

## **Redefining Online Dispute Resolution; Why ODR is Not A Stand-Alone Alternative**

*By: Daniel M. Ntongai\**

### **Abstract**

*The traditional interpretation of what Online Dispute Resolution (ODR) comprises of is slowly fading, more so after the impact from the COVID 19 pandemic. The outbreak of the virus has seen courts in the Republic of Kenya close their doors, or in some instances, as a less adverse effect, scale down on their operations necessitating the need for other means of dispute resolution. This exposed the country to the use of the internet and existing virtual platforms for interactions and other purposes. The upshot is a redefinition of what Online Dispute Resolution is, and to the greatest extent, the marrying of Online Dispute Resolution with Alternative Dispute Resolution (ADR) and the Judicial Court System. This paper will provide a redefined meaning of what is now to be considered Online Dispute Resolution, its place in conflict resolution and the impact on the existing dispute resolution mechanisms. The paper will also assess the practicality in upholding and enforcing the new redefined Online Dispute Resolution as a means of conflict resolution, independent from all other existing dispute resolution mechanism.*

**Keywords:** Alternative Dispute Resolution, COVID 19 Pandemic, Online Dispute Resolution, Kenya.

### **Introduction**

There exists a number of dispute resolution mechanisms. Litigation has always been the most widely recognized mode of dispute resolution not only

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in Kenya but also globally.<sup>1</sup> The process has posed major challenges, the top most being a backlog of cases.<sup>2</sup> In attempts to deal with these issues, many states (for instance Kenya and India) are now embracing alternative forms of dispute resolution. As a recognition of the need to embrace alternative forms, among other treaties and internationally recognized regulatory frameworks (for example *ICC ADR Rules 2001* and *UNCITRAL Model Law on International Commercial Conciliation 2002*), the UN Charter under article 33 states that parties to a dispute shall first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. This encourages the use of different dispute resolution mechanisms other than the judicial process.

Article 48 of the Constitution of Kenya provides for the right to access justice<sup>3</sup>. The Constitution of Kenya encourages the use of ADR in administration of justice. Alternative Dispute Resolution mechanisms in Kenya are recognized and provided for by the Constitution under Article 159(2)(c).<sup>4</sup> The provision requires that in the administration of justice, proper regard be made to all existing forms of dispute resolution other than court litigation. Deployment of the alternative mechanism (alternative to the court process) is calculated towards ensuring expeditious settling of disputes, being that it does not involve complex formalities as is with the judicial process.

ADR is advocated for essentially for three reasons as discussed by Carrie Menkel-Meadow.<sup>5</sup> The first reason, she argues, is quantitative. ADR is meant to achieve faster and extra efficient resolution. The second reason is qualitative, in that ADR establishes a more tailored and party friendly

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<sup>1</sup> Muigua, K. and Kariuki, F., 2015. Alternative Dispute Resolution, Access to Justice and Development in Kenya. *Strathmore Law Journal*, 1(1), pp.1-21.

<sup>2</sup> Wangui, Grace. "Factors Influencing Performance of the Judicial System in Kenya, the Case of Delayed Court Rulings." *International Journal of Law and Policy* 1, no. 1 (2017): 64-72.

<sup>3</sup> Article 48, *Constitution of Kenya* (2010).

<sup>4</sup> Article 159(2)(c), *Constitution of Kenya* (2010).

<sup>5</sup> Carrie Menkel-Meadow; Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016.

resolution of legal disputes, laying emphasis on the possibility of future relations, rather than just dwelling on the past. The third reason is more inclined to the politics in dispute resolution, as it ensures greater party participation, diluting the role of lawyers. Carrie argues that ADR creates the ‘*let’s not have lawyers if we do not need to*’ mentality.

A common adage goes that necessity is the mother of invention. The legal world is not in any way immune. The COVID 19 Pandemic ultimately necessitated the need to consider other forms of dispute resolution that do not include actual physical in person interactions. In due time, virtual court proceedings became a thing, bringing to a halt the long tradition of physical court sessions. Online Dispute Resolution is arguably one of the best, among many others, inventions in the legal field. At inception, ODR was arguably slightly distinct from ADR.<sup>6</sup> This discourse will analyze the distinction, as it was, and as it is now, accessing whether ODR is ADR. Aziz in his article *The Settlement of disputes through Online Dispute Resolution (ODR): A Literature Review* argues that ODR differs from ADR in that different forms of ADR are integrated into a comprehensive process with several stages. Major reference is made to the article by Carrie Menkel-Meadow, the consensus being despite the unimagined benefits ODR is set to achieve in some cases, there is need to embrace the old-fashioned in person interactions, especially for us, the members of the legal profession. Selfish as it may sound, there is need to remain relevant.

