

Conflict Management and Sustainability: Making Arbitration and ADR Greener for Justice and One Health

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Conflict Management and Sustainability: Making Arbitration and ADR Greener for Justice and One Health

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Abstract

This paper discusses how sustainability can be integrated into arbitration and Alternative Dispute Resolution (ADR). The paper argues that arbitration and ADR are viable and effective processes towards sound conflict management for sustainability. It examines ways through which arbitration and ADR can foster sustainability. However, despite their suitability in the quest towards sustainability, the paper notes that arbitration and ADR can undermine the Sustainable Development agenda. It explores some of the key challenges in utilising arbitration and ADR in conflict management and their impacts on sustainability. In light of these concerns, the paper offers ideas towards making arbitration and ADR greener for justice and one health.

1.0 Introduction

A conflict refers to a disagreement or difference of opinion between or among individuals¹. Conflicts usually arise due to disagreements between different actors on the basis of perceived incompatible goals². Conflicts can occur in various levels including intrapersonal (within an individual), interpersonal (between individuals), intragroup (within a group), intergroup (involving two or more groups), and intraorganizational (within organizations)³. Conflicts can also involve nations⁴. It has been argued that disagreements and conflicts are inevitable everyday occurrences whose effective

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¹ Ronquillo. Y., Ellis. V.L., & Toney-Butler. T.J., 'Conflict Management' Available at <https://www.ncbi.nlm.nih.gov/books/NBK470432/> (Accessed on 06/11/2025)

² Definition and Concepts., Available at <https://gsdrc.org/topic-guides/conflict-analysis/definitions-and-concepts/> (Accessed on 06/11/2025)

³ Conflict Management., Available at https://healthnet.org.np/downloads/manual/Conflict_management.pdf (Accessed on 06/11/2025)

⁴ Definition and Concepts., Op Cit

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management can result in constructive change⁵. Conflicts can therefore bring positive outcomes if successfully managed. However, conflicts can have adverse impacts when societal mechanisms and institutions for managing and resolving them break down, giving way to violence⁶. It has been argued that societies that are characterized by weak institutions, fragile political systems and divisive social relations can be drawn into endless cycles of conflict and violence threatening peace and development⁷. Effective conflict management in such contexts is therefore necessary for peace, sustainability and development.

Conflict management refers to the processes and techniques adopted towards stopping or preventing overt conflicts and aiding the parties involved to reach a durable and peaceful solution to their differences⁸. It involves handling all stages of a conflict as well as the mechanisms used in the management of conflicts⁹. Conflict management has also been described as an ongoing process by which conflicts are identified and addressed in a fair, efficient and expeditious manner¹⁰. It has been argued that the goal of conflict management is to minimise the potential negative impact that can arise from conflicts and disagreements and encourage agreement and positive outcomes¹¹. Conflict management involves various strategies and techniques ranging from the most informal negotiations between the parties themselves through increasing formality and more directive interventions from external sources to a full court hearing with strict rules of procedure¹².

⁵ Ibid

⁶ United Nations., 'Land and Conflict' Available at https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_ExeS_Land%20and%20Conflict.pdf (Accessed on 06/11/2025)

⁷ Ibid

⁸ Leeds. C.A., 'Managing Conflicts across Cultures: Challenges to Practitioners.' *International Journal of Peace Studies*, Volume 2, No. 2, 1997

⁹ Ibid

¹⁰ Institute of Directors., 'Conflict Management' Available at <https://www.iod.com/resources/business-advice/conflict-management/> (Accessed on 06/11/2025)

¹¹ Ibid

¹² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

Effective conflict management plays a key role in the quest towards Sustainable Development. For example, when conflicts are successfully managed, this creates suitable conditions for peace, justice, stability and prosperity towards Sustainable Development¹³. However, conflict management can also threaten several aspects of sustainability including environmental protection¹⁴. Consequently, it is imperative to integrate sustainability into conflict management for peace and prosperity.

This paper discusses how sustainability can be integrated into arbitration and Alternative Dispute Resolution (ADR). The paper argues that arbitration and ADR are viable and effective processes towards sound conflict management for sustainability. It examines ways through which arbitration and ADR can foster sustainability. However, despite their suitability in the quest towards sustainability, the paper notes that arbitration and ADR can undermine the Sustainable Development agenda. It explores some of the key challenges in utilising arbitration and ADR in conflict management and their impacts on sustainability. In light of these concerns, the paper offers ideas towards making arbitration and ADR greener for justice and one health.

