

*Appropriate Dispute Resolution (ADR) and True Access to Justice: Repairing Relationships, Acknowledging Mutual Humanity and Restoring Social Harmony*

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**Kariuki Muigua**

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## **Appropriate Dispute Resolution (ADR) and Access to Justice?: Repairing Relationships, Acknowledging Mutual Humanity and Restoring Social Harmony**

**Kariuki Muigua\***

### **Abstract**

*This paper critically discusses how Appropriate Dispute Resolution (ADR) can be harnessed to foster true access to justice. The paper conceptualizes ADR. It notes that ADR provides effective mechanisms and remedies towards ensuring true access to justice. The paper explores various ADR strategies and their role in fostering true access to justice. Despite its efficacy in the access to justice discourse, the paper notes that several challenges undermine the pursuit of true access to justice through ADR. In light of such concerns, the paper examines how ADR can be effectively embraced towards true access to justice by repairing relationships, acknowledging mutual humanity and restoring social harmony.*

### **1.0 Introduction**

Access to justice is a fundamental tenet of the rule of law and driver of Sustainable Development. Access to justice has been defined as the ability of all individuals to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with international, regional and national human rights standards<sup>1</sup>. Access to justice has also been defined as the ability of all citizens to resolve their disputes, prevent violation of their fundamental rights and freedoms, and to use justice as a platform to participate in their economies and societies<sup>2</sup>. It has been observed that at its core, access to justice envisages the ability of citizens to exercise their rights through the availability of adequate, effective, and prompt reparation/damages for harm suffered<sup>3</sup>. Further, it has been pointed out that requirements for effective access to justice include sound legal frameworks, legal protection, legal awareness and knowledge, legal aid and representation, credible formal and informal institutions, fair procedure and adjudication and enforceable solutions among others<sup>4</sup>.

It has been argued that access to justice is a matter of supply and demand since it involves empowering people to seek it while also securing the mechanisms to deliver it which can be both formal and informal<sup>5</sup>.

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\* PhD in Law (Nrb), SC, FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [June, 2026].

<sup>1</sup> Defining Access to Justice., Available at <https://thecommonwealth.org/publications/developing-people-centred-access-justice-strategy-blueprint-social-transformation-kenya-and-beyond/understanding-access-justice> (Accessed on 14/06/2026)

<sup>2</sup> Ibid

<sup>3</sup> Scottish Human Rights Commission., 'Access to Justice for Everyone' Available at <https://www.scottishhumanrights.com/media/2496/access-to-justice-for-everyone-a-discussion-paper.pdf> (Accessed on 14/06/2026)

<sup>4</sup> Gutterman. A. S., 'What is Access to Justice?' Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4050575](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4050575) (Accessed on 14/06/2026)

<sup>5</sup> International Development Law Organization., 'Access to Justice' Available at <https://www.idlo.int/what-we-do/access-justice> (Accessed on 14/06/2026)

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According to the United Nations, access to justice is a basic principle of the rule of law which enables people to have their voice heard, exercise their fundamental rights and freedoms, challenge discrimination and hold decision-makers accountable<sup>6</sup>. Further, it has been argued that strengthening access to justice ensures fair, equitable, inclusive, transparent and democratic societies that uphold the rule of law and protect human rights towards Sustainable Development<sup>7</sup>. Strengthening access to justice ensures the availability of efficient, effective and responsive justice systems that can empower citizens to exercise their rights and freedoms while also ensuring thriving and equitable economic, social, environmental and governance systems that can foster Sustainable Development<sup>8</sup>. In addition, access to justice is key in ensuring that no one is left behind in the quest for Sustainable Development by placing equity, fairness, justice and human rights at the core of all decision-making processes<sup>9</sup>.

The United Nations *2030 Agenda for Sustainable Development*<sup>10</sup> recognises access to justice as a fundamental pillar of the rule of law and a driver of Sustainable Development. Under the Agenda, Sustainable Development Goal (SDG) 16 seeks to promote peaceful and inclusive societies for Sustainable Development, *provide access to justice for all* and build effective, accountable and inclusive institutions at all levels<sup>11</sup> (Emphasis added). In particular, SDG 16.3 seeks to promote the rule of law at the national and international levels and *ensure equal access to justice for all* (Emphasis added)<sup>12</sup>.

