

# **KENYA'S CBC CRISIS AS A CALL TO THE BOARDROOM NOT COURTROOM:**

*Why dialogue will best remedy the uncertainties towards Kenyan children receiving the desirable quality education in the new education system*

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## **ABSTRACT**

*The Kenyan 8-4-4 education system is in transition to the new Competence Based Curriculum (CBC). The latter aims at not only having the students grasp what they learn but also specialize at an early age in what they can do best. There have been a number of challenges enshrining this new system. For example, the teachers who were trained under the 8-4-4 system need some training to facilitate their efficiency in the new system. Parents are needed to closely monitor and even participate actively in the intellectual growth of their children. Gadgets like smartphones, laptops, or computers are necessary for the students to browse some information as they study. This has been received differently by Kenyans. Some argue that they cannot afford the gadgets, others argue that they are busy throughout the day trying to make ends meet in their families. Although there was an initial taskforce that researched on the feasibility of CBC, nonetheless the new government looks forward to have this education system re-evaluated by another taskforce in order to address the underlying challenges inherent in this system. As such, this paper will define CBC and how it came about, highlight the challenges raised in its administration, compare and contrast what it will mean to solve the current CBC crisis in court or through ADR, then make recommendations before the conclusion. This paper argues that a court's rigidity undermines free expression as opposed*

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*to ADR's flexibility that can yield a meaningful dialogue involving all the stakeholders in the education ministry and parents, hence an amicable resolution on what to sustain or mitigate in the new education system as a way of making it an efficient, pragmatic and just path for all Kenyan children to attain their Sustainable Development Goal (SDG) number 4 on quality education.*

**Keywords:** Competence Based Curriculum, Alternative Dispute Resolution, Sustainable Development Goals, Alternative Justice System.

### **1.0 INTRODUCTION**

The quest for an education system that is affordable and efficient for all Kenyan children has been the desire of each Kenyan. In the new CBC curriculum, not all Kenyans are contented with it. Some see it as a burden to the parents who are expected to monitor and nurture their children's skills on various aspects. There are those who see it as good, yet, a rushed kind of endeavour because of the inadequacy of training for even the CBC teachers who are to train the learners on this new system. This article will define CBC and how it came about, highlight the challenges raised in its administration, compare and contrast what it will mean to solve the current CBC crisis in court or through ADR, then make recommendations before the conclusion. This paper argues that a court's rigidity undermines free expression as opposed to ADR's flexibility that can yield a meaningful dialogue involving all the stakeholders in the education ministry and parents, hence an amicable resolution on what to sustain or mitigate in the new education system as a way of making it an efficient, pragmatic and just path for all Kenyan children to attain their Sustainable Development Goal (SDG) number 4 on quality education.

### **2.0 CONCEPTUALIZING CBC**

The vision of the Ministry of Education, that guided the Prof. Douglas Odhiambo's taskforce which was working on the Competence Based Curriculum, was to have a globally competitive quality education, training and research for Kenya's

sustainable development.<sup>303</sup> Kenya, in response to the challenge of providing valuable education for sustainable development, "...is switching from objectives- based curriculum to competency-based curriculum (CBC)."<sup>304</sup> Kenya Vision 2030 encourages a connection between education and labour markets; hence, its target is to make Kenya a truly industrialized, middle-income country providing a high quality of life for all its citizens by the year 2030.<sup>305</sup> This is nested in the very heart of the Competency Based Curriculum. To understand fully this new education system, it is important to trace its roots.

The seeds of the Competence Based Curriculum (CBC) can be found in the Session Paper 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya that was developed by the Ministry of Education to address the challenges that were facing the education sector. "The CBC, still in its formative stage also highlights some of the values it is supposed to inculcate into the learners, with the anticipation that by the end of the education circle they will have been matured into them: responsibility, integrity, love, respect, unity, peace and patriotism."<sup>306</sup> This was inherently a response to the Sustainable Development Goal number 4 which seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.<sup>307</sup> Tom Destiny Namwambah stresses that:

It was also supposed that fundamental to CBC are the core competencies that it aims at infusing into the learners and they include the ability to: i) effectively

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<sup>303</sup> Ministry of Education, *Report of the Taskforce On the Re-Alignment of the Education Sector to The Constitution of Kenya 2010: Towards A Globally Competitive Quality Education for Sustainable Development*, 2012, xxii-xxiii.

