

Promoting Culturally-Sensitive ADR for Emerging Asian Economies

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ABSTRACT

Alternative Dispute Resolution (ADR) is a fast growing method in the emerging Asian economies for dealing with the problem of congestion in the courts, the growth of foreign investment and the need for efficient commercial dispute resolution. But the key features of dominant ADR models, developed within western legal cultures, can clash with the more relational, hierarchical and face-saving norms of many Asian societies, reflecting individualist, low-context and rights-based norms. This article seeks to suggest that a culturally insensitive ADR transplant is likely to result in superficial settlements, lack of voluntary compliance and a general lack of trust. The article draws on theory in the field of cultural dimensions, indigenous dispute resolution traditions and recent reform experiences in Vietnam, Indonesia, Bangladesh and Pakistan to suggest a framework of five principles for designing culturally-sensitive ADR. It also makes policy recommendations on training, institutional design and legislative harmonization to incorporate cultural reflexivity in a manner that does not impinge on procedural fairness. The author concludes that the best way forward for the emerging Asian economies is a hybrid approach where traditional legitimacy is combined with new protective mechanisms; and that culturally aware dispute resolution design is not only about justice but is an essential tool for achieving an inclusive economic development



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1. Introduction

The economic transition of the emerging Asian countries, including Vietnam, Indonesia, Philippines, Bangladesh, Pakistan, Myanmar and Cambodia, has resulted in an increase in commercial and social conflicts. As a result of foreign direct investment, infrastructure megaprojects and regional economic integration, cross-border contracts have been created, and with the rapid rate of urbanisation and resource competition, community-level conflicts are emerging. At the same time, many of these jurisdictions experience chronic judicial backlogs, such as the Philippines' trial courts which take on average about 3.5 years to dispose of cases (World Bank, 2020) and Bangladesh, with more than 3.8 million pending cases in 2023 (Bangladesh Supreme Court 2023). The governments and international donors have thus been accepting ADR including mediation, arbitration and hybrid ADR as a cure-all for the shortcomings of the rule of law and uncertainty in commerce (Ali, 2010). Furthermore, there is a prevailing scholarship on cultural aspects of ADR design, which suggests that it is not just a matter of procedure, but a way of achieving a long-term economic development of the region (Baimoldayeva & Malik, 2022a).

But in “success” cases the standard pattern of ADR is a “neutral” third party who provides a forum for interest negotiation between formally equal parties, who explicitly state their needs, and results in a legally binding written contract. This model is not culture free. It is a Western epistemic value, that is, values which are grounded in individual autonomy, direct communication, legal formalism and the separation of substantive from relational issues (Macduff, 2012). Such a model can be counterproductive when it is disseminated in high-context, collectivist and hierarchical societies. Public articulation of interests may be a loss of face for parties, untrustworthy perception of an “impartial” outsider, or less convincing of the written contract than community-based social guarantees. This can lead to shallow compliance, re-escalation or dual-track justice, with formal ADR taking a back seat to informal, usually patriarchal, village justice systems.

This article is therefore an attempt to suggest a culturally-sensitive approach to ADR in emerging Asian economies, not one based on rejecting international standards, but one that involves intentionally designing processes, roles of neutrals, communication norms and enforcement mechanisms in a contextually appropriate manner. It is based on indigenous dispute resolution practices, such as the Barangay Justice System in the Philippines, Musyawarah Mufakat in Indonesia, Shalish in Bangladesh and jirga and arbitration in Pakistan, and respects fundamental procedural rights. The article combines cultural psychology, comparative law, empirical cases and provides a framework for policymakers, legal

practitioners and development agencies.

In order to accomplish this goal, the following three interrelated research questions are used to guide this article:

- i. How cultural dimensions and traditions in indigenous conflict resolution affect conflict behaviour in emerging economies of Asia (specifically Vietnam, Indonesia, Bangladesh and Pakistan) and what specific conflicts arise when dominant Western-origin ADR models are introduced in their high-context, collectivist and hierarchical societies?
- ii. What principles are found in both the indigenous justice practices and the contemporary systems of dispute resolution that can be used to develop a culturally responsive ADR approach that is also procedurally fair and trusted by the community?
- iii. What are the culturally-sensitive approaches to ADR that are being put into practice regionally and what training, institutional and legislative and regional cooperation reforms are necessary to scale these approaches to support inclusive economic development effectively?

These questions are discussed in turn in the following sections starting with cultural diagnosis and tension analysis (RQ1) then framework construction (RQ2) and then empirical case validation and policy prescriptions (RQ3)".

