

# THE ROLE OF ADR IN THE REALIZATION OF SOCIOECONOMIC RIGHTS

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## ABSTRACT

*The Brundtland Report, which was authored by a group of international politicians, government officials, and environmental and development specialists, transformed the idea of sustainable development from one focused on physical concerns to one based on social, economic, and environmental concerns.<sup>1</sup>*

*As a result, this study provided the commonly cited justification that "sustainable development" meets current demands without compromising the ability of future generations to meet their own. To start, the term "sustainable" refers to any action that may be continued eternally, but the term "development" can either refer to a specific activity or our idea of socioeconomic activities as a whole.*

*Of course, society as a whole is our primary concern, but according to the logic of sustainable development, individual economic activities must also be structured as sustainably as feasible.<sup>2</sup> It is also important to keep in mind that the idea of sustainable development encompasses not only economic activity itself but also the procedures in charge of putting it into action and controlling it. While its political viability depends on the complete support of the people it touches through their governments, social and legal institutions, as well as their private activities, its successful execution necessitates integrated policy planning and social learning procedures, and social legal innovation. Kenya's Constitution guarantees socioeconomic rights;<sup>3</sup> rights to the best possible health care, liveable housing, and education. They also include freedom from hunger and the need for clean, safe water. Additionally, it requires the state to offer social security to those unable to sustain themselves.*

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<sup>1</sup> World, *Our Common Future* (Centre for Our Common Future 1992).

<sup>2</sup> Bernd Klauer, 'Defining and Achieving Sustainable Development' (1999) 6 *International Journal of Sustainable Development & World Ecology* 114.

<sup>3</sup> Article 43, Constitution of Kenya, 2010.

*This article discusses Alternative Dispute Resolution techniques that can be used to amicably resolve disputes that could obstruct or prevent people from fully enjoying their socio-economic rights. The influence that ADR may have on the fulfilment of these rights is also questioned. Finally, based on the findings and constructive criticism, it will discuss how ADR might contribute more actively and positively to the attainment of socioeconomic rights.*

## **1.0 INTRODUCTION**

Alternative Dispute Resolution refers to a variety of systems, processes, and procedures for resolving conflicts without resorting to court action. They include arbitration, mediation, negotiation, conciliation, evaluation, and traditional dispute resolution mechanisms. The rationale for using alternative dispute resolutions is premised on Article 159 (2) of the Constitution. In Kenya the Arbitration Act of 1995 governs arbitration.<sup>4</sup> Mediation does not have specific legislation. However, Court annexed mediation is provided under Section 59(A)–(D) of the Civil Procedure Act. Article 48 of the Constitution places a burden on the state to ensure that every person has access to Justice. For this reason, our judicial system encourages and recognizes disputes settled under article 159 of the constitution. A limitation by Section 3 of the Judicature Act limits the use of Alternative Dispute Resolution in civil matters. However, this restriction does not preclude ADR from being a force of change and encouraging sustainable development.

## **2.0 BACKGROUND**

The advent of the Covid-19 pandemic was the beginning of the demise of Economic and Social rights.<sup>5</sup> The Constitution of Kenya provides Kenyan citizens with economic and social rights under article 43. However, upon the onset of the pandemic, many people lost housing, education, and medical care and there was imminent food insecurity.<sup>6</sup> This all happened regardless of the provision of these rights under the Bill of Rights. This article

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<sup>4</sup> Arbitration Act, 1995.

<sup>5</sup> Justice Alfred Mavedzenge, 'Revisiting the Role of the Judiciary in Enforcing the State's Duty to Provide Access to the Minimum Core Content of Socio-Economic Rights in South Africa and Kenya' (2020) 7 Journal of Comparative Law in Africa 60.

