

UNIVERSITY OF NAIROBI



INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**AN ASSESSMENT OF EAST AFRICA COMMUNITY DISPUTE RESOLUTION
MECHANISMS AND PROSPECTS OF SUSTAINABLE PEACE (2012-2018)**

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**A RESEARCH PROJECT PRESENTED IN PARTIAL FULFILMENT OF THE
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DECLARATION

I declare that this research titled “*An assessment of East African Community Dispute Resolution Mechanisms and Prospects of Sustainable Peace (2012-2018)*” is my original work and has not been presented for any academic awards in any other University or Academic institution.

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This research project has been submitted for examination and grading with the approval of my Supervisor.

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DEDICATION

I dedicate this research work to my lovely spouse and children and in memory of my late parents who immensely contributed a lot to my life with the a little they had.

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I thank almighty God for guiding me this far and for giving me the courage and knowledge to complete this research project. I greatly acknowledge and value the contribution of my family for their support and empathy during the demanding time in my course when I was not there for them.

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ABSTRACT

Dispute resolution mechanisms have been used as fronts for cultivating sustainable peace in the East Africa Community. However, the success of this approach has not fully been documented. This is because the East Africa Community is a region with many valuable natural resources that would spur its growth to unprecedented levels in the world. Three objectives guided the study; to examine the nature and institutional aspects of alternate dispute resolution mechanisms in East African Community; to establish the extent to which alternative dispute resolution mechanisms used in East Africa and to establish the influence of dispute resolution mechanisms used in EAC on prospects of sustainable peace. The study was anchored on the Dual Concern theory of conflict resolution and the General Theory of Disputes and Conflicts. Descriptive research design was applied in the study with study site as the Ministry Foreign Affairs and International Cooperation in Rwanda. Both primary and secondary data sources were used. Questionnaires were used to collect primary data. Results indicated that alternative dispute resolution mechanisms have been in use in the East Africa region. The evidence is that East Africa Community members have set up mechanisms for alternative dispute resolution for sustainable peace and security. Findings established that strength of ADR is that it is domesticated in all the constitutions in the East Africa Community member states. For example in Kenya, Uganda, Rwanda and Tanzania, this justice as spelled out in the constitution is to be accorded irrespective of status of the persons. The null hypothesis that there are no significant strengths of institutional aspects of alternate dispute resolution mechanisms in East African Community was rejected and alternate hypothesis accepted. From the results it is evident that alternative dispute resolution mechanisms have been employed in settling regional conflicts among member states in East Africa Community. In South Sudan, mediation and arbitration was constantly used in mitigating the conflict before and after independence in 2011. Results showed that strength of ADR is visible since the constitution of the member states of the East Africa community has domesticated it. The strength of use of ADR is also notable since member states have constantly employed it as a means for sustainable peace and security. Thus the alternate hypothesis that there is significant strength of dispute resolution mechanisms on prospects of sustainable peace East African was accepted and null hypothesis rejected. The study concluded that there is a strong nature and institutional foundation of alternate dispute resolution mechanisms in East African Community. The study also concluded that there is significant usefulness of alternative dispute resolution mechanisms used in East Africa. The study finally concluded that evidence of use of ADR for sustainable peace and security in EAC region, is a strong indicator for dispute resolution mechanisms as a major prospects of sustainable peace in the region. The study recommended that there is need for member states to adhere to the resolutions under EAC's Draft Protocol on Foreign policy. There is necessity for creation of enforcement platforms to give EAC powers and forcefulness to overcome violators of ADR.

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ABBREVIATIONS

ADR	Alternate Dispute Resolution Mechanisms
CPMR	Conflict Prevention and Management and Resolution Mechanism
EAC	East Africa Community
EACJ	East African Court of Justice
EWS	Early warning System
ICJ	International Court of Justice
IMF	International Monetary Fund
PEP	Panel of Eminent Person
PF	Peace Facility

CHAPTER ONE

1.0.Introduction

The chapter presents the introduction of the study based on the specific objectives. This is done through the background of the study, statement of the problem, research questions and research objectives, literature review as well as theoretical review. It also highlights the research hypotheses, justification, research methodology and the chapter outline.

1.1 Background of the Study

International disputes have global judicial systems that are supranational. For example, the International Court of Justice (ICJ) based in The Hague has international laws that guide its resolution of disputes that are submitted to it by member states¹. ICJ was set up in 1945 by a charter of United Nations. It is the main judicial arm of the United Nation. ICJ is considered the highest court in the world which enjoys both general and universal jurisdictions where all members of the United Nations can lodge cases.²

Every regional body in the world has some form of alternative dispute resolution mechanisms either formerly agreed on in the treaty or in some ad hock formats. The laid down mechanisms are aimed at resolution of domestic, international or commercial disputes.³ In continental America, there is American Arbitration Association in charge of alternative dispute mechanisms. In Europe similar bodies include London Court of International Arbitration and Permanent Court of International Arbitration.⁴

Traditional African dispute resolution mechanisms were guided by several principles aimed at ensuring justice. The disputants needed to have confidence in the process. The tribunal that would hear and determine the dispute needed to be trusted by all parties involved. In many cases, the tribunals were made up of trusted and respected groups of

¹ International Court of Justice. *The International Court of Justice: Handbook*. The Hague, Netherlands: Registrar ICJ, 2010.

² Konstantinos D. Magliveras. *The African Court of Justice*. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. 2006, 15.

³ Konstantinos D. Magliveras. *The African Court of Justice*. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. 2006, 15.

⁴ United Nations Institute for Training and Research (UNITAR). *Alternative Dispute Resolution Methods*. Geneva: UNITAR, 200, 14.

the society such as elder, priests, chiefs or cult leaders⁵. Truth was a major consideration in dispute resolution mechanisms. All parties including the tribunal had to be open and truthful. To this effect, many dispute resolution mechanisms involved spiritual practices that would invoke heavy punishment to any party in the dispute or process that was untruthful⁶.

In East Africa, as is the case in Africa, most jurisdictions follow the English Common Law inherited from British colonialists. In exceptional cases, legal systems that adopt American Legal structures are sometimes present. ANDE legal working group⁷ advising international investors coming to East Africa on what to expect in commercial dispute resolution states that English common law in most cases apply but is a healthy compromise where many legal systems are in competition.⁸

East African Community has established a judicial system that addresses legal disputes amongst states in the community. East African Court of Justice, anchored under Article 9 of East Africa Community treaty is mandated with adjudication of civil and commercial cases emanating from the member countries. The court however, is also mandated to entertain cases related to human rights from the member states⁹. There is increased preference for arbitration in dispute resolution in East Africa especially if the dispute is of civil or commercial in nature. Litigation in East Africa is being avoided since the process is notoriously slow, with a huge backlog of undetermined cases. The process is also expensive and the loose win outcome hurts future business or social relations between the disputants¹⁰.

⁵ Ajayi, Adeyinka Theresa & Buhari, Lateef Oluwafemi, "Methods of Conflict Resolution in African Traditional Society." *International Multidisciplinary Journal*, Vol. 8 (2), Serial No. 33, (2013): 137-158

⁶ Ajayi, Adeyinka Theresa & Buhari, Lateef Oluwafemi, "Methods of Conflict Resolution in African Traditional Society." *International Multidisciplinary Journal*, Vol. 8 (2), Serial No. 33, (2013): 137-158

⁷ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 3.

⁸ Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

⁹ Philomena, Apiko. *Understanding the East African Court of Justice: The hard road to independent institutions and human rights jurisdiction*. European Center for development policy management, 2018,16.

¹⁰ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 3.

1.2 Statement of the Problem

The concept of dispute resolution mechanisms have been used as fronts for cultivating sustainable peace in the East Africa Community. However, the success of this approach has not fully been documented. Despite the East African region being endowed with plenty of resources, the region has experienced numerous security upheavals that have devastated her economic growth. Majority of EAC countries have experienced security challenges some that have threatened the very existence of the nations. In some of the countries like Burundi and South Sudan, there is still active violence. Countries like Kenya that are peaceful right now only have restive peace with structural factors that contribute to conflict still being unaddressed.

Most of the conflicts realized in EAC countries have had a relationship to economic competitions not just between functions within the countries but between countries in EAC. This is exemplified by various commercial disputes such as the one between Kenya and Tanzania and Uganda and Rwanda. Some of these disputes threaten the fragile peace and coexistence in the region. Initially, the concern was that with formation of East African Community, mechanisms to address disputes both within communities in individual countries and between countries have not been well developed to address the level of conflicts likely to explode. It is with this background in mind that this research investigates how dispute resolution mechanisms within EAC are contributing to sustainable peace in the region.

1.3 Research Questions

1. What is the strength of institutional aspects of alternate dispute resolution mechanisms in East African Community?
2. What is the usefulness of alternative dispute resolution mechanisms in East Africa?
3. What is the strength of dispute resolution mechanisms used in EAC on prospects of sustainable peace?

1.4 Objectives of the Study

1.4.1 Broad objectives

The broad objective of the study is to establish the influence of dispute resolution mechanisms and prospects of sustainable peace in East Africa Community.

1.4.2 Specific Objectives

1. To examine the strength of the institutional aspects of alternative dispute resolution mechanisms in East African Community.
2. To establish the usefulness of alternative dispute resolution mechanisms in East Africa.
3. To establish the strength of alternative dispute resolution mechanisms used in EAC on prospects of sustainable peace.

1.5 Literature Review

The literature review comprise of three specific objectives. These are the history of strength of dispute resolution in East Africa, usefulness of alternative dispute resolution mechanisms used in East Africa. Finally, the strength of dispute resolution mechanisms used in EAC and its prospects of sustainable peace.

