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COMMENTS AND RECOMMENDATIONS ON THE DRAFT STANDARDS OF BACHELOR TRAINING IN LAW IN UKRAINE

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I. INTRODUCTION

At the request of the USAID Fair, Accountable, Independent and Responsible (FAIR) Judiciary Program in Ukraine I was asked to review and comment on the newly developed Draft Standards of Level I (Bachelor's Degree) Academic and Professional Training Program. My comments and recommendations concerning the standards are listed below.

II. GENERAL COMMENTS AND RECOMMENDATIONS

1. **Comment 1:** Overall the standards are an impressive and comprehensive list of the areas that should be covered in such a document involving the teaching of law in the modern law faculty. The authors should be congratulated for their work.

2. **Comment 2:** The standards for the bachelor degree should not be designed without a full understanding of the relationship between the bachelor and master's programs and how those programs compliment each other. For the bachelor standards to be clearly developed, it makes sense to have a clearly articulated idea of the goals and outcomes for the master's program, and how it interrelates to the goals and outcomes for the bachelor program.

3. **Comment 3:** There are two broad types of standards contained in the document. First, there are concrete and specific standards that can be easily measured and implemented. For example: specific requirements on numbers of ECTS credits required. The second type of standard is less defined, more aspirational in nature, and therefore more difficult to measure. For example: training programs should include formation of "a professional worldview". These two types of standards are mixed through out the document with no clear separation of the two types of standards or their relation to each other.

Recommendation 3-1: The authors should consider restructuring the standards so that each section begins with a goals and purposes section (aspirational) followed by specific standards designed to implement the goals and purposes section. This has been done to some extent in Section III – Standard Training Content of the Academic Program in Law. (See below comments on Section II and III).ⁱ

4. **Comment 4:** In general organization and presentation of the standards presents a problem. Such standards should be organized in a manner where a user of the standards can easily find the subject area they are looking for.

Recommendation 4-1: The authors should consider using more subject headings or section titles to make the standards easier to use. In addition, multiple subjects should not be included in one titular section, but should have their own, clearly marked sections.ⁱⁱ

5. **Comment 5:** There appears to be no standards concerning the number of hours that a faculty member can teach both at their home institution and at other institutions. From experience I know that there are considerable problems with faculty members being over extended by having too many hours to teach or by teaching at too many faculties at the same time. In addition, there are no specific requirements concerning how many hours faculty members should be available at

the University for student consultation outside classroom hours, and limited mention of the non-teaching responsibilities of faculty.ⁱⁱⁱ

Recommendation 5-1: The authors should consider developing standards for the maximum number of teaching hours a law faculty member can teach and specific standards on non teaching responsibilities of faculty.

6. **Comment 6:** The authors should also consider whether it is appropriate to include any standards governing student attendance and participation in their classes or if this will be left up to the individual institutions. A minimum attendance and/or participation requirement should be in place in order to ensure a grade in a course. Whether these standards create a common national standard or each institution is allowed to develop their own standards should be discussed by the authors.

7. **Comment 7:** There are several areas where there are no or very limited standards that the authors should consider adding additional standards. Among these are library and information resources; facilities, equipment and technology; issues of academic freedom for faculty members; and issues related to academic tenure of faculty members (this may already be covered in other legislation).

III. COMMENTS AND RECOMMENDATIONS ON SPECIFIC SECTIONS

SECTION I. GENERAL STATEMENTS:

4.1. **Comment 8:** Currently reads: “to define unified requirements to the content and results of academic activity at level 1 of higher education”. Standards are usually established to determine the minimum requirements that an education program must meet in order for that program to be legitimate, but standards have to be flexible enough to encourage innovation and initiative by the law schools.

Recommendation 8-1: It would make sense to add the word “minimum” before requirements to make these distinctions clear.

Comment 9: The standards set forth the number of credits required to receive the bachelor degree but there is no mention of the minimum number of resident semesters a student must complete to get the degree. Most education standards establish a minimum amount of time that the students must be resident at the University in addition to a credit hour minimum. The standards currently require 240 credits, and limit students from taking more than 16 courses in a year, so it is unclear how quickly a determined student could achieve the necessary 240 credits. It is also unclear from the standards whether distance education for the entire curriculum would be allowed without any onsite instruction. (Section 6)

Recommendation 9-1: The authors should consider setting a minimum number of resident semesters as a standard. Standards on distance education should also be included.