<sup>6</sup> Justice Alfred Mavedzenge, 'Revisiting the Role of the Judiciary in Enforcing the State's Duty to Provide Access to the Minimum Core Content of Socio-Economic Rights in South Africa and Kenya' (2020) 7 Journal of Comparative Law in Africa 60.

focuses on the right to medical care and housing since it opines these were affected most during the pandemic.<sup>7</sup> The Covid-19 pandemic slowed down sustainable development. Sustainable development refers to any action that may go on without limitation. The term development can relay it to a particular activity all our conception of socioeconomic activities as a whole. Our main concern is society as a whole but in line with the logic of sustainable development, individual economic activities also need to be structured as sustainably as is practical. However, during the Covid-19 pandemic, many individuals lost their ways of livelihood and housing, and when they got sick; they had nowhere to run to.<sup>8</sup> This directly affected the economy as we prepared to enter a recession based on the prediction of prominent economists.<sup>9</sup> It is also critical to keep in mind that the concept of sustainable development includes both the actual economic activity and the process in charge of limp lamenting and managing it. Given this sustainable development is a beneficial socioeconomic change that does not endanger the social and ecological support structures on which communities and societies rely.<sup>10</sup>

This article specifically focuses on the right to housing and the right to emergency medical care. It asserts that these were the problems of many people at the height of the pandemic without disregarding other prevalent and equally important issues that need to be raised.

### **3.0 THE ROLE OF ADR IN RESOLVING MEDICAL DISPUTES**

The Constitution is the basis of the right to medical care. It states that every person has the right to receive the highest available standard of health including the right to health care services which comprises reproductive health care.<sup>11</sup> The Constitution also states that a person is not to be denied access to emergency medical care.<sup>12</sup> Per article 27 of the constitution, no one shall be discriminated against and denied medical care under any differentiating or defining characteristic.

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<sup>7</sup> Justus Kithiia and others, 'The Socio-Economic Impacts of Covid-19 Restrictions: Data from the Coastal City of Mombasa, Kenya' (2020) 33 Data in Brief 106317.

<sup>8</sup> Justus Kithiia and others, 'The Socio-Economic Impacts of Covid-19 Restrictions: Data from the Coastal City of Mombasa, Kenya' (2020) 33 Data in Brief 106317.

<sup>9</sup> 'Kenya Slumps into First Recession in Two Decades' (*African Business* 28 January 2021) <<https://african.business/2021/01/finance-services/kenya-slumps-into-first-recession-in-two-decades/>>.

<sup>10</sup> Bernd Klauer, 'Defining and Achieving Sustainable Development' (1999) 6 *International Journal of Sustainable Development & World Ecology* 114.

<sup>11</sup> Article 43(1)(a), Constitution of Kenya, 2010.

<sup>12</sup> Article 43(2), Constitution of Kenya, 2010.

The constitution also provides that international principles as well as international treaties and conventions that Kenya is part of form the law of the land.<sup>13</sup> The International Convention on Economic Social and Cultural Rights provides this right to access medical care.<sup>14</sup> The African Charter on Human and Peoples' Rights also provides that every individual has the right to enjoy the best attainable state of physical and mental health.<sup>15</sup> Article 16 of the African Charter on Human and People's Rights guarantees the citizens of member states to right to health. It further provides that every person has a right to equality under article 19.<sup>16</sup>

In addition, Section 7 of the Health Act defines emergency medical care as pre-hospital care, stabilizing the health of an individual, and ensuring the referral where the health provider of the first call does not have facilities to stabilize the health of the patient.<sup>17</sup> It further goes on to state that a medical institution that does not provide emergency medical treatment while having the ability to do so commits an offense and is liable for a fine of 3 million shillings upon conviction.

Section 2 of the Health Act defines emergency medical care as necessary immediate healthcare that must be administered to prevent death or worsening of a person's health status.<sup>18</sup> All matters and laws considered every person has the right to emergency medical care regardless of whether they have money or not. It goes as far as the Hippocratic Oath that mandates doctors to put the life of the patient first. It is quintessential to this earth that medical practitioners value and does their best to protect the life of an ailing person.<sup>19</sup> However, people continue to die due to financial incapacity and the inability to pursue the necessary medical treatment.

Two questions are posited; is it legal to charge for medical care, and secondly, to what extent is the right to property more significant than the right to life? Firstly, every person has the right whether natural or legal to receive compensation for services that they have offered.<sup>20</sup> In his article, Maurice Oduor-a student of law at the Moi University School of

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<sup>13</sup> Article 2 (5) & (6), Constitution of Kenya, 2010.