1.5.1 Theoretical Literature Review

Two theories that anchor the study are discussed in this section. They include the Dual Concern theory of conflict resolution and the General Theory of Disputes and Conflicts.

1.5.1.1 Dual Concern Theory of Conflict Resolution

The proponents of this theory were Pruitt and Rubin in 1986. This theory holds that an individuals or entities engagement in conflict resolution is informed by two dimensions; concern for self and empathy for others. Entities will engage or behave in ways that are constantly changing as they attempt to maintain a balance that takes care of the assertive interests and concerns for others important to them. The dissection of the two conflicting positions determines the conflict resolution mechanisms the entities will accept and adopt¹¹.

¹¹ Baker B. "Policing post-conflict societies: Helping out the state." *Policing & Society* 19(4) (2009): 329-332.

This theory provides five position entities are likely to take depending on where the self and empathy positions intersect. Avoidance approach happens when the conflicting parties or one of them is unwilling to confront the issue. The party will take a wait and see posture hoping the conflict will end by itself¹². This position occurs when the party or parties have to deal with uncomfortable cultural contexts. On the other hand, yielding conflict style happens when one party is more concerned about the situation of the other more than self¹³. One of the parties in the conflicting may be deriving moral rent from addressing the needs of the other or is highly concerned about maintaining status quo in their relationship with the other party concerned.

Competitive posture on the other hand is highly assertive with one of the conflicting parties taking a dominant position. Conflict resolution is seen as win or lose outcome. Where parties have intermediate concern for each other, they are likely to pick conciliation approach to conflict resolution. Here the parties will negotiate and bargain positions until a middle ground that fairly accommodates all parties is arrived at¹⁴. This theory is relevant as it describes the reality of the manner in which countries in East Africa Community approach conflicts. Competitive posture is an approach used by Tanzania when dealing with Kenya in trade related disputes. This arises from the fact that Tanzania is apprehensive of the domineering nature of Kenya. Conciliatory approach has been used by Rwanda and Uganda in resolving their security and border dispute.

1.5.1.2 General Theory of Disputes and Conflicts

This theory was projected by Raymond Shonholtz in 1974. This theory defines conflicts as disagreements that lack legitimate, transparent, accountable and reliable and non-arbitrary means of peaceful resolution. Conversely, disputes are disagreements that have a reliable, clear, and legitimate means of peaceful settlements with clear accountability mechanisms¹⁵.

¹² Gathege Protas Saende. *The concept of dispute resettlement in the East African Region*. Master thesis: University of Nairobi, 2012, 30.

¹⁴ Baker B. "Policing post-conflict societies: Helping out the state." *Policing & Society* 19(4) (2009): 329-332.

¹⁵ Raymond Shonholtz, *General Theory on Disputes and Conflicts*, Disp. Resol, 2003.

The theory purports that there are various levels of conflicts at state levels based on form of governance. Disputes are assigned to mature and transitioning democracies while conflicts are assigned to authoritarian regimes. There are no conflicts in democratic societies as democracies transform conflicts into dispute settlement mechanisms¹⁶.

The general theory of disputes and conflicts is applicable in the context of the East Africa community that have a variety of cultures and histories and conflicts that have continuously comprised the efforts at inculcating peace and security. The East Africa countries comprise of diverse categories of three countries. First, there are countries like South Sudan and Somalia that are still embroidered in war. This implies that such countries are struggling to recover from civil conflicts. They have little time to invest in quest for peace and security in the domestic domain, let alone the regional one¹⁷. The second cluster is countries that have recently emerged from civil strife like Eritrea and Burundi. These countries are yet to inculcate open, democratic and competitive systems of politics. They are starting to impose civil participation and liberties in governing systems. Finally, there are countries like Kenya and Tanzania that have embraced open and competitive political establishments¹⁸.

This theory premises that in authoritarian regimes, there are only conflicts and dispute settlement mechanisms are nothing but political gimmicks to meet the ends of the dictators. The third premise of this theory is that in international relations, national states can transform conflicts into disputes. This theory reflects realities of East Africa Community dispute resolution approaches.

The first EAC collapsed Uganda was ruled by Idi Amin who was a dictator and not willing to use dispute resolution mechanisms to resolve conflicts. The disputes between Burundi and other members of the EAC reflect the realities of autocratic leadership in that country. Lack of open war between Kenya and Tanzania and Uganda and Rwanda may be seen from the point of maturing democracy in the EAC.

¹⁶ Raymond Shonholtz, *General Theory on Disputes and Conflicts*, J. Disp. Resol, 2003.

¹⁷ Khadiagala, Gilbert M. *Regional Cooperation and Democratization Conflict Management in Africa*. Carnegie Endowment for International Peace, 2018.

¹⁸ Asefa, Sisay. "Advancing Peace and Regional Integration and Development in the Horn of Africa through Good Governance." *Resources, Peace and Conflict in the Horn of Africa* (2014): 13.

1.5.2 Empirical Literature Review

The empirical literature review is based on the three specific objectives. These are the nature and institutional aspects of alternative dispute resolution in East Africa, alternative dispute resolution mechanisms used in East Africa. Finally, there is influence of dispute resolution mechanisms used in EAC and its prospects of sustainable peace.

1.5.2.1 Strength of Institutional Aspects Dispute Resolution Mechanisms in EAC

The history of East African community runs back to the colonial days. Kenya and Uganda were under British colonialists. After the defeat of Germany in First World War, Tanzania who were formerly under Germany colonialists, joined British Colonies¹⁹. The governors of the three different regions in East Africa severally met and agreed on common positions that would facilitate their operations in East Africa. In most of the agreements, there were no formal structures that would address any arising disputes. However, the home office in London would often keep record of the agreements amongst EAC governors and give directions on their implementation in situations of disputes.

With cooperation between the East African territories being challenged by lack of a legal framework, lack of logistical coordination and personal challenges, the governors established the East African High Commission in 1947. The commission which had a judicial mandate over saw the implementation of various common services. East African Central Legislative Assembly was formed as the legislative arm of the newly established East African cooperation²⁰.

The new growth in East African Cooperation brought the need for a more formalized and structured dispute resolution mechanism. The East African Court of Appeal was born. The court used the common English law. Each region had domestic courts but appeals in all those courts were done at East African Court of Appeal²¹. The court determined

¹⁹ Gathege Protas Saende. *The concept of dispute resettlement in the East African Region*. Master thesis: University of Nairobi, 2012, 30.

²⁰ Gathege Protas Saende. *The concept of dispute resettlement in the East African Region*. Master thesis: University of Nairobi, 2012, 30.

²¹ Charles Leys and Paul Robinson. *The opportunities and problems of the East Africa Federation*. Oxford University Press, 1965.

disputes falling under East Africa's common services. The court however was limited domestic laws of the East African regions²².

When Kenya, Uganda and Tanzania gained their independence from British colonialists, the East African Community was reshaped to accommodate the changed circumstances. There were no clear dispute resolution mechanisms that were put in place, considering that the colonial era community had much a very smooth flow. However, this was not to apply in the new formation. The three regions were no independent states with divergent interests and sovereignty. They were now open competitors in trade and other aspects which raised conflicts. The countries were also having very divergent ideological inclinations that raised tensions. Kenya was a capitalist's country while Tanzania leaned towards socialism.

Though the original court of appeal was retained by the independent nations, it did not have the mandate to handle dispute emerging from EAC treaty. Lack of adequate dispute resolution mechanisms led to mistrust in EAC community that eventually collapsed it in 1984²³. The re-launch of new East African Community started in 1986 when heads of states from Kenya, Uganda, and Tanzania met to deliberate on the same²⁴. A series of meetings followed that culminated in the agreement for the revival of a new commission in 1993. On November 30th 1999, a treaty for formation of East African Community was signed by Kenya Uganda and Tanzania.

The treaty entered into force on 7th July 2002. Later, in the year 2008, Rwanda and Burundi joined the EAC community²⁵. Since then two more countries, South Sudan has since joined the community while Democratic Republic of Congo applied to join. With this second attempt, the East African Countries have set up robust dispute resolution

²² Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

²³ Gathege Protas Saende. *The concept of dispute resettlement in the East African Region*. Master thesis: University of Nairobi, 2012, 30.

²⁴ Akiumi, A. M. The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile. Unpublished, 2014, 43.

²⁵ Tomasz Milej. *The problem with laws in East Africa Community through the experience of European Union*. Max-Planck-Institut, 2015.

mechanisms. The treaty provides for the formation of a court of justice that is mandated to address disputes emerging from the treaty. The Court also has an arbitration mandate.²⁶

Koigi²⁷ investigated the history of East African Community and its impact on major economic milestones for EAC member countries and the challenges the bloc has encountered in meeting its regional objectives in the period 2000 to 2015. The study focuses on customs union and common markets in EAC. Secondary literature review was the mode of data collection employed. The study established that low level of public awareness of progress in EAC on customs union and common market has resulted to low level of exploitation of economic opportunities between the nationals of member states.

Njuki²⁸ investigated the genesis of EAC common market protocol and its impact on economic growth in Kenya. Specifically, the study investigated how movement of labor and persons, movement of capital, and contribution of trade on economic growth on Kenya. Exploratory research design was done to establish the relationship between the various variables. Directorate of commerce and three companies operating across East Africa were involved in the study. The study established that since its inception, capital movement affected economic growth in Kenya owing to the small amount of capital inflow in Kenya as compared to the much bigger amounts flowing out.

