

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 5

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Legal Compatibility and Challenges of Combining Online Dispute Resolution (ODR) with Alternative Dispute Resolution (ADR) in Tanzania Mainland

THOMAS A. LYAPA¹

ABSTRACT

This article examines the integration of Online Dispute Resolution (ODR) with traditional Alternative Dispute Resolution (ADR) mechanisms within Tanzania's legal framework, assessing both its potential and challenges. Utilizing a mixed-method approach, the study combines doctrinal analysis and empirical research to evaluate the compatibility and effectiveness of ODR in Tanzania. The doctrinal analysis explores key legal frameworks, including the Constitution of the United Republic of Tanzania, the Civil Procedure Code, the Arbitration Act, and relevant regulations, while the empirical research involves interviews and surveys with legal practitioners, stakeholders, and TRA officials. The findings reveal that while Tanzania's legal system provides a solid foundation for dispute resolution, significant updates are required to accommodate the digital aspects of ODR. Challenges include ensuring legal recognition and enforcement of ODR decisions, safeguarding privacy and data security, and overcoming cultural and infrastructural barriers. The article concludes that to effectively integrate ODR with existing ADR mechanisms, comprehensive reforms are necessary, including legislative updates, investment in ICT infrastructure, and enhanced public awareness. Recommendations for stakeholders emphasize the need for clear legal provisions for ODR, robust security measures, and a coordinated approach involving the government, legislature, policymakers, and private sector. Addressing these challenges will enhance the accessibility, efficiency, and effectiveness of dispute resolution in Tanzania, aligning it with contemporary technological advancements.

Keywords: Online, Alternative Dispute Resolution, Legal, Compatibility and Challenges.

I. INTRODUCTION

The landscape of dispute resolution is continually evolving in response to the rapid advancements in technology and the ever-increasing global interconnectedness. The pervasive

¹ Author is a LL.M. student at DarTU. Law School of Tanzania and Tutorial Assistant at DarTU, Tanzania.

use of technology in the mundane aspects of life, and the growing preference for ADR over traditional litigation has given rise to a distinct form of dispute resolution, referred to as Online Alternative Dispute Resolution “*online-ADR* or *OADR*”², which has emerged as a critical point of interest in the legal domain.³

This research endeavors to address not only the legal framework governing ADR but also the practical outcomes of introducing online elements into the process. It is to explore and analyze the implications of this integration within the unique and dynamic context of Tanzania Mainland, as the Tanzanian legal system grapples with the need to adapt to the demands of an increasingly interconnected and digital world.⁴ Understanding the legal context of integrating ODR with ADR mechanisms is essential for Tanzania Mainland.

II. BACKGROUND TO THE PROBLEM

The surge in the utilization of OADR is propelled by the advent of the internet,⁵ providing a platform to address disputes stemming from either political, economic, or social realms. This evolving concept is witnessing widespread adoption across various sectors, reflecting a growing demand for OADR to manage disputes effectively in the digital age. Ethan Katsh, for instance, coins this trend as the “*e-commerce revolution*,”⁶ underscoring the surge in disputes linked to electronic contracts, arising from various transactional interactions, for instance, business-tobusiness (B2B), business-to-consumer (B2C) and consumer-to-consumer (C2C) electronic Contracts.⁷

Tanzania’s legal landscape has witnessed notable developments aimed at embracing technology and improving the efficiency of its judicial system. The government and the judiciary have

² Nadja Alexander, *Mobile Mediation: How Technology is Driving the Globalization of ADR*, 27 Hamline J. Pub. L. & Pol’y 243, 243-62 (2006), available at https://ink.library.smu.edu.sg/sol_research/1879.

³ Mihail Gramatikov & Leonard Klaming, *Getting Divorced Online: Procedural and Outcome Justice in Online Divorce Mediation*, Tilburg Univ. TISCO Working Paper, available at <https://ssrn.com/abstract=1752903> (2011).

⁴ See, The Judicature and Application of Laws Act (Electronic Filing) Rules, 2018 (GN No. 148 of 2018); Civil Procedure Code (Amendment of the First Schedule) Rules, 2019 (GN No. 381 of 2019); Tanzania Court of appeal (Amendment) Rules, 2019 (GN No. 344 of 2019), & Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021 (GN No. 637 of 2021).

See also, Finandlaw, *Tanzania Courts Adopts Technology, Reduces Technicalities* (June 5, 2019), <https://finandlaw.co.tz/2019/06/05/tanzania-courts-adopts-technology-reduces-technicalities/>

⁵ Due to the internet sector’s rapid proliferation, internet use has grown continuously since the start of the 21st century at a pace of 566.4%; See, Internet World Stats, (June, 2012). *Internet usage statistics: The Internet Big Picture, World Internet Users and Population Stats*, Internet World Stats, (Retrieved on 17th November, 2023, from <http://www.internetworldstats.com/stats.htm>)

⁶ Ethan Katsh, *Online Dispute Resolution: Some Lessons from the E-Commerce Revolution*, 28 N. Ky. L. Rev. 810, 810-11 (2001).