<sup>14</sup> Article 12(1), United Nations, 'International Covenant on Economic, Social and Cultural Rights' (OHCHR16 December 1966) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>.

<sup>15</sup> Article 16, African Charter on Human and Peoples' Rights.

<sup>16</sup> African Charter on Human and Peoples' Rights.

<sup>17</sup> Health Act, 2017.

<sup>18</sup> *ibid*

<sup>19</sup> David Isaacs, 'The Hippocratic Oath' (2011) 47 *Journal of Pediatrics and Child Health* 321.

<sup>20</sup> Maurice Oduor and Dan Simiyu, 'The Right to Emergency Medical Treatment in Kenya' (*papers.ssrn.com*24 November 2015) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2695134](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2695134)> accessed 19 October 2022.

Law- relates this right to payment, to the right to property.<sup>21</sup> Therefore, legally compelling private medical practitioners to provide emergency medical care without compensation can be construed as an infringement of their right to property. However, it is important to consider that the right to emergency medical care is directly related to the right to life.<sup>22</sup> In answering the latter question, the African Charter on Human and People Rights provides that everyone has a right to life.<sup>23</sup> Morally speaking, even though morality is inconsequential to the discourse, the life of a human being is very important. Article 26 (3) provides that a person shall not be deprived of life intentionally. Read together with article 43, failing to provide emergency medical care to a patient whose medical condition is worsening is intentionally depriving this person of their life. By the constitution, there are limitations to the right to property. Because it is possible to regard emergency medical care as property on the part of private practice medical institutions, the state should compensate doctors as it is assumed the state deprived the doctors of owning their property for the emergency medical treatment issued without their compensation.<sup>24</sup> Another important piece of legislation is the Kenya Health Policy 2012- 2030. This policy forbids medical practitioners from denying emergency health services on grounds of inability to pay.<sup>25</sup> It further defines emergency medical treatment as health care services that preclude and manage the damaging health effects of an emergency and involves arranging for the transfer of clients as soon as the nature of the emergency is stabilized. Furthermore, Article 25 of the constitution provides rights that may not be limited. Among them, the right to property is not included. Here there is a push and pull. Should doctors give emergency medical care and rely on the government to compensate them, or should they deny emergency medical care that leads to the death of Kenyan citizens whose right to life has been protected under the constitution? There are several cases in which the latter has happened. October 5th, 2015 was the day Alex Madaga was injured in a hit-and-run accident.<sup>26</sup> This was widely covered by the media. Around 9:00 on the same day, he was ferried to Kenyatta national hospital by an ambulance from Kikuyu mission hospital. The employees at Kenyatta national hospital asserted there were no ICU beds available. They chose to rely on Coptic and Ladnan

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<sup>21</sup> Maurice Oduor and Dan Simiyu, 'The Right to Emergency Medical Treatment in Kenya' (*papers. ssrn.com* 24 November 2015) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2695134](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2695134)> accessed 19 October 2022.

<sup>22</sup> Article 26, Constitution of Kenya, 2010.

<sup>23</sup> Article 4, African Charter on Human and People Rights.

<sup>24</sup> Maurice Oduor and Dan Simiyu, 'The Right to Emergency Medical Treatment in Kenya' (*papers. ssrn.com* 24 November 2015) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2695134](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2695134)> accessed 19 October 2022.

<sup>25</sup> Ministry of Health, *Kenya Health Policy, 2012-2030*

<sup>26</sup> 'Dead after Arrival: Terrible Emergency Services Are Killing by the Thousand' (*Nation* 29 June 2020) <<https://nation.africa/kenya/health/Dead-after-arrival/3476990-4176182-n522p3z/index.html>> accessed 19 October 2022.