<sup>304</sup> George Areba, *Competence and Competency Based Learning Curriculum for Greening Sustainable Development in Kenya: Challenges and Panaceas*, Journal of Research Innovation and Implications in Education, Volume 3, Issue 2, 2019, 55.

<sup>305</sup> Mercy Muthiga Mauki, John Kitur, Niceta Wanja Ileri and Francisca Wavinya Ngala: *Competency-Based Curriculum Implementation and The Role of the Universities in Kenya*, Africa International University, 46.

<sup>306</sup> Tom Destiny Namwambah, *Principles of Rational Pedagogy: An Insight on Kenya's Competence Based Curriculum (CBC)* (Journal of Research & Method in Education, Volume 10, Issue 2, April 10, 2020), 5.

<sup>307</sup> United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, SDG4.

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communicate and collaborate in life; ii) think critically and be good decision makers and problem solvers; iii) have the imaginative and creative prowess; iv) embrace the patriotic attitude of good citizenship both locally and globally; v) embrace learning as a continuous and life-long process; vi) develop, attain self- efficacy in service to self and to the society; and vii) acquire digital skills and competences through continuous digital literacy. In other word, it was envisioned that CBC will lead to the holistic development of the human person, inculcate value consciousness, trigger sensitivity, innovativeness, and productivity and spurnational development.<sup>308</sup>

In the foreword to the Session Paper 1 of 2019, the chairperson of the committee, Julius Melly, observes that, “It is envisioned that the development of a competencebased curricula will provide learners with the opportunity to acquire the prerequisite knowledge, skills, values and attitudes to drive the country into knowledge-based and middle income industrialized nation.”<sup>309</sup> More elaborately, the session paper proposes Competence Based Curriculum (CBC) to replace the 8-4-4 system.<sup>310</sup> Consequently, “A total of 9 subjects are supposed to be covered in lower primary and upper primary pupils are expected to cover up to 11 subjects while junior school learners are expected to cover up to 13 subjects.”<sup>311</sup> The new education system encrusts three levels: Early Years Education, Middle School and Senior School.<sup>312</sup>

In this proposal:

- (i) Early Years Education includes Pre- primary and lower primary education for two years (pre-primary 1 and pre-primary 2 will be for children aged between 4 and 5 years). The learners from pre-primary 2 will join lower primary in grade 1 at about 6 years of age and spend 3 years in this part of early years of education before joining middle school.

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<sup>308</sup> Tom Destiny Namwambah, op cit., 5.

<sup>309</sup> Session Paper 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya, iv.

<sup>310</sup> Session Paper 1 of 2019, 10.

<sup>311</sup> Samson Kiprof Maluei, *Implementation of the New Curriculum (2-6-3-3-3) In Kenya*, (Journal of Business and Management Volume 21, Issue 5, May 2019), 69.

<sup>312</sup> Session Paper 1 of 2019, ibid.

- (ii) Middle School Education will comprise three years of upper primary and three years of lower secondary education. In upper primary, learners will be exposed to a broad based curriculum and will be given an opportunity for exploration and experimentation. Lower secondary will expose the learners to a broad based curriculum to enable them to explore their own abilities, personality and potential, as a basis for choosing subjects according to career paths of interest at the senior school.
- (iii) Senior School comprises three years of education targeted at learners in the age bracket of 15 to 17 years and lays the foundation for further education and training at the tertiary level and the world of work. It will mark the end of Basic Education as defined in the Education Act, 2013.

Under the proposal, higher education will consist of undergraduate and postgraduate (Masters and doctoral) programmes as well as TVET diploma. Tertiary and University education will last for a minimum of 3 years.<sup>313</sup>

This already shows that CBC is essentially intended to help the learners obtain the best knowledge and skills for their wellbeing. Clearly, the mission of the basic education curriculum reforms is that of nurturing every learner's potential.<sup>314</sup> "This curriculum is set to improve the economy of the country. It would also ease the academic pressures (examination) off the learner's shoulders who were obsessed with high academic grades achieved through long hours of content cramming in both internal and external examinations."<sup>315</sup> However, in the unfolding of CBC, a couple of challenges have been faced especially those associated with inadequacy of sufficient modern equipment such as smartphone; for many poor families this indirectly disadvantages their students.

