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• ПРОСПЕКТ •

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Dear readers,

I am pleased to present to your attention the third regular issue of the journal "Kazan University Law Review" in 2025.

This issue features articles on vital questions of theory and practice of Russian and foreign law, with a particular focus on comparative legal studies, human rights, and the philosophical foundations of law.

The issue opens with the article by Oybek Otabekovich Akhmadov, Assistant to the Director of the National Center of the Republic of Uzbekistan for Human Rights, titled "Interaction of the human rights systems of the states of the Eurasian space at the level of the OIC". The paper provides a comprehensive examination of the cooperation between the human rights systems of Eurasian states within the framework of the Organization of Islamic Cooperation. The author analyzes the specifics of this interaction, considering cultural, religious, and historical factors, and assesses the role of the OIC's Independent Permanent Human Rights Commission. The study is valuable for understanding the dynamics between universal human rights standards and regional particularities within the Islamic world.

The issue continues with the contribution from Murodjon Tursunbaevich Turgunov, Doctor of Law, Director of the Institute of State and Law of the Academy of Sciences of the Republic of Uzbekistan. His article, "The theoretical and philosophical heritage of Abu Nasr Farabi", explores the profound impact of the great Eastern thinker on the development of political and legal doctrine. The author highlights how Farabi's rationalist method and his vision of a "virtuous city" remain relevant for contemporary legal science, especially in the context of digital transformation and the global challenges of state building. The article underscores the enduring significance of Farabi's legacy as a bridge between Eastern and Western intellectual traditions.

The "International Law and Comparative Studies" section features the work of William Manga Mokofe, Senior Law Lecturer at Walter Sisulu University and Advocate of the High Court of South Africa, entitled "Consensus, Conscience, and Justice: Navigating Ethical Dilemmas of ADR in South Africa and the BRICS Context". The author investigates the complex ethical challenges within Alternative Dispute Resolution (ADR) practices in South Africa, framed by the nation's transformative constitutionalism and the philosophy of Ubuntu. The article offers

a comparative analysis with other BRICS nations, arguing for an ethically grounded ADR framework that balances efficiency with substantive justice and provides insightful recommendations for regional cooperation.

This collection of articles, representing scholarly perspectives from Uzbekistan and South Africa, reflects the journal's ongoing commitment to fostering a global dialogue on pressing legal issues. The contributions enrich our understanding of human rights mechanisms, legal philosophy, and the ethical foundations of dispute resolution in diverse socio-cultural contexts.

With best regards,
Editor-in-Chief
Damir Valeev

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ARTICLES

Oybek Akhmadov
Assistant to the Director of the National Center of the Republic of Uzbekistan for Human Rights

INTERACTION OF THE HUMAN RIGHTS SYSTEMS OF THE STATES OF THE EURASIAN SPACE AT THE LEVEL OF THE OIC

DOI: 10.30729/2541-8823-2025-10-3-124-135

Abstract. *This article examines the issue of interaction between the human rights system of the states of the Eurasian space within the framework of the Organization of Islamic Cooperation (OIC), as well as the place and role of the OIC in the protection and promotion of human rights at the global level. The article focuses on the specifics of cooperation between countries in the region in the field of human rights, taking into account their cultural, religious and historical characteristics, as well as an analysis of the problems and opportunities associated with the interaction of human rights systems in the context of the OIC, including issues of cultural relativism and religious interpretations of human rights.*

The article should be useful for researchers and specialists in the field of human rights, international law and Islamic studies, representatives of government agencies and non-governmental organizations involved in human rights issues, students and anyone interested in the topic of human rights in the Eurasian region and the role of the OIC in this area.

The purpose of the article is to increase understanding of the peculiarities of interaction between the human rights systems of the states of the Eurasian space within the framework of the OIC, to identify factors that promote and hinder effective cooperation in the field of human rights, to offer recommendations for strengthening interaction and developing dialogue between the countries of the region.

Keywords: *Human rights, Eurasian space, the Organization of Islamic Cooperation and its Independent Permanent Human Rights Commission.*

1. Introduction

The Eurasian region geographically covers a vast territory with a rich diversity of cultures, legal traditions, and political systems. The interaction of human rights systems among the states of the Eurasian space represents a dynamic picture of challenges and opportunities in advancing human rights principles.

The interaction of the human rights systems of the states of the Eurasian space is an important aspect of international relations and regional cooperation. The Eurasian space includes diverse states such as Russia, Kazakhstan, Belarus, Armenia, Uzbekistan, and others — each with its own unique human rights system and international obligations.

The history of human rights in the countries of the Eurasian space has deep roots going back to the Soviet period. In the Soviet Union there existed a unique system of rights closely linked to the ideology and policy of the state. After the collapse of the USSR in 1991, the newly independent states began shaping their own human rights protection systems, based on international standards and national specifics.

The countries of the Eurasian space advocate the development of economic, social, and cultural cooperation. One of the main aspects of this cooperation is the protection and promotion of human rights.

Human rights are the cornerstone of a just and equitable society, transcending cultural boundaries and embodying the essence of our shared humanity.

The concept of human rights has changed significantly over time, reflecting shifts in social norms, legal frameworks, and international standards. In the Eurasian space — encompassing many states with unique historical, cultural, and political contexts — the evolution of the human rights system has been a dynamic process shaped by various factors.

The evolution of the human rights system in the states of the Eurasian space is a multifaceted and continuous process requiring constant interaction, dialogue, and cooperation.

The states of the Eurasian space, like many other regions of the world, experience ongoing changes in the field of human rights. This evolution occurs under the influence of various factors, including political, economic, social, and cultural changes.

One of the key aspects of this evolution is the adoption and ratification by Eurasian states of international treaties and agreements on human rights. These legal instruments serve as the foundation for establishing universal standards of human rights protection and provide a basis for accountability and remedies in cases of violations. The states of the Eurasian space increasingly enter into international legal commitments, which contributes to standardization of human rights and enhances their protection.

Countries of the Eurasian space are parties to various international treaties and agreements in the field of human rights. Among them are:

— The Universal Declaration of Human Rights.
— The International Covenant on Civil and Political Rights.

— The International Covenant on Economic, Social and Cultural Rights.

— The Optional Protocol to the ICCPR concerning individual communications.

— The Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.

— The International Convention on the Elimination of All Forms of Racial Discrimination.

— The Convention on the Elimination of All Forms of Discrimination against Women.

— The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

— The Convention on the Rights of Persons with Disabilities.

— The Convention on the Rights of the Child.

— The Optional Protocol to the CRC on the involvement of children in armed conflict.

— The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

These international instruments form the basis of human rights policy and interaction in the region.

In addition, the evolution of the human rights system reflects changes in public opinion and values. Growing awareness of the importance of human rights, activation of civil society, and strengthening of the role of independent media contribute to better observance of citizens' rights and freedoms.

An important part of the evolution of the human rights system is also the development of national legislation in this area. Many countries of the Eurasian space adopt new laws and reform existing ones to ensure compliance with international standards and to protect the rights of all citizens.

Moreover, the development of national legislation and institutional mechanisms for human rights protection has become an important part of this evolution. Many states of the Eurasian space have adopted laws and implemented reforms to bring their internal legal frameworks into line with international human rights norms, thereby strengthening the protection of the rights of all persons under their jurisdiction.

The evolution of the human rights system also reflects changes in societal attitudes, growing awareness, and increased activity on human rights issues.

Despite positive shifts in the development of the human rights system, challenges and problems remain in the field of human rights in the region. These problems may include political instability, conflicts, discrimination, inequality, restrictions on freedom of expression and association, insufficient implementation of rights and freedoms, inadequate protection of vulnerable groups, problems with access to justice and legal remedies for human rights violations.

To address these problems and continue a positive trajectory of human rights development, coordinated efforts are needed at various levels. Governments, civil society, international organizations, and other stakeholders must work together to strengthen the legal framework, build institutional capacity, increase awareness and education in the field of human rights, and ensure meaningful participation and representation of all segments of society in decision-making processes.

