

True Justice in Appropriate Dispute Resolution (ADR): Beyond Clearing Case Backlogs or Achieving Quick Solutions, to Protecting Party Privacy and Restoring Social Harmony

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True Justice in Appropriate Dispute Resolution (ADR): Beyond Clearing Case Backlogs or Achieving Quick Solutions, to Protecting Party Privacy and Restoring Social Harmony

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Abstract

This paper discusses how Appropriate Dispute Resolution (ADR) mechanisms can be effectively utilised to foster true justice for Sustainable Development. The paper observes that ADR techniques such as negotiation, mediation, conciliation, arbitration and TDRMs contain several key attributes and provide numerous advantages that can strengthen access to justice for Sustainable Development. It examines the key features and advantages that make ADR an appropriate platform towards enhancing access to justice. Despite providing several advantages towards strengthening access to justice, the paper argues that there is need to bolster the use of ADR in order to achieve true justice for Sustainable Development. In particular, the paper notes that it is necessary to go beyond clearing case backlog or achieving quick solutions, to protecting party privacy and restoring social harmony in order to effectively and appropriately harness ADR for enhanced access to justice. The paper suggests how this dream can be achieved towards true justice for Sustainable Development.

1.0 Introduction

Justice is a fundamental tenet in the Sustainable Development discourse. The concept of justice is associated with fair and impartial decision procedures (procedural justice) and with persons and groups being treated even-handedly (formal justice, treating like cases alike) and in a morally fitting way (material or substantive justice)¹. It has been observed that justice can be achieved in various forms including *distributive justice* (economic justice) that involves fairness in sharing resources and opportunities²; *procedural justice* which focuses on fair and impartial decision making procedures³; *restorative justice* whose aim is to repair harm to victims of crimes and rehabilitate offenders⁴; and *retributive justice* that focuses on punishing crimes in a society (Emphasis added)⁵.

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¹ Pogge. T., 'Justice: Philosophical Aspects' *International Encyclopedia of the Social & Behavioral Sciences*, 2nd Edition, 2015, pp 943-948

² Maiese. M., & Burgess. H., 'Types of Justice' Available at https://www.beyondintractability.org/essay/types_of_justice (Accessed on 30/07/2026)

³ Ibid

⁴ Ibid

⁵ Ibid

By promoting justice in all its forms, it is possible to ensure fairness, inclusivity, equity and respect for human rights towards Sustainable Development⁶. It has been observed that justice supports economic growth, environmental conservation and social harmony while ensuring that development policies and priorities do not leave anyone behind⁷. The United Nations 2030 Agenda for Sustainable Development⁸ through Sustainable Development Goal (SDG) 16 seeks to promote peaceful and inclusive societies for Sustainable Development, *provide access to justice for all* and build effective, accountable and inclusive institutions at all levels⁹ (Emphasis added).

Despite its role in promoting Sustainable Development, it has been observed that billions of people all over the world lack effective, appropriate and meaningful access to justice¹⁰. This situation undermines Sustainable Development since it excludes many people from social, political and economic opportunities that are vital in unlocking sustainability¹¹. Consequently, there is need for appropriate interventions towards fostering justice for Sustainable Development. In particular, it has been observed that processes such as negotiation, mediation, conciliation, arbitration and Traditional Dispute Resolution Mechanisms (TDRMs) contain several key features and provide certain advantages that can strengthen access to justice for Sustainable Development¹².

This paper discusses how Appropriate Dispute Resolution (ADR) mechanisms can be effectively utilised to foster true justice for Sustainable Development. The paper observes that ADR techniques such as negotiation, mediation, conciliation, arbitration and TDRMs contain several key attributes and provide numerous advantages that can strengthen access to justice for Sustainable Development. It examines the key features and advantages that make ADR an appropriate platform towards enhancing access to justice. Despite providing several advantages towards strengthening access to justice, the paper argues that there is need to bolster the use of ADR in order to achieve true justice for Sustainable Development. In particular, the paper notes that it is necessary to go beyond clearing case backlog or achieving quick solutions, to protecting party privacy and restoring social harmony in order to effectively and appropriately harness ADR for enhanced access to justice. The paper suggests how this dream can be achieved towards true justice for Sustainable Development.

⁶ United Nations Development Programme., 'Justice and Sustainable Development' Available at https://www.undp.org/sites/g/files/zskgke326/files/2025-01/report_justice_anddevelopment_2023.pdf (Accessed on 30/07/2026)

⁷ Ibid

⁸ 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 30/07/2026)

⁹ Ibid

¹⁰ United Nations Development Programme., 'Justice and Sustainable Development' Op Cit

¹¹ Ibid

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

2.0 Role of Appropriate Dispute Resolution (ADR) in Access to Justice

ADR has developed into an effective solution due to global gaps in access to justice. For example, it has been observed that most countries are still struggling to establish functional, timely, affordable, responsive and credible justice systems¹³. In particular, challenges such as high legal costs, bureaucracy, complex legal procedures, illiteracy, corruption, distance from formal courts, backlog of cases in courts and inadequate legal knowhow undermine the effectiveness of judicial systems in delivering justice to citizens¹⁴. In light of these concerns, it has been observed that many citizens have lost faith in the ability of their national courts to provide timely, cost-effective and just management of their disputes¹⁵.

