

**An Evaluation of Alternative Dispute Resolution in Access to Justice: The Case of
Family Disputes in Kibra in Nairobi, Kenya**


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Requirements for the Award of the Degree of Master of Arts in Human Rights**

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DECLARATION

This research is my work and has not been presented to any institution for award of degree or any other academic award in any university

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DEDICATION

This research project is dedicated to my son Alain Makori for his prayers, encouragement and support during this study.

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LIST OF ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CoK	Constitution of Kenya, 2010
CPC	Criminal Procedure Code
EU	European Union
KI	Key Informants
TDR	Traditional Disputes Resolution
UN	United Nations
USAID	The United States Agency for International Development

ABSTRACT

Alternative Dispute Resolution (ADR) is gaining popularity for resolving various types of disagreements among these; family, business, and natural resource-related disputes. The study aimed at assessing the effectiveness of the ADR Mechanisms in facilitating access to justice for family disputes among the residents of Kibra, an informal settlement in Nairobi Kenya. The study explored the impact of awareness of the ADR mechanism on and among family disputants; evaluated the relationship between the mechanism and its application in accessing justice. The study identified and discussed some of the challenges that face the mechanism especially in pursuit of justice in Kibra Nairobi County. The study's target population was 60 respondents that included (48) family disputants and (12) key informants (chiefs). The study employed a descriptive research design. Primary data was collected through questionnaires and interview schedules. Utilitarian theory was used in the study which contends that the action that promotes human happiness should be supported.

The study established that 53% of Kibra residents are unaware of the ADR mechanisms that hinder their access to justice. Notably, 65% of females are aware of ADR compared to 35% of males' category in Kibra. Further study found that 56% of family disputants applied ADR mechanisms in resolving family disputes in Kibra. Notably, 70% of females applied ADR compared to 30% of male respondents in Kibra. The study found insignificant association at 5% significance level between the gender of respondents and ADR mechanisms awareness in Kibra, as denoted by ($X^2=1.092a$, $df=1$, P Value =.296, at $P>.05$). Further, study found a significant association at 5% significance level between the gender of respondents and the application of ADR mechanisms by family disputants in Kibra, as denoted by ($X^2=6.689a$, $df=1$, P Value =.010, at $P<.05$). The study identified challenges faced by family disputants like ADR outcomes may be unsatisfactory at 44%. Case facts may not be fully disclosed (mistrust) at 28%, unfamiliarity with the ADR process (poor communication) at 17%, and difficulty deciding on suitable methods at 11%. The study concluded that most family disputants are unaware of ADR in resolving family disputes. The study also concluded that the majority of females applied ADR compared to the minority of the male category in Kibra. Finally, the study recommends that the Kenyan government needs to enhance community awareness of ADR in urban informal settlements. Policymakers should regularly review ADR policies to strengthen family disputants' access to justice in Kibra, Nairobi County.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction and background of the study

A family is a group linked through blood, intermarriage, or adoption. It is a group of individuals who cohabitate and operate as a unified domestic unit. The composition of a family unit consists of parents and their offspring (Michelle, 2013). Conflicts arise when the previously harmonious interactions and relationships among family members are broken due to one or more factors. For instance, today's families face infidelity, violence, child molestation, divorce, and separation.

Many families end in divorce, separation, or squabbles due to conflicts (Aye et al., 2016). Malek (2013) asserts that no matter how wonderful a family is; they all have conflicts. Ullah (2018) explains that human disagreements and differences of opinion within or outside of family issues are historical realities that we cannot entirely reject or ignore. Family disputes have become more widespread and rampant to the extent that society has considered them a regular occurrence (Muigua, 2018).

The term conflict was used by sociologist Robert Fisher in 2000 to describe an intense and protracted disagreement. Njenga (2016) argues that conflicts arise from disagreements regarding values and claims to power or wealth, often arising in neighborhood disputes and small claims. These conflicts can harm relationships and affect family members, as constant disagreement can lead to disputes over time thus affecting the family's overall well-being.

In addressing these conflicts, families opt to apply the proceedings of the court process to resolve these disputes. Muigua (2018) revealed that families that pursue justice via the

judicial system have many challenges, such as a deficiency in personnel, inadequate financial resources, and a substantial accumulation of pending cases. Further, it highlights that despite the prevalence of conflicts, many jurisdictions worldwide have efficiently implemented specialized procedures and mechanisms to resolve these disputes Muigua, (2018). Therefore, these obstacles to access to justice could be addressed through Alternative Disputes Resolution ADR.

Brett (2015) defines ADR as a collaborative process in which parties or their representatives meet to seek a resolution. In addition, ADR refers to conflict strategies management and resolution, which can be informal or formalized as the judicial system.

The first paragraph of Article 33 of the United Nations Charter (1945) stipulates a range of methods that may be used to resolve conflicts peacefully. These mechanisms include negotiation, investigation, mediation, conciliation, arbitration, judicial resolution, regional agencies or agreements, and other similar processes. Therefore, ADR mechanisms effectively resolve legal issues involving money, families, and natural resources, making it easier for victims to seek help. They are prevalent in minor, routine, and local conflicts where equity significantly determines justice. The utilization of local and cultural norms could potentially be more appropriate than adhering strictly to national legal criteria.

Janmejain (2020) avers that ADR has grown rapidly and has become institutionalized since the 1970s. For instance, the people of the Republic of China have embraced mediation as a type of ADR. In the 1990s, 22 different types of non-judicial dispute settlement in the United States of America used ADR mechanisms. On the 26th of July, 2012, Germany passed legislation on mediation and alternative dispute resolution methods outside of the traditional court system to enhance conflict resolution (Sungatullina et al.,

(2019); Abolonin, 2013). In a similar version, Belgian legislators incorporated ADR mechanisms in their laws, starting with family law, and took a significant step in 2013 to mainstream ADR in family matters (Raes, 2019).

Ullah (2018) postulates that the ADR mechanism has concealed families' privacy, unlike in an open court where there is no privacy. ADR mechanisms in family issues ensure that the poor and disadvantaged parties receive justice. Therefore, ADR is suitable for settling family disputes since it does not involve complex procedural or strict evidentiary rules by the family mediators in family matters. According to Ullah (2018), this type of dispute resolution has made it easier for many families to get justice because it is inexpensive and quick. In this context, ADR has recently gained popularity worldwide (Korobko, Radaeva, et al., 2019).

Despite ADR being embraced by most jurisdictions globally, African countries such as South Sudan resort to traditional justice systems. Ntuli (2018) states that most civil and criminal conflicts amount to approximately 90%. Although traditional systems like ADR have existed in African cultures for centuries, in many instances, they are seen as relevant in transitional justice processes. Most African legal systems have adopted this approach. The National Land Reform Mediation Panel, for example, was established by South Africa's Department of Land Affairs to resolve conflicts that would have taken longer if handled through the formal legal system (Mikhaylov et al., 2019).

In Kenya, Legal support for alternative dispute resolution (ADR) is included in Kenya's Constitution (2010). The National Council for ADR, National Chamber of Mediation and Arbitration, and Kenya Mediation Centre are only a few alternative dispute resolution organizations authorized under the ADR Act, 2015, which also mandates training for

mediators. The Constitution of Kenya 2010, specifically in Article 48, stipulates that the State must guarantee access to justice for all individuals. Furthermore, if any fees are deemed necessary, they must be reasonable and should not hinder or obstruct the accessibility of justice.

Moreover, the 2010 Constitution of Kenya, as stated in Article 50, stipulates that every individual possesses the entitlement to have any conflict that can be settled by legal means adjudicated in a just and open trial before a court of law or before an independent and unbiased tribunal or body if deemed suitable. Article 159 of the Constitution of Kenya 2010 pertains to the administration of justice in the country and acknowledges the value of ADR and more conventional forms of dispute settlement. The article provides that the courts and tribunals must be guided by the notion of supporting alternative forms of issue settlement, including but not limited to reconciliation, mediation, arbitration, and conventional conflict resolution procedures, in the exercise of their judicial power.

Kenya's Constitution, under Article 159 (2) (c), mandates ADR techniques such as reconciliation, mediation, arbitration, and conventional conflict settlement processes. According to Muigua (2015), most Kenyans can now settle their disagreements through ADR amicably rather than going to court, which is expensive and time-consuming. As a result, the Kenyan legal system has recognized the importance of ADR in resolving cases and reducing the court backlog (Muigua, 2015).

According to Ullah (2018), ADR has become a popular technique for resolving family disagreements, particularly those that are distinctive and require a unique way of resolving them. ADR gives an excellent opportunity for dissatisfied family members to take part directly in the dispute resolution process and voice their grievances. The utilization of

ADR systems in industrialized and developing nations has generated much debate. There exists a notion that those living in poverty are more prone to engaging in criminal activities and that informal settlements are closely associated with both crime and poverty on a global scale (Alakshendra, 2019).

An informal settlement is a heavily populated urban residential area with low-quality, close-knit dwelling units. Informal settlements often have damaged or unfinished infrastructure and are occupied mainly by impoverished people (UN-Habitat, 2011). ADR has enabled many families to access justice easily since the program is inexpensive and takes less time. In the case of family matters, particularly in urban informal settlements, access to justice is acute since most of the victims are living in substandard living conditions, poor and jobless. Therefore, victims cannot meet the cost of settling disputes formally. This makes ADR desirable and effective in family matters. Moreover, the high costs of other dispute resolution and delays may prevent disputants from getting justice (Ullah, 2018).

Kibra is the largest slum in Kenya and one of Africa's most notorious and unsanitary informal settlements. Kibra's reputation stems from its lack of basic infrastructure and contested legal status, with residents denied access to land, housing, and essential urban services. The area's legal status is currently debated (Lüthi, 2016; Wesolowski & Eagle, 2010). Kibra is an integral part of the thriving economy of Nairobi, home to over 240,000 people, significantly impacts Kenya's booming economy (Chaffinch, 2022).

In this context, it is clear that ADR plays a crucial role in access to justice. This system has gained widespread acceptance among countries worldwide and is adopted to settle disputes outside the court systems. Therefore, this research addressed the central question: Do

Kenyan people living in Kibra informal settlements utilize mechanisms for ADR available in Kenya to solve family disputes? Therefore, the study evaluated the awareness, applicability, and challenges of the ADR mechanisms in access to justice among family disputants in informal urban settlements in Kibra Nairobi County, Kenya.

