

**Reframing Conflict Management in the East
African Community: Moving from Alternative to
'Appropriate' Dispute Resolution**

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Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution

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Abstract

The paper critically discusses the need to reframe conflict management in the East African Community (EAC) in order to fully capture the spirit of Alternative Dispute Resolution (ADR) mechanisms. The paper argues that ADR mechanisms in African societies including the EAC ought to be considered 'Appropriate' and not 'Alternative' in access to justice. It posits that ADR mechanisms have been part and parcel of African societies since time immemorial and were always the first point of call in management of disputes owing to their advantages. The paper explores the ADR framework within the EAC as set out under the Treaty Establishing the EAC. It further highlights challenges facing ADR mechanisms within the EAC. The paper further proposes interventions towards reframing conflict management in the EAC in order to fully capture the spirit of ADR as 'Appropriate' Dispute Resolution.

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1.0 Introduction

Conflicts are a common phenomenon in human relationships and interactions. The term conflict has been defined as a situation in which two or more parties perceive that they possess mutually incompatible goals¹. It has also been described as a process of social interaction involving a struggle over claims to resources, power and status, beliefs, and other preferences and desires². Conflicts often occur as a result of incompatibility of goals and interests between two or more individuals³. They can also occur due to misalignment of goals, actions or motivations which can be real or only perceived to exist⁴. Conflicts are an undesirable occurrence in any given society since they can affect peace, sustainability and development. Development is not feasible in a conflict situation⁵. Consequently, there is need for effective and expeditious management of conflicts in order to spur development⁶.

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 differences⁷. Conflict management thus involves handling all stages of a conflict as well as the mechanisms used in the management of conflicts⁸. Various approaches and techniques can be adopted towards managing conflicts 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 procedure⁹.

¹ Demmers. J., *'Theories of Violent Conflict: An Introduction'* (Routledge, New York, 2012)

² Muigua. K., *'Alternative Dispute Resolution and Access to Justice in Kenya.'* Glenwood Publishers Limited, 2015

³ Kaushal. R., & Kwantes. C., *'The Role of Culture and Personality in Choice of Conflict Management Strategy.'* International Journal of Intercultural Relations 30 (2006) 579-603

⁴ Ibid

⁵ Muigua. K & Kariuki. F., *'ADR, Access to Justice and Development in Kenya.'* Available at <http://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 15/06/2023)

⁶ Ibid

⁷ Leeds. C.A., *'Managing Conflicts across Cultures: Challenges to Practitioners.'* International Journal of Peace Studies, Volume 2, No. 2, 1997

⁸ Ibid

⁹ Muigua. K., *'Alternative Dispute Resolution and Access to Justice in Kenya.'* Op Cit

The process of conflict management can either result in settlement or resolution¹⁰. Settlement refers to an agreement over the issues in a conflict which often involves a compromise¹¹. Settlement often seeks to mitigate a conflict without discovering or rectifying the underlying causes of such a conflict¹². Settlement mechanisms include litigation and arbitration. These mechanisms have been described as highly coercive, power based and involve a lot of compromise in addressing the conflict¹³. They may be effective in providing an immediate solution to a dispute but fail to address underlying issues in a dispute leaving the likelihood of disputes reemerging in future¹⁴. Resolution on the other hand refers to a process where the outcome is based on mutual problem-sharing whereby parties to a conflict cooperate in order to redefine their conflict and relationships¹⁵. Resolution mechanisms include most Alternative Dispute Resolution (ADR) processes such as mediation, negotiation and facilitation¹⁶. These mechanisms are non-coercive, non-power based and focus on the needs and interest of parties¹⁷. They result in mutually satisfying outcomes that address the root causes of conflicts thus creating long lasting outcomes.

