. What is the current legislative framework governing WLB in Kenya?
2. What quality of work-life practices do young advocates working in law firms in Nairobi have?
3. What are the necessary reforms that will enable the legislative framework enhance WLB initiatives in Kenya?

### **1.6 Hypotheses**

The following hypotheses were tested:

- Ho<sub>1</sub> The current legislative framework for WLB initiatives in Kenya does not satisfactorily enhance WLB initiatives among employees in Kenya and is, therefore, in need of reform.
- Ho<sub>2</sub> Young advocates working in law firms in Nairobi have an inadequate work-life balance.

### **1.7 Justification**

There are not many studies that have been undertaken on the impact of the legislative framework governing WLB in the country. Also, little research has been undertaken on the interplay between the state of the law and the achievement of an appropriate WLB culture in Kenya. Much of the research relating to WLB has focused on job satisfaction and commitment, performance, health factors and the influence of gender. This study thus seeks to break new ground by studying the role law has played in limiting the efficiency and impact of WLB initiatives in Kenya.

There is also minimum linkage on the interplay between work in the legal profession, family and personal life in Kenya. It is, therefore, difficult to determine if young advocates have enough time for personal life. These problems create a major knowledge gap and constrain proper understanding of WLB in the legal profession in Kenya.

The study is, thus, justified in that it makes a key academic contribution by availing credible research and literature on the state of the legislative framework governing WLB in Kenya. The study is also useful to the policy maker in that it makes proposals for legislative reforms necessary to enhance an appropriate WLB culture in Kenya.

### **1.8 Literature Review**

This chapter presents a review of literature related to this study. Most of the literature available on WLB in Kenya focuses on job satisfaction and commitment, performance, health factors and the influence of gender. This chapter gives an evaluation of some of these studies, as well as other studies on WLB that are general in nature.

According to Patel and Cunningham<sup>29</sup>, an individual's combination of life roles could lead to either negative effects or positive outcomes. This depends on the dominance each role has in the individual's life. A decrease in the time or attention given to personal life would reduce personal life role performance, leading to an increase in work time or attention, which in turn would cause an increase in work role performance. The interplay between the various roles in a person's life and the dominance taken by each role can lead to either WLB or WLC.

Guest<sup>30</sup> identifies five models that explain the relationship between work and personal life: the segmentation model, the spillover model, the compensation model, the instrumental model and the conflict model. The segmentation model views work and personal life as two separate domains which do not influence each other, whereas the spillover model presupposes that one domain can influence the other either positively or negatively. On the other hand, the compensation model hypothesizes that the demands or pleasures that are lacking in one domain can be fulfilled through the other domain. Relatedly, the instrumental model holds that activities carried out in one domain can facilitate the success of the other domain. Finally, according to the

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<sup>29</sup> Patel and Cunningham (n 8) 389.

<sup>30</sup> Guest (n 5) 258.

conflict model, there are high levels of demand from the various spheres of life. Consequently, an individual often has tough choices to make, and this can result in conflict. The concept of WLB is based on the premise that paid work and personal life should be seen as complementary roles, rather than competing roles, so as to enable a person achieve a full life.

Clive *et al's*<sup>31</sup> study of the impact of WLB practices on employee performance at Safaricom Kenya found a strong relationship between the WLB practices and employee performance. The study recommends having WLB programmes as a strategy to motivate employees. The WLB practices that were found to be effective at Safaricom included job sharing arrangements, flexible leave arrangements, consulting employees in preparing duty rosters and ensuring employees do not work for excessively long hours. Employees were also motivated due to the childcare facilities available for working mothers, comprehensive medical cover and the existence of games and sporting facilities. Accordingly, the study recommends that all companies adopt proper WLB practices as a prerequisite to improving efficiency.

Ng'ang'a<sup>32</sup> carried out a study on international non-governmental organizations in the health sector in Kenya which recommends the adoption of quality WLB practices. The proposed WLB initiatives include compressed work schedules, alternative work schedules, FWAs, job sharing, childcare facilities, wellness programmes and telecommuting. The study noted an increase in employee motivation and productivity in the organizations that adopted these WLB initiatives.

Busby and James<sup>33</sup> provide justification for laws that promote the reconciliation of paid work and personal life. They discuss the law's role in addressing the challenges posed by the need to relieve the tension that employees experience between work roles, family roles and care-giving roles. They argue that the law can bring about work-family reconciliation and indeed strongly articulate the need for the law to do so. The current study agrees with Busby and James on the role that the law plays in enhancing WLB. This study therefore examines the role that the laws in Kenya have in enabling work-life reconciliation through WLB initiatives.

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<sup>31</sup> Nyandeghe O Clive, Masakhalia O Christopher and Josephat Kwasira, 'An Assessment of the Impact of Work Life Balances Practice and Welfare Programme on Performance of Employees at Safaricom Kenya' (First SHRD Annual Research Conference, JKUAT Main Campus, 12th and 13th September 2013).

<sup>32</sup> Elizabeth W Ng'ang'a, 'Quality of Work Life Practices among International Non-Governmental Organizations in the Health Sector in Kenya' (MBA thesis, University of Nairobi 2010).

<sup>33</sup> Nicole Busby and Grace James (eds) *Families, Care-Giving and Paid Work: Challenging Labour Law in the 21st Century* (Edward Elgar Publishing 2011).



Smith and Baker<sup>34</sup> discuss the legislative regimes that create rights to ensure that the process of earning a living does not prevent employees from undertaking other roles in life. They categorize these rights as ‘floor’ rights, regulating the minimum wages and working hours, and ‘family friendly’ rights that encompass FWAs and parental rights such as maternity and paternity leave. They argue that since each of these rights arose as a response to an interconnected set of social and economic challenge, it is imperative first to understand the nature of those challenges and the logic of each response. Legislative provisions on employment should represent a minimum entitlement for employees, but more generous contractual arrangements can enhance the regulations. They also discuss the long-hours culture, exhibited in professions such as legal practice and corporate management, which dictates that the value of an employee is directly related to the number of continuous hours the employee commits to the organization. They view this culture as one of the greatest obstacles to WLB.

The discussion by Smith and Baker is important for the current study as it lays the general legislative framework for WLB initiatives. In other words, they underscore the primary features of the rights under the WLB framework. Most importantly, they discuss extensively the legislative framework and rationale for each of these rights. This study will borrow from the discussion of the general aspects of WLB initiatives and the legislative framework for these rights in analyzing the Kenyan experience in this sector.

Kamau *et al*'s<sup>35</sup> study of WLB practices and the effect on employee job performance at Eco Bank Kenya concluded that FWAs improve employee job performance. Further, the presence of employee assistance programmes at ECO Bank improved employee performance, as well as employee attendance rates. Leave policies were also found to impact performance by reducing work-related stress. Based on the findings, the study proposed the amendment of existing labour laws to include mandatory employee welfare programs facilitated by employers.

Rhode<sup>36</sup> raises the question whether women can successfully fulfill the competing duties of wives, mothers and lawyers. Rhode refers to a career satisfaction survey that was carried out by

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<sup>34</sup> Ian Smith and Aaron Baker, *Smith & Wood's Employment Law* (Oxford University Press 2013).

<sup>35</sup> Joyce M Kamau, Viona Muleke, Samuel O Mukaya and Juma Wagoki, ‘Work-Life Balance Practices on Employee Job Performance at Eco Bank Kenya’ (2013) 5 *European Journal of Business and Management* 179.

<sup>36</sup> Rhode (n 5) 2210.

the American Bar Association (ABA) in 2000. Most of the lawyers surveyed stated that they did not have enough family time or time for personal interests. The challenges faced by legal practitioners that the article highlights include extended working hours, inadequacy of parental leave and childcare assistance. However, even though the inadequacy of WLB policies in legal practice affects all lawyers, women pay a disproportionate cost. Nevertheless, men are not shielded from WLB problems. Male lawyers rarely get flexible schedules or extended leave for family reasons.

Rhode proposes several recommendations to enhance WLB in the legal profession. In support of the ABA report, it is necessary to embrace FWAs, reduced or compressed schedules, childcare assistance and telecommuting. However, pay and bonuses should be proportionate to hours worked. Further, FWAs should not be used to bar consideration for partnership status and other promotions. Overall Rhode insists that there be a great need to find solutions that make balanced lives a priority in the legal profession.

The present study agrees with Rhode on the need to enhance WLB in the legal profession. Accordingly, this study interrogated young advocates working in law firms in Nairobi to shed light on the work-life culture in the Kenyan legal profession. This study then considered whether the Rhode's recommendations are applicable to the Kenyan situation.

### **1.9 Research Methodology**

Both desk based research and fieldwork were used. This study applied both primary and secondary methods of data collection. Materials and literature were obtained from primary sources such as legislation and case law, as well as secondary sources such as books, journal articles, reports and relevant studies in the area. The libraries that were resourceful for the research were the University of Nairobi Parklands Campus library, the University of Nairobi Jomo Kenyatta Memorial Library, the Strathmore University Library and the High Court library.

The population for this study constituted young advocates aged between 25 and 30 years working in law firms in Nairobi. Simple random sampling was used to identify 100 respondents from a list of advocates within the target population. The list was obtained from the Law Society of Kenya after the researcher's express declaration that the information would be used

exclusively for study purposes. Saunders<sup>37</sup> recommends a 95 percent level of certainty. At the time the study was carried out, there were 10,926 advocates with 4,843 in private practice.<sup>38</sup> Of these advocates, an estimated 10% were working in law firms in Nairobi; the other 90% comprising of advocates who fell outside the target population because they were either practicing in other parts of the country or are not working in law firms. Therefore, in order to get 95 confidence  $\pm$  2.5 standard deviation (SD), a sample size of 100 was deemed sufficient.

To comply with ethical requirements, an assurance that the results would be used for study purposes only was presented to each respondent. Further, the respondents were assured that their names and those of the law firms would not be revealed so as to maintain confidentiality. Only advocates who willingly cooperated and agreed to be interviewed were used in this study. The study focused on advocates employed in law firms in Nairobi. Excluded were partners and single practitioners, as well as advocates working in other sectors, for example, government, teaching institutions and non-practicing lawyers. The study only focused on one category of advocates because their working conditions were similar; therefore, they faced the same issues. Therefore, there was uniformity.

The advocates were interviewed using the questionnaire in the Appendix. The aim was to supplement the desk based research with primary qualitative research. The information obtained was triangulated into the findings from the desk based research. The questionnaire was designed and structured to ease data analysis. Validity of the research instrument was established through a pilot study. The questionnaire was pre-tested using randomly selected advocates within the target population to refine the instrument in order to ensure that it collects the required data. The respondents who participated in the pre-testing of the questionnaire did not form part of the main sample frame of the study in order to avoid bias. After the pilot study, ambiguous questions were removed, and the questionnaire was finely adjusted.

The questionnaires were administered on site using face-to-face interviews, after establishing contact through an initial phone call. The use of questionnaires was preferred because it is a

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<sup>37</sup> Mark Saunders, Philip Lewis and Adrian Thornhill, *Research Methods for Business Students* (3<sup>rd</sup> edn, Pearson Education 2003) 155.

<sup>38</sup> Law Society of Kenya Online, 'LSK Advocate Search Engine' <<http://online.lsk.or.ke/online/index.php>> accessed 18 February 2014.

relatively economical method of soliciting information from people.<sup>39</sup> Further, face-to-face interviews minimized non-response and enabled the researcher clarify any issues that the respondents found ambiguous.

The researcher employed the services of a research assistant. The assistant was trained on the techniques of interviewing before commencement of the fieldwork. The researcher administered the questionnaires to the targeted respondents to fill. The questionnaire responses were analyzed quantitatively using Excel spreadsheets and Statistical Package for Social Sciences (SPSS) version 19. Data was entered, cleaned and subsequently analyzed. Variability was measured using SD. Data was presented in tables, pie charts and bar chart diagrams.

### **1.10 Scope and Limitation of the Study**

This study focused on the legislative framework of WLB in Kenya. The policy and institutional frameworks for WLB were not examined. Though the legislative framework provides for some WLB initiatives, other measures that enhance WLB may exist through policy and institutional frameworks.

The study was limited to WLB among young advocates working in law firms in Nairobi. Therefore, the results cannot be applied with certainty to all other members of the legal profession and to other professions. Moreover, the focus was on the interplay between the state of the law and the achievement of an appropriate WLB culture in Kenya. No attempt was made to examine factors such as peer pressure, family pressures, competition, lack of jobs, and the nature of legal work. These are factors that may also lead to advocates accepting stressful working conditions.

### **1.11 Chapter Breakdown**

This research paper is divided into the following chapters.

#### **Chapter 1: Introduction**

The introductory chapter entails a general introduction and conceptual analysis of the study. It begins with a background on the issue, which then build up to the statement of the problem. It also introduces the reader to the objectives of the study, the hypothesis, the research questions to

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<sup>39</sup> Nicholas Walliman, *Your Research Project* (2<sup>nd</sup>edn, Vistaar Publications 2005) 282.

be investigated, the theoretical framework, and methodology. It also includes a review of the literature relevant to the study, justification of the study and chapter breakdown.