### **Understanding ODR**

Knowingly or otherwise, we engage in ODR in our activities. The simplest form is the discussion and settling of issues over phone or sending documents with tracked changes and markings.<sup>7</sup> With the new digital era, ODR cannot and ought not be ignored. ODR, in layman’s language, is defined as dispute resolution which involves different aspects of the internet, or in general, the Information and Communication Technology (ICT)

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<sup>6</sup> Aziz, Tuan Nurhafiza Raja Abdul, and Nor‘Adha Abdul Hamid. "The Settlement of disputes through Online Dispute Resolution (ODR): A Literature Review." *Asian Journal of Research in Business and Management* 2, no. 4 (2020): 90-98.

<sup>7</sup> Loutocký, Pavel. "Online Dispute Resolution as an Inspiration for Contemporary Justice." *Jusletter IT. Die Zeitschrift für IT und Recht* (2019).

sector.<sup>8</sup> The rapid advancements in the ICT sector have been a major boost to the growth and recognition of ODR, not only in Kenya but globally. It would therefore be disastrous to act or actually be ignorant of these developments, more so with the continued use of ICT related services in our day to day lives. As early as in the 1990s, the emergence and continued use of the internet was predicted to eventually foresee the rise of ODR due to the possible emergence of conflicts from internet use.<sup>9</sup>

ODR is actualized in a number of ways. One such is automated negotiations which involves participation of two or more parties in a bargain, which negotiations are achieved in most cases by use of tools of e-commerce.<sup>10</sup> The process may also involve computerized intelligent software commonly referred to as autonomous agents, which help negotiate and resolve disputes. The artificial intelligent agent asks each party questions pertaining their interests and preferences and works to facilitate an efficient agreement.<sup>11</sup>

Online mediation is a second form of ODR.<sup>12</sup> The process involves mediation which is facilitated with the help of ICT advancements for instance emails and video conferences.<sup>13</sup> With more advancements in ICT, the mediator may be replaced by artificial intelligence which plays the exact role.<sup>14</sup> The third form is online arbitration, which differs from online mediation (assisted negotiation) in that the final decision, once signed in an

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<sup>8</sup> Matteucci, Giovanni. "ODR-online dispute resolution and justice, in the post Covid-19." ODR-online dispute resolution and justice, in the post Covid-19 (2020): 71-97.

<sup>9</sup> Ethan Katsh and Janet Rifkin, *Online dispute resolution* (Jossey-Bass 2001)

<sup>10</sup> Beam C & Segev A, 'Automated Negotiations: A Survey of the State of the Art', Fisher Centre for Information Technology & Management: University of California.

<sup>11</sup> Zhou, Michelle X., Gloria Mark, Jingyi Li, and Huahai Yang. "Trusting virtual agents: The effect of personality." *ACM Transactions on Interactive Intelligent Systems (TiiS)* 9, no. 2-3 (2019): 1-36.

<sup>12</sup> Kandashvili, Irakli. "Mediation and Online Dispute Resolution (odr) as an Innovative Form of Dispute Resolution." *J. Law* (2018): 94.

<sup>13</sup> ABA Taskforce on Electronic Commerce and Alternative Dispute Resolution Taskforce, *What is Online Dispute Resolution? A Guide to Consumers*, 2002

<sup>14</sup> Jacobs P 'Mediation Now and Then', Newsletter, Mediation, International Bar Association Legal Practice Division, 2007

agreement is binding. All submission of documents and evidence is effected by online means such as emails.<sup>15</sup>

Colin Rule<sup>16</sup> in response to the article by Carrie acknowledges that many of the ODR advocates presuppose that it is synonymous with the internet. Regardless of the internet slowly developing into the defining communication platform in the current era, Colin emphasizes that the less forms of digital communication such as telephones whether wired or not, fit well into the description of ODR. In his article he states that these technologies have turned out to be part of our everyday lives to an extent that we do not even notice when we make use of them.<sup>17</sup> The use of technology is now becoming a new normal. (*May be virtual courts are the new normal; or the so called 'social-distancing'; or 'working from home'*).<sup>18</sup> The article and sentiments by Colin Rule are paramount in this discourse, bearing in mind that he is the CEO of mediate.com and a co-founder of modria.com both of which provide for ODR.

