

Alternative Dispute Resolution in a New Age: Navigating Turbulent Seas with Optimism

Kariuki Muigua

Table of Contents

Abstract..... 3

1.0 Introduction 3

2.0 Alternative Dispute Resolution in a New Age 6

3.0 Challenges facing ADR in a New Age 11

4.0 Conclusion 13

References 16

Alternative Dispute Resolution in a New Age: Navigating Turbulent Seas with Optimism

Kariuki Muigua*

Abstract

Alternative Dispute Resolution (ADR) mechanisms are being increasingly recognized as 'Appropriate' and ideal in managing disputes due to their several advantages. As a result, these processes have been embraced globally, regionally, and nationally to foster effective management of disputes. ADR mechanism are also proving to be useful in new world of technological advancements, greater regional integration, and the drive towards green growth. This paper critically examines the opportunities and challenges for ADR in a new age. The paper posits that ADR is vital in light of emerging issues such as green growth, climate change, regional integration, and technological advancements. It also points out the opportunities for ADR in these contexts. The paper also discusses challenges facing ADR in a new age. The paper also suggests measures towards navigating these challenges with optimism towards a bright tomorrow for ADR.

1.0 Introduction

Alternative Dispute Resolution (ADR) is an umbrella term that refers to a set of processes that are applied to manage disputes without resort to adversarial litigation¹. ADR has also been defined as a term that encompasses a series of mechanisms for resolving disputes that are linked to but function outside formal court litigation processes². According to the United Nations, ADR is a general term, used to define a set of

* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [August, 2024].

¹ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

² Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' *Africa Security Brief*, No. 16 of 2011

approaches and techniques aimed at resolving disputes in a nonconfrontational way³. The United Nations notes that ADR covers a broad spectrum of approaches, from party-to-party engagement in negotiations as the most direct way to reach a mutually accepted resolution, to arbitration and adjudication at the other end, where an external party imposes a solution⁴. In addition, somewhere along the axis of ADR approaches between these two extremes lies mediation, a process by which a third party aids the disputants to reach a mutually acceptable solution⁵. ADR therefore covers various techniques including negotiation, mediation, arbitration, conciliation, adjudication, expert determination, early neutral evaluation, and Traditional Dispute Resolution Mechanisms (TDRMs) among others⁶.

ADR techniques offer several benefits in conflict management. These mechanisms are associated with features such as informality, flexibility, efficiency, privacy, confidentiality, party autonomy and the ability to foster expeditious and cost-effective management of disputes⁷. As a result of these features, ADR offers significant advantages, such as reducing case backlogs, lowering costs of managing conflicts, and promoting peaceful dispute resolution⁸. In addition, ADR processes also allow for more creative and collaborative outcomes than those available through litigation⁹. Some ADR techniques such as negotiation and mediation are also key in preserving and even

³ 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

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Muigua. K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Op Cit

⁸ American Bar Association., 'Unlocking the Power of Alternative Dispute Resolution: Beyond Courts and Conflict' Available at <https://www.americanbar.org/advocacy/global-programs/news/2024/unlocking-power-alternative-dispute-resolution/#:~:text=ADR%20offers%20significant%20benefits%2C%20such,equity%2C%20and%20access%20to%20justice.> (Accessed on 26/08/2024)

⁹ JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum' Available at <https://www.jamsadr.com/adr-spectrum/> (Accessed on 26/08/2024)

enhancing the relationship of parties to a conflict¹⁰. These advantages of ADR enhance justice system effectiveness and accessibility, aligning with values of fairness, equity, and access to justice¹¹.

Due to the foregoing advantages, it has been argued that there is need to embrace ADR as ‘Appropriate Dispute Resolution’¹². These processes are suitable in delivering ideal and long- lasting outcomes and are therefore ‘Appropriate’ and not ‘Alternative’ in managing disputes¹³. Due to their appropriateness, ADR mechanisms have been embraced globally, regionally, and nationally to foster effective management of disputes. The *Charter of the United Nations*¹⁴ sets out the legal framework for utilizing ADR processes at the global stage. The Charter provides that parties to a dispute shall first of all seek a solution by *negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means* of their own choice (Emphasis added)¹⁵. At a regional level, the *Treaty Establishing the East African Community*¹⁶ mandates the East African Court of Justice (EACJ) to foster ADR processes including arbitration¹⁷. At a national level, the Constitution of Kenya urges courts and tribunals to promote ADR mechanisms including reconciliation, mediation, arbitration and TDRMs¹⁸. The Constitution of Uganda also urges courts in adjudicating cases of both a civil and criminal nature to promote reconciliation between parties¹⁹.

