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HUMAN RIGHTS AND ADR MECHANISMS: INNOVATIVE PATHWAYS FROM TRADITION TO TRANSFORMATION IN THE GLOBAL JUSTICE SYSTEM

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I. ABSTRACT

In the age of increasing global challenges, resolving disputes through traditional court procedures is often lengthy, expensive, and procedurally complex. In today's highly competitive environment, both nations and individuals endeavour to secure justice, rights, and remedies through effective institutional mechanisms. This has led to numerous disputes and caused instability worldwide, whether in the Russia-Ukraine war or the Palestine-Israel conflict. The value of ordinary human life is undermined in many international and national disputes. Exploring innovative solutions to resolve disputes, including mediation, conciliation, arbitration, and negotiation, offers hope for millions of people. These mechanisms reduce not only the cost and time involved in settlement but also make justice more accessible and approachable. This paper examines how Alternative Dispute Resolution (ADR) mechanisms are driving a transformative shift in the global justice system, aligning with the conference theme "From Tradition to Transformation: Innovative Approaches to Alternative Dispute Resolution." International instruments that support ADR mechanisms include the United Nations Charter of 1945, the Hague Conventions for the Pacific Settlement of International Disputes, and the 1982 Manila Declaration on the Peaceful Settlement of International Disputes, among others. This paper also addresses international human rights violations in environmental law disputes, including matters involving the climate justice network Rete Legalità per il Clima, hydrocarbon operations in Congo, and selected UK-based environmental accountability cases. While challenges such as enforceability, procedural fairness, transparency, and the digital divide continue to exist, this research argues for deeper integration of innovative ADR into the national and international human rights arena.

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II. KEYWORDS

Alternative Dispute Resolution (ADR), International Human Rights, Environmental Justice, Global Justice, Climate Litigation.

III. INTRODUCTION

According to the Uppsala Conflict Data Program, the count of ongoing armed conflicts reached 61 in 2024, the highest level recorded since 1946. Deaths caused by these conflicts have increased significantly over the past decade. Similarly, the Global Peace Index 2025 records a continuing decline in global peacefulness, with 87 countries recording a year-on-year deterioration and 97 countries now less peaceful than they were at the Index's inception in 2008. These alarming trends highlight the growing need for more effective and peaceful ways to resolve disputes.

ADR mechanisms (Mediation, Arbitration, Conciliation and hybrids) are more efficient and amicable ways to resolve disputes outside the courts. Unlike litigation, ADR often emphasises maintaining relationships and peacefully settling disputes. This makes ADR particularly suitable for sensitive cases such as human rights violations, environmental conflicts and international relations.

Many specialised international institutions have been working very efficiently in settling disputes, such as the ICC (International Court of Arbitration (Paris)), the WIPO Arbitration and Mediation Centre (Geneva), and the LCIA London. International Instruments for environmental law cases include the PCA Optional Rules for Arbitration of Environmental Disputes, PCA Optional Rules for Conciliation of Disputes Relating to Natural Resources and the Environment, UNCITRAL, etc.

This paper discusses the changing role of ADR in resolving modern global disputes on human rights and environmental justice. It examines how international legal frameworks and institutions support the peaceful resolution of disputes via ADR and how these mechanisms help create a more accessible, efficient, and inclusive global justice system. Meanwhile, the study underscores major challenges linked to ADR, such as enforceability, procedural fairness, and disparities in access to dispute-resolution processes.

A. Research Objectives

The present research paper seeks to achieve the following objectives:

1. To examine the conceptual development of Alternative Dispute Resolution mechanisms and their relevance in the contemporary global justice system.
2. To analyse the international legal framework supporting ADR, particularly under the United Nations Charter, the Hague Conventions, the Manila Declaration, the UNCITRAL Model Law, and the New York Convention.
3. To evaluate the role of ADR mechanisms in promoting access to justice, human rights protection, restorative outcomes, and the peaceful settlement of disputes.
4. To assess the utility of ADR in environmental and climate justice disputes through selected international and domestic case studies.
5. To identify the principal challenges affecting ADR, including enforceability, procedural fairness, transparency, unequal bargaining power, and the risks associated with digital and AI-assisted dispute resolution.