## **Chapter 2: The Legislative framework for Work-Life Balance in Kenya**

The second chapter reviews the legislative framework governing WLB in Kenya. This includes the Constitution of Kenya 2010, the Employment Act and the Regulation of Wages (General) Order, as well as relevant international conventions.

## **Chapter 3: Analysis of the Work-Life Culture of the Legal Profession**

This chapter covers the empirical part of the paper. It includes statistics displaying the collected data on the WLB practices of young advocates in Nairobi and co-relational analyses. The aim of this is to expose the work-life culture in the legal profession and identify possible loopholes in the legislative framework governing WLB in Kenya.

## **Chapter 4: Best practices on WLB**

Chapter four discusses the key aspects on regulation of WLB in the United Kingdom (UK). Further, a comparative analysis of the UK's WLB legislative framework with that of Kenya is undertaken.

## **Chapter 5: Conclusion**

The final chapter gives a recap of the issues discussed in the research paper. It presents the conclusion of the findings and suggests recommendations that can be implemented to develop policies and legislation that enhance WLB initiatives in Kenya.

## CHAPTER TWO

### THE LEGISLATIVE FRAMEWORK ON WORK-LIFE BALANCE IN KENYA

#### 2.1 Introduction

This chapter expounds on the law governing WLB initiatives in Kenya. In this regard, the chapter discusses the content of the relevant Kenyan and international law dealing with WLB in Kenya. The chapter begins with an overview of the general legislative framework governing WLB. The legislative framework includes the Constitution of Kenya 2010, the Employment Act, Chapter 226 of the Laws of Kenya and international law such as the International Labour Organization (ILO) conventions. It will then consider the specific WLB initiatives and the enabling statutory provisions, including relevant case law.

It is important to note that Kenyan law does not include specific and direct legislation for promoting WLB. The issue of WLB in Kenya is mainly linked to labour law. WLB initiatives in Kenya are thus primarily based on the labour market policy.

#### 2.2 Overview of Legislative Framework

##### 2.2.1 The Constitution of Kenya 2010

The discussion on the legislative framework begins with the Constitution because it is the supreme law of the Republic. Moreover, in accordance with article 2(4) of the Constitution, any other law that is inconsistent with the Constitution is void to the extent of that inconsistency. The current Constitution of Kenya was promulgated on 27<sup>th</sup> August 2010. The preamble to the Constitution emphasizes the country's commitment to nurturing and protecting the wellbeing of the individual, the family, the community and the nation as a whole. Part of the wellbeing of an individual is achieved through the achievement of WLB. It may be said that the preamble to a constitutional document affords a key to its spirit and its meaning.<sup>40</sup> Therefore, from the onset, the Constitution sets the framework pace on embracing WLB initiatives.

Relatedly, Article 10(2) (b) provides that the national values include human dignity and human rights. A person's human rights are inalienable. Human rights include the right to equal

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<sup>40</sup> Pralhad Balacharya Gajendragadkar, *The Constitution of India: Its philosophy and Basic Postulates* (Oxford University Press 1969).

employment, paid maternity leave and paternity leave, and education. Further, women have the right to services related to pregnancy and lactation. These rights are facilitated by WLB initiatives.

Article 45(1) recognizes that the family is the fundamental unit of society. The family is the custodian of the values upheld by the community. The state is, therefore, under an obligation to protect the family. WLB initiatives benefit the family in that a person is able to adequately balance between work and family roles.

Through Article 2(5) of the Constitution, the general rules of international law form part of Kenyan law. In addition, based on Article 2(6) any treaty or convention that Kenya has ratified is deemed to be part of the law of Kenya. Accordingly, Kenya is under an obligation to ensure it complies with the standards set in these instruments.

### **2.2.2 The Employment Act**

Labour law governs the relationship between employers and employees. To understand the Kenyan employment situation it is necessary to first examine the history of the development of the labour force. The history dates back to the British colonization of Kenya, which brought a demand for hired labour. Before colonization, Kenya had not developed a cash economy and the institution of employment had not yet been developed. However, the colonial community introduced forced taxes such as poll and hut taxes. People were indirectly compelled to work and in that way the colonialists met the labour demands. Therefore, instead of attracting labour through incentives, the European employers introduced a system of forced labour. Hence, the African employees were not ambitious and willing employees.

The response to this unwillingness was the enactment of legislative penalties for breach of contract. These penalties included fines, imprisonment, dismissal and criminal penalties. This led to the birth of the Employment Act. The Act, however, has undergone several changes since inception. The changes include the prohibition of forced labour.

The Employment Act 2007 primarily governs the employment relationship in Kenya. The long title provides that the Act *inter alia* defines the fundamental rights of employees, sets out the basic conditions of employment and regulates matters dealing with the employment of children.

The Act sets out the requirements for employment contracts, including wages, rights and duties in employment, termination and dismissal. The Employment Act provides a number of WLB initiatives that relate to the employment relationship.

About regulation of working hours, section 55 provides that employers should regulate working hours in accordance with the law. Further, the agreed upon hours of work should be stated in the employment contract. In addition, article 27(2) entitles employees to a day of rest within the course of each 7-day period. This requirement on rest days is in accordance with international standards.

Leave entitlements are important WLB initiatives. Section 29 of the Act entitles female employees to maternity leave and male employees to paternity leave. Such job-protected leave should be with full pay. Further, upon completion of the maternity or paternity leave, the employee is entitled to return to the same position or an alternative equivalent position.

### **2.2.3 The International Labour Organization (ILO) Conventions**

Kenya is a member of the ILO, a specialized agency of the United Nations. The ILO is dedicated to improving labour conditions throughout the world. Since the establishment of the ILO in 1919 through the Treaty of Versailles, it deals with international labour standards. The main objectives of the agency include encouraging decent employment opportunities, strengthening dialogue on work-related issues, promoting rights at work and enhancing social protection.<sup>41</sup> Governments often use the international standards developed by the ILO to draft and implement labour laws that adhere to international standards. The ILO has developed several conventions that support WLB.

Six of the ILO conventions deal with the regulation of hours of work. Article 2 of Convention 1 and article 3 of Convention 30 establish a 48-hour work week and set the maximum hours of work per day at eight hours. Convention 47, however, seeks to reduce this to a 40-hour work week. This reduction is a useful mechanism to deal with the problem of unemployment, as well as a means of enabling employees make use of the rapid technological advances. Article 2(1) of Convention 14 and article 6(1) of Convention 106 entitle employees to an uninterrupted weekly

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<sup>41</sup> International Labour Organization (ILO), 'About the ILO' <<http://www.ilo.org/global/about-the-ilo/lang-en/index.htm>> accessed 10 March 2014.



rest period which should not be less than 24 hours. In addition, Convention 175 aims at ensuring that employees who work part-time receive the same protection, basic wages, statutory social security and employment conditions as those of comparable full-time employees.

About maternity protection and the protection of pregnancy, convention 183 is the most up-to-date. However, conventions 3 and 103 are still in force in some countries. Article 4(1) of Convention 183 sets the standard of maternity leave at not less than 14 weeks. Such leave is to be granted only after the female employee has produced to the employer a medical certificate which states the expected due date. Further, article 4(4) of the convention provides that even though maternity leave may begin before the birth of the child, the leave must include a six weeks period after the child is born. Also, in accordance with article 5, maternity protection includes leave due to sickness or complications arising out of pregnancy or childbirth.

Convention 140 is premised on article 26 of the Universal Declaration of Human Rights (UDHR) which provides for the right to education. It defines the term paid educational leave as leave that is granted to an employee for the pursuit of education for a certain period that would ordinarily fall within working hours. During such leave, the employee should receive adequate financial benefits. The convention requires states that have ratified it to formulate and apply a policy that promotes the granting of paid educational leave.

The 1981 Convention on Workers with Family Responsibilities defines such workers as male and female employees who have responsibilities relating to dependent children, which limit the possibility to participate in economic activities. Article 3 of the Convention encourages states to ensure that national policies allows workers with family responsibilities to exercise the right to employment without discrimination, and as far as possible limiting conflict between employment and family obligations. The aim of this requirement is to create equality between workers with family responsibilities and other employees. Relatedly, Convention 177 seeks to promote equality of treatment between home workers, or teleworkers, and other wage earners.

Out of these conventions, Kenya ratified Convention 14 on 13<sup>th</sup> January 1964 and Convention 140 on 9<sup>th</sup> April 1979.<sup>42</sup> Despite not having ratified the other conventions, a number of the

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<sup>42</sup>International Labour Organization (ILO), 'Ratifications for Kenya' <[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103315](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103315)> accessed 12 March 2014.

requirements of the ILO conventions are reflected in Kenyan law. This study looks at these legislative provisions in the discussion of the specific WLB initiatives.

## **2.3 Specific WLB Initiatives**

WLB initiatives and policies may be classified into three main categories.<sup>43</sup> The first relates to working conditions, in terms of working hours and leave entitlements. The second category relates to the location of work; that is whether the employee needs to meet face-time at the office or whether they can work from alternative locations, including the home. The third category relates to programmes that make the employee's choices easier, such as assistance with childcare and provision of free or subsidized meals.

### **2.3.1 Initiatives relating to working conditions**

#### **2.3.1.1 Working hours**

Article 24 of the UDHR recognizes a right to rest and leisure, and this includes a reasonable limitation of working hours. Further, article 7(d) of the International Covenant on Economic, Social and Cultural Rights includes the reasonable limitation of working hours as part of the conditions of work that every individual has the right to. Weekly hour limits are the legal standards that represent the standards that the government upholds as acceptable working hours for the citizens. These limits are the primary method of preventing regular and consistent working hours. They, therefore, contribute towards enabling employees achieve an acceptable balance between paid work, family responsibilities and other aspects of personal life.

Section 27 of the Employment Act provides that working hours of employees are to be regulated by employers. Accordingly, article 10(2) (g) requires the employment contract to state, *inter alia*, the hours of work that the employee is expected to abide by. Further, the Regulation of Wages Order (RWO) sets the Kenyan standard on the maximum hours of work per week as fifty-two hours. In accordance with section 5(1) of the RWO, these 52 hours are to be spread over a maximum of six days a week. Section 5, however, provides two exceptions to this rule. The first is that where a person is employed for night work, the maximum number of hours that they are to work should be sixty hours. The second exception is that employees under the age of sixteen

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<sup>43</sup> David Clutterbuck, *Managing Work-Life Balance: A Guide for HR in Achieving Organisational and Individual Change* (CIPD Publishing 2003) 170.

years should not work for more than six hours in a day. The maximum working hours in Kenya are, therefore, higher than the ILO standards which require either a 48-hour limit or a 40-hour limit.

Hours worked above the 52-hour limit are considered to be overtime. According to the RWO, overtime payment is 1.5 times above the normal rate. Such overtime payment may be awarded by the court where it is established that the employee went beyond the regular working hours. For example, in *Seth Namunyanyi Mahiga v. Healthy U 2000 Limited*<sup>44</sup> the respondent agreed with the claimant's statement that he worked 11 hours a day, which amounted to 66 hours per week. This meant that the claimant worked an extra 14 hours per week. The court, therefore, awarded Kshs. 217,083.53 on account of overtime.

Rights to minimum periods of weekly rest also work together with weekly limits of working hours to enable WLB. In Kenya, rest days are provided for by section 27(2) of the Employment Act. Employees are entitled to one day for every seven days worked. This provision is in accordance with international standards, which requires the right to at least 24 consecutive hours of rest each week. Section 7(1) of the RWO, however, allows for the deferment of rest days such that they are taken on a subsequent day. Such deferred rest days may be accumulated until a maximum of fourteen days and then taken as leave with full pay, in addition to the employee's annual leave. However, such deferment cannot be done where the employee is less than sixteen years of age.

### **2.3.1.2 Flexible working arrangements**

FWAs are also an important initiative on WLB. They provide an alternative to the traditional eight to five work day. FWAs allow employees to vary the arrival and departure time depending on the circumstances and the workload, without compromising the expected hours at the end of the day. An alternative is the ability to work from locations other than the office. As such, the employee can work from home but meet the agreed targets. The Kenyan Employment Act does not provide guidelines on such arrangements. However, the practice has been embraced by some organizations, and they usually have a guiding implementation policy.

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<sup>44</sup> [2013] eKLR, Cause 1124 of 2011.