The paper seeks to critically discuss the place of ADR in conflict management within the East African community. The East African Community (EAC) is a regional intergovernmental organisation of seven partner states which are: The Republic of Burundi, the Democratic Republic of the Congo, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the Republic of Uganda, and the United Republic

¹⁰ Ibid

¹¹ Bloomfield. D., 'Towards Complementarity in Conflict Management: Resolution and Settlement in Northern Ireland,' *Journal of Peace Research*

¹² Ibid

¹³ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

¹⁴ Mwagiru. M., 'Conflict in Africa: Theory, Processes and Institutions of Management, Centre for Conflict Research, Nairobi 2006

¹⁵ Bloomfield. D., 'Towards Complementarity in Conflict Management: Resolution and Settlement in Northern Ireland,' Op Cit

¹⁶ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

¹⁷ Ibid

of Tanzania with its headquarters in Arusha, Tanzania.¹⁸ It is established pursuant to the Treaty Establishing the East African Community¹⁹. The paper explores the role of ADR under the Treaty Establishing the East African Community. It highlights the challenges and opportunities for ADR within the EAC. The paper posits that there is need to reframe conflict management within the East African Community in order to fully capture the spirit of ADR as 'Appropriate' and not 'Alternative' Dispute Resolution.

2.0 Overview of Alternative Dispute Resolution (ADR) Mechanisms and their Role in Access to Justice

Alternative Dispute Resolution (ADR) is an all-encompassing term which refers to multiple non-judicial methods of handling conflicts between parties²⁰. ADR refers to a set of mechanisms that are used to manage conflicts without resort to courts²¹. These mechanisms include negotiation, mediation, arbitration, neutral evaluation, enquiry, expert determination and conciliation²². In Kenya, ADR mechanisms have been recognized under the Constitution which mandates courts and tribunals to promote alternative forms of dispute resolution²³.

ADR mechanisms have been classified by some authors into facilitative, evaluative and determinative processes²⁴. Facilitative processes such as mediation involve assisting parties to a dispute in identifying issues in dispute and in coming to an agreement about

¹⁸ East African Community., 'Overview of EAC.' Available at <https://www.eac.int/overview-of-eac> (Accessed on 15/06/2023)

¹⁹ Treaty Establishing the East African Community., Available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download> (Accessed on 15/06/2023)

²⁰ Block. M. J., 'The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes.' *Rutgers Law Record.*, Volume 44, 2016-2017

²¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

²² Block. M. J., 'The Benefits of Alternate Dispute Resolution for International Commercial and Intellectual Property Disputes.' Op Cit

²³ Constitution of Kenya, 2010, article 159 (2) (c), Government Printer, Nairobi

²⁴ Xie Z, 'The Facilitative, Evaluative and Determinative Processes in ADR,' 2011-10-12, available at <http://www.xwqlaw.com/info/c47f5ff15b464882ad5c9a7f97338652> (Accessed on 15/06/2023)

the dispute²⁵. Evaluative processes include early neutral evaluation and expert appraisal where a third party is more actively involved in advising the parties about the issues in dispute and various possible outcomes²⁶. Determinative processes include arbitration and expert determination where a third party makes a determination after parties have presented their arguments and evidence in relation to a dispute²⁷. However, this classification leaves out negotiation which involves parties discussing the issues at hand so as to arrive at mutually acceptable solutions without the help of a third party²⁸.

ADR mechanisms have been hailed as being ideal in enhancing the right of access to justice that has been enshrined under the Constitution²⁹. The right of access to justice in Kenya, East Africa and Africa at large has hitherto been hampered by many unfavourable factors such high court filing fees, bureaucracy, complex legal procedures, illiteracy, distance from formal courts, backlog of cases in courts and lack of legal knowhow³⁰. ADR has the potential to address these challenges and promote the right of access to justice in Africa³¹. Most ADR mechanisms possess 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 of enhancing access to justice³².

ADR mechanisms have been practiced in Africa for many centuries³³. African communities gave preference to values such harmony, togetherness, social cohesion and

²⁵ Ibid

²⁶ Muigua. K & Kariuki. F., 'ADR, Access to Justice and Development in Kenya.' Op Cit

²⁷ Ibid

²⁸ Ibid

²⁹ Constitution of Kenya, 2010., Article 48

³⁰ Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," 1 *Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

³¹ Muigua. K., 'Heralding a New Dawn: Achieving Justice through effective application of Alternative Dispute Resolution Mechanisms (ADR) in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Heralding-a-New-Dawn-Access-to-Justice-PAPER.pdf> (Accessed on 15/06/2023)

