

Why Alternative Dispute Resolution Matters in Kenya Today

Introduction

Disputes are an inevitable aspect of human interaction and the Kenyan Jurisdiction is no exemption. Whether in commerce, labor relations, environmental matters, or governance, conflicts arise that require fair and efficient mechanisms of resolution. In Kenya today, **Alternative Dispute Resolution (ADR)** plays a pivotal role in fostering access to justice, reducing case backlogs, promoting peacebuilding, and enhancing efficiency across various sectors. Arbitration is one of the form of Alternative Dispute Resolution (ADR). To this effect is refers to the set of mechanisms that are integrated in management of disputes without the parties resorting to the rigors of the adversarial litigation. The legal basis is provided under the Charter of the United Nations which affirms that the parties to the dispute shall first seek a solution by, enquiry, mediation, arbitration, conciliation, mediation and judicial settlement. With the judiciary increasingly embracing ADR and constitutional backing through Article 159(2)(c) of the Constitution of Kenya 2010, ADR has emerged not merely as an alternative, but as a complementary and often preferable mode of conflict resolution in a multi-stakeholder environment.

The Legal Foundation and Evolution of ADR in Kenya

The recognition of ADR within Kenya's legal framework is rooted in the **2010 Constitution**, which directs courts and tribunals to promote **reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms**, provided they do not contravene the Bill of Rights or principles of justice.

The mandates flowing from the constitution gives authority to legislative enactments such as the **Arbitration Act (1995, revised 2009)**, the **Mediation Accreditation Committee Rules**, the **Civil Procedure Act**, and specialized frameworks in **labour, land, family, and commercial disputes** underscore the state's intention to institutionalize ADR.

Addressing the Judicial Backlog and Enhancing Efficiency

One of the major challenges facing Kenya's judiciary is the **backlog of cases**, which undermines the constitutional right to a fair and expeditious trial. ADR offers a timely remedy.

According to the Judiciary's annual reports, tens of thousands of matters clog the courts, some taking years to resolve. Through **mediation and arbitration**, disputes can be settled in weeks or months, preserving relationships and saving time and resources. ADR has the benefit of being private and confidential where parties enjoy a lot of autonomy and considerable control over the proceedings including the appointment of an arbitrator and the process of arbitration. Further it has the ability to promote expeditious and cost effective management of disputes.

Stakeholders such as judicial officers, litigants, and court administrators benefit immensely from the decluttering of court rolls and the reallocation of judicial resources to complex and precedent-setting cases.

Relevance to Commercial and Business Communities

The **private sector**, particularly in sectors such as construction, finance, insurance, real estate, and manufacturing, stands to gain immensely from ADR. **Arbitration** offers confidentiality,

expertise-based decision-making, and cross-border enforceability key attributes for modern commerce.

Organizations such as Kenya Private Sector Alliance (KEPSA) and Kenya National Chamber of Commerce and Industry (KNCCI) have actively supported arbitration and mediation to protect contractual relationships and encourage investment.

Furthermore, institutions such as the Chartered Institute of Arbitrators (CIArb) Kenya Branch, Nairobi Centre for International Arbitration (NCIA), and others offer neutral forums for dispute resolution. These bodies ensure that commercial disputes are resolved by practitioners who understand the technical, financial, and operational contexts of the industries involved.

ADR in Public Administration and Government Agencies

Government institutions are not immune to disputes ranging from procurement issues, land matters, to devolution-related disputes between counties or between national and county governments. ADR mechanisms help avoid prolonged litigation that can derail service delivery or public projects.

The Public Procurement Administrative Review Board (PPARB) and National Land Commission (NLC) integrate ADR mechanisms in handling disputes related to tendering and historical land injustices, respectively. Moreover, the Intergovernmental Relations Act and the County Governments Act provide for intergovernmental dispute resolution mechanisms.

By adopting ADR, public bodies enhance good governance, transparency, and cost-effectiveness—key tenets of public administration.

ADR and Civil Society: Promoting Access to Justice

Civil society organizations (CSOs) and community-based organizations (CBOs) have historically championed grassroots peacebuilding, restorative justice, and legal empowerment, especially in marginalized or under-served communities.

Organizations such as FIDA-Kenya, Kituo Cha Sheria, and Legal Resources Foundation support community paralegal programs and alternative mechanisms to resolve family, land, and inheritance disputes without court litigation.

The Role of Legal Professionals and ADR Experts

The growing prominence of ADR requires that lawyers, judges, mediators, arbitrators, and advocates be equipped with both legal and interpersonal competencies to serve in these roles. Legal professionals increasingly find that clients value confidentiality, speed, and autonomy, which ADR mechanisms provide.

Institutions like CIArb (Kenya Branch), Law Society of Kenya (LSK), and Kenya School of Law (KSL) have incorporated ADR training and certification to build capacity for the legal community. Continuous professional development in ADR is vital to maintain global standards, enhance integrity, and build trust in ADR systems.

Moreover, with the rise of **Online Dispute Resolution (ODR)** platforms, legal professionals must embrace digital innovation to provide hybrid dispute resolution services in a post-pandemic era.

Further, in sectors like **energy, infrastructure, and natural resources**, where public-private partnerships (PPPs) are common, ADR offers flexibility and expertise to resolve complex multi-party disputes without stalling national development.

By embracing ADR, Kenya positions itself as an **international arbitration hub**, which enhances the country's global competitiveness and legal reputation.

Challenges and Recommendations

Despite its benefits, ADR in Kenya still faces challenges including limited public awareness, inconsistent enforcement of arbitral awards, inadequate funding for mediation services, and resistance by traditional litigants.

To address these:

- The **Judiciary and CIArb Kenya** should intensify **public sensitization** on ADR rights and options.
- **Legal aid programs** should include ADR options for indigent clients.
- The **Arbitration Act** may require amendment to ensure swifter enforcement of awards and reduce judicial intervention.
- Law schools and continuing legal education programs should **mainstream ADR training** across disciplines.

Conclusion

Alternative Dispute Resolution is not merely an adjunct to litigation it is a **pillar of Kenya's justice system and development strategy**. Whether in resolving commercial conflicts, enhancing access to justice, managing intergovernmental disputes, or maintaining social harmony, ADR offers accessible, efficient, and inclusive mechanisms. Multi-stakeholder engagement from the judiciary, private sector, civil society, and public institutions is crucial to unlocking ADR's full potential in Kenya. As the country moves toward a more responsive and democratic legal system, ADR will continue to be a key driver of peace, justice, and sustainable development.