¹⁰ Muigua. K., ‘Alternative Dispute Resolution and Access to Justice in Kenya.’ Op Cit

¹¹ American Bar Association., ‘Unlocking the Power of Alternative Dispute Resolution: Beyond Courts and Conflict’ Op Cit

¹² United Nations., ‘Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building’ Op Cit

¹³ P. Fenn, “Introduction to Civil and Commercial Mediation”, in Chartered Institute of Arbitrators, *Workbook on Mediation*, (CIArb, London, 2002), pp. 50-52

¹⁴ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

¹⁵ Ibid, article 33 (1)

¹⁶ Treaty Establishing the East African Community., Available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download> (Accessed on 26/08/2024)

¹⁷ Ibid, article 32

¹⁸ Constitution of Kenya, 2010., Article 159 (2) (c)., Government Printer, Nairobi

¹⁹ Constitution of Uganda., Article 126 (2) (d)., Available at <https://www.parliament.go.ug/documents/1240/constitution> (Accessed on 26/08/2024)

The potential of ADR has therefore been recognized globally, regionally, and nationally. ADR mechanisms are also proving to be useful in the new world of technological advancements, greater regional integration, and the drive toward green growth²⁰. This paper critically examines the opportunities and challenges for ADR in new age. The paper posits that ADR is vital in light of emerging issues such as green growth, climate change, regional integration, and technological advancements. It also points out the opportunities for ADR in these contexts. The paper also discusses challenges facing ADR in a new age. The paper also suggests measures towards navigating these challenges with optimism towards a bright tomorrow for ADR.

2.0 Alternative Dispute Resolution in a New Age

The concept of ADR is relevant in light of emerging issues including technological advancement, greater regional integration, and the quest towards green growth. The rapid growth of technology has permeated into all aspects of life including the field of dispute resolution²¹. Technology is seen as a disruptive phenomenon that has the capacity to end traditional business models, to cast whole industries into oblivion, and to destroy traditional crafts, arts, and professions²². In the age of rapid technological advancements, Online Dispute Resolution (ODR) platforms have become increasingly vital for addressing consumer disputes effectively and efficiently²³. ODR consists of

²⁰ Muigua. K., 'Alternative Dispute Resolution in the Context of Emerging Challenges of Climate Change, Cyber Security, and Globalization' Available at <https://kmco.co.ke/wp-content/uploads/2024/04/Alternative-Dispute-Resolution-in-the-Context-of-Emerging-Challenges-of-Climate-Change-Cyber-Security-and-Globalization.pdf> (Accessed on 26/08/2024)

²¹ Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-KariukiMuigua.pdf> (Accessed on 26/08/2024)

²² Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Available at <https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/09/digital-dispute-resolution> (Accessed on 26/08/2024)

²³ United Nations Trade and Development., 'Technology and the Future of Online Dispute Resolution Platforms for Consumer Protection Agencies' Available at <https://unctad.org/publication/technology-and-future-online-dispute-resolution-platforms-consumer-protection-agencies#:~:text=Consumer%20ODR%20consists%20of%20mechanisms,other%20information%20and%20communication%20technology.> (Accessed on 26/08/2024)

mechanisms for resolving disputes facilitated through the use of electronic communications and other information and communication technology²⁴. It has also been described as the application of Information and Communications Technology to the practice of dispute resolution²⁵. As a result of technological advancements, new forms of ADR such as online mediation, online arbitration, and block chain arbitration have emerged²⁶.