B. Research Questions

The present research paper is guided by the following research questions:

1. To what extent does the existing international legal framework support Alternative Dispute Resolution as a mechanism for peaceful dispute settlement and human rights protection?
2. How can ADR mechanisms contribute to access to justice, restorative outcomes, and the protection of vulnerable communities in domestic and international disputes?
3. What role can ADR play in resolving environmental and climate justice disputes, particularly where traditional litigation is delayed, costly, or procedurally complex?
4. What legal and institutional challenges, including enforceability, procedural fairness, transparency, unequal bargaining power, and digital exclusion, limit the effectiveness of ADR mechanisms?

C. Research Methodology

This study uses a doctrinal and analytical framework to explore how Alternative Dispute Resolution (ADR) mechanisms contribute to safeguarding human rights in the global justice system. It mainly depends on secondary sources, including international treaties and conventions, court rulings, scholarly writings, books, and reports issued by international organisations. Among the key instruments analysed are the United Nations Charter, the Hague Convention for the Pacific Settlement of International Disputes, and the Manila Declaration on the Peaceful Settlement of International Disputes. The study also employs descriptive and comparative approaches to evaluate how well ADR mechanisms handle human rights and environmental conflicts on an international scale.

IV. CONCEPT AND EVOLUTION OF ADR

Alternative Dispute Resolution (ADR) refers to resolving issues without resorting to court proceedings. Rather than filing a lawsuit and waiting for a judge to rule, individuals come together with the assistance of a neutral third party, such as a mediator or arbitrator, to work toward a mutual agreement. It is called “alternative” because it offers a different method for resolving disputes apart from traditional court cases. ADR is typically quicker, more cost-effective, and less emotionally taxing than litigation, and it often helps parties preserve their relationships after resolving the conflict.² Alternative Dispute Resolution (ADR) is a way to solve problems without going to court. Adjudication is a quick and cheap process, mostly used in money and business problems.

An adjudicator listens and gives a fast decision that is temporarily binding. Mediation uses a neutral person called a mediator. The mediator helps both sides talk and find an agreement. The mediator does not make the decision. Arbitration is more formal. An arbitrator acts like a private judge. After listening to both sides, the arbitrator makes a final decision that is legally binding. Expert determination is used for technical problems. An expert with special knowledge looks at the issue and decides whether it can be binding or not.³

² RICS, What Is Alternative Dispute Resolution? RICS (last visited Mar. 23, 2026), <https://www.rics.org/dispute-resolution-service/alternative-dispute-resolution>

³ Ibid.

The evolution of ADR can be traced back to the ancient mechanisms for settling disputes that were used when court systems were not in use. Some of the notable examples are Confucian mediation, influenced by Confucianism (mostly in East Asia), where disputes are mainly settled by some elder members or village leaders in private premises to avoid any kind of shame or embarrassment.⁴ The second is Sulha Mediation, an ancient mediation technique with roots in Islamic teachings on four elements: honour, ritual, forgiveness, and reconciliation, as well as tribal customs. The mediators chosen are some tribal or community leaders, and the settlement is very informal, and the punishment involves apology, forgiveness and a process of goodwill.⁵

The third one is Panchayat Mediation and Lok Adalat, which is mainly followed in Nepal, Bangladesh and India. In which the mediators are often elected representatives or retired legal professionals who settle disputes based on consensus and traditional practices.⁶ The fourth one is Indigenous peace circles, which are followed by many indigenous communities of North America, where they form a circle and discuss things uninterruptedly and experienced and spiritual leaders facilitate the proceedings based on equality and empathy.⁷ The fifth one is Ubuntu philosophy, followed mainly in South Africa, focusing on reconciliation and restoring relationships rather than blame. Although mediation is formally recognised, it remains voluntary and is widely used in commercial disputes. In practice, parties often prioritise personal interests, making resolution difficult.⁸

⁴Christina Wang, Why Mediation – Harmony in Resolution: The Art of Mediation Through Chinese Philosophy, Together Mediation (Sept. 18, 2025), <https://www.togethermediation.co.nz/NewsDetail.aspx?ID=13>.