The Constitution of Kenya, 2010, in article 27 provides for equality and freedom from any form of discrimination.<sup>316</sup> Article 53 (1) (a) highlights that each child has a right to free and compulsory basic education.<sup>317</sup> As we shall see, those who suggest amendments to CBC cite, *inter alia*, the many financial demands it makes,

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<sup>313</sup> Session Paper 1 of 2019, *ibid*.

<sup>314</sup> Kenya Institute of Curriculum Development, *Basic Education Curriculum Framework*, 2017, 10.

<sup>315</sup> Samson Kiprop Maluei, 67.

<sup>316</sup> Constitution of Kenya, 2010, article 27.

<sup>317</sup> Constitution of Kenya, article 53 (1)(a).

make it expensive, hence, discriminatory to those from humble backgrounds who cannot afford all it requires.

### **3.0 BRIEF FACTS LEADING TO THE CBC CRISIS**

The key problem facing CBC implementation is inadequacy of funds. “Many educationists have argued that cost is a major hurdle for the success of Prof. Douglas Odhiambo’s task force proposed 2-6-3-3-3 system. They observe that the new structures of education alone are expected to cost Sh362 billion per each year.”<sup>318</sup> As a matter of fact, some significant progress has been accomplished in the early stages of Kenya's educational system, albeit at a massive expense. However, Kenya's budgetary allocation and the full range of development have been impacted by the financial cost and implications of the change. The Government was required to offer free learning in public institutions from early childhood through senior secondary school level, which collectively includes basic education, in order to implement the transition from the 8-4-4 to 2-6-3-3-3 system of education. As a result, the government needed Kshs360 billion (\$4.2 billion) in the 2012–13 fiscal year for infrastructure, new textbook purchases, and teacher hiring, and Kshs1.4 trillion (\$16.5 billion) from 2012–2015 to execute the new educational system. (GoK, 2011).<sup>319</sup>

Moreover, the teachers are not yet ready in terms of being equipped with the necessary skills required for CBC’s implementation. “Though there has been government attempt to conduct workshops to sensitize teachers on the CBC it has been criticized as hurriedly done and not engaging all teachers.”<sup>320</sup> There has been a backlash against teachers' perceptions, behaviours, and expertise of assessment in the classroom. That this system has not yet performed at its best.<sup>321</sup> This means that there are several teachers who ought to implement CBC yet they are not

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<sup>318</sup> Tom Destiny Namwambah, op cit., 5

<sup>319</sup> Tom Destiny Namwambah, ibid.

<sup>320</sup> George Areba, op cit., 57.

<sup>321</sup> Pius M. Mutiso and Karen T. Odhiambo, *Teachers Preparedness in Implementation of Alternative Assessment in Primary Schools within the Competency Based Education System of Kenya*, (International Journal of Research and Innovation in Social Science, Volume VI, Issue III, March 2022), 207.

sufficiently equipped with the necessary skills required for CBC. Therefore, they cannot fully execute their roles as CBC teachers.

According to Samson Kiprop Maluei, the transition from the 34-year-old 8-4-4 curriculum to the new 2-6-3-3-3 system is an ambitious and hastily completed government initiative. The government will accomplish this by assigning the necessary resources and procedures.<sup>322</sup> In a study by Mosioma (2018) on teachers' preparedness for implementation of the CBC in private pre-schools in Dagoretti North Sub-County, Nairobi City County, it was noted/highlighted that, while 44.1percent disagreed, the majority (45.2%) believed that they have the necessary subject-matter knowledge to execute a competency-based program. Unacceptablymany (44.1%) said they lacked the necessary subject-matter expertise to implement the competency-based program.<sup>323</sup>