It has been noted that technology has the ability to make dispute resolution more efficient²⁷. It holds the promise for an improved dispute resolution landscape that is based on fewer physical, conceptual, psychological and professional boundaries, while enjoying a higher degree of transparency, expeditiousness, efficiency, accessibility, participation and change²⁸. ODR can also foster access to justice for geographically separated parties²⁹. It can also enable parties access information relevant to their dispute in real time therefore enhancing the efficacy of dispute resolution³⁰. Further, as a result of technological advancement, it is possible to use software algorithms to keep communication focused on key issues that need to be addressed while structuring negotiations to keep them moving toward resolution³¹. ADR therefore holds immense promise in light of technological advancement. ADR, with its diverse range of methods such as mediation, arbitration, and negotiation, presents a viable option that aligns with

²⁴ Ibid

²⁵ Rule. C., 'Technology and the Future of Dispute Resolution' Available at <https://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf> (Accessed on 26/08/2024)

²⁶ Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Op Cit

²⁷ Mania. K., 'Online Dispute Resolution: The Future of Justice.' *International Comparative Jurisprudence*, No. 1 of 2015, (pg 76-86)

²⁸ Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

²⁹ Rule. C., 'Technology and the Future of Dispute Resolution' Op Cit

³⁰ Ibid

³¹ Ibid

the dynamic nature of technological advancement while addressing the specific demands of disputes in the cyberspace³².

Technology is therefore revolutionizing ADR. For example, Artificial Intelligence (AI) is significantly impacting ADR by automating and enhancing various aspects of the dispute resolution process³³. AI algorithms have the ability to analyse vast amounts of legal data to predict outcomes and suggest resolutions based on historical trends and case law³⁴. This capacity is key in not only expediting dispute resolution but also aiding arbitrators and mediators in making more informed decisions³⁵. In addition, the use of blockchain in creating smart contracts has been a major development in dispute resolution and ADR³⁶. These contracts execute automatically when predetermined conditions are met, therefore minimizing disputes³⁷.

ADR is also relevant in light of greater emphasis on regional integration. In Africa, regional economic integration aims to create larger, more attractive markets, link landlocked countries to international markets and support intra-African trade³⁸. There have been efforts towards bolstering regional integration in Africa through the formation of Regional Economic Communities (RECs) and inter-governmental organizations including the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States

³² Singh. B., 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues arising in Cyberspace Lensing E-Commerce and Intellectual Property' Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/183> (Accessed on 26/08/2024)

³³ Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Available at <https://www.linkedin.com/pulse/technology-adr-overview-transformative-tools-saleem-shaheen-j4j3e/> (Accessed on 27/08/2024)

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ African Development Bank Group., 'Regional Integration' Available at <https://www.afdb.org/en/topics-and-sectors/topics/regional-integration> (Accessed on 26/08/2024)

(ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC)³⁹. In addition, the establishment of the African Continental Free Trade Area (AfCFTA) is anticipated to deepen integration, foster trade and investment, enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa⁴⁰.

ADR presents numerous benefits in light of these efforts towards regional integration. For example, the *Protocol on Rules and Procedures on the Settlement of Disputes* under the Agreement establishing the AfCFTA⁴¹ envisages the use of ADR processes including negotiation, mediation, arbitration, conciliation, and good offices to manage disputes under the AfCFTA. ADR processes can therefore strengthen efforts towards regional integration in Africa by ensuring efficiency, neutrality of forum, and expeditious management of disputes under the AfCFTA⁴². In addition, the formation of regional ADR centres in Africa including the Nairobi Centre for International Arbitration, the Kigali International Arbitration Centre, and the Cairo Regional Centre for International Commercial Arbitration is key in bringing the continent together in the field of dispute resolution⁴³.

³⁹ Africa Union., 'Regional Economic Communities.' Available at [\(https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20\(1991\)\)](https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20(1991)) (Accessed on 26/08/2024)

⁴⁰ United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at [\(https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-,Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day\)%2C%20according%20to%20UNCTAD\)](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-,Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day)%2C%20according%20to%20UNCTAD) (Accessed on 26/08/2024)

⁴¹ African Union., 'Agreement Establishing the African Continental Free Trade Area.' Available at https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf (Accessed on 26/08/2024)

⁴² The Efficiency of the AfCFTA Dispute Resolution Mechanism: An In-Depth Analysis., Available at <https://arbitrationblog.kluwerarbitration.com/2023/07/11/the-efficiency-of-the-afcfta-dispute-resolution-mechanism-an-in-depth-analysis/> (Accessed on 26/08/2024)

⁴³ ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Available at <https://aln.africa/wp-content/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf> (Accessed on 26/08/2024)

ADR is also relevant in the quest towards green growth. The concept of green growth aims to foster economic growth that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities⁴⁴. It involves promoting economic growth and development, while ensuring that natural assets continue to provide the resources and environmental services on which human well-being relies⁴⁵. Green growth is therefore an idea that seeks to achieve environmentally sustainable economic and social growth⁴⁶. Green growth is low carbon, resource efficient and socially inclusive⁴⁷. In addition, green growth ensures that growth in employment and income are driven by public and private investment into such economic activities, infrastructure and assets that allow reduced carbon emissions and pollution, enhanced energy and resource efficiency, and prevention of the loss of biodiversity and ecosystem services⁴⁸.

