

CULTURAL DIMENSIONS AND THEIR IMPACT ON ALTERNATIVE DISPUTE RESOLUTION PROCESSES AND RESULTS: A STUDY OF ADR ACROSS DIVERSE CULTURAL CONTEXTS

By Akinlalu Ayanfeoluwa Rotimi²¹

Introduction

Conflict occurs everywhere except in the cemetery. Everyone experiences conflict except the dead – Assegid Habtewold. This drives home the assertion that conflicts are innate to human beings.²² In the bustling marketplace of ideas, numerous factors are responsible for how disputes are perceived and resolved, and culture is inevitably a player. Pause! Take some time to imagine a mediator's or arbitrator's table where participants hail from the far and distinct ends of the earth. What would be the expectations of the Nigerian Igbo trader? Or the ideology of the Kenyan elder? Or the approach taken by the businessman from China? Questions like these and the answers thereof are what determine an effective Alternative Dispute Resolution (ADR) process.

The study of Alternative Dispute Resolution (ADR) is relatively young, however, the practice is not.²³ Many cultures worldwide have traditional forms of mediation to settle discord. In essence, expectations of what dispute resolution should look like are unavoidably linked to cultural ties.²⁴ It is on this basis that this article seeks to understand how and to what extent culture influences ADR practices and outcomes. To give full play to the execution of this worthwhile venture, quality attention will be paid to unraveling the intricate intersection between culture and Alternative Dispute Resolution and the extent to which cultural practices have influenced ADR practices. Also, an analytical approach will be employed to unravel the implications for ADR practitioners in the global scene. This ensures a balanced approach in the disentanglement of the convoluted facets of the subject matter.

²¹ Akinlalu Ayanfeoluwa Rotimi is a 500 Level law student of the University of Nigeria, Nsukka

²² McIntyre S, "Como as Pessoas Gerem o Conflito Nas Organizações: Estratégias Individuais Negociais" ISSN. (Análise Psicológica, 2012) <https://doi.org/10.14417/ap.447> > accessed 30 December 2024.

²³ Waterfold, Kate. *Cross-cultural disputes: guidance for Australian mediators*. (Australian Lawyers Alliance, 2017) <https://classic.austlii.edu.au/au/journals/PrecedentAULA/2017/43.html> > accessed 30 December 2024.

²⁴ Ibid.

2.0. CULTURAL PRACTICES AND ALTERNATIVE DISPUTE RESOLUTION: AN INTRICATE DANCE

Because contemporary dispute-resolution methods are fundamentally rooted in cultural practices, it is natural that they intersect in many ways. For example, a person from a strongly relational culture like the Chinese culture may feel limited by the choices available to them for resolving the dispute, if they know that their decisions will impact the people close to them.²⁵ This is in contrast with the Australian culture which focuses more on the needs of the individual rather than the collectivist culture.²⁶ Therefore, exploring how culture influences and intersects with ADR practices and outcomes reveals not just the complexities of global interaction but also the profound potential for tailored solutions that honor diversity.

In a culturally diverse region like Africa, a plethora of methods are employed in the settlement of discord between individuals. These methods are implemented based on traditional philosophies²⁷ as well as the subject matter. In the North-West Region of Cameroon, also known as the Bamenda Grassfield²⁸, where the Kom people reside, traditional institutions play a “quasi-religious” role in the arbitration, mediation, and reconciliation of conflicts at micro and macro levels.²⁹ The Kom people make use of different institutions such as the kwifoyn, who continue to be the most respected leaders of the land, and The Fon, who serves as means for reconciling human and spiritual forces based on their belief in gods and spirits, the *ɛtwi* which serves as the traditional court of law³⁰, which employs traditional methods of arbitration, and the Ntul Shrine. The Ntul Shrine consists of all-male members and is the center of reconciliation, mediation, and appeasement.³¹

²⁵ Goh, Bee Chen. *Negotiating with the Chinese* (1st ed, Dartmouth Pub 1996).