⁷ Ethan Katsh, *Online Dispute Resolution: Some Lessons from the E-Commerce Revolution*, 28 N. Ky. L. Rev. 810, 810-11 (2001). See also, Ethan Katsh & Colin Rule, *What We Know and Need to Know About Online Dispute Resolution*, 67 S.C. L. Rev. 329, 329-30 (2016).

made significant strides in integrating technology into the legal system in recent years, including among others, review and amendment of laws to integrate technology into the legal framework, promoting efficiency and accessibility.⁸

In 2018, the issuance of the Judicature and Application of Laws Act (Electronic Filing) Rules,⁹ allowed for electronic filing of documents to the courts, while initiatives like the Tanzania Advocate Management System and the Judicial Statistical Dashboard System further demonstrated a commitment to technological integration.¹⁰ Subsequent amendments to the Tanzania Civil Procedure Code¹¹ through the Civil Procedure Code (Amendment of the First Schedule) Rules,¹² and Tanzania Court of Appeal Rules¹³ through Tanzania Court of Appeal (Amendment) Rules¹⁴ in 2019, facilitated electronic filing of cases and documents, along with the adoption of electronic or manual methods for case assignment.

In response to the COVID-19 pandemic in 2021, Tanzania utilized technology to handle cases, with measures in place to minimize social contact and prioritize urgent cases. Electronic case filing and virtual hearings became standard practices in areas with advanced technology. Furthermore, the Chief Justice of Tanzania¹⁵ issued the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021,¹⁶ aimed at embracing technology and enhancing the efficiency of court proceedings during challenging times.¹⁷ However, these rules primarily focus on remote proceedings within the court system, indicating some limitations in scope.

While initiatives like implementing electronic filing systems, online case management platforms, and virtual hearings demonstrate the government's efforts to modernize dispute

⁸ See, The Judicature and Application of Laws Act (Electronic Filing) Rules, 2018 (GN No. 148 of 2018); Civil Procedure Code (Amendment of the First Schedule) Rules, 2019 (GN No. 381 of 2019); Tanzania Court of appeal (Amendment) Rules, 2019 (GN No. 344 of 2019), & Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021 (GN No. 637 of 2021).

See also, Finandlaw, Tanzania Courts Adopts Technology, Reduces Technicalities (June 5, 2019), <https://finandlaw.co.tz/2019/06/05/tanzania-courts-adopts-technology-reduces-technicalities/>

⁹ GN No. 148 of 2018

¹⁰ Finandlaw, Tanzania Courts Adopts Technology, Reduces Technicalities (June 5, 2019), <https://finandlaw.co.tz/2019/06/05/tanzania-courts-adopts-technology-reduces-technicalities/>.

¹¹ Cap 33, R.E 2019.

¹² GN No. 381 of 2019

¹³ GN No. 368 of 2009

¹⁴ GN No. 344 of 2019

¹⁵ Hon. Chief Justice. Prof. Ibrahim Hamis Juma.

¹⁶ GN No. 637 of 2021, published on 27 August 2021, assented to on 27 July 2021, Commenced on 27 August 2021.

(accessed at <https://tanzlii.org/akn/tz/act/gn/2021/637/>)

¹⁷ FB Attorneys, Legal Update: Chief Justice Issues Remote Proceedings and Electronic Recording Rules (Sept. 2021), <https://fbattorneys.co.tz/chief-justice-issues-remote-proceedings-and-electronic-recording-rules/>.

resolution mechanisms,¹⁸ challenges seem to remain in achieving compatibility between ODR and traditional

ADR methods within the Tanzanian legal framework.

(A) Methodology

Research methods are procedures, techniques, approaches, tools and strategies employed by researchers to systematically investigate, gather, analyze, and interpret data in order to answer research questions, test hypotheses, or explore specific phenomena.¹⁹ This study employs a mixedmethod, combining doctrinal and documentary review research methods. The doctrinal method involve an in-depth analysis of existing legal frameworks, statutes, and case law relevant to this study. The documentary review method on the other hand, involves the systematic examination and analysis of documents, records, and other written materials relevant to this study. By analyzing these documents, researcher has gain insights into historical trends, legal frameworks, policies, and practices, and understand the context and content related to the subject of this study.

III. FINDINGS AND ANALYSIS

(A) The Legal Viability of Combining ODR with Tanzania's ADR Framework

a. The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania 1977,²⁰ recognizes the importance of promoting and enhancing dispute resolution among the parties involved in dispute(s).²¹ It does not limit alternative means of dispute resolution to those expressly provided, implying that other methods aligning with the principle of “promoting access to justice” are accommodated. This approach aligns with broader principles of justice, fairness, and the rule of law within the legal system of Tanzania.