Hospital for help, and his wife had to pay 200,000 Kenyan shillings to get him hospitalized. Unfortunately, she did not have the necessary funds. The oxygen tank needed to be refilled so they went back to Kikuyu mission hospital. He reportedly suffered an internal head haemorrhage according to the ambulance attendants. After his relative complained they returned him to Kenyatta national hospital where he shortly passed away. Alex Madaga had earnestly fought for his life for 18 hours. His family was compensated for his suffering, totalling 150,000 Kenyan shillings, a minimum wage of 20 years totalling 2, 068, 248 Kenyan shillings, and special damages in the sum of 1, 189, 659 Kenyan shillings.

This is not an isolated case, unfortunately. Many have died in the hands of inhumane private medical facilities that refused to offer emergency medical services to individuals because they do not have money. Following the Kenya health policy, this is illegal. This is an example of discrimination in the medical sector, based on financial capability. It has only gotten worse during the pandemic.<sup>27</sup>

Patients frequently experience denial of emergency medical care due to their inability to pay for follow-up treatment. According to the constitution, equality entails having access to all rights and basic freedoms in their whole and equal nature. This involves treating patients equally during times of crisis regardless of whether they can procure financial assistance or not. Even while private hospitals and doctors have the right to charge a fee, people who lack the means should not be prevented from receiving emergency medical care because of the cost.

This article finds a gap between what is required in terms of emergency medical care and what goes on in the real life of Kenyan citizens. On one hand, the right to life and emergency medical treatment is guaranteed in the constitution and other related laws of the country. However, this is mitigated by a few requirements, especially by private hospitals. As seen in the case of *Lucco Nagin v Ministry of Health*, the services that are chiefly offered in public hospitals are much more expensive in private hospitals and may lead to the endangerment of a person's life even when it is not a medical emergency.<sup>28</sup> However, private hospitals cannot be precluded from charging a fee because it is their right. There's a gap in the law that needs to be filled to ensure that this right is realized fully.

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<sup>27</sup> Justus Kithiia and others, 'The Socio-Economic Impacts of Covid-19 Restrictions: Data from the Coastal City of Mombasa, Kenya' (2020) 33 Data in Brief 106317.

<sup>28</sup> *Luco Njagi & 21 others v Ministry of Health & 2 others* [2015] eKLR

#### **4.0 LEGAL PROVISIONS PROMOTING THE USE OF ADR IN MEDICAL DISPUTE RESOLUTION**

Article 21 (2) of the Constitution mandates the state to take legislative policy and other measures including setting standards to realize the rights provided under article 43 of the constitution, including the right to the medical care of its highest quality. Furthermore, Article 21(1) mandates the state to observe protect, and promote the rights and fundamental freedoms in the Bill of Rights. As mentioned earlier, the right to medical care is directly related to the right to life. Article 21 (4) of the constitution mandates the state to enact legislation that fulfils international obligations that it has. By the Universal Declaration of Human Rights,<sup>29</sup> the African Charter on Human and People's Rights<sup>30</sup> and the International Convention on Economic Social and Cultural Rights<sup>31</sup>, the state ought to enact legislation that protects the right to life. Section 3 of the Judicature Act allows for ADR to be used in civil matters. Furthermore, Article 159(2) of the constitution encourages courts to use ADR as a method to solve disputes as long as it is consistent with the written law and not repugnant to morality and justice.

In light of these provisions, this article asserts that the state ought to make legislation and effective policy to implement the use of Alternative Dispute Resolution in settling medical bills. One of the reasons why Alternative Dispute Resolution is effective is because it encourages informal and friendly negotiations outside the adversarial system of the court. It is also a quick and urgent way of settling disputes which is effective in emergency medical situations. This article contends that legislation implemented that allows Alternative Dispute Resolution to be a vehicle for settling financial disputes between medical institutions and patients will allow for the realization of the right to medical treatment. In the implementation of this legislation, health facilities should be incentivized to realize this right as part of the fundamental rights provided to Kenyan citizens under the constitution. The concept of Procedural Justice may be embraced. If there exist norms and processes for making any decision, and if they are followed, these are the subjects of Procedural Justice.<sup>32</sup> That everyone should be treated equally.