1.5.2.2 Usefulness of Alternative Dispute Resolution Mechanisms in EAC

With the establishment of EAC community afresh in 1999, there was deliberate attempt to have a working dispute resolution mechanism. This is in recognition of the failures of the first EAC. Article 23 of the East African Community has established The East African Court of Justice as the judicial arm of the community. EACJ has a responsibility of ensuring the EAC countries are abiding as agreed. They listen and determine disputes emerging from EAC treaty²⁹.

²⁶ Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

²⁷ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

²⁸ Emili Njuki. "Assessment of the contribution of East African Community Common Market Protocol to the economic growth of Kenya." Thesis, Strathmore University, 2016.

²⁹ Talkmore Chidede and Louis Gitinywa. *Dispute settlement in the East African Community*, 2018. [Hpts://www.tralac.org/blog/article/134453](https://www.tralac.org/blog/article/134453).

Unlike other adjudication courts, East African Court of Justice has an arbitral arm. Article 32 of the EAC community gives the court mandate to determine a case through arbitration process as may have been agreed on by the parties in disputes in their contractual agreements. The arbitration request may be brought forward to the court by the EAC council of ministers. The courts mandate for arbitration has been extend to cover investment disputes³⁰.

East African Community encourages negotiations and conciliation as the primary means of dispute resolutions amongst its members. For example, the Customs Union Protocol for dispute resolution provides that disputes be resolved through negotiation, arbitration and mediation. Where parties fail to agree, CU protocol guides that Committee of Trade remedies establishes a panel. The panel listens to the dispute and presents a report to the committee for final decision. The CU protocol provides guidance to ensure that alternative dispute resolution mechanisms in all member countries have a sense of uniformity, predictability, transparent, accountable and fair³¹.

EAC countries have seen the value of alternative dispute resolution mechanisms. Rwanda has already established an arbitration center and Kenya is in the process of developing one with well-defined arbitration guidelines. East African Community treaty has provided a framework for arbitration. Article 9 of the treaty established East African Court of Justice (EACJ). Under article 32 of EAC treaty, parties may refer a case to EACJ for arbitration on contractual disputes. In 2001, EACJ developed arbitration rules which were improved in March of 2012³².

William³³ investigates the effectiveness of dispute resolution mechanisms under EACJ. He identifies the problem as EACJ having a court based system of adjudication that is highly static and at the same time accommodating a rather fluid arbitration process under its jurisdiction. The researcher focuses on anti-dumping dispute resolution mechanism

³⁰ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

³¹ Talkmore Chidede and Louis Gitinywa. Dispute settlement in the East African Community, 2018. [Hpps://www.tralac.org/blog/article/134453](https://www.tralac.org/blog/article/134453).

³² Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 10.

³³ William Mwanza. Optimizing the dispute resolution process for trade remedies in the EAC. 2015

under customs union protocol. The study observes that the fact that there is the EACJ arbitration process and a committee on trade policies determining may raise challenges of predictability, and consistency in decision making. The study recommends a greater look at the alternative dispute resolution mechanisms in EAC to ensure they are not contradictory.

A study commissioned by the East African Community secretariat³⁴ investigated the capacity of EAC secretariat in alternative dispute resolution mechanisms. Findings established that EAC secretariat staff has been offered trainings on mediation, and arbitration. It observed that the training sessions were particular to EAC past experiences that build the staff capacity extensively. However, the researcher revealed that EAC staff struggled to effectively conduct mediation in the region mainly due to inadequacy of resources.

Warui³⁵ investigated alternative dispute resolution mechanisms in East African Community with a case study of Migingo Islands contested by Kenya and Uganda. The study established that the dispute for the small island between the two countries have been ongoing since 2008. Inability of EACs dispute management processes have failed to be applied in this specific conflict raising doubts of the regions ability to address major disputes in the bloc should they arise.

Mugambi³⁶ examined application of dispute resolution mechanisms focusing on Kenya as a part of EAC. The study was based on literature review of relevant secondary data. This research established that there is an attempt to embrace alternative dispute resolution mechanisms in Kenya especially for communal conflicts in North Eastern Kenya. However, poor resourcing of the processes and low level of skills in ADS is hampering their effectiveness.

³⁴ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

³⁵ Warui David Njoka. "The East African Community and Dispute Settlement: A Case of Migingo Island". Thesis, University of Nairobi, 2011.

³⁶ Mugambi Kithamba. "The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County." Thesis. University of Nairobi, 2017.

1.5.2.3 Strengths of Dispute Resolution Mechanisms in EAC and Prospect on Sustainable Peace

East African countries have various dispute resolution mechanisms. Most countries in East Africa have common law jurisdictions having been colonized by Britain and hence inherited English legal tradition. In common law approach, statutory law is established by legislative arm of government while regulatory law is developed by the executive arm. In common law, the courts will interpret the statutory law when an issue is brought before it or when there is no regulatory law guiding the statutory law.³⁷

Common law is perceived as friendly to investors and this has encouraged other nations to invest in East Africa. It is used by many countries across the world including USA and hence its interpretation worldwide is much more uniform than other laws. Common law has also guided EAC countries and national levels to easily adjudicate commercial disputes and in the process enhancing peaceful coexistence³⁸. Concerns however have been raised that common law in some EAC jurisdiction has been silent on some critical elements critical in commercial transactions which has resulted to ambiguous judgments'.³⁹

Kenyan company act, for example has had gaps that have failed to properly protect property rights or rights of first refusal that investors need clarity on. A similar scenario is present in Tanzanian company laws. The common laws in EAC have been observed to reinterpret existing laws that has resulted to unpredictable litigations⁴⁰. Other countries in East African Community, such as Rwanda, have civil law jurisdictions. These laws trace their roots to Roman and Napoleon laws. Civil laws are different from common laws in that they do not allow the courts to interpret statutory laws where regulatory aspects of the same are missing.

³⁷ Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

³⁸ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 7

³⁹ Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

⁴⁰ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 7

However, Civil laws tend to be more detailed than common laws giving investors a higher level of certainty on judicial outcomes. Nonetheless, difference in philosophies of law in East Africa has brought challenges in determining cases as different jurisdiction will draw different conclusions on similar matters. It is for this reason that Rwanda has started shifting to common law to be aligned to majority of EAC members⁴¹. EACJ arbitration processes have been hailed as greatly successful in resolving disputes in EAC. It has clear procedures that provide time limits. This makes resolution of disputes transparent and expeditious. The cost of adjudication is also relatively cheap than other jurisdictions. Disputants do not need to pay the arbitrator and filing fees are relatively low as one hundred US dollars for disputes involving less than ten thousand US dollars⁴².

There have been calls to ensure that dispute resolution mechanisms in EAC are fine tuned to ensure justice, sustainable benefits and peace. Canadian International Development Association, Tanzanian chapter, states that the dispute resolving bodies should sensitize the public on their roles and process so that their judgments can receive wider public support and limit chances on inter country disputes and hence ensure peaceful coexistence. International Monetary Fund (IMF) considers clarity on key areas that are likely to be sources of dispute as the best preventive approach to disagreements that would threaten EAC peace.⁴³ In the first EAC formed immediately after independence of EAC countries, lack of fair distribution of economic benefits resulted to its eventual collapse and in the process led to enmity between countries such as Tanzania and Uganda and Kenya and Uganda. It is hence imperative to ensure the new EAC has laid down processes that will ensure all countries have equitable share of gains from the community for sustainable peaceful coexistence⁴⁴.

⁴¹ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 8.

⁴² Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 8.

⁴³ Akiumi, A. M. "The Tripartite Commission for East African Corporation and its Predecessors: A Brief Constitutional Profile" Unpublished, 43.

⁴⁴ Katrin Kuhlmann. *East Africa legal guide and legal working group toolkit: new markets lab*. Ande Legal Working Group, 2014, 7.

A study by Katryn investigated the effectiveness of dispute resolution mechanisms in EAC as a precursor for peace and resolving of natural resources disputes⁴⁵. The study specifically focused on cases of oil exploration. The researcher used secondary literature review for data collection. The study reported that oil exploration is a new venture in East Africa but one with potential of raising sharp conflicts. The researcher concluded that the dispute resolution mechanisms in place are inadequate to address disputes of gas exploration. A recommendation is made to have dispute resolution mechanisms specific to oil exploration sector and which may be informed by other such processes in the world for peaceful resolution of community concerns.

Annie Barbara⁴⁶ provides an analysis of EAC conflicts linking security and peace to development. The study identified that all triggers of conflict are evident in EAC region which are structural, political, social and economic. Competition for natural resources has resulted to violence in the region. Availability of small arms has made violent crimes be on the rise in the last three decades threatening peaceful coexistence of communities and neighbouring countries in the region. The study concluded that for the region to benefit from economic benefits of peace and integration, they must address the security concerns in all the six member countries.

Based on secondary literature, Wafula⁴⁷ studied on resource based disputes in EAC member countries borderlands, their history, current and future directions and the implication on integration. The study reported that trans-border resource conflicts are majorly as a result of poor boundary marking by colonial governments, poorly defined and unmarked borders, poor border management and inadequacy of alternative dispute resolution mechanisms to address border related disputes.

1.6 Gaps in the Literature

Various empirical studies have focused on history of dispute resolution mechanisms in EAC. For example Koigi investigated the history of East African Community and its impact on major economic milestones for EAC member countries and the challenges the

⁴⁵ Katryn, Mann, the East African. East Africa alternative dispute resolution still lacking. 2014

⁴⁶ Annie Barbara Chikwanha. "The Anatomy of Conflicts in the East African Community (EAC): Linking Security with Development." Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands, 2007.