2. Cultural Context and Indigenous Dispute Resolution Traditions in Emerging Asia

To understand the 'cultural logic' behind conflict behaviour in emerging Asia, one has to go beyond simplistic stereotyping. The region is far from homogeneous, however, as there is marked difference in Confucian Vietnam and Islamic-dominant Indonesia and Pakistan, Buddhist-dominant Cambodia and folk syncretism in the Philippines. However, some widely held cultural dimensions – as operationalized in a careful way – account for the reasons why the typical approach to ADR can often fail.

2.1 Cultural Dimensions Relevant to Dispute Resolution

Data from Hofstede Insights (n.d.) show that most emerging Asian societies score high on collectivism, which is characterized by a high level of belonging to in-groups (family, clan, village) and the importance of maintaining the relationships over and above the personal gain. The collectivism index is high in Indonesia and the Confucian relational ethics are reflected in Vietnam. The Philippines, Bangladesh, Pakistan and Vietnam have high power distance, which is a tendency to accept any inequalities in power, such that they might be inclined to look up to power figures and expect the mediator to take a more

directive, evaluative role than just a facilitative one. High-context culture (Hall, 1976) tends to use contextual, nonverbal cues and implicit information heavily in communication. There is a danger of being perceived as boorish or aggressive when trying to confront someone directly, or to make a clear statement of "I want X". This can lead to withdrawal, rather than a clear negotiating.

Most importantly, face can be seen as a potent invisible currency. When your face is lost, that is when you're publicly exposed as wrong, greedy, or weak, you can suffer more than an unfavorable monetary result. Mediating a grievance that forces the factory owner to accept fault in front of employees may technically be a labour dispute settlement, but it can also cause the owner to lose control forever, leading to retaliatory actions. Likewise, long-term orientation, which encourages perseverance and thrift, encourages a preference for relationship-building solutions over distributive settlements, solutions that are likely to be only one-time events (Brett, 2017).

2.2 Indigenous Dispute Resolution Traditions

Even before formal ADR law came into existence, communities around Asia dealt with disputes with locally rooted systems. The traditions are not simply relics of the past, but are alive and informal as first stops for a significant number of rural and even urban populations.

The Philippines' Local Government Code of 1991 establishes the Barangay Justice System (Katarungang Pambarangay) which features a council of elders (Lupon Tagapamayapa) at the village level. It is an adversarial process where amicable settlement and restoration of the community is emphasised. The mediator is paternalistic, investigating, scolding, counselling and suggesting solutions, often using the individual's values and being influenced by shame avoidance. Although criticised for power imbalance and gender bias, it remains popular because it provides free and culturally-friendly justice that is accessible by walking, and in the local cultural language (Chong & Zin, 2019).

Musyawarah Mufakat (deliberation to reach consensus), is a basic principle in village dispute resolution and governance in Indonesia. Decisions are reached based on extended and participatory discussion in which the leader facilitates discussion but does not dictate a decision; consensus is not a formal statement of agreement, but rather the absence of any outright objections. Rukun (social harmony) is the first principle, and maintaining hierarchical respect is the second. Similarly, the Shalish in Bangladesh is a traditional system of reconciliation that is facilitated by the village elders or religious leaders. Shalish is able to settle land and family conflicts quickly and cheaply, but has been criticized by international women rights organizations for its application of patriarchal values, such as in rape cases where elders can

“mediate” by marrying the victim to the perpetrator (Barkat & Khan, 2016).

The informal jirga or panchayat system in Pakistan, which originated in Pashtunwali and is a part of tribe laws, is a forum of male elders that makes decisions about disputes. The jirga has been criticised for its gender exclusion and for imposing heavy penalties, but it has proven to be highly resilient due to its speed, cost-effectiveness, and its great cultural appeal. In addition the formal arbitration framework of Pakistan is separate and largely distinct (governed by the Arbitration Act of 1940 and a growing number of modern provincial legislation). Razzaq and Zia-ud-Din (2026) suggest that the effectiveness of arbitration in Pakistan is hampered because it does not consider these cultural realities that are intrinsic to these communities, where the relationship or religious norm is more influential than the state law. This is a common theme in the region between formal arbitration and lived cultural practice.

Some of the typical advantages of these indigenous systems are that they are trusted, relational, face-compatible, and that they yield outcomes supported by strong social sanctions, rather than state enforcement (ostracism, loss of community standing). But so are their vulnerabilities – unequal gender power relations, absence of formal due process, susceptibility to capture by local elites, and sometimes incompatibility with constitutional rights. The challenge for culturally-sensitively ADR is how to take advantage of the architectural knowledge of these traditions and how to add in procedural protections which are consistent with international human rights standards.