One can decide a standard for admitting any patients in an emergency medical situation without bias or prejudice by using procedural Justice. Equal rights must be granted to all people. Additionally, social and economic disparities must meet two requirements; they

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<sup>29</sup> Article 4, Universal Declaration of Human Rights, 1945.

<sup>30</sup> Article 4, African Charter on Human and People Rights.

<sup>31</sup> Article 12(1), United Nations, 'International Covenant on Economic, Social and Cultural Rights' (*OHCHR*16 December 1966) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>.

<sup>32</sup> John Thibaut and others, 'Procedural Justice as Fairness' (1974) 26 *Stanford Law Review* 1271.

must be linked to post and offices that are available to everyone under the equality of opportunity and they must represent the largest expected benefits of the society's most disadvantaged individuals. In light of this, it is fair to end discrimination when admitting patients in their circumstances.<sup>33</sup> Patients should not be discriminated against when they are unable to pay according to Rawls's theory of Justice.<sup>34</sup>

Alternative Dispute Resolution (ADR) can be used in the healthcare system to ensure that people who cannot afford medical care receive the care they require. One method is to use mediators or neutral third parties to assist patients and healthcare providers in negotiating financing options or financial assistance programs. Furthermore, ADR can be used to resolve insurance coverage or medical billing disputes, which can assist in ensuring that patients are not unfairly denied access to medical services because of financial limitations.

When using Alternative Dispute Resolution (ADR) to ensure access to medical services for individuals who are unable to pay, healthcare providers can receive compensation in a variety of ways. One method is to use sliding fee scales, which consider a patient's ability to pay and adjust the cost of services accordingly.<sup>35</sup> This allows healthcare providers to be compensated for their services while also making them more accessible to low-income patients. Furthermore, healthcare providers can be compensated through charitable donations or grants, which can help to offset the cost of providing services to patients who cannot afford them.<sup>36</sup> In some cases, healthcare providers may choose to provide pro bono, or reduced or no-cost, services to patients who are unable to pay.<sup>37</sup> In conclusion, healthcare providers can use a combination of these methods to get paid for the work they do. The right to life should be radically defended at all costs.

## **5.0 RESOLVING HOUSING DISPARITIES BY USE OF ADR**

Article 43(1) (b) of the Constitution of Kenya guarantees every person the right to adequate housing and reasonable standards of sanitation. In the case of *Satrose Ayuma & 11 others vs The Registered Trustees of Kenya Railways Staff Retirement Benefits*

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<sup>33</sup> John Thibaut and others, 'Procedural Justice as Fairness' (1974) 26 Stanford Law Review 1271.

<sup>34</sup> John C Harsanyi, 'Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory' (1975) 69 American Political Science Review 594.

<sup>35</sup> Ching-To Albert Ma, 'Health-Care Payment Systems: Cost and Quality Incentives—Reply' (1998) 7 Journal of Economics & Management Strategy 139.

<sup>36</sup> James M Ferris and Elizabeth A Graddy, 'Structural Changes in the Hospital Industry, Charity Care, and the Nonprofit Role in Health Care' (1999) 28 Nonprofit and Voluntary Sector Quarterly 18.

<sup>37</sup> James M Ferris and Elizabeth A Graddy, 'Structural Changes in the Hospital Industry, Charity Care, and the Nonprofit Role in Health Care' (1999) 28 Nonprofit and Voluntary Sector Quarterly 18.



**Fund Scheme and 3 others**,<sup>38</sup> the High Court issued an order preventing the eviction of the petitioners and expressed worry about the absence of laws controlling evictions in Kenya regardless of whether they are supposed to be from formal or informal settlements. The court further stated that the right to adequate housing should not be interpreted narrowly as a right to a basic form of shelter or a roof over one's head but rather as a right to live somewhere in safety peace and dignity. This is emphasized in General Comment Number 4 of the United Nations Committee on Economic, Social, and Cultural rights.<sup>39</sup> The court also ruled that everyone should have access to housing regardless of their financial situation or access to resources<sup>40</sup>;

The right to housing in its base form (shelter) need not be predicated upon "land title". Indeed, many citizens cannot acquire private title to land, which condemns them to the indignity of "informal settlement". Where the Government fails to provide accessible and adequate housing to all the people, the very least it must do is protect the rights and dignity of those in the informal settlements. The courts are there to ensure that such protection is realized, otherwise, these citizens, must forever, wander the corners of their country, in the grim reality of "the wretched of the earth".