⁴⁷ Wafula Okumu . Resources and border disputes in Eastern Africa. *Africa Relations*. 12(1), 2010, 279-297

bloc has encountered in meeting its regional objectives in the period 2000 to 2015. The gap in this study is that it primarily focused on the history of dispute resolution in customs union and common markets in EAC. Njuki investigated the genesis of EAC common market protocol and its impact on economic growth in Kenya. The gap in the study was its limitation to labor and persons, movement of capital, and contribution of trade on economic growth on Kenya.

A number of scholars studied on alternative dispute resolution mechanisms in EAC. For example, William investigates the effectiveness of dispute resolution mechanisms under EACJ. Warui investigated alternative dispute resolution mechanisms in East African Community with a case study of Migingo Islands contested by Kenya and Uganda. Mugambi examined use of ADR for resolving disputes in Kenya. The gaps in these studies was that they only focused on specific areas such as EACJ, Migingo Islands and Kenya unlike current study that focuses on alternative dispute resolution mechanisms in various fields of interaction in EAC.

Similarly, various scholars studied on dispute resolution mechanisms in EAC and prospect on sustainable peace. For instance, Katryn investigated the effectiveness of dispute resolution mechanisms in EAC as a precursor for peace and resolving of natural resources disputes. The study specifically focused on cases of oil exploration unlike the current study that basis is scholarly analyzes on different mechanisms for dispute resolutions and how they impact on sustainable peace in EAC.

1.7 Research Hypotheses

1. There are no significant strengths of institutional aspects of alternate dispute resolution mechanisms in East African Community.
2. There is no significant usefulness of alternative dispute resolution mechanisms used in East Africa.
3. There is no significant strength of dispute resolution mechanisms on prospects of sustainable peace East African.

1.8 Justification of Study

1.8.1 Policy Justification

The importance of this study is that it creates awareness on the history of the East Africa mechanisms. The study analyzed the ADR mechanisms that are employed in the EAC region. The study also outlined the relationship between dispute resolution mechanisms and the prospects for sustainable peace in the EAC region.

1.8.2 Academic Justification

This study makes a scholarly approach on the subject area that are applicable in resolving conflicts in the EAC region. The study has created an empirical discourse and analysis of the origin of dispute mechanisms, use of alternative dispute mechanisms and the comparative analysis of dispute resolution mechanisms and sustainable peace. For future scholars, the study has created a platform for future studies on ADR that are applicable in the EAC region.

1.8.3 Theoretical Framework

1.8.3.1 General Theory of Disputes and Conflicts

This theory as projected by Raymond Shonholtz in 1974 seems to resonate well with the realities of mechanisms for dispute resolution in the East Africa Community. It is notable that the theory purports that there are various levels of conflicts at state levels based on form of governance. Disputes are assigned to mature and transitioning democracies while conflicts are assigned to authoritarian regimes. This theory reflects the realities of East Africa Community dispute resolution approaches.

Unlike in the earlier EAC, the modern grouping seems to embrace the use of ADR mechanisms as a means of resolving challenges between member countries. This may be the reason informing lack of open hostilities and wars in the region. A case in point is the dispute between Uganda and Rwanda over border and security issues. The two countries have resolved to reconcile as a win-win dispute resolution mechanism that advances the course of peaceful coexistence in the EAC region. The weakness of this theory is that it makes a bracket assumption that maturity in the level of democracy translates into peaceful dispute resolutions.

1.9 Research Methodology

1.9.1 Research Design

Research design is a plan for assisting the researcher to have the necessary control over issues that may hinder the truthfulness of the results.⁴⁸ Descriptive research design is applied in the study for ascertaining the degree of the frequency of occurrence of dispute resolution mechanisms in East Africa. The study's approach adopted focuses on observation of analysis of past scholars on the occurrence of the phenomenon under study. The design gives room for the application of research tools likes desktop review of past studies.

1.9.2 Study Site

The study site was the offices of Ministry of Foreign Affairs in Rwanda. This study used both primary and secondary data sources. For collection of primary data, officials of the ministry were emailed the questionnaires. The secondary data was collected from past scholars who have focused on the study area.

1.9.3 Sampling Frame and Sample Size

A sampling frame is also defined by Welman, Kruger and Mitchell as a list of the source material or device that assist the researcher in selecting the requisite sample population for the study.⁴⁹ The study used simple random sampling to select ten officials of the ministry. For secondary data, library sources, books, e-books, government publications, journals, magazines and newspaper articles were analyzed.

1.9.4 Data Collection Instruments

Questionnaires were used to collect primary data. The secondary data was drawn from library sources, books, e-books, government publications, journals, magazines and newspaper articles.

1.9.5 Ethical Considerations

All sources of data were appropriately cited and referenced. In addition, plagiarism test on the entire study was undertaken.

⁴⁸ Cooper, D.R., & Schindler, P.S. (2011). *Business Research Methods (10thEd.)*. New York, USA. The Irwin/McGraw-Hill Series, p34.

⁴⁹ Welman, J. C., Kruger, S. J., & Mitchell, B. (2008). *Research Methodology (3 Ed.)*. Cape Town, South Africa; Oxford University Press, p111.

1.9.6 Analysis and Presentation of Data

This data was analyzed systematically to identify the major findings from which the conclusions and recommendations are derived. The analyzed data was interpreted and presented in narrative forms.

1.10 Chapter Outline

The study had five chapters. In chapter one, the introduction of the research study was conducted. The chapter commenced by setting the broad context of the study through the statement of the problem. Objectives of the study followed giving way to literature review that comprised of theoretical and empirical review. This was followed by hypotheses, justification, theoretical framework and the methodology of the study. The chapter ended with the summary. Chapter two provided the history of the strength of East Africa Community dispute resolution mechanisms. Chapter three highlighted an analysis of usefulness of alternative dispute resolution mechanisms in East Africa Community. Chapter four discussed the strengths of dispute resolution mechanisms used in EAC on prospects of sustainable peace. Chapter five analyzed the summary, conclusions and recommendations of the study.

1.11 Chapter Summary

This chapter has reviewed the literature on the context of dispute resolution in the East Africa region for the purpose of sustainable peace and security. The study expounds the concept of dispute resolution mechanisms as an important factor for sustainable peace in the region.

CHAPTER TWO

NATURE AND ASPECTS OF ALTERNATE DISPUTE RESOLUTION MECHANISMS IN EAST AFRICAN COMMUNITY

2.0. Introduction

East African Community is made up of six countries, Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan. The founding treaty of new East African community was founded in 1999. But the history of East African community, from which we shall derive the regions nature of alternate dispute resolution mechanisms, dates far back. The history of East African community runs back before colonialism. There was a common non-tribal identity in the regions. Swahili language has been a common bond for East Africans for more than three hundred years now. However, it was not until the 19th century that British colonialists established a common region that formed the East Africa⁵⁰.

2.1 Alternate Dispute Resolution Mechanism before Independence

Some form of formal economic and social integration in East Africa started in 1897 with the construction of Kenya Uganda Railway. This was followed by attempts to form formal institutions like customs collection center in 1900, East African currency board in 1905, East African Postal union in the same year, the court of appeal for East Africa in 1909, and East African Customs Union in 1919. As years progressed, other colonial era institutions were established such as East African High Commission in 1945, East African common service organization in 1961 and finally East African Community of 1967⁵¹.

In the colonial era, East African region was divided in three territories, Kenya, Uganda and Tanganyika. Each region was under a separate governor who reported to home office in London. To ease administrative and dispute resolutions, the three governors would agree on various management issues that would be recognized by the office in London. The colonial office in London encouraged written agreements on these administrative and

⁵⁰ Talkmore Chidede and Louis Gitinywa. Dispute settlement in the East African Community, 2018. [Hpts://www.tralac.org/blog/article/134453](https://www.tralac.org/blog/article/134453).

⁵¹ Warui David Njoka. "The East African Community and Dispute Settlement: A Case of Migingo Island". Thesis, University of Nairobi, 2011.

alternate dispute resolution mechanisms that would be used to resolve disputes that would emerge⁵².

By the end of Second World War, it had become clear to governors administering East Africa that there was need for more meaningful consultations amongst themselves to strengthen their cooperation in East Africa and diffuse common sources of disputes and tensions. The governors would hold meeting periodically as conference of governors and the agreements made would be separately implemented in the regions. Though the conferences made a lot of progress, the challenge was that the agreements were not binding as they were not grounded on any legal framework. This coupled with logistical frustrations meant that the cooperation agenda was not moving forward as required⁵³.

After operating under Conference of Governors Framework for about a year, the governors realized the need for a more structured framework for administrative and dispute resolution. This led to the formation of East Africa High Commission. This was promulgated in 1947 and became effective on 1st January 1948. Cooperation in East Africa now had a judicial framework. The commission was mandated to oversee implementation of many common services⁵⁴. Soon, a legislature, East African Central Legislative Assembly was established under the Order of the Council, a forum for public debate and development of laws that would address issues including disputes emerging from the East African Community. The assembly legislated on matters such as railway, posts, telecommunication and harbors. It also went beyond common service issues to address other East African region issues that would facilitate achievement of sustainable peace in the region.

However, even with formation of EAC high commission did not create a formal dispute resolution mechanism. Most disputes within the three territories were resolved through negotiations, consultations and establishment of terms of cooperation. However, the formation of East Africa Central Legislative Assembly mandated as supreme legislative

⁵² Warui David Njoka. "The East African Community and Dispute Settlement: A Case of Migingo Island". Thesis, University of Nairobi, 2011.

⁵³ Gathege Protas Saende. *The concept of dispute resettlement in the East African Region*. Master thesis: University of Nairobi, 2012, 30.

⁵⁴ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

organ for three territories reigned in and aligned local laws to the East African legislative agenda. For example, East Africa Central Legislative Assembly was allowed to overrule any municipal law of member states⁵⁵.