Bolstering access to justice is therefore necessary in the pursuit of Sustainable Development. However, it has been observed that many countries are struggling to establish functional, timely, affordable, responsive and credible justice systems undermining true access to justice<sup>13</sup>. In particular, since most countries rely on courts in promoting access to justice, challenges such as high legal costs, bureaucracy, complex legal procedures, illiteracy, corruption, distance from formal courts, backlog of cases in courts and lack of legal knowhow undermine true access to justice through court processes<sup>14</sup>. In light of these concerns, it is necessary to promote true access to justice towards advancing the rule of law and Sustainable Development.

This paper critically discusses how Appropriate Dispute Resolution (ADR) can be harnessed to foster true access to justice. The paper conceptualizes ADR. It notes that ADR provides effective mechanisms and remedies towards ensuring true access to justice. The paper explores various ADR strategies and their role in fostering true access to justice. Despite its efficacy in the access to justice discourse, the paper

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<sup>6</sup> United Nations., 'Access to Justice' Available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (Accessed on 14/06/2026)

<sup>7</sup> Organisation for Economic Co-operation and Development., 'Access to Justice' Available at <https://www.oecd.org/en/topics/sub-issues/access-to-justice.html> (Accessed on 14/06/2026)

<sup>8</sup> Organisation for Economic Co-operation and Development., 'Access to Justice' Op Cit

<sup>9</sup> Ibid

<sup>10</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 14/06/2026)

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>14</sup> Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," *I Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

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notes that several challenges undermine the pursuit of true access to justice through ADR. In light of such concerns, the paper examines how ADR can be effectively embraced towards true access to justice by repairing relationships, acknowledging mutual humanity and restoring social harmony.

## **2.0 Role of Appropriate Dispute Resolution (ADR) in Access to Justice**

With countries facing challenges in establishing functional, timely, affordable, responsive and credible justice systems, there have been calls to embrace more appropriate techniques in order to ensure true access to justice towards Sustainable Development<sup>15</sup>. Due to underlying challenges in court processes, it has been observed that many citizens have lost faith in the ability of their nations' courts to guarantee effective access to justice<sup>16</sup>. Failure to ensure effective, expeditious and affordable access to justice can lead to differences and disagreements accelerating into broader conflicts especially in fragile contexts<sup>17</sup>.

The notion of Appropriate Dispute Resolution (ADR) refers to the suitability of mechanisms such as negotiation, mediation, arbitration, conciliation, adjudication and Traditional Dispute Resolution Mechanisms (TDRMs) in fostering true access to justice<sup>18</sup>. It has been argued that although these processes are commonly referred to as Alternative Dispute Resolution, there is need to embrace them as '*appropriate*' and not '*alternative*' due to their efficacy and appropriateness in ensuring access to justice<sup>19</sup>. The use of the term '*alternative*' to describe ADR mechanisms is misleading since it may be understood to imply that these mechanisms are second-best to litigation which is not the case<sup>20</sup>. It has been observed that in many contexts, ADR techniques are considered as '*appropriate*' and not '*alternative*' in conflict management due to their key attributes and advantages<sup>21</sup>.

ADR mechanisms provide numerous advantages which make them an appropriate tool in fostering access to justice. For example, most ADR mechanisms possess key attributes including informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes making ADR a viable and appropriate tool in enhancing access to justice<sup>22</sup>. In particular, it has been observed that ADR processes such as negotiation, mediation and conciliation allow for more creative and collaborative solutions than those available in traditional litigation and are therefore '*appropriate*' in dispensing justice<sup>23</sup>. By fostering collaboration, ADR processes including negotiation, mediation and conciliation allow all parties involved in a conflict to work together towards resolving the underlying conflict through active listening and respectful communication<sup>24</sup>. It has been observed that collaboration

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<sup>15</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution' Available at <https://kmco.co.ke/wp-content/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Moving-from-Alternative-to-Appropriate-Dispute-Resolution-I.pdf> (Accessed on 15/06/2026)

<sup>19</sup> Ibid

<sup>20</sup> P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CI Arb, London, 2002), pp. 50-52

<sup>21</sup> Ibid

<sup>22</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

<sup>23</sup> JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 15/06/2026)

<sup>24</sup> Ronquillo. Y., Ellis. V., & Toney-Butler. T., 'Conflict Management' Available at <https://www.ncbi.nlm.nih.gov/books/NBK470432/> (Accessed on 15/06/2026)

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encourages parties in conflict to work through disagreements through empathy and listening towards mutually beneficial and long-lasting solutions<sup>25</sup>. By enabling collaboration and cooperation, ADR processes allow parties in conflict to reach satisfactory solutions and mutually beneficial solutions thus repairing and strengthening relationships in the process<sup>26</sup>.