1.2 Problem Statement

Alternative Dispute Resolution (ADR) fosters growth, peace, and social justice in communities amidst community issues. ADR has gained popularity over formal judicial processes due to its flexibility, cost-effectiveness, accessibility, and practicality in resolving disputes. Traditional legal processes are expensive, inaccessible, and protracted, denying disputants the opportunity to settle their cases, particularly those experiencing poverty.

The Kenyan National ADR policy promotes the practice of ADR in all sectors and inculcates the culture of ADR mechanism in the country. However, Mangerere (2018) highlights that Kenya's policies and structures are inadequate for effective civil justice delivery and equitable access, as well as the inadequacy of the procedural justice system in providing quality outcomes and remedies. Further, Kenya's judicial system faces significant challenges due to case backlogs and a lack of mandatory ADR (Judiciary, 2020). Additionally, Article 159 (2) (c) of the Kenyan Constitution (2010) allows Kenyan courts to refer deserving disputes to ADR mechanisms.

Despite the incorporation of ADR into the Constitution and attempts to encourage its use in conflict resolution, today, many families are suffering from constant disputes, leading to disintegration and substandard living conditions. Further, today, the Kenyan judiciary continues to record many cases, raising doubt on the effectiveness of the ADR mechanism

(Gichuhi, 2018). Additionally, the Kenyan justice system has often emphasized legal formalism over legal plurality, undermining and neglecting informal justice systems.

Therefore, the question arises: Why are Kenyan courts continuing to struggle with a high backlog of cases, yet ADR mechanisms are provided for in the Kenyan Constitution 2010? Can't ADR solve family disputes, especially in informal settlements where the fighting happens because of bad living conditions, lack of resources, or a complex economic crisis? Indeed, if this problem remains unaddressed, the victims of family disputes will be denied access to justice, which may result in high backlog cases in Kenyan courts. Furthermore, persistent conflict may be unpleasant and detrimental to relationships. This may frustrate the effectiveness of the ADR in Kenyan informal settlements, thus giving a compelling reason for carrying out this study in the Kibra informal settlement, one of the most notorious and unsanitary informal settlements in Africa.

Therefore, this research addressed the effectiveness of ADR in urban informal settlements in Kibra. The study focused on access to justice for family disputants in urban informal settlements. The study used awareness, application, and challenges of ADR mechanisms to evaluate the effectiveness of ADR in urban informal settlements in Kibra, Nairobi County.

1.3 Purpose of the Study

The study aimed to evaluate the effectiveness of ADR Mechanisms in access to justice for family disputants in Kibra informal settlement in Nairobi, Kenya.

1.3.1 The Objectives of the Study

The study's specific objectives included:

1. To investigate how the level of awareness of ADR influences the use of ADR mechanisms among family disputants in Kibra, Nairobi county
2. To evaluate the relationship between the application of ADR and the access to justice among family disputants in Kibra, Nairobi County.
3. To identify the challenges of ADR as a tool in access to justice among family disputants in Kibra, Nairobi county.

1.4 Research Questions

The following questions guided the investigation:

1. How does the ADR awareness level affect ADR use among family disputants in Kibra Nairobi County?
2. To what extent does the application of ADR affect the access to justice among family disputants in Kibra, Nairobi County?
3. What are the challenges facing ADR mechanisms as a tool in access to justice among family disputants in Kibra, Nairobi County?

1.5 Scope of the Study

The study evaluated the effectiveness of ADR in resolving family disputes in urban informal settlements in Kibra, Nairobi County. The study focused on awareness, application, and challenges of ADR mechanisms to evaluate the effectiveness of ADR in urban informal settlements in Kibra. In resolving family disputes, victims may utilize courts or ADR mechanisms. This study included ADR methods as potential means of addressing family problems and excluded the traditional court system in resolving family disputes.

1.6 Justification and Significance of the Study

Access to justice is a rule of law principle. The Kenyan Constitution as well as International legal instruments such as the Charter of the United Nations (1945) encourage the use of ADR in dispute resolution. However Kenyan courts continue to record high number of cases especially on family disputes leading to backlog of cases in courts and families continue to disintegrate because of family disputes yet ADR is an avenue for resolving such family disputes that is available to even low income earners such as those that reside in urban informal settlements, thus the need to carry out this study. The study looked at the awareness, applicability and challenges of ADR mechanisms in access to justice in Kibra. Study will make a valuable contribution to the existing body of literature by addressing the gaps in knowledge on measures, mitigations, and recommendations that might potentially address the issues surrounding access to justice in informal settlements in relation to family disputes. Further, the outcome of this research has the potential to provide advantages to individuals involved in family disputes, the field of jurisprudence in improving the laws that govern ADR in Kenya as well as policymakers in Kenya and beyond. The research results provided insights into the potential for family victims to seek recourse through ADR mechanisms in the face of family problems, which may be accessible to individuals with financial means. The research results may be used by the Kenyan judicial court systems to enhance awareness, application, and understanding of ADR in urban informal settlements. This study results might provide a better planning for future ADR practices in Kenya, ultimately leading to a reduction in the backlog of cases within the Kenyan courts. Moreover, the court system may use ADR mechanisms in order to expeditiously administer justice to marginalized individuals, since it is widely

acknowledged that delayed justice amounts to a denial of justice related to family dispute cases in urban informal settlements in Kenya. This study established the relationship between ADR and family disputes in urban informal settlements, offering valuable insights for future research on ADR mechanism in Kenyan family disputes.

1.7. Limitation of the Study

The study was limited to physical accessibility to the research site since participants resided in urban informal settlement characterized by insecurity, stagnated water, impassable roads, and hostile terrains to mingle from ‘village’ to ‘village.’ Similarly, participants with disabilities could not access research sites that were not physically accessible. As a result, the researcher gathered respondents at a safer central place (the chief’s office) who participated in the study. In addition, the study was limited to the uncooperative nature of respondents' responses and interventions that occurred during the data collection process. Consequently, the researcher explained to the participants the purpose of the study in order to foster cooperation and rapport and establish confidence with respondents. Further, due to time and financial constraints, the research was limited to questionnaires and interviews as the primary instruments for data collection. As a result, the study was limited from using expensive or time-consuming data collection methods like focus groups or census that are more expensive.

1.8 Definition of Key Terms

Alternative Dispute Resolution - pertains to providing equitable access to justice for all individuals, regardless of their social standing. The promotion of alternative methods of resolving disputes, such as reconciliation, mediation, arbitration, and traditional dispute

resolution processes, is encouraged following the Constitution of Kenya, 2010, Article 159 2(c).

Arbitration is a procedure in which a dispute is submitted by agreement of the concerned parties to one or more arbitrators who make a binding decision on the dispute.

Compromise refers to an act where parties resolve their dispute by mutual concessions.

Conciliation refers to an act where parties in disputes bring a neutral third party to settle a dispute.

Family disputes refer to conflicts that arise based on family matters and need a resolution.

Household refers to one or more individuals who live in the same place and share meals or living quarters; it might be a single family or any other collection of people.

Litigation refers to accessing justice through formal court systems

Mechanisms refer to methods involved in solving disputes

Mediation refers to the intervention of a third person or mediator in to a dispute to assist the parties in dispute to negotiate jointly acceptable resolution to the dispute.

Negotiation refers to a discussion that leads to agreement.

1.9 Literature Review

Literature review touched on the characteristics of an urban informal settlement, the concept of ADR together with the categories of ADR mechanisms. The study also considered the objectives on awareness, applicability and challenges of ADR in addressing family disputes in Kibra. This is discussed in detail in Chapter two.

1.9.1 Theoretical Framework

The utilitarian theory is used in interpreting and understanding the study variables.

1.9.2 Utilitarian Theory

This study adopted the theory of utilitarianism by one of the proponents of utilitarianism John Stuart Mill (1806–1873) whose work is most fully developed in his seminal work *Utilitarian* (1861). According to utilitarian theory, morality should focus on maximizing the sum of societal benefits while minimizing costs (pain and unhappiness). In this light, it follows that family members should pursue whatever will make their family most content. Although moral philosophy has been hampered by numerous debates over the ultimate good, Mill thought from the start that everyone could agree that human activities' consequences greatly affect their morality (Kemerling, 2011).

Utilitarianism is based on the concept of utility, which says that any action that promotes human happiness should be supported (Bentham, 1789). Human happiness can be increased in two ways: by increasing pleasure and/or decreasing pain. The theory contends that the rightness or wrongness of an action should be determined by its consequences and according to Bentham (1789), the best course of action is the one that maximizes happiness for the largest number of individuals. Critics of utilitarian theory argue that the outcomes of an action, or the expected ones, should be used to determine its rightness or wrongness. This problem occurs when the outcomes of our activities are not what was anticipated.

1.9.3 Application of the Theory to the Study

In life, we often must evaluate our contentment and what is best for our community, whether that be a group of friends, family, religious believers, or one's nation. The theory advocates for justice for all, and disputants can access justice based on fairness, especially for the oppressed. The theory reflects the Constitution of Kenya (2010), which establishes ADR procedures to ensure that all citizens have access to justice, in which the study is

anchored. Therefore, in evaluating how to handle family disagreements, the theory created as little distress as possible among family disputants in an urban informal settlement in informal settlements in Kibra, Nairobi County.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The chapter reviewed related literature on the effectiveness of ADR mechanisms and family dispute resolution. The chapter presented the characteristics of informal urban settlement, the concept of ADR mechanisms, and the literature on alternative dispute resolution methods in resolving family disputes as well as the challenges for ADR methods as a tool for settling family cases in Kibra informal settlement. Furthermore, the section presented a theoretical review and its application to the study. Finally, it presented a summary of the literature review.

2.2 Characteristics of Urban Informal Settlement

The global increase in urban populations is accompanied by a corresponding growth in the number of individuals residing in informal settlements, such as slums and other economically disadvantaged regions. About a quarter of the world's metropolitan population resides in these squatter areas, and their numbers have increased by 213 million since 1990 (UN-Habitat, 2013b, pp. 126–8). The rise of informal settlements can be attributed to various factors, including population growth, rural-urban migration, and absence of affordable housing, inadequate governance in policy, planning, and urban management, economic vulnerability, low-wage employment, marginalization, and displacement caused by conflict, natural disasters, and climate change (UN-Habitat, 2016). Poor water supply, limited sanitary facilities, inadequate living space, inadequate durability of houses, and tenure instability are all examples of such problems. Slums are often

considered densely inhabited metropolitan regions with poor living conditions (Righa, 2012).

