

# Operationalizing Alternative Justice System through Grassroots National Government Administrative Structures: A Case of Nakuru North Sub-County

Mary Mwangi\*

## ABSTRACT

*Access to justice is critical to the development of a society. In Kenya, access to justice for all Kenyans is emphasized in the Constitution. However, majority of Kenyans find it difficult to access justice due to high cost and time involved in disposing cases through the formal justice system. As a result, a debate on the use of alternative systems of dispensing justice has emerged but no tangible structures have been created to support this idea. This paper explores the effectiveness of grassroots National Government Administrative structures comprising of Chiefs, Assistant Chiefs and elders and the role they play in delivering alternative justice and the challenges that they encounter. Results showed that these structures are already involved in resolving disputes and are deeply entrenched within the community. The average time for disposing cases at the grassroots administrative structures is 5.8 days, which is significantly shorter than the average of 24 months that it takes to resolve dispute in formal judicial system. The average direct cost of resolving disputes is approximately Kshs.500 which is substantially lower than the average cost of resolving dispute through the formal court system, which is estimated to be between Kshs.6000 to Kshs.30,000. The resolution process is also characterised by flexible mechanism for summoning parties, flexible procedures for presenting cases, and less punitive remedies. The challenges that hamper the effectiveness of dispute resolution by these structures include lack of adequate training on dispute resolution, interference in the dispute resolution process, lack of adequate resources, and lack of cooperation. To enhance the effectiveness of these structures in resolving disputes, the government needs to provide trainings to the*

---

\* National Government Administrative Officer and Certified Professional Mediator

*administrators and allocate more resources towards the dispute resolution function.*

**Keywords:** Alternative justice system, grassroots administrative structures, chief, mediation, alternative dispute resolution.

## INTRODUCTION

Access to justice is a basic principle of the rule of law. However, accessing justice is still a challenge in Kenya. A survey conducted by HiiL Innovating Justice in 2017 revealed that more than 50% of respondents had experienced extreme stress and mental health problems due to legal challenges<sup>1</sup>. Poor access to Justice in Kenya is largely attributed to low number of magistrates and judges. In addition, citizen's access to justice has been hampered by the need to travel long distances to access the courts, complex court processes that make legal representation a necessity, and the high cost of accessing legal representation<sup>2</sup>.

The drafters of the Constitution of Kenya 2010 noted the limitation of the formal justice system and highlighted the need to promote alternative justice systems (AJS)<sup>3</sup>. The term alternative justice system (AJS) refers to structures for administering justice that can be used in place of the mainstream judicial system.<sup>4</sup> AJS make use of customary law, culture, practices and beliefs to resolve disputes. It emphasizes on restorative justice that seeks to provide an expeditious, participatory, affordable, and socially inclusive modes of resolving disputes<sup>5</sup>. It makes use of alternative mechanisms of resolving

---

<sup>1</sup> HiiL Innovating Justice, 'Justice Needs and Satisfaction in Kenya 2017' (HiiL Innovating Justice 2017) <[https://www.hiil.org/wp-content/uploads/2018/07/hiil-report\\_Kenya-JNS-web.pdf](https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf)> accessed on 11 November 2020.

<sup>2</sup> World Bank, 'Court Annexed Mediation Offers Alternative to Delayed Justice for Kenyans' (*World Bank*, 2017) <<https://www.worldbank.org/en/news/feature/2017/10/05/court-annexed-mediation-offers-alternative-to-delayed-justice-for-kenyans>> accessed 11 November 2020.