It has been noted that in the quest towards green growth, disputes may occur in key sectors including renewable energy, carbon reduction, waste management, electrification, transport and other initiatives and collaborations aimed at developing and implementing sustainable innovation⁴⁹. Further, with the urgent need to combat climate

⁴⁴ United Nations Economic Commission for Africa., 'Enabling Measures for an Inclusive Green Economy in Africa' Available at https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA_Enabling%20measures%20for%20an%20inclusive%20green%20economy%20in%20Africa.pdf (Accessed on 26/08/2024)

⁴⁵ Organisation for Economic Cooperation and Development., 'Towards Green Growth' Available at <https://www.oecd-ilibrary.org/docserver/9789264111318-sumen.pdf?expires=1724073546&id=id&accname=guest&checksum=E34A1AF0D5BEFA1932CC992346CAD9> (Accessed on 26/08/2024)

⁴⁶ World Bank Group., 'Inclusive Green Growth' Available at <https://documents1.worldbank.org/curated/en/129971468157532224/pdf/793260BRI0v20R00Box037737400Public0.pdf> (Accessed on 26/08/2024)

⁴⁷ United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resourceefficiency/green-economy> (Accessed on 26/08/2024)

⁴⁸ Ibid

⁴⁹ World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Available at <https://www.wipo.int/amc/en/center/specific-sectors/greentechnology-sustainability/> (Accessed on 26/08/2024)

change for green growth, the risk of disputes related to sustainability and green growth is on the rise⁵⁰. ADR mechanisms are suitable in resolving disputes related to green growth in areas such as climate change, renewable energy, infrastructure, transport, agriculture and other land use and food production systems⁵¹. As time- and cost-efficient alternatives to litigation, ADR allows parties to choose a mediator, arbitrator or expert with legal and technical expertise in thematic areas within the green growth discourse⁵². ADR also provides a neutral forum for managing cross border disputes through which disputes can be resolved through a single procedure while also ensuring efficient enforcement of outcomes⁵³.

From the foregoing, it emerges that there are immense opportunities for ADR in a new age. However, several challenges are also emerging within the practice of ADR in a new age.

3.0 Challenges facing ADR in a New Age

Despite its numerous benefits, the practice of ADR in a new age raises several concerns. For example, the technology systems supporting digital dispute resolution may be subject to cyberattacks⁵⁴. Unauthorized persons may access the technology supporting digital dispute resolution and engage in unwarranted practices such as stealing of information, deleting information or sending unwanted information to the detriment of

⁵⁰ Ibid

⁵¹ International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf> (Accessed on 26/08/2024)

⁵² World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Op Cit

⁵³ Ibid

⁵⁴ Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-andNew-Frontiers-EmbracingTechnology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-MuiguaPh.DJune-2020.pdf> (Accessed on 27/08/2024)

the parties⁵⁵. It has been noted that technology simultaneously presents the biggest opportunity and the biggest challenge for the practice of dispute resolution⁵⁶. On the positive side, it has the ability to improve access to justice, and provide speedier and better outcomes⁵⁷. However, on the negative side, concerns around data privacy and the potential for algorithmic bias in AI are major challenges for ADR in the era of technological advancement⁵⁸. Further, some technologies are expensive and maybe out of reach for ordinary citizens therefore creating barriers in embracing online dispute resolution⁵⁹.

Further, the role of ADR in the context of regional integration is hindered by several obstacles including. For example, ADR in Africa faces key challenges including inadequate political support, human resources, legal foundations, and sustainable financing⁶⁰. These challenges are hindering the development of the legal and institutional capacity on ADR in Africa including the growth of regional ADR centres⁶¹.