Cooperation among countries within international and regional organizations is of key importance for solving global problems, ensuring peace, stability, and sustainable development. International and regional organizations play an important role in creating a platform for cooperation among countries at various levels.

The Eurasian space, as a complex, multi-level structure, is a unique research platform in which a different geometry of interstate cooperation has formed in the formats of the Commonwealth of Independent States (CIS), the Shanghai Cooperation Organization (SCO), the Eurasian Economic Union (EAEU), the Collective Security Treaty Organization (CSTO)[1] and the Organization of Islamic Cooperation (OIC).

2. The Eurasian Economic Union

The EAEU is an important economic association including Russia, Kazakhstan, Belarus, Armenia, and Kyrgyzstan. Although the EAEU mainly focuses on economic issues, cooperation in the field of human rights also takes place. Within the EAEU, consultations and exchanges of experience are conducted on human rights and social standards.

Although Uzbekistan is not a member of the EAEU, it maintains close economic and political ties with EAEU member states, which contributes to the exchange of experience and best practices in the field of human rights.

3. Cooperation within the CIS[2]

The Commonwealth of Independent States is another important regional mechanism facilitating interaction in the field of human rights. Within the CIS, regular meetings and conferences are held to discuss human rights protection and the development of common standards.

4. The UN and other international organizations

The countries of the Eurasian space actively cooperate with international organizations such as the United Nations, the OSCE, and the Council of Europe

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[1] *Ogneva V. V.* (2018). Eurasian Space: Trends in Transformation, Potential for Expanding Partnership // Central Russian Journal of Social Sciences, 13(4).

[2] Commonwealth of Independent States (CIS). (n.d.). Official website. Available at: http://chis.minsk.by/.

to improve the human rights situation in the region. These organizations provide technical and financial assistance, conduct monitoring, and issue recommendations for improving human rights practice.

Collective efforts of countries within such organizations contribute to developing common strategies and actions to achieve coordinated solutions on important issues. These organizations also play a key role in addressing regional problems, including in the sphere of human rights protection.

After all, human rights are universal values that must be protected and respected in every corner of the world. Human rights are fundamental principles underpinning the structure of society, transcending borders and retaining inherent value for every person. Ensuring respect for these rights is not only a moral imperative, but also a legal and ethical obligation incumbent on all countries — especially in the diverse landscape of the Eurasian region.

The human rights system is a fundamental aspect of the modern international community, influencing the position of the individual in society. The evolution of human rights reflects the values and principles underlying global development. In the context of the Eurasian space, which is home to diverse states, it is important to study interaction and cooperation in protecting human rights also at the level of the Organization of Islamic Cooperation.

The OIC is an intergovernmental organization[1] established in 1969 to strengthen Muslim unity. Representing 57 member states, the OIC often calls itself the "United Nations of the Muslim world". But unlike the UN, the OIC has historically opposed the concept of universal human rights, instead promoting the concept of Islamic human rights.

Countries of the Eurasian space such as Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are full members of the OIC.

The Russian Federation is also a strategic partner of the Organization of Islamic Cooperation and maintains special relations with this organization. Although Russia is not a member of the OIC, it has had permanent observer status in this international organization since 2005.

One area of cooperation between Russia and the OIC is strengthening international security and cooperation in combating terrorism. Russia actively participates in discussions and decision-making on security problems in areas where the OIC has a strong presence, such as the Middle East, North Africa, and Central Asia.

Cooperation between Russia and the OIC in the sphere of human rights is one aspect of international interaction requiring detailed analysis and study. The OIC, uniting 57 Islamic member states, has significant influence on human rights observance

[1] Organisation of Islamic Cooperation. History. (n.d.). Official website of the Organization of Islamic Cooperation. Available at: https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en.

in its participating countries. Russia, as a permanent observer in the OIC, also plays an active role in promoting human rights compliance in its international relations.

Cooperation among countries within the OIC covers a wide range of issues, including combating terrorism and extremism, expanding trade and economic cooperation, exchanging experience in education and healthcare, and supporting development in member states.

Cooperation at the OIC level is based on mutual respect, a commitment to peaceful coexistence, and the expansion of cooperation in various fields. States of the Eurasian space actively support OIC initiatives to expand trade and economic cooperation within the organization and contribute to global understanding and strengthening international ties among Eurasian states.

The purpose of the OIC is to strengthen cooperation among members at the political, economic, social, cultural, and scientific-technical levels.

The OIC is also an important platform for discussing and resolving problems facing the Islamic world. Cooperation within the OIC helps build trust, foster dialogue among countries, and develop mutual understanding.

The principles of OIC activity are respect for cultural diversity, peaceful settlement of conflicts, protection of human rights, and ensuring stability in the region. OIC member states strive to maintain solidarity, justice, and cooperation among themselves on the basis of shared Islamic values and universal human rights.

In its early years, the OIC adhered to a strict religious approach, emphasizing the central role of Sharia. During this period, the OIC viewed the international human rights system with caution, considering that it ignored local culture, history, and religious beliefs[1].

Until recently, the OIC rarely addressed human rights issues, mostly limiting itself to adopting analytical and resolution-type documents.

It should be noted that the OIC pays special attention to protecting socially vulnerable groups, namely children and women. A process of developing regional standards on children's rights is currently underway[2]. An important step in this process was the adoption of the "Covenant on the Rights of the Child in Islam" in June 2005[3]. It should also be noted that this covenant is an effective specialized OIC document in the field of human rights.

The OIC Charter adopted in 2008, with amendments at the 11th Islamic Summit in Dakar, further strengthened attention to human rights. Then Secretary General

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[1] Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC). (2019). Human Rights Standards and Institutions in OIC Member States. Ankara: SESRIC.

[2] For example, Resolution "On the Care and Protection of Children in the Islamic World". (2000). Resolution "On the Care and Protection of Children in the Islamic World". (2003). Rabat Declaration. (2005).

[3] *Ihsanoglu E.* (2010). The Islamic World in the New Century: The Organisation of Islamic Conference, 1969–2009. London: Hurst & Company. 288 p.

Ekmeleddin Ihsanoglu writes in his book that the summit "opened a new era for the organization and its members", and continues:

This new approach, consistent with the Charter's objectives, is an important step forward in adapting to global values in the field of human rights and provides for closer alignment of principles with international documents and the practice of other regional or intergovernmental organizations.

In 2020, by Resolution[1] No. 63/47-Pol of the OIC Council of Foreign Ministers, a new version of the Cairo Declaration was adopted, renamed the "Cairo Declaration on Human Rights of the Organization of Islamic Cooperation"[2]. The text of the declaration contains references to universal international legal instruments as well as sources of Islamic international law. It provides for a broader spectrum of human rights and covers 26 of the 32 human rights and freedoms listed in the Universal Declaration of Human Rights.

The evolution of the New Cairo Declaration was warmly received by the United Nations, Western governments, and non-governmental human rights organizations (NGOs), as it demonstrated the OIC's readiness to move closer to core international human rights standards — creating opportunities for dialogue on initial disagreements and closer cooperation. Rights previously granted only to men were now extended to women as well.

The new declaration also clearly stipulates that its provisions should not be interpreted in a way that would prejudice rights and freedoms provided by the national legislation of OIC member states, states' obligations, and their sovereignty and territorial integrity.

The Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation (OIC IPHRC) is also an important institution within the OIC, whose main task is to develop cooperation and address human rights problems on a global scale[3].

As an independent body, the IPHRC plays an important role in coordinating human rights efforts, exchanging best practices, defending culturally sensitive interpretations of human rights principles, and strengthening cooperation in the sphere of human rights protection among OIC members.

The IPHRC is one of the main organs of the OIC and the key institution paying particular attention to human rights issues within the OIC system. Initially, the idea of establishing the IPHRC was proposed in 2005 as part of the Ten-Year Programme of Action, recognized in the 2008 OIC Charter. It officially began work with the adoption

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[1] Resolution No. 63/47-Pol. On Adoption of the Cairo Declaration of The Organization of Islamic Cooperation on Human Rights. (n.d.). Official website of the Organization of Islamic Cooperation. Available at: https://oicoci.org/docdown/?docID=6626&refID=3255.