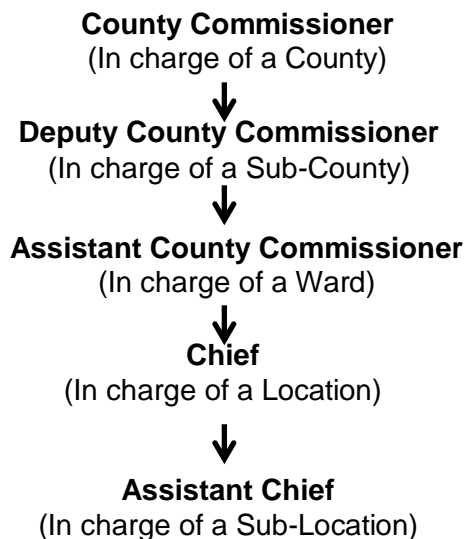
<sup>3</sup> Agnetta Okalo, 'Mainstreaming Alternative Justice Systems for Improved Access to Justice: Lessons for Kenya' (University of Nairobi 2019).

<sup>4</sup> Kariuki Muigua, 'Current Status of Alternative Dispute Resolution Justice Systems in Kenya' 36.

<sup>5</sup> Okalo (n 3).

disputes such as mediation, arbitration, conciliation, negotiation, and expert opinion.<sup>6</sup>

The AJS Baseline policy identifies grassroots national government administrative structures as one of the avenues that the country can use to operationalize AJS in Kenya<sup>7</sup>. The National Government Administrative Structure is established through the National Government Coordination Act of 2013.<sup>8</sup> As Figure 1 illustrates, the National Government Administrative Structure comprises of five hierarchical positions with the senior-most being the County Commissioner and the junior-most being the Assistant Chief. Later, a position of the Regional Commissioner was created who supervises counties that replaced the former Provincial Administration. In this paper, the term grassroots national administrative structure refers to the Chief and Assistant Chiefs as well as other arrangements that have been established to assist the two offices in the execution of their mandate.



**Figure 1: National Government Administrative Structure**

---

<sup>6</sup> Kariuki Muigua and Francis Kariuki, 'Alternative Dispute Resolution, Access to Justice and Development in Kenya' [2015]: 1 Strathmore Law Journal.

<sup>7</sup> The Judiciary of Kenya, 'Alternative Justice Systems Baseline Policy' <<https://ajskenya.or.ke/download/alternative-justice-systems-baseline-policy/>>. Accessed on 12 May 2021.

<sup>8</sup> National Government Coordination Act No.1 of 2013.

The Chief's Act<sup>9</sup> stipulates that the primary duty of Chiefs and Assistant Chiefs is to maintain order in their area of jurisdiction. The Act also allows these officers to appoint other persons to assist them to carry out their duties. Resolving disputes is a not a strange task for grassroots administrative officers. In fact, dispute resolutions make up the bulk of the tasks that Chiefs and Assistant Chiefs perform in the day-to-day activities. The survey by HiiL Innovating Justice revealed that Chiefs and their Assistants are the most helpful in delivering justice to the poor and rural population<sup>10</sup>. This paper sought to determine whether the grassroots administrative structures form effective avenues for delivering alternative justice and challenges that these structures encounter.

## **METHODOLOGY**

The study utilized the descriptive research design because the aim of the study was to describe the dispute resolution processes at the grassroots administrative structures and challenges encountered during these processes. The study was conducted in Nakuru North Sub-County, which was purposively selected because of proactiveness of the grassroots administrative structures in the area in the resolution of disputes. The target population comprised of chiefs, assistant chiefs, and disputants who had their disputes resolved at the grassroots administrative offices in the 1-week period prior to the date of study. The study area had a total of 39 administrators (10 Chiefs and 29 Assistant Chiefs) during the period of study. In the 1-week period prior to the date of study, a total of 89 disputes had been resolved involving 195 disputants through the offices of the 39 grassroots administrators. Participation was voluntary where those who were approached were given the option to decide whether to participate or not. Data was collected using semi-structured questionnaires. Two questionnaires were constructed one targeting the administrators and the other targeting the disputants. The resultant data was analysed using descriptive statistics such as frequencies and percentages and the thematic content analysis technique. The analysis was aided by the Statistical Packages for Social Sciences (SPSS).

---

<sup>9</sup> Section 6 of the Chief's Act, Cap 128, Revised 2012.

<sup>10</sup> HiiL Innovating Justice (n 1).