The digital world is borderless. There are no limits to the ends to which one can travel. When disputes arise, forming key part of the issues is jurisdiction which like a coin has two sides. On the one side, there may be conflict on which laws apply if the conflicting parties are from different states (see *Bangura v. Washington Post*<sup>19</sup>). On the other hand, the mere fact that the online world is borderless infers that ODR may be used and is applicable in any jurisdiction.<sup>20</sup> A classical case illustration such application of ODR is *Funzi Furnitures v. UEFA*<sup>21</sup> which involved a dispute over domain name

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<sup>15</sup> Ponte L and Cavenagh T, *Cyberjustice*, 'Online Dispute Resolution for E-Commerce' Parson Prentice Hall, 2005

<sup>16</sup> Colin Rule, "Is ODR ADR?" (2016) 3 *International Journal on Online Dispute Resolution* 8-11

<sup>17</sup> *ibid*

<sup>18</sup> Carroll, Noel, and Kieran Conboy. "Normalising the "new normal": Changing tech-driven work practices under pandemic time pressure." *International Journal of Information Management* 55 (2020): 102186.

<sup>19</sup> *Bangura vs. Washington Post* [2005] O.J. NO. 3849

<sup>20</sup> Rizkiana, Rina Elsa. "The Future Of Online Dispute Resolution: Building A Framework For E-Commerce Dispute Resolution In Indonesia." *The Lawpreneurship Journal* 1, no. 2 (2021): 114-138.

<sup>21</sup> *Funzi Furnitures vs. UEFA* [Decision 710 of 2000 WIPO Arbitration and Mediation Centre]

registration. Without the digital space, settlement of this specific dispute would have proved difficult and costly considering the geographical distance between the parties and the differences in laws governing either.

In Kenya, the Constitution and other statutory framework including the Civil procedure Act all advocate for just, expeditious and affordable resolution of disputes. The laws have allowed for the use of ADR mechanisms in promoting these objectives. The Kenyan laws however do not expressly recognize the use of ODR. ODR lacks an independent legal framework (*one of the main reasons it cannot be considered a stand-alone alternative*). ODR is still clinging on ADR for recognition and validity, subjecting it to possibilities of scrutiny while at the same time evolving, conforming and blending with the existing dispute resolution mechanisms.

### **Viability of ODR as an independent dispute resolution mechanism in Kenya**

There is no existing independent legal framework governing ODR in Kenya. The lack of express legislation does not however count that much as an inhibitor to the application ODR. The Arbitration Act for instance is perceived in a number of its provisions to be advocating for other forms alternative to ODR. Section 19(a)<sup>22</sup> on party autonomy allows individual parties to conduct proceedings expeditiously where else Section 20<sup>23</sup> on the freedom to determine procedure gives room for use of ODR related procedures for instance tele-conferencing, emails or phone calls.

The Consumer Act allows that dispute resolution be in accordance with the procedures provided in law, to which ODR is not.<sup>24</sup> Just as is with the other statutory provisions, there is no sufficient legal backing in support of ODR unlike the case in UK with the Online Dispute Resolution for Consumer

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<sup>22</sup> Section 19A, Arbitration Act (1995).

<sup>23</sup> Section 20, Arbitration Act (1995).

<sup>24</sup> Muigua, Kariuki. "Utilising Alternative Dispute Resolution Mechanisms to Manage Commercial Disputes." In 1st Nairobi Centre for International Arbitration (NCIA) Alternative Dispute Resolution (ADR) National Conference, Intercontinental Hotel, Nairobi, Kenya on 5th-6th June. 2018.

Disputes and Amending Regulations (Regulations on Consumer ODR)<sup>25</sup> which applies directly to ODR. The regulatory framework must set safeguards so as to ensure justice and fairness in the use of ODR as a means of dispute resolution<sup>26</sup>.

Discussed in this discourse, ODR shares the underlying principles of ADR classified as qualitative and quantitative.<sup>27</sup> At the very best, it is to be complimentary to the court mechanisms. The rise and survival of ADR for instance is not only pegged on its recognition by the Constitution of Kenya but also on recognition of its legitimacy by the Judiciary and the establishment of institutions that dictate its procedures and applicability.