In *Agnes Yahuma Digo v. PJ Petroleum Equipment Limited*,<sup>45</sup> the claimant alleged to have made an oral agreement with the Respondent's General Manager for one hour lactation breaks each morning and afternoon. The respondent's claim was that the claimant's letter of appointment stated that the office hours from Monday to Friday would be from 8.00 a.m. to 1.00 p.m. and 2.00 p.m. to 5.00 p.m. On Saturdays the working hours would be from 8.00 am to 12.00 noon. In the case, Ndolo J stated *obiter* that flexible hours are a policy issue. The judge agreed with the respondent that there was no FWA, since it was not included in the terms of the written contract nor did the company have a policy on FWAs. Therefore, FWA parameters should be set out in a policy document, and not merely discussed and agreed upon between an employer and employee. Consequently, though there is no specific law relating to FWAs, such arrangements can be provided for in the policy documents of organizations.

### **2.3.1.3 Maternity, paternity leave and related leave entitlements**

The Employment Act provides for maternity leave and paternity leave entitlements. These leave entitlements enable employees to take time off from work after the birth of a child, but without the risk of being dismissed. They are an important mechanism in supporting the integration of work and family obligations for working parents. Such leave is important to protect the health and well-being of both the parent and child. Maternity leave is a means through which women can successfully combine reproductive and productive roles. It is a health and welfare measure aimed at protecting the mother and newborn child just before, during and immediately after childbirth.

The law sets the basic minimum for what leave entitlements employers must offer employees. Section 29(1) of the Employment Act requires employers to provide female employees with job-protected maternity leave for a period of three months with full pay. The length of maternity leave under Kenyan law is in accordance with ILO Conventions 3 and 103. It, however, does not meet the international standard set by Convention 183.

The case of *Jane Wairimu Machira v Mugo Waweru and Associates*<sup>46</sup> emphasized that female employees are entitled to maternity leave even while on probation. In this case, the claimant applied for maternity leave but the respondent declined to approve the application because the

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<sup>45</sup> [2013] eKLR, Cause 2049 of 2011.

<sup>46</sup> [2012] eKLR, Cause 621 of 2012.

claimant was still on probation. The respondent then advised the applicant to apply for study leave instead. The court held that the respondent's instruction to the applicant to apply for study leave instead of maternity leave demonstrated a clear misunderstanding of the purpose of maternity leave. Therefore, the refusal to grant the claimant's request for maternity leave was deemed discriminatory.

To be eligible, the employee should apply for maternity leave by giving seven days notice. A shorter notice period may be accepted depending on the circumstances. By virtue of section 29(3), an employee is entitled to an extension of maternity leave with the consent of the employer, by taking sick leave, annual leave, compassionate leave or any other leave as may be necessary. In such cases, the maternity leave expires after the extended leave.

Maternity leave is viewed as a temporary interruption of employment. Upon the expiration of the maternity leave, the employee is guaranteed the right to return to work after the leave. Section 29(2) provides job protection while taking leave in that after the leave, the employee must be restored to the same position or an equivalent one. An equivalent position means that the new position should include the same benefits, pay and other conditions of employment. Therefore, after the leave, the employee cannot be transferred to a job whose terms and conditions are less favourable.

There is importance given to the presence of the father at the time around the time of childbirth. However, this was not always the case. In the traditional African setting, childbirth was considered a woman's affair. Further, care of the newborn children was predominantly undertaken by the mother and other women in the homestead. In light of this, paternity leave entitlements were not provided for under the repealed 1976 Employment Act. Paternity leave only came to be part of the law in 2007 when the current Employment Act was enacted. It was at that time that it was recognized that men also have family responsibilities as child rearers. As such, the recognition of the importance of the fathers' involvement at the time of childbirth led to the entitlement to paternity leave.

Paternity leave, usually taken around the time of the childbirth to enable the father to acclimatize to parenthood, is for a period of two weeks with full pay. Both maternity and paternity leave entitlements are with full pay. Providing full pay ensures economic security for both mothers and

fathers while they are on leave. It also enables employees to promote family stability, hence preserving family integrity.

A related type of leave that promotes WLB is parental leave. Parental leave is a relatively long-term leave available to either parent to facilitate the care of a young child over a period that follows either maternity leave or paternity leave. Paragraph 10(3) of ILO Recommendation 191 urges for the granting of leave to an employee father or mother at the expiration of maternity leave. Further, paragraph 22(1) of ILO Recommendation 165 considers parental leave a part of an integrated approach to enhance WLB. Despite this, Kenyan law does not provide for parental leave.

Paragraph 10(5) of Recommendation 191 provides that adoptive parents should also have access to the system of protection on maternity leave, especially regarding leave, benefits and maternity protection. In such case, the date that the child arrives in the adoptive parents' home may be counted as the date of birth in legislative terms. This adoption leave would enable the adoptive parents to adapt to the arrival of the child. However, since unlike actual childbirth, no recovery period is needed, adoption leave may be for a shorter time than maternity leave. The adoption laws in Kenya, which are provided for by the Children Act, however, do not mention anything on adoption leave. Therefore, such leave does not currently apply under Kenyan law.

Article 10(1) of ILO Convention 183 provides for lactation breaks for breastfeeding women. These breaks are supposed to be counted as working time and so the employee's remuneration should not be deducted because of the breaks. Lactation breaks are supposed to be available to women upon the return from maternity leave. There are no legislative provisions for lactation breaks in Kenya.

#### **2.3.1.4 Compassionate leave**

Compassionate leave is an important mechanism to support employees when they need to respond to urgent domestic misfortunes. Such personal misfortunes may include bereavement, or situations where a close relative or friend is gravely ill or has been involved in a serious accident. In *Joseph Otieno Onyango v. M/S Kaajal Textiles Ltd & Another*,<sup>47</sup> the claimant was granted compassionate leave. The claimant was to resume work five days later but came back slightly

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<sup>47</sup> [2012] eKLR, Cause 1409 of 2011.

later only to be summarily dismissed. The respondent claimed that since the claimant had no more annual leave days the extension of the compassionate leave beyond the five days granted amounted to absenteeism. The court held that the dismissal of the claimant for reporting to work two days late after burying the father was callous and unwarranted. Judgment was, therefore, entered for the claimant.

Similarly, in *George Odhiambo Owaka v. Wells Fargo Limited*,<sup>48</sup> the claimant was granted one week compassionate leave so that he could travel upcountry to bury his son. The claimant allegedly could not resume work on the agreed date because of lack of funds and so telephoned a personnel officer for the respondent requesting for an extension of the time, which was granted. However, the claimant was summarily dismissed after reporting to work two days later. The respondent's argument was that since the claimant did not return to work as agreed, the termination was justified. The court held that since the claimant had left the place of work on legitimate grounds and under distressing circumstances, the respondent should have been more sensitive and considerate to the claimant. The court found the termination of the claimant's services under the circumstances to be cruel and insensitive on the part of the respondent. Therefore, judgment was entered in favour of the claimant.

Compassionate leave is granted for a short period, rarely exceeding more than a few days at any one time. In accordance with section 11(1) of the RWO, the number of days the employee is granted compassionate leave is thereafter deducted from the employee's annual leave entitlement. However, section 11(2) of the RWO gives employees the right to take an additional five days compassionate leave without pay each year.

### **2.3.1.5 Study leave**

Article 26 of the UDHR affirms that every person has the right to education. There is a correlation between education and improved standard of living in the country. Development of human capital through increased knowledge, education, training, skills and expertise is of great importance to both employers and employees. Study leave is a means through which employees can meet needs and keep up with the advances of modern society. Study leave enables continuing education and training.

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<sup>48</sup> [2012] eKLR, Civil Suit 1460 of 2010.

Article 1 of ILO Convention 140 defines paid education leave as leave which an employee is granted for educational purposes for a specified period during working hours, with adequate financial entitlements. Article 2 provides that such paid education leave should be granted to enable employees to access training at any level, trade union education or general, social and civil education. However, the conditions of eligibility for the paid leave may vary according to the different categories of training under article 10.

According to section P of the Civil Service Code of Regulations, the Government policy on training is continually to improve the knowledge, skills and attitudes of public servants to enable them deliver quality services. Accordingly, public employees are entitled to study leave of a minimum of five days each year. Such training is to be based on the identified training needs of the Ministry or Department. While on training, the employee is deemed to be on duty and, therefore, continues to receive a substantial salary throughout the duration of the course. Further, an employee who is traveling for training purposes is entitled to receive appropriate allowances and travelling privileges. Moreover, if the training is outside Kenya, the employee is entitled to maintenance allowance to meet basic and other living expenses.

Kenya is under an obligation to develop and implement a policy that promotes the granting of paid education leave, as stipulated under article 3 of ILO Convention 140. Further, section 91(1)(f)(iv) of the Employment Act empowers the Minister of Labour to make rules and regulations on conditions relating to employment, including education. However, so far no rules or regulations have been passed.

### **2.3.2 Initiatives relating to the location of work**

Teleworking, also known as telecommuting, is a means through which employees can fulfill work responsibilities at home or another approved location.<sup>49</sup> Teleworking combines the use of ICT with the concept of a flexible workplace. Through the use of portable electronic tools, employees can work from a 'virtual office' which offers flexibility in terms of the location and time within which work is done. This flexibility can enhance WLB.

Telecommuting enhances WLB in that it provides employees with the opportunity to have more family time and to participate in home responsibilities. In addition to that, there are time savings

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<sup>49</sup> Department of Trade and Industry, 'Telework Guidance' (2003) 1.



that come from not having to commute to the work site on a daily basis. Through the ability to work from home, employees can put the extra time to other uses.

Commuting patterns and office hours oblige everyone to keep to the same general work timetable. On the other hand, telecommuting enables employees to have a flexible approach to working hours. In this way, employees can make use of the individual personal daily rhythms. If they work best in the early morning, they can put in more work at that time. Similarly, if they work best late at night, they can put in more effort at that time. Therefore, employees can start and stop according to what works best in the circumstances.

A teleworking arrangement may cover all or part of an employee's working hours. Depending on the agreement, teleworking may be on an occasional basis or a regular schedule. However, to be effective, the employee's performance while they are teleworking should be measured using the same standards as though they were working from the worksite. They must, therefore, meet the same targets and deadlines.

Article 4(2) of the 1996 ILO Home Work Convention 177 takes into account the special nature of home work. It equates home work to teleworking and calls for equality of treatment between teleworkers and other wage earners. The rights provided for under the convention include remuneration, social security, access to training, maternity protection, freedom of association, and protection against discrimination. Kenya has not ratified ILO Convention 177. Neither does it have a framework to govern teleworking.

### **2.3.3 Initiatives relating to employee assistance**

#### **2.3.3.1 Childcare support**

According to section 2 of the Children Act a child is a person below the age of eighteen years. Article 5 of the 1981 ILO Workers with Family Responsibilities Convention number 156 encourages the development and promotion of community services such as childcare and family services. Access to childcare support is an important factor in enhancing WLB especially among women in that it enables participation in the workforce while balancing family responsibilities. Childcare support may be in the form of pre-school supervision. However, a comprehensive childcare approach is one that encompasses support for children of all ages. This childcare

support may be through, for example, providing workshops and other forums for new parents, and organizing family event days.

There are no special provisions in Kenyan law for corporate or state-provided childcare support for employees. However, some employers have internal policies and agreements that provide for childcare assistance. For example, Safaricom has a day-care centre run by childcare professionals.<sup>50</sup> In this way, employees can leave the children under the care of the professionals, proceed to work, and periodically check on them.

### **2.3.3.2 Provision of free or subsidized meals**

Food is a basic necessity to sustain human life. The law relating to provision of meals does not apply to all employees. There has to be an express agreement between the employer and employee that states that the employer is to provide food. With such an agreement in place, section 33(1) of the Employment Act obligates the employer to ensure that the employee is properly fed and is sufficiently supplied with cooking utensils and means of cooking.

Ensuring that employees are properly fed may entail providing free or subsidized meals, or paying the employees a reasonable allowance for the purchase of food. In *Kenya National Private Security Workers' Union v. Kenya Kazi Security Services Limited*<sup>51</sup>, guards offering security services to the United States of America Embassy in Nairobi were being paid a meal allowance of Kshs. 25 per day. Bearing in mind that the embassy is located in a secluded high-end part of Nairobi and the fact that hawkers were not allowed to sell food to the guards, the court found that this amount was inadequate. It, therefore, increased the meal allowance to Kshs. 250 per day.

Certain categories of employees are entitled by law to meal allowances to cater for instances where they are on duty away from the regular worksite. For example, section 15 of the Regulation of Wages (Protective Security Services) Order 1998 provides that the daily rates of the meal allowances for guards and security officers are Kshs. 95 for breakfast, Kshs. 115 for lunch and Kshs. 120 for dinner. This allowance is to be part of the subsistence allowance. Further, section 14 of the Regulation of Wages (Hotel and Catering Trades) Order 1981 sets the

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<sup>50</sup> Clive (n 29) 689.