## **Analysis of AJS at the Grassroots**

A total of 24 administrators, equivalent to 61.5% of the population of administrators, participated in the study by completing and returning their questionnaire. The majority of these administrators (75.0%) were male with the remaining 25.0% being female. The average age of the administrators was 47.6 years with the youngest being 40 years and the oldest being 54 years old. On the other hand, 23 disputants equivalent to 11.8% of the population of the disputants completed the study. The majority of the disputants (69.6%) were male with female accounting for 30.4% of the sample. Their mean age was 41.7 years with the youngest being 20 years and the oldest being 72 years.

The respondents were involved in resolving different forms of disputes. Marital disputes were the most common with 47.8% of the disputants reporting this form of dispute. Marital dispute encompassed issues such as squabbles among married couples, extra marital affairs, and up-keep for children of separated couples. Marital disputes are prevalent not just in Kenya but in most parts of the world<sup>11</sup>. If not resolved in time, these conflicts lead to physical and psychological abuse<sup>12</sup>. Njoroge also observed that most marital disputes in Kenya are solvable but without structured approaches of resolving them, couples end up separating<sup>13</sup>.

The second most common dispute was debt, which was reported by 21.7% of the surveyed disputants. Debt dispute covered a wide range of issues including a party failing to repay money that was lend to him/ her or a tenant failing pay rent for several months. Land dispute was reported by 17.4% of the disputants and encompassed issues such as disagreement about land boundaries, land sale, and land inheritance/ succession. Land issues are very emotive in Kenya because land is considered a valuable resource by virtually all communities and is an important factor of production<sup>14</sup>. Therefore, having

---

<sup>11</sup> Elijah Onyango Standslause Odhiambo and Thomas Leshan Maito, 'Social Dimensions of Marital Conflict in Kenya' (2013) 1 *Journal of Power* 12.

<sup>12</sup> *ibid.*

<sup>13</sup> Sarah Njoroge, 'The Influence of Regulated Marital Conflict Resolution Styles on Marital Stability in Kiambu County, Kenya' (2017) 13 *European Scientific Journal* 24.

<sup>14</sup> Philip Onguny and Taylor Gillies, 'Land Conflict in Kenya: A Comprehensive Overview of Literature' [2019] *Les Cahiers d'Afrique de l'Est / The East African Review* <<http://journals.openedition.org/eastafrica/879>> accessed 30 November 2020.

effective mechanisms for resolving land disputes is paramount to the peace and stability of the country.

About 8.7% of the disputants said that their case was about theft, where they had gone to report someone whom they believed had stolen their property. Another 4.3% said that their case was about a physical altercation with another party. These finding is also consistent with Muigua who argues that alternative dispute resolution mechanism should be used to resolve petty crimes such as nuisance, theft, and cattle rustling<sup>15</sup>.

### **Effectiveness of the Grassroots Administrative Structure**

The study also interrogated the dispute resolution process at the grassroots administrative structures with the aim of determining their effectiveness. Several issues were interrogated including duration of cases, cost to the disputants, procedures involved and fairness of the process.

#### ***Duration of Cases***

The time taken to resolve cases is one of the indicators used to evaluate the effectiveness of an AJS.<sup>16</sup>In the current study, disputants were asked to indicate how long it had taken to have their dispute resolved in terms of days. Results showed that the disputants' cases took an average of 5.8 days to resolve. Most cases were resolved within a day as shown by the mode statistic in Table 2 while the case with the longest duration took approximately 28 days to resolve.

**Table 1: Results on Duration of Disputants' Cases**

<b>Statistic</b>	<b>Value (in days)</b>
Mean	5.8
Mode	1
Minimum duration	1
Maximum duration	28

<sup>15</sup> *ibid.*

<sup>16</sup> Inessa Love, 'Settling Out of Court: How Effective Is Alternative Dispute Resolution?'

<<https://openknowledge.worldbank.org/bitstream/handle/10986/11055/678050V00PUBL0Setting0out0of0court.pdf?sequence=1&isAllowed=y>>.accessed on 12 May 2021.