In light of the foregoing concerns, it has been correctly observed that in order to remedy injustices, end impunity, and protect the rights of both current and future generations, justice systems, services and institutions need to be fair, accountable, expeditious, accessible and able to deliver quality justice services for all, especially the most marginalised and vulnerable populations¹⁶. In the quest towards enhancing access to justice for Sustainable Development, formal justice systems represent only one avenue for seeking justice, and consequently, there is need to harness and utilise the quality and efficacy of the full array of state and non-state justice service providers¹⁷. One of the most effective approaches towards achieving this goal is through the use of ADR techniques including negotiation, mediation, conciliation, arbitration and traditional and customary justice systems¹⁸.

ADR techniques contain several key features and provide numerous advantages making them appropriate in strengthening access to justice for Sustainable Development. The key features and advantages of ADR include informality, privacy, confidentiality, flexibility and the ability to promote expeditious and cost-effective management of disputes¹⁹. ADR is an appropriate avenue towards achieving true justice since it ensures a justice system with procedural flexibility, a broad range of remedial options, and a focus on individualized justice²⁰. It has been observed that by

¹³ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

¹⁴ Ojwang. J.B , "The Role of the Judiciary in Promoting Environmental Compliance and Sustainable Development," *I Kenya Law Review Journal* 19 (2007), pp. 19-29: 29

¹⁵ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability' Op Cit

¹⁶ United Nations Development Programme., 'Access to Justice' Available at https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP%20GP_%20Justice.pdf (Accessed on 30/07/2026)

¹⁷ Ibid

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

¹⁹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

²⁰ 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 30/07/2026)

embracing ADR, Parties can manage their disputes quickly saving time and financial resources that could otherwise be spend in lengthy court proceedings²¹.

In addition, it has been observed that most ADR processes emphasize collaboration and cooperation allowing parties to preserve and strengthen relationships when compared to adversarial court processes²². In particular, ADR mechanisms such as negotiation, mediation and conciliation allow for more creative and collaborative solutions than that those available in traditional litigation²³. It has been observed that by encouraging collaboration, ADR processes enable parties to design mutually satisfactory outcomes that ensure that the root causes of conflicts are addressed therefore minimising the likelihood of disagreements and disputes reemerging in future²⁴. The flexibility of ADR mechanisms also allow parties to tailor conflict management to their specific needs and develop creative solutions that take into account their unique circumstances²⁵. In addition, the transnational applicability of ADR processes such as mediation and arbitration also provides advantages in managing disputes in an increasingly dynamic and interconnected world²⁶. Further, ADR processes such as arbitration and adjudication provide for expert determination of disputes by allowing parties to select decision-makers with requisite education, knowledge, skills and experience towards sound and informed outcomes²⁷.

The foregoing attributes and advantages make ADR an appropriate tool in fostering access to justice. Despite being termed as 'alternative' it has been argued that the key features and advantages of ADR make these processes an 'appropriate' tool in dispensing justice towards Sustainable Development²⁸. The United Nations observes that 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 relationship²⁹. ADR processes are therefore appropriate and not alternative due to their dynamism, efficacy and viability in strengthening access to justice for Sustainable Development.

²¹ Benefits of Alternative Dispute Resolution., Available at https://rcmonlinecollege.co.ke/lessons/5-6-benefits-of-alternative-dispute-resolution-2/?srsltid=AfmBOoqdWVKPN9Axx_0w_W_xsZgLT7UiByb3arOzi2nwjcVW5brJzUhJYBb (Accessed on 30/07/2026)

²² Ibid

²³ JAMS ADR., 'What is ADR' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 30/07/2026)

²⁴ Ibid

²⁵ Benefits of Alternative Dispute Resolution., Op Cit

²⁶ Moses, 'The Principles and Practice of International Commercial Arbitration' 2nd Edition, 2017, Cambridge University Press

²⁷ Benefits of Alternative Dispute Resolution., Op Cit

²⁸ P. Fenn, "Introduction to Civil and Commercial Mediation", in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52

²⁹ 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 30/07/2026)

Despite its appropriateness in promoting access to justice, the use of ADR can also fuel several concerns. For instance, power imbalances, enforceability challenges, and inadequate transparency and public accountability have been identified as some of the key challenges facing ADR³⁰. In addition, reducing ADR as a mere tool to clear case backlog or achieve quick outcomes to disputes can undermine the appropriateness of dispute resolution since the root causes of conflicts may not be adequately addressed³¹. Consequently, there is need harness the positive attributes of ADR while mitigating its challenges in order to promote true justice for Sustainable Development.