Additionally, it argued that Housing Rights are connected to the intrinsic dignity of people and that these rights are interconnected and unbreakable. The right to housing was severely threatened during the Covid-19 pandemic. It was a cold morning in Kariobangi when the residents were woken up and told to pick up their belongings and a ruthless demolition took place.<sup>41</sup> This rendered thousands of people homeless during a raging pandemic. Not only did this endanger the health of the individuals but also denied them their constitutionally mandated right to housing and sanitation. The issue of protecting private property rights from the enforcement of socioeconomic Rights is one of the issues that arise when it comes to the application of this right, unlike civil and political rights. According to those who demand the protection of property rights the Bill of Rights only applies vertically.

Considering the history of an unequal distribution of resources brought on by centralized and monopolize systems of power and decision-making, Kenyans anticipated that their lives will be dramatically modified after the promulgation of the constitution in 2010.

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<sup>38</sup> *Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 others*

<sup>39</sup> CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)

<sup>40</sup> *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment), Par. 153.*

<sup>41</sup> 'Evicted Residents Vulnerable to Covid-19' ([www.amnesty.org.uk](https://www.amnesty.org.uk)) <<https://www.amnesty.org.uk/urgent-actions/evicted-residents-vulnerable-covid-19>> accessed 19 October 2022.

This constitution was considered transformational because, at the centre of it, all was human life, human dignity, and human rights. However, does it centre human dignity if the state itself denies individuals the right to housing? Why is there a legal gap in the regulation of tenant-landlord relationships to protect individuals from unlawful evictions? This article asserts that the gap can be filled by Alternative Dispute Resolution. The first step is tenant unions.

To establish the workings of a Tenant Union, we will look into the tenant movement in New York City from 1904 to 1984.<sup>42</sup> Organizations with a focus on rent power that support tenant rights work to change laws in favour of tenants. They might develop by sharing a building or renting from the same landlord. Renters can offer infrastructure to organize into larger networks outside of municipal limits thanks to tenant groups. The political foundation needed to implement anti-displacement measures and enforce tenant safeguards is built by tenant unions.

Finding other locals that are interested in starting associations might help build tenant unions. The purpose of a tenant union is to provide renters with more negotiating leverage with their landlords. Due to their influence, landlords can evict people from their properties for a variety of purposes, including unionizing.<sup>43</sup> When a tenant complains by themselves about the circumstances of the rental unit, the landlord may decide to evict them to end the annoyance. The establishment of tenant unions, however, is a genuine testimonial to the effectiveness of collective bargaining.

Collective bargaining is widely used in labour law. The formation of trade unions as provided for under section 4-11 of the Labour Relations Act 2007, enables employees to form trade unions, and organize and engage in collective bargaining with their employers. Employers are also allowed to form organizations and unions. This has enabled employees everywhere to fight for their rights including equal and better pay, and a better work environment, as well as protesting against inhumane employers. This same concept can be used for the formation of tenant unions. The act of participating in discussions with a group of employers to come to a settlement is known as collective bargaining as it is now practiced. However, the concept of collective bargaining is broad enough to be adopted in situations where there is an imbalance of bargaining power; where there is an individual or a group of people that have a higher stake in a situation and a disadvantaged group.

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<sup>42</sup> Peter Marcuse, Ronald Lawson and Mark Naison, 'The Tenant Movement in New York City, 1904-1984.' (1988) 103 *Political Science Quarterly* 388.

<sup>43</sup> Peter Marcuse, Ronald Lawson and Mark Naison, 'The Tenant Movement in New York City, 1904-1984.' (1988) 103 *Political Science Quarterly* 388.