<sup>51</sup> [2013] eKLR, Cause 1449 of 2011.

daily meal allowance for persons employed in hotels and other catering establishments at Kshs. 60 per day. Similarly, meal allowance for public service vehicle drivers is unreasonably low. Section 5(1) of the Regulation of Wages (Road Transport) Order 1972 provides for meal allowances of Kshs. 3 for breakfast, Kshs. 4 for lunch and Kshs. 5 for dinner that is to be paid to the employee whenever they need to work away from the principal area of employment. Section 10(2) of the Regulation of Wages (Laundry, Cleaning and Dyeing Trades) Order offers the same substandard meal allowance rates.

## **2.4 Conclusion**

The chapter briefly discussed the law concerning WLB in Kenya. In conclusion, the chapter has established that the legislative framework for WLB in Kenya could be improved so as to enhance WLB. For instance, it was established that the law relating to working hours does not comply with international standards. Therefore, employees in Kenya work for longer hours than the general international requirements. Further, Kenyan law does not provide for FWAs. About leave entitlements, though the law provides for maternity and paternity leave, it does not provide for other related entitlements such as parental leave and adoption leave. There are also no legislative provisions to provide a framework for teleworking, which would afford greater flexibility to employees in that they could work from locations other than the regular worksite. Further, no legislative provisions exist to cater for state-provided or corporate childcare for employees.

The foregoing leads to the conclusion that the Kenyan WLB legislative framework needs reform so as to enhance the welfare of employees in the country. The next chapter will survey a sample of young advocates in Nairobi to establish if they feel they have the necessary balance between work and personal lives. This survey will be aimed at establishing if the legislative framework in Kenya is sufficient for employees to achieve an appropriate WLB. This study focuses on the legal profession because it is believed that legal practitioners face challenges such as extended working hours and the inadequacy of leave entitlements and childcare assistance.

## CHAPTER THREE

### WORK-LIFE BALANCE OF YOUNG ADVOCATES IN NAIROBI

#### 3.1 Introduction

Based on the objectives, the researcher undertook a descriptive study of young advocates working in law firms in Nairobi. The descriptive study assessed the WLB situation of young advocates aged between 25 and 30 years. Advocates understand and safeguard the law of the country. Advocates are expected to follow both the letter and the spirit of the law. As such, it would be expected that law firms would be the greatest advocates for protecting the interest of future generations and so should embrace WLB initiatives for the benefit of employees.

It should be noted that since the study was limited to young advocates, the results cannot be applied with certainty to all other members of the legal profession or to other professions. Simple random sampling was used to identify the 100 respondents from a list of advocates within the target population. The study was conducted from March to April 2014. The study considered the number of young advocates who were in practice in Nairobi at the time of the study. Consequently, to get 95 confidence  $\pm$  2.5 standard deviation (SD), a sample size of 100 was deemed sufficient.

The selected location of the study was Nairobi County. Nairobi is the county with the highest population in Kenya. At the time of the study, the population was 3,138,369 people.<sup>52</sup> Further, at the time Nairobi had a population density of 304.0, which is a large population density.<sup>53</sup> In addition, Nairobi has the highest concentration of lawyers and law firms, as well as being the seat of the highest court in Kenya. These factors enabled easy access to several advocates within the target population.

The chapter presents and analyses the findings of the study and provides an interpretation. The objective of the study was to investigate the quality of work-life practices among young advocates working in law firms in Nairobi. Questionnaires were distributed to the 100 randomly selected young advocates. 93 young advocates agreed to take part in the study. Therefore, the

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<sup>52</sup> Kenya National Bureau of Statistics, 'County Statistics' <[http://www.knbs.or.ke/index.php?option=com\\_content&view=article&id=176&Itemid=645](http://www.knbs.or.ke/index.php?option=com_content&view=article&id=176&Itemid=645)> accessed 18 February 2014.

<sup>53</sup> *ibid.*

response rate was 93%. As per Mugenda and Mugenda<sup>54</sup>, any response rate that is 70% or more is excellent for descriptive studies, and so this can be regarded as an excellent response rate. Each young advocate was interviewed for approximately half an hour.

### **3.2 Demographic data**

Questions relating to the demographic variables of age, gender, marital status, parenthood, and religious affiliation were included in the questionnaire that the respondents completed. Information was also provided about the length of service at the employing organization.

Out of the 93 respondents, there were 45 males (48.4%) and 48 females (51.6%). There was, therefore, gender equity among the respondents. The mean age of the respondents was 27.71 years (SD = 1.606). Of the respondents, 69.9% were single, and 30.1% were married or living as married. Of the respondents with children, nineteen were married (twelve males and seven females), and one respondent was a single mother.

The study sought to determine the respondents' length of service at the law firms. The length of service would give an indication as to how familiar the advocates were to the policies of the law firm. From the responses, the average length of service was 2.14 years (SD = 1.324). Hence majority of the respondents had been with the law firms for at least two years, which is long enough to know the organization policies. The demographic data is summarized in Table 3.1.

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<sup>54</sup> Olive Mugenda and Abel Mugenda, *Research Methods: Quantitative and Qualitative Approaches* (African Centre for Technology Studies 2003).

		Respondents	Percent
Age in years	25 years	9	9.7
	26 years	13	14.0
	27 years	24	25.8
	28 years	16	17.2
	29 years	12	12.9
	30 years	19	20.4
Gender	Male	45	48.4
	Female	48	51.6
Marital status	Single	65	69.9
	Married	28	30.1
	Divorced/Separated	0	0.0
	Widow/Widower	0	0.0
Parenthood	Yes	20	21.5
	No	73	78.5
Religion	Catholic	26	28.0
	Protestant	56	60.2
	Muslim	4	4.3
	Atheist	1	1.1
	Other	6	6.5
Length of service	Less than one year	13	14.0
	One year	16	17.2
	Two years	29	31.2
	Three years	15	16.1
	Four years or more	20	21.5

**Table 3.1 Respondents' demographic data**

### 3.3 Family Life

This section was designed to obtain general information about the respondents' family life that was relevant to the study.

#### 3.3.1 Marital status and parenthood

As mentioned in section 3.2, 69.9% of the respondents were single and 30.1% were married. The marital status of the respondents impacted the WLB. A greater sense of WLC was exhibited in the married respondents. Further, the respondents who had dependent children experienced a

greater sense of imbalance between work and family commitments. The findings on the correlation between marital status, parenthood and WLB are summarized in Table 3.2.

		Problems adjusting family life with work	Problems adjusting personal interests with work
Marital status	Single	43.1%	56.9%
	Married	70.7%	50.0%
Parenthood	No	45.2%	58.9%
	Yes	70.0%	40.0%

**Table 3.2 Effect of marital status and parenthood on WLB**

As shown in Table 3.2, the majority of married respondents had problems adjusting family life with work. The WLC was compounded in the respondents who had dependent children. On the other hand, half of the married respondents had problems adjusting personal interests with work. The sense of WLC experienced by the unmarried young advocates was less than that of the married young advocates.

The respondents were asked whether they have children, and if they answered in the affirmative a follow-up question on the age and gender of the children was asked. Of the respondents, 21.5% were parents. Fifteen of the young advocates had just one child, and five had two children. The youngest child was 1-month-old and the eldest was 8 years old. Therefore, all the children were young children who can all be classified as dependants. The fact that the respondents had young children posed challenges for some of the parents, as some lamented: “Planning hospital clinics in accordance with my work schedule is challenging. Also working late sometimes means less time with family or running errands.” “My son usually sleeps at 7pm. I only spend an hour with him.” “I feel I don’t have enough time to spend with my baby as I have to work till weekends.”

### 3.3.2 Relationships

The respondents were asked to rate on a four-item scale the relationships with their children, parents, cousins, grandparents and workmates. On the scale, 1 represented ‘non-existent’, 2 represented ‘bad’, 3 represented ‘fair’ and 4 represented ‘good’. The means were interpreted as follows: 0 – 0.49 indicated that the relationship was non-existent; 0.5 – 1.49 indicated that the relationship was bad; 1.5 – 2.49 indicated that the relationship was fair and 2.5 – 3 indicated that

the relationship was good. A standard deviation greater than 1 indicated that the respondents did not uniformly agree on the rating. The findings are summarized in Table 3.3.

RELATIONSHIPS		
	Mean	Std. Deviation
Relationship with children	3.00	.000
Relationship with father	2.66	.756
Relationship with mother	2.86	.432
Relationship with cousins	2.52	.636
Relationship with grandparents	2.14	1.163
Relationship with family members	2.57	.449
Relationship with workmates	2.69	.466
Total	2.63	

**Table 3.3 Respondents' ratings of relationships**

Despite the findings depicted in Table 3.2, from the analysis above, all the respondents who had children rated the relationship as good (a mean of 3). Although the difference was not great, more respondents rated the relationship with mothers as good (a mean of 2.86) as compared to the relationship with fathers (a mean of 2.66). Most of the respondents rated the relationship with workmates as good (a mean of 2.69). Relationship with cousins had a mean of 2.52. This rating indicated that the respondents perceived the relationship as good. The lowest rating was on the respondents' relationship with grandparents, with a mean of 2.14, therefore, categorizing it as fair. However, for relationship with grandparents, the standard deviation of 1.163 being greater than 1 indicated that the respondents were not all in agreement on the rating.

The mean on the relationship with family members was 2.57, which indicated that most respondents had a good relationship with family members. Therefore, even though Table 3.2 shows that the majority of respondents experienced WLC, most respondents felt that they related well with family members. With the addition of the rating of relationship with workmates, the mean on relationships increased to 2.63, which is also an indication of a good relationship.

When the ratings of the relationships were correlated to the respondents' sense of WLB, it was found that there was no direct relationship. The state of the relationships with the different



persons in the respondents' lives, therefore, had no effect on whether the respondents experienced WLB or WLC.

### 3.4 Personal Interests

This section sought to investigate the religious affiliation of the respondents and the time they spent on various activities that do not relate to either family or work.

#### 3.4.1 Religion

The respondents were asked to evaluate the level of religious commitment on a three-point scale (1 being 'low', 2 being 'moderate' and 3 being 'high'). Religion is important to this study because according to Patel and Cunningham, it can be a psychosocial tool that can help balance stress experienced in both the family and work domains.<sup>55</sup> In analyzing the data, the means were interpreted as follows: 0 – 1.49 indicated that the level of commitment was low; 1.5 – 2.49 indicated that the level of commitment was moderate and 2.5 – 3.49 indicated that the level of commitment was high. The findings are summarized in Table 3.4.

RELIGIOUS COMMITMENT		
	Mean	Std. Deviation
Devotion to faith	2.40	.594
Religious affiliation	1.98	.978
Total	2.19	

**Table 3.4 Level of religious commitment**

From Table 3.4, the mean level of devotion to faith was 2.40 and the mean level of religious affiliation was 1.98, which means that the respondents' level of commitment was moderate. The overall mean of 2.19 indicated that the respondents' level of religious commitment was moderate.

#### 3.4.2 Time spent on personal matters

The study sought to evaluate the time that the respondents spent on various activities between Monday and Friday. The activities that were rated were grooming, prayer, sports/exercise, church service/mass, personal development/training, TV/movies, phone conversations and social

<sup>55</sup> Patel and Cunningham (n 8) 390-1.

activities. These activities were rated on a six-point scale (0 being 'none', 1 being 'less than 15 minutes', 2 being '15-30 minutes', 3 being '30 minutes-1 hour', 4 being '1-2 hours and 5 being 'more than 2 hours'). In analyzing the data, the means were interpreted as follows: 0 – 0.49 indicated that the respondent did not spend any time on the given activity; 0.5 – 1.49 indicated that the respondent spent less than 15 minutes on the given activity; 1.5 – 2.49 indicated that the respondent spent between 15 and 30 minutes on the given activity; 2.5 – 3.49 indicated that the respondent spent between 30 minutes and one hour on the given activity; 3.5 – 4.49 indicated that the respondent spent between one and two hours on the given activity and 4.5 – 5.0 indicated that the respondent spent more than 2 hours on the given activity. The findings are summarized in Table 3.5.

TIME SPENT ON PERSONAL MATTERS		
	Mean	Std. Deviation
Grooming	1.84	.970
Prayer	1.49	.761
Sports/exercise	1.47	1.486
Church service/mass	1.53	1.886
Personal development/training	1.90	1.622
TV/movies	2.87	1.527
Phone conversations	2.98	1.452
Social activities	2.86	1.652
Time spent on personal matters	2.12	

**Table 3.5 Time spent on personal matters**

From the analysis above, most respondents spent less than 15 minutes on sports and exercise (a mean of 1.47) and prayer (a mean of 1.49). The mean for church service or mass was 1.53 which shows that the average time spent on this is between 15 minutes and half an hour. A standard deviation of 1.886, which is greater than 1, shows that the respondents were not in agreement on the ratings for the time spent at church service and mass. The average time spent on grooming and personal development was also between 15 and 30 minutes (means of 1.84 and 1.90 respectively). Many of the respondents rated the time spent on social activities (a mean of 2.86), television and movies (a mean of 2.87) and phone conversations (a mean of 2.98) as between 30 minutes and one hour. The standard deviations for sports, church, personal development,

television, phone conversations and social activities were greater than 1. Accordingly, there was a great disparity between the ratings the respondents made on these items.