[2] Adopted at the 47th session of the Council of Foreign Ministers of the OIC. (2020). Niamey, Republic of Niger, November 27–28. Available at: OIC official website or relevant URL.

[3] Establishment of the OIC Independent Permanent Human Rights Commission (IPHRC). OIC Official Website.

of the IPHRC Statute in accordance with a Resolution adopted at the 38th session of the Council of Foreign Ministers of OIC member states held in Astana (Republic of Kazakhstan) on June 28–30, 2011. The 2008 Charter recognizes the IPHRC as a principal organ of the OIC (Article 5). The Commission is mandated to promote civil, political, social, and economic rights enshrined in the organization's treaties and declarations, as well as in generally recognized human rights documents, in accordance with Islamic values (Article 15).

Some argue that the mandate of the new human rights commission is severely limited and that the commission lacks the ability to take action against serious human rights violations in some OIC member states, despite good opportunities to promote human rights in the Muslim world — and that the OIC has still not succeeded in doing so[1].

At the same time, the IPHRC supports efforts of OIC member states to improve legislation aimed at strengthening the rights of women, youth, and people in need. In this regard, it pays special attention to ensuring rights in the economic, social, political, cultural, and educational spheres, and to ending all forms of violence and discrimination.

In addition, the revised OIC Charter paved the way for promoting civil, social, and economic rights in IPHRC human rights documents. By establishing the IPHRC, the OIC took an important step in the right direction toward universal human rights.

The creation of the IPHRC marked a new approach to human rights within the OIC. The Commission was tasked with promoting human rights among OIC member states as well as the rights of Muslim minorities.

In this context, the creation of the Commission should not be viewed as a step toward establishing an alternative, specific human rights system parallel to the existing UN-based system, of which all Eurasian states are members. Moreover, in cooperation with the Office of the UN High Commissioner for Human Rights, the Commission seeks to work within the existing system, taking into account features linked to traditional Islamic values.

The establishment of the IPHRC, together with other institutions, is clear evidence of efforts aimed at institutionalizing human rights standards and norms in member states. Although the Commission currently performs mainly an advisory role, its creation indicates serious changes in the OIC human rights system. Now an institution at the OIC level can provide member states with recommendations on how to implement international norms and standards while maintaining, or at least not contradicting, attention to Islamic teachings, values, and traditions. This indicates the desire and efforts of the OIC to institutionalize a human rights system using a compliance model rather than departing from international obligations, norms, and standards in the field of human rights.

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[1] *Petersen M. J.* (2012). Islamic or Universal Human Rights? The OIC's Independent Permanent Human Rights Commission. Copenhagen: Danish Institute for International Studies (DIIS) and *Kayaoglu T.* (2013). A Rights Agenda for the Muslim World. Doha: Brookings Doha Center Publications.

Thus, the creation of the OIC IPHRC became evidence of efforts to develop an integrated strategy and guidance in the field of human rights for all member states, including not only international but also regional norms and standards. This was an important turning point in the OIC's human rights agenda, since for the first time an official institutional human rights body received authority to promote and protect human rights in 57 member states. It was also assessed as a step forward in terms of OIC engagement and legitimacy in the field of human rights at the international level. With the establishment of the IPHRC, the OIC began to engage more actively in human rights issues, joining international discussions, processes, and the human rights agenda.

Cooperation among the countries of the Eurasian space in the field of human rights within the OIC is of strategic importance. It facilitates the exchange of experience, the creation of harmonized legal norms, and also enables a more effective response to challenges and threats facing human rights in the modern world. This cooperation is of paramount importance. By promoting it, we can expand the exchange of best practices, harmonize legal standards, and strengthen our collective ability to confront the multifaceted challenges and threats that human rights face in the modern world. After all, our common goal is to ensure respect for human rights regardless of religion, nationality, or political beliefs.

Agreements and partnerships among our countries provide us with a tremendous opportunity to improve the protection of the rights and freedoms of every person in our region.

Interaction among Eurasian countries on human rights within the OIC has far-reaching implications for the protection and promotion of fundamental freedoms. By fostering a culture of mutual respect and cooperation, we can work toward harmonizing legal standards, exchanging best practices, and addressing common human rights protection problems within our respective jurisdictions.

One of the key advantages of this cooperation lies in the opportunity it provides for knowledge exchange and capacity building among countries with different levels of human rights protection. Through dialogue and engagement, countries can learn from each other's experiences, improve their legal frameworks, and strengthen accountability and remedies mechanisms in cases of human rights violations.

Moreover, collective action serves as a platform for defending universal human rights principles while recognizing cultural diversity and the specifics of the Eurasian region. By recognizing the interrelationship of rights and duties, states can navigate the complex human rights landscape by considering local contexts and traditions, thereby promoting a more sustainable and context-appropriate approach to human rights protection.

By upholding universal human rights principles, encouraging inclusivity, increasing accountability, and strengthening cooperation within the OIC, we can contribute to creating a more just, equitable, and rights-respecting society for all people in this region.

Despite differences in legal traditions and cultural features, given the role of the OIC as an important forum for aligning international positions on human rights and the active participation of Eurasian states in the international arena, cooperation in this area has the potential to improve the human rights situation in the region.

5. Achievements

1. Human rights reforms: At the OIC level, states of the Eurasian space have carried out significant human rights reforms aimed at improving the human rights situation, including judicial reform, improving detention conditions, combating corruption, and improving working conditions.
2. Development of national strategies and programs: In the countries of the region, national strategies and programs for human rights protection have been developed and implemented, including action plans on the rights of women, children, and other vulnerable groups.
3. Establishment of human rights institutions: In most countries of the region, institutions of the Human Rights Commissioner (ombudsmen) and other human rights institutions have been created, playing an important role in protecting citizens' rights and freedoms and closely interacting with human rights institutions of OIC member states.
4. Judicial reforms: Reforms of the judicial system have been carried out to increase judicial independence and ensure fair justice.

6. Problems

1. Political instability: In some countries of the region, political instability is observed, which negatively affects human rights protection.
2. Corruption: Corruption remains a serious problem hindering effective protection of citizens' rights and freedoms.
3. Restrictions on freedom of speech and assembly: In a number of countries of the region, there are restrictions on freedom of speech and assembly, which draws criticism from the international community.

7. Recommendations

The foregoing makes it possible to formulate a number of recommendations and proposals for more effective implementation of cooperation in the field of human rights among the countries of the Eurasian space at the OIC level, namely:

— srengthening regional cooperation: To improve the human rights situation in the Eurasian space, it is necessary to strengthen regional cooperation within the OIC. This includes:

— developing and implementing common human rights standards and norms

— regular exchange of experience and best practices,

— conducting joint educational and training events,

— increasing the role of civil society: Civil society plays a key role in protecting human rights. It is necessary to create conditions for its active participation in monitoring and protecting rights and freedoms, and to provide support to non-governmental organizations,

— international support: International organizations, including the OIC, should continue to support the countries of the region in the field of human rights protection. This includes technical assistance, financing programs and projects provided by the OIC to strengthen human rights institutions in Eurasian states, as well as conducting independent monitoring and evaluation,

— improving the human rights protection mechanism within the OIC, as well as within regional organizations such as the CIS, the SCO, etc.

— analyzing the impact of OIC conventions and declarations on establishing common human rights protection standards among Eurasian states,

— sudying the role of OIC institutions and specialized agencies in developing cooperation among member states in promoting human rights,

— asessing the effectiveness of monitoring mechanisms within the OIC for tracking compliance with human rights and progress,

— further expanding the system of interaction among national human rights institutions of the countries of the region, in particular with regard to protecting the rights of labor migrants,

— discussing the problem of balancing cultural sensitivity with universal human rights principles in the context of the OIC,

— studying opportunities for collective resolution of human rights violation problems and support for vulnerable groups in the region,

— developing regional cooperation and exchange of experience on improving national human rights legislation,

— developing regional cooperation among national research centers for joint research on fundamental and applied problems in the field of human rights protection,

— mutual learning of best national practices in human rights protection through exchanging specialists and organizing internships,

— oganizing events (conferences, seminars) to discuss regional human rights problems, with involvement of scholarly communities.