When a union is well formed, it can self-advocate for a variety of complaints. Forcing direct discussions with landlords to improve living conditions, submitting group complaints to the local or state bodies in charge of housing, and boosting bargaining power are some of the milestones that a well-organized tenant organization may accomplish. Unionized tenants can get the assistance they need to satisfy their demands and deal with situations by using a third-party conflict resolution method, such as mediation between the unions and landlords.

Considering that there is a gap in legislation regarding the eviction of tenants when they do not have money to pay, Alternative Dispute Resolution through collective bargaining and negotiation is a feasible solution. Article 43 guarantees every person the right to housing. Under Article 21(2) of the constitution, the state is mandated to make legislation and set standards that realize the provisions under article 43. Article 21(1) also mandates the state to protect, promote and fulfil the fundamental freedoms and rights as stipulated in the Bill of Rights.

In addition, Article 36 (1) of the constitution accords every person with the freedom of association, the right to form and join or participate in activities of associations of any kind. Therefore, based on this provision, tenants can freely form tenant unions under the law. Article 36 (3) of the constitution provides that registration cannot be withheld unreasonably. The Constitution of Kenya 2010 is regarded as a transformational constitution that puts human dignity and human life at the centre. Moreover, courts have time and time again put the economic and social rights of Kenyan citizens at the forefront as observed in the case discussed above. Based on this, a Tenant Union is a reasonable organization to form and registration cannot be denied. It is therefore safe to admit that Parliament ought to implement legislation that allows for the formation of tenant unions and provides procedures for collective bargaining between landlords and tenants unions. Tenant unions can influence code enforcement and inspection as a municipal instrument to enforce lawful living standards and compel responsive landlords through collective bargaining and collective complaints. As with any labour relations, the negotiations that took place between these unions and the landowners should be taken seriously. This article asserts that legislation should give importance and power to tenant's unions by following the example of the Labour Relations Act 2007. Of course, the legislation may be improved but a starting point to improve the conditions of housing and realize the Economic and social rights provided by article 43 is required.

## **6.0 CONCLUSION**

ADR can aid in the promotion and protection of socioeconomic rights such as the right to healthcare, housing, and other necessities. This article primarily addressed the right to housing and the right to health care. Mediation, negotiation, and arbitration are ADR methods that can be used to resolve disputes about the provision and access to these rights, and they can help to ensure that people from disadvantaged or marginalized communities have equal access to the resources they require.

ADR, for example, can be used in the healthcare context to negotiate payment plans or financial assistance programs between patients and healthcare providers, as well as to resolve disputes over insurance coverage or medical billing. This can help to ensure that low-income people and those with limited resources have access to the medical care they require. ADR can be used to settle disputes between landlords and tenants, as well as to ensure that people have access to safe and affordable housing. Overall, ADR can be an effective tool for promoting and protecting socioeconomic rights by resolving disputes in a fair, efficient, and cost-effective manner and ensuring that people from disadvantaged communities have equal access to resources and services.

Alternative Dispute Resolution (ADR) as a process for addressing medical and housing problems under the law might be advantageous. The legal system may become more effective and economical by formalizing ADR as a means of dispute resolution. ADR techniques can frequently resolve issues more quickly and inexpensively than going to court, as well as in a less formal, more amicable environment. In delicate issues like those involving health care and housing, where parties may be more vulnerable and have less access to resources, this can be very helpful.

Additionally, formalizing ADR within the legal system might improve access to justice for underprivileged groups who might lack the resources to deal with the established court system. ADR can also assist in preventing disputes from developing and becoming more difficult and expensive to resolve, which can be advantageous for all parties involved. This is another benefit of formalizing ADR inside the legal system.

The formalization of ADR should be carried out in a manner that preserves the rights of the parties involved and ensures the fairness and impartiality of the process, but it's crucial to keep in mind that not all disagreements are suited for ADR. As a result, it's crucial to make sure that protections are in place to guarantee that the process is fair and that the parties are aware of their rights and obligations. In conclusion, formalizing ADR as a process for addressing medical and housing conflicts in the law may be advantageous as it can offer a more effective, affordable, and non-adversarial manner of resolving disputes, increase access to justice, and stop disputes from getting out of hand.

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