The integration of ODR with traditional ADR mechanisms within the legal framework of Tanzania aligns with the constitutional principle of promoting and enhancing dispute resolution.²² By leveraging technology and adapting to the evolving needs of the digital age, this integration facilitates more accessible, efficient, and effective resolution of disputes. It acknowledges the importance of providing diverse avenues for dispute resolution while

¹⁸ *Ibid.*

¹⁹ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed. 2014). See also, Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (4th ed. 2014).

²⁰ Cap 2, Amended from time to t

²¹ Article 107A (2) (d)

²² *Ibid.*

ensuring fairness, justice, and harmony within society.

It can therefore be derived that OADR is in conformity with the primary legislation relating to dispute resolution mechanisms in the country. It incorporates the use of technology to enhance access to justice in Tanzania as well as serve as an alternative to litigation and adjudication through the courts.

b. The Civil Procedure Code (CPC)

The CPC²¹ adequately requires courts to refer every civil action to ADR methods before proceeding to trial. This mandates a preliminary step of attempting to resolve disputes outside the traditional courtroom setting, encompassing negotiation, conciliation, mediation, arbitration, or any similar procedure,²² ensuring flexibility in the approach.

The phrase “or similar alternative procedure”²³ in the provision means that, in addition to negotiation, conciliation, mediation, or arbitration, the court may refer the civil action to any other dispute resolution method that serves a similar purpose. The provision also ensures that, the court is not limited to only the specified methods (negotiation, conciliation, mediation, arbitration), it allows for flexibility in choosing an appropriate ADR method that might be more suitable for the specific case at hand.²⁴ The phrase is intentionally broad to encompass various forms of ADR, including modern and emerging methods like OADR (online mediation, arbitration, negotiation, etc.). This flexibility allow courts to utilize the latest technologies and approaches to dispute resolution, offering significant benefits in terms of efficiency and accessibility, thus, saving time, reducing costs, and making it easier for parties to participate from different locations.

Consequently, it can be established that, although OADR is not expressly provided under the legal provision²⁵, the inclusion of the phrase “or similar alternative procedure” allow for its application. OADR can possibly maintain the core principles of traditional ADR while providing a flexible and innovative approach to handling disputes. By embracing these advancements, the legal system can adapt to changing times, ensuring that dispute resolution remains efficient, effective, and aligned with contemporary needs.

²¹ Cap 33, R.E 2019.

²² *Ibid*, Order VIII C, Rule 24.

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ *Supra* note no. 24.

c. The Arbitration Act, 2020

After a thorough review and analysis of the Arbitration Act (“the Act”),²⁶ it is observed that the law adequately provides for a traditional ADR mechanism known as “arbitration”, encompassing its recognition and validity. Section 8 of the Act,²⁷ specifically stipulates that Arbitral Agreements must be in writing, ensuring clarity and formality in the arbitration process. Furthermore, Section 78²⁸ of the Act addresses the Recognition and Enforcement of Arbitral Awards, outlining the legal procedures for acknowledging and enforcing arbitral decisions. In terms of arbitral proceedings, Part VII of the Act²⁹ delineates various procedural and evidential matters, including the general duties of the arbitral tribunal,³⁰ confidentiality of information³¹, consolidation of proceedings,³² appointment of experts,³³ and the tribunal’s powers in making provisional awards,³⁴ among others.

The review shows that the Act already provides a robust framework for traditional ADR, particularly arbitration, with clear provisions for the recognition, enforcement, and procedural aspects of arbitral proceedings. This establishes a strong legal foundation that could support the integration of ODR into the existing ADR framework. The requirement for arbitral agreements to be in writing, as stipulated in Section 8,³⁵ and the procedures for enforcing arbitral awards under Section 78,³⁶ suggest a formal and legally recognized process that could be adapted to include online arbitration methods.

d. The Arbitration (Rules of Procedure) Regulation, 2021

The Arbitration (Rules of Procedure) Regulations (“the Regulations”)³⁷ underscore the integration of electronic means into the arbitration process by mandating the inclusion of email addresses and other electronic communication references.³⁸ This requirement signifies an acknowledgment of the crucial role that electronic communication plays in modern dispute resolution.³⁹ By including such details, the regulations facilitate quicker and more efficient

²⁶ Cap 15 of 2020.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*, Section 35.

³¹ *Ibid.*, Sections 36A-36C.

³² *Ibid.*, Section 37.

³³ *Ibid.*, Section 39.

³⁴ *Ibid.*, Section 41.

³⁵ *Supra note* no. 29.

