

Evolution of Legal Aid in Kenya

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ABSTRACT

Legal aid is defined as legal advice, legal representation, and assistance in resolving disputes by alternative dispute resolution, drafting relevant documents and effecting service incidental to any legal proceedings, and reaching or giving effect to any out of court settlement as provided for in section 2 of the Legal Aid Act, 2016. The Black's Law Dictionary 9th Edition at page 912, further defines legal aid as the free or inexpensive services provided to those who cannot afford to pay full price. In a bid to adequately assess the evolution of legal aid in Kenya, this paper evaluates the position before and after the promulgation of Constitution of Kenya 2010. Before the Constitution of Kenya 2010, access to justice in Kenya was bedevilled with countless challenges including prohibitive court fees, geographical location, complexity of rules and procedure, use of legalese, understaffing by the providers of the service, lack of financial independence, lack of effective remedies, backlog of cases that delays justice, lack of awareness on ADR and traditional dispute resolution mechanisms. Prior to the promulgation of the 2010 constitution the government provided indigent persons with legal aid, however, in a limited matter as elucidated in the National Action Plan Legal Aid 2017-2020 Kenya. Legal aid was only available to accused persons who were charged with capital offences of murder facing trial in High Court. Despite the Civil Procedure Code having a provision for persons to sue as Paupers the procedure to determine eligibility was and remains nerve wracking. This paper traces the historical development of legislation and policy on legal aid in Kenya. Over the years we see how legal aid has evolved from being more of theoretical aspect to being a prevalent practical service that is offered across the country. The Constitution of Kenya 2010 and the Legal Aid Act 2016 strengthened the principle of access to justice as the instruments birthed the need of effective legal aid provision. Currently, the pivotal organ for legal aid and awareness established by the government is the National Legal Aid Service and the monitoring and evaluation of all the stakeholders by the institution/organ allows for the furtherance of the main goal for access of justice.

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INTRODUCTION

In all societies of the world, conflicts are inevitable and ubiquitous. This marvel will always be there throughout human history as long as there are differences in interests, goals, values and aims within the members of any given society. The sources, the individuals and the nature of the conflicts will always arise within the basic units of the community including the families, clans, villages and sometimes within the country. In every society, there are legal systems within the law that are usually applied to address the conflicts. However, legal systems within some countries are accessible by only a few members of the community due to many impeding factors.

In Kenya, the utilization of the legal aid mechanisms to resolve conflicts has been viewed as a strategy to address conflicts, however, its application is still not widespread. Legal aid is defined as legal advice, legal representation, and assistance in resolving disputes by alternative dispute resolution, drafting relevant documents and effecting service incidental to any legal proceedings, and reaching or giving effect to any out of court settlement¹. The Black's Law Dictionary further defines legal aid as the free or inexpensive service provided to those who cannot afford to pay full price². In a bid to assess the evolution of legal aid in Kenya robustly, the pre and post-2010 positions of legal aid are evaluated.

The Alternative Disputes Resolution mechanism which is within the legal systems is one of the vital institutions for conflict resolution in community and locality within Kenya. Even in countries with no formal state recognition of the institution of alternative dispute resolution, legal aid has remained resilient and continues to exist outside the spheres of state influence. This paper intends to highlight the role of legal aid in resolving conflicts in Kenya and how this has evolved with time. The paper starts by highlighting the evolution of legal aid in Kenya before 2010 and then situates the legal and justice system in the country post-2010. It highlights the bottlenecks, success factors and thereafter the opportunities for future success.

¹ Section 2, Legal Aid Act, 2016.

² Bryan A Garner (Ed) Black's Law Dictionary 9th Edition Pg 912.

Methodology

The critical review of the strengthening of access to justice through legal aid in Kenya, assessing gaps, challenges and opportunities relied heavily on the secondary data. Information from various sources was gathered and reviewed to determine the issues that have been hindering the access to justice in the Kenyan Justice Systems. The various literature published and widely applied in the Kenyan legal systems and the various articles of the Kenya Constitution 2010 were reviewed as a mechanism to comprehend the evolution of legal aid in Kenya.

The Position of Legal Aid Pre- 2010

Previously, before colonialism, in Kenya like any other African communities, individuals and societies were living communally in families, clans and villages in a cohesive manner. Conflicts could arise due to many factors, but non-formal mechanisms were in place to solve them. Those without resources could be assisted to access justice within the community. Everyone wanted to be part of the community, as much as there were variations in life³.