These findings were collaborated by the data collected from the administrators with 41.7% of them indicating that most cases take 1 day to complete. However, the administrators explained that the duration of the cases is largely determined by the nature and magnitude of the case. Complicated cases such as land disputes take longer to resolve. The time taken to resolve the dispute is significantly shorter than the average duration of cases in the formal judicial system in Kenya that is estimated to be 24 months.<sup>17</sup>The findings are consistent with the review by Love who found that in California, AJS resolved 25% of cases within six months as compared to 15% resolved by the formal legal system.<sup>18</sup>

Findings of the current study also demonstrated the importance of resolving disputes in the shortest time possible. One of the cases (case 14) involved a tenant who had his house locked by the landlord because he had accumulated rent arrears. The case was heard and determined within 7 days. During the duration of the case, the tenant's house was still locked forcing him to seek refuge from friends. If this case would have dragged on for months, the suffering of the tenant would have been prolonged.

### ***Cost to the Disputants***

The study also examined the monetary cost incurred by the disputant to have their case resolved at the grassroots administrative structures. Table 3 indicate that average monetary cost the disputant incurred was about Kshs 500.

**Table 2: Cost incurred by the Disputant to have their Cases Resolved**

<b>Statistic</b>	<b>Value (in Kshs)</b>
Mean	486.96
Mode	0
Minimum duration	0
Maximum duration	4000

The majority of the respondents reported that they did not pay any fee as indicated by the mode value. This is consistent with the data provided by the administrators, who reported they do not charge any fee. However, some disputants reported that they were asked to pay some fee ranging from Kshs 200 to Kshs 4,000. The fee can be largely explained by the fact that the grassroots administrative offices are not allocated resources to remunerate the elders appointed to help in resolving the cases. Consequently, the

<sup>17</sup> HiiL Innovating Justice (n 1).

<sup>18</sup> Love (n 16).

administrators are compelled to charge some fee in order to remunerate the elders for their time. However, there are no guidelines regarding the amount of fee to be charged.

The average fee paid by disputant at the grassroots administrative structures is however very little compared to the fee that litigants pay when they go through the formal judicial system. According to Muigua, the average cost of opening a file upon retaining the services of an advocate in Kenya is about Kshs. 6000 while the fee including advocate fee may rise to Kshs. 30,000 upon the completion of a simple matter.<sup>19</sup> The literature review by Love established that Americans firms that resolved their disputes through AJS reduce their cost of dispute resolution by 3 to 50 percent. The current study only compared the direct cost involved in resolving disputes in the formal justice system versus the grassroots administrative structure. The difference in the cost of the two avenues of justice widens further in favour of the grassroots administrative structures when indirect cost such as the cost of traveling to the case venue and production time lost during attendance of case hearings are considered.

### ***Procedures involved in Resolving Disputes***

The study further interrogated the procedures involved in resolving disputes at the grassroots administrative structure. Findings revealed that once a dispute is reported to the administrators' office, the administrator writes a letter summoning all the parties involved in the dispute indicating the date and time that they should present themselves at the administrator's office. There are no major technicalities involved in reporting of cases; the complainant just explains his or her issue to the chief who determines whether the case requires a hearing. This is a stark contrast to the formal judicial processes that require litigants to follow a structured procedure to kick start their case including filing documents and paying court fees. Muigua and Kariuki argue that one of the factors that threaten the rule of law in Kenya is legal formalism and dogmatism including complex court technicalities and procedures.<sup>20</sup> The formalities and technicalities that characterize the Kenya judicial system have pushed justice beyond the reach of many ordinary Kenyans, which has threatened the rule of law.

---

<sup>19</sup> Kariuki Muigua, 'Access to Justice and Alternative Dispute Resolution Mechanisms in Kenya' 26. Available at: <<http://kmco.co.ke>> accessed 10 November 2020.

<sup>20</sup> Muigua and Kariuki (n 6).