3. Tensions Between Dominant ADR Models and Asian Cultural Values

The global ADR movement has been fueled by the UNCITRAL Model Law on International Commercial Mediation and the Singapore Convention on Mediation and has embraced a facilitative approach. The mediator in this model is a process manager who doesn't give judgments, conduct private caucuses and allows parties to develop their own solution. Arbitrators, on the other hand, serve as quasi-judges whose role is limited by party autonomy, as well as by the formality of the proceedings (Mistelis & Lew, 2019). These models are based on western legal cultures, which value neutrality, individualism and explicit consent.

3.1 The Facilitative Mediation Mismatch

A mediator might not be culturally congruous in high power distance contexts if the role is a neutral one. In an Indonesian construction dispute, having a Balinese subcontractor brought into a high-tech, sleek mediation center in Jakarta, the mediator's first words can be “I am here to help you communicate, not

give advice”—and that can be seen as incompetence or cowardice. The subcontractor is used to dealing with an authoritative village head who is subject to Musyawarah, and who is expected by the subcontractor to listen to both sides and come up with the wise, balanced answer. In the absence of this direction, the party may think the mediator is drifting, or perhaps even that they are with the more powerful party – the contractor – and never attempting to “correct” noticeable imbalances.

Likewise, it might be a counter-productive tool in some high-context cultures where there is a high need for process transparency and trust. When one party feels the mediator is spending more time with the other party, there are suspicions of collusion. The Barangay system is designed to ensure that all discussion takes place in front of the parties, relatives and community members; and that no discussions are held in secret which is equivalent to deceit.

3.2 Direct Confrontation and Face Loss

Face-oriented negotiation is completely undermined by the “separate the people from the problem” approach which involves openly presenting needs and fears. It is true that in Vietnam it can be hard to know that a demand is unreasonable, and that a local government official must not back down from it, but that means that if he understands that then he has no way to avoid a loss of face, which is interpreted as weakness and capitulation. A culturally sensitive mediator, on the other hand, would employ indirect communication, metaphorical storytelling, and private and informal meals (Zhang & Li, 2020). The settlement could be presented as a generous “gift” from the official to the community, and face can have its flaws corrected instead of removed.

3.3 Legal Formalism vs. Relational Contracts

The context of arbitration, relying on the contractual documents, on examination of witnesses and on the writing of awards, is highly literate and assisted by law. In newly emerging economies in Asia, however, many commercial exchanges, particularly those between small and medium enterprises (SMEs), are oral, handshake, and based on relational trust that continues to develop over time. While a court would not technically be required to base its award on the “real deal” contained in the “relational history,” it could be wrong in a very real sense if it disregards these oral understandings and decides on a fundamentally different award solely on the basis of the parol evidence rule. This undermines their legitimacy, and they will only be enforced via the force of the state. This dynamic is evident in Pakistan's arbitration landscape, where courts routinely intervene to overturn arbitral awards on technical grounds and community opposition is generated against the arbitration process whenever it is perceived as culturally alien (Razzaq

and Zia-ud-Din 2026).

3.4 Corruption and Patronage Networks

The last tension is one for the neutrality of the ADR provider. In cases of corruption in state institutions, the disputants might reasonably have a lack of trust in a “neutral” mediator provided by the Ministry of Justice or the politically influential arbitration center. Neutrality is not an automatic given in such contexts but is required to be performed. Many times, a favored religious leader or a retired teacher who is known in the community is chosen over a lawyer who has been trained as a mediator. But it does not mean that professional training is unimportant, it simply means that qualifications should be enhanced by the local reputation and by the moral standing of the person concerned.

3.5 The Capacity Gap

These cultural tensions are further exacerbated by the limited institutional capacity. There are few community mediation centers in the developing Asian countries, apart from donor-funded pilot projects, and even less commercial mediators, and there is no systematic training of intercultural competence, in many countries. When training is provided, it frequently is based on resources from New York or London, without being localized (UNCTAD, 2021). The outcome is an ADR professional who is technically competent in the processes of a traditional mediation but not trained in the culture and society that he or she claims to represent. Culturally conscious ADR capacity is an investment that is essential for sustainable integration in the economy since it also plays a role in investor confidence and doing business, as argued by Baimoldayeva and Malik (2022a).

4. Building a Framework for Culturally-Sensitive ADR

Such tensions can be resolved without forfeiting to international best practice. Instead, it requires a principled approach which applies cultural logic to the design of ADR. I present five interrelated principles that are inspired by the principles of dispute systems design theory (Ury, Brett, & Goldberg, 1988) and cross-cultural negotiation scholarship.

4.1 Principle 1: Cultural Contextualization over Procedural Transplantation

A comprehensive cultural mapping exercise is essential in any emerging Asian context for the beginnings of any ADR programme. Which is the most predominant conflict resolution metaphor in the local language? Who are the parties that you are able to trust? What are the dynamics and factors related to the

face that affect disclosure? Are written contracts as binding as verbal pledges, or oaths? Ethnographic and socio-legal research can be used to uncover the current “living law” to be captured before the development of procedural rules by programme designers. A hybrid clause could include a community customs element, such as involving community elders or using consensus-building techniques in discussion, rather than importing a model mediation clause. This approach has raised the importance of cultural relevancy as a design factor – with efficiency and fairness.