Specific populations are particularly impacted by life in informal settlements. Squatter communities are located on the outskirts of cities, far from any commercial centers or other sources of commerce and supplies (Chant, 2014). Increased vulnerability to sexual assault and other forms of abuse is associated with living in substandard housing, displacement, and homelessness (Chant, 2013; McIlwaine, 2013). Violent and criminal acts in urban informal settlement areas are not accidental but inevitable results of social isolation and inequality (Kubende, 2016).

Kibra, located in Kenya, adjacent to Nairobi, stands as the most extensive slum in the Sub-Saharan African region. According to the Affordable Housing Institute (2011), the proportion of Nairobians residing in Kibra is 20%, indicating that one in every five individuals in Nairobi resides in this area. Additionally, the estimated population density in Kibra is reported to be 750,000 individuals per square mile. The Ministry of Housing (2013) states that unemployment and underemployment are also problems in the slums. Roughly half (49%) of adults in informal settlements have regular employment, nearly 19% work for their microenterprise at home, and over 26% are unemployed.

According to Kubende (2016), robbery is the most prevalent crime in Kibra, followed by pickpocketing. In the Kibra Informal Settlement, criminal behavior included alcoholism, drug addiction, gambling, manipulation, and antisocial tendencies. Additionally, Poverty and high unemployment were shown to be significant contributors to the area's high crime rate.

De Filippi, Cocina, and Martinuzzi (2020) revealed that today the major cities in emerging nations have significantly greater crime and violence rates. This is due to several causes, including growing urbanization, inadequate infrastructure, and income gaps, which all play a role in perpetuating social, economic, and political inequality. These effects weaken societies and increase dangers for marginalized people, especially those living in slums and other forms of informal settlements.

2.3 Concept of Alternative Dispute Resolution

Article 33(1) of the Charter of the United Nations (1945), mandated that parties engaged in a dispute are provided with a set of conflict management procedures to be employed in the event of a conflict. Parties involved in an international dispute are obligated to pursue a resolution through various peaceful means, such as negotiation, investigation, mediation, conciliation, arbitration, judicial resolution, regional agencies, or other agreed-upon methods by all parties involved.

The Charter establishes a legal framework for using ADR in international conflict settlement. ADR processes are legally established in Kenya. Article 159 of the Kenyan Constitution (2010), stipulates that the courts and tribunals have to encourage the utilization of alternative approaches to resolving conflicts, such as reconciliation, mediation, arbitration, and traditional dispute resolution processes, in the exercise of their judicial authority. In the context of Kenya, ADR encompasses a range of decision-making approaches that deviate from the traditional litigation process. The procedures encompassed within this framework consist of negotiation, investigation, mediation, conciliation, expert decision, and arbitration.

The Constitution aims to foster Kenyan communities' cultural customs and traditional knowledge, including ADR and TDR methods in dispute resolution. According to Mungai (2015), Article 159 (1) of the Constitution establishes that the judiciary derives its power from the populace and is entrusted to courts and tribunals established by or under the Constitution. These judicial bodies are expected to adhere to certain principles, including the promotion of ADR methods for resolving conflicts.

The Constitution ensures the entitlement of all individuals to avail themselves of the justice system, and mandates the State to implement suitable legislative, regulatory, and administrative measures to uphold the effectiveness of these justice systems. To ensure equitable access to justice for the citizens of Kenya, the Constitution expands the range of mechanisms within the judicial system by promoting the employment of both formal and informal justice systems (Mungai, 2015). Concerning this matter, Article 159 recognizes the application of ADR in Kenya. According to Nylund (2014).

A court may submit a dispute to an ADR mechanism on its initiative or with the consent of the parties. Courts respect the will of the parties before adjudicating a matter. Courts have held that before a dispute is referred to ADR mechanisms, a court needs to ascertain two things. First, there is a dispute between the parties, and second, the dispute in question can indeed be settled through ADR (Kamal, 2007).

2.4 Categories of ADR Mechanisms

ADR mechanisms are classified into three major categories; these include evaluative, facilitative, and determinative categories. An evaluation category involves parties in disputes to understand the matter at hand, and this category is conducted by a third party who guides the matter to be settled. The facilitative category requires a mediation process

that enables parties in disputes to resolve matters amicably and disputants to an agreement. Determinant categories involve the parties in disputes and invite an arbitrator who makes arguments for disputants for a matter at hand who also guides the cases to the conclusion (Muigua & Kariuki, 2014).

2.5. Awareness of ADR Mechanisms in Family Disputes

The importance of ADR in addressing family issues has been well recognized by international and supranational legal frameworks. However, the implementation of the Mediation Directive in Estonia, which legally establishes Family Mediation, has not led to a substantial increase in its use or improved understanding of the advantages of ADR in the management of civil cases (Kristi et al., 2019).

States are supposed to encourage the use of ADR, particularly mediation, to establish a harmonious equilibrium between alternative and conventional legal processes. The predicted increase in the utilization of ADR techniques is expected to contribute to the advancement of judicial systems that are more effective and capable of facilitating the proper functioning of the internal digital market. This, in turn, is anticipated to incentivize investment, enhance competitiveness, and foster economic growth.

The Constitution ensures that everyone has the chance to be heard, and it mandates that the government provide this opportunity through policy, legislation, and ad hoc measures. The concepts of the Directive apply to a wide range of national and EU-wide mediation systems on any issue where its application may be beneficial (Solarte Vasquez, 2014). The utilization of traditional conflict settlement mechanisms in Ethiopia has been a longstanding practice spanning several centuries. Gowak (2008) asserts that the current iteration of ADR has not achieved substantial levels of application and acceptance within

the legal system, despite attempts to improve its effectiveness through ministerial involvement.

Article 159 (2) of the Kenyan mandates the Judiciary to actively facilitate alternative dispute resolution mechanisms alongside its judicial authority. Several sectorial laws and legislation also cover these procedures and their use in access to justice. The legislators have successfully passed the necessary law; nevertheless, they have yet to deliberate on its implementation at the grassroots level. They fail to enhance the dissemination of public understanding regarding those laws and to promote their utilization among persons.

2.6 The Application of ADR Mechanisms to Resolution of Family Disputes

Conflicts may have been resolved by non-legal means in cultures worldwide for a very long time. The current development involves the growing support and implementation of ADR models, the increasing integration of ADR within the legal system, and the inclination to utilize ADR for purposes extending beyond the settlement of individual disputes. The study focused on the success and challenges of ADR in access to justice from a developed and developing world perspective.

The Constitution ensures that everyone has the chance to be heard, and it mandates that the government provides this opportunity through policy, legislation, and ad hoc measures. The concepts of the Directive apply to a wide range of national and EU-wide mediation systems on any issue where its application may be beneficial (Solarte Vasquez, 2014). The TDR has been used for hundreds of years in Ethiopia. Thus, ADR has not yet achieved any major level of usage and acceptance in its current form (Gowak, 2008). In recent years, ADR methods have gained popularity due to their faster, cheaper, and more flexible dispute resolution options compared to traditional litigation. They have been successful in various

disputes, reducing court burdens and improving access to justice. ADR methods preserve relationships by offering a collaborative approach, through negotiation and other ADR has grown increasingly widespread in countries like the United States (Blake, Browne, & Sime, 2016, p.101). In contemporary times, legislative provisions not only permit but also actively encourage the utilization of ADR mechanisms within the context of government agencies' public consultation and administrative dispute resolution procedures (Brown et al., 1998).

Over the past decade, the United States Agency for International Development (USAID) has been actively engaged in endeavors to advance the rule of law in developing and transitional nations. As a result of these initiatives, there has been a growing fascination in the use of ADR methods. ADR is often praised as a more expedient and successful means of achieving justice than the traditional court system, particularly in nations where the judicial system has lost the general public's confidence (Brown et al., 1998).

Moreover, ADR is widely recognized as a mechanism that may effectively facilitate the attainment of justice for communities who face barriers in accessing or utilizing the traditional court system. ADR enables these groups to address their issues in a manner that aligns with their cultural norms and values, therefore promoting societal harmony. The proliferation of ADR activities in both developed and developing nations is accompanied by a corresponding increase in the development and implementation of novel applications and approaches to ADR technology. Individual lives are being enriched, and broader social goals are achieved thanks to these effective initiatives. There is now sufficient ADR experience to draw meaningful conclusions on if, when, and how to launch an ADR initiative (Brown et al., 1998).

ADR programs can help those underserved by the legal system gain access to justice, decrease the time and money needed to resolve conflicts, and boost satisfaction among all parties involved. For example, the integration of the new ADR mechanism has the potential to address the inherent bias against women present in local norms or conventional conflict resolution methods. Consequently, ADR may enhance women's ability to seek justice, particularly in situations where the judicial system consistently exhibits bias against them (Brown et al., 1998).

The utilization of ADR in the context of ensuring access to justice has been seen in several countries, including but not limited to the United States, Argentina, Bangladesh, Bolivia, Colombia, Ecuador, the Philippines, South Africa, Sri Lanka, and Ukraine. ADR programs associated with the courts are emerging as a significant component of wider court reform endeavors in Argentina, Colombia, and Uruguay (Blair et al., 1994; McHugh, 1996).

In Kenya, ADR mechanisms can be traced back to the pre-colonial period in 1914. For instance, the application of the ADR mechanism was first recognized by the Kenyan legal system through the Arbitration Ordinance in 1914, which gave birth to Kenyan courts applying arbitration in Kenya (Muigua, 2016). The Arbitration Act of 2009 is the culmination of several revisions made to the Arbitration Ordinance over several years. Similarly, the Kenyan Constitution 2010 is cognizant of ADR Mechanisms as provided in Article 159 (2). It implies that the ADR mechanism will be utilized in Kenya's courts and tribunals. Further, the Criminal Procedure Code (CPC, section 176) has recognized the application of ADR mechanisms in Kenyan courts.

According to Gachoka and Momba (2019), the utilization of alternative dispute resolution (ADR) mechanisms has significant importance within the context of the criminal justice

system. The authors underline the necessity of complete implementation of these methods inside Kenyan courts. According to Muigua (2014), alternative dispute resolution (ADR) methods are crucial in enhancing access to justice by offering alternatives to traditional litigation processes. Additionally, the author presents a persuasive case for the implementation of alternative dispute resolution (ADR) mechanisms within the specific context of Kenya. For instance, he observed that combined unwritten laws, customs, and traditions are appropriate for dealing with access to justice. Further, the author asserts that ADR mechanisms are most applicable in resolving criminal cases instead of litigation systems (Muigua, 2014).