From the foregoing, it emerges that ADR processes provide numerous advantages making them appropriate in dispensing justice. It has been observed that with the exception of binding arbitration, the goal of ADR is to provide a forum for disputing parties to work towards a voluntary, collaborative and consensual agreement, as opposed to having a judge or other authority impose an outcome upon them<sup>27</sup>. The United Nations observes that ADR provides a wide range of options and possibilities that parties may choose to use, with the intent of removing a potential source of conflict, preventing its escalation and finding the way back to a constructive cooperative and a potentially productive future working relationship<sup>28</sup>. Further, it has been observed that ADR processes provide a forum for parties to manage their conflicts and disputes in non-confrontational manner thus fostering true access to justice<sup>29</sup>.

Embracing ADR is therefore necessary towards true access to justice. It has been observed that in order to ensure true access to justice: citizens must believe that decision-making processes take their views into account<sup>30</sup>; decision-making processes should be neutral and all opinions must be granted equal consideration without favoritism<sup>31</sup>; and citizens must trust justice systems and their representatives<sup>32</sup>. However, it has been observed that since most citizens have less access to courts, while the courts themselves are excessively bureaucratic, inefficient, and not transparent, it may not be possible to guarantee true access to justice through litigation<sup>33</sup>. In particular, the adversarial nature of litigation can damage relationships and undermine social harmony<sup>34</sup>. Despite the appropriateness of ADR in fostering access to justice, these mechanisms have been largely disregarded in favour of formal justice systems hence being described as 'alternative'. By being labelled as 'alternative', ADR processes have largely been

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<sup>25</sup> Miroslovov. M., 'Mastering The Collaborating Conflict Style In 2024' Available at <https://www.officern.com/blog/collaborating-conflict-style/> (Accessed on 15/06/2026)

<sup>26</sup> Collaborating Conflict Resolution Style: Everything You Need to Know., Available at <https://conflict-resolution-training.com/blog/collaborative-conflict-resolution-style/> (Accessed on 15/06/2026)

<sup>27</sup> Alternative Dispute Resolution., Available at <https://www.dol.gov/general/topic/labor-relations/adr#:~:text=Types%20of%20ADR%20include%20arbitration,%2C%20neutral%20factfinding%2C%20and%20Ominitrials.> (Accessed on 15/06/2026)

<sup>28</sup> United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Available at [https://www.un.org/waterforlifedecade/water\\_cooperation\\_2013/pdf/adr\\_background\\_paper.pdf](https://www.un.org/waterforlifedecade/water_cooperation_2013/pdf/adr_background_paper.pdf) (Accessed on 15/06/2026)

<sup>29</sup> Ibid

<sup>30</sup> Davis. W., & Turku. H., 'Access to Justice and Alternative Dispute Resolution' Available at <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1614&context=jdr> (Accessed on 15/06/2026)

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Ogbaharya. D., 'Alternative Dispute Resolution (ADR) in Sub-Saharan Africa: The Role of Customary Systems of Conflict Resolution (CSCR).' Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1612865](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1612865) (Accessed on 15/06/2026)

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underutilized undermining true access to justice<sup>35</sup>. It is therefore necessary to widely embrace and utilise ADR mechanisms towards true access to justice.

### **3.0 Harnessing Appropriate Dispute Resolution towards True Access to Justice**

ADR provides a viable and appropriate forum towards true access to justice. ADR techniques including negotiation, mediation, conciliation, arbitration and TDRMs provide several benefits such as informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes making ADR a viable and appropriate tool in enhancing access to justice<sup>36</sup>. In addition, by promoting collaboration, ADR techniques including negotiation, mediation and conciliation can foster mutually satisfactory and long-lasting solutions<sup>37</sup>.