Article 1 (1), (2), (3), and (4) of the Constitution of Kenya 2010 enshrines the sovereignty of the people. Article 174 presents the objects of devolution that include (a) to promote of democratic and accountable exercise of power; (b) to foster national unity by recognizing diversity; (c) to give powers of self- governance to the people in the exercise of the powers of the State and in makingdecisions affecting them; (d) to recognize the right of communities to manage theirrown affairs and to further their development; (e) to protect and promote the interests and rights of minorities and marginalised communities; (f) to promote social and economic development and the provision of proximate, easily accessibleservices throughout Kenya; (g) to ensure equitable sharing of national and local resources throughout Kenya; (h) to facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and (i) to enhance checks and balances and the separation of powers.<sup>324</sup>

This means that every citizen even those at the grassroots level in each county by dint of the aforementioned article 174, ought to, in the devolved government, oversight in the development of the CBC curriculum, to ensure the funds allocatedare utilized in the manner they were intended. Despite some claiming that CBC taskforce sidelined parents and teachers, the Constitution of Kenya 2010 in article

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<sup>322</sup> Samson Kiprop Maluei, op cit., 68.

<sup>323</sup> George Areba, 58.

<sup>324</sup> Constitution of Kenya, 2010, article 174.

22 gives ground to each citizen to institute a case when a fundamental right has been threatened as it notes that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

#### **4.0 EFFICIENCY OF THE BOARDROOM OVER COURTROOM IN ADDRESSING THE CBC ISSUE**

While it manifests that Kenyans have issues with CBC as aforementioned, it is important to recall the reason for its establishment. Although there have been challenges in its implementation, this does not mean that it be discarded without due consideration of the possible remedies to make it more efficient and equitable to all. As such, one may choose to handle this issue in court or through Alternative Justice Systems like the Alternative Dispute Resolution in the boardroom.

Article 159 (2) of the Constitution of Kenya, 2010, speaks about Alternative Dispute Resolution when it asserts that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3). Clause 3 pinpoints that traditional dispute resolution mechanisms shall not be used in a way that contravenes the Bill of Rights; is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or is inconsistent with this Constitution or any written law.<sup>325</sup>

But what is Alternative Dispute Resolution (ADR)? Kariuki Muigua understands ADR as a term encompassing all decision-making processes other than litigation, including but not limited to negotiation, enquiry, mediation, conciliation, expert determination and arbitration.<sup>326</sup> As one of the most basic forms of dispute resolution, negotiation offers parties the largest degree of influence over the course of events. It is an informal process. In order to find a solution that is acceptable to both parties without the aid of a third party, it entails the parties getting together to identify and debate the issues at hand.<sup>327</sup> Arbitration is also in this category and it

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<sup>325</sup> Constitution of Kenya, 2010, article 159 (3).

<sup>326</sup> Muigua K, *Setting Disputes through Arbitration in Kenya*, Glenwood Publishers Limited, 2012, pp.1-19.

<sup>327</sup> Kariuki Muigua, *Alternative Dispute Resolution and Article 159 of the Constitution*, 3.



is simply a procedure governed by laws in which formal disputes are settled by a private tribunal of the parties' choosing.

Arbitrations occurs when a neutral third party is chosen by the parties or an appointing body to settle the conflict and provide a final, binding judgment.<sup>328</sup> Unfortunately, there are those who see ADR as a lesser mechanism to the attainment of justice and this is a bias and a lie.<sup>329</sup> This is evident for example in the wording itself: 'Alternative' Dispute Resolution. For this reason, some academics have suggested that calling a judicial system "alternative" is inaccurate. This is a correct analysis because TJS is the only system of justice that the people in some African nations are familiar with because it is difficult for them to access formal court systems. As a result, it is not a substitute for any other system but rather the primary system of dispute resolution in these countries.<sup>330</sup>

According to the Alternative Justice System Baseline Report, 2020, about 95% of conflicts are settled outside of the court system through informal, non-state-based methods. One of the many informal conflict settlement procedures among these methods is AJS.<sup>331</sup> This means that nearly all disputes in Kenya, save around just 5% addressed via the court system, are solved amicably using Alternative Justice Systems. Mediation is key as one of the ADR mechanisms. In itself, mediation involves a scenario whereby a neutral third party assists the parties in reaching a negotiated settlement during the voluntary, informal, consensual, completely secret, and non-binding dispute resolution process.<sup>332</sup> As a result, in explaining the meaning of the term Alternative Justice System (AJS), the Alternative Justice System Framework Policy of 2020 notes that the Alternative Justice Systems (AJS) is a practice for obtaining justice as well as a philosophical idea. Its intellectual foundations are freedom, equality, non-discrimination, dignity, and equity, all of which are aligned with the human rights school of thought. The

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<sup>328</sup> Kariuki Muigua, *Alternative Dispute Resolution and Article 159 of the Constitution*, *ibid.*

<sup>329</sup> P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52.