Conflict resolution amongst Kenyan communities has since ancient times taken the form of negotiation, mediation, reconciliation or 'arbitration' by elders. Communally, disputing parties would sit together informally and resolve disputes and conflicts to maintain social harmony and restore social bonds⁴. Thus, all the methods of dispute resolution had the aim of restoring social order. Conflict resolution was wholesome and tried to resolve all the underlying causes of conflict by ensuring that the parties to the conflict participated and reached a settlement. In some cases, fines and compensation were used but only as a means to acknowledge the wrongs done and restore the parties. The fines and the compensation were not retributive but compensatory. The social bonds and social ties referred to as social capital enabled elders to resolve disputes since the threat of exclusion from the community made parties willing to settle⁵.

³ Kariuki, F. (2015). Conflict resolution by elders in Africa: Successes, challenges and opportunities. *Challenges and Opportunities (July 9, 2015)*.

⁴ Li, Y., Li, Q., Gao, J., Su, L., Zhao, B., Fan, W., & Han, J. (2016). Conflicts to harmony: A framework for resolving conflicts in heterogeneous data by truth discovery. *IEEE Transactions on Knowledge and Data Engineering*, 28(8), 1986-1999.

⁵ Bengtson, V. L., & Oyama, P. S. (2007). Intergenerational solidarity: Strengthening economic and social ties. *New York: United Nations Headquarters*.

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Additionally, the concept of social harmony and peace was not only among the living but also between the living and the dead. For some wrongs such as murder, rituals and cleansing had to be carried out to allow the spirit of the dead to rest in peace and not disturb the living. Some dispute resolution mechanisms involved reference to ancestors and spirits due to the importance of lineage and ancestry among Africans. Reference to spirits, trials by ordeal, rituals and cleansing in dispute resolution were the preserve of traditional healers, diviners and seers, who complimented elders in the dispute resolution process³. These were mechanisms that strengthened the social fabric and are now advocated in Kenya through the Legal Aid Act.

The factors which could limit individuals from accessing justice in this set up were minimal and its informal nature made access easier for all. After colonialism, the legal system was streamlined. A formal legal systems few selected individuals were trained on the systems and the language to use⁴. The court systems started working and centralized places were selected to act as court chambers. Most of the informal conflict resolution mechanisms were quashed and individuals started to follow the laid down formal legal systems. Before the 2010 era, the application of legal aid was in limbo.

Within this period, access to justice in Kenya was bedevilled with countless challenges including prohibitive court fees, geographical location, the complexity of rules and procedure, use of legalese, understaffing by the providers of the service, lack of financial independence, lack of effective remedies, a backlog of cases that delay justice, lack of awareness on ADR and traditional dispute resolution mechanisms.⁶ Before the promulgation of the 2010 Constitution, the government provided legal aid services to indigent persons, however in a limited matter⁷. Legal aid was only available to accused persons who were charged with capital offences of murder facing trial in the High Court⁸. Despite the Civil Procedure Code⁹ having a provision for persons to sue as paupers, the procedure to determine eligibility was and remains cumbersome for the target group.

Legal Aid was further provided under the Children's Act (No. 8 of 2001). Section 186 of the Act provides that every child accused of an offence to be provided with legal representation at the expense of the state. This position is supported in

⁶ <http://kmco.co.ke/wp-content/uploads/2018/08/A-Paper-on-Improving-Access-to-Justice-2.pdf> accessed 19 October 2020

⁷ National Action Plan Legal Aid 2017-2020 Kenya.

⁸ *ibid.*

⁹ Order 33, Civil Procedure Rules.

international law. Under international human rights law, the Convention on the Rights of the Child (Ratified 1990) under Article 37 guarantees every child deprived of his or her liberty prompt access to legal and other appropriate assistance and the right to challenge the legality of such deprivation before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. The African Charter on Human and People's Rights (Ratified 1992) under Article 8(c) obligates state parties to establish adequate educational and other appropriate structures with particular attention to women and to sensitize everyone on the rights of women.