By addressing the challenges and prospects inherent in this interaction, Eurasian countries can create a stronger foundation for human rights protection and cooperation on the OIC platform.

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THE THEORETICAL AND PHILOSOPHICAL HERITAGE OF ABU NASR FARABI

DOI: 10.30729/2541-8823-2025-10-3-136-142

Abstract. *The article provides information regarding the theoretical and philosophical heritage of Abu Nasr Farabi, thanks to which the West was able to restore the theoretical heritage of the philosophers of Ancient Greece and Rome, which subsequently opened the way to the Renaissance of science in the Middle Ages and contributed to the development of various branches of science, from logic to political and legal doctrines. The Farabi method, which embodies a rational approach to solving practical problems, can also be used at the present time, when legal science is exposed to digital influence and transformed into a more advanced system of quantum online control over momentarily emerging legal relations on the Internet, which will allow identifying the data offender relationships. In other words, legal control over society will be global in nature.*

Keywords: *Abu Nasr Farabi, theory and practice, law and state, society, philosophical idealism, social system, management, rapprochement of cultures of the West and the East.*

We wish to begin our article with a quote from the address of our President Shavkat Miromonovich Mirziyoyev: "Most of us are familiar with the ideas, hopes and dreams of our great thinker and ancestor-scholars about an enlightened society. Suffice it to recall the work of Abu Nasr Farabi "The Virtuous City".

Sh.M. Mirziyoyev

Large-scale reforms in the sphere of state and law are being carried out within the framework of the Development Strategy of New Uzbekistan. To achieve the goals of sustainable development, a scientific legal school has been created that meets the most modern requirements. Ensuring the rule of law in society has entered a new stage.

At the same time, it has become possible to fill many gaps in the history of political and legal science in Uzbekistan. In particular, the law of Turkic peoples, which was completely ignored during the period of atheistic dominance, has begun to be widely studied even in legal universities as specialized courses and academic subjects.

It is well known that the great name of encyclopedist Abu Nasr Farabi holds a special place in the formation of the rationalist tradition in Western European science. This requires of us, descendants and compatriots of the thinker, to research and promote his political and legal ideas and views.

This requires of us a careful study of the positive legal experience of our history and its application in practice in accordance with the requirements of our time. The comprehensive teaching of Abu Nasr Farabi on state and law occupies a special place in this experience.

Abu Nasr Farabi is one of the great figures in the history of state governance and legal views of the peoples of Central Asia. The role of the Thinker in the history of spirituality and culture of the East is so great that it can only be compared with the influence of Aristotle on European culture. This is why he was called "Muallim us-sani" — the Second Teacher, if the First is considered to be Aristotle[1].

As researchers of Farabi's work note: "In the original socio-political teaching of the "Aristotle of the East" — Farabi — there is a vivid manifestation of continuity with the entire complex of Eastern and Western ideological-philosophical sources, and the socio-political thought of the Near and Middle East, including Central Asia of that period"[2].

In his Message to participants of the International Forum of Culture "Central Asia — at the Crossroads of World Civilizations", held in September 2021 in Tashkent, President of Uzbekistan Sh.M. Mirziyoyev particularly noted: "The appearance three thousand years ago in the region of the first cities and states laid the foundation for active development of civilizational processes and philosophical views, science and knowledge, especially in the fields of medicine, astronomy, geography, mathematics, geodesy and architecture, and the formation of cultural and spiritual values. Speaking of this, we recall dozens of unique ancient cities, such as Samarkand and Bukhara, Otrar and Khujand, Merv and Osh. The life and activities of great personalities of the past are directly connected with them, among them are the scholars al-Khwarizmi, Ahmad Fergani, Abu Rayhan Biruni, Abu Ali ibn Sina, Mahmud Zamakhshari, Abu Nasr Farabi, Mirzo Ulugbek"[3].

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[1] *Zimmermann F. W.* (1981). Al-Farabi's Commentary and Short Treatise on Aristotle's De Interpretation. Vol. 3 // Oxford University Press. Pp. XXI, XXII, XXIII, CXXXIX, XLIV.

[2] *Nematov B. M.* (1997). Farabi and continuity in the development of doctrines of socio-political progress: abstract. dis. ... cand. philosopher. Sci. // IFL AS RUz. Pp. 4.

[3] *Mirziyoyev Sh.* (2021). President of Uzbekistan Sh. Mirziyoyev welcomed the participants of the International Cultural Forum "Central Asia — at the crossroads of world civilizations" // https://cis.minsk.by/news/20407/.... 15.09.2021.

The full name of Abu Nasr Farabi is Abu Nasr Muhammad ibn Muhammad ibn Uzlug Tarkhan, and "Farabi" is his pseudonym derived from his birthplace — the city of Farab (Otrar).

The theoretical foundations of Abu Nasr Farabi's views were very rich. In our view, there are several theoretical foundations of Abu Nasr Farabi's views on society, state and law, and political-legal doctrine.

First, one of the foundations of Farabi's teaching is the state-legal concept of Plato and Aristotle, which exerted a strong influence on the political-legal views of Abu Nasr Farabi. Abu Nasr Farabi adopted and creatively modified their important and fundamental ideas (especially those of Plato) and developed his own concept of society and state.

Second, the popular movements and their democratic ideas, which had a positive influence on the political and legal views of Abu Nasr Farabi. Therefore, not only the ideas of Abu Nasr Farabi himself, but also the age-old dreams of the peoples were expressed in his teaching about the virtuous state.

Third, religious ideology and political concepts that influenced the political-legal teaching and worldview of Abu Nasr Farabi. The basis of the methodology of Farabi's teaching on society and state was philosophical idealism.

Fourth, official state-legal concepts that formed the basis for creating the teaching about cities and societies, theoretical understanding of the dominant political system and its critical analysis.

These foundations had decisive significance in shaping the worldview of the great thinker Abu Nasr Farabi. In general, the views of Abu Nasr Farabi, including his teaching on state and its governance, are a natural result of historical development.

Thus, Abu Nasr Farabi sets two main political objectives in the science of politics: first — to build a virtuous state with an ideal ruler; second — to create a social system that will work for all peoples and for all times. This brings him close to Plato and gives his state-political ideas a philosophical tone.

Abu Nasr Farabi divides jurisprudence into two parts: first, jurisprudence that recognizes and supports freedom of legal creativity on all questions; and, second, dogmatic theology that adheres to the views and actions approved by the founder of Islam and accepts them as the basis of law-making. According to him, both of these parts together constitute Islamic law.

In Arab sources of the tenth century, we find different classifications of cities. One of the classifications is based on a political-legal evaluation, according to which cities are divided into four groups: the first — 16 main cities (amsars), standing alongside several major cities; the second — 77 main fortified cities (qasabas) in provinces; the third — regional cities (Madain, Mudin); the fourth — cities (nuwahi), such as Nihavend and Jizirat ibn Umar. The fifth group includes villages (rural settlements)[1].

[1] *Metz A.* (1973). Muslim Renaissance. Ed. 2nd // Nauka. Pp. 328.

The place of Farabi's philosophical-legal heritage is very significant in the history of further development of social sciences in the East: "Great is the role of Farabi's teaching in shaping the socio-political views of the fourteenth-century thinker Ibn Khaldun, the military commander and statesman Amir Timur, and the major fifteenth-century philosopher Davani"[1].