<sup>330</sup> Emily Kinama, *Traditional Justice Systems as Alternative Dispute Resolution under Article 159(2) (c) of the Constitution of Kenya, 2010* (Strathmore Law Journal, June 2015), 26.

<sup>331</sup> Alternative Justice System Baseline Report, 2020, xv.

<sup>332</sup> P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, *op. cit.*, p.10

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Kenyan Constitution contains all of these. AJS refers to actions that can be made to achieve equality and equity for all members of a specific cultural, political, and social identity as a practice for access to justice.<sup>333</sup>

Members in a boardroom can thus understand each other because there are no technicalities. ADR techniques can be flexible, cost-effective, and speedy; may create connections; are non-coercive and result in mutually gratifying outcomes.<sup>334</sup> In a courtroom however, if it is evidence to be submitted, then it has to be in accordance with the Evidence Act Cap 80. If it is a civil issue, the Civil Procedure Act Cap 21, is the guideline. If it is a criminal liability, the Penal Code Cap 63 and the Criminal Procedure Code Cap 75 give the dictates on what and how it should be handled. Plea taking where one states guilty or not guilty of the allegations is like a yes-no question which does not encompass the reality of the real issues in totality. The mechanical nature of the hearings makes the judge the supreme determinant of the case, yet, real solutions and settlements can be long-lasting if allowed to come from the disputing parties by themselves, for themselves.

Moreover, Alternative Dispute Resolution aims at restoring the former rapport among the parties through mediation and reconciliation. On the other hand, the court system is adversarial in the sense that it aims at restoring rights by say paying of damages to the harmed and has very little concern on their aftermath relationship. Therefore, traditional justice systems aim to promote restorative justice rather than retributive justice to a large extent.<sup>335</sup> For example, in the CBC crisis, if it is handled through the court system, the party that will lose will be embittered since they will be judged as 'violators' of the law and possibly be demanded to compensate for the wrong done. The relationship among the stakeholders in the education sector will be shaken and threatened by the ruling if it will not favour their objectives.

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<sup>333</sup> Alternative Justice System Framework Policy, 2020, 1.

<sup>334</sup> Kariuki Muigua, *ADR: The Road to Justice in Kenya*, A Paper Presented at the Chartered Institute of Arbitrators-Kenya Branch, International Arbitration Conference Held on 7th & 8th August, 2014 at Sarova Whitesands Hotel, Mombasa, Kenya, p. 21.

<sup>335</sup> Kariuki F, 'Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of Republic v Mohamed Abdow Mohamed [2013] eKLR,' 2 *Alternative Dispute Resolution Journal* (2014), pp.202- 228.

Kenyans should prefer mediation and arbitration to the court system because even under the Civil Procedure Act, mediation and arbitration still find their spirit uplifted. Sections 59, 59B and 59C of the Civil Procedure Act provides the court with jurisdiction to refer any dispute to ADR mechanisms where parties have agreed or where the court considers it appropriate. Order 46 rule 1 of the Civil Procedure Rules 2010, provides that where all parties agree, the court has jurisdiction to refer any matter in difference between the parties to arbitration.<sup>336</sup> Under Order 46 rule 20, a court can adopt and implement of its own motion or at the request of parties, any other appropriate means of dispute resolution including mediation for the attainment of the overriding objective under sections 1A and 1B of the Act. The overriding objective under the Civil Procedure Act is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.<sup>337</sup> If a person decides to take the CBC issue to court for determination, there is a high likelihood of delay since there are already several cases in the pipeline waiting for determination. As a consequence, the education system in Kenya will be in limbo, not sure whether CBC will be upheld by court hence proceed teaching it or whether the court will abolish it hence no need to teach it. However, if a boardroom meeting is scheduled on any agreed day, different stakeholders such as parents, teachers, students and others, will avail themselves and have a meaningful dialogue together where resolutions will be made amicably, all remaining friends. Moreover, the funds will be manageable as all that is needed is to secure a spacious place to be the boardroom with perhaps water for drinking. If one person offers a boardroom and another the drinking water with some lunch, that is done. But for the court system, hiring a lawyer or a team of lawyers from a serious law firm is not as cheap. It is therefore not suitable for say a poor parent in the village who wants this issue of CBC addressed as soon as possible, while using the cheapest yet most efficient method. Because of its high cost, in this case the court system will be a hindrance to justice since not all will afford it, but ADR will be easily affordable to the majority of Kenyans because of its few demands hence

