

Alternative Dispute Resolution Role in Enhancing Intergovernmental Relations between Nairobi City County and the National Government.

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Abstract

Relations between levels of government continue to pose threat to the goals of decentralization the world over. This study sought to determine the role of Alternative Dispute Resolution on intergovernmental relations between national government and Nairobi City County in Kenya. A structured and semi-structured questionnaire was administered to 83 stratified randomly sampled respondents. The descriptive and inferential findings presented in tables and charts demonstrated ADR process not being cost-

effective, inflexible and dissatisfactory verdict. To that end, the study recommended the study recommends ADR process streamlining to be cost-effective, flexible and satisfactory resolution.

Index Terms: Alternative Dispute Resolution, Conflict, Intergovernmental Relations.

INTRODUCTION

Many countries continue to experience certain levels of strained relations between different levels, among arms of government or within decentralized units (Carter & Post, 2019). These conflicts are attributed to sharing of resource allocation, administrative, jurisdictional and legislative functions that impede service delivery (Grossman, Pierskalla & Dean, 2017). In effort to resolve conflict, various countries have employed ADR mechanisms especially ADR's Cost effectiveness, ADR's flexibility and ADR's verdict satisfactory level with mixed outcomes although majority have been effective (Moore, 2014).

In Kenya, the governments at the national and county levels are distinct and inter-dependent hence expected to conduct their mutual relations on the basis of consultation and cooperation in discharge of their exclusive and shared functions as assigned pursuant to the Fourth Schedule to the Constitution (Cheeseman, Gabrielle & Justin, 2016). However, the conduct of mutual relations between the two levels of government have been characterized by recurrent conflicts which often escalate into disputes resulting in the erosion of the spirit of consultation and cooperation (Karuti, 2016). Notably, one of the worst intergovernmental conflicts witnessed recently in Kenya is the toxic conflict between Nairobi City County and the national government over administrative functions, revenue sharing and staff deployment roles. This has resulted into poor service delivery.

Although there exist many statutory mechanisms in resolving and ensuring smooth, cordial and harmonious intergovernmental relations such as National and County

Governments Coordinating Summit, Council of Governors and Intergovernmental Relations Technical committee. Others include, Intergovernmental Budget and Economic Council, County Intergovernmental Forum, Sectoral Forums as well as Joint Intergovernmental Technical Committee, conflicts linger on (D'Arcy & Cornell, 2016).

Currently, levels as well as arms of government mostly use litigation to settle their disputes which is costly and negatively imparted on funds allocated for development and service delivery (Kenya's Judiciary Watch Reports Series, 2016). In any event, the Summit and the Council of Governors do not constitute independent and impartial third-party neutrals suited to facilitate the effective resolution of intergovernmental disputes. Neither are they well suited to determine or resolve disputes arising from purely contractual relationships between the two levels of government or between county governments inter se (ICJ Kenya, 2015).

Efficient service delivery by the two levels of government with competing, and often conflicting, interests can only be attained if there is in place an effective and efficient dispute resolution mechanism to resolve relational disputes (other than political or administrative conflicts) (Khaunya, Wawire & Chepnge'eno, 2015). Such a mechanism must be characterized by (a) expedition; (b) cost-effectiveness; (c) party autonomy (where both levels of government have an equal voice in the process); (d) complete independence from the parties; (e) quality procedures; (f) quality outcomes; and (g) party satisfaction.

Regrettably, above established conflict resolution mechanisms, the judicial system is not reputed for

delivering a justice system that can be identified with all of the foregoing characteristics. It is painstakingly slow, costly and inappropriate for parties who are bound under the Constitution to undertake service delivery in the spirit of consultation and cooperation (Mungai, 2016). Litigation is inappropriate to resolve disputes between state organs that are in reality the aggregate of one whole, but for the governance model of devolution of power and the decentralization of service delivery (Simiyu., 2015).

This calls for effective conflict management and dispute resolution strategies that guarantee good governance and conducive environment for effective service delivery at both levels of government and among arms of government in the spirit of consultation and cooperation. However, the prevailing constitutional order and the extant statutory framework are not well suited to facilitate effective conflict management and expeditious dispute resolution among the key players in the devolved system of government, not to mention the gaping lacunae in the extant mechanisms for the resolution of contractual disputes.