Speaking of Farabi's influence on world philosophy, one should mention the philosopher Maimonides, whose work "Guide for the Perplexed"[2] contains ideas of Farabi. Through Maimonides, in the history of philosophy, one can trace a thread leading from Farabi to Spinoza, Duns Scotus, and Roger Bacon. The English philosopher R. Bacon, who knew Arabic, studied the works of Farabi in the original. During the Renaissance, Europe again found the "treasures" of classical ancient Greek philosophy, and the merit of the "Second Teacher" was not insignificant in this[3].

The merit of Eastern scholars in the history of political-legal thought consists in studying the ideas of state-legal development of Eastern countries, including the Republic of Uzbekistan. Historical facts are proof of the durability of certain state-legal concepts. Therefore, when declaring the goal of building a legal state in the Republic of Uzbekistan, it is necessary to consider what features of state-legal development require consideration and special attention, so that the legal state becomes a fact of real life and corresponds to the idea of national sovereignty.

The state-legal ideas of Farabi received their further development in the era of the "Second Renaissance" — in the ideas and works of Amir Timur, Mirzo Ulugbek, Husayn Baykara, Zahir al-Din Muhammad Babur and others.

The state-legal views of Amir Timur, set forth in the "Ordinance of Timur" — a unique document of the era, a kind of medieval constitution — is a historical work that details Amir Timur's views on the structure and governance of the state.

The development of the Jadid movement of the late nineteenth and early twentieth centuries is also a continuation of the ideas of great Eastern thinkers, including Farabi. The main content of the national ideas of Jadidism — the unification of all indigenous peoples of Turkestan — is presented in the works of Behbudi, Fitrat, Faizullah Khoja, Chulpan and other progressive patriots.

Mahmud Khoja Behbudi, founder and one of the theorists of Jadidism in Turkestan, revealed the main principle of national statehood as follows: "History knows that rights are not granted, but are won. Any nation, any people can protect

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[1] *Nematov B. M.* (1997). Farabi and continuity in the development of doctrines of socio-political progress: abstract. dis. ... cand. philosopher. Sci. // IFL AS RUz. Pp. 4.

[2] *Rabbi Moshe ben Maimon (Rambam)* (2000). The Guide for the Perplexed // Gesharim, Bridges of Culture. Pp. 23.

[3] *Usmanova U. S.* (2018). The contribution of the Central Asian scientist Abu Nasr al Farabi to the development of world philosophical thought // Young scientist. No. 3 (189). Pp. 244–245.

their rights, religion and politics only through the unification of efforts and their own aspirations. We Muslims, in particular, Muslims of Turkestan, do not want anyone to threaten our religion and nation, and in turn, declare that we have no goal of threatening anyone"[1].

At the Fifth Jubilee Consultative Meeting of the Heads of State of Central Asia, held on September 14, 2023, in the city of Dushanbe, President of Uzbekistan Sh.M. Mirziyoyev put forward a number of proposals, including "to establish regional research and educational grants and scholarships for talented youth of our countries in honor of such great Central Asian thinkers, scholars and philosophers as al-Khwarizmi, Farabi, Jami, Makhtumkuli, and Chingiz Aitmatov"[2].

Thus, in Uzbekistan, the development of sciences of state and law proceeds in the context of careful study of the historico-cultural heritage of the region, the works of great thinkers of the past, taking into account the peculiarities of the modern stage

It is necessary to emphasize the following:

— the diverse works of Abu Nasr Farabi made an invaluable contribution to the development of human civilization and social thought, including questions of state and law;

— the worldview of Farabi is recognized by contemporary scholars as the connecting link between the ancient world and the medieval Islamic world, on the one hand, and between the Eastern and Western European Renaissance — on the other;

— many Eastern scholar-thinkers (al-Biruni, Ibn Sina, Ibn Rushd, Ibn Bajja, Ibn Tufayl and many others) considered themselves students of Farabi and exerted enormous influence on Renaissance culture;

— Farabi is one of the key figures in the history of intellectual thought that influenced the development of world civilization, including questions of state and law development;

— the theoretical-philosophical legacy of al-Farabi influenced many thinkers and political figures of subsequent epochs, such as Amir Timur, Mirzo Ulugbek, Zahir al-Din Muhammad Babur, Behbudi, Fitrat and many others;

— Farabi's legacy contributed to the establishment of dialogue and convergence of Eastern and Western cultures. His works remain relevant for more than a thousand years. They are necessary for us today in building a modern democratic society.

At the same time, a just state and virtuous society were the lifetime dream of the great thinker Farabi, his contemporaries, and dozens of generations that came after him. Each generation conceived this in its own way and contributed to the approach

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[1] *Behbudi M.* (1917). Word of truth // Great Turkestan. June 12.

[2] *Mirziyoyev Sh.* (2023). Speech by the President of the Republic of Uzbekistan Shavkat Mirziyoyev at the Consultative Meeting of the Heads of State of Central Asia // https://president.uz/ru/lists/view/6658. 14.09.2023.

of such times. To realize this dream, to build such a country, many sacrifices were made, but it remained a dream among other countries subject to conquerors and colonizers.

Only in our time has the creation of a just state and virtuous society, with the honor of national independence, transformed from a dream into a state program and practical action of the people. We are witnesses to the realization of this dream in each address and practical activity of the president of our country. But no great goal is achieved easily. Along this path, it is necessary to work diligently and with enthusiasm on the basis of unity of all people and generations, making effective use of the achievements reached in the past. And the sphere of new information technologies gives our people the opportunity to achieve new accomplishments. For example, in the modern era, the period of transition from ordinary computing devices to quantum computers has begun, and scientists from the USA, Japan, the European Union, Germany, France, Great Britain, Canada, China, and South Korea are actively working in this field, inventing quantum computers day and night. This device will become a source of memory with significantly improved memory capacity compared to current computers, will provide unprecedented control over society, and is expected to render great assistance in the development of virtue among people. In other words, quantum surveillance of society ensures the exposure of any crime, no matter how secretly it may be committed.

Our wise people say: "Be happy, even if you do not have a throne". The main goal of Farabi was to show people the path to happiness. He saw this path in the unity of people on the path of good intentions. In his view, "a city that unites people who help each other to achieve true happiness is a virtuous city, a community of people united for the achievement of happiness is a virtuous community. A nation that helps each other achieve happiness is a virtuous nation. In such an order, if all peoples help each other in achieving happiness, the entire earth will be virtuous"[1]. In other words, the thinker emphasized the development of planetary virtuous consciousness on Earth, and this consciousness will certainly save humanity from nuclear hell.

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[1] *Farabi A.N.* (1970). Philosophical treatises // Nauka. Pp. 137.

Mirziyoyev Sh. (2023). Speech by the President of the Republic of Uzbekistan Shavkat Mirziyoyev at the Consultative Meeting of the Heads of State of Central Asia // https://president.uz/ru/lists/view/6658. 14.09.2023. (In Russian)

Nematov B. M. (1997). Farabi and continuity in the development of doctrines of socio-political progress: abstract. dis. ... cand. philosopher. Sci. // IFL AS RUz. Pp. 22. (In Russian)

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CONSENSUS, CONSCIENCE, AND JUSTICE: NAVIGATING ETHICAL DILEMMAS OF ADR IN SOUTH AFRICA AND THE BRICS CONTEXT

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Abstract. *Alternative Dispute Resolution (ADR) has gained prominence globally as a mechanism for resolving conflicts outside traditional court systems. In South Africa, ADR is not only a pragmatic response to judicial inefficiencies but also a constitutional tool for promoting access to justice, equality, and participatory democracy. However, the ethical dimensions of ADR, particularly in contexts marked by socio-economic disparities and cultural pluralism, pose significant challenges. This paper explores these ethical dilemmas within South Africa's ADR framework and compares them with similar issues in other BRICS nations. It argues that South Africa's unique blend of transformative constitutionalism and the ethical philosophy of Ubuntu offers a compelling model for ethically grounded ADR. The paper concludes by proposing strategies for strengthening ethical standards and fostering BRICS-wide cooperation in dispute resolution.*

Keywords: *Alternative Dispute Resolution, ADR, South Africa, ethical dilemmas, transformative constitutionalism, Ubuntu, access to justice, BRICS.*

1. Introduction

Alternative Dispute Resolution (ADR) has emerged as a vital mechanism for resolving disputes both within national jurisdictions and across international boundaries. Its appeal lies in its efficiency, flexibility, and capacity to alleviate the burden on formal judicial systems an especially pressing concern in emerging economies[1]. In South Africa, ADR is embraced not only as a practical solution

[1] *Bingham L.* (2020). The global rise of alternative dispute resolution. Cambridge University Press.

to litigation delays but also as a means of advancing constitutional commitments to access to justice, equality, and participatory democracy[1].

