

*Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate
Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability*

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Table of Contents

Abstract.....	3
1.0 Introduction	3
2.0 Legal Frameworks and Social Justice in Africa: Prospects and Challenges	4
3.0 Towards Insitutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability.....	7
4.0 Conclusion.....	8
References	9

Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Systems for Sustainability

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Abstract

This paper discusses how social justice can be achieved in Africa by decolonising legal frameworks. The paper observes that legal frameworks play a key role in promoting social justice both globally and in Africa. In particular, the paper notes that Appropriate Dispute Resolution (ADR) and traditional governance norms are central to the pursuit of social justice in Africa. Despite their role in promoting social justice in Africa, the paper notes that ADR processes and traditional governance norms have been largely underutilised in favour of foreign legal frameworks undermining the ideal of social justice in the continent. Consequently, the paper suggests how legal frameworks can be decolonised in Africa by institutionalising ADR and traditional governance norms in order to achieve social justice for sustainability.

1.0 Introduction

The pursuit of social justice is vital towards achieving sustainability both globally and in Africa. Social justice envisages an ideal world in which societies are based on the principles of equality and solidarity, respect for human rights, and recognize the dignity of every human being¹. In addition, social justice has been described as the foundation of peaceful and prosperous societies that are inclusive, equitable, sustainable and resilient². At its core, social justice envisages the fair treatment and equitable status of all individuals and social groups within a state or society³. It seeks to ensure fairness, equity, inclusion, human rights and self-determination especially for exploited, marginalized and oppressed individuals and communities⁴.

Social justice plays a key role in unlocking Sustainable Development. It has been observed that social justice is a primary driver of sustainability and a guarantee of its continuity⁵. By promoting just, inclusive and equitable societies, social justice ensures that no one is left behind in the pursuit of Sustainable Development⁶. Social Justice is at the heart of the 2030 Agenda for Sustainable Development which envisions a world of equality, human dignity, non-discrimination, justice, equal opportunity, and respect

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¹ United Nations., 'What is social justice and how is the UN helping make it a reality?' Available at <https://news.un.org/en/story/2025/02/1160301> (Accessed on 08/07/2026)

² International Labour Organization., 'Social Justice' Available at <https://www.ilo.org/topics-and-sectors/social-justice> (Accessed on 08/07/2026)

³ Social Justice., Available at <https://www.britannica.com/topic/social-justice> (Accessed on 08/07/2026)

⁴ Ibid

⁵ Social Justice and its Role in Sustainable Development., Available at <https://uomus.edu.iq/CollegeEn/Details/95669> (Accessed on 08/07/2026)

⁶ What is Social Justice? Origins and Definitions, Plus Social Injustice Examples., Available at <https://insights.taylorandfrancis.com/social-justice/what-is-social-justice/> (Accessed on 08/07/2026)

for race, ethnic, and cultural diversity⁷. It has been observed that social justice underscores the progressive march towards a world where the barriers that people face because of race, gender, age, ethnicity, culture, religion, or disability are dismantled in order to ensure that every person has equal and equitable access to opportunities necessary to fulfill their potential in life⁸. In particular, it has been observed that social justice permeates each Sustainable Development Goal (SDG), since it recognises that the Sustainable Development agenda cannot be met without meeting the needs of the most vulnerable and marginalized populations⁹.

Despite its role as a driver of sustainability, achieving social justice remains a challenge globally. For example, in the African context, it has been observed that social injustices are prevalent all over the continent as evidenced by disparities in education, income, wealth, access to healthcare, employment, security, and migration among other opportunities¹⁰. The prevalence of social injustices in Africa affects inclusive and equitable development since this situation prevents millions of people from accessing opportunities necessary to fulfill their rights and unlocking their potential¹¹. In light of these concerns, it is imperative to foster social justice in Africa in order to achieve sustainability.