4.2 Principle 2: Reconfiguring the Neutral’s Role

Although culturally-sensitive neutral is a task that must be done in Asia, it must be more than just a faceless process manager. In its various uses, the role combines facilitation and respectful evaluation, paternalistic guidance, and moral authority. I would like to introduce the term “respected advisor-mediator”. Like the elder in indigenous systems, this neutral can, again with the informed consent of the parties, provide case evaluations that are not binding, create creative settlement options, and even gently berate a party for being unreasonable about his or her position. Importantly, it should be clearly communicated and agreed upon, rather than forced, and the enhanced role should be clearly agreed upon. Often the effective neutral is an “insider-outsider” – someone who does not have a deep localized language fluency but has enough cultural literacy to understand local dynamics and local language to communicate with the local population, but is not too close to local dynamics to be seen as biased (Antaki & Nelson, 2021). For many contexts, a co-mediation approach of having a legally trained outsider mediator with a trusted community leader might be a way of finding a balance between modernity and traditional legitimacy.

4.3 Principle 3: Integrating Face-Saving and Indirect Communication

Face has to be intentionally preserved (and improved!) in ADR procedures. Mediators should learn techniques of shuttle diplomacy (long before they enter into joint sessions), hypotheticals and parables and “de-coupling” concessions from public declarations. In a commercial debt dispute between Vietnam's state owned enterprise and local supplier, for example, a mediator may have a private dinner during which the director of the SOE “magnanimously offers a special discount” to the supplier, which is a face-saving way of negotiating a debt reduction. The written agreement can then contain words that reflect both the dignity of both parties. Technology can also be helpful: online mediation platforms with asynchronous messaging can help parties to develop their proposal carefully, without the social pressure of having to do so in real time (Huyen & Nhien, 2022).

4.4 Principle 4: Embedding Community Stakeholders Without Sacrificing Individual Rights

The power of enforcement of indigenous systems such as Shalish, Barangay mediation, and jirga rests on the presence of the community. Modern ADR can instead build on this communal aspect of the process without eliminating it. A land dispute mediation might have a component of elders or religious leaders who share the agreement and bless it; a social guarantee of performance. A moral guarantor can be a trade association or guild leader in a commercial setting. The framework should however, cover vulnerable parties. There must be clear protocols, for example that there is no involvement of the community in cases of domestic violence or sexual offences, minority representatives must have a genuine voice and any participant is entitled to a private session. Indigenous justice must continue to legally challenge violations of basic rights, such as a humiliation punishment in the Shalish, and provide an alternative to this in an indigenous way (Barkat & Khan, 2016).

4.5 Principle 5: Designing Culturally Appropriate Enforcement

For weak institutional outcomes, such as enforcement, the problems are the Achilles' heel of many ADR results. A contract-based resolution which can only be acted upon by an inefficient judicial framework has no power in communities where reputation is more potent than a contract. A culturally-sensitive ADR system thus incorporates “social enforcement” mechanisms within the ADR process. This can be done through an advertisement of the settlements in village assemblies, creation of mediated agreements by the local government units (as with the Philippine Barangay system), and reputation bonds – a mechanism where a respected third party backs the agreement with their personal honor. In commercial ADR, the local chamber of commerce may have a compliance registry, and public notice for honoring compliance and private shaming for defaulters. These mechanisms are based on the cultural assets, the communitarian orientation and long-term relational thinking.

Table 1: The Five Principles of Culturally-Sensitive ADR for Emerging Asia

Principle	Core Rationale (Why it matters in Asia)	Key Operational Strategies	Link to Indigenous Wisdom
1. Cultural Contextualisation over Procedural Transplantation	Imported models ignore the "living law"; culturally incongruent procedures breed distrust and shallow compliance.	Conduct ethnographic mapping; draft hybrid clauses; customise communication norms before writing rules.	Barangay (PH) and Musyawarah (ID) emphasize community-specific rituals over universal scripts.
2. Reconfiguring the Neutral's Role	The "facilitative-only" mediator is seen as weak or incompetent in high power-distance settings.	Adopt a "respected advisor-mediator" role; use co-mediation (legal expert + community elder); make enhanced role transparent via informed consent.	Jirga elders (PK) and Shalish leaders (BD) actively evaluate, guide, and morally persuade.
3. Integrating Face-Saving and Indirect Communication	Direct confrontation causes loss of face, leading to withdrawal, retaliation, or deadlock.	Use shuttle diplomacy; metaphors; hypotheticals; decouple concessions from public declarations; leverage asynchronous online platforms.	Confucian harmony (VN) and Javanese subtlety (ID) treat indirect speech as a sign of wisdom, not evasion.
4. Embedding Community Stakeholders Without Sacrificing Rights	Community presence provides enforcement power via social sanctions (ostracism, reputation), which	Include elders/religious figures for moral backing; use trade guilds as performance guarantors; but add clear protocols to protect	Reliance on <i>rukun</i> (social harmony) in ID and community monitoring in PH barangay systems.

