

*Towards an Effective Negotiation and Mediation Framework in Kenya? Embracing Lessons from Africa and Globally*

# **Towards an Effective Negotiation and Mediation Framework in Kenya?: Embracing Lessons from Africa and Globally**

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**Kariuki Muigua**

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**Kariuki Muigua\***

**Abstract**

*This paper critically examines how negotiation and mediation alongside other ADR techniques can be appropriately harnessed in Kenya. The paper argues that negotiation and mediation play an important role in conflict management in Kenya. It discusses the key features and advantages of negotiation and mediation which make these processes ideal in enhancing access to justice in Kenya. Despite their appropriateness in strengthening access to justice, the paper argues that negotiation and mediation are yet to be fully harnessed in Kenya. It examines some of the key challenges undermining the use of negotiation and mediation in access to justice in Kenya. In light of these challenges, the paper discusses how Kenya can build an effective negotiation and mediation framework in order to enhance access to justice for development.*

**1.0 Introduction**

Negotiation and mediation are classified among Alternative Dispute Resolution (ADR) processes. The term ADR covers all dispute resolution processes other than litigation<sup>1</sup>. ADR is an umbrella term that covers a wide range of tools and skills that are utilised to manage conflicts and disputes without resort to courts<sup>2</sup>. These processes include negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs)<sup>3</sup>. It

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<sup>1</sup> 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 17/09/2025)

<sup>2</sup> Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at <https://www.eli.org/environmental-governance/community-guideusing-alternative-dispute-resolution-secure-1> (Accessed on 17/09/2025)

<sup>3</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

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has been argued that ADR denotes 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 parties<sup>4</sup>. 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)<sup>5</sup>. These processes may be linked to but function outside formal court litigation processes<sup>6</sup>.

ADR processes including negotiation and mediation provide several benefits in dispute resolution. For instance, ADR processes guarantee procedural flexibility, a broad range of remedial options, and a focus on individualized justice<sup>7</sup>. 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 a determination upon them<sup>8</sup>. If effectively harnessed, ADR can provide more creative, particularized, flexible and collaborative outcomes to disputes than the adversarial litigation processes<sup>9</sup>. ADR mechanisms are associated with several features and benefits including informality, flexibility, privacy, confidentiality, party

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<sup>4</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 17/09/2025)

<sup>5</sup> Ibid

<sup>6</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

<sup>7</sup> 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](https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf) (Accessed on 17/09/2025)

<sup>8</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%20minitrials.> (Accessed on 17/09/2025)

<sup>9</sup> Menkel-Meadow. C., 'Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities' Available at <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2758&context=facpub> (Accessed on 17/09/2025)

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autonomy and the ability to foster expeditious and cost effective management of disputes making them a suitable avenue in enhancing access to justice<sup>10</sup>. Due to their attributes and advantages, it has been argued that ADR is an appropriate and not an alternative tool in accessing justice<sup>11</sup>.

ADR is therefore an appropriate tool in accessing justice. Consequently, ADR mechanisms including negotiation and mediation are being widely embraced in the administration of justice at all levels. At the global level, the *Charter of the United Nations*<sup>12</sup> urges parties to a dispute to 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<sup>13</sup> (Emphasis added). At a national level, the *Constitution of Kenya*<sup>14</sup> mandates courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and Traditional Dispute Resolution Mechanisms (TDRMs)<sup>15</sup>. Utilising ADR is therefore key towards strengthening access to justice.

This paper critically examines how negotiation and mediation alongside other ADR techniques can be appropriately harnessed in Kenya. The paper argues that negotiation and mediation play an important role in conflict management in Kenya. It discusses the key features and advantages of negotiation and mediation which make these processes ideal in enhancing access to justice in Kenya. Despite their appropriateness in strengthening access to justice, the paper argues that negotiation and mediation are yet to be fully harnessed in Kenya. It examines some of the key challenges undermining the

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<sup>10</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>11</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-1.pdf> (Accessed on 17/09/2025)

<sup>12</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

<sup>13</sup> Ibid, article 33 (1)

<sup>14</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>15</sup> Ibid, article 159 (2) (c)

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use of negotiation and mediation in access to justice in Kenya. In light of these challenges, the paper discusses how Kenya can build an effective negotiation and mediation framework in order to enhance access to justice for development.