This paper discusses how social justice can be achieved in Africa by decolonising legal frameworks. The paper observes that legal frameworks play a key role in promoting social justice both globally and in Africa. In particular, the paper notes that Appropriate Dispute Resolution (ADR) and traditional governance norms are central to the pursuit of social justice in Africa. Despite their role in promoting social justice in Africa, the paper notes that ADR processes and traditional governance norms have been largely underutilised in favour of foreign legal frameworks undermining the ideal of social justice in the continent. Consequently, the paper suggests how legal frameworks can be decolonised in Africa by institutionalising ADR and traditional governance norms in order to achieve social justice for sustainability.

2.0 Legal Frameworks and Social Justice in Africa: Prospects and Challenges

Legal frameworks play a key role in promoting social justice for sustainability. For instance, effective legal frameworks can ensure respect for human rights and human dignity, equitable distribution of resources and inclusive and non-discriminatory social, economic and political environments that can ensure social justice¹². Through sound legal frameworks, it is possible to create new policies, change existing ones and

⁷ 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 08/07/2026)

⁸ Social Justice., Available at <https://sdgresources.relx.com/social-justice-0> (Accessed on 08/07/2026)

⁹ Ibid

¹⁰ Saoudi. H., & Louis-Sarbib. J., 'Fighting inequalities: A Major Challenge and an Essential Prerequisite for Inclusive and Sustainable Growth in Africa' Available at <https://www.policycenter.ma/sites/default/files/2023-10/Background-Paper-Inequality-In-Africa.pdf> (Accessed on 08/07/2026)

¹¹ How the public and private sectors can promote social justice across Africa., Available at <https://www.dbsa.org/article/how-public-and-private-sectors-can-promote-social-justice-across-africa> (Accessed on 08/07/2026)

¹² Muigua. K., 'Sustainable Development Goals and Social Justice in Kenya' (2021) *Journal of cmsd.*, Volume 7(1)

Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability

tackle societal challenges towards social justice¹³. In addition, it has been observed that effective, equitable and responsive legal frameworks and justice systems can ensure that individuals, regardless of their socio-economic status, gender, ability or any other characteristic are able to participate meaningfully in economic, social and environmental decision-making processes in order to achieve social justice¹⁴.

The presence of effective legal frameworks is therefore a prerequisite for social justice. In particular, it has been observed that well-designed legal frameworks can strengthen access to justice towards ensuring fair, equitable, inclusive, transparent and democratic societies that uphold the rule of law and protect human rights towards social justice and Sustainable Development¹⁵. The availability of efficient, effective and responsive justice systems can empower citizens to exercise their rights and freedoms, challenge inequalities and discrimination, while also ensuring thriving and equitable economic, social, environmental and governance systems that can foster social justice and Sustainable Development¹⁶. Access to justice is therefore inextricably linked to social justice since it ensures that legal frameworks and systems work equitably and fairly for every person regardless of their status towards fulfilling human rights, upholding human dignity and designing fair, equitable, inclusive, transparent and democratic societies¹⁷.

ADR and traditional governance norms provide an appropriate pathway towards achieving social justice in Africa for sustainability. Processes such as negotiation, mediation, arbitration, conciliation and Traditional Dispute Resolution Mechanisms (TDRMs) have been described as appropriate due to their ability and efficacy to deliver ideal outcomes for disputing parties¹⁸. 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 justice¹⁹. Most ADR processes including negotiation, mediation and conciliation also result in creative and collaborative outcomes that are more appropriate than those available through litigation²⁰. It has been pointed out that ADR processes allow parties to save time and costs, participate meaningfully in resolving their disputes, control the nature of proceedings and the outcome, and achieve greater satisfaction with the final outcome²¹. Consequently, ADR is an appropriate tool in conflict management.