By 1960, independence of East African States was looming. In this independence era, the East Africa High Commission could not continue. Tanganyika's independence coming earlier than Kenya's and Uganda's meant that management of East African region needed to be differently organized to ensure smooth flow of common services. Negotiations ensued and on 22nd December 1961, resulting to formation of The East African Common Services Organization. The agreement was entered into through an agreement, the East African Common Services Agreement entered into by Independent Tanganyika and colonial Kenya and Uganda. This negotiated document was complete with a constitution, and schedules detailing common services management⁵⁶.

Under the new body, laws and legislative structures were newly formed in anticipation that old structures would be viewed with suspicion by some parties. The new formation established Central Legislative Assembly to replace the East African Central Legislative Assembly under the former Commission. The new constitution allowed the laws made under the new legislative assembly to have legal effect in the home countries⁵⁷.

Though the new formation was seen as very promising, it did not adequately accommodate for dispute resolution mechanisms. Disputes even among member states were left to municipal courts. There were also other legal loopholes that could have provided frustration to the supremacy of the regional legal body. For example, member countries could amend or even repeal an Act of the organization⁵⁸.

⁵⁵ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

⁵⁶ Mugambi Kithamba. "The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County." Thesis. University of Nairobi, 2017.

⁵⁷ Moses Kiggundu and Kaitlyn DeGhetto. "Regional Integration: Review of Management Literature and Implications for Theory, Policy and Practice." *African Journal of Management*, 1(4) 2015:303-332.

⁵⁸ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

2.2 Dispute Resolution Mechanisms after Independence

In a few years, all three East African countries gained independence. The focus of the three nations was to establish their internal institutions and have assurance of their sovereignty. It was hence perceived that The East African Common Services Organization was not an appropriate midwife to integrate the three EAC countries and specifically in matters of dispute resolution. With a string desire to assert their independence, and sovereignty, East African States wanted strong internal economies. A common market framework with legal structures became necessary. Soon disputes and acrimonies started emerging over distribution of EAC revenue⁵⁹.

The East African Common Services Organization had not anticipated for common market issues. Independent states were worried about imbalance in trade and poor resource distribution over EAC common services. Independent East African States met to resolve the declining state of East African Region. In a meeting in Mombasa in 1967, the Heads of States formed a commission, the Philip commission that would establish ways in which East African Common Market concerns and cooperation would be salvaged and strengthened. The commission made up of representation from each of the three states was a framework for negotiations between the states. The emerging committees report formed the basis for the formation of a treaty between the three East African States that resulted into the first post-independence East African Community⁶⁰.

The East Africa Court of Appeal was formally established to deal with disputes in the region. Though there were domestic laws in the three member countries, the appeal court was the only one in existence. All common service legal disputes in East Africa were determined by this court. This Court however, had challenges that later resulted to the collapse of EAC. It did not have powers to demand compliance by member states as far

⁵⁹ Caroline Ntara. "African Trading Blocs and Economic Growth: A critical Review of Literature." Master's Thesis, Kenya Methodist University, 2016.

⁶⁰ Catherine McAuliffe, Sweta C. Saxena, and Masafumi Yabara. *The East African Community: Prospects for Sustained Growth*. International Monetary Fund, 2012.

as the East African Treaty was concerned. There was no way of bringing member states to the jurisdiction of the court⁶¹.

The lack of adequate ADR mechanisms in the first post-independence EAC led to the collapse of the regional body. The exact point the problems started in the union is not easily identifiable. However, many historians believe the total caving in happened in 1977 when member states failed to agree on the 1977/1978 budget. The disintegration was gradual with East African Community being declared no more in May of 1984⁶².

Following the collapse of the first post-independence East African Community, efforts started being put in place to restart the block. There was need to heal the wounds that led to the collapse of the initial union. In 1984, heads of states from Kenya, Uganda and Tanzania agreed for a formation of a mediation unit that would start processing of sharing out assets from the defunct EAC one. However, part of the mandate of the mediation team run beyond assets splitting. It provided for exploration of ways to have future collaboration between Kenya, Uganda and Tanzania⁶³.

There was recognition that the first EAC collapsed for lack of robust engagement of civil society and private sector alongside lack of strong political will power to sustain the union. There was suspicion from member states on each other's contribution to the initial EAC and disagreement on distribution of benefits emerging from the body. Realizing the need for a differently structured new EAC, initial member countries agreed that the new community would involve wider consultations both within individual countries and amongst the states themselves⁶⁴.

On November 30th 1993, East African Heads of States met and agreed on formation a union for all the member states. On March 14th 1996, the secretariat was officially launched. This commenced formal formation of new EAC. The Permanent Tripartite

⁶¹ Mugambi Kithamba. "The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County." Thesis. University of Nairobi, 2017.

⁶² East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

⁶³ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

⁶⁴ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

Commission for East Africa Commission was redrafted into a treaty in 1997 that heads of State signed to form the new EAC⁶⁵.

Since then, East African Community has formulated several mechanisms for dispute resolution aimed at sustainable peace in the region. The region has also established protocols for foreign policy coordination, as well as partnership in defence, security and peace. These protocols date back to 1998 when they were introduced as Memorandums of understanding. East Africa Community also has an Early warning System (EWS), a Peace Facility (PF) and a Panel of Eminent Person (PEP)⁶⁶.

The Foreign policy coordination protocol has provided rich grounds for conflict prevention within EAC that bedeviled the first EAC. Different countries disagreed on foreign policy issues that resulted to a lot of suspicion within the body. In the new formation, foreign policy protocol provided that EAC countries would take common position in international fora. The protocol also provided that EAC member countries would defend any member in a country where one doesn't have diplomatic representation⁶⁷.

2.3 Summary of the Chapter

Issues of trade had been a big source of mistrust and disputes in the initial EAC. Tanzania, for example was overly wary of Kenya's dominance in East African economic sphere. This is considered the biggest factor for collapse of initial EAC. It was therefore very important to the planners of new EAC to accommodate policy and protocols that would efficiently and effectively diffuse EAC trade disputes if the new formation was to survive⁶⁸.

A free trade area in EAC was already being intensively in 1999 after the launching of EAC wide passports. Caution was being exercised in agreeing on critical aspects of the

⁶⁵ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

⁶⁶ Warui David Njoka. "The East African Community and Dispute Settlement: A Case of Migingo Island". Thesis, University of Nairobi, 2011.

⁶⁷ Robert Koigi Muthomi. *Economic integration in East Africa: East Africa Community*. Master thesis, University of Nairobi, 2012.

⁶⁸ Annie Barbara Chikwanha. "The Anatomy of Conflicts in the East African Community (EAC): Linking Security with Development." Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands, 2007

trade agreements such as elimination of tariffs, and removal of internal barriers for goods originating from member countries. To this end a phased economic integration approach was employed. This would allow for learning and reflection to avoid earlier pitfalls. It was to start with a customs union, a common market, and finally monetary union⁶⁹.

⁶⁹ Annie Barbara Chikwanha. "The Anatomy of Conflicts in the East African Community (EAC): Linking Security with Development." Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands, 2007.

CHAPTER THREE
THE IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTION
MECHANISM IN EAST AFRICA COMMUNITY

3.0.Introduction

There are many ways of categorizing ADR mechanisms. However, the most commonly used is according to the level of control the disputants have over the process. The more formal the process gets, the less the control the disputants have. Some of ADR process includes negotiation, mediation, and arbitration. Hybrid ADRs are being fronted such as combination of mediation and arbitration⁷⁰.

3.1. Alternate Dispute Resolution Mechanisms in East Africa

In East Africa there are many dispute resolution mechanisms allowable by law. The most common ones are negotiation, mediation, conciliation and arbitration. Alternative dispute resolution mechanisms refer to all processes aimed at settling a disagreement other than litigation⁷¹. In Kenya alternative dispute resolution mechanism are acceptable in law. The Kenyan constitution acknowledges use of ADR mechanisms as a means of adjudicating legal matters. Thus, a court of law may allow the parties to attempt alternative dispute resolution mechanisms before having it determine a matter. However, this is only allowable in civil and commercial disputes but never in criminal matters⁷².

The East Africa nations have enshrined alternative dispute resolution mechanisms in their constitutions and local laws. In Kenya, the constitution adopted in 2010 recognizes that justice can only be effectively attained through multifaceted and pluralistic judicial mechanisms beyond the ordinary court processes. To this effect, the law provides alternative dispute resolution mechanisms to work alongside the conventional legal systems. This is in acknowledgment of the fact that alternative dispute mechanisms have

⁷⁰ Annie Barbara Chikwanha. "The Anatomy of Conflicts in the East African Community (EAC): Linking Security with Development." Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands, 2007.

⁷¹ Raymond Shonholtz, *General Theory on Disputes and Conflicts*, A, 2003 J. Disp. Resolution. (2003)

⁷² William Mwanza. Optimizing the dispute resolution process for trade remedies in the EAC, 2015.

been used by East Africans for ages and have proven effective in settling even very sensitive and deep disputes⁷³.

Studies done in East Africa indicate that many people have no access to justice through litigation of court processes. An East African based study by World Bank indicated that only 10% would chose the court as a means to settle disputes. Many have preferred to attain justice through alternative dispute resolution mechanisms⁷⁴. For many years in the EAC member states, ADRs have been embraced for the many advantages they have posed as compared to court based judicial processes.

ADR takes much shorter duration of time to resolve issues, especially traditional alternative dispute resolution ways. East Africa has had development delayed by many civil wars, for example in Uganda, South Sudan, Burundi and Rwanda. The most appropriate approach to sustainably settling the grievances emerging from these wars and stimulate economic regeneration is through ADRs⁷⁵.