3.0 Harnessing Appropriate Dispute Resolution (ADR) towards True Justice for Sustainable Development

Due to the challenges faced by justice systems all over the world, it is imperative to effectively harness and utilise ADR processes including negotiation, mediation, conciliation, arbitration, adjudication and TDRMs towards true justice for Sustainable Development. By ensuring faster, cost-effective and appropriate dispensation of disputes, ADR can accelerate progress towards Sustainable Development by creating suitable conditions for social harmony, economic growth and environmental protection³². However, in light of inherent challenges, there is need to revamp ADR in order realise its attributes as an appropriate tool of dispensing justice.

In particular, it is imperative to protect party privacy in ADR. Party privacy is a key feature in ADR which ensures that disputants are able to engage in open and candid conversations without the conflict management process becoming public knowledge³³. It has been observed that by focusing on privacy and confidentiality, ADR enables parties to freely participate in informal discussions of their interests towards reaching the best possible resolution of their dispute without concerns of such information leaking to third parties³⁴. Privacy ensures that parties have the freedom to discuss their concerns and explore potential solutions without the fear of such information becoming public knowledge³⁵. It also prevents sensitive information that may have arisen during ADR proceedings from becoming a matter of public focus³⁶. It is therefore necessary to protect party privacy in ADR in order to encourage parties to freely engage in open and meaningful discussions towards managing their disputes in the pursuit of true justice. In order to

³⁰ Defects of Alternative Dispute Resolution: Analysis, Implications, and Remedies., Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5072583 (Accessed on 30/07/2026)

³¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³² International Development Law Organization., 'Enhancing Access to Justice through Alternative Dispute Resolution in Kenya' Available at <https://www.idlo.int/news/highlights/enhancing-access-justice-through-alternative-dispute-resolution-kenya> (Accessed on 30/07/2026)

³³ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

³⁴ Meadow. C., 'Ethics Issues in Arbitration and Related Dispute Resolution Processes: What's Happening and What's Not' *University of Miami Law Review*, Volume 56, No.4

³⁵ Benefits of Alternative Dispute Resolution., Op Cit

³⁶ Ibid

achieve this goal, ADR practitioners including arbitrators, mediators, conciliators and adjudicators have been urged to maintain party privacy and confidentiality by not disclosing any information that arises during ADR proceedings to third parties unless in situations where such disclosure is allowed³⁷. In addition, ADR practitioners have been urged to ensure that proceedings are confidential and private³⁸. In particular, only parties to the dispute should be permitted access to the hearing venue and the materials used in ADR proceedings unless otherwise agreed³⁹. Protecting party privacy is therefore key towards achieving true justice through ADR.

In addition, it is imperative to focus on restoring social harmony towards achieving true justice through ADR. It has been observed that most ADR processes allow parties to work together towards mutually satisfactory outcomes that can ensure social harmony⁴⁰. With the exception of binding arbitration, the goal of ADR is to provide a forum for disputing parties to work towards a voluntary, consensual agreement, as opposed to having a judge or other authority impose an outcome upon them⁴¹. Through this approach, ADR processes are able to tackle the underlying causes of conflicts, repair and strengthen relationships, and foster reconciliation among disputing parties towards ensuring social harmony⁴². ADR practitioners have a key role to play in fostering social harmony by encouraging parties to collaborate and focus on common ground rather than who is right or wrong in a conflict⁴³. Through this approach, ADR can be effectively used to address the root causes of conflicts and disputes thus preserving and strengthening relationships, promoting reconciliation and ensuring peaceful co-existence among individuals and within communities towards restoring and promoting social harmony⁴⁴.

4.0 Conclusion

Strengthening access to justice is a key global agenda in the pursuit of Sustainable Development. ADR is an appropriate forum towards realising this dream by providing a quick, cost-effective and collaborative approach towards strengthening access to justice for Sustainable Development. However, it is imperative to go beyond clearing case backlog or achieving quick solutions, to

³⁷ Meadow. C., 'Ethics Issues in Arbitration and Related Dispute Resolution Processes: What's Happening and What's Not' Op Cit

³⁸ Muigua. K., 'Settling Disputes through Arbitration in Kenya.' Glenwood Publishers, 4th Edition, 2022

³⁹ Ibid

⁴⁰ 6 Advantages of Alternative Dispute Resolution., Available at <https://btmediation.com/advantages-of-alternative-dispute-resolution/> (Accessed on 30/07/2026)

⁴¹ 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%200minitrals>. (Accessed on 30/07/2026)

⁴² Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁴³ Mediation Can Maintain Harmony at Various Stages of a Case., Available at <https://www.brickergraydon.com/insights/publications/Mediation-can-maintain-harmony-at-various-stages-of-a-case> (Accessed on 30/07/2026)

⁴⁴ Muigua. K., 'Resolving Conflicts through Mediation in Kenya.' Glenwood Publishers Limited, 2nd Edition., 2017

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