In the context of green growth, it has been noted that the promise of litigation remains at a more ideal and policy- based level when compared with the real and practical impact of ADR mechanisms⁶². Litigation has been more effective than ADR in fostering green growth through court rulings that take into account the principles of Sustainable

⁵⁵ Ibid

⁵⁶ Rule. C., 'Technology and the Future of Dispute Resolution' Op Cit

⁵⁷ Ibid

⁵⁸ Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

⁵⁹ Ibid

⁶⁰ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁶¹ Asian African Legal Consultative Organization., 'Alternative Dispute Resolution: Asian-African Perspectives' Available at <https://www.aalco.int/ADR-PAPER22may2011.pdf> (Accessed on 27/08/2024)

⁶² Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Available at <https://www.hkiac.org/content/resolving-climate-change-related-disputes-through-alternative-modes-dispute-resolution> (Accessed on 27/08/2024)

Development⁶³. Through litigation, governments are being held accountable and required to implement green growth strategies including sustainable infrastructure, green jobs, sustainable fisheries, renewable energy, sustainable tourism, sustainable waste management, and sustainable agricultural practices⁶⁴. It is therefore imperative to enhance the role of ADR in green growth.

4.0 Conclusion

ADR holds immense promise in a new age. As digital technologies continue to advance, they have also begun to revolutionize various aspects of ADR processes⁶⁵. Technology is enhancing the efficiency, accessibility, and effectiveness of dispute resolution processes⁶⁶. ODR has emerged as a viable process for managing disputes that arise in a variety of contexts, including e-commerce transactions, online services, and other forms of online interactions⁶⁷. This form of ADR offers various advantages such as accessibility by parties regardless of geographical distances, cost-effectiveness, automation of administrative tasks associated with dispute resolution, such as document management and scheduling and the availability of an online repository for all communications and actions taken during the dispute resolution process⁶⁸. ADR is also relevant in the context of regional integration. For example, establishment of the AfCFTA provides opportunities for utilizing ADR processes to boost Intra-African trade and strengthen efforts towards regional integration in Africa by ensuring efficiency, neutrality of forum, and expeditious management of disputes⁶⁹. The establishment of regional ADR centres in Africa is also

⁶³ International Development Law Organization., 'Laws for the Planet: Using Law to Deliver Sustainability and Green Growth' Available at <https://www.idlo.int/news/speeches-and-advocacy/laws-planet-using-law-deliver-sustainability-and-green-growth> (Accessed on 27/08/2024)

⁶⁴ Ibid

⁶⁵ The Impact of Digital Technologies on Alternative Dispute Resolution., Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/175#:~:text=Abstract,various%20aspects%20of%20ADR%20processes>. (Accessed on 27/08/2024)

⁶⁶ Ibid

⁶⁷ Use of Technology in ADR: A case for Online Dispute Resolution (ODR)., Available at <https://medium.com/@legalpayofficial/use-of-technology-in-adr-a-case-for-online-dispute-resolution-odr-df1296b9296c> (Accessed on 27/08/2024)

⁶⁸ Ibid

⁶⁹ The Efficiency of the AfCFTA Dispute Resolution Mechanism: An In-Depth Analysis., Op Cit

key in fostering regional integration through ADR⁷⁰. ADR processes are also ideal in the green growth agenda by providing appropriate forums for managing disputes in areas such as climate change, renewable energy, infrastructure, transport, agriculture and other land use and food production systems⁷¹.

Despite this optimism, ADR in a new age faces several hurdles. Technology raises challenges related to data privacy, potential for algorithmic bias, and accessibility especially for poor citizens⁷². The role of ADR in regional integration is hindered by inadequate political support, human resources, legal foundations, and sustainable financing⁷³. Further, litigation is proving to be more practical than ADR in holding governments accountable and shaping green growth policies⁷⁴. It is therefore imperative to navigate these challenges in order to enhance the potential of ADR in a new age.