### **2.0 Negotiation and Mediation in Kenya: Prospects and Challenges**

Negotiation is an informal process that involves parties to a conflict meeting to identify and discuss the issues at hand so as to arrive at a mutually acceptable solution without the help of a third party<sup>16</sup>. It has been described as one of the most fundamental methods of conflict management which offers parties maximum control over the process and outcome<sup>17</sup>. Negotiation usually involves direct discussions between parties to find a mutually acceptable solution to their conflict<sup>18</sup>. It is a strategic form of communication where conflicting parties engage in discussions to address their respective needs, interests, and concerns<sup>19</sup>. The basis of negotiation is that parties find it preferable to search for an agreement through discussions rather than fight openly, give in, or break off contact<sup>20</sup>. According to the United Nations, negotiation is a way of coping with disagreement, with varying views and with different objectives through agreement<sup>21</sup>. Mediation refers to negotiation between two or more parties facilitated by an agreed-upon third party<sup>22</sup>. Mediation has also been defined as a process wherein parties to disputes or conflicts meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences<sup>23</sup>. Further, mediation has also been

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

<sup>17</sup> Ibid

<sup>18</sup> Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Available at <https://remedialcorner.com/blog/comprehensive-guide-to-conflict-resolution-traditional-and-modern-methods-in-east-africa/> (Accessed on 18/09/2025)

<sup>19</sup> The Role of Negotiation in Conflict Resolution Strategies., Available at <https://www.karrass.com/blog/conflict-resolution-strategies> (Accessed on 18/09/2025)

<sup>20</sup> Maiese. M., 'Negotiation' Available at <https://www.beyondintractability.org/essay/negotiation> (Accessed on 18/09/2025)

<sup>21</sup> United Nations., 'Fundamental of Negotiation' Available at <https://www.un.org/en/model-united-nations/fundamentals-negotiation> (Accessed on 18/09/2025)

<sup>22</sup> What is Mediation?., Available at <https://www.pon.harvard.edu/tag/mediation/> (Accessed on 18/09/2025)

<sup>23</sup> Mediation Defined: What is Mediation?., Available at <https://www.jamsadr.com/mediation-defined/> (Accessed on 18/09/2025)

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described as a method of conflict management where conflicting parties gather to seek solutions to the conflict, with the assistance of a third party who facilitates discussions and the flow of information, and thus aiding in the process of reaching an agreement<sup>24</sup>. It has been argued that mediation is a non-adversarial and collaborative process through which an impartial third party helps parties in a dispute reach a resolution through interest-based negotiations<sup>25</sup>. Mediation is usually a continuation of the negotiation process since it arises where parties to a conflict have attempted negotiations, but have reached a deadlock<sup>26</sup>. As a result, parties involve a neutral third party known as a mediator who facilitates communication, promotes understanding, focuses the parties on their interests, and uses creative problem-solving to enable the parties to reach their own agreement<sup>27</sup>.

Negotiation and mediation are appropriate processes in resolving disputes and conflicts. For example, it has been argued that utilising negotiation in conflict management enables parties to achieve mutually satisfactory solutions that respects each other's perspectives while minimizing the negative impact of the disagreement<sup>28</sup>. Negotiation often involves open dialogue, active listening, compromise, and sometimes concessions thus enabling parties to effectively resolve their differences<sup>29</sup>. In addition, negotiation has the potential to preserve and in some cases even enhance the relationship between the parties once an

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<sup>24</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2<sup>nd</sup> Edition., 2017

<sup>25</sup> United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDPAUNEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAUNEP2015_0.pdf) (Accessed on 18/09/2025)

<sup>26</sup> Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

<sup>27</sup> Ibid

<sup>28</sup> The Role of Negotiation in Conflict Resolution Strategies., Available at <https://www.karrass.com/blog/conflict-resolution-strategies> (Accessed on 18/09/2025)

<sup>29</sup> Ibid

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agreement has been reached between them<sup>30</sup>. By opting for negotiation, parties may also reduce costs and delays associated with other dispute resolution processes such as litigation<sup>31</sup>.

In addition, mediation is a suitable process for managing conflicts and disputes since it provides participants an opportunity to collaboratively design creative solutions to conflict and repair or even strengthen their relationships<sup>32</sup>. It has been argued that the premise of mediation is that in the right environment, parties to a conflict can improve their relationships and move towards cooperation<sup>33</sup>. Mediation encourages active listening while also promoting open and respectful communication therefore helping break down barriers including cultural barriers and building trust among parties<sup>34</sup>.