³² Muigua. K., 'Fusion of Mediation and Other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Available at <http://kmco.co.ke/wp-content/uploads/2022/11/Fusion-of-Mediation-and-Other-ADR-Mechanisms-with-Modern-Dispute-Resolution-in-Kenya-Prospects-and-Challenges.pdf> (Accessed on 15/06/2023)

³³ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition, 2017

peace as expressed in terms such as '*ubuntu*'.³⁴ Such values contributed to social harmony that ensured the stability of African societies and were subsequently incorporated in conflict management strategies³⁵. African societies developed conflict management strategies that were based on institutions such as the council of elders who ensured that the values and principles of African societies were respected and upheld³⁶. The values inherent in African societies remain virtually unchanged. ADR thus still has an important role to play in conflict management in current African societies including the East African Community.

3.0 The ADR Framework within the East African Community

The legal basis for ADR mechanisms at the global level is set out under the *Charter of the United Nations*³⁷. It provides that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, 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. The Charter of the United Nations thus provides the legal basis for adoption of ADR mechanisms across the world.

On a regional level, the *Treaty Establishing the East African Community* constitutes the East African Court of Justice (EACJ) as one of the principle organs of the EAC³⁸. The role of the EACJ as set out under the treaty is to be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with the

³⁴ Muigua. K., 'Heralding a New Dawn: Achieving Justice through effective application of Alternative Dispute Resolution Mechanisms (ADR) in Kenya.' Op Cit

³⁵ Ibid

³⁶ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successes-challenges-and-opportunities-1.pdf> (Accessed on 15/06/2023)

³⁷ Charter of the United Nations., Available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (Accessed on 16/06/2023)

³⁸ Treaty Establishing the East African Community., Op Cit Article 9 (1) (e)

treaty³⁹. The EACJ has jurisdiction to hear and determine disputes arising from an arbitration clause contained in a contract or agreement which confers jurisdiction to it to which the community or any of its institutions is a party⁴⁰. It can also hear and determine disputes arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the court⁴¹. The EACJ is thus mandated to promote arbitration as a dispute management mechanism within the EAC. The EACJ has since formulated its own arbitration rules in order to effectively discharge its mandate⁴².

In addition, the *East African Community Customs Union (Dispute Settlement Mechanism) Regulations* provide for the management of disputes through consultations in view of finding amicable resolution of disputes by the use of mechanisms such as conciliation and mediation⁴³. The Regulations further allow management of disputes through arbitration where parties consider it expedient to do so⁴⁴. The role of ADR mechanisms is thus firmly entrenched under these Regulations.

In addition to the foregoing provisions, various national Constitutions enshrine the use of ADR mechanisms in enhancing access to justice within the EAC. The Constitution of Kenya advocates the promotion of ADR mechanisms including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms⁴⁵. The Constitution of Uganda also advocates the promotion of reconciliation between parties in the administration of justice⁴⁶.

³⁹ Ibid, Article 23

⁴⁰ Ibid, Article 32 (a)

⁴¹ Ibid, Article 32 (c)

⁴² Arbitration Rules of the East African Court of Justice, Available at https://www.eacj.org/wp-content/uploads/2012/08/EACJ_Arbitration_Rules.pdf (Accessed on 16/06/2023)

⁴³ East African Community Customs Union (Dispute Settlement Mechanism) Regulations., Regulation 5 (1) Available at https://www.eac.int/~eacint/news/index.php?option=com_content&view=article&id=474:all-set-for-eac-military-games&catid=48:eac-latest&Itemid=69 (Accessed on 16/06/2023)

⁴⁴ Ibid, Regulation 5 (8)

⁴⁵ Constitution of Kenya, 2010., Article 159 (2) (c)

⁴⁶ Constitution of Uganda., Article 126 (2) (d)., Available at <https://www.parliament.go.ug/documents/1240/constitution> (Accessed on 16/06/2023)

ADR mechanisms are thus well stipulated under various legislations within the EAC. However, despite this recognition, several challenges hinder the efficacy of ADR mechanisms in the EAC.

4.0 Challenges Facing ADR in the EAC

Despite the efficacy of ADR mechanisms in conflict management within the EAC, several challenges hinder their uptake. These challenges are discussed below.

