

Appropriate Dispute Resolution and Access to Justice: Integrating Traditional, Community-based Practices with Modernized Statutory Frameworks

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Appropriate Dispute Resolution and Access to Justice?: Integrating Traditional, Community-based Practices with Modernized Statutory Frameworks

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Abstract

This paper discusses how the concept of Appropriate Dispute Resolution (ADR) can be effectively harnessed for enhanced access to justice. The paper posits that with countries all over the world struggling to establish effective, affordable, accessible and responsive justice systems, ADR provides techniques and solutions that can bolster access to justice at all levels. In particular, the paper notes that traditional and community-based justice systems provide an effective platform for enhanced access to justice through ADR. It discusses how traditional and community-based practices can strengthen access to justice. The paper also identifies some of the key challenges facing traditional and community-based justice systems. In addition, in order to strengthen access to justice through ADR, the paper suggests how traditional and community-based practices can be effectively integrated with modernized statutory frameworks.

1.0 Introduction

Access to justice has been identified as a cornerstone of democracy, the rule of law and Sustainable Development¹. It has been observed that access to justice focuses on the ability of every person to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards². In addition, access to justice also envisages the ability of citizens to exercise their rights through the availability of adequate, effective, and prompt reparation/damages for harm suffered³. The core 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 others⁴.

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,

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¹ Organisation for Economic Co-operation and Development., 'Toolkit for Access to Justice and People-Centred Justice Systems' Available at https://www.oecd.org/en/publications/toolkit-for-access-to-justice-and-people-centred-justice-systems_aecf7f78-en.html (Accessed on 25/08/2026)

² Gutterman. A.S., 'What is Access to Justice?' Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4050575 (Accessed on 25/08/2026)

³ 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 25/08/2026)

⁴ Gutterman. A.S., 'What is Access to Justice?' Op Cit

challenge discrimination and hold decision-makers accountable⁵. In addition, it has been observed that access to justice plays crucial role in advancing the rule of law, ensuring respect of democratic values and principles, and promoting inclusive, fair and equitable societies⁶. Efficient, effective and responsive justice systems 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 Development⁷. Enhanced access to justice has also been identified as a key platform towards 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 processes⁸.

Despite its vital role in promoting democracy, the rule of law, human rights and Sustainable Development, it has been observed that the justice needs of billions of people all over the world are not adequately and effectively met⁹. In particular, due to shortcomings in legal, policy and institutional frameworks, most people cannot obtain justice for everyday problems, are excluded from the opportunity the law provides, and live in extreme conditions of injustice¹⁰. Further, it has been observed that millions of people all over the world experience legal needs and justice problems every day, yet, too often, justice systems remain complex, fragmented, or out of reach¹¹. In light of these concerns, there have been calls to embrace appropriate, accessible, affordable and responsive justice systems in order to promote human rights, democracy, the rule of law and Sustainable Development¹².

This paper discusses how the concept of Appropriate Dispute Resolution (ADR) can be effectively harnessed for enhanced access to justice. The paper posits that with countries all over the world struggling to establish effective, affordable, accessible and responsive justice systems, ADR provides techniques and solutions that can bolster access to justice at all levels. In particular, the paper notes that traditional and community-based justice systems provide an effective platform for enhanced access to justice through ADR. It discusses how traditional and community-based practices can strengthen access to justice. The paper also identifies some of the key challenges facing traditional and community-based justice systems. In addition, in order to strengthen access

⁵ 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 25/08/2026)

⁶ 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 25/08/2026)

⁷ Ibid

⁸ Ibid

⁹ United Nations Environment Programme., 'Addressing Justice and Sustainable Development' Available at <https://www.unep.org/news-and-stories/story/addressing-justice-and-sustainable-development> (Accessed on 25/08/2026)

¹⁰ Ibid

¹¹ Organisation for Economic Co-operation and Development., 'Toolkit for Access to Justice and People-Centred Justice Systems' Op Cit

¹² Organisation for Economic Co-operation and Development., 'Access to justice' Op Cit

to justice through ADR, the paper suggests how traditional and community-based practices can be effectively integrated with modernized statutory frameworks.

2.0 Appropriate Dispute Resolution and Access to Justice: Promises and Pitfalls

In order to strengthen access to justice for democracy, human rights, and Sustainable Development, it has been observed that some techniques can ensure that justice systems are accessible, affordable, responsive and effective¹³. For example, processes such as negotiation, mediation, arbitration, conciliation, adjudication and Traditional Dispute Resolution Mechanisms (TDRMs) are considered appropriate in the access to justice discourse¹⁴. Despite being described as ‘*alternative*’, these processes contain several key features and advantages which ensure their appropriateness in delivering justice for all. For example, processes such as negotiation, mediation, conciliation and TDRMs can ensure appropriate justice systems which ensure procedural flexibility, a broad range of remedial options, and a focus on individualized justice¹⁵. These processes also provide for more creative and collaborative solutions than those available through traditional litigation thus ensuring appropriate and effective justice¹⁶. 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 thus ensuring long-term and sustainable outcomes¹⁷.