Current findings further revealed that the summon letter issued by the grassroots administrator may be delivered by the complainant or an elder. In some cases, parties are summoned through telephone calls by the chief, which tend to speed up the summoning process. This feature is also a sharp contrast to the judicial summoning process where the summons must be delivered by the complainants. Previously, complainants had to travel long distance to deliver summons to defendants and at times have to find ways of catching up with cunning defendants who avoid being summoned<sup>21</sup>. The administrator then selects a panel of elder that presides over the case. The involvement of elders from the community ensures that local remedies and solutions are integrated into the dispute resolution mechanism. McGinley observed that a major advantage of incorporating indigenous solutions in a dispute resolution process is that it creates a sense of control and ownership in the outcomes<sup>22</sup>. Consequently, the outcomes of the alternative dispute resolution process are easily accepted by all parties. On average, a panel will have about four elders and the administrator. The process of selecting the elders is not structured and often the elders selected are the ones present at the administrator's office during the day of the hearing.

During the hearing, each party is given the opportunity to present his or her side of the story. In some cases such as land dispute, disputants may present written records to support their case. In other cases, such as marital problem or theft, disputants may call witnesses to support their story while in cases involving land boundary disputes; the panel may visit the land in question. After evaluating all the materials presented to them, the panel makes a decision on the way forward. When disputants were asked whether the process involved in resolving their case was well organized, 95.7% gave an affirmative answer indicating that they were satisfied with the organization. The disputants were further probed to give their views regarding the dispute resolution procedures.

Results showed that the disputants were pleased with different aspects of these procedures including the summoning of all parties involved, provision of equal opportunity for parties to present their story, the arrangement of the venue, the manner in which the hearing were conducted, and the availability

---

<sup>21</sup> Geoff Dancy and others, 'What Determines Perceptions of Bias toward the International Criminal Court? Evidence from Kenya' [2019] *Journal of Conflict Resolution*.

<sup>22</sup> James D McGinley, 'A Soft Solution for a Hard Problem: Using Alternative Dispute Resolution in Post-Conflict Societies' (2016) 16 *Pepperdine Dispute Resolution Law Journal* 31.

and punctuality of the panellists. These findings are consistent with the study by McGinley who observed that approaching a case in good faith and ensuring that issues are discussed in depth leads to the acceptance of the ultimate solution by all parties<sup>23</sup>.

### ***Language Used***

The language used during the dispute resolution was also interrogated. This analysis was founded on the premise that one of the factors that make the formal judicial process inaccessible to the majority of Kenyans is the use of technical language and a lot of formalities<sup>24</sup>. In most cases, the largest proportion of communication in the Kenyan formal justice system is done in written form. The technicality of formal court processes and language compel citizens to seek legal representation that adds to the cost of resolving dispute. Drabarz, Kaluzny and Terrett observed that the choice of language determines the efficiency of any justice system in delivering justice to citizens<sup>25</sup>. This study has established that in the grassroots administrative structure, there is a lot of flexibility regarding the language used to resolve disputes.

Proceedings mainly rely on oral presentations by the disputants. Although written documents may at times be adduced, they often serve to support the oral presentations made by the disputants. In most cases, the panel uses the language understood by all parties involved. The Swahili language is the most commonly used language of dispute resolution in the study area, but the panel also allow parties to use local languages to express themselves. Where parties involved only understand a language that is not understood by the panellists and/ or the other parties, the services of an interpreter are sought. Switch of language between Swahili and local dialects is common during cases, which allow open expression of views by the disputants. These findings are consistent with the study by Drabarz, Kaluzny and Terrett who asserts that the language used in dispute resolution process should be

---

<sup>23</sup> Ibid.

<sup>24</sup> Muigua, 'Utilising Alternative Dispute Resolution Mechanisms to Manage Commercial Disputes' (n 20) in first National Centre for International Arbitration (NCIA) Alternative Dispute Resolution (ADR) National Conference, Inter-Continental, Nairobi 2018.