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<sup>336</sup> Civil Procedure Rules, 2010, order 46, rule 1.

<sup>337</sup> Civil Procedure Act, Cap. 21, section 59.

fostering the attainment of justice.<sup>338</sup> This does not however dilute the fact that we have an advanced system in Kenya on public interest lawyering where for example, institutions such as the Katiba institute have been conspicuous. The heart of the matter is the manner the dispute is resolved, the time it takes, the relationship between the disputants after the settlement and how lasting the resolutions are on either side (ADR or court).

**5.0 CHALLENGES LIKELY TO FACE ADR IN ADDRESSING CBCISSUE**

In the resolution of the CBC crisis using ADR, a number of challenges emerge. For example, if mediation is selected, then who should be the appropriate mediator? Secondly, what are the guidelines to ensure that the issue is comprehensively addressed without much time wasting in unending debates? Will the findings of the boardroom be binding and effected? Above all, the place of ADR is still underestimated in Kenya's legal space and this demands for more attention to ADR's visibility. These are the key challenges.

**6.0 RECOMMENDATIONS**

In choosing the mediator, care should be taken that such is carried out in a manner that promotes fairness, not through corruption or intimidation, in order to ensure the right person selected is competent enough as a mediator.

Guidelines should be drafted on what the board intends to address, the issues to be addressed and the extent and manner they desire them to be addressed.

The findings of the dialogues must be established as binding and each person in their respective capacities oversee the implementation of the same as soon as they finish the meeting as agreed.

**7.0 PROLEGOMENON TO THE FUTURE ADR IN KENYA**

As a way of facilitating the dispensation of AJS data availability and visibility, AJS stakeholders can liaise with the National Council for Law Reporting to:

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<sup>338</sup> Henry K Murigi, *Institutionalization of Alternative Dispute Resolution in Kenya: A Democratization Imperative*, Journal of cmsd Volume 4(3), 2020, 230.

Host the AJS database in the Kenya Law website that currently hosts, among other things, the Kenyan case laws;

Timely analyse and upload on the Kenya Law website the reports by the autonomous AJS institutions on disputes resolved, processes and procedures involved, notwithstanding the applicable substantive norms relied on;

Timely analyse and upload reports from third party institutions- annexed AJS institutions in their escapades of dispute resolution;

Analyse and upload reports from court-annexed institutions that are used to resolve disputes outside the court with/under the court's guidance and partial involvement;

Analyse and report regulated AJS institutions created and regulated either partially or entirely by state-based law institutions.

Conducting a communal standardisation and codification of AJS procedures, manuals, guidelines, and customary law jurisprudence consistent with human dignity.

Conducting and publishing an annual survey report on AJS's achievements and challenges throughout the year.

Translating and uploading on the Kenya Law website the notable dispute resolution proceedings across the Kenyan Communities.

Developing Case Digests on AJS.

Making a special call for articles on AJS e.g. on the need to recalibrate our understanding of AJS and customs, and publishing the best articles in the reputable bi-annual Kenya Law Review Journal.

Kenya Law to sponsor a grand Boardroom AJS Dispute Resolution Competition annually or biannually, depending on the availability of funds and partners, as a way of inculcating confidence among ADR practitioners that AJS is not inferior to the courtroom.

Reporting on the Kenya Law blog and the Bench Bulletin notable international jurisprudence ensconced on the AJS in Botswana and Rwanda to see what the councils of elders there have said on various matters of dispute resolution.