In most countries where ADR has been implemented, these mechanisms have become the backbone of conflict management and access to justice for marginalized and underprivileged populations. Therefore, ADR initiatives can be useful in conjunction with and support judicial system improvements.

2.7. Some Challenges to ADR Mechanisms in Accessing Family Justice

Alternative dispute resolution initiatives are not meant to replace the traditional court system. ADR programs are designed to implement equity rather than establish legal precedents or effect changes to the law or community norms. Some European Union member states have made significant advancements in promoting awareness campaigns, enhancing competencies, and disseminating the practice of mediation to many domains, including criminal trials (Lappi-Seppälä Storgaard, 2015, pp. 136-147). The challenges of ADR outcomes are kept confidential and should not be used when a public consequence or punishment is warranted. This is particularly true in scenarios characterized by the presence of violent and recurrent perpetrators, such as several cases of domestic violence. The

imposition of imprisonment as a court-ordered punitive measure may be deemed advantageous for the collective welfare.

In India, Ramteke (2020) found that ADR procedures in family disputes encounter issues such as attitudes, a need to modify our customary way of settling disagreements, and even a need to change our fundamental views. The idea of ADR procedures is to establish a WIN-WIN scenario, but people's attitudes are converting it into a WIN-LOSE situation, similar to litigation. Public attitudes must be readjusted; the people must readjust to the spirit of ADR and adhere to its underlying philosophy, which is that of the parties' highest good faith. In India, poor communication has proven to be the most significant impediment to settlement.

The parties and their lawyers' relationship may be so strained that they cannot communicate effectively. Neither party trusts the other. A failure to communicate clearly and effectively, which stymies good negotiations, is frequently, but not always, the outcome of a strained relationship. Lack of knowledge and understanding is a significant contributing factor to the ineffective execution of ADR processes. The primary aspect contributing to the issue at hand is a lack of awareness on the current legal rules. Many individuals belonging to the educated elite in India are often uninformed about the existence and potential of such processes. The efficacy of the ADR process can be enhanced via the dissemination of information and education among both rural and urban populations. Legal education and law schools should emphasize the arts of conciliation and negotiation rather than only litigation.

Client interest's good resolution is usually in the client's best interests. In reality, the failure to reach such a settlement drives the client to seek legal assistance in the first place. The

lawyer must analyze not just what the client desires but also why the parties have been unable to resolve their disagreement and devise a conflict resolution strategy likely to overcome the barriers to settlement.

Legal education, as well as a real attempt to provide less expensive means of resolving disputes, will necessitate professional mediators and judges who are taught to play a far more active role in steering proceedings toward a fair result. The marketplace demands have irrevocably transformed the nature of conflict settlement, and law schools must reflect this. Law schools primarily focus on equipping students with the skills necessary for adversarial situations, rather than emphasizing the need for reconciliation and accommodation. Consequently, this approach may not adequately satisfy the needs of the legal profession. Simultaneously, students need to enhance their ADR skills. Law students must also comprehend the suitability and advocacy concerns in ADR at a higher level and the crucial keys to problem solutions. Therefore, it is challenging to guarantee a consistent supply of competent individuals to run the programs due to poor literacy rates and a general lack of knowledge of ADR, human rights, and legal concerns.

Alternative Dispute Resolution ADR processes are permitted under Kenya's 2010 Constitution, but ADR must be used under its guiding principles and ideals. According to Article 159, if ADR violates the provisions of the Bill of Rights, if ADR is in conflict with principles of justice and morality, and if ADR is incongruous with the constitution or any statutory legislation. Hence, any deviation from this established norm may be subject to legal and constitutional challenges (Muigua, 2016). A study by Muigua (2018) established that the challenge with the ADR mechanism is that lawyers discourage their clients from engaging in the mediation process. Some attorneys have a wrong opinion of mediation

since they are educated to fight disputes and like arguing them in open Court. Lawyers see mediation as a danger to their ability to earn a living through litigation services. Annexed by the Court, mediation takes place inside the High Court's Family, Commercial, and Tax Divisions. There is a hurdle in that business-oriented parties may not attend the mediation owing to their busy schedules, causing proceedings to take longer than necessary. When deciding on multinational corporations that operate in Kenya, where the personnel's competence of making binding judgments on the firm is not located in Kenya but at the company's headquarters, mediation meets hurdles.

2.8 Knowledge Gap

The reviewed literature was related to awareness, application, and challenges of ADR procedures. The literature revealed that ADR processes might not work as well in urban slums because they do not account for the unique challenges and power imbalances that arise from urban informal settlements. The reviewed literature identified methodology gaps, highlighting the need for more quantitative studies to analyze the effectiveness of ADR in informal settlements in Kibra.

Further, the study revealed the challenges and limitations of implementing ADR methods in urban informal settlements, including the inability to address gender inequality, cultural barriers, and power imbalances.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

The chapter presents the research site, research design, target population, sampling procedure, and data collection techniques: questionnaires and interview schedule, data analysis techniques, and ethical statement.

3.2 Research Area

The Kibera slum has seen a significant increase in family cases in recent years, largely due to socioeconomic disadvantage, high population density, and limited educational opportunities and resources. This study was done in Kibra informal settlement in Nairobi County. Kibra is a division of the Nairobi area, which lies 5 kilometers from the city center. Kibra is the largest slum in Kenya and one of Africa's most notorious and unsanitary informal settlements.

The informal settlement has a populace of about 250,000 people. The settlement spans an area of 2.5 square kilometers and is situated in the southwestern region of Nairobi, in proximity to the affluent neighborhoods of Gatwekera, Soweto, Makina, Kisumu Ndogo, Kichinjio, Laini Saba, Silanga, Lindi, Kianda, Mashimoni, Raila, and Kambi Muru. These twelve 'villages' are encompassed within the expansive settlement.

Kibra is replete with conflicts, mainly from different tribes, between landlords and tenants, family cases, and those with and without work. Population and Housing Census in 2019, revealed that almost half of the Kenyan population is jobless. Moreover, a significant proportion of those residing in informal settlements receive an average daily income of approximately Ksh 200 (\$2). A typical home is 12 feet by 12 feet and may accommodate

up to 8 persons or more as a family (Center, 2020). The rationale for the site is that it handles numerous family disputes due to substandard living conditions that often result in conflicts. Therefore, the area provided a suitable environment for data collection and viable information for the study.

3.3 Research Design

This study adopted a descriptive research design. Descriptive research involves surveys and fact-finding inquiries, aiming to describe current affairs and possible behavior, attitudes, values, and characteristics (Kothari, 2004). Descriptive research, as studied by Mugenda and Mugenda (2003), is a methodological approach that documents current state of affairs, including behavior, attitudes, values, and traits. The design enabled the study to utilize descriptive statistics using percentages, frequency, cross-tabulation, and inferential statistics, where chi-square tests were employed to establish the relationship of study's variables. The research design enabled structured questionnaires and interview schedules to investigate the phenomenon. Further, the design allowed the study to describe study variables: level of awareness of ADR, the application of ADR, and the challenges aligned to ADR mechanisms in access to justice among family disputants in an urban informal settlement in Kibra, Nairobi County.

3.4 Target Population

According to Mugenda & Mugenda (2003), the term "population" is used to describe a collective of humans and things that share identifiable features. In 2022, the National Gender and Equality Commission reported 1,245 family cases in Kibra slum, a 10% rise from the previous year (2022). The term "target population" refer to the whole of individuals, events, or objects that are of interest to the researcher and are intended to be

investigated (Sekaran & Bougie, 2010). In this regard, 24% of these family cases reported in 2022 in urban informal settlement in Kibra represented family dispute cases. Therefore, the target population was 300 family dispute cases in all twelve (12) villages in Kibra. On the other hand, one chief was identified and represented one village, making a total of 12 chiefs who were identified as key informants in the study.

3.5 Sampling Procedure and Sample Size

The study employed purposive sampling techniques in the administration of research tools to family disputants and key informants to figure out the standards of awareness of ADR, the extent of applicability of the ADR mechanism, and the challenges facing the ADR mechanism. The rationale for purposive sampling was suitable in this study due to the nature of the phenomenon under scrutiny. Thus, the sampling design was suitable to identify respondents who responded to questionnaires and interview schedules (Etikan et al., 2016). Therefore, respondents provided viable information relevant to the study.

The sample size is a crucial aspect of any empirical investigation. Taherdoost (2017) emphasizes the need for a large enough random sample to make reliable generalizations about a larger population without sampling errors and biases. The study sample size was calculated using Mugenda and Mugenda (2003) who recommended a 10%-30% sufficient to represent a sample for a homogenous population in descriptive studies. In this regard, 20% of 300 family disputes cases represented a sample size of 60 participants.

3.6 Data Collection Tools

The research employed a combination of primary and secondary sources of data. The secondary sources included: books, journals, magazines, internet, and media. The information obtained from secondary sources was referenced. The primary sources were

obtained from study respondents through questionnaires for family disputants and interviews with key informants (Chiefs).

3.6.1 Questionnaires

A questionnaire contains a series of questions that require responses from the respondents. The study used close-ended questions to obtain information from the respondents. The study employed structured questionnaires administered to forty-eight (48) family disputants in Kibra. The questionnaire consisted of demographic information, ADR awareness, application of ADR, and Challenges of ADR in investigating the effectiveness of ADR in access to family justice in Kibra. The data obtained from questionnaires was utilized for both descriptive and inferential analyses in the study.

3.6.2. Interview Schedules

The study used interviews scheduled for key informants who included twelve Chiefs drawn from each 'village' in the study area. The study employed structured interviews for 12 key informants (Chiefs). The interview schedule was utilized to gather data on ADR awareness, application, challenges, and policy from key informants' perspectives to better understand the phenomena under scrutiny. The key informants' interview questions were aligned with the research objectives.

3.7 Data Analysis Techniques

Data collected through research tools was processed by editing, cleansing, tabulation, and analysis to make meaningful inferences. Quantitative data obtained through questionnaires and structured interviews were analyzed and presented in descriptive forms, such as frequency tables, figures, and valid percentages. The study utilized SPSS version 25 to analyze the obtained information to make meaningful interpretations per the study

objectives. In inferential statistics, the Chi-Square test was used to establish the relationship between awareness, application of ADR, and access to justice among family disputants in urban informal settlements in Kibra. Finally, data presentation was based on data collected, and the study findings were presented in line with specific objectives.