⁵Elahe Amani, Sulha, Community Mediation?, *Mediate.com* (July 27, 2021), <https://mediate.com/sulha-community-mediation>.

⁶Cliffe Dekker Hofmeyr, *From Conflict to Resolution: Insights into Traditional Global Mediation Practices*, Cliffe Dekker Hofmeyr (Mar. 25, 2025), <https://www.cliffedekkerhofmeyr.com/en/news/publications/2025/Practice/Dispute-Resolution/dispute-resolution-alert-25-march-From-conflict-to-resolution-Insights-into-traditional-global-mediation-practices>.

⁷Katelynn Chief, *Peace-making Circles: Justice in Tribal Communities*, Stanford W. (Oct. 17, 2017), <https://west.stanford.edu/news/peacemaking-circles-justice-tribal-communities>.

⁸Dominic Degraft Arthur, Abdul Karim Issifu & Samuel Marfo, An Analysis of the Influence of Ubuntu Principle on the South Africa Peace Building Process, 3 J. Glob. Peace & Conflict 63 (2015), https://jgpc.thebrpi.org/journals/jgpc/Vol_3_No_2_December_2015/4.pdf.

The Hague Convention for the Pacific Settlement of International Disputes, which encouraged arbitration and resulted in the creation of the Permanent Court of Arbitration, gave Alternative Dispute Resolution (ADR) a major boost. The Manila Declaration on Peaceful Settlement of International Conflicts and the United Nations Charter, both of which placed an extreme value on peaceful conflict resolution, further reinforced this. Over time, alternative dispute resolution (ADR) has spread beyond traditional limits into fields like human rights, environmental, and commercial law. Due to growing international conflicts, overloaded legal systems, the need for quicker and more economical resolutions, and the complexity of global trade and environmental issues, its significance has increased in modern times.

V. INTERNATIONAL LEGAL FRAMEWORK SUPPORTING ADR

The international legal framework firmly supports Alternative Dispute Resolution (ADR) mechanisms through multiple treaties and declarations, such as the United Nations Charter, the Hague Conventions for the Pacific Settlement of International Disputes, and the Manila Declaration on the Peaceful Settlement of International Disputes. These instruments emphasise the use of peaceful, non-coercive approaches to settle disputes, thereby helping to uphold international peace and security.

A. Charter of the United Nations

Article 2(3) of this charter addresses settling conflicts via peaceful methods in a way that does not jeopardise international peace and security or justice.⁹ Article 33 of the United Nations Charter stipulates that disputes likely to jeopardise the maintenance of international peace and security shall, first and foremost, be resolved through negotiation, inquiry, mediation, conciliation, arbitration, or other peaceful methods of their own choosing. Under Article 38, the Security Council has the authority to suggest resolving disputes through peaceful methods.

B. 1899/1907 Hague Conventions

The 1899 Hague Convention marked a significant step towards peaceful dispute resolution by introducing a formal framework for settling disputes through

⁹ Charter of the United Nations, art. 1, para. 1, June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

arbitration and mediation.¹⁰ This framework was further strengthened by the 1907 Hague Convention¹¹, which expanded its scope and provisions. Together, these conventions laid the foundation for the Permanent Court of Arbitration, creating an institutional mechanism for resolving international disputes. As of February 2017, the conventions have received wide international acceptance, with 102 states being parties to the 1907 Convention and 116 states having ratified either one or both conventions, highlighting their enduring importance in the global legal system.¹²

C. Manila Declaration 1982

In 1982, the United Nations General Assembly adopted the Manila Declaration on Peaceful Settlement of International Disputes. The non-aligned nations took the lead in promoting peaceful conflict resolution. The Declaration reiterates two fundamental tenets of the Charter in its preamble: first, that all States must settle their international conflicts peacefully to avoid endangering global peace, security, and justice; and second, that all States must abstain from threatening or using force against any State's territorial integrity or political independence in their international relations, or in any other way that is incompatible with the goals of the United Nations.¹³

D. UNCITRAL Model Law on International Commercial Arbitration 1985¹⁴

This Resolution was upheld by the General Assembly, which recognises the value of resolving conflicts that arise in international commercial dealings. Believing that creating a model arbitration law acceptable to states with diverse legal, social, and economic systems promotes the development of harmonious international economic relations. On 7 July 2006, UNCITRAL adopted amendments to articles 1 (2), 7, and 35

¹⁰ Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199, T.S. No. 536, 1 Bevans 577, available at <https://docs.pca-cpa.org/2016/01/bd7626f1-1907-convention-for-the-pacific-settlement-of-international-disputes.pdf>.

