

Embracing Online Dispute Resolution in Kenya: Feasibility of an Online Dispute Resolution Portal for E-commerce Disputes in Kenya

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Abstract

With the significantly rapid developing ICT sector and the corresponding growth of e-commerce, there is an urgent need for a direct and more efficient dispute resolution mechanism for online trade disputes in Kenya. Proliferation of online commerce comes with the inevitable increase of disputes in the area. It has become difficult to ignore the changes brought about by online commerce to the world of dispute resolution. This paper therefore seeks to evaluate the feasibility of the establishment of an online portal purposed for the efficient resolution of online trade disputes in Kenya. It will outline the legal framework necessary to serve as a foundation for the ODR-portal. The paper will also highlight the structure of European Union's ODR model currently in place as a point of reference. The aforementioned information will be analysed with the general intention of assessing what possible direction Kenya needs to take to embrace Online Dispute Resolution as an amicable dispute resolution mechanism for e-commerce disputes and in the same spirit contribute to the enhancement of access to justice in Kenya.

1.0 Introduction

The e-commerce scene in Kenya has grown alongside the general global growth in the area.¹ Many Kenyans have better access to the internet thanks to the proliferation of technology, such as smartphones and other portable devices such as laptops and tablets, and as a result is often dubbed as the 'Silicon Savannah' of East Africa.² Consequently, Kenyans are able to transact on e-commerce platforms available in their region.

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¹ International Chamber of Commerce (ICC) on Digital trends, available at: <https://iccwbo.org/global-issues-trends/trade-investment/digital-trade/> -accessed on 13 January 2018.

² Price Waterhouse Coopers (PWC) Report, *Disrupting Africa: Riding the Wave of the Digital Revolution* available at: <https://www.pwc.com/gx/en/issues/high-growth-markets/assets/disrupting-africa-riding-the-wave-of-the-digital-revolution.pdf> -accessed on 13 January 2018.

There are various models of e-commerce. The common ones include Business-to-Consumer (B2C) where transactions are between individual customers and businesses that usually involve the transfer of the final good or service to the consumer and Business-to-Business (B2B) where two businesses transact online e.g. between a wholesaler and a retailer.³ Others include Consumer-to-Business (C2B) where consumer's sell their commodities to businesses⁴ and Consumer-to-Consumer (C2C) there transactions are made between consumers aided by a platform which allows them to interact e.g. eBay.⁵

One of the main advantages of e-commerce is the fact that it saves time and costs that would otherwise arise from performing the transaction through brick and mortar means. However, where a dispute arises, parties still eventually resort to physical interaction so as to facilitate the resolution of the dispute. This diminishes the aforementioned advantage of having to transact without physical interaction ergo, creating an avenue for dispute resolution within the online sphere would greatly reduce the exertion and expenses associated with conventional (offline) means.

2.0 The Concept of Online Dispute Resolution (ODR)

ODR refers to Online Dispute Resolution. There is no universal definition of ODR. It is however considered by some as the online extension of ADR mechanisms.⁶ Others are of the view that forms of ADR significantly incorporate Information and Communication Technology in their execution, result in ODR⁷. Additionally, ODR has also been conceived as the transposition of the traditional ADR mechanisms online without substantive differences from their traditional counterparts except being more convenient and effective.⁸

³ Kumar, V., & Raheja, E. G, 'Business to Business (b2b) and Business to Consumer (b2c) Management', *International Journal of Computers & Technology*, 3(3b), (2012), 447-451.

⁴ Chen, D. N., Jeng, B., Lee, W. P., & Chuang, C. H. (2008). An agent-based model for consumer-to-business electronic commerce. *Expert Systems with Applications*, 34(1), 469-481

⁵ Dan, C., 'Consumer-To-Consumer (C2C) Electronic Commerce: The Recent Picture', *International Journal of Networks and Communications*, 4(2), (2014) 29-32.

⁶ Kallel S, 'Online Arbitration', *25 Journal of International Arbitration* (2008), 345.

⁷ Mercedes M A and Gonzalez N M, 'Feasibility Analysis of Online Dispute Resolution in Developing Countries', *44:1 Inter-American Law Review* 2012, 44.

⁸ Zheng S T, *Electronic Consumer Contracts in the Conflict of Laws*, Hart: Oxford and Portland, Oregon, 2009, 152.