Comment 10: There is a discrepancy between the requirements of Section 8.1 and Section 8.3. Students with no previous bachelor degree must complete a minimum of 135 ECTS credits in professional courses in law while students who have obtained a bachelor degree in other special fields have to have only 120 ECTS credits in professional courses in law.

Comment 11: 8.3 Elective Courses: According to the standards elective courses should be no less than 60 ECTS credits out of a total credit load of 240 ECTS credits, or 25% of the course load. This amount, while an improvement on practice presently in Ukrainian Universities, is lower than the standards in other countries. For example, Poland requires a minimum of 30% elective course load in their standards, and practice in the United States is to have around 50% of the course load be electives. (Of course as a graduate program the ability to have a more flexible elective load in the United States is easier.)

Limiting electives to 25% of course load for the bachelor's program may be appropriate if the decision is made with a view toward the Master's program including a significantly larger proportion of classes as electives.

Recommendation 11-1: The authors should consider raising the minimum number of hours that are electives, depending on their relation to the Master's program.

Comment 12: In section 10 the limit for total number of classes allowed in a year is stated as not more than 16 courses in a year. All other standards in this section are written in ECTS credits, and since some courses are 1 or 2 credits, and others 5 or 6, the actual time spent in the courses is more relevant as a guide to the maximum course load a student should be able to take.

Recommendation 12-1: It might make more sense that this standard be expressed in terms of maximum number of ECTS credits.

SECTION II LIST OF REQUIRED COMPETENCES OF BACHELORS IN LAW

Comment 13: This section in particular should be considered in conjunction with the expectations of the Masters program in law. This applies in particular to sections 16, 19 and 21.

Comment 14: Section II List of Required Competences of Bachelors in Law and Sections III Standard Training Content of the Academic Program in Law and very closely related to each other. The present way they are written they duplicate each other in several aspects, especially as it relates to the aspirational standards involving knowledge, abilities and skills students should have.

Recommendation 14-1: If the decision is made to reformat the standards to have a purposes and goal section followed by more concrete standards based on those goals, it might make sense to combine Sections II and III into one unified section, with Section II serving as the beginning of a purposes and goals section, and Section III serving as the beginning of specific training standards designed to implement the competences identified in Section II.

Comment 15: The list of skills, knowledge and abilities contained in this section is comprehensive and appropriate to a modern legal education.

SECTION III STANDARD TRAINING CONTENT OF THE ACADEMIC PROGRAM IN LAW

Comment 16: The list of training content in Section 23 is well thought out and inclusive of all the areas that would be appropriate to the study of law and a modern curriculum. Especially impressive is the inclusion of a clearly thought out plan for the development of legal skills as a required part of the curriculum.

Comment 17: Sections 25 and 26 include the practical internship as an important part of the program of study. This is an excellent requirement. However, the problem with internships is that students are often placed in institutions that are not set up to make the internship a meaningful experience, or lack a supervisor who can see that the internship is meaningful.

Recommendation 17-1: Given that the internship is given 15 ECTS credits, a substantial amount, the authors should consider drafting standards for the internship experience itself to make it clear to the law faculties and the place of internship what has to be done to meet the minimum standard of a successful internship placement. These standards should include information on issues like number of hours for the internship, the standard of supervision within the placement, the type of activity included in the internship, the duty of the student to report on or discuss the results of the internship with the law faculty, etc. ^{iv}

Recommendation 17-2: Section 25 includes as places appropriate for internships “other institutions and organizations”. This should be made more explicit to include institutions and non-governmental organizations that work in an area of the law and that will provide a relevant professional experience to the students relating to the law.

SECTION IV TYPES OF EVALUATION AND FEATURES OF LEARNING OUTCOMES

Comment 18: Section 29 states that evaluation methods should include various methods that allow evaluation of both theoretical knowledge and practical skills. Practical skills course often require substantially different methods of evaluation than theoretical or knowledge based courses.

Recommendation 18-1: The Authors should consider the following factors when setting standards of evaluation for skills courses:

- In addition to relevancy, impartiality, transparency and utility should be added the concept of encouraging ongoing evaluation of students accompanied by the opportunity to improve their performance and their marks for those performances.
- In addition to the discouragement of subjective evaluation the standards should encourage the adoption of objective criteria that can be applied even in legal skills

situations by the development of objective performance criteria that can be applied by instructors to student skills activities. For example: evaluating the skill of oral argument before the court should have some objective standards the students performance is measured against and not be based solely on the professors subjective impression of the student performance. (Although in skills evaluation there is always going to be some subjective element to the evaluation.)