Yet, ADR is not without its ethical complexities. Critical questions arise: Can mediator neutrality be maintained in environments characterized by stark socio-economic inequalities? Does the principle of confidentiality serve to protect vulnerable parties, or does it risk concealing unethical conduct? How can culturally embedded notions of fairness, such as the Southern African philosophy of Ubuntu — be reconciled with global norms of ethical practice?

These questions are not merely theoretical. They have tangible implications for justice outcomes and public trust in dispute resolution systems. This paper investigates these ethical challenges within South Africa's ADR landscape and situates them within the broader context of the BRICS nations, Brazil, Russia, India, China, and South Africa. By comparing South Africa's experiences with those of its BRICS counterparts, the paper identifies both shared ethical dilemmas and distinctive approaches to resolving them.

The central argument is that South Africa's transformative constitutionalism, when coupled with the ethical imperatives of Ubuntu, provides a robust framework for crafting ADR systems that balance efficiency with fairness and justice. The article unfolds in a structured progression. Section 2 examines the theoretical and constitutional foundations of alternative dispute resolution (ADR) in South Africa, highlighting how its evolution reflects broader principles of justice, equality, and transformation. Section 3 turns to the ethical dilemmas that arise within ADR practice, analysing tensions between neutrality, fairness, and accountability. Building on this, Section 4 provides comparative insights from other BRICS jurisdictions, drawing lessons from their institutional and cultural approaches to ethical regulation. Section 5 advances proposals for establishing ethically grounded ADR frameworks that integrate both international standards and indigenous values such as Ubuntu. Finally, Section 6 concludes with reflections on how ADR can strike a principled balance between consensus and conscience, ensuring that the pursuit of harmony does not come at the expense of justice.

2. Theoretical and constitutional foundations of ADR in South

2.1. ADR in Global and African Legal Traditions

Alternative Dispute Resolution (ADR) encompasses a range of mechanisms, including mediation, arbitration, conciliation, and negotiation, that serve either as alternatives to or complements for formal litigation[2]. Globally, ADR is often

[1] *De Vos P.* (2018). Access to justice and ADR in South Africa // Constitutional Court Review, 6 (1). Pp. 34–57.

[2] *Menkel-Meadow C.* (2019). Mediation: Theory, policy, and practice. Oxford University Press.

promoted for its efficiency, cost-effectiveness, and ability to reduce the caseload of overburdened courts. However, in African contexts, ADR is deeply rooted in customary practices that prioritize communal harmony, relational restoration, and consensus-building over adversarial confrontation.

In South Africa, these indigenous traditions of dispute resolution, characterised by community involvement and reconciliation, intersect with formal legal systems. This convergence presents a unique opportunity to integrate culturally grounded ethical principles into modern ADR frameworks. As Chitere and Irungu[1] (2017) observe, African dispute resolution methods emphasize the restoration of social relationships and the maintenance of community cohesion, values that are increasingly recognized as essential to sustainable justice.

2.2. South Africa's Transformative Constitutionalism

South Africa's post-apartheid constitutional order is founded on the principle of transformative constitutionalism, a legal philosophy that seeks to redress historical injustices and promote substantive equality, social justice, and democratic participation[2]. Within this transformative framework, ADR is not merely a procedural convenience; it is a constitutional imperative that supports the realization of fundamental rights.

Legislative instruments such as the Promotion of Access to Information Act (PAIA)[3] and the Promotion of Administrative Justice Act (PAJA)[4] reinforce the constitutional commitment to transparency, accountability, and inclusivity in dispute resolution. ADR mechanisms, when aligned with these values, become tools for empowering marginalized communities and enhancing access to justice. Thus, ADR in South Africa operates at the intersection of legal pragmatism and moral responsibility, requiring practitioners to be attuned not only to procedural fairness but also to the broader ethical implications of their work.

2.3. Ubuntu as an Ethical Lens

The Southern African philosophy of Ubuntu offers a profound ethical lens through which ADR can be understood and practiced. Rooted in notions of human dignity, relationality, and communal solidarity, Ubuntu emphasizes the interconnectedness of individuals within a community[5]. In the context of ADR,

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[1] *Chitere P., Irungu P.* (2017). African dispute resolution traditions: Mediation and reconciliation // African Journal of Legal Studies, 12(1). Pp. 78–102.

[2] *Klare K.* (1998). Legal culture and transformative constitutionalism // South African Journal on Human Rights, 14(1). Pp. 146–188.

[3] The Promotion of Access to Information Act 2 of 2000 (PAIA).

[4] The Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[5] *Letseka M.* (2012). Ubuntu and moral responsibility in Africa // In: *Murove M. W.* (ed.). African ethics: An anthology of comparative and applied ethics. University of KwaZulu-Natal Press. Pp. 25–40.

Ubuntu encourages mediators and arbitrators to prioritize reconciliation, mutual respect, and restorative justice over adversarial victory.

This ethical orientation challenges dominant Western models of dispute resolution, which often emphasize individual rights, procedural neutrality, and adversarial logic. Instead, Ubuntu calls for a more holistic approach, one that recognizes the moral obligations of disputants and practitioners to foster healing, understanding, and social harmony. As such, Ubuntu not only enriches the ethical foundations of ADR in South Africa but also offers a compelling alternative to global norms that may overlook the cultural and relational dimensions of justice.

3. Core ethical challenges of ADR in South Africa

Despite its promise, ADR in South Africa is fraught with ethical complexities that must be addressed to ensure that dispute resolution processes are not only efficient but also just and equitable. This section explores five key ethical challenges that undermine the integrity and inclusiveness of ADR mechanisms.

3.1. Neutrality and Power Asymmetries

Neutrality is widely regarded as a foundational principle of ADR. Mediators and arbitrators are expected to remain impartial, facilitating dialogue without favouring any party. However, in socio-economically stratified contexts such as South Africa, true neutrality is difficult to achieve. Parties with greater financial resources, legal knowledge, or institutional power may exert disproportionate influence over the process, subtly coercing less empowered participants into accepting unfavourable settlements[1].

This imbalance raises critical ethical concerns. ADR practitioners must be trained to recognize and mitigate power asymmetries, ensuring that all parties can participate meaningfully and without intimidation. Failure to do so risks transforming ADR from a tool of justice into a mechanism of quiet coercion.

3.2. Consent and Voluntariness

The legitimacy of ADR hinges on the principle of voluntary participation. Parties must enter the process freely, with informed consent and a genuine willingness to resolve their disputes collaboratively. However, economic hardship, limited legal literacy, and lack of access to legal representation can compromise this voluntariness. Individuals may feel pressured to accept settlements they do not fully understand or agree with, particularly when ADR is presented as the only viable alternative to costly litigation[2].

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[1] *Boulle L.* (2018). Mediation: Skills and Techniques. Durban: LexisNexis.

[2] *Fitzpatrick T.* (2020). Voluntariness in mediation: Ethical challenges // Mediation Quarterly, 37 (3). Pp. 56–72.

Ethical ADR practice requires safeguards to ensure that consent is not only formal but substantive. This includes providing accessible information, legal support, and procedural clarity to all participants, especially those from vulnerable or marginalized communities.

3.3. Confidentiality vs Transparency

Confidentiality is often celebrated as a virtue of ADR, fostering open communication and protecting the privacy of disputants. However, it can also serve as a veil that conceals unethical conduct, systemic discrimination, or procedural irregularities. In South Africa, where historical injustices and institutional mistrust remain salient, the tension between confidentiality and transparency is particularly acute.