¹³ Judiciary of Kenya., 'A Blueprint for Social Transformation through Access to Justice, 2023-2033' Available at <https://judiciary.go.ke/wp-content/uploads/2023/11/STAJ-Blueprint-I.pdf> (Accessed on 08/07/2026)

¹⁴ Ibid

¹⁵ 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 08/07/2026)

¹⁶ Ibid

¹⁷ Judiciary of Kenya., 'A Blueprint for Social Transformation through Access to Justice, 2023-2033' Op Cit

¹⁸ Chicktay. M. & Patelia. E., 'Appropriate Dispute Resolution, 3rd Edition' Available at https://store.lexisnexis.com/en-za/products/appropriate-dispute-resolution-3rd-edition.html?srsltid=AfmBOoq9GW_NeDOmohwhh2Vke-EbEBY_naEWo6xqVzihpbWQWLrWkidM (Accessed on 08/07/2026)

¹⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

²⁰ JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 08/07/2026)

²¹ Appropriate Dispute Resolution Information Sheet., Available at <https://sanmateo.courts.ca.gov/divisions/appropriate-dispute-resolution-programs/appropriate-dispute-resolution-information-sheet> (Accessed on 08/07/2026)

Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability

Due to their key attributes ADR processes and traditional governance norms including TDRMs are suitable in promoting social justice. For instance, ADR can expand access to justice for traditionally marginalized communities towards achieving social justice²². In addition, traditional governance norms ensure inclusive, accessible, appropriate and culturally-sensitive approaches to resolving grievances among parties towards social justice²³. ADR mechanisms and traditional governance norms can therefore be utilised to ensure that socially and economically disadvantaged individuals and communities participate in legal processes towards upholding their rights and challenging inequalities and discrimination for social justice²⁴.

Embracing ADR and traditional governance norms is especially vital in promoting social justice in Africa for sustainability. These processes have been used in conflict management in Africa since time immemorial ensuring peace, harmony, reconciliation and social justice²⁵. It has been argued that processes such as negotiation, mediation, conciliation and TDRMs are considered 'appropriate' and not 'alternative' in the African context since they are able to safeguard values that are inherent in African societies and foster peace and social cohesion²⁶. Most ADR processes and traditional governance norms in Africa are anchored in the culture of the people of Africa which emphasises communal values such as peaceful coexistence, harmony, truth, honesty, unity, cooperation, forgiveness and respect²⁷. Since conflict management is cultural-specific, embracing ADR and traditional governance norms including TDRMs and Alternative Justice Systems (AJS) can ensure sound conflict management while fostering social justice²⁸. For example, the African philosophy of *Ubuntu* /*Utu* focuses on social justice since it emphasises values aimed at promoting the greater good of the community. These values include sympathy, compassion, benevolence, solidarity, hospitality, generosity, sharing, openness, affirming, being available, kindness, caring, harmony, interdependence, obedience, collectivity and consensus²⁹. By adopting ADR and traditional governance norms, it is possible to uphold *Ubuntu* including through creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion for social justice³⁰.

Despite their appropriateness, failure to effectively utilise ADR and traditional governance norms undermines the pursuit of social justice in Africa. For example, by being labelled as 'alternative', there is a

²² Muigua. K., Kariuki. F., 'ADR, Access to Justice and Development in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-Kenya-Revised-version-of-20.10.14.pdf> (Accessed on 08/07/2026)

²³ Ibid

²⁴ Movshovich. V., Kezile. K., 'Alternative Dispute Resolution (ADR): Ensuring Equal Access To Justice In A Changing Legal Landscape' Available at <https://www.webberwentzel.com/News/Pages/alternative-dispute-resolution-ensuring-equal-access-to-justice-in-a-changing-legal-landscape.aspx> (Accessed on 08/07/2026)

²⁵ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

²⁶ Ibid

²⁷ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

²⁸ Judiciary of Kenya., 'A Blueprint for Social Transformation through Access to Justice, 2023-2033' Op Cit

²⁹ Mugumbate. J., & Nyanguru. A., 'Exploring African Philosophy: The Value of Ubuntu in Social Work.' Available at <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4272&context=sspapers&httpsredir=1&referer#:~:text=Ubuntu%20can%20best%20be%20described,ngumuntu%20ngabantu%20in%20Zulu%20language> (Accessed on 09/07/2026)