Negotiation and mediation are therefore ideal processes in managing conflicts and disputes since they enhance collaboration and cooperation thus enabling parties to design mutually satisfactory outcomes that can repair and strengthen relationships. Consequently, negotiation and mediation are being embraced in conflict management both globally and in Africa. In Kenya, negotiation and mediation have been part and parcel of conflict management for many centuries and continue playing a key role in enhancing access to justice<sup>35</sup>. For example, negotiation is part and parcel of human life and is practiced in virtually all fields of human activity on a daily basis with people often

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<sup>30</sup> Negotiation., Available at <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html#:~:text=Negotiations%20allow%20the%20parties%20to,the%20form%20of%20an%20agreement> (Accessed on 18/09/2025)

<sup>31</sup> Ibid

<sup>32</sup> What is Mediation?., Available at <https://www.nyc.gov/site/oath/conflict-resolution/what-is-mediation.page#:~:text=Mediation%20is%20a%20constructive%20conversation,conflict%20and%20repair%20professional%20relationships> (Accessed on 18/09/2025)

<sup>33</sup> United Nations., 'Guidance for Effective Mediation' Available at [https://unrcca.unmissions.org/sites/default/files/dpa\\_msu\\_guidance\\_english\\_web.pdf](https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf) (Accessed on 18/09/2025)

<sup>34</sup> Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at [https://www.researchgate.net/publication/372289839\\_Peace\\_Studies\\_Conflict\\_Resolution\\_and\\_Mediation\\_Strategies](https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies) (Accessed on 18/09/2025)

<sup>35</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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discussing to meet their respective needs, concerns and interests and solve conflicts<sup>36</sup>. It has been argued that conflict management among communities in Kenya and all over Africa is anchored on the ability of people to negotiate<sup>37</sup>. Negotiation has been used since time immemorial among African communities and is still applied widely in Kenya today at interpersonal and inter-group levels with people meeting informally to discuss and resolve their differences before they can escalate<sup>38</sup>. It has been argued that negotiation is a powerful tool in empowering Kenyans to access justice in a timely and cost-effective manner while preserving and even strengthening relationships<sup>39</sup>.

In addition, mediation has been widely embraced in conflict management in Kenya. It has been argued that mediation has existed in Kenya and Africa since antiquity<sup>40</sup>. Mediation as practiced by communities in Kenya is an informal, voluntary, flexible and expeditious process aimed at preserving relationships and ensuring peaceful co-existence among the people of Kenya and Africa<sup>41</sup>. For many centuries, inter and intra communal conflicts in Kenya were mediated in informal settings where they were presided over by the Council of Elders who acted as mediators<sup>42</sup>. It has been observed that mediation in Kenya is a customary and every day affair with people sitting down to collaborate and agree on issues at hand<sup>43</sup>. Mediation is widely practiced in Kenya and is playing a crucial role in reducing backlog of cases in the Judiciary, promoting access to justice and encouraging amicable resolution of disputes<sup>44</sup>.

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<sup>36</sup> United Nations., 'Fundamental of Negotiation' Op Cit

<sup>37</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>41</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>42</sup> Ibid

<sup>43</sup> Ibid

<sup>44</sup> Nairobi Centre for International Arbitration., 'Mediation Ecosystem in Kenya: Current Trends and Future Prospects' Available at <https://ncia.or.ke/wp-content/uploads/2025/01/Mediation-Ecosystem-in-Kenya.pdf> (Accessed on 18/09/2025)

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Negotiation and mediation are therefore key processes in fostering access to justice in Kenya. However, despite their appropriateness, the practice of negotiation and mediation in Kenya still faces several challenges. For instance, it has been argued that court involvement in mediation in Kenya such as in the case of the Court Annexed Mediation (CAM) programme undermines voluntariness and party autonomy which are key features of mediation<sup>45</sup>. In addition, due to their non-binding nature, enforcement of negotiated and mediated agreements in Kenya is largely left to the good will of the parties which can undermine finality of dispute resolution when parties violate such agreements<sup>46</sup>. Further, a fragmented institutional framework, concerns over standardization and accreditation of personnel and insufficient trained personnel have resulted in a disjointed mediation practice in Kenya and concerns over the quality of mediation environment in the country<sup>47</sup>. In addition, the traditional and customary systems of dispute resolution which have enabled Kenyan communities to manage disputes effectively for many centuries through negotiation and mediation have largely been ignored<sup>48</sup>. It is imperative to address these challenges in order to effectively harness negotiation and mediation in Kenya.