In order to enhance the appropriateness of ADR in a world of technological advancement, concerns around data privacy and the potential for algorithmic bias must be addressed to maintain the integrity of the process⁷⁵. It is imperative to enhance data privacy and security in digital dispute resolution in order to enhance the viability of ADR in the cyber space⁷⁶. It is also important to foster access to technology in order to avoid a digital divide in dispute resolution⁷⁷. Further, in light of greater regional integration, it is necessary to enhance political support and sustainable financing for the growth of ADR processes at

⁷⁰ ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

⁷¹ International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Op Cit

⁷² Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

⁷³ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Cit

⁷⁴ Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Op Cit

⁷⁵ Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

⁷⁶ Muigua. K., 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Navigating-the-Digital-DisputeResolution-Landscape-Challenges-and-Opportunities-.pdf> (Accessed on 27/08/2024)

⁷⁷ Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Op Cit

a regional level⁷⁸. It is imperative for countries to enhance their legal, policy, and institutional frameworks on ADR in order to ensure the acceptability of these mechanisms at national and regional levels⁷⁹. Establishment of more ADR centres offering a broad range of services including arbitration, mediation, and conciliation is also necessary to foster regional integration through ADR⁸⁰. In addition, it is necessary to widely embrace ADR in green growth for effective management of disputes on climate change, renewable energy, infrastructure, transport, and industrialization among other key sectors⁸¹. ADR practitioners including arbitrators and mediators should also enhance their expertise on green growth in order to foster this agenda nationally, regionally, and globally⁸². ADR institutions also have a crucial role to play by developing rules and/or expertise specific to the resolution of disputes concerning green growth including environmental disputes⁸³.

ADR presents numerous opportunities in a new age of technological advancements, greater regional integration and a push for green growth. However, it vital to navigate the emerging challenges with optimism in order to ensure a bright tomorrow for ADR.

⁷⁸ Uwazie. E., 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability.' Op Ci

⁷⁹ Muigua. K., 'Promoting International Commercial Arbitration in Africa.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/PROMOTING-INTERNATIONAL-COMMERCIALARBITRATION-IN-AFRICA-EAIA-Conference-Presentation.pdf> (Accessed on 27/08/2024)

⁸⁰ ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Op Cit

⁸¹International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Op Cit

⁸² Ibid

⁸³ Ibid

References

Africa Union., 'Regional Economic Communities.' Available at [https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20\(1991\)](https://au.int/en/recs#:~:text=The%20purpose%20of%20the%20RECs,the%20Abuja%20Treaty%20(1991))

African Development Bank Group., 'Regional Integration' Available at <https://www.afdb.org/en/topics-and-sectors/topics/regional-integration>

African Union., 'Agreement Establishing the African Continental Free Trade Area.' Available at https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf

ALN Africa., 'Africa's Growing Dispute Resolution Landscape' Available at <https://aln.africa/wp-content/uploads/2023/06/Africas-Growing-Dispute-Resolution-Landscape.pdf>

American Bar Association., 'Unlocking the Power of Alternative Dispute Resolution: Beyond Courts and Conflict' Available at <https://www.americanbar.org/advocacy/global-programs/news/2024/unlocking-power-alternative-dispute-resolution/#:~:text=ADR%20offers%20significant%20benefits%2C%20such,equity%2C%20and%20access%20to%20justice>

Asian African Legal Consultative Organization., 'Alternative Dispute Resolution: Asian-African Perspectives' Available at <https://www.aalco.int/ADR-PAPER22may2011.pdf>

Constitution of Kenya, 2010., Government Printer, Nairobi

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

Eidemuller. H., & Wagner. G., 'Digital Dispute Resolution.' Available at <https://blogs.law.ox.ac.uk/business-law-blog/blog/2021/09/digital-dispute-resolution>

International Chamber of Commerce., 'Resolving Climate Change Related Disputes through Arbitration and ADR' Available at <https://iccwbo.org/wp-content/uploads/sites/3/2019/11/icc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf>

International Development Law Organization., 'Laws for the Planet: Using Law to Deliver Sustainability and Green Growth' Available at <https://www.idlo.int/news/speeches-and-advocacy/laws-planet-using-law-deliver-sustainability-and-green-growth>

[JAMS ADR., 'What is ADR? Defining the Alternative Dispute Resolution Spectrum'](https://www.jamsadr.com/adr-spectrum/)
Available at <https://www.jamsadr.com/adr-spectrum/>

Mania. K., 'Online Dispute Resolution: The Future of Justice.' *International Comparative Jurisprudence*, No. 1 of 2015, (pg 76-86)