ADR practitioners must navigate this ethical dilemma with care. While confidentiality can promote trust and candour, it must not be used to shield misconduct or prevent scrutiny. Mechanisms such as ethical audits, anonymized reporting, and oversight by independent bodies can help balance privacy with accountability.

3.4. Professional Accountability of ADR Practitioners

South Africa currently lacks a unified ethical code or regulatory framework governing the conduct of ADR practitioners. This absence creates risks of bias, incompetence, and cultural insensitivity. Without clear standards and enforcement mechanisms, practitioners may operate with varying degrees of professionalism, undermining the credibility and fairness of ADR processes[1].

To address this gap, South Africa must develop comprehensive ethical guidelines and establish professional bodies responsible for certification, training, and disciplinary oversight. These structures should incorporate both international best practices and culturally relevant ethical principles, such as those derived from Ubuntu.

3.5. Cultural Pluralism and Ethical Universality

South Africa's rich cultural diversity presents both opportunities and challenges for ethical ADR. While multiculturalism allows for the incorporation of varied dispute resolution traditions, it also complicates the establishment of universally accepted ethical norms. Practices that are considered fair and respectful in one cultural context may be perceived as biased or inappropriate in another[2].

Integrating Ubuntu-based ethics with global standards requires careful negotiation and sensitivity. ADR frameworks must be flexible enough to accommodate cultural

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[1] *Keet A., Loots A.* (2018). ADR ethics and professional accountability in South Africa // Potchefstroom Electronic Law Journal, 21(4). Pp. 1–27.

[2] *Makofane W.* (2021). Cultural pluralism and ADR ethics in South Africa // Journal of African Legal Studies, 18(1). Pp. 87–105.

pluralism while maintaining core ethical commitments to fairness, dignity, and justice. This balancing act is essential for building inclusive and contextually legitimate dispute resolution systems.

4. ADR in the BRICS context: shared ethical dilemmas

The ethical challenges facing ADR in South Africa are not unique. Across the BRICS nations, Brazil, Russia, India, China, and South Africa, similar dilemmas emerge, shaped by diverse legal traditions, socio-political contexts, and cultural values. This section offers a comparative overview of ADR practices in these countries, highlighting common ethical concerns and distinctive approaches.

4.1. India: Community Mediation and Representation

India has institutionalized community-based mediation through mechanisms such as Lok Adalats (People's Courts), which aim to resolve disputes outside the formal judicial system. These forums are particularly effective in handling civil, matrimonial, and minor criminal cases, offering swift and cost-effective resolutions[1].

However, ethical concerns persist. Ensuring voluntary participation and adequate representation for marginalized groups remains a challenge. In rural and under-resourced areas, parties may lack access to legal advice or feel pressured to accept decisions made by community elders or local authorities. The risk of informal coercion and unequal bargaining power underscores the need for safeguards that protect the rights and dignity of all participants.

4.2. Brazil: Efficiency vs Equity in Labour and Commercial ADR

Brazil has made significant strides in expanding ADR, particularly in the domains of labour and commercial disputes. The country's legal reforms have encouraged mediation and arbitration as alternatives to litigation, contributing to improved efficiency and reduced court backlogs[2].

Nonetheless, ethical tensions arise in cases involving socio-economic disparities. In labour disputes, for example, employers may wield disproportionate influence over employees, leading to settlements that favour corporate interests over worker rights. The challenge lies in balancing procedural efficiency with substantive fairness, ensuring that ADR does not become a tool for reinforcing existing inequalities.

4.3. China: Harmony and State Influence

China's ADR system is deeply influenced by Confucian principles of harmony and collectivism, which prioritize social stability and consensus over individual

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[1] *Bhat P.* (2017). Community mediation and Lok Adalats in India: Ethical considerations // Journal of Indian Law, 9(2). Pp. 45–62.

[2] *Ferraz O.* (2019). Labour disputes and ADR in Brazil // Brazilian Journal of Labour Law, 14(2). Pp. 21–40.

rights. Mediation is widely practiced, often facilitated by government-affiliated bodies such as People's Mediation Committees[1].

While this approach promotes community cohesion, it raises ethical questions about state influence, voluntariness, and the subordination of individual rights. In some cases, disputants may feel compelled to conform to collective expectations or government directives, undermining the autonomy and fairness of the process. The tension between societal harmony and personal justice remains a central ethical dilemma in China's ADR landscape.

4.4. Russia: Reform and Institutional Trust

Russia has undertaken reforms to modernize its arbitration system, aiming to enhance transparency and attract foreign investment. However, persistent issues such as corruption, lack of institutional trust, and inconsistent enforcement continue to undermine the credibility of ADR mechanisms[2].

Ethical challenges in Russia mirror those in South Africa, including concerns about neutrality, transparency, and professional accountability. Without robust oversight and ethical standards, ADR risks becoming a venue for elite manipulation rather than equitable dispute resolution.

4.5. Comparative Insights: Shared Challenges and South Africa's Contribution

Across the BRICS nations, several common ethical dilemmas emerge:

— Power asymmetry between disputants
— Voluntariness compromised by socio-economic pressures
— Confidentiality that may obscure unethical conduct
— Lack of professional accountability and oversight

South Africa's experience offers valuable lessons. Its transformative constitutionalism provides a legal foundation for inclusive and rights-based ADR, while the ethical philosophy of Ubuntu introduces a culturally resonant framework for reconciliation and restorative justice. These elements position South Africa as a potential leader in shaping BRICS-wide ethical standards for ADR.

Collaborative efforts among BRICS countries, such as joint research, practitioner exchanges, and the development of shared ethical guidelines, could foster a more coherent and principled approach to dispute resolution across diverse legal and cultural contexts.

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[1] *Wang H.* (2020). Ethics and mediation in contemporary China // Asian Journal of Legal Studies, 11 (2). Pp. 33–49.

[2] *Ivanov S.* (2018). Arbitration reforms and ethical dilemmas in Russia // Russian Law Journal, 6 (4). Pp. 12–28.

5. Towards an ethically grounded ADR framework

An ethically grounded ADR framework is indispensable for ensuring legitimacy, fairness, and public confidence in dispute resolution systems. Ethics function not merely as procedural guidelines but as normative anchors that sustain the moral authority of ADR practitioners and institutions[1]. In the South African context, an ethical ADR system must balance global standards with local moral frameworks, particularly the values embedded in Ubuntu, the principle that one's humanity is affirmed through others[2]. The following subsections outline key pathways towards this vision.

5.1. Strengthening Ethical Codes and Professional Oversight

South Africa should establish a formal ADR ethical charter integrating both international best practices and indigenous ethical principles. Such a charter should be modelled on global frameworks, such as the UNCITRAL Model Law on International Commercial Conciliation (2002) and the International Mediation Institute (IMI) Code of Conduct, while incorporating the restorative and communal values of Ubuntu. As Winks[3] notes, harmonising Western professional ethics with African humanism fosters cultural legitimacy and moral coherence in ADR practice.

Mandatory ethics training for mediators and arbitrators, coupled with professional accreditation and certification, can promote uniform standards of conduct and competence. Oversight bodies, possibly under the Department of Justice or a national ADR Council, should be empowered to investigate complaints, issue sanctions, and uphold accountability. Such professional oversight mitigates risks of bias, misconduct, and procedural injustice[4]. Ethical regulation, thus, not only upholds fairness but enhances public trust in ADR institutions as viable alternatives to formal adjudication.

5.2. Balancing Confidentiality and Transparency

Confidentiality is a cornerstone of ADR; it ensures candour, protects sensitive information, and preserves relationships[5]. However, unchecked confidentiality can obscure unethical practices or procedural abuses. To maintain balance, ethical

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[1] *Boulle L.* (2018). Mediation: Skills and Techniques. Durban: LexisNexis.