Most young advocates felt that the time they spent on personal matters was little. Some of the comments included: “When I wake up in the morning to exercise, I inevitably run late for work. I cannot exercise in the evening as I leave work at sundown.” “I am always busy with work and lack time for recreational activities.” “I am not able to fully utilize or explore my personal hobbies because I am at work most of the day.” “Work takes up too much time and is too demanding, so there is little time to socialize and pursue other personal areas.”

### 3.5 Work

In this section respondents were asked questions relating to working hours and the extent of adoption of WLB practices in the respective law firms.

#### 3.5.1 Working hours

The respondents were asked to indicate the time they usually report to the office, the time they usually leave the office, the length of the lunch break and other breaks that they may be entitled to. The purpose of this was to determine the average number of hours that they spent at the office each day. The following formula was used:

$$\text{Working hours} = (\text{leaving time} - \text{reporting time}) - (\text{lunch break} + \text{other breaks})$$

The findings on the time young advocates spent at the office are summarized in Table 3.6.

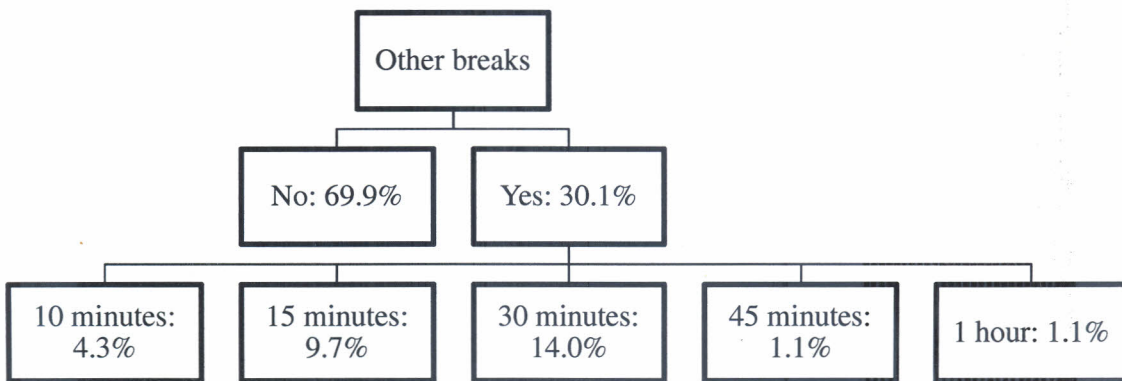
WORKING HOURS					
	Reporting time	Leaving time	Lunch break	Length of other breaks	Working hours
Minimum	6:30	16:15	0:00	0:10	6:15
Maximum	9:00	21:00	1:30	1:00	13:30
Mean	7:47	18:05	0:54	0:23	9:15
Std. Deviation	0:35	1:07	0:16	0:11	1:16

**Table 3.6 Time respondents spend at the office**

The earliest reporting time was 6.30 a.m. whereas the latest reporting time was 9.00 a.m. The mean reporting time was 7.47 a.m. That indicates that the majority of young advocates arrived at

the office before 8.00 a.m. On the other hand, the earliest leaving time was 4.15 p.m., and the latest leaving time was 9.00 p.m. The mean leaving time was 18.05 p.m. That shows that most respondents left the office after 5.00 p.m. All the respondents indicated that they were entitled to a lunch break. However, some of the respondents (4.3%) stated that they did not take any lunch break. Instead, they usually ate as they are working. Therefore, the minimum lunch break was calculated as 0.00. The majority of the respondents stated that they had a lunch break of one hour. The maximum lunch break was recorded as one and a half hours. There were also a few who had a lunch break that was less than one hour, thus bringing the mean lunch break length to 54 minutes, which is slightly less than an hour.

Some of the respondents indicated that they were entitled to take other breaks during the day. For those who answered in the affirmative, there was a follow-up question as to the length of these other breaks. The shortest break was 10 minutes, and the longest break was one hour. For those young advocates who were entitled to other breaks, the mean length was 23 minutes. The findings on other breaks are summarized in Figure 3.1.



**Figure 3.1 Breaks other than lunch break**

Table 3.6 shows that the minimum number of working hours per week was 6 hours 15 minutes, whereas the maximum number of working hours was reported as 13 hours 30 minutes. The mean number of working hours was 9 hours 15 minutes. Therefore, on average the respondents spent 46 hours 15 minutes working each week.

The young advocates, therefore, felt that they spent too much time at the office. Some of them admitted: “Work takes up the bulk of my time leaving me with hardly any time to do anything else... I have no time for personal interests (and) the only time I get to spend quality time with my family is during weekends.” “The firm is very busy. After working for a while, you realize that in order to meet deadlines, you have to work on weekends and public holidays.” “Working on weekends has robbed me of my private life. My work-life balance is wanting. The pressures associated to work take most of my valuable time.” “I spend over two-thirds of the day at the office or doing office work.” “Work takes too much of my time. I travel a lot and work weekends and often late hours.”

Nevertheless, working for long hours may only become a cause for concern if it is associated with dissatisfaction with the balance between family needs, personal needs and work. The findings on the correlation between the length of working hours and the sense of WLB are summarized in Table 3.7.

	Problems adjusting family life with work	Problems adjusting personal interests with work
Less than 8 hours a day	34.6%	27.3%
8 hours a day	50.0%	40.5%
More than 8 hours a day	63.6%	59.5%

**Table 3.7 Correlation between length of working hours and WLB**

As shown in Table 3.7, the advocates who worked for less than eight hours a day experienced a greater sense of WLB. On the other hand, the advocates who worked for more than eight hours a day experienced a greater sense of WLC. Further, work interfered more with the family domain than with the personal interests’ domain.

### **3.5.2 Work-life balance practices**

The respondents were given a set of WLB practices and asked to indicate on a five-point scale the extent to which these practices were adopted at the law firms(1 being ‘I’m not sure’, 2 being ‘not at all’, 3 being ‘to a moderate extent’, 4 being ‘to a great extent’ and 5 being ‘to a very great extent’). The WLB practices were divided into two categories: those relating to flexibility of working hours and those relating to the location. In analyzing the data, the means were

interpreted as follows: 0 – 1.49 indicated that the practice was not adopted; 1.5 – 2.49 indicated that the practice was adopted to a moderate extent; 2.5 – 3.49 indicated that the respondent was not aware; 3.5 – 4.49 indicated that the practice was adopted to a large extent; and 4.5 – 5.0 indicated that the practice was adopted to a very large extent. A standard deviation greater than 1 indicated that the law firms did not uniformly adopt that particular practice.

The WLB practices relating to flexibility of working hours would indicate whether the employees were at liberty to establish personal daily or weekly work routines. This provision for flexibility would, therefore, point to whether the work schedules fitted in well with the routines and responsibilities outside work. The results for the question on requirement to work on weekends were reverse scored to come up with the WLB practice of optional weekend work. In this way, a higher score represented less optional weekend work. The other items were analyzed as they were. The findings are summarized in Table 3.8.

FLEXIBILITY OF WORKING HOURS		
	Mean	Std. Deviation
Flexible start and finish times	1.70	1.030
Flexible working days	1.30	.734
Flexible working hours	1.62	.977
Time off for family emergencies/events	3.55	1.175
Optional weekend work	4.25	1.167
Total	2.48	

**Table 3.8 WLB practices relating to working hours**

From Table 3.8 optional weekend work and time off to attend to family matters had means of 4.25 and 3.55 respectively, which shows that these were practiced to a great extent. Flexible start and finish time had a mean of 1.70, and flexible working hours had a mean of 1.62. Therefore, these two practices were adopted to a moderate extent. The mean of 1.30 for flexible working days showed that this practice was adopted at all. The overall mean of 2.48 indicated that WLB practices relating to flexibility of working hours were adopted by the law firms at which the respondents worked to a moderate extent. However, for optional weekend work, time off to attend to family matters and flexible start and finish times, the SDs were 1.167, 1.175 and 1.030 respectively. Since the SDs were greater than 1, this showed that the law firms at which the respondents worked did not uniformly adopt these practices.

In summary, therefore, this data shows that the majority of young advocates did not have flexible working days. Also, many young advocates did not have flexible working hours and flexible start and finish times. Although they were not in agreement, most young advocates were allowed time off to attend to family matters and were also allowed to choose whether or not to work on weekends.

About location, respondents were asked to evaluate the extent to which they could work from locations other than the office and whether they have office resources for teleworking. The WLB practices relating to the location, therefore, indicated the extent to which teleworking was adopted. The responses are summarized in Table 3.9.

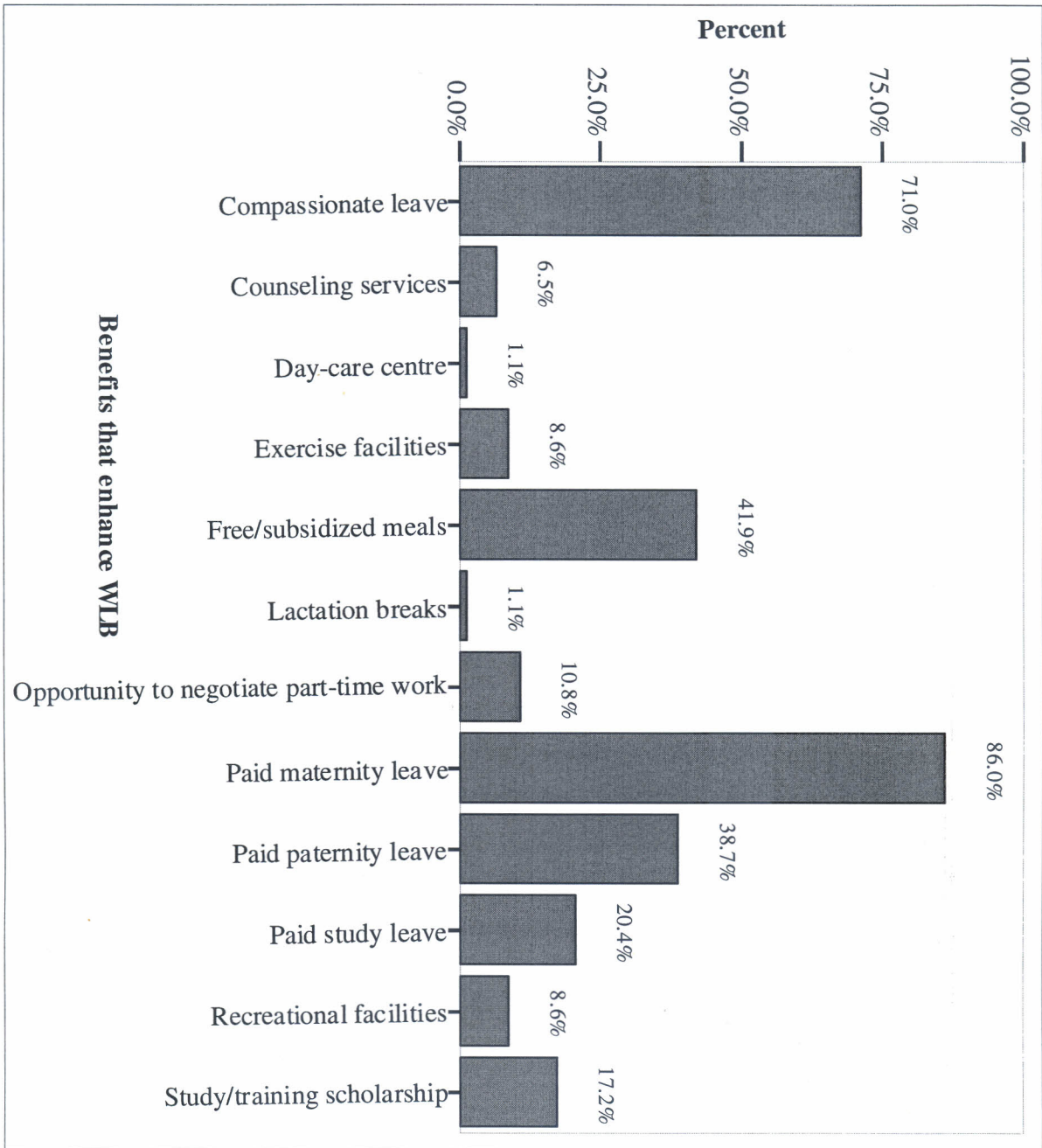
LOCATION		
	Mean	Std. Deviation
Teleworking	1.48	.880
Provision of teleworking resources	2.23	1.512
Total	1.85	

**Table 3.9 WLB practices relating to location**

The results above show that teleworking with a mean of 1.48 was a practice that was not adopted. The provision of teleworking resources with a mean of 2.23 was moderately practiced. The overall mean of 1.85 indicated that WLB practices relating to the location were adopted by the law firms at which the respondents work to a moderate extent. However, provision of teleworking resources had a standard deviation of 1.512, which is greater than 1, therefore indicating that the law firms at which the respondents worked did not agree on the adoption of this practice. In summary, the majority of young advocates were not allowed to work from locations other than the office and only a few were provided with teleworking resources.