United Nations Commission on International Trade Law (UNCITRAL) established a working group on Cross-Border ODR in 2010. The group assigned was 'Working Group III'. It is tasked with the development of rules that will govern cross-border ODR for disputes arising out of e-commerce transactions.⁹ The group, on the 16th of December 2016, came up with the Technical Notes on Online Dispute Resolution which define ODR as a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology".¹⁰

From the above, it is clear that the underlying common feature of ODR is that it is a mechanism for resolving disputes that incorporates various aspects of information and communication technology to facilitate the resolution of the dispute.

3.0 Kenyan Legal Framework

3.1 Constitution of Kenya (2010)

The Constitution of Kenya recognises Alternative Dispute Resolution as an avenue to justice in Kenya. It states that, '*in the exercise of judicial authority, courts and tribunals shall be guided by alternative forms of dispute resolution including mediation arbitration and traditional dispute resolution mechanisms.*'¹¹ It further bestows responsibility of the state to ensure access to justice for all persons at a reasonable fee that shall not impede them.¹²

In addition to the above express provisions on access to justice the Constitution also obligates the court not to impede justice on the account of procedural technicalities. It urges the court to minimize on formalities related to proceedings so as to give room for proceedings on the basis of informal documentation. It also states that no fees should be charged for the commencement of proceedings.¹³

The constitution also recognises every citizen's right of access to information held by the state. This right facilitates access to justice by providing the citizen with adequate knowledge

⁹ NCTDR, available at < <http://odr.info/uncitral-cross-border-odr/> > accessed on 13 January 2018.

¹⁰ Paragraph 24, *Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law (UNCITRAL) 2016*.

¹¹ Article 159, *Constitution of Kenya (2010)*.

¹² Article 48, *Constitution of Kenya (2010)*.

¹³ Article 22, *Constitution of Kenya (2010)*.

of their respective rights. This makes it possible for them to seek redress from the court or any other ADR mechanism.¹⁴

Access to justice in the Constitution is also advocated through upholding one's right to administrative action that is efficient, expeditious, lawful, reasonable and procedurally fair.¹⁵ Another right critical to the enhancement of one's access to justice that is upheld by the constitution is the right to a fair and public hearing.¹⁶ Only by exercising fairness during the hearing process can the proper procedural execution of the available mechanisms result in justice to the one who seeks it.

It is clear from the above provisions that the Constitution promotes access to justice through ADR. From the language applied in Article 159, the Constitution does not limit alternative means to those expressly provided.¹⁷ This means that the Constitution is able to accommodate other methods of dispute resolution not been expressly provided for as long as they fall in line with the general principle of the promotion of access to justice.

It can therefore be derived that ODR as a form of dispute resolution will be in conformity with the primary legislation relating to ADR mechanisms in the country. It incorporates the use of technology to enhance access to justice in Kenya as well as serve as an alternative to litigation and adjudication through the courts.

3.2 Consumer Protection Act

In online and related disputes, the Consumer Protection Act states that a supplier in an internet agreement must disclose all prescribed information to the consumer.¹⁸ It also provides an opportunity for the consumer to accept or decline the agreement or correct any errors in it.¹⁹ In addition, the supplier must deliver a copy of the agreement in writing within the prescribed period after the consumer enters the agreement.²⁰ Since most of the relevant

¹⁴ Article 35, *Constitution of Kenya* (2010).

¹⁵ Article 47, *Constitution of Kenya* (2010).

¹⁶ Article 50, *Constitution of Kenya* (2010).

¹⁷ Chief Bayo Ojo, 'Achieving Access to Justice Through Alternative Dispute Resolution' *Chartered Institute of Arbitrators (Kenya) Journal*, 1 2013 1.

¹⁸ Section 31 (1), *Consumer Protection Act* (No. 46 of 2012).

¹⁹ Section 31 (2), *Consumer Protection Act* (No. 46 of 2012).

²⁰ Section 32, *Consumer Protection Act* (No. 46 of 2012).

contractual information mentioned above is communicated online, the practicality of ODR is enhanced.

Parties may agree to resolve the dispute using any procedure available in law.²¹ The effect of this provision is the fact that parties to a consumer agreement can choose to adopt ADR mechanisms to resolve their disputes. Although ODR is not expressly recognised under any Kenyan law, it can be incorporated once a recognised procedure for the process is enacted. The Act aims to promote the social and economic welfare of Kenyan consumers by providing a consistent, accessible and efficient system of resolution of disputes arising from consumer transactions.²² ODR for e-commerce disputes will therefore act as an actualisation of this aim as it intends to ease the dispute resolution procedures within e-commerce.