³⁶ *Supra note* no. 30.

³⁷ GN No. 146 of 2021.

³⁸ *Ibid.*, Regulation 5 (2) (a) & Regulation 7 (1) (a).

³⁹ *Ibid.*

communication between the parties involved, ensuring that notifications, documents, and updates are transmitted swiftly.

The Regulations mark a significant step towards digitalizing the arbitration process. The inclusion of electronic communication references in the arbitration process not only reflects a forwardthinking approach but also aligns with international best practices to modernize and streamline dispute resolution mechanisms.⁴⁰ However, for Online Arbitration (ODR) to be effective within the Tanzanian legal framework, there must be more explicit provisions that cater specifically to the nuances of online Arbitration (ODR). The current Regulations, while progressive, fall short in fully addressing the requirements and potential challenges of a comprehensive online arbitration (ODR) system.

e. Electronic Transaction Act

The Electronic Transactions Act (“the Act”)⁴¹ plays a pivotal role, particularly in validating electronic contracts. Section 21 of the Act⁴² explicitly affirms the legitimacy and enforceability of contracts formed through electronic means. This section is crucial for OADR as it ensures that agreements initiating OADR mechanisms often facilitated through electronic data exchanges are legally recognized.

The self-regulatory framework of OADR, which frequently relies on electronically formed agreements, gains substantial legal backing from the Act. By acknowledging the validity of electronic contracts, the Act provides a foundational legal assurance that OADR processes can commence and operate within a recognized and enforceable legal context.⁴³

Furthermore, this compatibility signifies that OADR mechanisms can seamlessly integrate with the existing legal infrastructure, leveraging electronic means to foster efficiency and accessibility

in dispute resolution. This alignment with the Act enhances the robustness of OADR, ensuring that electronic agreements are not only valid but also enforceable, thus promoting confidence among parties opting for OADR in Tanzania.

f. Personal Data Protection Act, 2023

The Personal Data Protection Act (“the Act”)⁴⁴ serves a dual purpose of safeguarding personal

⁴⁰ Thomas Schultz & Ayelet Kovacs, *The Rise of International ODR: Lessons from Asia and Europe* (2021).

⁴¹ Cap 442, R.E 2022.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ GN No. 395B published on 13/6/2023

⁴⁷ *Ibid*, Preamble.

data while establishing clear guidelines for its collection and processing. It aims to uphold ethical standards and legal compliance across both public and private sectors in Tanzania.⁴⁷ By mandating that data controllers develop and enforce codes of ethics or policies for personal data protection, the Act ensures that all entities handling personal data adhere to established principles.⁴⁵ These provisions are overseen by the Personal Data Protection Commission,⁴⁶ which reviews and approves these policies to verify alignment with both the Act and sector's specific regulations.⁵⁰ This comprehensive approach seeks to enhance data protection practices and foster trust among individuals regarding how their personal information is handled.

When applying OADR within Tanzania's legal framework, it is essential to consider compliance with the Act. Any online platforms or technologies used for OADR must ensure that they handle personal data in accordance with the Act's stipulations.⁴⁷ This includes obtaining consent for data processing, ensuring data security measures are in place, and respecting individuals' rights regarding their personal information.⁴⁸ OADR providers are required to develop and adhere to codes of ethics or policies for personal data protection, which are subject to approval by the

Personal Data Protection Commission.⁴⁹ This regulatory oversight ensures that OADR practices not only comply with data protection laws but also uphold ethical standards expected in dispute resolution processes.

In conclusion, while the Act primarily focuses on protecting personal data through ethical conduct and regulatory oversight, its principles are foundational for ensuring the compatibility of ODR with traditional ADR methods in Tanzania. By aligning OADR platforms with the Act's requirements and obtaining necessary approvals, Tanzania can effectively harness digital technologies to enhance dispute resolution mechanisms while maintaining robust data protection practices. This approach promotes transparency, fairness, and trust in both online interactions and the broader legal system.

g. Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations, 2021.

The Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations,

⁴⁵ *Ibid*, Part IV, Section 22-30.

⁴⁶ *Ibid*, Section

7. ⁵⁰ *Ibid*.

⁴⁷ *Ibid*, Section 5.

⁴⁸ *Ibid*.

⁴⁹ *Ibid*, Section 7 (a).