### **3.0 Towards an Effective Negotiation and Mediation Framework in Kenya**

Negotiation and mediation are appropriate mechanisms in enhancing access to justice in Kenya. They have been part and parcel of conflict management among Kenyan communities since time immemorial<sup>49</sup>. Despite their widespread use, the practice of negotiation and mediation in Kenya still faces several challenges. It is therefore important to build an effective negotiation and mediation framework in Kenya in order to strengthen access to justice for development.

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<sup>45</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

<sup>46</sup> Ibid

<sup>47</sup> Nairobi Centre for International Arbitration., 'Mediation Ecosystem in Kenya: Current Trends and Future Prospects' Op Cit

<sup>48</sup> Judiciary of Kenya., 'Promoting Alternative Justice Systems (AJS)' Available at <https://judiciary.go.ke/promoting-alternative-justice-systems-ajs/> (Accessed on 19/09/2025)

<sup>49</sup> Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Op Cit

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There has been progress towards strengthening the negotiation and mediation framework in Kenya. For example, the Constitution of Kenya envisages the use of ADR processes including mediation, negotiation and TDRMs in accessing justice<sup>50</sup>. Constitutional recognition is key in legitimising negotiation and mediation among other ADR processes and enhancing their uptake towards achieving the right of access to justice for Kenyans. In addition, mediation in Kenya has been fused with the formal justice system through the CAM programme<sup>51</sup>. This initiative has been hailed in strengthening mediation practice in Kenya and promoting management of disputes in a reconciliatory and cost-effective manner and helping to restore broken relationships<sup>52</sup>. According to the Judiciary of Kenya, CAM has bolstered the use of mediation as an appropriate tool for accessing justice with families being reunited, contractual relations being restored and cases that had been in court for years being resolved in an expeditious and cost-effective way<sup>53</sup>.

In addition, the *Dispute Resolution Bill, 2025*<sup>54</sup> seeks to formalize, modernize, and regulate ADR processes including mediation and conciliation towards enhancing access to justice, reducing backlog of cases in courts, and entrenching amicable and community-responsive approaches in dispute resolution. The Bill acknowledges that ADR processes are key in ensuring voluntary participation in dispute resolution, confidentiality of dispute resolution processes and expeditious resolution of disputes<sup>55</sup>. Enacting the Dispute Resolution Bill into law can therefore enhance access to justice through ADR

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<sup>50</sup> Constitution of Kenya, 2010., article 159 (2) (c)

<sup>51</sup> Judiciary of Kenya., 'Court Annexed Mediation' Available at [https://judiciary.go.ke/court-annexed-mediation/#:~:text=Court%20Annexed%20Mediation%20\(CAM\)%20was,to%20in%20the%20adversarial%20process.](https://judiciary.go.ke/court-annexed-mediation/#:~:text=Court%20Annexed%20Mediation%20(CAM)%20was,to%20in%20the%20adversarial%20process.) (Accessed on 19/09/2025)

<sup>52</sup> Judiciary Counts gains of Court Annexed Mediation' available at <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/judiciary-counts-gains-of-court-annexed-mediation-3420850> (Accessed on 19/09/2025)

<sup>53</sup> Judiciary of Kenya., 'Court Annexed Mediation' Op Cit

<sup>54</sup> The Dispute Resolution Bill, 2025., Government Printer, Nairobi

<sup>55</sup> Ibid

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processes including mediation. Further, the *Alternative Justice Systems Framework Policy* seeks to enhance the use of Alternative Justice Systems (AJS) in accessing justice in Kenya<sup>56</sup>. It has been argued that AJS covers various techniques including Customary and Informal Justice Systems (CIJ) and Traditional Dispute Resolution Mechanisms (TDRMs)<sup>57</sup>. These phrases cover dispute resolution practices that are often embraced by indigenous communities in managing conflicts through institutions such as community paralegals, local authorities, and elders<sup>58</sup>. At the core of AJS is the use of customary and informal justice systems including indigenous forms of mediation, conciliation and arbitration<sup>59</sup>. Implementing the AJS Framework Policy can therefore strengthen traditional forms of mediation and ADR in Kenya.