<sup>25</sup> Anna Drabarz, Tomasz Kaluzny and Stephen Terrett, 'Language as an Instrument for Dispute Resolution in Modern Justice' (2017) 52 *Studies in Logic, Grammar and Rhetoric* 41.

pragmatic in promoting communication between the disputants and the arbitrators or mediators<sup>26</sup>.

### ***Fairness of the Process***

The study also sought to know the fairness of the process used to resolve dispute at the grassroots administrative structures. When asked about this issue, majority of the disputants (95.7%) felt that the dispute resolution process was fair. The disputants gave different account to support their position including that all parties were given equal opportunity to present their story, equal treatment of all parties by the panel, and proper listening by the panellists. On the other hand, the administrators explained that the appointment of elders to listen to the cases is one of the mechanisms that they use to ensure fairness. Having different persons listening to the case tend to reduce bias. This is not usually the case in the formal judicial process in Kenya where most cases at the lower courts are heard and determined by a single individual. A panel is only constituted at the Court of Appeal and Supreme Court levels.

Current findings also suggest that satisfaction with case outcome is higher among disputants who resolve their cases through the grassroots administrative structure than those who go through the formal judicial process. These findings are a sharp contrast to the findings of the study by Pryce and Wilson that involved a sample of 519 individuals, which found that the majority of Kenyans are sceptical about the fairness of the formal judicial process<sup>27</sup>. The majority of the respondents expressed that the formal justice system tend to favour the elite and people of high social economic status.

### **Challenges**

The final objective of the study was to understand the challenges that hamper the dispute resolution process at the grassroots administrative structure. Several issues emerged including lack of training, interference, lack of cooperation, threat to the security of the administrators, and lack of resources.

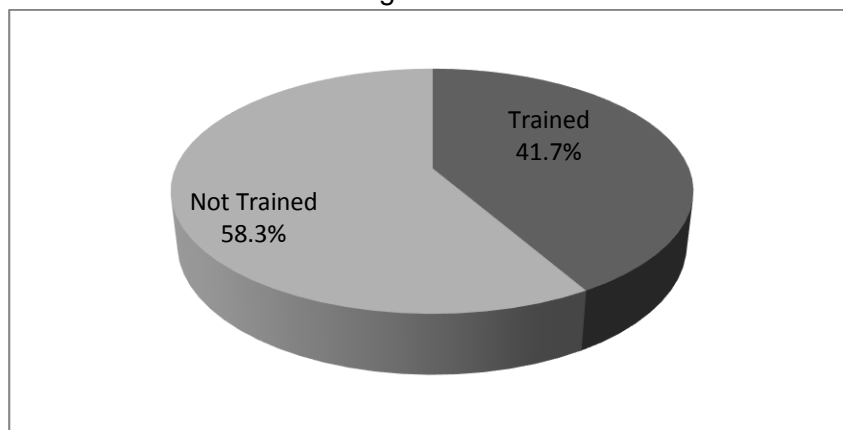
---

<sup>26</sup> *ibid.*

<sup>27</sup> Daniel K Pryce and George Wilson, 'Police Procedural Justice, Lawyer Procedural Justice, Judge Procedural Justice, and Satisfaction With the Criminal Justice System: Findings From a Neglected Region of the World': [2020] Criminal Justice Policy Review <<https://journals.sagepub.com/doi/10.1177/0887403419900230>> accessed 30 November 2020.

### **Training**

As illustrated in Figure 2, about 58% of the administrators had not undertaken any formal training on dispute resolution. About 42% elaborated that they had attended short courses or seminars organized by the law courts, local universities, and non-governmental organization. Some administrators reported that the only training that they had received was on conflict resolution, which is one of the units taught when the administrators are taken for the paralegal training upon recruitment. Only two administrators reported to have undertaken professional training on alternative dispute resolution that goes for more than 1 month. This figure translates to 8.3% of the total sample.