³⁰ Ibid

perception that ADR processes and traditional governance norms are second-best to litigation, a situation that has undermined their use and growth for true access to justice³¹. In particular, it has been observed that indigenous practices and institutions on conflict management in Africa, which have been central drivers of social justice for many centuries, were largely weakened and even destroyed during the colonial era since the colonial powers introduced formal justice processes such as law courts, which came to pronounce judgments rather than resolve conflicts according to the African concepts of justice³². Due to colonialism, conflicts that were hitherto handled through traditional amicable settlements practices, including ADR, with emphasis on reconciliation and the restoration of social harmony among the people of Africa were now being handled on the basis of punishment of the conflicting parties³³. Colonialism therefore resulted in subjugation of indigenous and customary dispute resolution practices in Africa undermining social justice³⁴.

In light of the foregoing, there is need to decolonise legal frameworks in Africa in order to promote social justice for sustainability.

3.0 Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability

With Africa facing challenges in achieving social justice, there is need to embrace novel approaches in order to realise this ideal for sustainability. In particular, due to their focus on harmony, peace, social cohesion and communal interests, ADR processes and traditional governance norms are well-positioned to promote social justice in Africa³⁵. However, as a result of colonialism, these processes have been weakened, ignored, subjugated and deemed ‘*alternative*’ undermining the quest for social justice in Africa³⁶.

It is therefore imperative to institutionalise ADR processes and traditional governance norms in order to strengthen the pursuit of social justice in Africa. In particular, there have been calls to put in place adequate legal, policy and institutional regimes and infrastructure in order to enhance the uptake of ADR mechanisms for enhanced access to justice in Africa³⁷. It has been observed that institutionalisation of ADR is a key process towards providing elaborate legal and policy framework and guidelines for the application of ADR mechanisms and further linking these mechanisms to formal justice systems³⁸. This process is also vital in upholding ADR mechanisms as part of the justice systems in Africa³⁹. It is therefore vital to institutionalise ADR processes in order to bolster progress towards social justice in Africa. However, while institutionalising ADR processes, it is imperative to preserve their key features including

³¹ Uwazie. E., ‘Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.’ *Africa Security Brief*, No. 16 of 2011

³² Adeyinka. A., & Lateef. B., ‘Methods of Conflict Resolution in African Traditional Society’ Op Cit

³³ Ibid

³⁴ Ibid

³⁵ Mugumbate. J., & Nyanguru. A., ‘Exploring African Philosophy: The Value of Ubuntu in Social Work.’ Op Cit

³⁶ Adeyinka. A., & Lateef. B., ‘Methods of Conflict Resolution in African Traditional Society’ Op Cit

³⁷ 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 09/07/2026)

³⁸ Ibid

³⁹ Ibid

Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability

voluntariness, confidentiality, party autonomy and collaboration which are key in ensuring access to justice⁴⁰.

In addition to ADR, it is imperative to institutionalise traditional governance norms in Africa for sustainability. It has been observed that traditional governance norms in Africa including institutions such as the council of elders play a key role in fostering social justice through amicable resolution of disputes for peace, harmony, reconciliation and social cohesion⁴¹. It is therefore imperative to recognise the role of traditional governance norms and empower TDR practitioners through education, training and mentorship⁴². It has been pointed out that this will enhance their skills and ability to manage disputes through ADR mechanisms in a manner that safeguards the key concepts of justice such as human rights⁴³.

4.0 Conclusion

There is need to decolonise legal frameworks in order to achieve the ideal of social justice in Africa. In particular, legitimising and institutionalising ADR and traditional governance norms provides an effective and Afrocentric approach towards promoting social justice for sustainability.

⁴⁰ Ibid

⁴¹ 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 09/07/2026)

⁴² Judiciary of Kenya., 'A Blueprint for Social Transformation through Access to Justice, 2023-2033' Op Cit

⁴³ Ibid

Decolonising Legal Frameworks for Social Justice in Africa: Towards Institutionalisation of Appropriate Dispute Resolution (ADR) and Traditional Governance Norms for Sustainability

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