

LAW, CULTURE AND DISPUTE RESOLUTION: PROSPECTS FOR ALTERNATIVE DISPUTE RESOLUTION (ADR) IN AFRICA

By Winifred Kamau

ABSTRACT

In recent years, African countries have seen concerted efforts by Western agents to introduce alternative dispute resolution (ADR) as part of the reforms in the legal sector. ADR is seen having many benefits over traditional litigation; notably that it is less expensive, speedier, informal and more flexible. Mediation, in particular, has been promoted as a return to the model of harmonious dispute settlement previously used by non-Western societies. There is an assumption that ADR can easily be “re-transplanted” to Africa. Using Kenya as a case study, this paper challenges the appropriateness of superimposing ADR techniques refined in the West onto African societies, whose socio-cultural, political and economic structures differ fundamentally from those in the West. It argues that there is a serious need to examine the specific African context, particularly the fact of legal pluralism, and to understand the ways in which culture impacts on dispute resolution. If ADR is to effectively operate in Africa, it will have to reexamine its cultural assumptions and strive to be responsive to the actual needs of the African people, rather than simply adhere to technique and form.