4.1 Inadequate Institutional Framework

It has been pointed out that one of major challenges facing the uptake of ADR mechanisms within the EAC is the issue of institutional capacity⁴⁷. There exists a challenge on the capacity of existing institutions to meet the demands of ADR mechanisms such as arbitration and mediation⁴⁸. The EACJ which is mandated to promote ADR mechanisms such as arbitration within the EAC cannot at the moment effectively promote mechanisms such as international commercial arbitration and international commercial mediation due to challenges related to personnel, funding and conflicting laws and policies in member countries⁴⁹. There is need to address such institutional challenges in order to foster ADR within the EAC.

4.2 Lack of Harmonized Legal Framework

There is lack of harmonized laws and rules within the EAC than could potentially hinder the use of ADR mechanisms. EAC member states generally fall into the category of Anglophone countries such as Kenya, Uganda and Tanzania and Francophone countries such as Rwanda, Burundi and the Democratic Republic of the Congo. Such differences

⁴⁷ Muigua. K., 'Effectiveness of Arbitration Institutions in East Africa.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Effectiveness-of-Arbitration-Institutions-in-East-Africa-22-February-2016.pdf> (Accessed on 16/06/2023)

⁴⁸ Ibid

⁴⁹ Muigua. K., 'Building Legal Bridges: Fostering Eastern Africa Integration through Commercial Arbitration.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Building-Legal-Bridges-FOSTERING-EASTERN-AFRICA-INTEGRATION-THROUGH-COMMERCIAL-ARBITRATION-April-2015.pdf> (Accessed on 16/06/2023)

result in different legal cultures, systems and laws⁵⁰. Consequently, the ADR framework varies from country to country within the EAC and it may be difficult to have a harmonized approach towards ADR with the exception of arbitration which is cross border in nature⁵¹.

4.3 Interference by National Courts in ADR

Courts often get involved in ADR mechanisms such as court-annexed mediation and arbitration in aspects such as enforcement of mediation settlement agreements and arbitral awards and setting aside of arbitral awards⁵². One of the major challenges facing ADR mechanisms such as international commercial arbitration is court interference on grounds such as public policy. Public policy is wide concept with no clear definition and this creates uncertainty and ambiguity when it comes to the enforcement of foreign arbitral awards⁵³. An investor seeking recognition and enforcement of an arbitral award is thus never sure whether a particular municipal court might adopt a reasoning towards public policy whose effect would be to annul an award or not⁵⁴. Court interference in ADR mechanism such as arbitration can intimidate investors and hinder the growth of ADR mechanisms in EAC⁵⁵. There is need to delimit the confines of court involvement in ADR in order to promote these mechanisms in the EAC.

⁵⁰ Kariuki. F., 'Challenges facing the Recognition and Enforcement of International Arbitral Awards within the East African Community.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Paper-on-Recognition-and-Enforcement-of-Foreign-Arbitral-Awards.pdf> (Accessed on 16/06/2023)

⁵¹ Muigua. K., 'Building Legal Bridges: Fostering Eastern Africa Integration through Commercial Arbitration.' Op Cit

⁵² Sattar. S., 'National Courts and International Arbitration: A Double-edged Sword?' *Journal of International Arbitration*, Volume 27, Issue 1

⁵³ Kariuki. F., 'Challenges facing the Recognition and Enforcement of International Arbitral Awards within the East African Community.' Op Cit

⁵⁴ Ibid

⁵⁵ Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIAL-ARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf> (Accessed on 16/06/2023)

4.4 Inadequate Marketing of the EAC in ADR

The EAC and Africa in general have been portrayed as less developed and ill equipped in promoting ADR mechanisms such as international commercial arbitration and international commercial mediation⁵⁶. Many people outside the continent still view Africa as lacking the capacity in terms of personnel and resources to promote these mechanisms and little has been done in marketing Africa as a hub of ADR⁵⁷. There is need to effectively market the EAC and Africa at large as an ideal destination for ADR mechanisms.

4.5 Bias and Perception of Corruption against the EAC

There is a general bias against Africa and Africans in the international community. Africa is generally viewed as a corrupt and uncivilized continent⁵⁸. Further, the governance concerns prevalent in some African countries often result in the international community viewing the entire continent in negative terms. This hinders the growth and use of ADR mechanisms such as international commercial arbitration and international commercial mediation since it creates the perception that it is impossible to attain justice in Africa⁵⁹.