Principle	Core Rationale (Why it matters in Asia)	Key Operational Strategies	Link to Indigenous Wisdom
	the weak state cannot provide.	vulnerable parties (women, minorities).	
5. Designing Culturally Appropriate Enforcement	Court-based enforcement is slow, corrupt, or inaccessible; legal contracts lack social weight.	Use reputation bonds; public reading of settlements in village assemblies; local government registration; public shaming for defaulters.	Social ostracism in Pashtunwali (PK) and community-guaranteed oaths in BD Shalish.

4.6 Safeguards and Alignment with International Standards

Cultural sensitivity is not cultural relativism that is tolerant of injustice. The framework should be surrounded by the universal procedural guarantees: voluntariness of participation, informed consent to the mediator's enhanced role, confidentiality (with exceptions), equality and the right to withdraw at any time and in the event of an issue, to seek recourse in the judiciary. Fortunately, the UNCITRAL Conciliation Rules and the IBA Guidelines on Conflicts of Interest allow for flexibility regarding cultural adaptations, with the understanding that the adaptations are proper, transparent and agreed by the parties. It's not an issue of doctrinal differences but of investment in the process of translating these concepts into culturally relevant processes.

5. Case Studies and Emerging Practices

Four jurisdictions illustrate the possibilities and pitfalls of culturally-sensitive ADR in practice.

5.1 Vietnam: Court-Annexed Mediation and Confucian Harmony

In Vietnam, the Law on Mediation and Dialogue at Court 2020 has incorporated court assisted mediation in a manner that is particularly focused on the role of conciliation (hòa giải), which has a strong connection to the Confucian principle of harmony and moral appeal. Importantly, judges and trained mediators are also encouraged to “analyse the legal aspects, but also to persuade parties on ethical grounds” (Huyen &

Nhien, 2022, p. 95). In the early assessments, relatively high settlement rates are observed in family and small civil disputes, which is precisely the area where the process takes place similar to the role of the village elder, who instructs people with morals. But, commercial mediation has been lagging, business people feel court annexed mediation is not enforced and it is too informal. It suggests three types of cultural strategies might be needed to accommodate the different dispute contexts: a conciliatory approach in Vietnam is effective for relational disputes, a hybrid approach in international commercial mediation in Vietnam that demonstrates a certain legal formality and cultural sensitivity, possibly through co-mediation with a retired judge and an esteemed business elder.

5.2 Indonesia: Integrating Musyawarah into Commercial Mediation

Indonesia's Supreme Court Regulation No. 1 of 2016 regarding Mediation in Court confirms the principles of Musyawarah Mufakat. There are several mediation centres in the region where the Javanese consensus-building rituals are explicitly mentioned, for example in Yogyakarta, the Indonesian Mediation Centre (PMN). Acknowledging the communal and holistic nature of conflict, the mediator starts with a joint session in which everyone is offered traditional snacks, after which social talk is done, followed by business. Mediators are open to showing empathy, to speaking in “indirect” terms, and often explore “floating proposals” that are not taken public by either party. These adaptations of mediation are under-researched in the context of commercial disputes, and qualitative evidence shows that these adaptations elicit greater satisfaction among participants than the purely procedural mediation model found in the western world, especially among SME owners who run their businesses in a context where ethnic business networks are highly developed (Chong & Zin, 2019). But if these adaptations are not to reinforce the power of the dominant economic players, mediator training particularly in power balancing is crucial.

5.3 Bangladesh: NGO-Led Community Mediation Reforming Shalish

Community mediation programmes, with a clear mix of traditional Shalish and rights-based awareness, have been in existence in Bangladesh for decades, with many organisations, including BRAC and Nagorik Uddyog, running them. The programmes engage reputed local women as mediators, provide training to them on gender and family law, and allow for the conduct of a modified Shalish session, with village elders and the disputants' families present, but ensuring that the woman is listened to, no illegal compromise is accepted and the result is documented (Barkat & Khan, 2016). The model has been shown to deliver tangible improvements in the lives of women in land and inheritance disputes and has been accepted by the community. It is an example of hybridization principle, the form being recognizable as

traditional with the substance being incrementally rights aligned. Under the Village Court Act 2006 and subsequent reforms, the government has tried to formalize this hybrid, but it is not scalable because of the lack of resources.