¹¹ Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199, T.S. No. 536, 1 Bevans 577, available at https://avalon.law.yale.edu/20th_century/pacific.asp.

¹² Permanent Ct. of Arb., *In the Spotlight*, PCA-CPA (last visited Mar. 23, 2026), <https://pca-cpa.org/en/home/>.

¹³ "Manila Declaration on the Peaceful Settlement of International Disputes, G.A. Res. 37/10, U.N. GAOR, 37th Sess., Supp. No. 51, at 261, U.N. Doc. A/RES/37/10 (Nov. 15, 1982)", available at <https://legal.un.org/avl/ha/mdpsid/mdpsid.html>.

¹⁴ UNCITRAL Model Law on International Commercial Arbitration, UNCITRAL, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration (last visited Mar. 16, 2026).

(2), introduced a new Chapter IV A to replace article 17, and added a new article 2 (A). The updated version of Article 7 aims to modernise the format of arbitration agreements to align more closely with international contract standards.

E. The New York Convention 1958

This convention addresses the application relating to the recognition and enforcement of arbitral awards issued in a territory of a state other than the state where recognition or enforcement of such awards is requested, in cases arising from disputes between persons, whether natural or legal.¹⁵ The Model Law plays a crucial role in harmonising arbitration laws across jurisdictions and strengthening the effectiveness of ADR in international commercial disputes.

Thus, these international instruments collectively establish a robust legal foundation for ADR, reinforcing its role as a reliable and widely accepted mechanism for the peaceful settlement of international disputes. However, despite the strong legal framework, challenges such as uneven enforcement, varying domestic adoption of international instruments, and power imbalances between states continue to limit the full effectiveness of ADR mechanisms.

VI. ADR IN HUMAN RIGHTS AND ENVIRONMENTAL JUSTICE

The protection and promotion of human rights remain central to international law; however, traditional dispute resolution mechanisms have often proven inadequate in addressing the complex and sensitive nature of human rights and environmental disputes. In this context, Alternative Dispute Resolution (ADR) emerges as a more flexible, participatory, and victim-centric approach that complements formal legal systems.

Recent developments in treaty drafting have increasingly incorporated human rights considerations into investment governance, recognising both states' obligations and investors' responsibilities. For instance, the Netherlands Model (2019) explicitly addresses investors' responsibilities regarding human rights and obliges states to take

¹⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3, available at https://www.newyorkconvention.org/media/uploads/pdf/1/2/12_english-text-of-the-new-york-convention.pdf.

appropriate measures to ensure that individuals affected by business-related human rights abuses have access to effective remedies. However, despite these advancements, the actual impact and effectiveness of such provisions in practice remain unclear.¹⁶ ADR does not replace binding judicial remedies or state accountability under international human rights law (e.g., via UN treaty bodies or the International Court of Justice). Instead, it supplements them by enhancing access to justice, reducing barriers, and promoting healing or systemic change in ways that litigation sometimes cannot achieve efficiently.

Ways in which ADR can support human rights mechanisms are:

1. **Speed and Efficiency in resolving disputes:** In cases involving displacement, environmental harm, corporate accountability, or custodial violations, delays in justice can exacerbate harm. The importance of timely justice is reflected in international frameworks such as Article 14(3)(c) of the ICCPR and Article 6 of the ECHR, as well as judicial recognition in cases like *Hussainara Khatoon v. State of Bihar* (1979)¹⁷, which affirmed the right to a speedy trial.
2. **Confidentiality and Protection Policy:** ADR mechanisms emphasise confidentiality and privacy, which help protect victims' identities, prevent re-victimisation, and encourage individuals to come forward without fear. This helps in safeguarding victims' identities, which further protects their dignity, prevents re-victimisation, encourages victims to come forward without fear, and ultimately enhances the protection and enforcement of human rights. This principle is additionally supported by the international legal framework, such as the UDHR (1948) Article 12,¹⁸ and under Article 17 of ICCPR¹⁹, which expresses that "no one might be targeted to arbitrary interference with their privacy, home, abode or correspondence, without