In order to be self-sustaining, ODR would require to borrow much more than the dispute resolution mechanisms from ADR. Key to its survival, ODR lacks the institutional framework that ADR has developed such as the Chartered Institute of Arbitrators and the Nairobi Centre for International Arbitration. Without such recognized institutions' outright embrace on ODR, then it would be close to impossible to create an ODR as an independent system of dispute resolution.

The digital implementation of ODR is not in itself self-sufficient. Forms of ODR that have put into use the developments in technology in dispute resolution still largely depend on human supervision and regulation. The divorce platform developed by the Dutch Rechtswijzer for instance is proposed to integrate aspects of the computer design and human interfaces.<sup>28</sup> Carrie argues that the integration of human and computer design is a relevant future for ODR. However, from the institutions' approach, ODR involving

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<sup>25</sup> Regulation on Consumer ODR, Regulation (EC) No 2006/2004 and Directive 2009/22/EC

<sup>26</sup> J. Gachie, 'An Evaluation of The Need for Regulation of Online Dispute Resolution (ODR) In Kenya, LLM Thesis, University of Nairobi, November 2016.

<sup>27</sup> Carrie Menkel-Meadow; Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016.

<sup>28</sup> De la Rosa, Fernando Esteban, and John Zeleznikow. "Making intelligent online dispute resolution tools available to self-represented litigants in the public justice system: towards and ethical use of the ai technology in the administration of justice." In Proceedings of the Eighteenth International Conference on Artificial Intelligence and Law, pp. 195-199. 2021.

semi-autonomous programs thereby diminishing the role played by humans may seem inopportune. Being that the institutions are a source of livelihood for its members, more so the lawyers, suggesting to replace them with enhanced technology will result to reluctance in embracing ODR.

ADR and ODR suffer the same fate when it comes to enforceability. Enforceability of decisions arising out of ODR settlements is in itself difficult.<sup>29</sup> Legitimacy of ADR is pegged on recognition by the courts as under Article 159 of the constitution of Kenya. ADR therefore turns to the court for enforcement of its decisions for lack of its own enforcement mechanisms.<sup>30</sup> The assumption therefore would be that any enforcements on the decisions arrived at through ODR be achieved by the courts, which beats the whole logic of not in the first instance seeking to use alternative forms of dispute resolution.

Evidently, ODR methods cannot be utilized where technology has not developed. Its practicality for this reason is questionable more so with regard to the entire country's proficiency with the use of technology.<sup>31</sup> In as much as change is inevitable, acceptance may prove difficult. ODR, considering its much reliance on ADR cannot be a stand-alone alternative.<sup>32</sup>

### **Redefining ODR. Why ODR is ADR**

An underlying notion, which considerably is turning out to be a myth is that ODR is different and distinct from ADR. Currently, there is little distinction between ODR and ADR. As a foundation to this discourse, it is paramount to note that ODR heavily borrows from existing forms of ADR.<sup>33</sup> The forms discussed above wherein ODR is employed are the same exact mechanisms considered relevant in ADR. As Mercedes and Gonzalez put it, ODR is as a

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<sup>29</sup> Zheng, Jie. "Enforcement of the ODR Outcomes." In *Online Resolution of E-commerce Disputes*, pp. 281-344. Springer, Cham, 2020.

<sup>30</sup> Ahmed, Masood. "Route 66: enforcing arbitral awards." (2020).

<sup>31</sup> Friedman G H, 'Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities', 708

<sup>32</sup> Carrie Menkel-Meadow; Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016.

<sup>33</sup> Zheng, Jie. "The Development of ODR in E-Commerce Transactions." In *Online Resolution of E-commerce Disputes*, pp. 33-62. Springer, Cham, 2020.



result of combined enhancements in ICT and ADR<sup>34</sup>. The article by Mercedes and Gonzalez did at the time take cognizance of the use of electronic means of communication or admitting audiences through video conferences by the courts in exercise of their everyday duties, referring to them as cyber-courts<sup>35</sup>. Notably, they were not considered as alternatives, but just the courts using new ICT services to undertake their duties. It therefore becomes difficult to comprehend why we would consider ODR distinct from, or an alternative to ADR.