Reporting whatever has been amended or enacted on the AJS manuals and laws. Kenya Law to link the AJS and Courts by reporting resolved and unresolved issues in the process of resolution in either modes, thus facilitating cooperation between

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the two modes to enable co-reference of cases between them through a clear recordkeeping strategy.

Develop practical training manuals and standard of operating procedures on key matters of AJS.

Train judicial officers and the public on appropriate application of the agency principle of jurisdiction of AJS mechanisms.

Develop a Code of Conduct for AJS practitioners.

### **8.0 CONCLUSION**

All in all, the CBC education system has come with its benefits yet it does not lack some challenges. In as much as it desires to enhance the skills of the learner to meet SDG 4 on quality education, its demands on the side of the parents and teachers such as adequate funding and training need to be efficient. Taking this matter to court would not be appropriate since the court is expensive, adversarial and slow as compared to the ADR that is cheap, amicable and fast in addressing issues. Despite the lack of a clear guideline on who should be the mediator for example, the guidelines on how the meeting should be in the boardroom, and the implementation of the findings, the ADR system gleams as appropriate since all these issues can be fixed. As such, ADR towers as a beacon of justice amidst the CBC crisis. A task force selected simply needs to carry out investigations on the CBC issue then conduct an indoor meeting to discuss the findings in order to come up with a detailed report on the agreed upon recommendations to solve the problem.

## References

- Constitution of Kenya, 2010. Civil Procedure Act Cap 21 Civil Procedure Rules 2010 Criminal Procedure Code Cap 75 Penal Code Cap 63 Evidence Act Cap 80
- Alternative Justice System Baseline Report, 2020.
- Alternative Justice System Framework Policy, 2020.
- Emily Kinama, *Traditional Justice Systems as Alternative Dispute Resolution under Article 159(2) (c) of the Constitution of Kenya, 2010* (Strathmore Law Journal, June 2015).
- George Areba, *Competence and Competency Based Learning Curriculum for Greening Sustainable Development in Kenya: Challenges and Panaceas*, Journal of Research Innovation and Implications in Education, Volume 3, Issue2, 2019.
- Henry K Murigi, *Institutionalization of Alternative Dispute Resolution in Kenya: A Democratization Imperative*, Journal of cmsd Volume 4(3), 2020.
- Kariuki F, 'Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of Republic v Mohamed Abdow Mohamed[2013] eKLR,' 2 Alternative Dispute Resolution Journal (2014), pp.202- 228.
- Kariuki Mugua, *Alternative Dispute Resolution and Article 159 of the Constitution*.
- Kariuki Muigua, *ADR: The Road to Justice in Kenya*, A Paper Presented at the Chartered Institute of Arbitrators-Kenya Branch, International Arbitration Conference Held on 7 th & 8 th August, 2014 at Sarova Whitesands Hotel, Mombasa, Kenya.
- Kenya Institute of Curriculum Development, *Basic Education Curriculum Framework*, 2017.
- Mercy Muthiga Mauki, John Kitur, Niceta Wanja Ileri and Francisca Wavinya Ngala: *Competency-Based Curriculum Implementation and The Role of the Universities in Kenya*, Africa International University.

Ministry of Education, *Report of the Taskforce On the Re-Alignment of the Education Sector to The Constitution of Kenya 2010: Towards A Globally Competitive Quality Education for Sustainable Development*, 2012.

Muigua K, *Setting Disputes through Arbitration in Kenya*, Glenwood Publishers Limited, 2012, pp.1-19.

P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, op. cit, p.10

Pius M. Mutiso and Karen T. Odhiambo, *Teachers Preparedness in Implementation of Alternative Assessment in Primary Schools within the Competency Based Education System of Kenya*, (International Journal of Research and Innovation in Social Science, Volume VI, Issue III, March 2022).

Samson Kiprop Maluei, *Implementation of the New Curriculum (2-6-3-3-3) In Kenya*, (Journal of Business and Management Volume 21, Issue 5, May 2019).

Session Paper 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

Tom Destiny Namwambah, *Principles of Rational Pedagogy: An Insight on Kenya's Competence Based Curriculum (CBC)* (Journal of Research & Method in Education, Volume 10, Issue 2, April 10, 2020).

United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*.

P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CI Arb, London, 2002), pp. 50-52.