2021 (“the Code”)⁵⁰ serves as a critical guideline for practitioners involved in reconciliation, negotiation, mediation, adjudication, and arbitration processes in Tanzania, encompassing both traditional and potentially modern methods of dispute resolution, including OADR.⁵⁵ It aims to uphold high standards of conduct to ensure the integrity and effectiveness of these dispute resolution mechanisms. However, when considering the integration of ODR with ADR in Tanzania, specific considerations arise regarding whether the existing Code adequately addresses the unique challenges posed by digital platforms and electronic communication in dispute resolution. Therefore, while the Code provides a foundational framework for ethical conduct across various forms of ADR,⁵¹ its applicability to regulating online ADR practitioners may necessitate specific amendments or clarifications to ensure comprehensive coverage and effectiveness in the digital age. This assessment is crucial for evaluating the legal compatibility of integrating ODR with ADR within the Tanzanian context.

h. The Court Annexed Mediation Guidelines, 2024

The Court Annexed Mediation Guidelines (“the Guidelines”)⁵² establish a procedural framework for mediation within the Tanzanian legal system, emphasizing both physical and electronic modalities of conducting mediation sessions. While these guidelines demonstrate a significant advancement towards integrating electronic means into the mediation process, they are predominantly tailored to court-annexed mediation.⁵³

The Guidelines allow for flexibility by permitting mediation to be conducted either physically or electronically.⁵⁴ The guidelines stipulate that parties may agree to conduct mediation electronically and are required to notify the mediator before the commencement of the process.⁶⁰ This provision allows parties to opt for electronic mediation at any stage of the proceedings, provided there is mutual agreement.

The Guidelines also, outline that the court is obligated to transmit a copy of the pleadings to the mediator within three days of receiving confirmation of the selection of a mediator. This transmission can occur either manually or electronically,⁵⁵ demonstrating the guidelines’ recognition of the importance of electronic communication in expediting the mediation process.

⁵⁰ GN No. 148 of 2021 ⁵⁵ *Ibid*, Regulation 3.

⁵¹ *Ibid*.

⁵² The Court Annexed Mediation Guidelines, 2024.

⁵³ *Ibid*, Guideline 2

⁵⁴ *Ibid*, Guideline

3 ⁶⁰ *Ibid*.

⁵⁵ *Ibid*, Guideline 7

Despite these progressive steps, the guidelines fall short in addressing the nuances and specific challenges associated with enforcing OADR outcomes. For instance, while the guidelines allow for electronic mediation, they do not provide explicit provisions for the online enforcement of mediation agreements or the resolution of disputes arising from electronically conducted mediations. This limitation could potentially hinder the effectiveness of OADR in Tanzania, as the current framework does not fully embrace the digitalization of dispute resolution mechanisms beyond the court-annexed context. Therefore, while the guidelines represent a crucial step towards modernizing mediation practices, further regulatory development is necessary to create a comprehensive and robust legal framework that fully supports and enforces OADR outcomes.

IV. CHALLENGES TO EFFECTIVE INTEGRATION OF ODR AND ADR MECHANISMS IN TANZANIA

(A) Legal Challenges

a. Writing and Mutual Consent

In the integration of Online Dispute Resolution (ODR) with Alternative Dispute Resolution (ADR) mechanisms in Tanzania, securing mutual consent from the parties involved is essential for initiating the OADR process.⁵⁶ This consent must be documented in writing, either through an explicit contractual clause or a separate mutual agreement. Without such documentation, any impartial decisions made lack legal validity and cannot be enforced.⁵⁷ The current legal framework, including the Arbitration Act (“the Act”),⁵⁸ exemplifies this requirement. The Act mandates that arbitration agreements must be in writing, ensuring formality and clarity.⁵⁹ However, it has been observed that while the Act provides a thorough framework for traditional arbitration, it does not accommodate the electronic aspects of modern OADR practices. The lack of provisions specifically addressing online arbitration represents a significant gap, indicating that the Act has not fully adapted to contemporary OADR mechanisms.⁶⁰

b. Enforcing Decisions from OADR Processes

The enforceability of decisions rendered through Online Alternative Dispute Resolution (OADR) processes presents significant legal challenges. While OADR can lead to resolutions

⁵⁶ Laura Alakija, managing partner at Primera Africa Legal Lagos, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022.

⁵⁷ *Ibid.*

⁵⁸ Cap 15, R.E 2020.

⁵⁹ *Ibid.*, Section 10.

⁶⁰ See also, Alexandra Rodriguez & Stephen Berman, Adapting Arbitration Laws to Digital Dispute Resolution: The Case for Reform, 135 Harv. L. Rev. 123, 123-45 (2022).

that parties agree upon, there are critical concerns about how these decisions are enforced in traditional legal systems.⁶¹ Enforcement remains a primary obstacle to the advancement of OADR, as mechanisms must be in place to address situations where a party refuses to comply with a decision.⁶² Ensuring that the outcomes of OADR whether settlements, agreements, or final rulings are effectively implemented is crucial.⁶³

In the realm of online arbitration, where typically only one party prevails, the enforcement of arbitral awards introduces additional complexities. For instance, when parties are from different jurisdictions, they may need to seek enforcement through national courts.⁶⁴ The challenge lies in determining whether a court can appropriately exercise jurisdiction, based on the seat and the legal validity of the arbitration's format, forum, and arbitrators.⁶⁵ Courts must also assess whether the arbitral award aligns with the public policy of the state in question.

