

### **Author's Note**

Mediation has the ability to deal with conflicts that occur within society. It has the capacity to resolve them. Mediation has its own limitations: it is without prejudice, non-binding and informal. However, where it has worked, lasting solutions have been reached by the parties themselves. It is also possible to come to agreements within and after a mediation and have these enforced either as contracts or in court.

The Constitution of Kenya 2010 has been in place for a while now. Article 159 recognises mediation and other forms of Alternative Dispute Resolution (ADR) as useful tools to aid in Access to Justice and expeditious resolution of disputes.

On the ground, there has been growing awareness and acceptance of the use of ADR mechanisms. Mediation has been embraced by the Court in the Court Annexed Mediation Scheme.

In the conception of the Court Annexed Mediation, however, informal mediation at the local level does not seem to have been given a chance.

The rules governing the same are adopted from the Ontario Mandatory Mediation Program, Canada. They are quite formal. There is a real risk of formalising mediation and making it accessible only to those who are literate and affiliated to professional bodies.

Mediation as practised in Africa has for long been informal but effective. Even as the Judiciary seeks to address the issue of backlog of cases, it is imperative to bear in mind that any mechanism that is adopted should not only respond to the needs of the target group, but should also be accessible, cost-effective and one that the parties can easily identify with especially when compared to litigation. There is a real risk of having a mediation program that is riddled with technicalities just like arbitration.

This edition takes stock of these developments and examines the place of mediation in the Kenyan context. The edition contains additional materials on how best to conceive and implement a mediation program that not only responds to the needs of the people but also achieves the desired goal of addressing case backlog in courts. It is hoped if these recommendations are considered, it is possible to adopt mediation as part of the access to justice framework in Kenya, while retaining most or all of its perceived merits.

There is also a chapter on the use of negotiation and mediation in the resolution of environmental conflicts in Kenya. The chapter also contains a section on family mediation. While the use of mediation is not only restricted to these two areas, the chapter is intended to highlight some of the ways in which mediation can be used to enhance access to justice for majority of Kenyans.

The edition examines the current legal and institutional structures surrounding mediation and contains reflections on the place of mediation in the future.

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