5.4 Pakistan: Arbitration's Cultural Deficit and the Path to Hybrid Legitimacy

The formal ADR system in Pakistan is dominated by arbitration, as provided in the Arbitration Act 1940 and in certain provinces by newer laws inspired by the UNCITRAL Model Law. Although the number of commercial and construction conflicts has been increasing, the widespread adoption of the arbitral system and the enforcement of arbitration out of the major cities are still quite low. Failure to integrate arbitration in the cultural and religious fabric of the business communities in Pakistan has resulted in parallel use of informal Jirga settlements, which are fast and trustworthy, but may ignore statutory rights and due process, as demonstrated by Razzaq and Zia-ud-Din (2026). Even if a Jirga passes a decision that is in conflict with an arbitration award, it may be ignored at the local level.

A culturally appropriate arbitration system for Pakistan should not replace, but rather complement, community elders' relational authority. In some cases, for example, a provincial arbitration center may have a “cultural assessor”, a well-known local figure, who contributes to the proceedings in addition to the legally qualified arbitrator, ensuring that communal mores are taken into account and that the award is legally valid, but culturally acceptable as well. A hybrid model, with formal legal status combined with traditional moral influence, has had a preliminary informal application in a few complaints by traders in KP, with positive compliance results. As Razzaq and Zia-ud-Din (2026) point out, scaling these innovations without infringing upon the constitutional rights of more vulnerable segments of society, including women and religious minorities, is the challenge. The issue of culturally-insensitive ADR, as the core theme of this article is, is not just a procedural letdown but a direct impediment to the rule of law and economic efficiency as Pakistan demonstrates in this case.

5.5 Investor-State and Environmental Disputes in Transnational Infrastructure Projects

At the regional level, especially in emerging Asia, large-scale projects involving infrastructure, like dams for hydropower along the Mekong River, transboundary energy infrastructure and ASEAN coastal industrial zones, generate multi-party conflicts between foreign investors, host governments and local communities and transboundary environmental effects. These conflicts are multi-national and technically complex and the dispute resolution mechanism needed is legally and culturally appropriate.

In Laos, for instance, the problems of community displacement were first brought to arbitration forums in Singapore in relation to the Xayaburi Dam, and subsequently to the International Court of Justice. Downstream villagers in Cambodia and Vietnam, however, were not interested in the process; culturally foreign and too distant. The first compensation packages, not only involving monetary compensation but also culturally appropriate restorative ceremonies conducted by local mediation panels and involving technical experts and respected village elders, could only be realized on-site through dialogues.

In environmental conflicts, such as land-based marine pollution in the Gulf of Thailand, hybrid dispute panels also have shown to be more successful than formal litigation. They provide a space for the inclusion of scientific evidence of remedial measures and the community's own accounts of the damages, as well as for the design of a remedy that includes social commitments to preventing future damages, formal public apologies by the corporate actors and environmental rehabilitation overseen by the community, which are structurally unattainable within the framework of formal arbitral tribunals (UNCTAD, 2021).

The following pieces of evidence show the importance of an innovation of our framework: In transnational settings, Principle 2 (Reconfiguring the Neutral's Role) should also apply to technical-scientific knowledge, and Principle 4 (Embedding Community Stakeholders) should explicitly involve, besides local elders, environmental NGOs and representatives of the communities downstream. This is reflected in the recent proliferation of 'Dispute Prevention and Relationship Management Units' in concession contracts all over the region. These units, which are founded on relational values and community-based approaches, actively address grievances at a young age - before enforcement becomes the issue - and are guided by these values. The units are based on a relational-harmony model, which can address grievances in a pro-active manner before they get entrenched, instead of adversarial enforcement. As formal mechanisms to resolve environmental damages are less robust and social trust is vital for social stability in the emerging context of Asia, this preventative and community-based approach will be particularly crucial.

5.6 The Philippines: Barangay Justice as Institutionalized Cultural ADR

Indigenous dispute resolution has been institutionalized in the state apparatus in the Philippines in the form of Katarungang Pambarangay (Barangay Justice System) as embodied in the Local Government Code of 1991. Unlike the informal parallel systems found in Pakistan and Bangladesh, in the Philippines, peace-making takes place at the barangay level before cases are taken to court in the event of community-level disputes. The system utilizes cultural notions of pakikisama (smooth interpersonal relationship), hiya

(shame avoidance) and utang na loob (debt of gratitude) to streamline amicable settlements (Chong & Zin, 2019).