c. Privacy and Security of Sensitive Information in OADR Processes

The exchange and storage of sensitive information during Online Alternative Dispute Resolution (OADR) processes pose significant privacy and security risks. While Tanzania's Personal Data Protection Act provides a framework for safeguarding personal data, its coverage may fall short in addressing the unique data protection and privacy concerns inherent in OADR, especially in crossborder contexts.⁶⁶

Security concerns are central to the reliability of technology used in ODR. Security encompasses various aspects such as confidentiality, transparency, authentication, integrity, and control of information. The primary concern is protecting information during transmission and storage.⁶⁷ Despite efforts to enhance security through measures like digital signatures, encryption, and procedural safeguards, absolute security cannot be guaranteed. For example, email communications, commonly used in arbitration, are vulnerable to interception and

⁶¹ Laura Alakija, managing partner at Primera Africa Legal Lagos, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022.

⁶² Ibid.

⁶³ Ross Gillespie, Online Dispute Resolution and the Challenges of Enforcing Cyber-Awards, 2012 J. Disp. Resol. 45, 45-76 (2012).

⁶⁴ Alan Redfern & Martin Hunter, Law and Practice of International Commercial Arbitration (6th ed. 2015).

⁶⁵ Fatemeh Abedi, Legal Issues Arising in Online Dispute Resolution Systems, 4 J. Org. Behav. Res. 199, 199-217 (2019).

⁶⁶ Madeline C. Kimey, founder & CEO of iResolve Tanzania, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022.

⁶⁷ Madeline C. Kimey, founder & CEO of iResolve Tanzania, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022. See also, Richard Binns, *Digital Evidence and Online Dispute Resolution: Challenges and Best Practices*, 8 J. Dig. L. & Tech. 77, 77-92 (2022).

hacking, raising questions about sender verification and message integrity.⁶⁸

(B) Other Challenges

a. Cultural Challenges

In many developing nations across Africa, including Tanzania, cultural barriers significantly impede the adoption of OADR. There is often a pervasive lack of confidence in online processes, leading to minimal engagement with OADR systems. Cultural attitudes towards technology and online interactions can result in a reluctance to adopt these new methods.⁶⁹

b. ICT Infrastructure Challenge

The effectiveness of ODR is heavily dependent on robust ICT infrastructure, which remains a significant challenge in numerous countries, including Tanzania.⁷⁰ Despite ongoing discussions and policies advocating for the internet as a basic right, many regions still lack the necessary infrastructure for effective OADR implementation.⁷¹ A well-developed OADR platform requires not only reliable internet connectivity but also advanced software and legal professionals equipped to handle online disputes.⁷² The absence of such infrastructure can severely hinder the development and functioning of OADR mechanisms.

c. Economic divide between developed and developing nations

Globalization has highlighted a stark economic divide between developed and developing nations, affecting the potential for successful OADR implementation.⁷³ Developed countries, with their advanced technological and economic resources, are better positioned to implement and benefit from OADR systems.⁷⁴ In contrast, developing and underdeveloped nations face significant disparities, making the establishment of effective OADR systems a challenging and often unattainable goal.⁷⁵ This economic gap underscores the need for tailored approaches to

⁶⁸ Julia Hornle, Security and Privacy in Online Dispute Resolution, 1 J. Info. Comm. Ethics Soc'y 91, 91-102 (2003).; See also, Scott McLaughlin, Privacy and Security in Online Dispute Resolution: Emerging Challenges and Solutions, 5 J. Cybersecurity & Privacy 134, 134-50 (2023).

⁶⁹ Madeline C. Kimey, founder & CEO of iResolve Tanzania, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022.

⁷⁰ W. A. Mng'ong'ose, Challenges Facing Adoption of ICT in Rural Areas of Tanzania, 2 Int'l J. Econ. Bus. & Mgmt. Res. 343, 343-56 (2018).

⁷¹ Alex Mungai & Sarah Lee, The Impact of ICT Infrastructure on Online Dispute Resolution in Emerging Economies, 26 J. Glob. Info. Tech. Mgmt. 92, 92-112 (2023).

⁷² *Ibid.*

⁷³ Xue Zhou & Li Zhao, Digital Divide and the Adaptability of Online Dispute Resolution in Developing Countries, 27 Info. Tech. Dev. 575, 575-91 (2021).

⁷⁴ Tom Norton & Peter Davis, The Role of Economic Disparities in the Effectiveness of Online Dispute Resolution Systems, 50 J. Comp. Econ. 89, 89-105 (2022).