The process of developing the legal framework on access to justice and legal aid began in 1998 when the Attorney General set up a Legal Aid Steering Committee comprising of government departments such as the Judiciary State Law Office, the Kenya National Commission on Human Rights and representatives of the civil society¹⁰. In 1999 the Committee identified possible models for legal aid delivery in Kenya. As a result of this, a framework for piloting legal aid and awareness was proposed in 2001 but the same was not rolled out. Although the said framework was not validated, in 2001 the Kenyan legislative framework on legal aid was enacted. All this was developed and supported through the understanding the diversity of Kenyans¹¹.

Colonization brought a cultural conflict between the Kenyan and western cultures. The western culture was viewed as superior and dominant, thus subjugating African cultures¹². Cultural imperialism was extended to the world of dispute resolution. Kenyan cultures were allowed to guide courts so long as they are not repugnant to justice and morality, yet repugnancy was measured by western sense of justice and morals rather than Kenyan¹³.

After the 2002 election, a new government came into power and directed the

¹⁰ Ouma, Y., & Chege, E. (2016). Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide. *International Journal of Clinical Legal Education*, 23(5), 107-134.

¹¹ Nanjala, C. (2013). Determinants of effective legal Aid service delivery in Kenya. *International Journal of Social Sciences and Entrepreneurship*, 1(5), 271-288.

¹² Musau, P. M. (2003). Linguistic human rights in Africa: Challenges and prospects for indigenous languages in Kenya. *Language culture and curriculum*, 16(2), 155-164.

¹³ Ndege, P. O. (2009). Colonialism and its Legacies in Kenya. *Lecture delivered during Fulbright–Hays Group project abroad program: July 5 to August 6*.

newly formed Ministry of Justice National Cohesion and Constitutional Affairs to give policy directions in the area of access to justice¹⁴. The ministry then set up a weekly legal aid clinic held every Wednesday to members of the public. These services were in high demand from the members of the public thus prompting the ministry to engage consultants in the year 2005 who developed the 2001 report and aligned it to Executive Order No. 2 of 2003. The report was revised and validated by stakeholders in 2006 and presented in 2007. All this was in anticipation of not only not only enhancing access to justice but also strengthening social capital but also ensuring that the social capital is strengthened and empowered¹⁵.

In 2007 the Ministry of Justice National Cohesion and Constitutional Affairs established the National Legal Aid and Awareness Programme (NALEAP) vide Gazette Notice No. 11598 of 2007 aimed at advising the government on matters of access to justice and drawing lessons for the establishment of a national legal aid scheme¹⁶. NALEAP was also a build-up from previous efforts at creating a legal aid programme by the Office of the Attorney General and other stakeholders¹⁷.

For instance, in the year 2018 and 2019 at Nakuru Pilot Office, National Legal Aid and Awareness Programme managed to resolve 277 maintenance cases, 89 custody cases and a total of 331 cases combined. NALEAP further piloted six thematic areas from the year 2009 to 2013 with various legal aid providers and other stakeholders in the justice system¹⁸, thereby contributing to the implementation of the government's Medium Term Plan, 2008-2012 and Vision 2030 under Strategic Theme 6 that focuses on six thematic areas¹⁹. The initiatives to develop a legal aid legislation and policy were undertaken through consultative processes between the government and civil society. This marks the position of legal aid in Kenya pre-2010.

¹⁴ Gibson, B. (2008). *The New Ministry of Justice: An Introduction*. Waterside Press.

¹⁵ Ouma, Yohana & Chege, Esther. (2016). Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide. *International Journal of Clinical Legal Education*. 23. 107. 10.19164/ijcle.v23i5.567.

¹⁶ National Action Plan Legal Aid 2017-2020 Kenya (50)

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

Legal Aid Post 2010

The promulgation of the Constitution of Kenya 2010 shed light on the vital principle of access to justice. The different articles elaborate on the rights of various individuals seeking justice and roles of the justice and legal aid providers. The Constitution of Kenya (Article 159(2)) guarantees the right of every individual to access justice²⁰ and this is promoted both formal and informal justice systems as a way to resolve disputes²¹. The recognition and protection of human rights and fundamental freedoms has to be effected to preserve the dignity of individuals and communities as well as to promote social justice²². The recognition of alternative dispute resolution methods (either formal or informal) was aimed at hastening the justice process. The constitution appreciated the roles of the informal systems of justice. All this was done to not only promote justice, but also strengthen the social fabric within the societies after a conflict has been resolved.