3.1.1. Negotiation as an Alternative Dispute Resolution Mechanism in East Africa

Negotiation is a form of communication between parties in a dispute with an aim of coming to a mutually agreeable position. In negotiation, disputing parties are likely to present themselves. However, in some cases they will have agents arguing their cases. However, whether presenting self or presented, the disputants have high level of control over the negotiation process⁷⁶. Negotiation is further divided into varieties. There is competitive bargaining and cooperative negotiation. Competitive negotiations are aggressive, with disputants looking for substantive results. They will most probably take hard positions. Concessions are rare in such cases or ugly at best. Cooperative negotiators are more concerned with creating and sustaining relationships. The disputants

⁷³ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁷⁴ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

⁷⁵ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁷⁶ Mugambi Kithamba. "The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County." Thesis. University of Nairobi, 2017.

are therefore likely to make concessions on substantive matters to maintain relationships⁷⁷.

The East African Community has embraced negotiations to address many disputes affecting the region and Africa at large. A good example is the conflict on the control of waters of the Nile Basin. In the colonial period, the Nile waters were regulated by British stamped treaties. After the independence of Africa, East African countries contested the treaties arguing that they favored Northern Africa Countries like Egypt and Sudan. The situation has remained contested up to date. The Nile River Basin Commission supported by East African Community has been at the forefront to negotiate for a peaceful resolution to the potential conflict between East and North African countries. The negotiations have helped avoid an all-out war pitting the two sides⁷⁸.

3.1.2. Mediation as an Alternative Dispute Resolution Mechanism in East Africa

Mediation is process that is not binding in which a third party facilitates the ongoing. The mediator has no decision making power with disputants maintaining the outcome of the substantive aspects of the mediation. Nonetheless, the mediator serves as a facilitator who helps the disputing parties develop ground rules. The mediator also ensures the parties respects the rules set. The mediator does not impose or even suggest solution to the parties in conflict but lets the parties do so themselves⁷⁹.

Mediation is an approach that is widely practiced in resolving disputes in East Africa both as a community and within individual states. The United Nations through UN Habitat and UNHCR have been championing mediation as a way to resolve and prevent conflicts in war torn South Sudan and neighbouring Democratic Republic of Congo that have spill-over in the East African region. For example in DRC, the focus has been to resolve land related disputes so that internally displaced people can return back to their communities and reclaim their lands. In Northern Kivu, Community Land Mediation

⁷⁷ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

⁷⁸ Mugambi Kithamba. "The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County." Thesis. University of Nairobi, 2017.

⁷⁹ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

Centers have been established to provide a local supply of mediators. Mediators from the lowest administrative centers are trained on mediation and supported to provide their services to local communities⁸⁰. Mediation was also used to resolve post-election conflicts in Burundi in 2015 under the auspices of the East African leadership⁸¹.

3.1.3. Arbitration as an Alternative Dispute Resolution Mechanism in East Africa

Arbitration is a situation where the disputing presents their case to a third party. This third party, the arbitrator has some more power than a mediator. They have the power to render a decision based on the arguments made by the disputants⁸². The EAC allows the use of ADR under its Article 32. In normal jurisdiction of court process, a litigation court will not allow for alternative dispute resolution mechanisms. Not so with EACJ. The court has a hybrid role of offering ordinary litigation processes but also being an arbitrator.

The article 32 of EACJ states that the court has the mandate to hear determine a matter “arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the community or any of its institutions is a party; or arising from a dispute between the partner states regarding this treaty if the dispute is submitted to it under a special agreement between the partner states concerned; or arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court⁸³.”

Article 8 of EAC treaty further adds that “the appointing authority shall appoint, from among the Judges of the Court a panel to constitute the tribunal to conduct the arbitral

⁸⁰ Fred Nkusi. Understanding the jurisdictional powers of the EA Court of Justice. The New Times. February 06, 2017. <https://www.newtimes.co.rw/section/read/207744>

⁸¹ East African Community. EAC High secretariat capacity assessment in Alternative Dispute Resolution. EAC, Arusha. 2018.

⁸² Mugambi Kithamba. “The role of alternative dispute resolution mechanisms on prevention of conflicts: A case study of Isiolo County.” Thesis. University of Nairobi, 2017.

⁸³ Fred K. Nkusi. Understanding the jurisdictional powers of the EA Court of Justice. The New Times. February 06, 2017. <https://www.newtimes.co.rw/section/read/207744>

proceedings, unless the parties have agreed on a Sole Arbitrator who, in the like manner, shall be appointed from among the Judges of the Court⁸⁴.

Arbitration in Kenya is regulated and guided by Chartered Institute of Arbitrators. Other organizations that offer arbitration services, alongside other alternative dispute resolution mechanisms are dispute resolution center and mediation training institute. However, there is no law obliging parties to seek the services of these bodies in case of disputes in their agreements. In deed parties to agreements are free to choose any person they feel capable and fit to arbitrate their disputes⁸⁵. It is generally accepted that parties invoking ADR will bear their own costs. If there are costs related to a third party, the disputing parties will share the costs. In arbitration situations the cost of paying the arbitrator may be decided and split between the disputing parties. Arbitration proceedings in Kenya are confidential⁸⁶.

The duration with which a matter under arbitration will be resolved vary depending on the concerned country in the East African region. This is highly dependent on the complexity of the matter. Other factors are commitment and enthusiasm of the parties involved, timelines agreed on and the speed of the arbitrator. However, giving averages, arbitration in Kenya and Uganda can be as short as six months or stretch up to three years⁸⁷.

Arbitration in Kenya and Uganda has clear guidelines covered by law. Arbitration Act guides how the process goes. The law dictates the procedures of evidence presentation. Whereas the law allows for evidence to be presented in any manner, there must be an agreement between the disputing parties on how the evidence is to be tabled. In the absence of an agreement, the arbitral tribunal determines how the evidence will be presented. They may choose to allow for oral presentation of evidence only or demand the proceedings be grounded on document evidence depending on the matter at hand.

⁸⁴ Fred K. Nkusi. Understanding the jurisdictional powers of the EA Court of Justice. The New Times. February 06, 2017. <https://www.newtimes.co.rw/section/read/207744>

⁸⁵ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁸⁶ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁸⁷ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

For example, a Kenyan arbitrator is allowed by law to provide interim protection to any party involved in arbitration processes as he may deem necessary.

However, unlike a normal case processes, parties to an arbitration process have more rights to privacy. They are under no obligation to disclose documents to their opponents. Exchange of documents and information can only be guided by the agreement between the two disputing parties. Parties will disclose the document very necessary to their cases. However, there are documents and information that is strictly privileged such as that between clients and their lawyers. Medical records also cannot be disclosed unless there is consent of the patient involved or the laws of the land demand it⁸⁸.

Arbitration act provides for the relationship between arbitration and normal court dispute resolution mechanisms. The act provides for involvement of a court of law in a dispute. A court of law may intervene in an arbitration to determine how enforceable an agreement in arbitration is, while providing interim measures of protection to specific vulnerable parties, or if it is necessary for the court to set aside the appointment of an arbitrator. A court of law may also intervene when assistance to gather evidence is needed, while removing an arbitrator or setting aside an arbitration ruling. The arbitration Act in Kenya also allows the court to enforce an arbitral award. Kenyan courts are also allowed to hear and determine appeals coming from arbitration processes⁸⁹.

It is a common practice for parties in dispute to enter into negotiations outside the arbitration platforms to settle pending matters without prejudicing their cases. The law states that any documents generated in such agreements are without prejudice. This means that in case the dispute gets to the court of law, such documents are not admissible as evidence⁹⁰.

In all East African countries, awards emanating from arbitration processes are enforceable as those coming from courts of law but a decree must be made by a court of law to that effect. Therefore, when an arbitration award needs to be enforced, the parties

⁸⁸ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁸⁹ Sean Omondi and George King. Application of Dispute Resolution Mechanisms in Kenya. African Law and Business. <https://www.africanlawbusiness.com/kenya>.

⁹⁰ Caroline Ntara. "African Trading Blocs and Economic Growth: A critical Review of Literature." Master's Thesis, Kenya Methodist University, 2016.

must make an application to a court of law to that effect. Once the high court provides enforcement authority, then the award becomes enforceable just like any other court ruling⁹¹.

In Kenya, parties can agree that if a dispute award is not agreeable to both parties, any party that feels aggrieved can appeal to a court of law within their countries. However, for this process to pally, the parties must have expressly agreed that the award given can be appealed in a court of law. If no such express agreement existed, the aggrieved party can still go to court but request for the arbitration determination to be set aside⁹².

In East African community, a court will set aside an arbitration award if it determines that a party to the arbitration was incapacitated in its regard, the arbitration agreement is invalid under law. If the party seeking the nullification of the award proves that it was not adequately involved in determination or informed the selection of an arbitrator, the court may still determine whatever other resolutions emerging from the processes as null and void. If one party was unable to present its case, the decision of the arbitration can be set aside. Other factors considered are the conduct of the arbitrators, specifically if it was not impartial or did not adhere to the agreed on procedures⁹³.

⁹¹ Caroline Ntara. "African Trading Blocs and Economic Growth: A critical Review of Literature." Master's Thesis, Kenya Methodist University, 2016.

⁹² Moses Kiggundu and Kaitlyn DeGhetto. "Regional Integration: Review of Management Literature and Implications for Theory, Policy and Practice." *African Journal of Management*, 1(4) 2015:303-332.

⁹³ Moses Kiggundu and Kaitlyn DeGhetto. "Regional Integration: Review of Management Literature and Implications for Theory, Policy and Practice." *African Journal of Management*, 1(4) 2015:303-332.