Embracing ADR for true access to justice involves repairing relationships. It has been observed that due to their focus on collaboration and cooperation, ADR techniques such as negotiation, mediation and conciliation improve communication between parties in conflict and provides a forum for creative solutions to disputes that better meet the needs of the parties<sup>38</sup>. Consequently, these techniques are appropriate in repairing, preserving and strengthening relationships and building and sustaining long-term peace<sup>39</sup>. It has been correctly observed that ADR techniques can be more effective and acceptable in most contexts since they form part of the traditional community forms of conflict resolution<sup>40</sup>. For example, ADR techniques fit comfortably within the concept of justice in Africa, particularly its core values of reconciliation and harmony<sup>41</sup>. Therefore, by focusing on reconciliation, ADR allow the parties to resolve their issues while maintaining a complex relationship<sup>42</sup>. It has been observed that this form of conflict resolution has the potential to preserve relationships, treating the episode as a temporary disruption rather than a break of the relationship<sup>43</sup>. Embracing ADR is therefore necessary in repairing relationships towards true access to justice.

It is also necessary to utilise ADR towards true access to justice by acknowledging mutual humanity. For example, it has been observed that in the African context, the philosophy of *Ubuntu* is usually applied in conflict management with humanness, peace, justice, harmony and reconciliation at the centre of the decision-making process<sup>44</sup>. In order to acknowledge mutual humanity, conflict management in African societies is aimed at creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and gives prominence to communal needs over individual needs in line with the African philosophy of *Ubuntu/Utu*<sup>45</sup>. This philosophy emphasises humanness, harmony and togetherness over individual

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<sup>35</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>36</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>37</sup> JAMS ADR., 'What is ADR' Op Cit

<sup>38</sup> Alternative Dispute Resolution., Op Cit

<sup>39</sup> Muigua. K., 'Towards Effective Peacebuilding and Conflict Management in Kenya.' Available at <https://kmco.co.ke/wp-content/uploads/2021/05/Towards-Peacebuilding-and-Conflict-Management-in-Kenya.docx-Kariuiki-Muigua-MAY-2021x.pdf> (Accessed on 15/06/2026)

<sup>40</sup> Davis. W., & Turku. H., 'Access to Justice and Alternative Dispute Resolution' Op Cit

<sup>41</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>42</sup> Davis. W., & Turku. H., 'Access to Justice and Alternative Dispute Resolution' Op Cit

<sup>43</sup> Ibid

<sup>44</sup> Batchelor. B., Chetty. N., & Makore. S., 'Incorporating Afrocentric Alternative Dispute Resolution in South Africa's Clinical Legal Education' Available at <https://www.saflii.org/za/journals/LDD/2021/17.pdf> (Accessed on 15/06/2026)

<sup>45</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

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interests<sup>46</sup>. It has been observed that ADR techniques including negotiation, mediation, conciliation and TDRMs honour the spirit of *Ubuntu* by giving prominence to cooperation, reconciliation, harmony, and peaceful co-existence among individuals and within communities<sup>47</sup>. Embracing these techniques is therefore necessary in acknowledging mutual humanity towards true access to justice.

Utilising ADR for true access to justice also involves restoring social harmony. ADR techniques such as negotiation, mediation and conciliation are able to restore social harmony by enabling parties in conflict to focus on common ground rather than who is right or wrong in a conflict<sup>48</sup>. These mechanisms are able to address root causes of conflicts and disputes thus preserving and strengthening relationships and ensuring peaceful co-existence among individuals and within communities towards social harmony<sup>49</sup>.

#### **4.0 Conclusion**

ADR is an appropriate tool towards true access to justice. It is imperative to harness ADR by repairing relationships, acknowledging mutual humanity and restoring social harmony in order to promote true access to justice for Sustainable Development.

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<sup>46</sup> Ibid

<sup>47</sup> Motsisi. M., 'Mediation & Ubuntu' Available at <https://www.mmatheomotsisi.com/mediation-ubuntu/#:~:text=Ubuntu%20as%20the%20Primeval%20Model,promotes%20genuine%20trust%20and%20openness> (Accessed on 15/06/2026)

<sup>48</sup> Mediation Can Maintain Harmony at Various Stages of a Case., Available at <https://www.brickergraydon.com/insights/publications/Mediation-can-maintain-harmony-at-various-stages-of-a-case> (Accessed on 15/06/2026)

<sup>49</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition., 2017

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