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

Muigua. K., 'Alternative Dispute Resolution in the Context of Emerging Challenges of Climate Change, Cyber Security, and Globalization' Available at <https://kmco.co.ke/wp-content/uploads/2024/04/Alternative-Dispute-Resolution-in-the-Context-of-Emerging-Challenges-of-Climate-Change-Cyber-Security-and-Globalization.pdf>

Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf>

Muigua. K., 'Navigating the Digital Dispute Resolution Landscape: Challenges and Opportunities' Available at <https://kmco.co.ke/wp-content/uploads/2023/08/Navigating-the-Digital-Dispute-Resolution-Landscape-Challenges-and-Opportunities-.pdf>

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>

Muigua. K., 'The Evolving Alternative Dispute Resolution Practice: Investing in Digital Dispute Resolution in Kenya' Available at <https://kmco.co.ke/wp-content/uploads/2022/04/The-Evolving-Alternative-Dispute-Resolution-Practice-Investing-in-Digital-Dispute-Resolution-in-Kenya-Kariuki-Muigua.pdf>

Organisation for Economic Cooperation and Development., 'Towards Green Growth' Available at <https://www.oecd-ilibrary.org/docserver/9789264111318-sumen.pdf?expires=1724073546&id=id&accname=guest&checksum=E34A1AF0D5BEFA1932CC992346CAD9>

Orsua. R., 'Resolving Climate Change-Related Disputes through Alternative Modes of Dispute Resolution' Available at <https://www.hkiac.org/content/resolving-climate-change-related-disputes-through-alternative-modes-dispute-resolution>

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

Rabinovich-Einy..O., & Katsh. E., 'Reshaping Boundaries in an Online Dispute Resolution Environment.' *International Journal of Online Dispute Resolution*, Volume 1, No. 1 (2014)

Rule. C., 'Technology and the Future of Dispute Resolution' Available at <https://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf>

Shaheen. M. S., 'Technology in ADR: An Overview of Transformative Tools' Available at <https://www.linkedin.com/pulse/technology-adr-overview-transformative-tools-saleem-shaheen-j4j3e/>

Singh. B., 'Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues arising in Cyberspace Lensing E-Commerce and Intellectual Property' Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/183>

The Efficiency of the AfCFTA Dispute Resolution Mechanism: An In-Depth Analysis., Available at <https://arbitrationblog.kluwerarbitration.com/2023/07/11/the-efficiency-of-the-afcfta-dispute-resolution-mechanism-an-in-depth-analysis/>

The Impact of Digital Technologies on Alternative Dispute Resolution., Available at <https://rbadr.emnuvens.com.br/rbadr/article/view/175#:~:text=Abstract,various%20aspects%20of%20ADR%20processes>

Treaty Establishing the East African Community., Available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2487/download>

United Nations Economic Commission for Africa., 'Enabling Measures for an Inclusive Green Economy in Africa' Available at https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/UNECA_Enabling%20measures%20for%20an%20inclusive%20green%20economy%20in%20Africa.pdf

United Nations Environment Programme., 'Green Economy' Available at <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resourceefficiency/green-economy>

United Nations Trade and Development., 'Technology and the Future of Online Dispute Resolution Platforms for Consumer Protection Agencies' Available at <https://unctad.org/publication/technology-and-future-online-dispute-resolution-platforms-consumer-protection->

[agencies#:~:text=Consumer%20ODR%20consists%20of%20mechanisms,other%20infor%20mation%20and%20communication%20technology](#)

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

United Nations., 'Africa's Free Trade on Track, More Efforts Needed.' Available at [https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though.-,Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day\)%2C%20according%20to%20UNCTAD](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though.-,Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day)%2C%20according%20to%20UNCTAD)

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

Use of Technology in ADR: A case for Online Dispute Resolution (ODR)., Available at <https://medium.com/@legalpayofficial/use-of-technology-in-adr-a-case-for-online-dispute-resolution-odr-df1296b9296c>

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

World Bank Group., 'Inclusive Green Growth' Available at <https://documents1.worldbank.org/curated/en/129971468157532224/pdf/793260BRI0v20R00Box037737400Public0.pdf>

World Intellectual Property Organization., 'WIPO Alternative Dispute Resolution for Green Technology and Sustainability' Available at <https://www.wipo.int/amc/en/center/specific-sectors/greentechnology-sustainability/>