CHAPTER FOUR

DISPUTE RESOLUTION MECHANISMS USED IN EAC ON PROSPECTS OF SUSTAINABLE PEACE

4.1 Introduction

This chapter highlights the findings on dispute resolution mechanisms used in East African Community with the aim for prospecting for sustainable peace. The chapter also makes an illustration of the various countries where dispute resolution mechanisms have been employed to inculcate sustainable peace.

4.2 Response Rate

The response rate was 70% since seven officials of Ministry of Foreign affairs in Rwanda responded by filling the questionnaires appropriately.

4.3 Strength of alternative dispute resolution mechanisms in East Africa region

The results revealed that ADR has widely been used in the East Africa region. This is shown since the East Africa Community members through the auspices of EAC and IGAD have set up mechanisms for alternative dispute resolution on inter border and even regional for regional peace and security. The underlying principles for alternative dispute resolution mechanisms are highlighted through the EAC's Draft Protocol on Foreign policy. For example, when President Pierre Nkurunziza changed the constitution to overstay his mandated two terms in office, former President Benjamin Mukapa used mediation to resolve the conflict through the backing of EAC.

This shows that to some extent the various dispute resolution mechanisms used in East African Community for enhancing sustainable peace have mixed results. In some cases, success has been attained as seen from the case of Kenya during the 2007/2008 electoral violence. In Kenya, the use of mediation led to peace. However, instances abound where this has not been successful as witnessed through the case of Burundi and South Sudan where conflicts have continued to escalate.

4.3.1 Constitutional Support on use of ADR

Findings established that all the constitutions in EAC member states guarantee the right for personal access to justice. To support this, the judicial systems, the courts and various localized tribunals are created on the presupposition for justice for all persons. For

example in Kenya, Uganda, Rwanda and Tanzania, this justice as spelled out in the constitution is to be accorded irrespective of status of the persons.

The constitutions of these countries also respect the application of alternative dispute resolution mechanisms such as mediation, reconciliation, arbitration as well as use of traditional dispute resolution mechanisms. For example in Rwanda and Tanzania, traditional dispute resolution mechanisms are upheld from the village level. In Kenya and Uganda, access to justice include the use of alternative dispute management mechanisms like the use of village elders to resolve cattle rustling between the Karamoja of Uganda and the Pokot of Kenya.

4.3.2 Institutionalization of ADR in Constitutions in East African Region

Results established that member states in the East Africa Community have institutionalized and domesticated the use of ADR in the constitution. Firstly, the East Africa Community treaty requires member states to abide by the operational principles stipulated for the sake of safeguarding the rule of law, democracy, social justice and human rights. In Rwanda, *abunzi* and *gacaca* courts have continued to play a tremendous role in conflict resolution. These courts have been instrumental in presiding over civil and land disputes an even in criminal cases such as trial of genocide perpetrators. The courts have full recognition under the constitution and the laws of Rwanda. In Rwanda, the literal meaning for *abuzi* is ‘those who reconcile’. These local mediators are mandated by the constitution to resolve disputes through mutually accepted solutions. They are part of the government initiative designed to serve justice and governance to citizens at all levels.

4.4 Usefulness of ADR used in East Africa

The findings showed that ADR have been employed in settling regional conflicts among member states in East Africa Community. In South Sudan, mediation and arbitration has constantly been used in mitigating the conflict before and after independence in 2011. Through arbitration, Ethiopia, Kenya and Uganda were able to institute the peace agreement between South Sudan and Sudan in Somalia. The Comprehensive Peace Agreement of 2005 that eventually led to independence in July 2011 was created through negotiations. The resultant civil war of 2013 also witnessed the use of negotiation that

eventually led to a peaceful agreement between Salva Kiir and Riek Machar in 2015. Arbitration has also been used to manage the conflict in South Sudan after the 2015 continued civil war.

In the conflict in Somalia, countries in East Africa such as Kenya, Uganda and Burundi have been in the frontline in contributing troops to AMISOM. To settle the conflict, negotiation and arbitration have continually been applied in creation of the government in Mogadishu. Kenya has been in the frontline in guiding the negotiations that eventually led to creation of a government in Somalia. The East Africa Community was instrumental in the use of negotiation and arbitration to settle the electoral related violence in Kenya in 2007/2008. Presidents Museveni of Uganda and Jakaya Kikwete of Tanzania led negotiations that led to pacification of that conflict.

In Burundi, conflict emerged when President Pierre Nkurunziza changed the constitution to stay on power beyond the constitutional limit in 2015. The task of pacifying the conflict was given to the former President of Tanzania Benjamin Mukapa. However, he was unable to negotiate an end to this conflict leading to Nkurunziza defying the East Africa Community and getting reelected in July 2015.

4.5 Use of Various Categories of ADR

The respondents were asked to state the agreement on the use of arbitration as an alternative dispute resolution mechanism in East Africa region. It was revealed that arbitration was officially enacted in Rwanda in 2012 with the establishment of Kigali International Arbitration Centre (KIAC). This body was established to support the efforts of the judiciary in Rwanda in arbitration services for business related disputes both locally and in the East Africa region. Other East Africa member countries like Kenya and Uganda have enacted arbitration in the law as alternative dispute resolution mechanisms. On the use of negotiation as an alternative dispute resolution mechanism in East Africa region the respondent were in agreement that this method is in application. The use of negotiation to political conflicts is well captured in the case of electoral related violence in Kenya in 2007/2008. President Mwai Kibaki and opposition leader Raila Odinga were put in the negotiation table to pacify the conflict.

On the use of mediation as alternative dispute resolution mechanisms for settling boundary and political disputes, the results revealed that this is a widely used method in the region. In Rwanda, *gacaca* and *abuzi* are often cited as the best case of use of arbitration in dispute resolution. The *gacaca* and *abuzi* use of the two traditional dispute resolution systems codify a hybrid between state-sponsored justice and traditional methods in dealing with genocide cases which are criminal in nature. The use of *gacaca* and *abuzi* was popularized by the government of Rwanda in the post-2000 era for making justice decentralized, affordable and accessible.

In Kenya, mediation has been used to resolve boundary conflicts between various communities. For example, the government of Kenya through the local administration and village elders managed to settle the conflict between the Turkana and Pokot communities. In 2015, through the use of mediation, inter and intra community dialogue between elders, women groups, reformed warriors, youths and politician led to a peaceful resolution of the conflict.

4.6 Strengths of various ADR enshrined in the Constitutions of East Africa

Respondents were to mention the various ADR enshrined in the constitutions of the EAC member states. The member states of the East Africa community have domesticated alternative dispute resolution mechanisms in the constitution. In the Constitution of Kenya 2010, Article 189 (4) has formally extended the use of ADR. Under this article, the National Legislation is mandated to make provision for procedures to be adhered to in settling inter-governmental disputes through alternative dispute resolution mechanisms.

In Uganda and under the Judicature Act, Cap 13, a provision is made for the application of ADR under the direction of the formal court. Under Section 26 to 32 of the Act, a provision is made for situations that necessitate the reference of disputes to arbitrators where such officials have been given the powers by the High court to deal with civil disputes. Under the Constitution of Rwanda and specifically in Article 141 of the 2003 Constitution revised in 2015, the *abuzi* committees are provided with the responsibility of conciliating disputes. They do this for the purpose of maintaining national unity and peaceful coexistence of the people of Rwanda. These committees that exist and operate in

every corner of the country are elected by the community for the sake of allowing local ownership and community participation in settling disputes.

4.6.1 Strengths of use of ADR in East Africa

Responses were sought on the extent various members of the East Africa Community have used alternative dispute resolution mechanisms. It was noted that Kenya has in the forefront in use of negotiation and mediation in facilitating and leading numerous peace processes such as the Comprehensive Peace Agreement between South Sudan and Sudan in 2005. This agreement led to the independence of South Sudan. Kenya brokered the negotiations that led to the formation of the Transitional Federal Government in Somalia in 2005. Kenya and Uganda have hosted numerous sessions of the Great Lakes negotiations and arbitration involving need for resolving of conflicts in Burundi. The EAC has been instrumental in Burundi especially over the 2015 political crises occasioned by change of constitution for term extension by President Pierre Nkurunziza. Tanzania was at the forefront in brokering peace in Kenya in 2007/2008 post-election violence through negotiations, arbitration and mediation.

4.6.2 Challenges Facing Use of Alternative Dispute Resolution Mechanisms

Findings show that a number of challenges face the use of alternative dispute resolution mechanisms in East Africa Community. First, lack of adequate capacity in terms of qualified and experienced personnel to handle disputes through the use of ADR was mentioned. This is especially so when the personnel entrusted to participate in dispute resolution fail to fully understand the application of such methods like mediation, reconciliation and many others. Secondly, there is the threat of the parties mandated to undertake ADR losing their powers especially where the court has the overall monitoring of the activities and procedures in use. This has the threat of destroying the authenticity of the resolutions which as noted from mediation ought to be voluntary without court interference.

Thirdly, mediation may be viewed as more of a court process, as noted where the decision arrived by the mediating parties has to revert to the court for enforcement. Fourthly, where one party has more powers over the other, they may over-dominate the proceedings of negotiation, arbitration or mediation. In this case, the ADR results may

finally reflect the needs and interests of such a party and in the process erode the legitimacy of the entire process. Finally, the modalities and methods used in ADR may not be fully known by the public. Awareness of such methods has not been done and they are not fully understood by the general public in terms of management and usefulness.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter highlights the summary, conclusions and recommendations of the study. The conclusions and recommendations are explained as per the objectives of the study.