4.0 Feasibility of E-commerce ODR in Kenya vis-a-vis the European Union Model

4.1 European Union ODR Model in England

England has benefitted from significant strides in the European Union (EU) regarding the development of ODR. The EU established an online dispute resolution platform for online disputes.²³ This applies to member states through the Online Dispute Resolution for Consumer Disputes and Amending Regulations (Regulation on consumer ODR).²⁴

These regulations apply to all out-of-court dispute resolution processes concerning contractual obligations stemming from online sales or service contracts between consumers and traders.²⁵ It dictates that the platform ought to provide an electronic complaint form which can be filled in by the complainant.²⁶ More importantly, the platform offers an electronic case management tool free of charge, which enables the parties to conduct the dispute resolution procedure online through the ODR platform.²⁷

²¹ Section 88, *Consumer Protection Act* (No. 46 of 2012).

²² Section 3 (4) (g), *Consumer Protection Act* (No. 46 of 2012).

²³ EU ODR Platform, available at <

<https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.show&lng=EN> > accessed on 22 December 2017.

²⁴ *Regulation on Consumer ODR*, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

²⁵ Article 2, *Regulation on Consumer ODR*, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

²⁶ Article 5 (4) (a), *Regulation on Consumer ODR*, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

²⁷ Article 5 (4) (d), *Regulation on Consumer ODR*, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

For this system to work, member states are obliged to establish 'ODR contact points'. These will provide a local platform to lodge claims in respective state.²⁸

The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations bring the regulation into force in England. It mandates online traders within England to provide a link to the EU online platform on their website which is easily accessible to the consumers.²⁹ In England, online platforms such as the 'ODR Contact Point' have been set up to educate the public on what they need to know before they engage in online dispute resolution and to link them to the EU site.³⁰

When a dispute arises, the consumer will need to fill in an online complaint form and submit it to the ODR Platform. This includes details about the trader, the consumer, the purchase item and the complaint itself. Relevant support documents such as the invoice should be uploaded as well.³¹ The complaint will be sent from the ODR Platform to the respective trader, who will propose a dispute resolution body to the consumer. The trader and the consumer have 30 days to agree on the dispute resolution body that will deal with the dispute.³²

Where the disputants cannot agree on a dispute resolution body to handle the dispute within 30 days, the ODR Platform will not be able to proceed with the complaint any further.³³ If they both agree on a dispute resolution body to handle their dispute, the ODR Platform will automatically transfer the complaint to that entity. Once the transfer has occurred, the dispute resolution body will have three weeks to determine if it is competent to handle the dispute. If it is competent to do so, it will handle the case and should reach an outcome in 90 days.³⁴

²⁸ Article 7, *Regulation on Consumer ODR*, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

²⁹ Regulation 19A, *Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations* 2015.

³⁰ ODR Information website, available at < <https://www.odrcontactpoint.uk/> > accessed on 22 December 2017.

³¹ European Union Online Dispute Resolution Procedure, available at:

<https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.complaints.timeLine&uuid=#step-one> - accessed on 22 December 2017.

³² European Union Online Dispute Resolution Procedure, available at:

<https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.complaints.timeLine&uuid=#step-one> - accessed on 22 December 2017.

³³ *Ibid*

³⁴ *Ibid*

4.2 E-commerce ODR in Kenya

This part seeks to identify what would be the most practical approach to be taken in the actualisation of ODR in Kenya. This will involve the level of involvement of the state, private institutions and individuals in the development of the process.

The Judiciary has recently taken steps to embrace ADR in a bid to enhance access to justice as well as reduce the backlog of cases through the enactment of the court-annexed mediation program.³⁵ In the same light, the Judiciary has also taken other steps to improve the justice system through the Judiciary Transformation Framework (2012-2016).