*Figure 2: Distribution of Administrator based on Training*

McGinley noted that the success of AJS is dependent on the skill, expertise, and knowledge of the personnel who are tasked with the responsibility of dispensing justice<sup>28</sup>. The alternative dispute resolution process requires a blend of sufficient problem-solving skills blended with experience and light footprint<sup>29</sup>. The level of skills required rises as the complexity of the dispute being resolved increases. Although the administrators and the elders have gained considerable experience through practice, some skills can only be learnt through formal training. It was worth noting that while the short courses play a role in improving the administrators' dispute resolution skills, more comprehensive training is needed.

### **Interference**

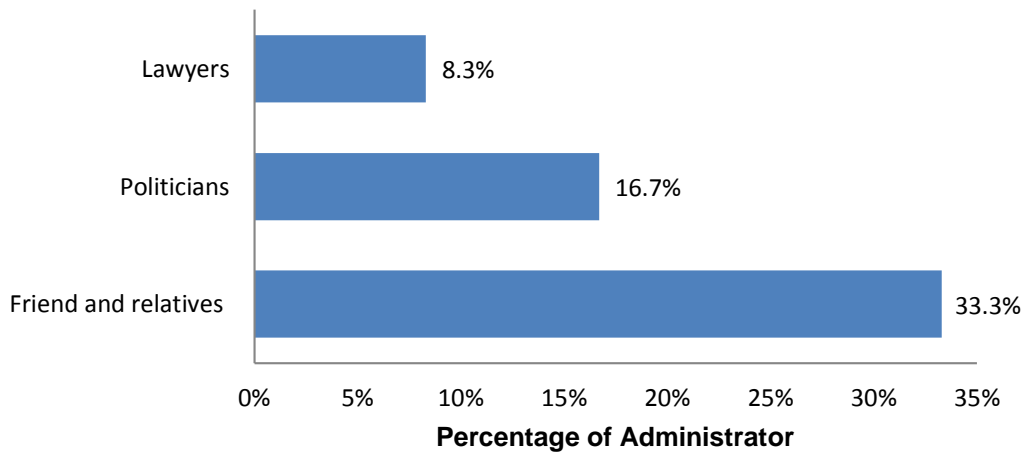
Interference in case proceedings by external forces is another challenge that was identified during the study. The majority of the administrators (58.3%) reported that they experience different forms of interference when resolving

---

<sup>28</sup> McGinley (n 22).

<sup>29</sup> Ibid.

cases. The most common form of interference comes in the form of intimidation from friends and family of the accused as illustrated in Figure 3. This implies that the security of the administrator is an issue of concern when it comes to dispute resolution especially for sensitive matters. Other sources of intimidation include politicians and lawyers who keep issuing threats to the Administrators disguised as court contempt.



*Figure 3: Sources of Intimidation encountered by the Administrators*

About 33% of the administrators reported experiencing intimidation from friends and relatives on parties involved in case that they are resolving. About 16.7% said that they have experienced intimidation from local politicians such as members of parliament or members of national assemblies. About 8.3% said that they have experienced intimidation by lawyers who have been engaged by parties involved in a case. Another form of interference is bribery, where one of the parties attempts to bribe the panellists or some of the panellists in order to get a favourable ruling. This implies that the integrity of the elders selected by the administrator is paramount to safeguarding the sanctity of grassroots administrative structures dispute resolution function. The integrity may be undermined by the fact that the Administrators are not allocated a budget for remunerating the elders making them susceptible to bribery.

The issue of interference in AJS particularly those that place emphasis on cultural approaches of resolving disputes was noted in the study by Brown, Cervernak, and Fairman, who found that community mediators and arbitrators often have influence over disputants by virtue of their positions and thus they

may push disputants to accept settlements that they do not agree with<sup>30</sup>. Disputants may also feel pressured by cultural norms to accept settlements that are considered as fair standards in a given community. Cultural norms may also influence the selection of mediators/ arbitrators. For instance, in communities with patriarchal cultures, the mediation/ arbitration team is more likely to be male dominated, which may disadvantage female disputant especially when it comes to resolution of gender sensitive issues such as property inheritance.