Dispute resolution by alternative methods other than the rigorous and lengthy court systems acted as a mechanism from which society derives some benefit. Those allowed to resolve conflicts, do so due to their long experience, wisdom and the respect they are accorded in society. The application of the alternative mechanisms was based on the various social theories that highlighted the need of a win-win situation in conflicts resolutions. For instance, the social solidarity theory, being a functionalist theory, explains the resilience of dispute resolution by members of the courts selected or individuals within the communities even in modern societies that have embraced western legal systems. Where a community cannot access formal justice systems due to costs and other externalities, elders are there to resolve arising disputes. Therefore, the existence of disputes resolvers is a social fact in the society providing a dispute resolution utility occasioned by the absence or low penetration of western legal systems²³.

Article 27(1) of the constitution of Kenya 2010, which is in line with the protection of the rule of law, enshrines equality before the law and the right to equal protection and equal benefit of the law. Moreover, accused individuals have the right to choose and be represented by an advocate as well as to be

²⁰ Article 48, Constitution of Kenya, 2010.

²¹ Article 159(2), Constitution of Kenya, 2010.

²² Article 19(2), Constitution of Kenya, 2010.

²³ Komter, A. E. (2005). *Social solidarity and the gift*. Cambridge University Press.

informed of this right²⁴. This provision goes further to ensure that individuals who cannot afford legal representation²⁵ The Constitution of Kenya 2010 stand as the turning point for legal aid in Kenya as it brought to fruition the importance of access to justice and the dire need to provide legal aid in order to ensure that no individual is barred from attaining justice due to their financial status or inability to comprehend the law.

The vitality and essence of the legal system being all encompassing was set forth especially after 2010 as efforts to develop adequate legal aid services by both state and non-state actors began to unfold. This is mainly due to difficulties that were experienced in the formal system²⁶. The challenges (financial, legal language etc) denied individuals an opportunity to access justice or resolve conflicts based on the communal understanding. In some instances, culture plays a significant role in resolution of conflicts and gives shared interests some strength as compared to legal systems.

The Government of Kenya engaged in the process of developing policies on Legal Aid and access to justice based on the mandate set by the Constitution 2010 (Article 48). Through this, in 2016, legislation was developed to form the Legal Aid Act²⁷ that sets out the parameters to facilitate the legislative mandate. This was to allow Parliament to legislate and pass bills that support the adoption and financial support to the legal aid in Kenya. The application of the alternative dispute resolution mechanisms explains how people view reality, live and resolve disputes. When a society uses Alternative Dispute Resolution mechanisms, sometimes, people use their cultures to resolve disputes. Consequently, dispute resolution and other real-life conditions are sub-optimal when done through a foreign culture (formal legal mechanisms). The optimization of the community linkages are the some of the main aspects that are considered in the Legal Aid Act of Kenya.

Justice systems such as courts are thus sub-optimal in the Kenya context due to varying cultural context. For instance, while Kenyan traditional societies were and to a large extent are grouped communally, western societies are individualistic. This results in a cultural-conflict if western ideals are applied in dispute resolution. Moreover, while dispute resolution in Kenyan societies

²⁴ Article 50(2)(g), Constitution of Kenya, 2010.

²⁵ Article 50(2)(h), Constitution of Kenya, 2010.

²⁶ Gachie, A. J. (2016). *An evaluation of the need for regulation of online dispute resolution (ODR) in Kenya* (Doctoral dissertation, University of Nairobi).

²⁷ The Legal Aid Act, 2016.

aimed at repairing social ties and restoring harmony; court justice systems are mainly punitive with a winner-loser ideology²⁸.

The Legal Aid Act of 2016 changed the provision of legal aid services in Kenya. As stated above, at the Nakuru Pilot Office, National Legal Aid and Awareness Programme managed to resolve a total of 331 cases combined in 2019. All these cases could have been at various stages in courts, clogging the other existing ones. The Act is guided by fundamental values and principles which have accelerated the delivery of justice services to the citizens. Moreover, the Act provides that legal aid is not limited only to criminal cases, but also includes civil and constitutional cases²⁹. This has seen the reduction of court cases, hastened the delivery of justice and strengthened the social fabric.