Why ADR? This paper argues that alternative dispute resolution is most appropriate to address IGR in Kenya as

currently is. ADR is a set of market mechanisms that maximize (a) proportionality; (b) party control; (c) expedition; (d) quality procedures and outcomes; and (e) consumer satisfaction. Despite such challenges, there are insufficient empirical evidence on this issue in the context of Kenya. The proposed study, therefore, addresses the gap in this area by examining this issue with special reference to Nairobi City County, national government, the Judiciary, Legislature and Executive.

Research Objectives.

- (i) To determine the effect of ADR's Cost effectiveness on intergovernmental relations between the national government and Nairobi City County.
- (ii) To analyze the effect of ADR's flexibility on intergovernmental relations between the national government and Nairobi City County.
- (iii) To establish the effect of ADR's verdict satisfactory level on intergovernmental relations between the national government and Nairobi City County.

RESEARCH METHODOLOGY

The study preferred a descriptive survey approach comprising quantitative and qualitative techniques. Stratified random sampling was used to select 8 village elders, 4 Members of County Assembly and 10 imams in the sub-county at time of the study. Additionally, 3 civil organizations personnel working in the affected region, 25 police officers and 23 most recently worst affected conflict victims in the sub-county totalled to 83.

An open-ended and closed-ended questionnaire was utilized for primary data collection. Collected data was quantitatively and qualitatively analysed before presenting findings graphically followed with explanation in continuous prose.

FINDINGS

established that the ADR process does not provide expedient resolution of justice, the facilitators (mediator and witnesses) and that during ADR process are not few. Similarly, each party does not bear its own costs during ADR process. Also, the ADR charges or fines are not few and bargainable and ADR process does not have less documentation, few or none exhibits, and little bureaucracy as well as few technicalities. Inferential findings disposed a significant and positive correlation between ADR's cost effectiveness and intergovernmental relations between national government and Nairobi City County.

Equally, it was established that parties do not create rules guiding the ADR process, there is no personal presentation during the ADR process, parties do not select moral, trusted and acceptable to mediate the ADR process. Also, the ADR process is not voluntary, it is not consensual and also it is not risk-free as well as parties are not allowed to seek alternative options in the event of a stalemate. Further, process is not less agrimony hence preserves relationship between warring factions. Furthermore,

inferential findings documented a strong and positive association between ADR's flexibility and intergovernmental relations between national government and Nairobi City County.

As well, descriptive findings reported that parties but juries do not decide verdict during the ADR process, the verdict of the ADR process is not easily acceptance hence it is not easily compliable. Also, the findings conveyed during the ADR process, a verdict cannot be made confidential verdict if parties choose and a verdict reached during the ADR process is retributive hence cannot ensure harmony between national government and Nairobi City County. Further, the ADR resolutions reached are not aimed at addressing the parties' concerns and the ADR verdict addresses parties' both legal and non-legal needs as opposed to court process that satisfies legal aspects exclusively. Inferential findings posted a significant and positive association between ADR's verdict satisfactory

level and intergovernmental relations between national government and Nairobi City County.

RECOMMENDATIONS

Based on the findings, the study recommends that the ADR process be streamlined to provide expedient resolution of justice as well as reducing the number of facilitators (mediator and witnesses) and that during ADR process for effective resolution of conflicts between warring factions. Likewise, the study recommends that each party should bear its own costs during ADR process. In the same way, it is recommended that the ADR charges or fines should be few and bargainable and the ADR process should have less documentation, few or none exhibits, and little bureaucracy as well as few technicalities for quick conflict resolution among antagonistic parties.

Alike, it is recommended that parties should be allowed to create rules guiding the ADR process, as well as permitting personal presentation during the ADR process. Also, the study recommends the need to ensure parties enjoy free hand in selecting moral, trusted and acceptable individuals to mediate the ADR process. In the same vein, it is recommended that the ADR process should be voluntary as well as consensual and also it should be risk-free.

Further, the study recommends the verdict arrived at is appealable to give chance for further ventilation by the unsatisfied party. Finally, it is recommended the process should be made less agrimony to preserve relationship between warring factions.

Similarly, it is the view of this study that parties but juries should have a final say on the verdict during the ADR process. Also, the verdict of the ADR process should ensure the verdict is easily acceptance to make it easily compliable to satisfy all parties. In addition, this study recommends that during the ADR process, a verdict should be made confidential verdict if parties choose. More so, the study recommends that a verdict reached during the ADR process should not be retributive to ensure harmony after the ADR process. It is also recommended that the ADR resolutions reached should be aimed at addressing the parties' concerns. Further, the study recommends that the ADR verdict should address parties' both legal and non-legal needs as opposed to court process that satisfies legal aspects exclusively.

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