The foregoing initiatives are key towards enhancing access to justice in Kenya through negotiation, mediation and ADR. In addition, it is imperative to embrace lessons from Africa and globally in order to build an effective negotiation and mediation framework in Kenya. For example, conflict management in African societies is well-entrenched in the traditions, customs, norms and taboos of the people<sup>60</sup>. Conflicts in African communities are seen as threat to the social fabric that holds the community together<sup>61</sup>. African communities have therefore developed and embraced conflict management strategies that are geared towards effectively dealing with conflicts in order to ensure peaceful co-

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<sup>56</sup> 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 19/09/2025)

<sup>57</sup> Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Available at <https://cic.nyu.edu/wp-content/uploads/2023/11/Multiple-Doors-to-Justice-in-Kenya-2023.pdf> (Accessed on 19/09/2025)

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Ademowo. A., 'Conflict Management in Traditional African Society.' Available at [https://www.researchgate.net/publication/281749510\\_Conflict\\_management\\_in\\_Traditional\\_African\\_Society](https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society) (Accessed on 19/09/2025)

<sup>61</sup> 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-Elderssuccesseschallenges-and-opportunities-1.pdf> (Accessed on 19/09/2025)

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existence within the community<sup>62</sup>. Conflict management among African communities is aimed at creating consensus, facilitating reconciliation, fostering peace, harmony and cohesion and gives prominence to communal needs over individual needs<sup>63</sup>. For many centuries, conflict management in African societies has taken the form of informal negotiation, mediation, reconciliation and arbitration among other techniques which are administered by institutions such as the council of elders<sup>64</sup>. These techniques fit comfortably within traditional concepts of African justice, particularly its core value of reconciliation<sup>65</sup>. Therefore, in order to build an effective negotiation and mediation framework in Kenya, it is imperative to reframe conflict management and embrace these processes from an African perspective since they fit well within the concept of justice in the continent<sup>66</sup>.

There is also need to embrace global best practices in negotiation and mediation. This involves designing and implementing appropriate legal, policy, and institutional frameworks to support the uptake of negotiation and mediation in addition to other ADR techniques<sup>67</sup>. It is also necessary for key stakeholders including the Judiciary to spread awareness on the importance of negotiation and mediation while also linking ADR techniques to formal justice systems in order to enhance their uptake, legitimacy and effectiveness<sup>68</sup>. Further, there is need to ensure quality and competence in negotiation,

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<sup>62</sup> Adeyinka. A., & Lateef. B., 'Methods of Conflict Resolution in African Traditional Society' *An International Multidisciplinary Journal*, Ethiopia Vol. 8 (2).

<sup>63</sup> Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

<sup>64</sup> Kariuki. F., 'Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities.' Op Cit

<sup>65</sup> Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

<sup>66</sup> Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <http://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Movingfrom-Alternative-to-Appropriate-Dispute-Resolution-1.pdf> (Accessed on 19/09/2025)

<sup>67</sup> Ibid

<sup>68</sup> The Judiciary of Kenya., 'Judiciary Supporting Alternative Dispute Resolution Mechanisms' Available at <https://judiciary.go.ke/judiciary-supporting-alternative-dispute-resolution-mechanism/> (Accessed on 19/09/2025)

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mediation and ADR through capacity building, training, standardization and accreditation of ADR practitioners<sup>69</sup>.

Through the foregoing, it is possible to build an effective negotiation and mediation framework in Kenya.

#### **4.0 Conclusion**

Negotiation and mediation are suitable processes in strengthening access to justice in Kenya. However, the practice of negotiation and mediation in Kenya faces several challenges undermining their use in conflict management. It is therefore necessary to build an effective negotiation and mediation framework in Kenya by embracing lessons from Africa and globally in order to strengthen access to justice for development.

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<sup>69</sup>Nairobi Centre for International Arbitration., 'Mediation Ecosystem in Kenya: Current Trends and Future Prospects' Op Cit

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**References**

Ademowo. A., 'Conflict Management in Traditional African Society.' Available at [https://www.researchgate.net/publication/281749510\\_Conflict\\_management\\_in\\_Traditional\\_African\\_Society](https://www.researchgate.net/publication/281749510_Conflict_management_in_Traditional_African_Society)

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

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)

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>

Bercovitch. J., 'Mediation Success or Failure: A Search for the Elusive Criteria.' *Cardozo Journal of Conflict Resolution*, Vol. 7, p 289

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

Environmental Law Institute., 'A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice' Available at <https://www.eli.org/environmental-governance/community-guideusing-alternative-dispute-resolution-secure-1>

Judiciary Counts gains of Court Annexed Mediation' available at <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/judiciary-counts-gains-ofcourt-annexed-mediation-3420850>