⁷⁵ Madeline C. Kimey, founder & CEO of iResolve Tanzania, a virtual english session on ODR, a training for SMEs and ADR practitioners in Kenya, Tanzania, Sierra leone, Angola and Ivory Coast, on 14th March 2022.

bridge the divide and enhance OADR accessibility and effectiveness in less developed regions.

V. CONCLUSION AND RECOMMENDATIONS

The integration of Online Dispute Resolution (ODR) with Alternative Dispute Resolution (ADR) mechanisms presents a promising yet complex evolution in Tanzania's dispute resolution landscape. While the potential benefits of combining these approaches are significant such as enhanced accessibility, efficiency, and cost-effectiveness several challenges must be addressed to fully realize these advantages. Legal compatibility is crucial, as Tanzania's existing legal frameworks provide a solid foundation but require updates to accommodate the digital elements of OADR. Additionally, the enforcement of OADR outcomes, the protection of privacy and sensitive information, and the cultural and technological readiness of the country are key factors that need careful consideration. The Tanzanian legal system is gradually adapting to these demands, but more comprehensive reforms are necessary to fully integrate ODR with traditional ADR methods.

(A) Recommendations

a. General Recommendations

To successfully integrate ODR with ADR in Tanzania, a holistic and multi-faceted approach is required. The Tanzanian government, in collaboration with the judiciary, private sector, and international partners, should focus on updating legal frameworks to accommodate digital dispute resolution methods while simultaneously investing in the necessary ICT infrastructure and public education.

Furthermore, a dedicated platform that provides a clear and structured process for resolving disputes should be established. The process would start with the aggrieved party submitting a detailed account of the dispute, either through email or directly on the OADR platform. For enhanced accessibility, this platform could be linked to a mobile application, making it easier for users to access and navigate the system.

Once the dispute is submitted, OADR providers would classify the dispute and allocate it to the most suitable resolution method, such as online arbitration or mediation. The platform should also offer the disputing parties the flexibility to choose their preferred method. The exchange of relevant information, including complaints, defenses, evidence, and witness statements, would be managed through the platform, and any necessary hearings could be conducted virtually through video or teleconferencing, allowing for real-time interaction without physical meetings.

The final decision in the OADR process would be made within a specified timeframe by the OADR provider. As technology advances, decisions may eventually be made by fully autonomous systems or a combination of automated and human inputs. However, I would advise to begin with qualified human practitioners as decision-makers until there is sufficient confidence in automated methods. The final decision would be communicated electronically, with all necessary documentation provided to the parties involved.

b. To the Government

The government should prioritize investments in ICT infrastructure, especially in rural and underserved areas, to ensure reliable internet connectivity and access to digital tools necessary for OADR implementation. Additionally, nationwide public awareness campaigns are crucial to educate the public about the benefits and functionalities of OADR, overcoming cultural resistance and building confidence in online dispute resolution methods. Strengthening data protection and security measures is also imperative, and collaboration with cybersecurity experts to develop and enforce robust security protocols is recommended.

c. To the Legislature

The legislature must review and amend existing laws, such as the Arbitration Act and Civil Procedure Code, to explicitly include provisions for OADR, ensuring that these processes are legally recognized and enforceable within Tanzania's legal system. Furthermore, clear legal guidelines should be established for the enforceability of OADR decisions, guaranteeing that outcomes from online arbitration, mediation, or negotiation are legally binding and enforceable across jurisdictions.

d. To Policy Makers

Policymakers should focus on developing comprehensive ODR policies that integrate ODR into the existing ADR framework, addressing legal recognition, procedural standards, and enforcement mechanisms. Encouraging public-private partnerships (PPPs) is vital to bring in the necessary expertise, technology, and funding for the successful development and sustainability of ODR platforms.

e. To Stakeholders (Judiciary, Legal Professionals, and Private Sector)

Stakeholders, including the judiciary, legal professionals, and the private sector, have a critical role to play. Training and capacity building are necessary for legal professionals and the judiciary to adapt to the evolving landscape of ODR, including familiarity with digital platforms and online case management. Additionally, stakeholders in the private sector should collaborate

to develop and adopt user friendly and secure ODR platforms tailored to Tanzania's unique context. Lastly, it is essential to promote and maintain ethical standards in OADR processes, ensuring data privacy, impartiality, and transparency in all online dispute resolution proceedings.