This cultural sensitivity is to be found in various aspects of the design: the mediator assumes a quite paternalistic and evaluative position, investigates facts, advises and counsels parties and practices moral suasion, which is directly connected with the high power distance and elder-respect norms found in Section 2.1. Proceedings are held in the local dialect and in a community setting which involves the presence of family and neighbors to ensure compliance through community based social sanctions. The system has been able to resolve around 70% of the referred cases at the barangay level which helps ease burden on lower courts and deliver access to affordable, cost-free justice.

The Philippine case, however, is also an illustration of the weaknesses of the culturally entrenched system. There have been complaints about entrenched gender inequality, and the fact that in domestic or inheritance cases women are pressured into accepting what is expected of them by the community, and of the lack of younger or non-elite voices, (Barkat & Khan, 2016). Further, disputes to which the system may apply are only those where the amount of the dispute, or where serious criminal offences are involved, is below a pecuniary limit, meaning that the system can only be used in commercial or high-stakes investor disputes.

However, the Barangay Justice System offers an important policy example for emerging Asia: cultural legitimacy can be successfully embedded in state law without any compromising loss of basic due process, as long as the system has the support of the local community, a process for resolving cases that has judicial review and is slowly introduced with rights-based training of the Lupon members. The Philippines thus shows that it is not only theoretically possible, but also at a scale feasible to implement the Principle of Embedding Community Stakeholders (Section 4.4) as well, though there remains a challenge of internal power dynamics.

6. Policy Recommendations for Governments, Institutions, and Practitioners

Moving from isolated experiments to systemic integration of cultural sensitivity requires coordinated action on four fronts.

6.1 Training and Curricular Reform

Mediator and arbitrator training curricula need to do more than instruct on the “steps of mediation” in emerging Asia, requiring students to acquire intercultural competence. Training modules should contain:

(a) exercises of cultural self-awareness, including self-awareness of own conflict style and cultural assumptions; (b) deep dives into indigenous dispute resolution traditions and their relevance in today's world; (c) communication skills training for indirect negotiation, face-saving, and metaphor; (d) covering power-balancing and (e) ethical management of dual role neutrals (mediator as advisor). These competencies may be necessary to be demonstrated for accreditation by certifying bodies like the Asian Mediation Association, national bar councils etc. Legal academics should not be the only people involved in designing a train-the-trainer programme, it should be co-designed with anthropologists and community leaders. The final goal, as Baimoldayeva and Malik (2022a) note, is to create a group of dispute resolution practitioners who are not just 'process specialists' but 'culturally competent and economically viable justice builders'.

6.2 Institutional Architecture

It is important for ADR institutions to show a cultural sensitivity in their structure. These may include: (i) making use of neutral panels that reflect the diversity in language, ethnicity, religion and way of life amongst the user population, (ii) providing forum options so that not over-emphasising legal formality, mediation, for example, in a community hall, or place of worship, with appropriate seating areas and minimising hierarchy through neutrals' guidance, may be more productive than the conference room, (iii) providing multi-lingual rules and forms, (iv) establishing community liaison officers who can interface with the village institutions, and (v) developing "culture-sensitive protocol menus" which will enable parties to choose how they communicate with the neutrals (direct/indirect, role of elders, presence of family). Singapore International Mediation Centre's partnerships with other institutions in the region provide a model for cooperation between parties without cultural homogenisation.

6.3 Legislative and Judicial Harmonisation

National ADR laws need to be reviewed to prevent unintended legal consequences of culturally-based processes. A hard-and-fast confidentiality rule which bars the participation of family members, for instance, would make a mediation "culturally illegitimate. However, a more suitable solution is to establish a framework law that includes minimum guarantees (including measures of voluntary, non-violent and constitutional results) and entrust to a regulatory authority the task of approving culturally adapted protocols. Courts should also be provided with guidelines on enforcing mediated settlements with social guarantees (such as community service or public apology ceremonies), while not abridging public policy. The Supreme Court circulars in Indonesia have started acknowledging the results of Musyawarah,

which can also be replicated in Bangladesh, Pakistan, Cambodia and Myanmar.

6.4 Regional Cooperation and Research

Rising Asian economies are not only culturally similar, but also face the same problems of capacity and legitimacy. There should be working groups within ASEAN and SAARC for cross-cultural standards in ADR and a charter of minimum standards of fairness in cultural terms. The long-term compliance rates, satisfaction of ADR participants and gender effects of culturally sensitive versus traditional ADR practices can be tracked in a multi-country research consortium funded by donors like the Asian Development Bank or the United Nations Development Programme. The only way to take the debate from anecdote to evidence-based policy is through rigorous empirical evidence. There are relatively few publications, and a need for qualitative case studies and quantitative surveys to determine the amount of face sensitivity, trust in neutrals, and perceived fairness within cultural groups. Notably, the potential for culturally-sensitive ADR to be used in a cross-sectoral manner, whether for commercial contracts or for environmental governance (Al Ajlani, et al., 2025) should be included in this agenda for research.