¹⁶"Jennifer Haworth McCandless & Fabio Maniscalco, *Human-rights-based Claims by States and "New-Generation" "International Investment Agreements*, Wolters Kluwer Arbitration Blog (Aug. 1, 2018)," <https://legalblogs.wolterskluwer.com/arbitration-blog/human-rights-based-claims-by-states-and-new-generation-international-investment-agreements/>."

¹⁷*Hussainara Khatoon v. State of Bihar*, (1979) INSC 66

¹⁸"Universal Declaration of Human Rights, G.A. Res. 217 (III) A (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>."

¹⁹ *K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors*, (2017) 10 SCC 1

being targeted by strikes upon their accolade and reputation. “In India, the right to privacy is a fundamental right protected under the Constitution. This was upheld in the case of Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors, (2017) 10 SCC 1.”²⁰

3. **Preservation of Relationships and Restorative Outcomes:** ADR promotes dialogue-based resolution through neutral facilitation, enabling restorative outcomes that prioritise reparation, accountability, and relationship rebuilding rather than adversarial confrontation. This ADR approach to resolving disputes seems more victim-centred, with a focus on restoration and reparation. This has been supported by an international framework, such as Article IX of the Guidelines on the Right to Remedies and Reparation for Victims of Severe Human Rights Violations and Major Breaches of International Humanitarian Law, focusing on “Reparation for Harm Suffered.”²¹ It is also backed by Article 27 of the Guiding Principles on Business and Human Rights, which says “States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.”²²
4. **Improved Access to Justice, Especially for Vulnerable Groups:** ADR enhances access to justice by reducing barriers such as cost, delay, procedural complexity, and power imbalances, particularly benefiting vulnerable groups. These have been inclined towards many international frameworks,

²⁰ Ibid .

²¹ G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

²² “Hum. Rts. Council, Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011),” available at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

like Article 8 UDHR (right to effective remedy), Article 10 (entitlement to fair and public hearing by an independent tribunal), and ICCPR Article 14 guarantees fair trial rights, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), Convention on the Rights of Persons with Disabilities (CRPD, 2006). Article 13 explicitly requires effective access to justice on an equal basis, etc.

- 5. Environmental Justice:** Traditional justice through litigation in the matter of environmental justice is often slow and time-consuming, while the environment, being a sensitive matter, requires expeditious and speedy justice to protect the instant harm that can be done to it with no time. The growing popularity of a peaceful settlement of recurrent environmental claims and litigation in the US and Canada gave rise to environmental dispute resolution (EDR) in the 1960s.²³ In 2013, The European Parliament and the Council of the European Union adopted Directive 2013/11/EU to establish a framework for alternative dispute resolution in consumer disputes. However, there was an absence of a specific directive aimed at resolving environmental disputes through the use of alternative dispute resolution (ADR) methods.²⁴ In several cases, the forest dwellers were forced to vacate their place so that dams, dykes, and barrages could be constructed, for example, forest dwellers vacating their place for the construction of Bakun Dam in Sarawak, Malaysia and forest dwellers being evicted from forests declared as reserve forests in Uttar Pradesh, India, and so forth. Public participation in finalising environmental impact assessments is an area where negotiations have proven to be very useful.²⁵ The establishment of the International Court of Arbitration represents an altogether new approach to moving from conflict to consensus, thereby ensuring greater compliance. Hence, in the Permanent Court of Arbitration (PCA) case of Trail Smelter (US vs Canada), the establishment of the International Court of Arbitration

²³“David J. Hayes, *Elusive Goal – New ADR Models Help in Natural Resources Disputes*, 7 Disp. Resol. Mag. 29 (2000).”

²⁴3rd U.N. Rep. Int'l Arb. Awards 1905 (1941).