### 3.5.3 Benefits that promote work-life balance

This section sought to determine which of the various benefits that adopt WLB were adopted by the law firms at which the young advocates worked. The results are summarized in Figure 3.2.



**Figure 3.2 Benefits that enhance WLB**



These results imply that with reference to benefits that promote WLB, the majority of young advocates (91.6%) were granted the statutory requirement of three months paid maternity leave. Although the law provides for two weeks paid paternity leave, only 42.2% of the respondents stated that the law firms granted this. Further, 71% of the respondents indicated that the law firms where they worked found it prudent to grant fully paid compassionate leave. However, during the interviews, three respondents remarked that though they were entitled to compassionate leave, the leave was pegged to the annual leave and was, therefore, deducted from the annual leave.

On average, most young advocates were not entitled to paid study leave. Neither were most respondents given the opportunity to grow academically through study and training scholarships. However, most of the respondents remarked that they were entitled to undertake Continuing Legal Education (CLE) training at the firm's cost. In this way, the employees could secure the five CLE units that are a prerequisite to the annual practicing certificate application.

Only 6.5% of the young advocates had access to counseling services through the law firms. Moreover, only 10.8% were entitled to negotiate for part-time work when they feel the need to. On the other hand, some respondents (41.9%) stated that the law firms where they worked considered it important to provide free or subsidized meals for the employees. Further, a few young advocates (8.6%) had been provided with access to exercise facilities and recreational facilities at the firms' cost.

The respondents noted that most of the law firms found no value in establishing day care centers to cater for the employees' children while they were at work. Only one respondent indicated that the law firm had recently set up a day care centre as well as a system for lactation breaks. Although she was not bringing her two young children to the office because she had employed a house help, she expressed that she was grateful for the initiative and that she would be sure to use it once in a while.

### **3.6 Work-life balance**

The study sought to determine whether young advocates had adequate balance between personal needs, family needs and career requirements. WLB was, therefore, studied in the form of the component elements work, family and personal interests. The respondents were asked to evaluate

whether they felt they had any problems adjusting family life with work. This question assessed WLB between the work and family domains.

Some respondents were happy to devote large amounts of time and energy to work, but noted that this had an effect on the families. Some respondents remarked: "I leave when most are asleep and come back home too tired to interact." "I am able to balance my work and family life fairly well. Nevertheless, if the two collide, work is likely to have its way." "I am always tired. I fight constantly with my boyfriend as I cannot afford to meet him on weekdays. I sometimes pass on family events (sic) to continue office research at home." "After a long day, which is every day, you prefer to have some space; time alone." "Sometimes if the workload is heavy and there are tight deadlines, I forgo time that would otherwise be spent with my family. We, however, do not work on weekends, and this is a plus." "Too much work to do and not enough time to do it. That means I carry work home and end up being too tired over the weekend to do anything other than sleep."

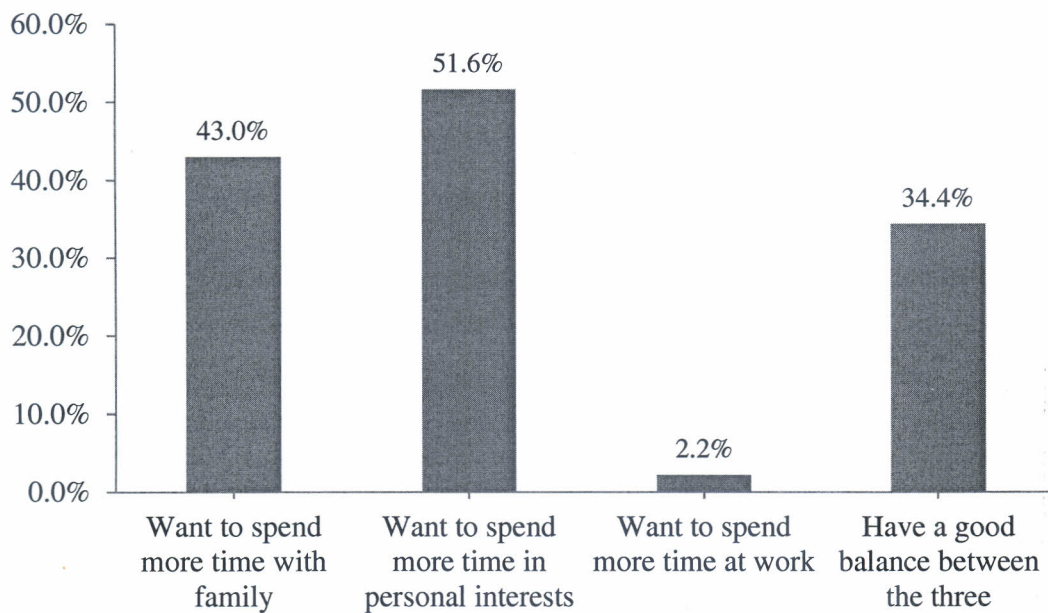
Some advocates, however, expressed that despite the heavy workloads, they had a clear divide between the work and family domains: "I have adequate time with my family after work and during the weekends." "The weekend is enough for my family." "Family time is strictly family time." "I never carry work or its stresses home."

The respondents were also asked to evaluate whether they felt they had problems adjusting personal interests to work. This question assessed WLB between the work and personal interests' domains. Some of the advocates admitted that they did not feel they had problems balancing personal interests and work because there was an overlap between the two domains. Some of the comments included: "I can assimilate my personal interests into my work very easily." "My work and my interests are somehow intertwined making it easy to sail through." "My personal interests are related to my work."

Nevertheless, the majority noted a conflict between the two domains: "I am usually too tired from work to engage in personal interests." "I am at work most times. It is difficult to make enough time to pursue other interests and be consistent." "Work is demanding and it is hard to schedule personal interests, plus working on weekends does not help." "There is no time to engage in my personal interests." "On occasion it often becomes difficult to engage in my

interests when the work load is heavy.” “I am not able to fully utilize or explore my personal hobbies because I am at work most of the day.” “The working policy requires us to work on six days of the week, leaving one with very minimal time to pursue personal interests.”

The respondents were then asked whether they felt they had problems in terms of WLB. To expound further, they were asked to indicate whether they would like to spend more time in any of the three domains (family, personal interest and work) or whether they felt they had a good balance between the three. The findings on the respondents who answered in the affirmative are summarized in Figure 3.3.



**Figure 3.3 Work-life balance factors**

Figure 3.3 shows that 34.4% of the respondents felt that they had a good WLB. The other 65.6% who felt that they had WLC indicated where they wanted to spend more time. They had the option to tick as many categories as they felt applied to the situation. In total 43.0% of the respondents felt they wanted more family time, 51.6% felt they needed more time for personal interests, and 2.2% wanted to spend more time at work.

In analyzing this section on WLB, a multiple regression analysis was conducted to determine the extent to which (after controlling for background individual factors) relationship with family members, time spent in personal matters, hours worked, flexibility of working hours and

teleworking were associated WLB. The background individual factors that were controlled were gender, age, marital status, parenthood, religion and length of service at the law firm. The analysis of variation (ANOVA) findings are represented in Table 3.10.

### Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.356(a)	.126	.076	.456

a Predictors: (Constant), Relationships with family members, Time spent on personal matters, Working hours, Flexibility of working hours, Teleworking

### ANOVA (b)

Mode 1		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	2.614	5	.523	2.520	.035(a)
	Residual	18.052	87	.207		
	Total	20.667	92			

a Predictors: (Constant), Relationships with family members, Time spent on personal matters, Working hours, Flexibility of working hours, Teleworking

b Dependent Variable: Work-life balance

**Table 3.10 ANOVA table for work-life balance**

The ANOVA indicated that the overall variance accounted for in the model had an  $F(5,87) = 2.520$ ,  $p > 0.05$ ,  $\alpha = 0.05$  indicated that the proportion of variance in WLB accounted for by the independent variables was zero. Therefore, there was no regression relationship between the dependent variable and the predictor variable. Work obligations interfered with both the family and the personal interests' domains. Hence, the null hypothesis in this study that young advocates working in law firms in Nairobi have an inadequate WLB was not rejected.

### 3.7 Discussion of the findings

The major findings on the section on family life were that only a few of the young advocates were parents, and the children of these respondents were between the ages of one month and eight years. All the respondents who had children rated the relationship with the children as good. Most respondents rated the relationships with the parents, cousins and workmates as good. There was a disparity between the advocates rating on the relationship with grandparents but on average the rating was fair. The findings on personal interests suggest that the majority of young

advocates had moderate religious commitment. Most advocates felt that the time they spent on personal matters was little.

The findings on the section on work suggest that the majority of young advocates arrived at the office before 8.00 a.m. and left after 5.00 p.m. The average lunch break was slightly less than one hour. A few young advocates were entitled to other breaks during the day and these were for an average of 23 minutes. The minimum working hours was 6 hours 15 minutes, whereas the maximum number of working hours was 13 hours 30 minutes. On average, young advocates worked for 9 hours 15 minutes, excluding lunch break and other breaks.

With reference to WLB practices relating to flexibility of working hours, the young advocates were not entitled to vary the working days, and most were not allowed to vary the working hours, start times and finish times. Most young advocates, however, were entitled to take time off from work to attend to personal matters. Most young advocates were also allowed to choose whether or not to work on weekends. On practices relating to the location, the study revealed that the young advocates were not allowed to work from locations other than the office. In addition, only a few had office resources for teleworking.

These results further showed that for practices relating to benefits that enhance WLB, the majority of young advocates were granted the statutory requirement of paid maternity leave. However, for the male counterparts, paid paternity leave was not as common. The majority of young advocates were also entitled to fully paid compassionate leave. About academic growth, the majority of young advocates were not entitled to paid study leave or to study and training scholarships. A number of young advocates, however, were entitled to free or subsidized meals.

Very few young advocates had access to counseling services, recreational facilities and exercise facilities through the law firms. Even fewer young advocates were entitled to lactation breaks and access to office-provided day-care centers to cater for the needs of the young children. Also, few young advocates could negotiate for part-time work where the need arose. Family event days and family support programmes were also not provided.

The findings from this study suggest that the majority of young advocates working in law firms in Nairobi had an inadequate work-life balance. Work commitments interfered with both family and personal life obligations.

### **3.8 Conclusion**

The study concludes that the majority of young advocates working in law firms had an inadequate work-life balance. It should, however, be noted that there is a role that the individual plays in enhancing WLB. Even though the framework may exist, the employees need to make use of the available WLB practices.

It is important to consider all the factors influencing employees' ability to balance work and non-work commitments. Having employees who make use of available WLB practices may attract cost savings for organizations through improved efficiency and enhanced productivity. Therefore, the improvement of the legislative framework governing WLB in Kenya would be beneficial in enabling employees achieve greater WLB.

The next chapter will discuss the UK legislative framework for WLB. This will look at the key aspects relating to the regulation of WLB and the successes that they have achieved in enhancing WLB. Consequently, chapter five will propose recommendations on how to improve the Kenyan legislative framework governing WLB.

## **CHAPTER FOUR**

### **THE LEGISLATIVE FRAMEWORK FOR WORK-LIFE BALANCE IN THE UNITED KINGDOM: A COMPARATIVE STUDY**

#### **4.1 Introduction**

In the United Kingdom (UK) there has been a considerable effort to introduce legislative and policy measures that assist employees in reconciling the demands of the workplace and those of the family. Such measures include the provision of childcare services, the regulation of working hours and paid leave such as maternity leave, paternity leave, adoption leave, parental leave, and compassionate leave. The legislative framework has a direct influence on the adoption of WLB initiatives in the workplace to enhance a good balance between paid work and family life.

This chapter discusses the legislative framework for WLB in the UK). Further, a comparative analysis of the UK WLB legislative framework will be undertaken with that of Kenya. The study considers UK law because of the shared common legal systems and structures dating back to the colonial times. Further, the UK has had a historical influence in the development of Kenyan law. Kenya was colonized by the British. Through the reception clause that was introduced in Kenya on 12<sup>th</sup> August 1897, British laws were applied to Kenya. Even though there have been several amendments to the laws in both Kenya and the UK, there are still several similarities.

This study, therefore, considers whether the UK has a facilitative WLB legislative framework. In this regard, the chapter discusses the various aspects of the legislative framework for WLB in the UK and how these have impacted on the improvement of WLB of employees the country. Further, the chapter makes comparisons between the two countries with a focus on recommendations for the improvement of the WLB legislative framework in Kenya. However, the study considers the fact that the socio-economic context of Kenya is different from that of the UK. Therefore, the proposed WLB initiatives are not an exact replica of those found in the UK.