4.6 Disregard for Some ADR Mechanisms such as TDRMs

ADR mechanisms such as TDRMs have often been looked down upon by formal justice systems. In Kenya, the Constitution provides that TDRMs shall not be used in a way that is repugnant to justice and morality or results in outcomes that are repugnant to justice and morality⁶⁰. Such labelling has resulted in disregard of TDRMs since it subjects them to the Western concepts of justice and morality yet African societies who have their own conceptions of justice and morality⁶¹. There is need to redefine the conceptions of justice

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Amazu A. Asouzu, *International Commercial Arbitration and African States: Practice, Participation and Institutional Development*, University Press, Cambridge, 2001. PP. 5-6 Available at <http://catdir.loc.gov/catdir/samples/cam031/2001018482.pdf> (Accessed on 16/06/2023)

⁵⁹ Ibid

⁶⁰ Constitution of Kenya, 2010., Article 159 (3)(b)

⁶¹ Muigua. K., 'Institutionalising Traditional Dispute Resolution Mechanisms and other Community Justice Systems.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/Institutionalising-Traditional-Dispute-Resolution-Mechanisms-and-other-Community-Justice-Systems-25th-April-2017.pdf> (Accessed on 16/06/2023)

and morality in order to change the attitudes and perceptions towards ADR mechanisms such as TDRMs and elevate their role in conflict management in the EAC⁶².

5.0 Way Forward

There is need to reframe conflict management within the EAC in order to fully capture the spirit of ADR. The process of conflict management is largely influenced by culture⁶³. Difference in cultural aspects such as belief systems, attitudes, religious practices, social stratification, language and economic practices could potentially take different forms in each culture⁶⁴. Culture therefore plays an important role in conflict management. African societies have since time immemorial ascribed to values aimed at promoting social cohesion⁶⁵. Such values include peaceful coexistence, harmony, truth, honesty, unity, cooperation, forgiveness and respect⁶⁶. Conflicts in African societies were thus viewed as a threat to peaceful coexistence and harmony⁶⁷. African societies thus adopted conflict management strategies that were aimed at amicable management of conflicts in order to preserve the social fabric which tied such communities together⁶⁸.

Conflict management in African societies was aimed at creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and gave prominence to communal needs over individual needs⁶⁹. ADR mechanisms were therefore the first point of call in conflict management in African societies. Conflict management amongst African communities has since time immemorial taken the form of informal negotiation,

⁶² Ibid

⁶³ Kaushal. R., & Kwantes. C., 'The Role of Culture and Personality in Choice of Conflict Management Strategy.' *International Journal of Intercultural Relations* 30 (2006) 579-603

⁶⁴ Ibid

⁶⁵ Awoniyi. S., 'African Cultural Values: The Past, Present and Future' *Journal of Sustainable Development in Africa*, Volume 17, No.1, 2015

⁶⁶ Ibid

⁶⁷ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

⁶⁸ Ibid

⁶⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

mediation, reconciliation and arbitration⁷⁰. These mechanisms were administered by institutions such as the council of elders which ensured compliance with their outcomes⁷¹. ADR mechanisms have thus been part and parcel of the African culture⁷². These mechanisms were considered as 'Appropriate' and not 'Alternative' in management of disputes since they were able to safeguard values that were inherent in African societies and foster peace and social cohesion⁷³. Colonization resulted in subjugation of ADR mechanisms where they were regarded as 'Alternative' to formal justice systems⁷⁴. In order to enhance access to justice through ADR in the EAC, there is need to reframe conflict management and consider ADR mechanisms as 'Appropriate' and not 'Alternative' in the quest towards justice.