The Act regulates the provision of legal aid services in Kenya and establishes the National Legal Aid Service³⁰ (“NLAS”) to provide legal aid services to the vulnerable and indigent persons who qualify for legal aid services. Such individuals are referred to as ‘indigent persons’ in the Act, and a person is an indigent person if he/she cannot afford to pay for legal services³¹. Further, such a person by virtue of Section 36 should be a citizen of Kenya (b) a child; (c) a refugee under the Refugees Act; (d) a victim of human trafficking; or (e) an internally displaced person; or (f) a stateless person. All this persons are also allowed to seek alternative dispute resolution.

Additionally, modernity has had its fair share of negative impacts on Kenyan justice systems. In pre-colonial period, elders were the rich and wealthiest people as they held land and livestock. Their wealth and respect enabled them to be independent during dispute resolution processes. However, in modern societies, younger people have accumulated wealth and, in most cases, older people rely on the younger people. Consequently, in some instances dispute resolution by courts has been affected by bribery, corruption and favoritism.

²⁸ Ambani, J. O., & Ahaya, O. (2015). The Wretched African Traditionalists in Kenya: The Challenges and Prospect of Customary Law in the New Constitutional Era. *Strathmore LJ*, 1, 41.

²⁹ Section 35, Legal Aid Act, 2016.

³⁰ Section 5, Legal Aid Act, 2016.

³¹ Section 2, Legal Aid Act, 2016.

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Apart from corruption and bribery, modernity and westernization have broken down the close social ties and social capital between families and kinsmen. In contrast to pre-colonial days when the most important family system was the extended family, in modern times the main family system, especially in urban areas, is the nuclear family. Migration to urban areas and an increasingly individualistic society have broken down the communal or extended family system and thereby reducing the influence of arbitrators. In addition, the superiority of the westernized judicial and legal system has further reduced the influence arbitrators have in resolution of disputes.

The Legal Aid Act recognised and appreciated the roles played by Alternative Disputes Resolution. Conflict resolution by alternative methods is based on social/cultural values, norms, beliefs and processes that are understood and accepted by the community and recognized by law. For that reason, people are able to abide and comply with their decisions. Respect for elders, ancestors, parents, fellow people and the environment is cherished and firmly embedded in the mores, customs, taboos and traditions amongst Kenyans. The admonitions, commandments and prohibitions of ancestors and community alternative methods are highly esteemed as they reflect experiences which have made communal life possible up to the present day.

The progress of legal aid in the last years has been significant in adopting the necessary methods in order to further the concept of legal aid in the country. NLAS has set out to accomplish eight strategic objectives³², in order to fulfill its ultimate goal, which is to facilitate for access to justice for all. These objectives are as follows;

1. To strengthen the framework of policies, laws, and administrative processes that will ensure sustainable and quality access to justice. This was left to the legislative arm of the government to develop, legislate and pass acknowledgement that support the provision of legal aid in Kenya. The director, Legal Services who heads the legal services function in the National Assembly is responsible to the National Assembly for this service. The Director was supposed to supervise, guide, counsel, train and develops all legal staff and co-ordinate administration and overall management of the legal services provided to the National Assembly. These services include the formulation and dissemination of legal drafting policy in the National Assembly, liaison with the Director, Litigation and Compliance and the Office of the

³² National Action Plan, Legal Aid 2017 – 2022 Kenya, pg 24.

Attorney General on litigation matters involving the implementation of the Legal Aid Act in Kenya.