The main distinction between ODR and ADR is the use of ICT.<sup>36</sup> ODR was birthed and has since developed due to innovations in technology. The use of ICT by the Kenyan judicial systems as a means to promoting the judicial processes and ensuring that the court processes are not interfered with kills the strongest foundational basis for ODR. The COVID 19 pandemic brought to light the efficiency of telecommunications in ensuring effective running of the court activities. The upfront is the continued use of ICT services by the courts in carrying out its mandate, impacting on the traditional understanding of what ODR is.

ODR is an aid to the development and continued use of ADR. The 'redefined' meaning of ADR is premised on the notions that ODR is ADR, and that ODR is a means to an end, or simply, an opportunity for ADR to expand. For instance, communication between parties during dispute resolution is relevant, hence there is need to identify effective modes of communication. ODR has simply enhanced communication between parties through ICT hence promoting different forms of ADR.

ODR lacks an independent regulatory framework which therefore poses questions on its legitimacy.<sup>37</sup> Application of ODR in dispute resolution is

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<sup>34</sup> Mercedes M A and Gonzalez N M, 'Feasibility Analysis of Online Dispute Resolution in Developing Countries', 44:1 *Inter-American Law Review* 2012, 44.

<sup>35</sup> Mercedes M A and Gonzalez N M, 'Feasibility Analysis of Online Dispute Resolution in Developing Countries', 44.

<sup>36</sup> Zheng, Jie. "The Development of ODR in E-Commerce Transactions." In *Online Resolution of E-commerce Disputes*, pp. 33-62. Springer, Cham, 2020.

<sup>37</sup> Carrie Menkel-Meadow; Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016.

currently pegged on the Constitution's reference to alternative dispute resolution mechanisms under Article 159(2)(c).<sup>38</sup> Most of the advocates of ODR however find no fault in it lacking regulatory framework or legislation. Schultz in an article<sup>39</sup> highlights that advocating for control or government intervention or regulation is felt to be a creation of an obstacle to its development. In the article, he asserts that the best regulation is no regulation. ODR may not have a specific set of legislation or set rules but its borrowing and use of ADR mechanisms makes it subject to the rules governing the use of ADR. Considerably, even with legislation on ODR, there is little or no distinction between key aspects of ADR and ODR. The England Regulation on Consumer ODR<sup>40</sup> is an example of existing ODR framework that so much mirrors ADR.

The place of ODR as an alternative has since been lost. ODR is just what the words in it mean. The settling of disputes virtually(online). The court's use of virtual platforms and ADR's use of virtual platforms are both forms of ODR. However, the traditional understanding of ODR (being that it is an extrapolation from ADR) is to be more likened to ADR.

### **The impact of redefinition**

The traditional reference of ODR was to a system majorly suitable to settling disputes arising from online interactions. The objective at the time of its inception was to settle disputes that cannot be amicably settled in person due to their complexity.<sup>41</sup> Discussed herein, this ODR system has made major reliance on ADR for its development and survival. However, with the redefined meaning, the term ODR now makes reference to not only the application of ADR mechanisms online but to the general use of virtual platforms and developments in ICT to facilitate dispute resolution.<sup>42</sup>

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<sup>38</sup> Article 159(2)(c), *Constitution of Kenya* (2010).

<sup>39</sup> Schultz T, 'Does Online Dispute Resolution Need Governmental Intervention? A Case for Architectures of Control and Trust', *Journal of Law and Technology*, 6:1 2004, 106.

<sup>40</sup> Regulation on Consumer ODR, Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

<sup>41</sup> Nadler J 'Electronically-Mediated Dispute Resolution and E-Commerce.' *Negotiation Journal* 17.4 (2001), 33-347

<sup>42</sup> Carrie Menkel-Meadow; Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016.

Appreciating this new meaning addresses two of the main obstacles that the traditional ODR was faced with. The first is on regulatory framework. Unlike in England, this discourse has established that Kenya has no express legislation dictating on ODR despite having a 2030 vision on digitization of major aspects of the economy. Embracing the redefined meaning that ODR is nothing new but an extrapolation of the existing means through the use of ICT services will be an acknowledgement that ODR is actually regulated through the existing regulated methods of dispute resolution. The existing methods already have a defined procedure that has been acceptable and employed widely.

The second challenge addressed is on culture and the traditional practice. The society in which we live in is slow and adamant in accepting change. The idea of using robots (as any layman would put it) in dispute resolution has not well registered with many of our citizens. That aside, the virtual world has been used a number of times to defraud netizens and the levels of illiteracy are somewhat alarming. If ODR is nothing new but an enhancement of the existing, then it is a better idea to sell.