#### **4.2 Overview of the UK Legislative Framework**

The WLB campaign in the UK started in March 2000 when the UK Government and the National Assembly for Wales launched a discussion document entitled “Changing Patterns in a Changing World.” The document discussed the concept of WLB, the business case for improving WLB, the possibility of achieving tailor-made solutions, how to make the change, and

the plans that the UK Government and the National Assembly for Wales had for promoting good practice in WLB. Such improvements would be made in partnership with businesses, the voluntary sector and employee organizations. The UK Government then set up a Ministerial Advisory Committee on Work-Life Balance, which was chaired by the Minister for Employment and Equal Opportunities.<sup>56</sup> The Government also set up a fund that it called “Work-Life Balance Challenge Fund” to support innovative projects that help employers promote WLB.<sup>57</sup> The campaign led to several legislative amendments to promote and support WLB.

This section discusses the various Acts of Parliament and regulations that have been enacted to enhance WLB. The Employment Rights Act 1996 (ERA 1996) consolidates the enactments in the UK that relate to employment rights. The Work and Families Act 2006 (WFA 2006) provides *inter alia* for the statutory rights to leave and pay in connection to the birth or adoption of a child. The Childcare Act 2006 (CA 2006) explains the powers and duties of the UK local authorities in relation to childcare support. The Children and Families Act 2014 (CFA 2014) *inter alia* makes amendments to the right to request for flexible working and to leave provisions relating to families.

The Maternity (Compulsory Leave) Regulations 1994 provide measures relating to pregnant employees, employees who have recently given birth and employees who are breastfeeding. The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 (MPPAR 2008) provides for ordinary maternity leave, additional maternity leave, paternity leave, ordinary adoption leave, additional adoption leave and parental leave. The Parental Leave Regulations 2013 (PLR 2013) determine the conditions and extent of the entitlement to parental leave.

The Working Time Regulations 2003 (WTR 2003) provide for various measures that relate to working time. The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (FWECCR) provide the statutory right to request for FWAs to enable an employee to care for a child or another adult. On the other hand, the Flexible Working (Procedural Requirements) Regulations 2002 (FWPRR 2002) provide the procedural requirements for the right to request for

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<sup>56</sup> DFEE, Scotland Office and the National Assembly for Wales, ‘Changing Patterns in a Changing World’ (Discussion Document, March 2000) 27.

<sup>57</sup> *ibid* 28.



flexible working. Finally, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR 2000) prohibit less favourable treatment of part-time employees.

### **4.3 Specific WLB initiatives**

#### **4.3.1 Regulation of working hours**

Section 234(3) of the ERA 1996 defines working hours as the time when an employee is required to be at work in accordance with the employment contract, without counting the number of hours worked overtime. The law can improve working conditions by regulating working hours. Weekly work limits are key in preventing consistent long hours of work, and also in allowing employees adequate time to devote to family obligations and leisure. The limitation of working hours is also considered a human right.<sup>58</sup> Setting a legal limit on working hours that complies with international standards can greatly enhance WLB.

Article 2 of the 1919 ILO Hours of Work (Industry) Convention number 1 and article 3 of the ILO Hours of Work (Commerce and Offices) Convention number 30 set the maximum working hours at 48 hours per week and limit the hours of work per day to eight hours. The WTR 2003 provides the same limit as the ILO conventions. Any work done above this limit is considered overtime. However, an individual employee may voluntarily sign an agreement to opt out if the limit. Further, such an employee may later cancel the agreement. In addition, sections 45A(1)(a) and 101A(1)(a) of the ERA 1996 prohibit employers from subjecting employees to any detriment for refusing to comply with conditions that contravene the WTR 2003.

Regulation of working hours is an important WLB mechanism which is required under international law. Kenya's limit on the maximum number of working hours is 52 hours, which is above the international law limit. On the other hand, the UK's WTR 2003 set the maximum at 48 hours. This limit complies with ILO Conventions 1 and 30.

#### **4.3.2 Flexible working arrangements**

FWAs enable employees, with the approval of the employers, to work at varied times according to the different needs. It may be through varying the hours and times of work or working from

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<sup>58</sup> Universal Declaration of Human Rights, art 24; International Covenant on Economic, Social and Cultural Rights, art 7(d); the Revised European Social Charter 1996, art 2; Charter of Fundamental Rights of the European Union, art 31(2).

home or other approved locations. Flexibility contributes to WLB by allowing employees some discretion over the distribution of the working hours and location. This flexibility, therefore, enables employees balance better work demands with other obligations such as family needs.

The right to request for flexible working is a WLB initiative that encourages organizations to embrace family-friendly policies by facilitating the process through which employees and employers can negotiate for mutually beneficial work arrangements. Employees who have worked for at least six months can request the employers for FWAs. This right is protected by section 80F(1)(b) of the ERA 1996, regulation 3 of the FWECRR, section 12(2) of the WFA 2006, and section 132 of the CFA2014. Upon receipt of the application, the employer may only reject because of the business justifications enumerated in section 80G of the ERA 1996. Moreover, sections 47E and 104C prohibit employers from subjecting employees to any detriment because of making an application or bringing proceedings related to the request for FWAs. Regulation 16(1) of the FWPRR 2002 gives employees the same protection.

Of the FWAs, part-time working is the most common. Regulation 2(2) of PTWR 2000 defines part-time working as an arrangement in which an employee is contracted to work for less than the basic full-time hours. Such an arrangement usually involves an equivalent reduction in pay through the pro-rata principle. Therefore, the part-time worker should not receive less than the proportion of remuneration that the number of weekly hours bears in comparison to those of a comparable full-time worker. In this way, the PTWR 2000 ensures that part-time employees are not treated less favourably than comparable full-time employees merely because of the part-time status. According to Hennig *et al*'s<sup>59</sup> study on WLB policies, women in the UK who work part-time find the reconciliation between work and family life better than those who do not. Hence, part-time work has positive effects.

The other types of FWAs are job sharing, working from home, compressed hours, flexi-time and annualized hours. Job sharing involves two employees sharing the responsibilities, remuneration and other benefits of one full-time job. Compressed working hours enable employees to work over fewer weekdays. Such employees can, therefore, have longer weekends. Flexi-time enables

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<sup>59</sup> Marina Hennig, Stefan Stuth, Mareike Ebach and Anna Erika Hagglund, 'How do Employed Women Perceive the Reconciliation of Work and Family Life? A Seven-Country Comparison of the Impact of Family Policies on Women's Employment' (2012) 32 *IJSSP* 513,518.

employees to vary the working hours within specified limits. On the other hand, annualized hours enable employees to work a certain number of hours in a year, and these hours may be varied to meet both the organization's demands and the employee's needs. The employees can, therefore, use these variations to meet various other obligations.

Teleworking involves using technology to enable employees to work away from the traditional office environment. Employees can, therefore, carry out work from home or other approved locations, either occasionally or as a permanent working arrangement. This flexibility enables employees to balance work and family obligations. It also helps employees save on time that they would otherwise have used travelling to and from the office.

In 2003, the European Framework Agreement on Telework was developed. The Trades Union Congress, the Confederation of British Industry and the Employers' Organisation for Local Government then came up with a Telework Guidance.<sup>60</sup> The Telework Guidance focuses on the implementation of the European Framework Agreement in the UK. It is a non-binding document. However, it encourages employers to rely in it when coming up with policies on teleworking.

An employee may apply for teleworking in accordance with section 80F(1)(a)(iii) of the ERA 1996 to enable the employee balance between work and caring obligations. Such an employee would need to be caring for a child or another adult. The law does not expressly cater for teleworking of employees who are not carers. However, the Telework Guidance proposes that teleworking arrangements be introduced on the basis of consensus between employers and employees. Further, the Telework Guidance stipulates that teleworkers should be entitled to the same benefits as the comparable employees who are working from the office premises

Kenya does not have any legislative provisions to regulate FWAs. Neither does it have a framework to govern teleworking. It is, therefore, left to organizations to provide for FWAs and teleworking in policy documents. It would be useful to have the right to request for FWAs and teleworking protected by the law. However, consideration would have to be given to the socio-economic situation in Kenya. Even though the country strives towards enabling a 24-hour economy, this has not yet been effected. Further, insecurity issues may prevent employees from

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<sup>60</sup> Department of Trade and Industry, 'Telework Guidance' (2003).

taking on night-work. Therefore, these would need to be considered in the formulation of a legislative framework for FWAs and teleworking.

### **4.3.3 Maternity leave and related leave entitlements**

Article 4(1) of the 2000 ILO Maternity Protection Convention number 183 sets the international standard for the duration of maternity leave at not less than 14 weeks. In the UK, the law entitles female employees to a maximum of 52 weeks paid maternity leave. Further, in accordance with section 165(1) of the Social Security Contributions and Benefits Act 1992, maternity allowance is payable for the entire 52 weeks. Section 71(3)(a) of the ERA 1996 defines the first 26 weeks' as ordinary maternity leave. The second 26 weeks is defined by section 73 of the ERA 1996 as additional maternity leave, and is available to all employees who qualify for ordinary maternity leave. The UK law does not provide for lactation breaks because of the extensive maternity leave period that is offered.

Article 8(2) of EU Directive 92/85/EEC obligates EU countries to include compulsory leave of at least two weeks at the beginning of the maternity leave. As explained in article 4(4) of ILO convention 183, compulsory leave protects female employees from the pressure to return to work at the most fragile time after childbirth. Accordingly, section 72(3) provides for compulsory maternity leave and defines it as a two-week period within the employee's ordinary maternity leave during which the employee is not allowed to work. The UK complies with this international requirement.

Adoption leave provisions extend maternity and paternity leave provisions to adoptive parents. Sections 75A and 75B of the ERA 1996 entitle female employees to 52 weeks paid adoption leave. This leave is divided into 26 weeks ordinary adoption leave and 26 weeks additional adoption leave. Section 80B(3) of the ERA 1996 entitles male employees to adoption leave for a period of two weeks.

Regulation 3 of the PLR 2013 defines parental leave as leave which employees with parental responsibility can take, which does not exceed eighteen weeks, to care of each child. Further, schedule 2, paragraph 7 of the PLR provides that the leave does not have to be taken all at once. The flexibility of this piecemeal arrangement allows the parent to take the leave as it suits them. For parental leave to apply the child should be below the age of five years. Parents of adopted

children are entitled to parental leave up to the fifth anniversary of the adoption or the child's eighteenth birthday, whichever comes first.

Parental leave is unpaid and is available to either parent as an individual entitlement after the expiry of the maternity or paternity leave period. It is thus gender-neutral. To be eligible, an employee must have been continuously employed under the employer for a period of at least one year. Job security is protected while the employee is on parental leave. Hence, the employee is entitled to return to the same job once the parental leave comes to an end. It is an important initiative that enhances WLB because it supports parental care of young children. For example a parent may take parental leave so as to spend more time with the child or to help the child fit into a new child care arrangement. The leave may also enable a parent to look at new schools for the child or to spend time with a hospitalized child. Also, the fact that parental leave is available to both male and female employees promotes gender equity.

In Kenya, maternity leave is for a period of three months. To enhance the health and wellbeing of female employees, maternity leave could be increased so that it is more than fourteen weeks. Alternatively, the law could provide female employees with the possibility of reduced working hours for the period when they resume work after the maternity leave. Moreover, the provisions on maternity and paternity leave should extend to adoptive parents in the form of adoption leave. Also, it would be beneficial to have legislative provisions for parental leave. These would be important measures in enhancing WLB.

#### **4.3.4 Compassionate leave**

Section 57A of the ERA 1996 entitles employees to a reasonable time from work to deal with emergencies involving dependants. The Act defines a dependant as a spouse, a child, a parent or any person who lives with the employee as part of the family. Compassionate leave may be taken to enable the employee provide assistance to a dependant who is ill, injured, assaulted or has just given birth. An employee may also take compassionate leave in case of the death of a dependant. If an employee requests for time off and the request is unreasonable denied, the employee may make a complaint to an employment tribunal in accordance with section 57B of the ERA 1996.

Kenyan law and practice renders compassionate leave redundant in that it is deducted from the employee's annual leave. To enhance WLB, compassionate leave should operate as a distinct leave entitlement.

#### **4.3.5 Childcare assistance**

For employees with young children, childcare support is crucial for the reconciliation of work and personal life. Childcare facilities serve an important purpose in that they are designed to take care of children and contribute to the working parents' WLB. Sections 6(1) and 8(3) of the CA 2006 obligate local authorities to secure sufficient childcare support for working parents and those making the transition to work if there is no other person who is willing to provide the childcare. Further, sections 7(1) and 10(1) of the Act provide that part of the provision of childcare should be free of charge, after which the local authority may charge for the childcare support.