[2] *Mokgoro Y. (*1998). Ubuntu and the Law in South Africa // Potchefstroom Electronic Law Journal, 1 (1). Pp. 16–32.

[3] *Winks B.* (2019). Cultural Legitimacy and the Ethics of ADR in South Africa // South African Law Journal, 136 (2). Pp. 209–225.

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oversight structures should mandate periodic ethical audits and transparent reporting mechanisms that do not compromise party privacy. For example, anonymised summaries of disciplinary outcomes can enhance public confidence and demonstrate institutional integrity.

Furthermore, ethical frameworks should delineate exceptions to confidentiality in cases involving fraud, coercion, or violations of human rights. As noted by Stulberg[1], transparency mechanisms in mediation enhance accountability without eroding confidentiality's protective function. South Africa can adapt these principles within its ADR landscape, ensuring that ethical audits and oversight reports preserve both trust and justice.

5.3. Addressing Power Imbalances

Ethical ADR practice must actively redress power disparities that threaten voluntariness and fairness, particularly where parties differ in socio-economic or informational capacity. Access to legal aid, state-supported mediation assistance, and procedural safeguards, such as simplified language and independent advisors, ensure informed consent and equitable participation[2]. The Constitution of the Republic of South[3], underscores equality and dignity as foundational values, which must be operationalised within ADR ethics.

The Ubuntu-based notion of relational justice calls for mediators to adopt a facilitative, empathetic approach that recognises and uplifts the vulnerable[4]. Institutionalising such ethical sensitivity transforms ADR from a neutral procedural device into a participatory justice mechanism that embodies constitutional aspirations of transformation and inclusion.

5.4. BRICS Cooperation in Ethical Standards

As South Africa deepens its collaboration within the BRICS bloc, ethical convergence in ADR can become a vehicle for global South solidarity and legal innovation. BRICS nations share common developmental and justice-oriented concerns, positioning them to co-develop ethical standards that reflect plural legal cultures while promoting international credibility[5].

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[1] *Stulberg J.* (2021). Transparency and Accountability in Mediation Ethics // Ohio State Journal on Dispute Resolution, 36 (2). Pp. 319–336.

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[3] Republic of South Africa. (1996). The Constitution of the Republic of South Africa, Journal of Constitutional Development // Government Gazette, 378 (17612). Pp. 1–147.

[4] *Bennett T.* (2011). Ubuntu: An African Equity // (SSRN working paper / publication record). South African Journal of Philosophy, 30(3), Pp. 33–45.

[5] *Chandrasekhar S.* (2022). Ethics and Development Cooperation among BRICS States: A Comparative Overview // Journal of Global Legal Studies, 14 (2). Pp. 95–112.

South Africa's constitutional and Ubuntu-driven model of ethical justice offers valuable insights for BRICS partners, particularly in humanising dispute resolution and aligning ethics with social justice. Joint initiatives, such as the establishment of a BRICS ADR Ethics Council or periodic forums, could facilitate knowledge exchange and ethical harmonisation. As Mlambo[1] observes, such South–South cooperation may pioneer a global ethical standard grounded in responsibility, respect, and relational justice.

6. Towards an Ethically Grounded ADR Framework

An ethically grounded ADR framework is indispensable for ensuring legitimacy, fairness, and public confidence in dispute resolution systems. Ethics function not merely as procedural guidelines but as normative anchors that sustain the moral authority of ADR practitioners and institutions[2]. In the South African context, an ethical ADR system must balance global standards with local moral frameworks, particularly the values embedded in Ubuntu — the principle that one's humanity is affirmed through others[3]. The following subsections outline key pathways towards this vision.

6.1. Strengthening Ethical Codes and Professional Oversight

South Africa should establish a formal ADR ethical charter integrating both international best practices and indigenous ethical principles. Such a charter should be modelled on global frameworks, such as the UNCITRAL Model Law on International Commercial Conciliation (2002) and the International Mediation Institute (IMI) Code of Conduct, while incorporating the restorative and communal values of Ubuntu. As Winks[4] notes, harmonising Western professional ethics with African humanism fosters cultural legitimacy and moral coherence in ADR practice.

Mandatory ethics training for mediators and arbitrators, coupled with professional accreditation and certification, can promote uniform standards of conduct and competence. Oversight bodies, possibly under the Department of Justice or a national ADR Council, should be empowered to investigate complaints, issue sanctions, and uphold accountability. Such professional oversight mitigates risks of bias, misconduct,

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[1] *Mlambo T.* (2023). Reimagining ADR in the Global South: Towards a Shared Ethical Framework // Revista Brasileira de Alternative Dispute Resolution, 5 (2). Pp. 72–81.

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and procedural injustice[1]. Ethical regulation, thus, not only upholds fairness but enhances public trust in ADR institutions as viable alternatives to formal adjudication.

6.2. Balancing Confidentiality and Transparency

Confidentiality is a cornerstone of ADR; it ensures candour, protects sensitive information, and preserves relationships[2]. However, unchecked confidentiality can obscure unethical practices or procedural abuses. To maintain balance, ethical oversight structures should mandate periodic ethical audits and transparent reporting mechanisms that do not compromise party privacy. For example, anonymised summaries of disciplinary outcomes can enhance public confidence and demonstrate institutional integrity.

Furthermore, ethical frameworks should delineate exceptions to confidentiality in cases involving fraud, coercion, or violations of human rights. As noted by Stulberg,[3] transparency mechanisms in mediation enhance accountability without eroding confidentiality's protective function. South Africa can adapt these principles within its ADR landscape, ensuring that ethical audits and oversight reports preserve both trust and justice.

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South Africa's constitutional and Ubuntu-driven model of ethical justice offers valuable insights for BRICS partners, particularly in humanising dispute resolution and aligning ethics with social justice. Joint initiatives, such as the establishment of a BRICS ADR Ethics Council or periodic forums, could facilitate knowledge exchange and ethical harmonisation. As Mlambo, observes, such South–South cooperation may pioneer a global ethical standard grounded in responsibility, respect, and relational justice.

Visual Comparative Table Summarizing Ethical Challenges in ADR Across some BRICS Countries:

Country	Power Asymmetry	Voluntariness	Confidentiality vs Transparency	Professional Accountability	Cultural Integration
South Africa	High (socio-economic inequality)	Compromised by economic pressure	Risk of concealing misconduct	Lacks unified ethical code	Ubuntu-based ethics
India	Moderate (rural disparities)	Threatened by lack of legal literacy	Limited oversight	Variable standards	Community traditions
Brazil	High (corporate vs workers)	Pressured settlements	Corporate confidentiality concerns	Developing oversight	Legal pluralism
China	Moderate (state influence)	Influenced by collectivist norms	State-controlled mediation	Government-led ethics	Confucian harmony
Russia	High (elite manipulation)	Undermined by institutional distrust	Opaque arbitration practices	Weak enforcement	Post-Soviet legal culture

Source: Dr W.M. Mokofe

7. Conclusion and recommendation

Alternative Dispute Resolution (ADR) in South Africa represents both a practical innovation and a profound ethical undertaking. While ADR offers significant advantages, such as efficiency, accessibility, and the potential to alleviate judicial

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backlogs, it also introduces complex ethical dilemmas that cannot be ignored. Issues of neutrality, voluntariness, confidentiality, professional accountability, and cultural pluralism underscore the need for a principled approach to dispute resolution.

South Africa's transformative constitutionalism provides a robust legal foundation for embedding ethical considerations into ADR processes. Coupled with the relational and restorative ethos of Ubuntu, this framework offers a distinctive model for balancing consensus and conscience, ensuring that ADR outcomes are not only expedient but also morally and socially just.

The comparative analysis of BRICS nations reveals shared challenges, including power asymmetries, compromised voluntariness, and insufficient oversight. Yet, it also highlights opportunities for collaboration. By leveraging South Africa's constitutional and cultural insights, BRICS countries can work toward developing harmonized ethical standards that respect diversity while promoting fairness and accountability.

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