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/>

Judiciary of Kenya., 'Court Annexed Mediation' Available at [https://judiciary.go.ke/court-annexed-mediation/#:~:text=Court%20Annexed%20Mediation%20\(CAM\)%20was,to%20in%20the%20adversarial%20process](https://judiciary.go.ke/court-annexed-mediation/#:~:text=Court%20Annexed%20Mediation%20(CAM)%20was,to%20in%20the%20adversarial%20process)

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

*Towards an Effective Negotiation and Mediation Framework in Kenya? Embracing Lessons from Africa and Globally*

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-Elderssuccesseschallenges-and-opportunities-1.pdf>

Lee. S., 'Multiple Doors to Justice in Kenya: Engaging Alternative Justice Systems' Available at <https://cic.nyu.edu/wp-content/uploads/2023/11/Multiple-Doors-to-Justice-in-Kenya-2023.pdf>

Maiese. M., 'Negotiation' Available at <https://www.beyondintractability.org/essay/negotiation>

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](https://www.researchgate.net/profile/ThomasMain/publication/228182886_ADR_The_new_equity/links/53d00e470cf2fd75bc5c57a5/ADR-The-newequity.pdf)

Mediation Defined: What is Mediation?., Available at <https://www.jamsadr.com/mediation-defined/>

Menkel-Meadow. C., 'Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities' Available at <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2758&context=facpub> (Accessed on 17/09/2025)

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

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>

Muigua. K., 'Reframing Conflict Management in the East African Community: Moving from Alternative to 'Appropriate' Dispute Resolution.' Available at <http://kmco.co.ke/wpcontent/uploads/2023/06/Reframing-Conflict-Management-in-the-East-African-Community-Movingfrom-Alternative-to-Appropriate-Dispute-Resolution-1.pdf>

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

Nairobi Centre for International Arbitration., 'Mediation Ecosystem in Kenya: Current Trends and Future Prospects' Available at <https://ncia.or.ke/wp-content/uploads/2025/01/Mediation-Ecosystem-in-Kenya.pdf>

*Towards an Effective Negotiation and Mediation Framework in Kenya? Embracing Lessons from Africa and Globally*

Negotiation., Available at <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html#:~:text=Negotiations%20allow%20the%20parties%20to,the%20form%20of%20an%20agreement>

Oba. A., 'Comprehensive Guide to Conflict Resolution: Traditional and Modern Methods in East Africa' Available at <https://remedialcorner.com/blog/comprehensive-guide-to-conflict-resolution-traditional-and-modern-methods-in-east-africa/>

Saaida. M., 'Peace Studies: Conflict Resolution and Mediation Strategies' Available at [https://www.researchgate.net/publication/372289839\\_Peace\\_Studies\\_Conflict\\_Resolution\\_and\\_Mediation\\_Strategies](https://www.researchgate.net/publication/372289839_Peace_Studies_Conflict_Resolution_and_Mediation_Strategies)

The Dispute Resolution Bill, 2025., Government Printer, Nairobi

The Judiciary of Kenya., 'Judiciary Supporting Alternative Dispute Resolution Mechanisms' Available at <https://judiciary.go.ke/judiciary-supporting-alternative-dispute-resolution-mechanism/>

The Role of Negotiation in Conflict Resolution Strategies., Available at <https://www.karrass.com/blog/conflict-resolution-strategies>

The Role of Negotiation in Conflict Resolution Strategies., Available at <https://www.karrass.com/blog/conflict-resolution-strategies>

United Nations Environment Programme., 'Natural Resources and Conflict: A Guide for Mediation Practitioners' Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation\\_UNDPAU\\_NEP2015\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NRCMediation_UNDPAU_NEP2015_0.pdf)

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

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)

United Nations., 'Fundamentals of Negotiation' Available at <https://www.un.org/en/model-united-nations/fundamentals-negotiation>

United Nations., 'Guidance for Effective Mediation' Available at [https://unrcca.unmissions.org/sites/default/files/dpa\\_msu\\_guidance\\_english\\_web.pdf](https://unrcca.unmissions.org/sites/default/files/dpa_msu_guidance_english_web.pdf)

*Towards an Effective Negotiation and Mediation Framework in Kenya? Embracing Lessons from Africa and Globally*

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

What is Mediation?., Available at <https://www.nyc.gov/site/oath/conflict-resolution/what-is-mediation.page#:~:text=Mediation%20is%20a%20constructive%20conversation,conflict%20and%20repair%20professional%20relationships>

What is Mediation?., Available at <https://www.pon.harvard.edu/tag/mediation/>