²⁶ Hankiz, Dolan. ‘Culture, Self, and Medical Decision Making in Australia and China: A Structural Model Analysis’ (National Library of medicine, 2019) <https://doi.org/10.1177/2381468319871018>. accessed 30 December 2024.

²⁷ John-Philippe Schriever, ‘Traditional African Dispute Resolution (TADR) Mechanisms’ (LinkedIn, 15 November 2014) <https://www.linkedin.com/pulse/20141115083304-106263112-traditional-african-dispute-resolution-tadr-mechanisms> accessed December 30 2024

²⁸ Charles Fombad, ‘Constitution-Building in Africa: The Never-Ending Story of the Making, Unmaking, and Remaking of Constitutions’ (2019) 58(1) *Journal of African Studies* 3 <http://dx.doi.org/10.1177/0021909618825276> accessed 30 December 2024.

²⁹ Annet Nyakecho, ‘Traditional Methods of Conflict Resolution: Challenges and Opportunities’ (ACCORD, 2009) <https://www.accord.org.za/conflict-trends/traditional-methods-of-conflict-resolution/> accessed 30 December 2024.

³⁰ Nkwi, W. ‘Etwi, Ntul, Nkwifoyn and Foyn: Sites, Objects and Human Beings in Conflict Resolution in Pre-colonial Kom (Cameroon)’ (2013) 33-51 *Conflict Studies Quarterly* <https://pure.knaw.nl/portal/en/publications/etwi-ntul-nkwifoyn-and-foyn-sites-objects-and-human-beings-in-con> accessed 30 December 2024.

³¹ Ibid.

In Nigerian traditional/pre-colonial societies, dispute resolution was handled by family heads, village heads, elders, kindred, age grade, council of elders, chiefs, chief priests, and so on.³² These Traditional African Methods of Settling Disputes (TAMSD)³³ are a precursor of Alternative Dispute Resolution mechanisms adopted in many parts of contemporary African societies.

In addition, ADR, and its implementation in UAE-based Countries greatly encounter the influence of Sharia law and practice. For instance, more than three schools of *Fiqh* are not in support of female arbitrators.³⁴ There is also the reduced weight placed on female witnesses' testimonies in arbitration according to the Holy Qur'an.³⁵ Even though various jurisdictions have made attempts to ban Sharia Law, it is unlikely that these bans will affect international commercial arbitration.³⁶ Therefore, cultural affiliations across Africa, Asia, Europe, and other continents of the world greatly Influence ADR notions and expectations.

3.0. HOW HAS CULTURE INFLUENCED ADR PRACTICES?

To properly access the question, this segment will major on a triad of specific aspects in Alternative Dispute Resolution influenced by various cultures.

3.1. Selection of dispute resolution methods: Cultural values and practices shape the means and methods through which disputes are resolved. For instance, cultures of African origin prioritize spirituality in day-to-day activities and may have spiritual inclinations in dispute resolution. Again, some collectivist cultures such as the Chinese culture may emphasize collective harmony, while others like the Australian culture may prioritize individual rights and adversarial approaches.³⁷

³² Joseph Olusegun Akinbi, 'Ethnic Conflict in Nigeria: A Challenge to Inclusive Social and Political Development' (2020) 10 *Open Journal of Social Sciences* 243 <https://www.scirp.org/journal/paperinformation?paperid=97760> accessed 30 December 2024

³³ Egbunike-Umegbolu, C., 'The Role of Dispute Prevention in Transnational Dispute Management' (Transnational Dispute Management, 2024) <https://www.transnational-dispute-management.com/journal-advance-publication-article.asp?key=1940> accessed 30 December 2024.

³⁴ Essam Alsheikh. 'Distinction between the concepts mediation, conciliation, sulh and arbitraion in Shari'ah law' (2011) 367-400 *Arab Law Quarterly* <https://doi.org/10.1163/157302511X596212> accessed 30 December 2024.