2. To provide quality, effective, and timely legal assistance, advice, and representation for the poor, marginalized, and vulnerable. This has been the major mandate implemented by the National Legal Aid Services. This was made possible through the acknowledgement of the roles played by alternative disputes resolution mechanisms. Access to justice is an essential ingredient of the rule of law. Citizens and especially the vulnerable and the indigent need to access the courts and legal processes with ease for the realization of enforcement of rights provided in the law. Access to justice is one of the constitutionally recognized human and fundamental rights. Legal aid programs are a central component of strategies to enhance access to justice.
3. To enhance access to justice through legal aid and awareness. Inaccessibility to justice is a major issue internationally. There is therefore an urgent need to find solutions to protect peoples' through enhanced access to justice. The importance of community-based solutions, such as mass pro bono contributions from individuals, law service providers and other organizations cannot be overemphasized. Another important contributor to improved access to justice is promotion of pro bono work by all lawyers and law organizations at their own initiative. Additionally, supporting the establishment of free legal aid and legal awareness programmes with a focus on vulnerable groups, working with governments to ensure the sustainability of these services, and to develop legal frameworks for free legal aid, establish national free legal aid institutions, and plan for specific budget allocation to free legal services and facilitating policy dialogues on the rule of law and access to justice between the government and civil society
4. To promote and institutionalize the paralegal approach in access to justice. Paralegals are dedicated to legal empowerment as they help people to understand, use and shape the law. They are trained in law and policy and in skills like mediation, organizing, and advocacy. These paralegals work with clients to seek concrete solutions to instances of injustice. They form a dynamic, creative frontline that can engage formal and traditional institutions alike. They promote access to justice in courts.
5. To promote the use of alternative and traditional dispute resolution mechanisms (ADRM). ADRM provides relief to congested or overloaded courts, thus facilitating access to justice; prevent excess cost and undue delay; and, providing more effective dispute resolution. Alternative Dispute Resolution Mechanism provides scientifically

developed techniques to the Judiciary which helps in reducing the burden on the courts. ADR provides various modes of settlement including, arbitration, conciliation, mediation, negotiation among others in a more flexible manner. The process allows someone to select their own Arbitrator or Mediator and the court is not involved as compared to the conventional court processes. The expenses are reduced, it is speedy, the results or the outcome of the process can be kept confidential and all the parties are allowed and given full participation thus fostering cooperation.

6. To establish an implementation, monitoring, regulatory, and support framework. Strengthening legal frameworks and justice institutions has gained momentum among governments and judicial actors. With the increase in effort and interventions in the sector, there has been a need to create tools to assess justice systems, in order to identify the main elements affecting the workings of the justice machinery. Think tanks and international organizations working in the field have contributed to a substantial body of indicators assessing various aspects of justice systems.
7. To allot fiscal, human, and technical resources for legal aid and awareness services in Kenya. Strengthening access to legal services requires several steps, including educating people about their legal rights, building the capacity of both governmental and traditional legal structures, linking legal services to opportunities for economic empowerment, and supporting partnerships between community-based legal services and national advocacy campaigns against corruption, gender discrimination, and other systemic abuses.
8. To undertake research to ensure evidence-based initiatives. There is need to support more research on the impediments of access to justice in Kenya. For instance, research by the Kenya AIDS NGO Consortium in 2004 revealed that most Kenyans engage traditional structures such as councils of elders for mediating and arbitrating disputes, rather than seeking justice through the police and courts³³. The National Legal Aid Action Plan is being used to implement through a multi-sectoral and integrated approach including collaboration between the national and county governments with external support from development partners, civil societies, and the private sector³⁴.

³³ UNAIDS and WHO. AIDS Epidemic Update. 2005.

³⁴ National Action Plan, Legal Aid 2017 – 2022 Kenya.

CONCLUSION

This paper concludes that there is need to backup and strengthen the legal and policy framework for the application of alternative dispute resolution by mediators. In this regard, we can learn from the challenges and advantages of the Black Administration Act in South Africa. Emphasis should be placed on alternative dispute resolution as the first option in resolving disputes. Parties in certain personal relations such as marriage, divorce, child custody, maintenance, succession and related matters should first opt to alternative dispute resolution before approaching the formal legal system.

Within the legal systems in Kenya, the arbitrators or mediators engaged in the process lacks adequate and regular remuneration to prevent chances and opportunity for corruption. The legal systems and the legislative arm of the government has not developed a framework for appealing the decision of arbitrators to be strengthened in the alternative dispute resolution mechanisms. The development and strengthening of the enforcement mechanism for alternative dispute resolution mechanisms by arbitrators still wanting. Kenyan traditions and customs should be co-opted into formal education system to enhance the respect for our cultures, especially after centuries of subjugation.

Most African customs and practices are neither written nor codified since they are passed from generations to generations through word of mouth. They are at great risk of dying away and should therefore be taught not only for use in dispute resolution but also for posterity and appreciation by present and future generations. Need for codification of key concepts, practices and norms of alternative dispute resolution to protect them. Further, such codification increases uniformity and consistency of application of alternative dispute resolution mechanisms by elders.