3.8 Ethical Statement

In consideration of research ethics, the researcher obtained all the relevant permits from authorities. The researcher obtained an introductory letter from the university of Nairobi and research permit from National Commission for Science, Technology and Innovation (NACOSTI). The researcher visited the research site to identify and recruit study's participants prior to actual data collection. The researcher informed participants the purpose of the study to gain their confidence and trust in the study. The researcher sought the consent of the participants who participated in the study. The researcher protected the participants' identities by allowing them not to disclose their names. The participants voluntarily and willingly participated in the survey without coercion or incentive. The participants were also accorded the liberty to withdraw from the study if they so wished. The researcher ensured that the collected information was only used for scholarly work. Further, the researcher confirmed that only obtained information from respondents was used in the study. Finally, the secondary sources used in the study were all acknowledged and referenced.

CHAPTER FOUR

DATA PRESENTATION, INTERPRETATION AND DISCUSSION

4.1 Introduction

This chapter deals with the data analysis, presentation, interpretation and discussion of data. Data analysis was aligned with specific objectives, they included: To investigate how the level of awareness of ADR influences the use of ADR mechanisms among family disputants in Kibra, Nairobi county, to evaluate the relationship between the application of ADR and the access to justice among family disputants in Kibra, Nairobi County. The study also identified the challenges of ADR as a tool in access to justice among family disputants in Kibra, Nairobi county as discussed elsewhere in this work. Descriptive and inferential statistical methods such as frequency tables, figures, cross-tabulation, and chi-square tests were used to analyze the collected data in the study.

4.2 Response Rate

A total of 48 questionnaires were sent out to respondents, out of these, 36 were returned, which is a 75% response rate. The structured interviews were conducted with 12 key informants (Chiefs), and eight (8) interview schedules were returned, which marked a response rate of 67%. Total responses were calculated and presented in Table 4.1

Table 4.1: Respondents' Response Rates

Respondents	Instruments administered	Instruments returned	Response rate
Family disputants	48 Questionnaires	36 returned	75%
Key informants(chiefs)	12 Interview schedules	8 interviewed	67%
Total	60 Instruments	44 Instruments	73%

From Table 4.1, it was found that the research instruments' response rate was above 70%, which was acceptable for making inferences in the study. Baruch (1999) states that a 40% or below response rate is unacceptable and would raise validity concerns, whereas a response rate of 60% +/-20 is considered acceptable and reasonable.

4.3 Respondents' Awareness of ADR in Urban Informal Settlement

The study sought information on ADR awareness in Kibra, the participants were asked to provide information about their understanding of ADR mechanisms in urban informal settlements in Kibra, Nairobi county. The data gathered from family disputes is depicted in Figure 4.1.

Figure 4.1: Description of ADR Awareness

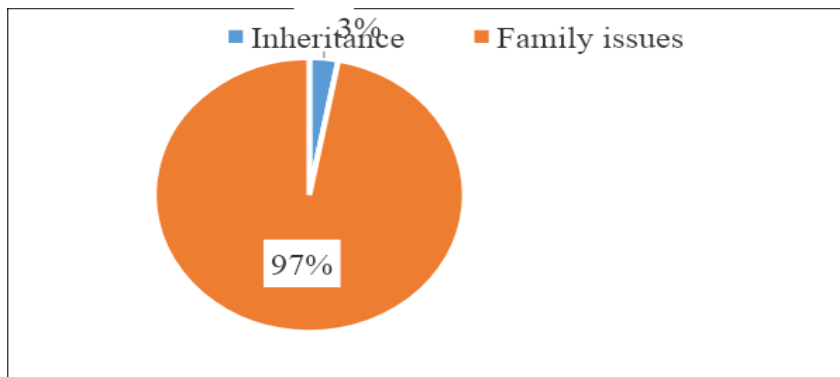


Figure 4.1 found that most of the family disputants, 97% understood ADR mechanisms as out-of-court methods for access to justice among disputants of conflicts emerging from family issues. A minority of respondents, 3% understood ADR mechanisms as methods to find amicable resolutions to disputes emerging from inheritance in urban informal settlements. The results implied that most family disputants related ADR mechanisms to resolutions involved in access to justice without using court systems. Further, family issues dominated as the major conflict that requires to be resolved through the application of ADR mechanisms in urban informal settlements in Kibra, Nairobi County.

4.4 Respondents' Encounter of ADR in Urban Informal Settlement

The study sought whether family disputants encountered family disputes in urban informal settlements and which gender encountered more family disputes in Kibra, Nairobi County. Similarly, the study conducted a cross-tabulation on the faced family disputes and the respondents' responses, which was computed to split the answers by gender. For this purpose, a cross-tabulation was computed, the findings are shown in Table 4.2.

Table 4.2: Cross tabulation: Gender * Encountered Family Disputes

Crosstabs		Yes	No	Total	
Gender	Female	Count	11	9	20
		% within gender	55.0%	45.0%	100.0%
		% within Have you encountered family disputes?	50.0%	64.3%	55.6%
	Male	Count	11	5	16
		% within gender	68.8%	31.3%	100.0%
		% within Have you encountered family disputes?	50.0%	35.7%	44.4%
Total	Count	22	14	36	
	% within gender	61.1%	38.9%	100.0%	
	% within Have you encountered family disputes?	100.0%	100.0%	100.0%	

From Table 4.2, it was found that 55% of female respondents encountered family disputes compared to 69% of their male counterparts. Further, the findings showed that 50% of female and male respondents experienced family disputes in Kibra, Nairobi. In the same vein, the majority of total respondents, 61% revealed that they encountered family disputes compared to the minority of respondents, 39%, in an urban informal settlement in Kibra, Nairobi. The findings implied that the family disputants experienced conflicts that affected

their family members in an informal urban settlement in Kibra, Nairobi County. These results mirrored a study by Njenga (2016) that found that family members are affected by their problems.

4.5 Effect of Family Disputants' Awareness on Resolution of Family Cases

The study aimed to gather data from the study participants to understand the level of awareness of ADR in urban informal settlements. The obtained information was cross-tabulated in a table, with the data being grouped at the point of intersection by gender. The crosstabs findings are below in Table 4.3

Table 4.3: Cross tabulation: Gender * Awareness of ADR Mechanism

Crosstabs			Yes	No	Total
Gender	Female	Count	11	9	20
		% within gender	55.0%	45.0%	100.0%
		% within Are you aware of ADR mechanism	64.7%	47.4%	55.6%
	Male	Count	6	10	16
		% within gender	37.5%	62.5%	100.0%
		% within Are you aware of ADR mechanism	35.3%	52.6%	44.4%
Total		Count	17	19	36
		% within gender	47.2%	52.8%	100.0%
		% within Are you aware of ADR mechanism	100.0%	100.0%	100.0%

The findings in Table 4.3 indicated that a significant proportion of the overall participants, 53% within the gender, revealed that they are unaware of ADR mechanisms when resolving family disputes in access to justice in an urban informal settlement in Kibra, Nairobi County. Notably, 65% under the female category respondents agreed that they are

aware of the ADR mechanism compared to 35% under the male category. The findings implied that females are more aware of ADR mechanisms than males in the urban informal settlement Kibra. The results mirrored a study by (O'Connor, 2010) that ADR is an appealing substitute for women since the judiciary system has been condemned for being biased against women in its results and methods.

However, the vast of participants under the male category at 53% revealed that they are not aware of the ADR mechanism compared to the female category at 47% when resolving family disputants in Kibra. Further, the results showed that 53% of respondents, across the genders, said they were unaware of ADR mechanisms in urban informal settlements in Kibra. Additionally, a minority of total respondents, 47%, said that they are aware of ADR mechanisms in urban informal settlements in Kibra, Nairobi.

These findings align with Joamets and Solarte Vásquez (2019) that the implementation of the Mediation Directive in Estonia, aimed at legally institutionalizing Family Mediation, has not led to a substantial increase in its utilization or improved understanding of the advantages of ADR in the management of civil cases. Moreover, it can be seen that the lack of understanding among urban informal settlement inhabitants about ADR processes aligns with the findings from Ethiopia, which indicate that ADR has not gained substantial traction or widespread acceptability in its contemporary manifestation (Gowak, 2008).

On the contrary, the findings contradicted a study by Muigua (2015), who acknowledged that ADR is a popular conflict resolution mechanism in most Kenyan communities, especially in urban informal settlement communities in Kenya.

The study conducted Chi-square tests to find out whether there exists a relationship between the gender of the respondents and awareness of ADR mechanisms in resolving

family disputes in urban informal settlement in Kibra. The Chi-Square test statistics are presented in Table 4.4.

Table 4.4: Chi-Square Tests for Gender and ADR Awareness

Chi-square Tests	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.092 ^a	1	.296
Continuity Correction ^b	.503	1	.478
Likelihood Ratio	1.100	1	.294
Linear-by-Linear Association	1.062	1	.303
N of Valid Cases	36		

From Table 4.4, it was found that Chi-square statistics examined the association between gender and ADR mechanisms awareness among family disputants. The findings revealed that there is an insignificant association at a 5% significance level between the gender of respondents and ADR mechanisms in urban informal settlement in Kibra, as denoted by ($X^2=1.092a$, $df=1$, P Value =.296, at $P>.05$).

The results implied that there is no difference in the gender of respondents in terms of ADR awareness in urban informal settlement in Kibra Nairobi County. Further, these findings are attributed to the fact that most family disputants are unaware of the ADR mechanisms available for resolving family disputes in informal urban settlement in Kibra, Nairobi. Additionally, most family disputants have low awareness of ADR mechanisms, poor literacy, and a lack of familiarity with ADR methods in settling their family disputes and communal issues in Kibra. Moreover, these findings mirrored findings by most family disputants' respondents; 47% revealed that they are unaware of ADR mechanisms in resolving ADR awareness in urban informal settlement in Kibra, Nairobi County.

The study sought information on the types of family disputes experienced by family disputants in access to justice in an urban informal settlement in Kibra, Nairobi. Table 4.5 shows the calculated data.

Table 4.5: Types of Family Disputes

Reponses	Frequency	Valid Percent
Land disputes	5	14
Marriages disputes	21	58
Inheritance disputes	8	22
Money disputes	2	6
Total	36	100.0

In Table 4.5, most participants revealed that they experienced marriage disputes at 58%, followed by inheritance at 22%, land at 14%, and money at 6%. These are the types of family disputes experienced by family disputants in urban informal settlement in Kibra. The results implied that many families in urban informal settlements experienced various family disputes, which is evident that conflicts occurred among the family disputants. These findings echoed a study by Muigua (2018) that nowadays, family disputes have become more widespread and rampant to the extent that society has considered them a regular occurrence.