³⁵ *Ibid.*

³⁶ Rizzo Amaral, 'The Rise of Asia and Its Impact on International Commercial Arbitration' (LinkedIn, 5 October 2022) <https://www.linkedin.com/pulse/rise-asia-its-impact-international-commercial-known-rizzo-amaral> accessed 30 December 2024.

³⁷ Hankiz, Dolan. 'Culture, Self, and Medical Decision Making in Australia and China: A Structural Model Analysis' (National Library of medicine, 2019) <https://doi.org/10.1177/2381468319871018>. Accessed 30 December 2024

A practical culture that mirrors this influence on ADR methods is the Thai culture.³⁸ Thai culture places a strong emphasis on harmony and conflict avoidance, making mediation a go-to as a dispute resolution mechanism.³⁹ Reports show that up to 30% of caseloads resolved by the China International Economic and Trade Arbitration Commission (CIETAC) are resolved through Med-Arb, a feature that can be partially attributed to Confucianism and its culture of harmony.⁴⁰ In Japan, the numbers rise to about 50% according to data from the Japan Commercial Arbitration Association (JCAA).⁴¹ These cultural attitudes can therefore inform appropriate modes of alternative dispute resolution. In the American case of **Fisher v. University of Texas**⁴², also known as **Fisher II**, the court's selection of mediation as the preferred ADR method was informed by a deep understanding of the cultural nuances surrounding the case. The case involved a challenge to the university's affirmative action admissions policy. The Supreme Court advised the parties to resort to mediation taking into consideration the cultural and societal significance of the issues at hand. This case illustrates how cultures can influence the selection and application of ADR methods

3.2. Language and communication: Language, in itself, is a vehicle of thought⁴³, majorly revolving around the words we speak. However, communication transcends our verbal representations. It encompasses gestures, facial expressions, body movements, and other modes of expression.⁴⁴ Thus, cultures that have distinct communication styles can encounter challenges in the way their dispute resolutions are approached.

The following case study of the Iran-US tribunal of the 1980s is an example of cultural influence on Communication as an important aspect of ADR. This case is commonly known as “**The Traumatic International Arbitration of 1984-1988 Iran-v-US Tribunal**”⁴⁵. During this period,

³⁸ Sharon Lin. ‘Alternative dispute resolution in Asia: Thailand’s role and impact’ (Lexology, 2024) <https://www.lexology.com/library/detail.aspx?g=77fcd7c2-b44e-46fc-8084-713d658444de> accessed 30 December 2024.

³⁹ V. K. Rajah. ‘W(h)ither adversarial commercial dispute resolution?’ (20 January 2016) 17 *Arbitration International* <https://doi.org/10.1093/arbint/aiv075> access 30 December 2024.

⁴⁰ Rizzo Amaral, ‘The Rise of Asia and Its Impact on International Commercial Arbitration’ (LinkedIn, 5 October 2022) <https://www.linkedin.com/pulse/rise-asia-its-impact-international-commercial-known-rizzo-amaral> accessed 30 December 2024.

⁴¹ Ibid.

⁴² 579 U.S. 365 (2016)

⁴³ Simon W. Blackburn. ‘*Philosophy of Language*’ (*Encyclopaedia Britannica*) <https://www.britannica.com/topic/philosophy-of-language> accessed 30 December 2024.

⁴⁴ Study.com, ‘What Is Communication? Definition & Importance’ <https://study.com/academy/lesson/what-is-communication-definition-importance.html> accessed 30 December 2024.