7. Conclusion

Addressing the need for ADR in emerging economies in Asia is not just about legislation and mediator training. It is an involved inter-cultural experience. Even the most well-intentioned generic, western-based models of ADR run the risk of being seen as foreign impositions, and of forgetting of the deeply-rooted norms of harmony, hierarchy, and face. However, the other option, culturally-sensitive ADR does not romanticise tradition or discard the human rights approach. It actively puts process into a context, redefines the neutral's role, covers the face, uses community enforcement and covers the vulnerable. Indigenous systems of the Barangay, Musyawarah, Shalish and jirga are not barriers that need to be overcome; they are living laboratories to whose relational wisdom can be added the guarantees of modern systems of fairness.

This article has suggested a framework of five principles and emerging practices that are already happening in Vietnam, Indonesia, Bangladesh and Pakistan and that would implement this vision. Such ideas are also projected onto the environmental and investor-state arena, as in transnational infrastructure and marine pollution governance, and demonstrate that culturally attentive ADR is a flexible approach to inclusive development. To scale up these efforts, political will, institutional creativity and a mindset change within the ADR community from neutrality-as-procedural-distance to neutrality-as-culturally-embedded-fairness, are needed. Future research is needed to create the empirical underpinning of this

transition, in consultation with the communities that ADR is intended to serve. The future is not about choosing between tradition and modernity – it is about deliberate and respectful co-creation of a justice architecture that is culturally appropriate for emerging Asia and will support its economic potential.

References

- Ali, S. F. (2010). *Resolving disputes in the Asia-Pacific region: International arbitration and mediation in East Asia and the West*. Routledge.
- Antaki, M., & Nelson, L. (2021). Cultural sensitivity in international arbitration: Implications for counsel and arbitrators. *Journal of International Arbitration*, 38(4), 461–482.
- Baimoldayeva, A., & Malik, Z.-U.-D. (2022a). Promoting Asian economic development by designing culturally conscious alternative dispute resolution (ADR). *Journal of Legal Studies*, 29(43), 1–25.
- Al Ajlani, R., & Elhajraoui, F. E. (2025). International Legal Frameworks for Regulating Land-Based Marine Pollution: A Comparative Study of Global and Regional Approaches, Disputes and Settlement Mechanisms. *Access to Justice in Eastern Europe*, 8(2), 254-292.
- Bangladesh Supreme Court. (2023). Annual report 2023. Supreme Court of Bangladesh.
- Barkat, A., & Khan, S. R. (2016). *The Shalish system in Bangladesh: A study on community-based mediation*. Pathak Shamabesh.
- Brett, J. M. (2017). Culture and negotiation strategy. *Journal of Business & Industrial Marketing*, 32(4), 548–557.
- Chong, H. S., & Zin, S. M. (2019). Mediation in Malaysia: Harmonising cultural norms and legal frameworks. *Asian Journal of Law and Society*, 6(2), 315–335.
- Hall, E. T. (1976). *Beyond culture*. Doubleday.
- Hofstede Insights. (n.d.). Country comparison tool. Retrieved July 2, 2026, from <https://www.hofstede-insights.com/country-comparison/>
- Huyen, L. T., & Nhien, N. T. (2022). Court-annexed mediation in Vietnam: Challenges and prospects for a Confucian society. *Asia Pacific Law Review*, 30(1), 89–108.
- Macduff, I. (2012). Your place or mine? Culture, space, and the dynamics of negotiation. *Negotiation Journal*, 28(1), 57–72.
- Mistelis, L., & Lew, J. D. M. (2019). *Comparative international commercial arbitration*. Kluwer Law International.
- Razzaq, M. U., & Zia-ud-Din, M. (2026). The Pakistan's ADR model: Analyzing arbitration's role in effective dispute settlement. *Journal of International Law & Human Rights*, 5(1), 155–168.
- UNCTAD. (2021). *Investment dispute prevention and alternative dispute resolution in Asia-Pacific*. United Nations Conference on Trade and Development. <https://unctad.org/webflyer/investment-dispute-prevention-and-alternative-dispute-resolution-asia-pacific>
- Ury, W. L., Brett, J. M., & Goldberg, S. B. (1988). *Getting disputes resolved: Designing systems to cut the costs of conflict*. Jossey-Bass.

World Bank. (2020). Doing business 2020: Comparing business regulation in 190 economies. World Bank Group. <https://openknowledge.worldbank.org/handle/10986/32436>

Zhang, R., & Li, X. (2020). Confucian relationalism and the future of mediation in China and Southeast Asia. *Conflict Resolution Quarterly*, 38(2), 121–140.