2.0 Arbitration, ADR and Conflicts Management: Promises and Pitfalls

According to the United Nations, ADR (also referred to as '*Appropriate Dispute Resolution*') is a general term, used to define a set of approaches and techniques aimed at resolving disputes in a non-confrontational manner¹⁵. In addition, ADR can also be described as a

¹³ World Bank Group., 'Fragility, Conflict & Violence' Available at <https://www.worldbank.org/en/topic/fragilityconflictviolence> (Accessed on 06/11/2025)

¹⁴ Embracing Greener Arbitrations: A Journey Towards Sustainability., Available at <https://www.lexology.com/library/detail.aspx?g=a37895da-c14d-4c3f-9fbb-8d05b5ccd551> (Accessed on 06/11/2025)

¹⁵ 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 (Accessed on 07/11/2025)

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term that covers all dispute resolution processes other than court proceedings¹⁶. ADR has also been defined as a spectrum of less costly and more expeditious alternatives to litigation, where a neutral party assists the disputing parties in reaching resolution¹⁷. However, it has been correctly noted that in some ADR processes such as negotiation, parties to a conflict meet to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party¹⁸.

ADR is therefore an all-encompassing term that entails multiple non-judicial methods of managing conflicts¹⁹. It has been pointed out that ADR covers a wide range of techniques and approaches ranging from party-to-party engagement through *negotiation* as the most direct way to reach a mutually accepted resolution, to *arbitration* and *adjudication* where an external party imposes a solution upon the parties²⁰. Further, it has been noted that somewhere along the axis of ADR approaches between these two extremes lies *mediation* which is a process by which a third party aids the disputants to reach a mutually agreed solution (Emphasis added)²¹. ADR therefore covers various processes and techniques including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs)²². These processes may be linked to but function outside formal court litigation processes²³.

¹⁶ Alternative Dispute Resolution (ADR), Available at [https://uk.practicallaw.thomsonreuters.com/0-107-6391?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-107-6391?transitionType=Default&contextData=(sc.Default)&firstPage=true) (Accessed on 07/11/2025)

¹⁷ JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 07/11/2025)

¹⁸ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

¹⁹ Block. M. J., 'The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes.' *Rutgers Law Record.*, Volume 44, 2016-2017

²⁰ United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Op Cit

²¹ Ibid

²² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

²³ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

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Arbitration and other ADR processes provide a suitable and appropriate approach in conflict management. For example, ADR processes provide numerous advantages in the administration of justice including a system with procedural flexibility, a broad range of remedial options, and a focus on individualized justice²⁴. Further, it has been argued that ADR allows for more creative and collaborative solutions than those available in traditional litigation²⁵. ADR mechanisms contain several key attributes including informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes which makes them a viable tool in conflict management²⁶. According to the United Nations, 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 relationship²⁷. Further, it has been argued that most ADR processes are ideal in promoting effective solutions that respects each side's perspectives while minimising the negative impact of conflicts²⁸.

ADR processes including arbitration are therefore suitable in conflict management. It has been argued that with the exception of binding arbitration, the goal of ADR is to provide a forum for disputing parties to work toward a voluntary, consensual agreement, as opposed to having a judge or other authority impose an outcome upon them²⁹. Further, ADR provides a platform for parties in dispute to resolve their differences prior to or during the use of formal administrative procedures and litigation which are often very

²⁴ 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 07/11/2025)

²⁵ JAMS ADR., 'What is ADR' Op Cit

²⁶ Muigua, K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

²⁷ United Nations., 'Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building' Op Cit

²⁸ The Role of Negotiation in Conflict Resolution Strategies., Available at <https://www.karrass.com/blog/conflict-resolution-strategies> (Accessed on 07/11/2025)

²⁹ 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 07/11/2025)

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costly and time-consuming³⁰. Due to these benefits, arbitration and other ADR mechanisms have been embraced in conflict management both globally and at national levels. At the global level, the *Charter of the United Nations*³¹ encourages a peaceful approach towards managing conflicts amongst states. The Charter provides 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 choice³² (Emphasis added). At a national level, the *Constitution of Kenya*³³ mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, *arbitration* and TDRMs³⁴.

Despite their appropriateness in conflict management, arbitration and other ADR processes can undermine the quest towards sustainability. For example, arbitration and ADR has been associated with negative environmental impacts. This challenge arises as a result of too much use of physical documents and carbon emissions due to a lot of travel in international arbitration and international mediation³⁵. It has been argued that arbitration and ADR can negatively impact sustainability through travel, use of physical documents including correspondence, trial bundles and awards, and reliance on technologies that consume a lot of energy³⁶. In light of these concerns, it is imperative to make arbitration and ADR greener for justice and One Health.