4.6 ADR Methods Utilized by Family Disputants in Resolution of Family Cases

The study sought information on the ADR methods used by family disputants to resolve family disputes in access to justice in an urban informal settlement in Kibra, Nairobi County. The obtained data from family disputants are tabulated in Table 4.6

Table 4.6: ADR Methods Utilized in Accessing to Family Justice

Responses	Frequency	Valid Percent
Intervention by council of elders	19	52
Intervention by church leaders	17	48
Total	36	100.0

Findings in Table 4.6 showed that most respondents utilized the council of elders by 52% as ADR mechanism to resolve their family disputes in Kibra. Further, family disputants utilized church leaders at 48% to resolve their family disputes in access to justice in an urban informal settlement in Kibra, Nairobi County. The results of the study indicate that the citizens of Kibra lack knowledge regarding the many ADR processes outlined in the 2010 Kenyan constitution. These mechanisms include negotiation, inquiry, mediation, conciliation, expert determination, and arbitration.

These findings corresponded with the majority of key informants (Chiefs) who reported during the interview that family disputants utilized elders and church leaders to resolve their family disputes in access to justice in Kibra, Nairobi County. Therefore, the results implied that most of the family disputants in Kibra are unaware of the ideal ADR mechanisms for resolving family disputes in Kibra. These results resonated with findings by Muigua (2015) that most Kenyans can now settle their disagreements through ADR mechanisms amicably rather than going to court, which is expensive and time-consuming. Additionally, the ADR mechanisms have become a popular technique for resolving family disagreements, particularly those that are distinctive and require a unique way of resolving them (Ullah, 2018).

4.7 Reasons Why Family Disputants Utilize ADR Mechanisms in Resolution of Family Cases

The study explored the reasons behind the utilization of ADR mechanisms by family disputants in urban informal settlements in Kibra, Nairobi county. The study sought information from family disputants to understand the reasons for choosing ADR mechanisms to resolve family disputes in access to justice in urban informal settlement in Kibra. The obtained information was depicted in Table 4.7

Table 4.7: Reasons for ADR Mechanism in Resolution of Family Cases

Reasons	Frequency	Valid Percent
ADR brings justice to disputants	13	36
ADR is cheap	10	28
ADR is a Win-Win scenario	6	17
ADR takes less time	7	19
Total	36	100.0

Results in Table 4.7 portrayed that ADR mechanisms bring justice to family disputants by 36%, ADR mechanisms are cheap by 28%, ADR mechanisms encourage win-win scenario by 17%, and ADR mechanisms takes less time by 19% in resolving family disputes in urban informal settlement in Kibra. During the interview, most of the key informants (Chiefs) reported that family disputants chose ADR mechanisms because they are cheap and take less time compared to the court system in Kenya. These findings are in agreement with Ullah (2018) that ADR, as a type of dispute resolution, has made it easier for many families to get justice because it is inexpensive and quick.

4.8 Relationship of ADR Application and Resolution of Family Cases in Kibra

The study investigated the impact of ADR Mechanisms on the resolution of family cases in Kibra, Nairobi. The study focused on the use of ADR

mechanisms in urban informal settlements. The application of ADR mechanisms by family disputants enabled the study to check how well something works of ADR mechanisms in fixing family disputes in urban informal settlement in Kibra, Nairobi County.

The study sought to understand how applicable ADR mechanisms are in resolving family disputes in urban informal settlement in Kibra, Nairobi. The family disputants' responses were collected, and cross-tabulation statistics were performed to understand the applicability of ADR mechanisms based on the gender category of respondents, as portrayed in Table 4.8

Table 4.8: Cross tabulation: Application of ADR Mechanism

Crosstabs			Yes	No	Total
gender	Female	Count	14	6	20
		% within gender	70.0%	30.0%	100.0%
		% within Do you apply ADR in resolving family disputes?	70.0%	37.5%	55.6%
	Male	Count	6	10	16
		% within gender	37.5%	62.5%	100.0%
		% within Do you apply ADR in resolving family disputes?	30.0%	62.5%	44.4%
Total		Count	20	16	36
		% within gender	55.6%	44.4%	100.0%
		% within Do you apply ADR in resolving family disputes?	100.0%	100.0%	100.0%

Table 4.8 displayed results for both male and female family disputants in relation to the application of ADR mechanisms in urban informal settlement in Kibra, Nairobi County. The majority of respondents, 56%, revealed that they applied ADR mechanisms in resolving their family disputes in access to justice in Kibra. Further, the minority of respondents, 44%, indicated that they do not apply ADR mechanisms when resolving family disputes in Kibra. The findings revealed that the female category applied ADR mechanisms at 70% in resolving family disputes compared to male respondents at 30% in urban informal settlement in Kibra, Nairobi County.

The results implied that both genders of family disputants utilized the council of elders and church leaders available when resolving family disputes in Kibra, Nairobi. These findings corresponded with key informants (chiefs) during the interviews that most of the family disputants, such as elders and church leaders, applied ADR mechanisms in resolving their family disputes in urban informal Kibra settlement. These findings mirrored Muigua and Kariuki (2014), who stated that ADR mechanisms are of utmost applicability in resolving criminal cases as opposed to litigation systems. Additionally, ADR mechanisms play a vital role in improving access to justice without the utilization of litigation processes.

The study conducted Chi-square tests of the association between gender and the use of alternative dispute resolution in resolving family disputes in urban informal settlement in Kibra. The obtained information from family disputants was computed, and Chi-square statistics.

In Table 4.9 (below), it was found that Chi-square statistics examined the association between the gender of the respondents and use of ADR aspects by family disputants in settling family issues in Kibra, Nairobi. It was revealed by the results that there is a

substantial link at a 5% significance level between the gender of respondents and the application of ADR mechanisms by family disputants in urban informal settlement in Kibra, as denoted by ($X^2=6.689^a$, $df=1$, P Value =.010, at $P<.05$). These findings implied that the policies on ADR mechanisms apply to family disputants in access to justice by resolving family disputes in urban informal settlement in Kibra. Further, the findings are attributed to most respondents applying ADR mechanisms in resolving family disputes in urban informal settlement in Kibra, Nairobi County.

Table 4.9: Chi-Square Tests for Gender and Application of ADR

Tests	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	6.689 ^a	1	.010
Continuity Correction ^b	4.872	1	.027
Likelihood Ratio	7.559	1	.006
Linear-by-Linear Association	6.492	1	.011
N of Valid Cases	36		

4.9 Application of ADR among Family Disputants in Resolution of Family Cases

The study sought to understand to what extent does key informants (chiefs) applied ADR mechanisms to promote ADR mechanisms in resolving family disputes in access to justice among family disputants in urban informal settlement in Kibra, Nairobi.

Results in Table 4.10 (below) show that the majority of key informants, to a great extent of by 50% promoted the ADR mechanism in access to justice to family disputants in Kibra, Nairobi County. Further, results revealed that, to a very great extent, 37.5% of the key informants (chiefs) promoted ADR mechanisms in access to justice to family disputants in urban informal settlement in Kibra, Nairobi. However, 12.5% of the key informants

remained neutral on applying ADR mechanisms in resolving family disputes. The study found that most key informants in Kibra, Nairobi County, advocate for alternative dispute resolution methods for resolving family issues and accessing justice.

Table 4.10. Key informants Views on ADR Policies in Resolution of Family Cases

Responses	Frequency	Valid Percent
Neutral	1	12.5
Large extent	4	50.0
Very large extent	3	37.5
Total	8	100.0

The research investigated whether policies or measures had been put in place to improve residents' use of ADR aspects to be able to get justice. The results obtained on whether the established policies are applicable in the facilitation of ADR mechanism by family disputants in Kibra are portrayed in Table 4.11.

Table 4.11. Family Disputants' Views on ADR Policy in Resolution of Family Cases

Applicable of Policy on ADR mechanism	Frequency	Valid Percent
Very applicable	16	44
Applicable	10	28
Neutral	4	11
Very inapplicable	6	17
Total	36	100.0

Table 4.11 demonstrated that most family disputants, 72%, a sum of 44%, and 28% agreed that the policies on ADR mechanisms are applicable in resolving family disputes in an urban informal settlement in Kibra, Nairobi County. The results implied that the communal cases as such family disputes are determined through applying ADR mechanisms in urban informal settlements in Kibra. Further, these results are attributed to the fact that the authorities, such as chiefs, promote ADR mechanisms in resolving family disputes in Kibra, Nairobi. Additionally, these findings reflected the significance of the ADR mechanism in resolving societal problems outside the courts in Kenya. These findings mirrored Gachoka and Memba (2019), who postulated that the application of mechanisms of ADR is crucial for the judicial system for criminals and emphasized that ADR mechanisms need to be fully implemented in Kenyan courts.

4.10. Challenges Facing ADR Mechanisms in Urban Informal Settlement

The study sought data about the challenges encountered by family disputants in the utilization of ADR for the resolution of family disputes in urban informal settlements in Kibra, in Nairobi County. The study sought information from family disputants on challenges that hinder the utilization of ADR in urban informal settlement in Kibra. The obtained information on challenges facing the utilization of ADR mechanisms.

Findings in Table 4.12 (below) revealed that family disputants faced challenges in utilizing ADR mechanisms in access to justice for family disputes as follows; ADR mechanism outcomes maybe dissatisfying to family disputants by 44% and case facts may not be fully disclosed(mistrust) by 28%. Family disputants reported unfamiliarity with the process of ADR mechanism (poor communication) by 17% and difficulty on deciding on suitable method 11% in urban informal settlement in Kibra, Nairobi County.

Table 4.12: Challenges of ADR Mechanism in Resolution of Family Cases

Challenges	Responses	
	N	Percent
ADR outcomes may be dissatisfying to disputants	16	44%
Cases facts may not be fully disclosed (Mistrust)	10	28%
Unfamiliarity with the process (Poor communication)	6	17%
Difficulty on deciding on suitable method	4	11%
Total	36	100.0%

These findings implied that most of family disputants are encountered with various challenges that hamper their willingness and readiness to utilize ADR mechanisms available when seeking rights to justice for their family disputes in urban informal settlement in Kibra, Nairobi. These findings implied that these challenges continue to impede family disputants their rights to justice in urban informal settlement in Kibra, Nairobi County.