In addition there is need to enhance the capacity of ADR practitioners within the EAC through education, training and mentorship. There is need to set up more ADR institutions to facilitate training in ADR mechanisms such as arbitration, mediation and conciliation in addition to the existing institutions⁷⁵. Further, ADR institutions and practitioners should invest in modern technology such as virtual hearing infrastructure in order to fully promote ADR mechanisms such as international commercial arbitration, international commercial mediation and Online Dispute Resolution (ODR) especially in the face of rapidly growing networking and borderless legal practice⁷⁶. This will enhance

⁷⁰ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities' Op Cit

⁷¹ Ibid

⁷² Muigua. K., 'Fusion of Mediation and Other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Op Cit

⁷³ Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' Op Cit

⁷⁴ Ghebretekle. T., & Rammala. M., 'Traditional African Conflict Resolution: The Case of South Africa and Ethiopia' available at <https://www.ajol.info/index.php/mlr/article/view/186176> (Accessed on 16/06/2023)

⁷⁵ Muigua. K., 'Nurturing International Commercial Arbitration in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2021/10/Nurturing-International-Commercial-Arbitration-in-Kenya.pdf> (Accessed on 17/06/2023)

⁷⁶ Olowononi. E. O & Ogechukwu. J.I 'Recent Developments in 21st Century Global Legal Practice: Emerging Markets, Prospects, Challenges and Solutions for African Lawyers' (2019) 5 *KIU Journal of Social Sciences* 31

efficiency, cost effectiveness and expeditiousness in the administration of justice which are salient features of ADR mechanisms⁷⁷.

The effectiveness of ADR mechanisms within the EAC can also be enhanced through adequate government support such as putting in place adequate legal regimes and infrastructure to enhance the uptake of ADR mechanisms⁷⁸. Governments can further enhance the role of ADR mechanisms within the EAC by designing laws that advocate for these mechanisms and institutionalizing ADR mechanisms in a manner which preserves their key attributes such as flexibility, informality, privacy and confidentiality⁷⁹. There is also need to enhance good governance within the EAC in order to promote confidence among investors as to the ability of the region as an ideal venue for ADR.

Further, there is need to delimit the role of courts in ADR mechanisms in order to cure the challenge of court interference in these mechanisms. The role of courts should merely be facilitative in aspects such as granting interim measures of protection and enforcement of decisions and should not be designed to stop or delay ADR proceedings⁸⁰. Finally, there is need to market the EAC as an ideal destination for ADR. Practitioners and ADR institutions can use marketing tools such as ADR conferences and collaborations with institutions in other continents in order to enhance their visibility in the ADR spectrum⁸¹. ADR practitioners can also tap into marketing tools such as publications, websites and social media in order to portray their skills and qualifications and promote confidence in people seeking their services. Through such measures, the role of ADR mechanisms in enhancing access to justice within the EAC will be enhanced.

⁷⁷ Ibid

⁷⁸ Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Op Cit

⁷⁹ Muigua. K., 'Fusion of Mediation and Other ADR Mechanisms with Modern Dispute Resolution in Kenya: Prospects and Challenges.' Op Cit

⁸⁰ Kariuki. F., 'Challenges facing the Recognition and Enforcement of International Arbitral Awards within the East African Community.' Op Cit

⁸¹ Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Op Cit

6.0 Conclusion

The place of ADR mechanisms within the EAC is enshrined under the Treaty Establishing the EAC⁸². ADR mechanisms such as negotiation, mediation, conciliation, traditional justice systems and arbitration have been practiced in Africa for many centuries⁸³. These mechanisms were considered 'Appropriate' and not 'Alternative' in managing conflicts and were always the first point of call whenever disputes emerged. However, modern conceptions of justice brought about by colonialism resulted in subjugation of ADR mechanisms where they were now considered 'Alternative' to formal justice systems⁸⁴. This has resulted in several challenges which hinder the efficacy of ADR mechanisms in the EAC and Africa at large. There is need to reframe conflict management in the EAC and correctly capture the spirit of ADR as 'Appropriate' and not 'Alternative' in the administration of justice. This will enhance the viability of ADR mechanisms in the EAC and promote the reputation of the region as an ideal venue for ADR. Reframing conflict management in the EAC is a noble idea.

⁸² 'Treaty Establishing the East African Community.' Op Cit

⁸³ Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities' Op Cit

⁸⁴ Ghebretkle. T., & Rammala. M., 'Traditional African Conflict Resolution: The Case of South Africa and Ethiopia' Op Cit

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- Constitution of Kenya, 2010, article 159 (2) (c), Government Printer, Nairobi
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