The Judiciary Transformation Framework pushed for the promotion of ADR mechanisms in the administration of justice.³⁶ At the core of the framework, the judiciary intended to put in place an elaborate ICT strategic plan that will enable the judiciary to harness technology in the pursuit of justice.³⁷ Apart from the management applications of ICT that the judiciary intended to apply, the framework fell in line with the promotion of ODR. It proposed a tele-justice system which simply refers to the incorporation of teleconferencing into the justice system.³⁸

The framework also proposed the digitalisation of court records. The effect of this could be less reliance on physical copies of documents thus facilitating the shift to an independent online platform for administering justice. It also proposed an SMS inquiry system that is going to be part of an overall complaints management system. The framework proposed the extension of the application of ICT to incorporate training programmes that will disseminate the know-how on dispute resolution to the public. The framework also proposed the implementation of a Local Area Network within the court areas so as to facilitate a communication portal that will serve as a platform for the incorporation of virtual court systems.³⁹ Despite the timeline for the framework expiring in 2016 the judiciary maintained the above agenda and is still in the process of implementation as seen in their current strategy document, 'Sustaining Judiciary

³⁵ Kenya Judiciary, FAQ's on Court Annexed Mediation, available at: <http://kenyalaw.org/kenyalawblog/wp-content/uploads/2016/04/Court-Annexed-Mediation-at-the-Judiciary-of-Kenya..pdf> -accessed on 14 January 2018.

³⁶ The Judiciary, Republic of Kenya, *Judiciary Transformation Framework 2012-2016*, 2012, 14.

³⁷ *Ibid* 21.

³⁸ *Ibid* 46.

³⁹ *Ibid* 47.

Transformation: A Service Delivery Agenda' (2017-2021). Chapter 5 of the document on their digital strategy reflects this.⁴⁰

This Judiciary, a central player in the administration of justice, thus is arguably in an ideal position to spearhead the establishment of an ODR portal.

Additionally, the Communications Authority of Kenya is mandated to regulate communication services in the country.⁴¹ Among its functions, it is also mandated to facilitate the development of e-commerce in Kenya.⁴² This makes it another potential key player in the development of ODR for e-commerce. Besides the Judiciary, it can also work with local ADR experts as well as key local ADR institutions such as the recently established Nairobi Centre for International Arbitration (NCIA)⁴³, the Chartered Institute of Arbitrators (Kenya) (CI Arb-K)⁴⁴ and/or the Strathmore Dispute Resolution Centre (SDRC)⁴⁵, in the development of an ODR platform. It can also provide the licence for the operation of the online platform as well as its general compliance with internet regulations.⁴⁶

The development of ODR procedures is made possible by ODR platforms⁴⁷ and ODR providers.⁴⁸ On one hand, ODR platforms host ODR services and can be managed by third party providers and the other hand, ODR providers are professionals or institutions that become involved at the request of the parties in conflict.⁴⁹ Institutions poised to provide ADR

⁴⁰ The Judiciary, Republic of Kenya, *Sustaining Judiciary Transformation: A Service Delivery Agenda 2017-2021*, 44.

⁴¹ Section 5, *Information and Communications Act*, (2011).

⁴² CAK Website 'What we do', available at: <http://ca.go.ke/index.php/what-we-do> -accessed on 10 January 2018.

⁴³ Nairobi Centre for International Arbitration website available at: <http://ncia.or.ke/about-ncia/> - accessed on 11 January 2018.

⁴⁴ Chartered Institute of Arbitrators (Kenya) website available at: <http://www.ciarbkenya.org/> - accessed on 11 January 2018.

⁴⁵ Strathmore Dispute Resolution Centre available at: <https://www.strathmore.edu/sdrc/> - accessed on 11 January 2018.

⁴⁶ Section 10, *Kenya Information and Communications Act* (2009).

⁴⁷ These are internet-based locations where interested parties can submit their claims to be resolved online.

⁴⁸ These are the organizations that give rise to locations on the internet where disputes can be resolved online

⁴⁹ Nicuesa V, 'Resoluci'on electr'onica de conflictos' in Peguera M (ed), *Principios De Derecho De La Sociedad*, Aranzadi, 2010, 409.

services such as the CIArb-K, NCIA and SDRC as well as individual experts in the area can act as ODR providers once they have taken the necessary steps to embrace ODR. ODR can also greatly benefit government services. The government can set up an alternate ODR platform and actively act as an ODR provider. This can be done through the incorporation of ODR in institutions that provide public services online. Institutions such as the Insurance Regulatory Authority (IRA) through their ERS and Agents portals,⁵⁰ the Kenya Revenue Authority (KRA) through their online services such as customs online payment,⁵¹ and the Postal Corporation of Kenya (PCK) through their soon to come Virtual Post Office services,⁵² just to mention a few, are some that would benefit from an ODR portal.