⁴⁵ HOWARD, M. ‘Impacts of cultural differences on international arbitration based on the example of Iran’ (Robert Gordon University, 2018) <https://openair.rgu.ac.uk> accessed 30 December 2024.

cultural differences caused severe frustration for arbitrators, resulting in intense friction between both countries. According to Judge Aldrich – an American arbitrator at the tribunal – “Discussion among the American and Iranian members proved fruitless” ... “The Americans had no idea how the Iranians would behave at their first meeting”⁴⁶. These frustrations in communication later led to a fistfight between arbitrators at The Hague while the arbitration tribunal was in progress.⁴⁷ This is another means through which culture influences ADR.

3.3. Cultural perceptions of what is Just and Fair: Cultural interpretations of justice and fairness greatly influence ADR practices and outcomes as they shape participants’ expectations and receptiveness to dispute resolution outcomes. For example, the Gacaca Courts in Rwanda place heavy emphasis on restoring harmony within the community, prioritizing social cohesion and long-term peace over strict legal punishments.⁴⁸ This philosophy greatly differs from the practice of commercial Arbitration in the United States which imbibes an individualistic culture, where justice is equated with adherence to rules and legal precedents.⁴⁹ In societies like the USA, justice may be perceived as contract enforcement, monetary awards, and strict adherence to the letters of the law. Participants with differing cultural notions of fairness may therefore struggle to accept ADR outcomes interpreted in foreign contexts.

Summarily, The case of **R v Mohamed Abdow Mohamed**⁵⁰ represents how culture has impacted ADR practices. In this case, Mohammed stabbed and killed another. The families of the concerned parties resorted to ADR methods under the Sharia Law and customs which involved the compensation of the deceased’s family. In court, Justice R. Lagat–Korir discharged the accused, holding that the deceased’s family had been duly compensated according to customs. Even though the court's decision has been met with numerous criticisms, a fact remains true: ADR practices have been greatly influenced by culture.

4.0. IMPLICATIONS FOR ADR PRACTITIONERS

⁴⁶ ALDRICH, J. K. and ALDRICH, G. H. *The Jurisprudence of the Iran-United States Claims Tribunal* (1st ed, Clarendon Press, 1996)

⁴⁷ Ibid.

⁴⁸ United Nations, ‘Backgrounder on International Justice for the 1994 Genocide in Rwanda’ (2014) <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%2520Justice%25202014.pdf> accessed 30 December 2024.

⁴⁹ Global Arbitration Review, ‘USA: Commercial Arbitration’ https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/usa?utm_source=chatgpt.com accessed 30 December 2024

⁵⁰ [2013] KEHC 3823 (KLR)

The realization of culture's influence on ADR practices and outcomes sparks numerous implications for the ADR Practitioner.

1. The practitioner must go back to the drawing board to **relearn** various approaches for investigating cultural behaviours. These models include the cultural trait approach⁵¹ and the constructivist approach.⁵² A good grasp of these equips the practitioner from a philosophical viewpoint.
2. **ADR Practitioners should employ adaptive methods** such as, pre- mediation consultation with the parties⁵³ in order to ascertain differences and commonalities, as well as, involvement of arbitrators from different cultures concerned (in the case of arbitration), so that parties feel represented.
3. ADR Practitioners should be equipped with **cultural sensitivity and emotional intelligence** in the execution of ADR processes.

5.0 CONCLUDING REMARKS

Cultural practices and inclinations influence ADR practices and outcomes in numerous ways. ADR practitioners must therefore equip themselves with necessary know-how to adapt to these influences.

51 Morris, M. and Fu, H. Y. 'How does culture influence conflict resolution? A dynamic constructivist analysis. *Social Cognition*' 19(3), 324–349. (Research Gate, 2001) <https://doi.org/10.1521/soco.19.3.324.21475>

52 Ibid.

53 D.A. Hoffman and Triantafyllou. 'Cultural and Diversity Issues in Mediation and Negotiation' (2014) 246 The Massachusetts General Hospital Textbook on Diversity And Cultural Sensitivity in Mental Health, Current Clinical Psychiatry. DOI 10.1007/978-1-4614-8918-4_10 accessed 30 December 2024.