The study findings mirrored Nandkishor Ramteke (2020) that ADR procedures in family disputes encounter issues such as attitudes, a need to modify our customary way of settling disagreements, and even a need to change our fundamental views. The idea of ADR procedures is to establish a WIN-WIN scenario, but people's attitudes are converting it into a WIN-LOSE situation, which is similar to litigation in India. Further, poor communication has proven to be the most significant impediment to the settlement process.

4.11 Mitigations to ADR Challenge in Resolution of Family Cases.

The study sought information on mitigations from family disputants and key informants to establish remedies for challenges facing family disputants when utilizing ADR mechanisms when seeking rights to justice in informal urban settlement in Kibra, Nairobi

The study sought information from Key informants (chiefs) on the mitigations to be set up to remedy challenges facing family disputants in urban informal settlement in Kibra. The obtained information was tabulated in Table 4.13

Table 4.13: Key Informants (Chiefs) Views on Mitigations to ADR Challenges

Responses	Frequency	Valid Percent
Disputants to be educated on ADR	5	62.5
Courts to advocate ADR mechanism	3	37.5
Total	8	100.0

Table 4.13 revealed that the majority of key informants, 62.5% suggested that family disputants need to be educated to create awareness of ADR mechanism in resolving family disputes in urban informal settlement in Kibra. Further, key informants at 37.5% suggested that Kenyan courts need to advocate and promote ADR mechanisms to resolve communal cases that may be determined outside the court system to create awareness of ADR applications in urban informal settlement in Kenya.

These findings reflected the spirit of the Kenyan Constitution 2010, Article 159, which recognizes the use of ADR mechanisms. Article 159 (2) outlines the basic principles for exercising judicial power in Kenya, including promoting ADR methods (Nylund, 2014). Additionally, Gachoka and Memba (2019) postulate that the application of ADR

mechanisms is important for the criminal justice system and emphasize that the mechanisms need to be fully implemented in Kenyan courts.

The study sought information on mitigations to ADR challenges facing family disputants' when resolving family disputes in urban informal settlement in Kibra. The obtained information from family disputants are tabulated in Table 4.14.

Table 4.14: Family Disputants Views on Mitigations of ADR Challenges

Mitigations	Frequency	Valid Percent
Making ADR outcomes satisfactory	9	25
Create community awareness	10	28
Training court mediators	2	5
Training of ADR facilitators and stakeholders	13	36
Fight corruption in ADR	2	5
Total	36	100.0

Results in Table 4.14 established that some family disputants proposed that the ADR mechanism effectively resolves family disputes and promotes the human right to justice among family disputants in urban informal settlement in Kibra. The following measures need to be taken: Train ADR facilitators and stakeholders at 36%, Create community awareness at 28%, Make ADR mechanisms outcomes satisfactory to disputants at 25%, Train court mediators at 5%, Fight corruption in the ADR process tied at 5%.

These findings echoed a study by Marzouk and Moamen (2009) that alternative dispute resolution (ADR) conversations may need the participation of parties unrelated to the issue

due to the conservative character of many rural communities. Further, Kamal (2007) found that. These implied that the justice provided would be more satisfactory to the disputants.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the study summary, main results according to specific objectives, the conclusion, recommendations, and suggestions for further study.

5.2 Findings of the study

The study findings revealed that majority of disputants in Kibra have encountered family disputes in many forms. It is established that the major disputes are in regard to marriage, inheritance, land and money disputes. The study further established that majority of the disputants do not employ the use of ADR in resolving their disputes.

The study established that for disputants who used ADR in resolving their disputed opted for it because it brings justice to family disputants at 36%, is cheap at 28%, is a win-win scenario at 17%, and takes less time at 19% for family disputants in Kibra.

The study also established that 53% of family disputants are not aware of ADR mechanisms in Kibra. Notably, it was revealed that 65% of female respondents are aware of ADR mechanisms compared to 35% under the male category in Kibra.

5.3 Conclusion

The study concluded that the majority of family disputants in urban informal settlements are not aware of ADR mechanisms in Kibra, Nairobi County. Consequently, this low awareness of ADR mechanisms impedes access to justice among family disputants.

The study concluded that family disputants lack awareness on matters ADR to enable them access justice. Further, the study concluded that challenges such as poor literacy and lack

of knowledge on ADR mechanisms impede access to justice among family disputants in an urban informal settlement in Kibra, Nairobi County.

Finally, the study concluded that the policies on ADR mechanisms through chiefs promoted ADR applications and increased access to justice among family disputants in an urban informal settlement in Kibra, Nairobi County.

5.4 Recommendations

Based on the study findings, the study recommended that:

1. ADR stakeholders should emphasize community awareness and knowledge in urban informal settlement residents in Kibra, Nairobi County can help mitigate the low awareness of ADR among family disputants.
2. Policymakers should regularly review ADR policies to promote its application in access to justice for family disputants in urban informal settlements in Kibra, Nairobi County.
3. The Kenyan government to prioritize training and civil education in urban informal settlements in Kibra on ADR mechanisms for dispute resolution, justice, conciliation, and negotiation.
4. Similar research to be conducted on the effectiveness of ADR mechanisms in access to justice in urban informal settlements using other variables excluded in this research in Kibra, Nairobi County.
5. There is a need to conduct a similar study in other urban informal settlements to compare the findings in relation to the effectiveness of ADR mechanisms in access to justice for family cases in Kenya.

Bibliography

- Abolonin, V. O. (2103). German law “On supporting mediation and other forms of out-of-court conflict resolution” (Mediations G) (with a brief explanation). *Bulletin of the civil process*, 5, 203 - 217.
- Ahmad, N. (2009). Peace and Reconciliation, Its Significance and Role in the Mission of the Prophet (Peace be on Him) The Case of Sulh Al-Hudaybiyah. *Insights (20724586)*, 2.
- Aye, E. N., Akaneme, I. N., Adimora, E. D., Offorka, T. O., Robinson, A., Nwosu, P. O., & Ngozi, F. (2016). Family Conflict and Managing Strategies: Implication for Understanding Emotion and Power Struggles. *Global Journal of Psychology Research: New Trends and Issues*, 6(3), 148-159.
- Baruch, Y. (1999). "Response rates in academic studies - a comparative analysis". *Human Relations*, 52, pp.421-434
- Bentham, J. (1970). An Introduction to the Principles of Morals and Legislation, eds. *Burns and Hart (University of London: The Athlone Press, 1970)*. (First published in 1789).
- Blake, S., Browne, J., & Sime, S. (2016). *A Practical Approach to Alternative Dispute Resolution*. Oxford University, Press.
DOI: 10.10.1093/he/9780198823094.001.0001
- Brett, J. (2015). Attitudinal Structuring, Alternative Dispute Resolution, and Negotiation Strategy. *Negot. J.*, 31, 359.
- Brown, S., Cervenak, C., & Fairman, D. (1998). *Alternative Dispute Resolution Practitioners Guide*. Office of Democracy and Governance, Bureau for Democracy, Conflict, and Humanitarian Assistance, US Agency for International Development.
- Center, S. (2020, October 27). *Briefing Paper No 1: A Conflict Analysis of Nairobi's Informal Settlements—Shalom Center for Conflict Resolution and Reconciliation /SCCRR*. Briefing Paper No1:<https://shalomconflictcenter.org/briefing-paper-no-1/>
- Chaffinch. 2022. Kibra: always deprived but rarely depressed. [Online] Available at: <<https://www.chaffinch.org.uk/Kibra-slum/>> [Accessed 8 October 2022]
- De Filippi, F., Cocina, G. G., & Martinuzzi, C. (2020). Integrating Different Data Sources to Address Urban Security in Informal Areas. The Case Study of Kibera, Nairobi. *Sustainability*, 12(6), 2437.
- Fisher, R. (2000). Sources of Conflict and Methods of Conflict Resolution. *International Peace and Conflict Resolution, School of International Service, The American University, 1965*, 1-6.
- Francis Kariuki (2013), “Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya: Case Study of *Republic v Mohamed Abdow Mohamed [2013] e-KLR*”, p. 4.
- Gachoka, M.P and Memba. S (2019): An Appraisal on the Jurisprudential and Precedential Leaps Institutionalizing the Ideas of ADR in Kenya’s Criminal Justice System. *Journal of Alternative Dispute Resolution* 7(1)
- Garg, C. R. (2014). *Research Methodology (Third, ed.)* New Delhi: New Age International (P) Limited.

- Gichuhi, J. (2018). Revisiting Article 159 (2)(c) of the Constitution of Kenya: How the judge sees it. Available at SSRN 3235391.
- Gowak, S. M. (2008). Alternative Dispute Resolution in Ethiopia-a Legal Framework. *African Research Review*, 2(2), 265-285.
- Izmailov, R., & Baryshev, S. (2018). Legal Problems of Protection against Unfair Competition in The Sphere of Housing and Communal services. *National Academy of Managerial Staff of Culture and Arts Herald*, (1).
- Janmejain Singh (2020): Importance of Alternative Dispute Resolution in Family Dispute, *International Journal of Legal Enforcement ISSN: 2582 8894 Uia: Aa1003/2020*
- Joamets, K., & Solarte Vásquez, M. C. (2019). Current challenges of family mediation in Estonia. *Journal of Contemporary European Studies*, 27(1), 109-120.
- Judiciary (2020). Performance Management understanding evaluation report 2018/2019,
- Kamal, M. J. (2007). Train More Lawyers on Mediation Technique for Greater Success in ADR. Review of the Family Courts Ordinance 1985. BLAST, CIRDP: Dhaka. Available at http://archive.thedailystar.net/2007/04/29/d704290_60168.htm
- KEBS (2019). Kenya National Bureau of Statistics, Kenya Population and Housing Census. <https://open.africa/dataset/2019-kenya-population-and-housing-census>.
- Kemerling, Garth: 2011, The Philosophy Pages: Jean-Jacques Rousseau (1712-1778), <http://www.philosophypages.com/ph/rous>.
- Korobko, K. I. (2019). Mediation as an Alternative Dispute Resolution: World Experience. *Revista San Gregorio*, 1(30).
- Kothari, C. R. (2004). Research Methodology: Methods and Techniques. New Age International (P) Ltd.
- Kubendei, H. S. (2018). *Factors Influencing Crime in the Urban Informal Settlements. A Case Study of Kibra* (Doctoral dissertation, University of Nairobi).
- Laibuta, K. I. (2012). Access to Civil Justice in Kenya: An Appraisal of the Policy and Legal Framework. *Strategic Journal of Business & Change Management*. V5.5. DOI:10.61426/sjbcm.v5i1.627
- Li, Z., & Alakshendra, A. (2019). The dynamics of informality, insufficiency, and conflicts in slums: Evidence from Patna, India. C-34301-INB-1
- Lüthi, C. (2016). Slum improvement lessons in Africa: Kibera. *Learning from the Slums for the Development of Emerging Cities*, 115-124
- .Malek, C. (2013). Family Conflict. <http://www.crinfo.org/coreknowledge/family-conflict>
- Matejevic, M., Jovanovic, D., & Lazarevic, V. (2014). Functionality of Family Relationships and Parenting Style in Families of Adolescents with Substance Abuse Problems. *Procedia-Social and Behavioral Sciences*, 128, 281-287.
- Michelle, B. (2013). Meaning of Family. *Mental Health Professional*, 12(4), 45-52.
- Mill, John Stuart. (1861) 2000. *Utilitarianism*. Edited by Mark C. Rooks. British Philosophy: 1600-1900. Charlottesville, VA: IntelLex Corporation.
- Mugenda & Mugenda, (2003). Research methods; quantitative and qualitative approaches. Africa Center for Technology (ACTS), Nairobi Kenya.
- Muigua D., K. (2015). Legitimising Alternative Dispute Resolution in Kenya: *Towards a Policy and Legal Framework*, 5(2)