Employer-supported childcare is a term used to describe instances where employers assist employees with some of the childcare costs. UK law does not obligate employers to provide childcare support. However, section 13(1)(b) of the ERA 1996 allows an employee to sign a legally binding agreement to forfeit part of the remuneration due under the contract of employment for the sake of some non-cash benefit. This arrangement is commonly known as salary sacrifice. One of these non-cash benefits is employer-supported childcare. There are benefits for employees who decide to sacrifice. For example, by making use of either childcare vouchers, directly contracted childcare or workplace nurseries, the employee is entitled to either full or partial exemptions for income tax and national insurance contributions (NICs).

Childcare vouchers are vouchers that are provided by employers to enable the employees pay for childcare. Through the use of childcare vouchers, unlike the other two types of employer-supported childcare, the employee can choose the childcare provider. Further, in accordance with sections 270B and 318AA of the Income Tax (Earnings and Pensions) Act 2003, employees are entitled to receive £55 each week or £243 each month that is free from tax and NICs. These vouchers do not have to be used when they are issued and so can be saved for later use.

Directly contracted childcare refers to a situation where an employer arranges with a commercial childcare provider to cater for the childcare needs of the employees. Sections 270B and 318AA

of the Income Tax (Earnings and Pensions) Act 2003 limit the amount that is tax and NIC free to £55 each week or £243 each month. Therefore, if the employer pays this amount to the childcare provider then it will be free from tax and NICs. Payment above this limit will attract income tax and NIC on the additional amount.

Workplace nurseries are set up by the employer at the workplace or another location. The employer then offers places to the employees' children. For full income tax and NIC exemptions, the nursery must be made available by the employer alone, must meet the requirements of the Childcare Act 2006 and places in the nursery must be made available to all employees. In addition to the benefits that the workplace nurseries offer to employees, employers may also benefit through tax relief on the day-to-day costs of running the nursery. The employer may also receive capital allowances on the cost of equipment for the nursery and tax relief for the capital costs of providing premises for the nursery.

Kenya does not have any legislative framework for employer-supported childcare. It should, however, be noted that the social situation regarding childcare is different in the two countries. In Kenya, many employees make use of house managers, nannies or house helps to assist in caring for their children. Therefore, bearing in mind the social context, the employer-supported childcare measures may be different. For example, employees may prefer having more money to pay for domestic workers rather than having day-care centers at the workplace.

#### **4.4 Conclusion**

The chapter discussed the legislative framework for WLB in the UK. A comparative analysis was undertaken between the UK WLB legislative framework and the Kenyan WLB framework. The next chapter makes recommendations to enhance the Kenyan WLB legislative framework.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

This chapter concludes the salient findings of the study. It also discusses the proposals for reform, making recommendations on how the legislative framework governing WLB in Kenya can be enhanced. The chapter is based on the findings of Chapter 2 and Chapter 3. Further, the chapter makes recommendations based on the best practices on regulation of WLB in the UK.

The chapter is divided into two main sections. The first section entails a conclusion and summary of the study. Here, the key findings made in each of the foregoing chapters are discussed in an effort to answer the hypotheses of the study. The second section entails a discussion of the specific recommendations for reform to the WLB legislative framework.

#### 5.2 Conclusion

Chapter one essentially entailed an introduction and conceptual analysis of the study. The chapter laid a background on the concept of WLB and WLC. WLB enables employees to strike a balance between the roles that they have in the domains of work, family and personal interests. When one domain takes a prominent position in respect to the others, it leads to a sense of WLC. The first hypothesis of the study was that the current legislative framework is inadequate to ensure that WLB initiatives achieve the objectives among employees in Kenya and is, therefore, in need of reform. The second hypothesis was that young advocates working in law firms in Nairobi have an inadequate WLB.

In this regard, the study aimed at critically examining the legislative framework governing WLB in Kenya to establish the status of the law and determine whether it is efficient in enhancing WLB. The study also looked at the work-life culture of young advocates in Nairobi to determine if the legislative framework is effective to enable the achievement of WLB. The research methodology used in the study involved both desk based research and fieldwork. Desk based research was used given that most of the primary and secondary materials and literature was available from the internet, books, journal articles, reports and relevant studies in the area. In addition, young advocates working in law firms in Nairobi were interviewed to supplement the desk based research.



Chapter two entailed an exposition of the legislative framework for WLB in Kenya. The laws discussed included the Constitution of Kenya 2010, the Employment Act 2007 and the ILO Conventions. It emerged that WLB initiatives in Kenya are governed primarily by the employment laws. The WLB initiatives were categorized into three types: initiatives relating to working conditions, initiatives relating to working location and initiatives relating to employee assistance.

Chapter three presented and analyzed the findings of the study and provided an interpretation of the interviews conducted on young advocates working in law firms in Nairobi. It emerged that work obligations interfered with both the family and the personal interests' domains. The qualitative study tested the null hypothesis in this study and found that the young advocates working in law firms in Nairobi had an inadequate WLB. The null hypothesis was thus not rejected. The analysis showed that there was a perceived disconnect between the WLB legislative framework and the experiences of the young advocates.

Chapter four discussed the best practices behind the success of WLB in the UK. The Acts that were discussed included the Employment Rights Act 1996, the Work and Families Act 2006, the Childcare Act 2006 and the Children and Families Act 2014. It emerged that the UK has regulated working hours such that employees are expected to work for a maximum of 48 hours. In addition, employees are entitled to apply for FWAs so that they can vary working hours or the location of work.

In the UK, the maternity leave provisions are more generous than those provided in the Kenyan law. Female employees are entitled to maternity leave of 52 weeks. Male employees, on the hand, are entitled to paternity leave of two weeks. Further, the maternity and paternity leave entitlements apply even in cases of adoption. In addition to this, both male and female employees who have parental responsibility are entitled to parental leave of 18 weeks for each child. Compassionate leave is also guaranteed by law so that employees can take time off to deal with emergencies relating to dependants. Further, employees are entitled to study leave if the purpose of the study or training is to improve the employee's effectiveness and to improve performance in the business.

The UK law relating to teleworking is governed by the European Framework Agreement on Telework and the Telework Guidance. Though these two are non-binding instruments, employers rely on the guidelines when coming up with teleworking arrangements for employees. In the UK, the law does not obligate employers to provide employer-supported childcare. However, employees may by choice make use of childcare vouchers, directly contracted childcare or workplace nurseries. These three childcare support systems entitle employees to either full or partial exemptions for income tax and national insurance contributions.

### **5.3 Recommendations from this study**

The study revealed that young advocates in Nairobi who were interviewed did not have an adequate WLB. The null hypothesis that the young advocates do not have an adequate WLB was thus not rejected. The study also examined the Kenyan WLB legislative framework. Even though the legislative framework provides for some measures that enable WLB, further amendments can be made to enhance WLB in the country.

Some of the recommendations that have been identified are based on the UK framework. Others are based on the ILO standards. Accordingly, the following are recommended to enhance the Kenyan WLB legislative framework:

The maximum number of working hours should be reduced to comply with the international standard of 48 hours per week as provided for by ILO Conventions 1 and 30. Alternatively, it should be reduced to 40 hours per week in accordance with ILO Convention 47. Further, the right to request for flexible working should be guaranteed by law so that employees can make use of FWAs.

ILO Convention 183 sets the international standard for maternity leave at not less than 14 weeks. Kenya's Employment Act entitles employees to three months maternity leave. Maternity leave in Kenya should, therefore, be increased to more than 14 weeks. The law should also guarantee adoption leave and parental leave. Further, the maternity leave regulations should include a provision for a period of compulsory maternity leave in accordance with ILO Convention 183. This compulsory leave protects female employees from the pressure to return to work at the fragile time after childbirth because this would be detrimental to the health of the woman and possibly also that of the child.

In Kenya, compassionate leave is considered within the context of annual leave such that the number of days the employee is granted compassionate leave is thereafter deducted from the employee's annual leave entitlement. Compassionate leave should operate as a separate leave entitlement. There should be a legislative framework to regulate teleworking in Kenya. Kenya should also have a legislative framework to provide for employer-supported childcare.

In conclusion, even though the legislative framework governing WLB in Kenya provides employees with some initiatives it would be even better if it was strengthened. Some amendments can be made so that it meets international standards. In this way, the well-being of employees in the country will be better protected.

#### **5.4 Recommendations for further research**

This study examined the legislative framework governing WLB in Kenya. The policy and institutional frameworks for WLB were not examined. Though the legislative framework provides for some WLB initiatives, other measures that enhance WLB may exist through policy and institutional frameworks. Further research is needed for such investigation.

The focus of the study was on the state of the WLB legislative framework. Though having facilitative legislative provisions is necessary, they serve no purpose if they are not properly implemented and enforced. Therefore, further research needs to be conducted on the enforceability and implementation of the WLB legislative provisions.

The study revealed that the young advocates work did not have an adequate WLB. The majority of young advocates worked for long hours and some did not take breaks during the day. These work conditions led to interference with both the family and personal interests' domains. The study attributed this interference to the state of the legislative framework. No attempt was made to examine other factors that may lead to advocates accepting such stressful working conditions. Further research is needed to investigate the role played by peer pressure, family pressures, competition, lack of jobs and other relevant factors.

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## APPENDIX: QUESTIONNAIRE ON WORK-LIFE BALANCE

The purpose of the study is to know how work-life balance is being promoted in your workplace and the significance of the program to your life. All information will be treated confidentially. If you consent to taking part in this study, kindly sign below:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Section A: Family Life

1. Age \_\_\_\_\_
2. Gender: Male  Female
3. Marital status: Single  Married  Divorced/Separated  Widow/Widower
4. (a) Do you have any children? Yes  No

(b) If you answered yes to question 4 (a) above, please fill in the table below:

	Age	Gender
Child 1		
Child 2		
Child 3 and more		

5. Describe your relationship with the following people:

	Non-existent	Bad	Fair	Good
Children				
Father (or male guardian)				
Mother (or female guardian)				
Cousins				
Grandparents				
Workmates				

### Section B: Personal interests

1. Religious affiliation

Catholic  Protestant  Muslim  Hindu  Atheist  Other

2. Please indicate your level of religious commitment:

	High	Moderate	Low
Devotion to faith			
Engagement in religious activities			

3. Please indicate how much time do you spend each day (Monday-Friday) on the following activities:

	None	Less than 15 min	15-30 min	30min- 1hr	1-2hrs	More than 2hrs
Grooming						
Prayer						
Sports/exercise						
Church service/mass						
Personal development/training						
TV/movies						
Phone conversations						
Social activities						

**Section C: Work**

1. How many years have you worked at the law firm?

Less than 1 year  1 year  2 years  3 years  4 years or more

2. What time do you usually report to the office? \_\_\_\_\_

3. What time do you usually leave the office? \_\_\_\_\_

4. (a) How long is your lunch break? \_\_\_\_\_

(b) Are you entitled to take any other breaks during the day? \_\_\_\_\_

(c) If yes, how long are these other breaks? \_\_\_\_\_



5. Please indicate by ticking in the spaces provided the degree to which your law firm provides the following work-life practices:

	1-I'm not sure	2-Not at all	3-To a moderate extent	4 - To a great extent	5 - To a very great extent
<b>Working hours</b>					
Do you have flexible start and finish times?					
Can you vary your work days per week?					
Can you vary your working hours per day?					
Can you take time off for family emergencies and events?					
Are you required to work on weekends?					
<b>Location</b>					
Can you work from locations other than the office?					
Do you have office resources for teleworking (e.g. laptops, i-pads, smart phones)					

6. Among these benefits that enhance WLB, please tick those that are provided for at your workplace.

- |  |  |
|--|--|
| <input type="checkbox"/> Compassionate leave   | <input type="checkbox"/> Opportunity to negotiate part-time work |
| <input type="checkbox"/> Counseling services   | <input type="checkbox"/> Paid maternity leave                    |
| <input type="checkbox"/> Day-care centre       | <input type="checkbox"/> Paid paternity leave                    |
| <input type="checkbox"/> Exercise facilities   | <input type="checkbox"/> Paid study leave                        |
| <input type="checkbox"/> Free/subsidized meals | <input type="checkbox"/> Recreational facilities                 |
| <input type="checkbox"/> Lactation breaks      | <input type="checkbox"/> Study/training scholarship              |

Other (please specify) \_\_\_\_\_

**Section D: Work-Life Balance**

1. Do you feel you have problems adjusting your family life with your workload?

Yes  No

Please explain further .....  
.....  
.....

2. Do you feel you have problems adjusting your personal interests with your workload?

Yes  No

Please explain further .....  
.....  
.....

3. Do you feel you encounter problems in terms of work-life balance?

Yes  No

Please explain further .....  
.....  
.....

4. Where would you want to spend more time? (Tick all that apply)

- Family
- Personal interests
- Work
- I already have balance between the three

Write below any views concerning work-life balance that you feel the questionnaire has not addressed:

.....  
.....  
.....  
.....

**Thank you for your cooperation and time taken to fill this questionnaire.**