Harnessing processes such as negotiation, mediation, arbitration, conciliation, adjudication and TDRMs is therefore key towards strengthening access to justice. These processes contain several attributes including informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes¹⁸. These features are appropriate in strengthening access to justice. In particular, by encouraging collaboration, ADR processes such as negotiation, mediation and conciliation enable parties to design mutually satisfactory outcomes that ensure that the root causes of conflicts are addressed therefore minimising the likelihood of

¹³ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Glenwood Publishers Limited, 2015

¹⁴ 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-1.pdf> (Accessed on 25/08/2026)

¹⁵ Main. T., ‘ADR: The New Equity.’ Available at https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf (Accessed on 25/08/2026)

¹⁶ JAMS ADR., ‘What is ADR’ Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 25/08/2026)

¹⁷ 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%20minitrials.> (Accessed on 25/08/2026)

¹⁸ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Op Cit

disagreements and disputes reemerging in future¹⁹. Further, the flexibility of ADR mechanisms also allow parties to tailor conflict management to their specific needs and develop creative solutions that take into account their unique circumstances²⁰.

In particular, traditional and community-based practices provide effective, accessible and appropriate solutions that can enhance access to justice for vulnerable and marginalized individuals and communities. For example, it has been observed that traditional, customary and community-based justice systems resonate more with local populations and are therefore well accepted and effective in providing a sense of justice and restoring community relationships²¹. In most contexts, traditional and community-based access to justice practices are often more accessible, responsive and affordable than formal justice systems therefore making them an appropriate tool in enhancing access to justice²². In addition, it has been correctly observed that since traditional, customary and community-based justice systems are closely tied to their respective communities and are mostly non-institutionalized, these processes are cost-effective and more affordable when compared to formal systems²³.

Traditional and community-based practices play an important role in strengthening access to justice in various parts of the world. For instance, it has been observed that traditional justice systems are regarded as an essential element of the cultural heritage of African communities, embodying unique philosophies, values, rituals, and practices that have historically played a crucial role in preventing and resolving conflicts and fostering peace, harmony and community cohesion²⁴. In the African context, traditional and community-based practices are considered appropriate in strengthening access to justice since they emphasize cooperation, reconciliation, communitarism, strong group coherence, social obligations, consensus-based decision-making, social conformity, and strong social sanctions in accordance with the spirit of conflict management inherent in African communities²⁵.

¹⁹ JAMS ADR., 'What is ADR' Op Cit

²⁰ Benefits of Alternative Dispute Resolution., Available at https://rcmonlinecollege.co.ke/lessons/5-6-benefits-of-alternative-dispute-resolution-2/?srsltid=AfmBOoqdWKPN9Axz_0w_W_xsZgLT7UiByb3arOzi2nwjcW5brIzUhJYBb (Accessed on 25/08/2026)

²¹ Traditional Justice Systems., Available at <https://gsdrc.org/topic-guides/transitional-justice/concepts-and-mechanisms/mechanisms/traditional-justice-systems/> (Accessed on 25/08/2026)

²² Judiciary of Kenya., 'Promoting Alternative Justice Systems (AJS)' Available at <https://judiciary.go.ke/promoting-alternative-justice-systems-ajs/> (Accessed on 25/08/2026)

²³ Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Available at <https://judiciary.go.ke/download/alternative-justice-systems-baseline-policy-and-policy-framework/> (Accessed on 25/08/2026)

²⁴ Olawale. F.E., Hooi. K.Y., & Balakrishnan. K.S., 'The dynamics of African traditional justice systems: Perspectives and prospective' *African Security Review.*, Volume 33, Issue 3 (2024)

²⁵ Kariuki. F., 'African Traditional Justice Systems' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/African-Traditional-Justice-Systems.pdf> (Accessed on 25/08/2026)

Utilising traditional and community-based practices is therefore a vital approach towards enhancing access to justice through ADR especially in Africa and the Global South where millions of people face challenges in accessing justice. For example, it has been observed that these processes are highly accepted among indigenous peoples and local communities in Africa and the Global South since they are usually conducted in local languages, are easily accessible thus bringing justice closer to the people, they focus on restorative justice at the expense of retribution, and are conducted by respected institutions including the council of elders²⁶. Since they resonate well with indigenous and local communities, traditional and community-based practices are locally acceptable with compliance rates being high²⁷. These techniques can therefore promote accessible, timely, affordable, appropriate, responsive and culturally-sensitive approach towards justice²⁸.