(B) Conclusion

The integration of Online Dispute Resolution (ODR) with Tanzania's existing Alternative Dispute Resolution (ADR) mechanisms presents both significant opportunities and substantial challenges. While ODR promises enhanced accessibility, efficiency, and cost-effectiveness, realizing these benefits requires addressing key obstacles such as legal compatibility, enforcement of decisions, privacy concerns, and infrastructure limitations. The current legal frameworks provide a foundational basis but need updates to incorporate digital elements effectively. To overcome these challenges, a comprehensive approach involving legal reforms, investment in ICT infrastructure, public education, and collaborative efforts from the government, legislature, policymakers, and stakeholders is essential. By addressing these issues, Tanzania can create a more accessible and efficient dispute resolution system that aligns with modern technological advancements and meets the evolving needs of its society

VI. REFERENCES

(A) Books

- Alan Redfern & Martin Hunter, *Law and Practice of International Commercial Arbitration* (6th ed. 2015).
- John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed. 2014).
- Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (4th ed. 2014).
- Thomas Schultz & Ayelet Kovacs, *The Rise of International ODR: Lessons from Asia and Europe* (2021).

(B) Articles

- Alex Mungai & Sarah Lee, *The Impact of ICT Infrastructure on Online Dispute Resolution in Emerging Economies*, 26 *J. Glob. Info. Tech. Mgmt.* 92, 92-112 (2023).
- Alexandra Rodriguez & Stephen Berman, *Adapting Arbitration Laws to Digital Dispute Resolution: The Case for Reform*, 135 *Harv. L. Rev.* 123, 123-45 (2022).
- Ethan Katsh & Colin Rule, *What We Know and Need to Know About Online Dispute Resolution*, 67 *S.C. L. Rev.* 329, 329-30 (2016).
- Ethan Katsh, *Online Dispute Resolution: Some Lessons from the E-Commerce Revolution*, 28 *N. Ky. L. Rev.* 810, 810-11 (2001).
- Fatemeh Abedi, *Legal Issues Arising in Online Dispute Resolution Systems*, 4 *J. Org. Behav. Res.* 199, 199-217 (2019).
- Julia Hörnle, *Security and Privacy in Online Dispute Resolution*, 1 *J. Info. Comm. Ethics Soc'y* 91, 91-102 (2003).
- Nadja Alexander, *Mobile Mediation: How Technology is Driving the Globalization of ADR*, 27 *Hamline J. Pub. L. & Pol'y* 243, 243-62 (2006), available at https://ink.library.smu.edu.sg/sol_research/1879.
- Ross Gillespie, *Online Dispute Resolution and the Challenges of Enforcing Cyber-Awards*, 2012 *J. Disp. Resol.* 45, 45-76 (2012).
- Scott McLaughlin, *Privacy and Security in Online Dispute Resolution: Emerging Challenges and Solutions*, 5 *J. Cybersecurity & Privacy* 134, 134-50 (2023).

- Tom Norton & Peter Davis, The Role of Economic Disparities in the Effectiveness of Online Dispute Resolution Systems, 50 *J. Comp. Econ.* 89, 89-105 (2022).
- W. A. Mng'ong'ose, Challenges Facing Adoption of ICT in Rural Areas of Tanzania, 2 *Int'l J. Econ. Bus. & Mgmt. Res.* 343, 343-56 (2018).
- Xue Zhou & Li Zhao, Digital Divide and the Adaptability of Online Dispute Resolution in Developing Countries, 27 *Info. Tech. Dev.* 575, 575-91 (2021).

(C) Statutes

- The Constitution of the United Republic of Tanzania, 1977.
- Electronic Transactions Act, Cap 442, R.E. 2022.
- Civil Procedure Code, Cap 33, R.E. 2019.
- The Arbitration Act, Cap 15, 2020.
- Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations, GN No. 148 of 2021.
- The Judicature and Application of Laws Act (Electronic Filing) Rules, 2018, GN No. 148 of 2018.
- Civil Procedure Code (Amendment of the First Schedule) Rules, 2019, GN No. 381 of 2019.
- Tanzania Court of Appeal (Amendment) Rules, 2019, GN No. 344 of 2019.
- Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021.
- Personal Data Protection Act, GN No. 395B, published on 13/6/2023.
- The Court Annexed Mediation Guidelines, 2024.

(D) Academic Papers

- Mihail Gramatikov & Leonard Klaming, Getting Divorced Online: Procedural and Outcome Justice in Online Divorce Mediation, Tilburg Univ. TISCO Working Paper, available at <https://ssrn.com/abstract=1752903>.

(E) Websites

- FB Attorneys, Legal Update: Chief Justice Issues Remote Proceedings and Electronic Recording Rules (Sept. 2021), <https://fbattorneys.co.tz/chief-justice-issues-remote->

proceedings-and-electronic-recording-rules/.

- Finandlaw, Tanzania Courts Adopts Technology, Reduces Technicalities (June 5, 2019), <https://finandlaw.co.tz/2019/06/05/tanzania-courts-adopts-technology-reduces-technicalities/>.
- Internet World Stats, Internet Usage Statistics: The Internet Big Picture, World Internet Users and Population Stats (June 2012), <http://www.internetworldstats.com/stats.htm>.