An inevitable debate in the actualisation of ODR for e-commerce in Kenya will be the level of government involvement. It has been argued by some that ODR does not need government interference and that many ODR services should take root on their own.⁵³ Facilities such as Anywhere Arbitration,⁵⁴ Ujuj,⁵⁵ and Modria⁵⁶ operate online free from government interference. The use of email correspondence e.g. G-Mail and Yahoo Mail may also be free from government regulation. However, self-regulation resulted to several disagreements between consumer groups the most prominent of which the internet based businesses were suggesting that a mandatory ODR process should be integrated before going to court thus restricting immediate recourse to the court.⁵⁷

This prompted consumer to demand the retention of direct access to court. Similarly, this is seen in our Consumer Protection Act where any acknowledgement in a consumer agreement

⁵⁰ IRA Website, available at < <http://www.ira.go.ke/> > accessed on 16 January 2018.

⁵¹ KRA Website, available at < <http://www.kra.go.ke/index.php/kra-portal> > accessed on 16 January 2018.

⁵² Postal Corporation Website, available at < <https://www.posta.co.ke/virtualoffice/> > accessed on 16 January 2018.

⁵³ Chornenki G, *The Corporate Counsel Guide to Dispute Resolution*, Canada Law Book Inc., Aurora, 1999, 7-10.

⁵⁴ Anywhere Arbitration < available at: <http://www.anywherearbitration.com/> > accessed on 12 January 2018.

⁵⁵ Ujuj, available at: <http://www.ujuj.org/whatisujuj.html> > accessed on 12 January 2018.

⁵⁶ Modria, available at < <http://modria.com/product/> > accessed on 12 January 2018.

⁵⁷ United Nations Conference on Trade and Development, 'E-Commerce and Development Report 2003 (Internet edition prepared by the UNCTAD secretariat): Chapter 7: Online dispute resolution: E-commerce and beyond', available at <http://www.unctad.org> > accessed on 8 January 2018.

that requires a dispute to be submitted to an arbitration is invalid since it prevents the party from filing an action in the High Court.⁵⁸

This was further encouraged by the shortcomings of ODR providers through their lack of transparency, neutrality, appropriate complaint mechanisms and poor recognition of cultural and linguistic differences.⁵⁹

As Kenya begins to embrace ODR, we should take the above situations into account. Government involvement in the process is indeed critical in that it will be able to create favorable standards that ODR providers should abide by. This is the case in the UK through their ODR regulations. The state will have to take initiative to come up with new standards that will regulate ODR as an avenue for dispute resolution due to the complexities that arise in dealing with technology and cyberspace.

From the above, it would be adequate to propose a hybrid system of operation where the state, through the Communications Authority of Kenya in collaboration with the Judiciary could propose policy general regulations that would govern online platforms. This would be complemented by current local ADR providers who can also assist to develop policy in the area that can later concretize into regulations that will provide the structure of the process. At the same time, they can provide required professional services through the ODR portal. This way, there will be a combination of both the state's resources and those of the private individuals and bodies to further the establishment and growth of ODR for e-commerce in Kenya.

As is often the case, innovation presents itself with its own challenges and in this case, there are challenges that may hinder the application and operation of ODR for e-commerce disputes in Kenya. For one, the online world in general has been plagued with issues surrounding cybersecurity.⁶⁰ The security of information online can be compromised and this may affect ODR by tampering with the confidentiality associated with the dispute resolution procedures applied through the platform.

⁵⁸ Section 88, *Consumer Protection Act* (No. 46 of 2012).

⁵⁹ Rabinovich-Einy O, 'Balancing the Scales: The Ford-Firestone Case, the Internet, and the Future Dispute Resolution Landscape', 6 *Yale J. L. & Tech*, 2003-2004, 12.

⁶⁰ Singer, P. W., & Friedman, A., 'Cybersecurity: What Everyone Needs to Know', Oxford University Press. 2014, 11.

Despite the proliferation of technology in Kenya, a significant portion of the populace have not benefitted enough from this development in that they cannot afford or access the technology.⁶¹ As a result, they may not have access to the supporting technology required to sustain ODR such as a stable internet connection and/or an input device e.g. computers and smart-devices. This in turn limits those who can partake in the process.

The efficiency associated with ODR comes at the price of greatly diminishing face-to-face interaction. Some benefits associated with personal interaction include real time improvising in the face of unforeseen circumstances and personal verification of the identities of the parties and other participants in the dispute. It is easier to falsify your identity online thus may be a potential loophole for fraud in the application of ODR. However, this can be mitigated by incorporating audiovisual communication such as video-conference calls.