However, despite their vital role in improving access to justice for vulnerable and marginalized populations, traditional and community-based justice systems face several challenges including lack of recognition in some countries²⁹. In addition, without effective regulation, traditional and community-based practices can perpetuate human rights violations. For example, it has been observed that these processes usually demonstrate ethnic, religious, generational and gender hierarchies and divisions at the local level, which can limit their effectiveness and perpetuate inequalities and injustices³⁰. Consequently, there is need to integrate traditional and community-based practices with modernized statutory frameworks in order to strengthen the role of ADR in access to justice.

3.0 Integrating Traditional, Community-based Practices with Modernized Statutory Frameworks

Traditional and community-based practices provide an effective approach towards strengthening access to justice through ADR. It has been observed that these processes represent the historical, culturally integrated, and indigenous pathways through which societies in Africa and the Global South have utilised in managing conflicts for many centuries prior to the imposition of Eurocentric formal legal frameworks³¹. In particular, due to access to justice gaps occasioned by

²⁶ Kariuki. F., 'Traditional Dispute Resolution Mechanisms in the Administration of Justice in Kenya' Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3646995 (Accessed on 25/08/2026)

²⁷ Ibid

²⁸ Muigua. K., 'Traditional Dispute Resolution Mechanisms under Article 159 of the Constitution of Kenya., 2010' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/Paper-on-Article-159-Traditional-Dispute-Resolution-Mechanisms-FINAL.pdf> (Accessed on 25/08/2026)

²⁹ Kamanga. K., 'Traditional Dispute Resolution Mechanisms and Access to Justice in Central African Republic: A Theoretical Framework' Available at <https://zenodo.org/records/18723346> (Accessed on 25/08/2026)

³⁰ Traditional Justice Systems., Op Cit

³¹ Gafar. I., & Ayodeji. G. I., 'Traditional Dispute Resolution Mechanisms and Community Peace Building: A Doctrinal Legal Analysis' Available at https://www.researchgate.net/publication/408172339_TRADITIONAL_DISPUTE_RESOLUTION_MEC

challenges such as high litigation costs, backlog of cases in courts, complex legal procedures and geographical barriers for vulnerable and marginalized communities, traditional and community-based practices provide an appropriate solution towards scaling up access to justice through accessible, culturally-sensitive, responsive, effective and affordable justice systems³².

It is therefore imperative to harness traditional and community-based practices in order to enhance access to justice through appropriate justice systems. In particular, in light of concerns such as inadequate recognition and potential for human right abuses, it is imperative to integrate traditional and community-based practices with modernized frameworks in order to strengthen access to justice while upholding human rights, equity and fairness³³. For example, it has been observed that by integrating traditional and community-based practices with modernized statutory frameworks, these processes will find their rightful place in conventional judicial systems thus ensuring that they are meaningfully and actively utilized in facilitating access to justice especially for the marginalized, poor and underprivileged in the society³⁴. Integrating traditional and community-based practices with modernized statutory frameworks can enhance their role in access to justice including through establishing a clear system of referral where relevant and appropriate cases are referred to resolution through traditional justice systems³⁵.

In addition, integrating traditional and community-based practices with modernized statutory frameworks is key towards ensuring that these mechanisms are practiced in accordance with constitutional and human rights thresholds. For instance, through this approach, it is possible to ensure effective regulation towards ensuring that traditional and community-based practices adhere to procedural fairness including the right to a fair hearing for all affected parties³⁶. This key towards addressing gender, ethnic, religious and generational disparities and biases that can be perpetuated by traditional and community-based justice systems³⁷. In addition, by integrating traditional, community-based practices with modernized statutory frameworks, it is possible to put in place adequate measures including training and accreditation of traditional and customary institutions of conflict management such as elders in order ensure that these processes are practiced in a fair, effective, just and equitable manner³⁸.

[MECHANISMS AND COMMUNITY PEACE BUILDING A DOCTRINAL LEGAL ANALYSIS](#) (Accessed on 26/08/2026)

³² Ibid

³³ Muigua. K., 'Legitimising Alternative Dispute Resolution in Kenya: Towards a Policy and Legal Framework' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/LEGITIMISING-ALTERNATIVE-DISPUTE-RESOLUTION-MECHANISMS-IN-KENYA.pdf> (Accessed on 26/08/2026)

³⁴ Ibid

³⁵ Judiciary of Kenya., 'Alternative Justice Systems Baseline Policy and Policy Framework.' Op Cit

³⁶ Ibid

³⁷ Traditional Justice Systems., Op Cit

³⁸ Kamanga. K., 'Traditional Dispute Resolution Mechanisms and Access to Justice in Central African Republic: A Theoretical Framework' Op Cit

4.0 Conclusion

With access to justice gaps prevalent all over the world, there is need to embrace more appropriate strategies in order to foster democracy, human rights and Sustainable Development. In particular, traditional and community-based practices provide an appropriate platform towards strengthening access to justice for development especially in Africa and the Global South. However, there is need to effectively embrace these techniques by integrating traditional, community-based practices with modernized statutory frameworks for justice, equity, fairness and human rights.

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