²⁵Dan Swecker, *Applying Alternative Dispute Resolution to Environmental Problems*, [Mediate.com](https://www.mediate.com/articles/sweckerD1.cfm) (July 17, 2006), <https://www.mediate.com/articles/sweckerD1.cfm>.

represents an altogether new approach to moving from conflict to consensus, thereby ensuring greater compliance. Hence, in the case of the Permanent Court of Arbitration (PCA) in the case of Trail Smelter (US vs Canada).²⁶ According to which the customary law was set out, no state shall bring harm or allow any part of its territory to bring harm to another state. The case became the precedent in the resolution of disputes related to the environment on the basis of ADR. It is in this context that the latest case can be mentioned – the South China Sea case (Philippines v. China).²⁷ This case is not directly on the conservation of the environment, but might have a long-term bearing on the conservation of marine life in the region.

The NGT is an environmental court that has been specifically set up for the effective and efficient adjudication of environmental matters. As per its mandate, it must endeavour to decide cases within 6 months of institution, and it uses flexible proceedings (proceedings based on natural justice and not the entire Civil Procedure Code) to enable speedy delivery of "green justice." Hence, while the conventional process of litigation (including PILs in higher courts and those filed in the NGT) has been extremely important in the field of environmental governance, it has usually been time-consuming, confrontational, and incapable of offering prompt and consensus-based solutions. Such a situation has motivated legal experts and policy-makers to consider ADR processes like mediation.²⁸

VII. CASE STUDIES

1. Rete Legalità per il Clima (Legality for Climate Network) and others v. ENI

In February 2022, the climate justice network Rete Legalità per il Clima filed a specific instance before the Italian OECD National Contact Point against ENI S.p.A., alleging non-observance of the OECD Guidelines for Multinational Enterprises in relation to climate-related due diligence, disclosure, environmental responsibility, and human

²⁶3 U.N. Rep. Int'l Arb. Awards 1905 (1941).

²⁷ *South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016), <https://pca-cpa.org/en/cases/7/>.

²⁸ Dipankar Sharma & Dr. Aditi Choudhary, *Environmental Disputes and Resolution through Mediation in India: A Study of Environmental Dispute Resolution Mechanism*, 11 Int'l J. Env't Scis. [page range] (2025), <https://www.theaspd.com/ijes.php>.

rights concerns.²⁹ The case is particularly significant because it did not remain merely a pending complaint. After the Italian NCP accepted the matter for further examination, both parties accepted the NCP's good offices, and conciliation commenced in November 2023. On 7 July 2024, ENI and Rete Legalità per il Clima reached a confidential settlement agreement with the assistance of the conciliator appointed by the Italian NCP. The settlement concerned the sharing of information necessary to assess ENI's due diligence in potentially climate-altering activities and included commitments relating to public disclosure, risk assessment, and dialogue. This outcome makes the case a concrete example of how NCP-facilitated conciliation can operate as an ADR mechanism for resolving international human-rights-linked environmental disputes, thereby strengthening the argument that ADR can complement litigation in advancing corporate accountability and environmental justice.

2. Inter-American Court of Human Rights Advisory Opinion Oc-32/25 on The Climate Emergency and Human Rights (2025)

Adopted May 29, 2025, and published July 3, 2025, this declares the climate crisis a human rights emergency, affirming state obligations to prevent/mitigate harms, protect vulnerable groups (e.g., indigenous peoples, defenders), and ensure participation. It promotes participatory mechanisms (e.g., negotiation/consultation akin to ADR) for equitable remedies, influencing cases like Colombian páramo protections and Brazilian coal mine halts.³⁰

3. Trail Smelter case (US v. Canada)

As per the customary law that has been established, there is to be no injury or use of the territory of the state that will cause damage to any other state. It is the first environmental dispute that was heard under the ADR process, and this paved the way for the use of ADR in settling environmental disputes.³¹

²⁹ Rete Legalità per il Clima (Legality for Climate Network) & Others v. ENI, OECD Nat'l Contact Point (It.), (Feb. 15, 2022), available at <https://www.informea.org/en/court-decision/rete-legalita-il-clima-legality-climate-network-and-others-v-eni>.