5.0 Conclusion and the Way Forward

As commerce takes an online direction, dispute resolution procedures ought to adapt to the shifting landscape so as to maintain the speed, efficiency and accessibility brought about by the online world and the technology that supports it.

Online Dispute Resolution is keen on maintaining these qualities by utilising the same online resources to facilitate timely communication of issues and the eventual resolution of disputes. Kenya has the legal, institutional and individual capacity necessary to bring ODR mechanisms to fruition. Kenya has also embraced e-commerce greatly enough to substantiate the need for an online dispute resolution mechanism.

Thus, the development of an online portal and corresponding dispute resolution procedure will be an invaluable improvement to access to justice in the field of e-commerce. To charter a way forward, the following are some of the areas where action would be key to the foundation for the actualisation of ODR for e-commerce in Kenya:

a) Need to formulate ODR policy and legislation

The current institutions and individual experts dealing with the promotion of alternative methods of dispute resolution should engage in the development of policy that will be aimed

⁶¹ National Information & Communications Technology (ICT) Policy (2016) available at < <http://icta.go.ke/pdf/National-ICT-Policy-2016.pdf> > accessed on 25 January 2018.

at formulating legislation that will specifically regulate ODR for e-commerce and its practice in Kenya.

b) Establishment of online platforms

The State with assistance from experts in the field of ADR should mobilise to create an online platform for the resolution of disputes online. Guidelines on how the platform will be utilised and governed should be contained in the proposed ODR legislation. Government's involvement in the initiative is essential for the maintenance of standards that are favourable to the general citizenry.

Government institutions such as KRA and the others aforementioned should engage in establishing dispute resolution links to their online platform guided by the proposed ODR legislation to address the specific grievances associated with the services they provide to the public.

c) Defining a clear and practicable ODR procedure

This would entail clearly outlining the steps that a party seeking ODR will use in order to seek recourse. The following series of steps may form the crux of the ODR process. First, the aggrieved party should make a submission describing the dispute in question. This can be done through email or directly from the proposed ODR platform. The platform may also link its domain to a mobile application which will greatly improve access to the platform.

The second step would involve the classification of the dispute by the ODR providers and allocating the dispute to the most appropriate method. The platform should also give an opportunity for the parties in dispute to select their desired method. e.g. online arbitration, mediation etc.

The third step would outline the details behind the exchange of information regarding the case such as the complaint, the corresponding defences, evidence and even witness statements if any. This could be communicated through the ODR platform.

Where the process necessitates a hearing, all the participants may be brought together virtually through audio-visual means such as a video conference. Alternatively, participants can also be brought together through a teleconference setting. These instances create real-time interaction without physical confrontation.

The final determination will be made by the ODR provider within a predetermined period of time. As ODR develops, future determinations may even be made by a fully autonomous programme specialised for the task or an actual human being with the requisite qualifications. In some instances, the programme may be semi-autonomous relying, to a certain degree, on a human aspect.

However, as a first step, into the field of ODR, actual (human) practitioners should be the only resolvers to begin with as the latter autonomous methods may be utilised once confidence in them is established

The final decision can be communicated to the parties through an electronically-written communication such as an email. Alternatively, the decision can be communicated to the parties in another hearing setting, either audio-visual or just audio which can be later put down in writing.

This example doesn't cover all the aspects of the process but it demonstrates the feasibility of ODR for e-commerce with regard to its applicability here in Kenya.

d) ODR Education

Learning institutions should engage in including ODR an avenue for dispute resolution. In Kenya, this can be incorporated into our local universities' curriculums for courses such as Law, IT and related courses. The consequence of these actions would be the increased awareness of the existence of ODR as a mechanism to resolve disputes. More so, it would lead to growth of localised expertise thus prompting further development in the area.

e) Updating the existing legal framework

The law ought to adapt to changes in technology where novel aspects emerge and regulation is needed for its smooth application. However, the rate at which technology changes is significantly faster than the rate at which the law can keep up. This creates a discrepancy between the two and this discrepancy drags the adaptation process limiting the optimisation potential of new technologies. Changes in the operation of e-commerce enterprises in Kenya will directly affect the operation of ODR thus, lawmakers should be keen to act upon these changes as soon as they arise.

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