³⁰ Alternative Dispute Resolution Handbook., Available at <https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf> (Accessed on 07/11/2025)

³¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

³² Ibid, article 33 (1)

³³ Constitution of Kenya., 2010., Government Printer, Nairobi

³⁴ Ibid, article 159 (2) (c)

³⁵ Embracing Greener Arbitrations: A Journey Towards Sustainability., Available at <https://www.lexology.com/library/detail.aspx?g=a37895da-c14d-4c3f-9fbb-8d05b5ccd551> (Accessed on 07/11/2025)

³⁶ How Green is Your Arbitration?., Available at <https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2024/how-green-is-your-arbitration/> (Accessed on 07/11/2025)

3.0 Making Arbitration and ADR Greener for Justice and One Health

Arbitration and other ADR processes are appropriate in conflict management. However, due to their negative environmental impacts associated with transport, use of physical documents and energy consumption, arbitration and other ADR mechanisms can hinder progress towards sustainability³⁷. In light of these concerns, it is imperative to make arbitration and ADR greener for justice and One Health.

The concept of greening arbitration and ADR acknowledges the significant carbon footprint associated with conflict management³⁸. It seeks to foster environmentally sustainable practices in conflict management and requires all stakeholders in arbitration and ADR including arbitrators, mediators, adjudicators, conciliators, counsel, ADR institutions, and parties to disputes to reduce their carbon footprint³⁹. Making arbitration and ADR greener is therefore key towards fostering sustainability. It has been argued that the flexibility of ADR processes including arbitration and mediation means that it is possible to adopt green practices without compromising their effectiveness and appropriateness in efficiently managing disputes⁴⁰. By greening arbitration and ADR, these mechanisms can remain an attractive and preferable option for users who are increasingly concerned with their carbon footprint⁴¹.

In order to make arbitration and ADR greener, it is necessary to reduce waste⁴². Too much use of paperwork for correspondence, pleadings and awards contributes to waste thus undermining environmental sustainability⁴³. Consequently, there is need to reduce waste

³⁷ How Green is Your Arbitration?., Op Cit

³⁸ The Green Pledge., Available at <https://www.greenerarbitrations.com/sign-green-pledge#:~:text=The%20Green%20Pledge&text=The%20Campaign%20addresses%20the%20need,carbon%20footprint%20when%20resolving%20disputes> (Accessed on 07/11/2025)

³⁹ Ibid

⁴⁰ How Green is Your Arbitration?., Op Cit

⁴¹ Ibid

⁴² Muigua. K., 'Green Arbitration: Aligning Arbitration with Sustainable Development.' Available at <http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf> (Accessed on 07/11/2025)

⁴³ The Green Pledge., Op Cit

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including through embracing electronic correspondence and electronic submissions, avoiding printing unnecessarily and promoting the use of electronic bundles at hearings⁴⁴. In addition, it is imperative to foster energy efficiency in arbitration and ADR. ADR institutions, practitioners and counsel have been encouraged to reduce energy consumption through well-designed work places and adopt clean sources of energy in order to foster sustainability⁴⁵. Further, there is need to reduce the carbon footprint associated with travelling in arbitration and ADR⁴⁶. This can be achieved through avoiding unnecessary travelling, offsetting carbon emissions for ADR-related travel and using videoconferencing facilities as an alternative to travel⁴⁷. Further, by selecting suppliers and service providers that are committed to reducing their environmental impact, arbitration and ADR practitioners and institutions can demonstrate their willingness to foster sustainability⁴⁸.

Through the foregoing, it is possible to make arbitration and ADR greener for justice and One Health.

4.0 Conclusion

Arbitration and other ADR processes are appropriate in conflict management. However, these mechanisms can also undermine sustainability. As a result, there is need to integrate sustainability into arbitration and ADR by reducing waste, fostering energy efficiency and reducing the carbon footprint associated with travel⁴⁹. Making arbitration and ADR greener is therefore a pertinent ideal towards fostering sustainability, justice and One Health.

⁴⁴ Ibid

⁴⁵ How Green is Your Arbitration?., Op Cit

⁴⁶ The Green Pledge., Op Cit

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ How Green is Your Arbitration?., Op Cit

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