³⁰ Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (July 3, 2025), available at https://www.corteidh.or.cr/docs/opiniones/seriea_32_25_ing.pdf.

³¹ 3 U.N. Rep. Int'l Arb. Awards 1905 (1941).

4. South China Sea case (Philippines v. China)

Though this is not a case dealing directly with the conservation of the environment, it may have some long-lasting impact on the conservation of marine life in that area in the future.³² The mission of PCA has been continued in the Mox Plant case (Ireland v. United Kingdom), ITLOS Case No. 10, the Land Reclamation case (Singapore v. Malaysia) [(2005) XXVII RIAA 133], the Marine Boundary case (Barbados v. Trinidad and Tobago), PCA Case No. 2004-02, and the Sea delimitation case (Guyana v. Suriname).³³

It is a matter of great significance that the PCA developed the Optional Rules for Arbitration of Disputes Relating to Natural Resources and Environment, with some additions and modifications to the existing UNCITRAL rules, to deal with environment-related cases, granting the right to institute a case to individuals. Unfortunately, in view of the greater emphasis laid on the optional use of the rules and confidentiality of information, they might not be of much use.

5. Save Mon Federation Vs Union of India case (2013)

In *Save Mon Region Federation v. Union of India*, Appeal No. 39 of 2012, the National Green Tribunal passed two distinct orders that should not be conflated. In its order dated 14 March 2013, the Tribunal dealt with the procedural issue of limitation and communication of environmental clearance, holding that the appeal could not be rejected merely by treating the date of grant or uploading of clearance as conclusive where effective communication to affected persons was in question.³⁴ The substantive environmental ruling came later, in the final judgment dated 7 April 2016, where the Tribunal suspended the environmental clearance granted for the Nyam Jang Chhu Hydroelectric Project until further studies and consultations were completed. The 2016 judgment is therefore the proper authority for the wildlife, biodiversity, and sustainable-development aspects of the case, while the 2013 order should be cited only for the limitation and communication issue.

³² *South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, Award (Perm. Ct. Arb. July 12, 2016), <https://pca-cpa.org/en/cases/7/>.

³³ "*Guyana v. Suriname*, PCA Case No. 2004-04, Award (Perm. Ct. Arb. Sept. 17, 2007), reprinted in 30 R.I.A.A. 1 (2009)," available at <https://pca-cpa.org/en/cases/13/>.

³⁴ "*Save Mon Region Federation v. Union of India*, Appeal No. 39 of 2012

A. Challenges and Limitations

The ADR mechanism, as seen, can help achieve the settlement of disputes in a short span of time with more efficiency and mutual understanding between the parties. It helps regain the lost trust between parties and brings the victims to the initial positions as they were before the damages were caused or any disputes had arisen. While all these benefits make it suitable for the disputes, it also has another side which limits its applicability and raises concerns and the need for upgradation. Enforcing ADR decisions across countries can be difficult due to differences in national laws and legal systems. Even under the New York Convention, enforcement may be refused on public policy grounds. Jurisdictional overlaps can also create confusion and delay the process.³⁵ Second, once a decision is made, parties have very limited options to challenge it, even if there are mistakes. This can sometimes lead to unfair outcomes, as there is no proper system of appeal like in courts.³⁶

The third issue is a lack of transparency in ADR, as proceedings are kept private, making it difficult for the public to readily access the decisions made. This hampers the formation of legal precedents and reduces predictability in outcomes, particularly in matters of public interest. The fourth is Technological Bias. Incorporating emerging technologies such as AI and blockchain into ADR can enhance speed and efficiency, yet it also brings forth certain concerns. Problems including algorithmic bias, opaque decision-making processes, and unclear legal enforceability generate ethical and regulatory hurdles that require thoughtful attention.³⁷ The fifth one, lack of government support, is another challenge, especially in a developing country like India, where growth is uneven. While some areas are well-developed, ADR

³⁵"Article V(2)(b), New York Convention Guide," https://newyorkconvention1958.org/index.php?lvl=cmsspage&menu=626&opac_view=-1&pageid=10" (last visited Mar. 23, 2026).