- Muigua Kariuki (2014): *The Road to Justice in Kenya*. Chartered Institute of Arbitrators (Kenya Branch)
- Muigua Kariuki (2015): An Understanding of the Relationship Between Alternative Dispute Resolution Mechanism (ADR) and Access to Justice in Kenya
- Muigua Kariuki, & Francis, Kariuki. (2015). Alternative Dispute Resolution, *Access to Justice and Development in Kenya*. 1(1):1-21. doi: 10.52907/SLJ.V1I1.3
- Muigua Kariuki. (2016). Constitutional Supremacy Over Arbitration in Kenya.
- Muigua, K. (2016). Emerging Jurisprudence in the Law of Arbitration in Kenya: *Challenges and Promises*.
- Muigua, K. (2018). Access to Justice and Alternative Dispute Resolution Mechanisms in Kenya. <http://kmco.co.ke/wp-content/uploads/2018/09/access-to-justice-and-alternative-dispute-resolution-mechanisms-in-kenya-23rd-september-2018.pdf>
- Muigua, K., & Kariuki, F. (2015). ADR, Access to Justice and Development in Kenya. *Strathmore Law Journal* 1(1):1-21
- Mutisi, M. (2011). The Abunzi mediation in Rwanda: Opportunities for engaging with traditional institutions of conflict resolution. *africaportal.org*
- National Gender and Equality Commission (2022). Family Cases in Kibra Slum: A Situational Analysis. Nairobi: NGECC.
- Njenga, E. N. (2016). *Factors Influencing Intra Family Conflicts: A Case of Kikuyu Sub County, Kiambu County, Kenya* (Doctoral dissertation, University of Nairobi).
- Ntuli, N. (2018). Africa: Alternative Dispute Resolution in a Comparative Perspective. *Conflict Studies Quarterly*, (22).
- Nylund, A. (2014). Access to justice: Is ADR a help or hindrance? The Future of Civil Litigation: Access to Courts and Court-annexed Mediation in the Nordic Countries, 325-344.
- Ramteke, N. K. (2020). Alternative Dispute Resolution (ADR) Under International and National Context-An Overview. *IJRAR-International J. Res. Anal. Rev*, 7, 846-852.
- Righa, E, M (2012). *Factors Influencing Growth of Informal Settlement: A Case of Bangladeshi Slum, Changamwe Constituency, Mombasa county, Kenya* (Doctoral dissertation, University of Nairobi, Kenya).
- Riya Dani (2020). The Role-of Alternative Dispute-Resolution in Developing-Countries <https://viamediationcentre.org/readnews/NTcy/>
- Sekaran, U., & Bougie, R. (2010). *Research Methods for Business: A Skill Building Approach* (5th ed.). West Sussex, UK: John Wiley & Sons Ltd.
- Solarte Vasquez, M. C. (2016). Legal Regulation of Mediation and Involved Institutions: Estonia. *Mediation to Foster European Wide Settlement of Disputes* (57– 76). *Arachne Publishing House*, 10, 97888548914254.
- Solarte-Vasquez, M. C. (2014). The Institutionalization process of Alternative Dispute Resolution mechanisms in the European Union; The Estonian legal developments experience. *United Europe*, 7 (7-8), 94-111.
- Sungatullina, L. A., Izmailov, R. R., & Mikhaylov, A. V. (2019). Mediation as Alternative Dispute Resolution: Legal Analysis, Foreign Practice, and Perspectives in Russia. *Humanities & Social Sciences Reviews*, 7(6), 826-829.

- Taherdoost, H. (2016). Sampling methods in research methodology; how to choose a sampling technique for research. *How to choose a sampling technique for research (April 10, 2016)*
- Tekleab, A. G., Quigley, N. R., & Tesluk, P. E. (2009). A Longitudinal Study of Team Conflict, Conflict Management, Cohesion, and Team Effectiveness. *Group & organization management, 34*(2), 170-205.
- The Constitution of Kenya. (2010). Nairobi: National Council for Law Reporting.
- Ullah, M. S. (2018). Application of ADR in Family Court: A Critical Analysis Under Legal Framework and Practice in Bangladesh. *Green University Review of Social Sciences, 4*(1)
- UN-Habitat (2015a). Habitat III Issue Paper 22—Informal settlement, New York, 31 May 2015. https://habitat3.org/wp-content/uploads/Habitat-III-Issue-Paper-22_Informal-Settlements-2.0.pdf
- UN-Habitat (2016). Slum almanac 2015–2016: Tracking improvement in the lives of slum dwellers. UN-Habitat. <https://unhabitat.org/slum-almanac-2015-2016-0>
- UN-Habitat, (2011): What are informal settlement s and why do they exist? Archived 2011-02-06 at the Wayback Machine, Kenya.
- Wesolowski, A., & Eagle, N. (2010, March). Parameterizing the dynamics of slums. In *2010 AAAI Spring Symposium Series*.
- Winter 1992 “Natural Law”, *Constitution 4*, no. 1): 13–20

APPENDICES

APPENDIX 1: INTRODUCTION LETTER

Dear Participants.

My name is Edna Makori, and I'm a postgraduate student at the University of Nairobi. I am pursuing a research project on:

An Evaluation of ADR in Access to Justice: The Case of Family Disputes in Kibra in Nairobi, Kenya.

You are requested to answer all the questions honestly, accurately, and truthfully to ensure the reliability of the findings. Please know that any data you share will be kept strictly confidential and used only for research.

Your cooperation is highly appreciated.

Thank you

APPENDIX II: QUESTIONNAIRES FOR FAMILY DISPUTANTS

1. Indicate your gender?
 - a) Male
 - b) Female
2. What is a family dispute?
.....
.....
3. Kindly state family disputes you are aware of?
.....
.....
4. Have you ever encountered a family dispute?
 - a) Yes
 - b) No
5. If yes, in No. 4 above what was the family dispute all about?
.....
.....
6. If yes, in No.5 did you seek justice to resolve the disputes?
 - a) Yes
 - b) No
7. Are you aware of ADR mechanisms?
 - a) Yes
 - b) No
8. If yes, to No 7 above, mention some of the ADR mechanisms you are aware of?
.....
.....
9. How do you resolve your family disputes through ADR?
 - a) Through village elders
 - b) Through church elders
 - c) If any other specify
.....
.....
10. Kindly explain why you chose your methods.
.....
.....
.....
11. Do you encourage the use of ADR mechanisms in family disputes?
 - a) Yes
 - b) No
12. To what extent do you apply ADR mechanisms in settling family disputes in Kibera informal settlement?

	1	2	3	4	5	
Not applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very applicable

13. Are there challenges that make you not use ADR in settling family disputes?

a) Yes

b) No

15. Tick the challenges you face in settling family disputes through ADR mechanism.

a) It may take long to resolve the dispute

b) Facts may not be fully disclosed

c) Unfamiliarity with the process

d) Difficulty on deciding the 3rd party

e) If any other specify,

.....

.....

16. What measures can be put in place to ensure people use ADR mechanisms in settling family disputes?

a) Court referrals of matters on family disputes already in court

b) Government policies that can help people understand the process

c) Use of informal and simple rules of procedure

d) Speedy settlement of disputes

e) Family disputes should be privately resolved

f) If any other specify

.....

.....

.....

APPENDIX III: KEY INFORMANTS INTERVIEW FOR CHIEFS

1. Are you aware of Alternative Dispute resolution mechanisms?
 - a) Yes
 - b) No

2. What are ADR (Alternative Dispute Resolution) mechanisms?
 - a) Dispute resolution by village elders
 - b) Dispute resolution by the church
 - c) Not going to court
 - d) Other.....
 - e)

3. To what levels are family disputants aware of ADR mechanisms in family cases in Kibra informal settlement?

	1	2	3	4	5	
Aware	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Not aware

4. To what extent does the office of the chief encourage family disputants to seek justice through ADR mechanisms?

	1	2	3	4	5	
To a small level	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	To a great level

5. Are there policies/laws that promote ADR mechanisms in resolving family disputes?
 - a) Yes
 - b) No
 - c) Don't know

5. How applicable are ADR mechanisms in resolving family disputes in Kibra informal settlement?

	1	2	3	4	5	
Not applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Very applicable

6. What challenges hinder ADR mechanisms in settling family disputes in Kibra informal settlement?
 - a) The disputing parties may not agree on the ADR mechanism to use
 - b) Parties may not be aware of the available ADR mechanisms
 - c) Parties prefer winner takes all as opposed to win-win situation
 - d) Other.....

7. What can be done to remedy the challenges of ADR mechanism in family disputes?
 - a) Families residing in Kibra informal settlement to be educated about ADR mechanisms
 - b) Courts should be encouraged to refer family disputes to ADR

c) Any other.....


8. What measures can be used to promote ADR mechanisms in family disputes?.....

.....
.....

APPENDIX V: PLAGIARISM REPORT

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