### **The legal profession's opinion on ODR as ADR**

ODR developed mostly by members outside the legal profession where else ADR was developed by academics, lawyers, the government and other interested parties in the legal profession.<sup>43</sup> The focus by the private sector while developing ODR was commercial. Technology moves fast, is expensive to build and maintain hence entrepreneurs keen to reap the most are the top advocates of ODR. What therefore is the role of the legal profession? Or what ought be their role?

The role played by members of the legal profession, more so lawyers is imperative in conflict management more so in advocacy for the use of the various forms of dispute resolution mechanisms. With the recognition of ADR mechanisms in our Constitution, lawyers are presented with an

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<sup>43</sup> Sorabji, John. "Justice Without Lawyers." In *New Pathways to Civil Justice in Europe*, pp. 221-242. Springer, Cham, 2021.

opportunity to get involved in conflict resolution processes.<sup>44</sup> Courts, in a bid to reduce backlog refer some cases to ADR, allowing lawyers to act as representatives, negotiators and generally explore the ADR platform.

Despite there being no independent legal framework addressing ODR, Article 159 of the constitution introduces different forms of ADR that every advocate should embrace. Viewing ODR as a separate form of dispute resolution renders the role of lawyers in administration of justice insignificant.<sup>45</sup> ODR embraces all forms while using the online platform. Most of the methods used e-commercial disputes developed by the ICT sector where technology serves as a third party in conflict resolution. For this reasoning lawyers have no part to play in it.

ODR as ADR allows lawyers to carry out sessions online through video conferencing, draft legal opinions online without having to worry about the distance between them and their clients.<sup>46</sup> Further ODR creates online arbitrators, online judges and mediators which positions are best filled with persons in the legal profession.

Setting of standards and regulations governing ODR would be a step towards improving the involvement of advocates in ODR processes. Institutional implementation of these set standards would provide lawyers with a framework of operation in the ADR arena.

Embracing ODR as a form of ADR allows lawyers involved to create awareness to their clients on the alternative forms of solving disputes as provided for under Article 159(3) of the constitution of Kenya.<sup>47</sup> This way the lawyers' role in administration of justice will remain relevant and significant.

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<sup>44</sup> Muigua K., *The Lawyer as a Negotiator, Mediator and Peacemaker in Kenya*. (2015)

<sup>45</sup> Carrie Menkel-Meadow; *Is ODR ADR? Reflections of an ADR Founder from 15th ODR Conference, The Hague, The Netherlands, 22-23 May 2016*.

<sup>46</sup> Goodmann J, *The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber Mediation Websites*. (2003)

<sup>47</sup> Article 159, Constitution of Kenya (2010).

## **Conclusion**

ODR has no means of developing without reliance on conventional methods. Its proponents are wrong to want to consider it separate and distinct from ADR. With the continued use of ICT related services in dispute settlement, the backbone of ODR has since been destroyed, necessitating the need to redefine what is meant by it. ODR is a means to achieving reliable dispute resolution mechanisms. It does not develop any new structures or methods for dispute settlement but borrows from the existing and attempts to improve on them.

ODR consequently faces almost similar challenges to those faced by ADR. One of such, which is a key aspect in dispute resolution is on enforcement of decisions. There is no practical way demonstrated on how decisions arrived at after a successful ODR session are enforced. In furtherance, reliance on the courts by both ADR and ODR for enforcement of decisions is enough justification that none of the two can comprehensively be considered a stand-alone alternative. The root of the problem is the reliance of ADR on the courts for recognition. The constitution ought to have independently recognized ADR without much reliance on the existing judicial court systems.

The redefinition of ODR not only addresses key loopholes in the system (that would have otherwise remained resolved) but also weakens a number of its strengths, the fundamental one being jurisdiction. In a number of ways, the traditional meaning still has its relevance in the whole system.

As a member of the legal profession, ODR (whether in its traditional form or in the redefined meaning) evidently denies us a number of privileges, the most obvious being commercial. It may sound selfish to not advocate for ODR on this basis alone. Carrie Menkel-Meadow in her article is similarly inclined to sticking with the traditional old-fashioned way of in person dispute resolution methods. True to her words, ODR will work for some people in some cases but let us not forget our existing working systems.

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