- Types of evaluation should include some methods that are specific to legal skills classes such as performance evaluations, results of simulations, participation in exercises, etc.

SECTION V. THE SYSTEM OF HIGHER EDUCATION QUALITY ASSURANCE AT LEVEL 1 (BACHELORS DEGREE)

Comment 19: Section V seems to include multiple distinct topics such as evaluation of classes and programs, evaluation of professional competency of faculty, facilities, evaluation of teaching methods, etc. In fact this section seems to be a “catch all” section for all the topics not mentioned in the other sections, and in some instances is repetitive of other sections.

Recommendation 19-1: The authors should consider separating these topics into distinct sub headings or titular sections. This would serve to highlight the importance of these areas as independent areas of evaluation and standards and such a separation would clarify this section making it easier to read, refer to and implement. It would also be appropriate, as the current Section Title does not adequately convey the content within Section V.

Comment 20: Section 41.7 specifies that modern interactive methods are most efficient when applied to practical classes in small groups. While this is true to some extent, modern teaching methodology suggests that the use of interactive adult teaching techniques are necessary and more effective also in traditional substantive law subject classes even with a large group of students. Methods such as class discussion, use of visual aids and the Socratic dialogue are interactive in nature and can be applied in a large traditional classroom setting.

ⁱ As an example ABA Standard 401 Qualifications of faculty member reads: “A law school shall have a faculty whose qualifications and experience enable the law school to operate in compliance with the Standards and carry out its program of legal education. The faculty shall possess a high degree of competence, as demonstrated by academic qualification, experience in teaching or practice, teaching effectiveness, and scholarship”. Standard 403(a) however deals with specific requirements regarding faculty: “The full-time faculty shall teach substantially all of the first one-third of each student’s coursework. The full-time faculty shall also teach during the academic year either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.”

ⁱⁱ For example, the ABA Standards organization is clear and it is easy to see the topic you are interested in by looking at the table of contents:

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Approval of Law Schools
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ⁱⁱⁱ For example Section 404 of the American Bar Association standards for Responsibilities of Full Time Faculty states:

1. (a) A law school shall adopt, publish, and adhere to written policies with respect to full-time faculty members' responsibilities. The policies shall require that the full-time faculty, as a collective body, fulfill these core responsibilities:
 1. (1) Teaching, preparing for classes, being available for student consultation about those classes, assessing student performance in those classes, and remaining current in the subjects being taught;
 2. (2) Participating in academic advising, creating an atmosphere in which students and faculty may voice opinions and exchange ideas, and assessing student learning at the law school;
 3. (3) Engaging in scholarship, as defined by the law school;
 4. (4) Service to the law school and university community, including participation in the governance of the law school, curriculum development, and other institutional responsibilities described in the Standards;
 5. (5) Service to the profession, including working with judges and practicing lawyers to improve the profession; and

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6. (6) Service to the public, including participation in pro bono activities.
 2. (b) The law school shall periodically evaluate the extent to which the faculty discharges its core responsibilities under the law school's policies and the contributions of each full-time faculty member to meeting the core responsibilities of the faculty.

^{iv} For example the American Bar Association standard for Field Placements and other Study outside the classroom is Standard 305:

1. (a) A law school may grant credit toward the J.D. degree for courses that involve student participation in studies or activities in a format that does not involve attendance at regularly scheduled class sessions, including courses approved as part of a field placement program, moot court, law review, and directed research.
2. (b) Credit granted for such a course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.
3. (c) Each student's educational achievement in such a course shall be evaluated by a faculty member. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.
4. (d) The studies or activities shall be approved in advance and periodically reviewed following the school's established procedures for approval of the curriculum.
5. (e) A field placement program shall include:
 1. (1) a clear statement of its goals and methods, and a demonstrated relationship between those goals and methods and the program in operation;
 2. (2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;
 3. (3) a clearly articulated method of evaluating each student's academic performance involving both a faculty member and the site supervisor;
 4. (4) a method for selecting, training, evaluating, and communicating with site supervisors;
 5. (5) for field placements that award three or more credit hours, regular contact between the faculty supervisor or law school administrator and the site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work;
 6. (6) a requirement that each student has successfully completed sufficient prerequisites or contemporaneously receives sufficient training to assure the quality of the student educational experience in the field placement program; and
 7. (7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student may earn three or more credit hours in a field placement program, the opportunity for student reflection must be provided contemporaneously.
6. (f) A law school that has a field placement program shall develop, publish, and communicate to students and site supervisors a statement that describes the educational objectives of the program.