³⁶"Annulment of Arbitral Awards Under the UNCITRAL Model Law, Aceris L. (Aug. 26, 2023)," <https://www.acerislaw.com/annulment-of-arbitral-awards-under-the-uncitral-model-law/>.

³⁷"H&G Advocates, Limitations and Challenges in the Application of Artificial Intelligence in Arbitration, TAG Alliances (Oct. 16, 2024)," <https://www.tagalliances.com/litigation-a-adr/15003-limitations-and-challenges-in-the-application-of-artificial-intelligence-in-arbitration>.

mechanisms have not received equal attention or support, leading to limited awareness, infrastructure, and effective implementation.³⁸

There is a need to address these challenges to make it more efficient and reliable for the parties to support it, and make it more approachable for the parties towards it. There is a need for government protection, promotion and regulation of the dispute settlements through the ADR mechanism.

VIII. SUGGESTIONS AND RECOMMENDATIONS

In light of the challenges identified above, the following suggestions may strengthen the role of Alternative Dispute Resolution in human rights and environmental justice matters:

- 1. Strengthening the enforceability of mediated settlements:** States should consider ratifying or effectively implementing the Singapore Convention on Mediation so that international mediated settlement agreements receive clearer recognition and enforcement across jurisdictions. This would enhance confidence in mediation, particularly in cross-border commercial, environmental, and human rights-related disputes.
- 2. Developing rights-sensitive ADR safeguards:** ADR frameworks should include minimum procedural safeguards such as voluntary participation, informed consent, neutrality of the mediator or arbitrator, confidentiality protections, and access to independent legal advice. These safeguards are especially necessary where one party is economically, socially, or institutionally weaker.
- 3. Creating specialised ADR mechanisms for environmental disputes:** Environmental and climate-related disputes should be handled through specialised mediation or expert-assisted ADR panels involving environmental law experts, scientists, affected communities, and public authorities. Such mechanisms can help address technical complexity while preserving community participation and ecological accountability.

³⁸"Vibhuti Thakur, *An Overview of Challenges in ADR Mechanism in India*, iPleaders Blog (May 28, 2023)", <https://blog.iplayers.in/an-overview-of-challenges-in-adr-mechanism-in-india/>.

4. **Adopting transparency protocols in public-interest ADR:** While confidentiality remains an important feature of ADR, disputes involving environmental harm, corporate accountability, indigenous communities, or large-scale human rights concerns should follow standardised transparency protocols. Anonymised publication of settlement outcomes, compliance reports, and institutional summaries may improve public confidence without compromising legitimate privacy interests.
5. **Building ADR capacity in developing countries:** Governments, universities, bar councils, judicial academies, and international organisations should invest in training mediators, conciliators, arbitrators, and legal aid providers. Capacity-building is particularly important in developing countries where formal courts are overburdened and communities often lack affordable access to justice.
6. **Regulating digital and AI-assisted ADR:** Digital ADR platforms should be governed by clear standards on data protection, accessibility, algorithmic fairness, language inclusion, and human oversight. Technology should improve access to justice, but it must not deepen the digital divide or produce opaque, biased, or non-reviewable outcomes.
7. **Preserving judicial review in serious rights violations:** ADR should operate as a complementary mechanism and not as a substitute for courts in cases involving grave human rights violations, environmental crimes, or matters requiring authoritative public adjudication. Courts should retain supervisory jurisdiction to prevent coercive settlements, unfair outcomes, and abuse of confidentiality.

IX. CONCLUSION

ADR mechanisms are very innovative and transforming solutions towards the settlement of disputes. Earlier, there were no proper mechanisms but mutual and community leadership-based solutions to disputes, where a leader of the community or tribe used to decide the cases based on the ideas and suggestions of the elder members of the community. Nowadays, there has been a lot of development, which has led to the creation of international law, conventions, treaties, agreements and

other institutionalised mechanisms that have overall worked towards the development of this mechanism in the long run. It has helped settle a lot of international human rights cases and cases related to environmental disputes in a short period, efficiently and in a more peaceful manner. While on one hand it has been lauded, on the other hand, it has some territorial enforcement and other limitations. In this era of a globalised world, it requires digital infrastructure and more efficient regulations by the government and other non-government bodies for its full utilisation and reliability.

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