The issue of interference in AJS is also acknowledged in the Arbitration Act 2012 which lays ground under which arbitral awards may be set aside by the court<sup>31</sup>. One of these grounds is when there is evidence of corruption and undue influence. The Arbitration Act requires parties to sign an arbitration agreement that stipulate the appointment of arbitration procedures including the selection of the arbitration panel<sup>32</sup>. This feature is not present in the grassroots administration structures as the mediation/ arbitration panel is selected by the chief or assistant chief, which exposes the process to interference and undue influence.

### ***Lack of Resources***

The dispute resolution process is also hampered by lack of adequate resources. The study has established that the grassroots administrators rely on the services provided by community elders to resolve cases. However, their offices are not allocated resources for remunerating and facilitating these elders in the execution of the dispute resolution duties. As a result, some administrators require disputants to pay some fee to have their cases resolved. Although the study has established that the fee is low when compared to the cost of formal litigation, it may lock out the very poor from accessing justice through the local structures. Limited resources also make the elders susceptible to bribery and influence. It may also limit the quality of the dispute resolution process by limiting the fact-finding capabilities of the panellists. It has been established that in disputes related to land, the panellists are at times compelled to visit the site so as to gain a better understanding of the dispute. Such endeavours require resources that have not been provided for by the government.

---

<sup>30</sup> Scott Brown, Christine Cervenak and David Fairman, 'Alternative Dispute Resolution Practitioners Guide' (USAID 2016) <<https://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf>> accessed 10 November 2020.

<sup>31</sup> Section 35 of the Arbitration Act CAP 49, Revised 2012.

<sup>32</sup> Section 3 of Arbitration Act.

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the findings, the study concludes that the national government grassroots administrative structure offer a viable means of providing access to alternative form of justice to citizens. The study has established that these structures are already widely used to resolve family and civil issues as well as petty crimes in most parts of the country. The merit of these structures include shorter duration of cases, lower cost of resolving dispute, greater transparency and perceived fairness, and use of restorative remedies. However, the study has established that the effectiveness of grassroots administrative structure dispute resolution function is hampered by lack of training, interference, lack of a legal framework, lack of resources, and lack of cooperation. Based on the findings, the study makes the following recommendations that may enhance the effectiveness of the grassroots administrative structures in delivering alternative justice.

### ***Training for the Grassroots Administrators***

Government should provide training to the administrators on key areas such as mediation and arbitration among others. For the training to be more effective, it should be tailored to specific issues that the grassroots administrators deal with such as marital disputes, debts, land disputes, and petty crimes. Training can best be achieved through provision of trained facilitators to implement the training programme at the grassroots levels. The government can also facilitate professional training to the administrators, who after accreditation by relevant bodies would in turn act as trainers to the elders.

### ***Adequate Resources to Facilitate Dispute Resolution***

The government through the Ministry of Interior should provide adequate resources to the grassroots administrative offices for resolving disputes. In particular, the government should allocate a budget for remunerating the elders, facilitating fact-finding missions and enforcing decisions. Amount of resources allocated to a given administrative unit should match the type and volume of disputes addressed in the area. Areas with numerous and complex disputes should be given more resources to facilitate resolution of the disputes. Remuneration for elders will be a vital mechanism for reducing bribery and undue influence.

***Guidelines to Standardize Service Fee***

If government cannot provide resources to facilitate dispute resolution, a guideline should be developed that stipulate fees that disputants presenting different types of cases should pay as a service fee. Current findings suggest that the grassroots administrative offices in some area are already charging fee on disputant informally. This can be standardized so as to eliminate room for exploitation.

***Recognition and Enforcement of Decisions***

The formal justice system should recognize and enforce the decisions made by the grassroots administrative structures on disputes. This recognition will enhance the authority of these structures in resolving disputes. It will give the grassroots players' greater legitimacy in the eyes of the public and; thus, increase the number of Kenyans willing to resolve their disputes through this channel.