5.2 Summary of the Study

The study aimed at establishing the influence of dispute resolution mechanisms and prospects of sustainable peace in the region. The study was guided by three objectives: to examine the nature and institutional aspects of ADR in East African Community; to establish the extent to which alternative dispute resolution mechanisms used in East Africa and to establish the influence of ADR used in EAC on prospects of sustainable peace. Three null hypotheses constituted the hypothetical questions of the study. These are: there are no significant strengths of institutional aspects of ADR in East African Community; there is no significant usefulness of alternative dispute resolution mechanisms used in East Africa and there is no significant strength of ADR on prospects of sustainable peace East African.

The study was anchored by two theories. They include the Dual Concern theory of conflict resolution and the General Theory of Disputes and Conflicts. Descriptive research design was applied in the study for ascertaining the degree of the frequency of occurrence of dispute resolution mechanisms in East Africa. The study site was the Ministry of Foreign Affairs in Rwanda. Both primary and secondary data sources were used. For collection of primary data, officials of Ministry of Foreign Affairs were emailed the questionnaires. The secondary data was collected from past scholars who have focused on the study area. The study used simple random sampling to select ten officials of Ministry of Foreign Affairs. For secondary data, library sources, books, e-books, government publications, journals, magazines and newspaper articles were analyzed. Questionnaires were used to collect primary data.

5.2.1 Strengths of institutional aspects of alternate dispute resolution mechanisms in East African Community

Results indicate that alternative dispute resolution mechanisms have been in use in the East Africa region. The evidence is that East Africa Community members have set up mechanisms for alternative dispute resolution for sustainable peace and security. The principles for use of ADR are highlighted through the EAC's Draft Protocol on Foreign policy. Success of the strength of ADR is visible in cases like the 2007/2008 electoral violence. Here, the use of mediation led to peace. In South Sudan, mediation and arbitration led to independence and pacification of 2015 conflict. However, a few challenges to the strength of ADR is evident as shown through the case of President Pierre Nkurunziza who changed the constitution to overstay his mandated two terms in office. ADR through EAC was unable to negotiate the impasse and Nkurunziza was elected as president in violation of the protocol.

Findings established that strength of ADR is that it is domesticated in all the constitutions in the East Africa Community member states. In Rwanda and Tanzania, traditional dispute resolution mechanisms are upheld from the village level. In Kenya and Uganda, access to justice include the use of alternative dispute management mechanisms like the use of village elders to resolve cattle rustling between the Karamoja of Uganda and the Pokot of Kenya.

As such the null hypothesis that there are no significant strengths of institutional aspects of alternate dispute resolution mechanisms in East African Community is rejected. The alternate hypothesis that significant strengths exist of institutional aspects of alternate dispute resolution mechanisms in East African Community is accepted.

5.2.2 Usefulness of ADR used in East Africa

From the results it is evident that alternative dispute resolution mechanisms have been employed in settling regional conflicts among member states in East Africa Community. For example, in South Sudan, mediation and arbitration was constantly used in mitigating the conflict before and after independence in 2011. In Somalia, negotiation and arbitration have continually been applied in creation of the Transitional Federal

Government in Mogadishu. Presidents Museveni of Uganda and Jakaya Kikwete of Tanzania led negotiations that led to pacification of the 2007/2008 conflict in Kenya.

Due to its usefulness, arbitration was officially enacted in Rwanda in 2012 with the establishment of Kigali International Arbitration Centre (KIAC). Other East Africa member countries like Kenya and Uganda have enacted arbitration in the law as ADR. On the use of mediation *gacaca* and *abuzi* are often cited as the best case of use of arbitration in resolving criminal and civil disputes. The use of *gacaca* and *abuzi* was paramount for the government of Rwanda in the post-2000 era for making justice decentralized, affordable and accessible.

In Kenya, mediation has been used by the government through the local administration and village elders to settle the conflict between the Turkana and Pokot communities. Since the null hypothesis stated that, there is no significant usefulness of alternative dispute resolution mechanisms used in East Africa, it is rejected. The alternate hypothesis that there is significant usefulness of alternative dispute resolution mechanisms used in East Africa is accepted

5.2.3 Strength of dispute resolution mechanisms used in EAC on prospects of sustainable peace

The strength of ADR is visible since the constitution of countries in the region. In Kenya, Article 189 (4) of the Constitution of 2010 has formally extended the application of ADR in Kenya. In Uganda and under the Judicature Act, Cap 13, a provision is made for the application of ADR under the direction of the formal court. Under Section 26 to 32 of the Act, a provision is made for situations that necessitate the reference of disputes to arbitrators where such officials have been given the powers by the High court to deal with civil disputes. In Rwanda, the Constitution and specifically Article 141 of the 2003 Constitution revised in 2015, has provided the *abuzi* committees the responsibility of conciliating disputes.

The strength of use of ADR in East Africa is notable since member states have constantly employed it as a means for sustainable peace and security. For example, Kenya has used negotiation and mediation in facilitating the Comprehensive Peace Agreement between South Sudan and Sudan in 2005. Kenya and Uganda have hosted numerous sessions of

the Great Lakes negotiations and arbitration involving need for resolving of conflicts in Burundi. EAC has been instrumental in Burundi especially over the 2015 political crises occasioned by change of constitution for term extension by President Pierre Nkurunziza. However, a number of challenges have continued to threaten the use of alternative dispute resolution mechanisms in the region. For instance, lack of adequate capacity in terms of qualified and experienced personnel to handle disputes through the use of ADR. There is a challenge of the parties mandated to undertake ADR losing their powers especially where the court has the overall monitoring of the activities and procedures in use. Sometimes, the various methods used in ADR may not be fully known by the public in EAC region since awareness of such methods has not been done. Due to the presence of evidence in use of ADR for sustainable peace in the region, the null hypothesis is rejected. Thus the alternate hypothesis that there is significant strength of dispute resolution mechanisms on prospects of sustainable peace East African is accepted.

5.3 Conclusions

5.3.1 Strengths of institutional aspects of ADR in the EAC region

It is evident that ADR are basically an important modality of settling disputes in the East Africa region. This is notable through the creation and principles for use of ADR under the EAC's Draft Protocol on Foreign policy. The study concluded that there is a strong nature and institutional foundation of alternate dispute resolution mechanisms in East African Community.

5.3.2 Usefulness of alternative dispute resolution mechanisms used in East Africa

It is notable that alternative dispute resolution mechanisms are heavily relied on in pacification of disputes in the region. This is visible through the various examples of the usefulness of alternative dispute resolution mechanisms in settling regional conflicts in East Africa Community. As such, the study concluded that there is significant usefulness of alternative dispute resolution mechanisms used in East Africa.

5.3.3 Strength of dispute resolution mechanisms used in EAC on prospects of sustainable peace

It is evident that ADR is usually relied upon in dealing with civil-political disputes in East Africa region. Due to this strength, the constitutions of the member states have domesticated ADR as recourse for dispute resolution. ADR in East Africa is relied upon since member states have constantly used it as a means for enhancing sustainable peace and security. However, a number of challenges have continued to threaten the use of alternative dispute resolution mechanisms in the region. For instance, lack of adequate capacity in terms of qualified and experienced personnel to handle disputes through the use of ADR. The study concluded that evidence of use of ADR for sustainable peace and security in EAC region, is a strong indicator for dispute resolution mechanisms as a major prospects of sustainable peace in the region.

5.4 Recommendations

5.4.1 Strengths of institutional aspects of alternate dispute resolution mechanisms in East African Community

The study recommended that though alternative dispute resolution mechanisms are an important avenue of settling disputes in the East Africa region, there is need for member states to adhere to the resolutions under EAC's Draft Protocol on Foreign policy.

5.4.2 Usefulness of alternative dispute resolution mechanisms used in East Africa

It is evident that alternative dispute resolution mechanisms are important in mitigating disputes in the region. However, there is necessity for creation of enforcement platforms to give EAC powers and forcefulness to overcome violators of ADR. This is important for overcoming challenges like that posed by Pierre Nkurunziza in 2015.

5.4.3 Strength of dispute resolution mechanisms used in EAC on prospects of sustainable peace

Although ADR is important in dealing with civil-political disputes in East Africa region, there is need for sensitization and awareness creation to the general public on the modalities used in dispute resolution. This is important for creation of a strong foundation for efficient and effective use of ADR in dispute resolution.

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APPENDIX 1: QUESTIONNAIRE

- 1. Name
- 2. Institution
- 3. Has alternative dispute resolution mechanisms been in use in the East African Community?
 - a) Yes ()
 - b) No ()

If Yes, explain the aspects of alternative dispute resolution mechanisms that are institutionalized.

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- 4. State the various alternative dispute resolution mechanisms employed in settling disputes among the members of the East African Community.

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- 5. Has alternative dispute resolution mechanisms been institutionalized in your country's constitution?
 - c) Yes ()
 - d) No ()

If Yes, explain the aspects of alternative dispute resolution mechanisms that are institutionalized.

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- 6. State your agreement on the use of the following aspects of alternative dispute resolution mechanisms in East African region.

S. No	Aspects of alternative dispute resolution mechanisms	Agree	Disagree
1	Arbitration is commonly used in settling trade disputes in the region		
2	Negotiation is usually used in settling political disputes in the region		
3	Mediation is used in dealing with boundary and political disputes in the region		
4	Conciliation is primarily used as a dispute resolutions mechanism in the region.		

7. State the various alternative dispute resolution mechanisms enshrined in the constitution in the following East Africa countries.

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8. State the various instances in which dispute resolution mechanisms have been employed to inculcate sustainable peace in East African Community.

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9. State the various challenges facing the use of alternate dispute resolution mechanisms in conflict resolution in East Africa countries?