Published on e-First 2 September 2026

CONFIDENTIALITY AS CORPORATE SHIELD

How Asian Mediation Law Buries Corporate Harm

In 2019, a palm oil company in Indonesia settled groundwater contamination claims with 11 villages through confidential mediation. They disclosed nothing to regulators. The 12th village came later and negotiated blind. It is the intended result of mediation confidentiality: a rule meant for business disputes applied unchanged to cases where entire communities rely on information the law keeps hidden. This article argues that broad confidentiality rules let corporations manufacture systematic immunity in environmental, labour, and land-displacement disputes. The article suggests a new confidentiality framework that separates purely bilateral business disputes from those that impact public interests, requiring transparency for the latter and keeping full confidentiality only for the former.

Bashirul Islam **BIHANGO**
LLB (North South University);
Teaching Assistant, North South University, Bangladesh.

Md Iftekharul Islam **BHUIYAN**
LLB (North South University);
Teaching Assistant, North South University, Bangladesh.

I. Introduction

1 A factory in Jiangsu Province dumped chemical waste into an irrigation canal for four years before a group of rice farmers filed a complaint in 2018.[1] The company's lawyers suggested mediation. The farmers agreed because litigation would take five years. The legal aid organisation assisting them only had two staff members and 19 active cases. Also, the local court had a friendly relationship with the company's parent conglomerate. A settlement was reached, but the terms were kept secret. The farmers received compensation, but they could not assess its fairness because they did not know what similarly contaminated communities elsewhere accepted. The company was released from liability. The regulator received nothing. Three years later, communities

1 "Court in China Issues Record Pollution Fine", *BBC News* (31 December 2014) <https://www.bbc.com/news/world-asia-china-30640385> (accessed 14 June 2026).

downstream from the same canal found the same waste in their wells.[2] They filed their own claims. Like the Jiangsu farmers, they also had no information about the compensation received.

2 This pattern – harm, mediation, sealed settlement, regulatory silence, repeated harm – is not a failure of the mediation system in Asia.[3] It is the mediation system in Asia, working exactly as its legal framework allows. Mediation confidentiality, the rule that keeps all communications, admissions, and settlement terms from the public record, was created for a different type of dispute.[4] It was meant for two commercial parties that have similar resources, negotiating over a contractual breach that impacts only them. In that situation, the rule serves its purpose. It promotes honest discussions, helps reach settlements, and does not impose costs on anyone not involved, because those not at the table are not affected.

3 The problem is that this rule now covers disputes with very different characteristics.[5] Environmental contamination cases, land dispossession claims, occupational health disputes, and labour abuse allegations share a common feature that bilateral commercial disputes do not. The harm is spread out, impacting many people beyond just the two parties involved in negotiations. The evidence collected in each case is not only important for those parties, but also supports regulatory enforcement, future claims, and public accountability.[6] Sealing that evidence does not just protect the settlement; it undermines the entire system.

2 Hou Liqiang, "China: Provincial Govt Wins Lawsuit Against Chemical Co Over Environmental Damage From Industrial Waste", *Business and Human Rights Centre* (29 August 2018) <https://www.business-humanrights.org/en/latest-news/china-provincial-govt-wins-lawsuit-against-chemical-co-over-environmental-damage-from-industrial-waste/> (accessed 14 June 2026).

3 Jie Huang, "Consensus and Compulsion: The Extra-Territorial Effect of Chinese Judicial and Specially-Invited Mediation in Common Law Countries" (2024) 1(1) *Chinese Journal of Transnational Law* 8.

4 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27 *Ohio State Journal on Dispute Resolution* 1.

5 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27 *Ohio State Journal on Dispute Resolution* 1.

6 Judith Resnik, "The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75" (2014) 162 *University of Pennsylvania Law Review* 1793.

4 The research on mediation in Asia has mostly been positive, with a few exceptions. Chua,[7] Fan,[8] and Huang[9] have carefully documented the region's growth in institutions, generally praising their progress. The critical literature, including Ali[10] on coercion in mediation processes and Stipanowich[11] on the structural effects of the "vanishing trial", has raised important questions. However, it has not specifically critiqued confidentiality as a means of corporate power in the unique institutional context of developing Asia. This article aims to provide that critique.

5 The article will:

(a) outline the confidentiality structure of the main Asian mediation laws, identifying the gaps that allow for corporate exploitation;[12]

(b) present three main arguments against the current, uniform approach to confidentiality;[13]

(c) look at what similar jurisdictions had done when they faced the same issue;[14]

(d) suggest a different framework;[15] and

(e) explore why reform has not occurred and provide an honest answer.[16]

7 Eunice Chua, "The Singapore Convention on Mediation – A Brighter Future for Asian Dispute Resolution" (2019) 9(2) *Asian Journal of International Law* 195.
8 Fan Kun, "An Empirical Study of Arbitrators Acting as Mediators in China" [2014] 15 *Cardozo Journal of Dispute Resolution* 777.
9 Jie Huang, "Consensus and Compulsion: The Extra-Territorial Effect of Chinese Judicial and Specially-Invited Mediation in Common Law Countries" (2024) 1(1) *Chinese Journal of Transnational Law* 8.
10 Shahla Ali, "Conciliation Beyond the Courts: Aspirations and Limits of Mandated and Voluntary Court Mediation Programmes From a Multi-Jurisdictional Perspective" in *Comparative Procedural Law and Justice* (Burkhard Hess et al eds) (November 2024) Part XV, ch 2.
11 Thomas Stipanowich, "ADR and the 'Vanishing Trial': The Growth and Impact of 'Alternative Dispute Resolution'" (2004) 1(3) *Journal of Empirical Legal Studies* 843.
12 See paras 6–17 below.
13 See paras 18–33 below.
14 See paras 34–45 below.
15 See paras 46–56 below.
16 See paras 57–62 below.

II. Architecture of confidentiality in Asian mediation statutes

6 Four jurisdictions set the pattern. Their confidentiality provisions differ in detail but not in structural logic: they treat confidentiality as the default, carve-out exceptions, narrow enough to be functionally useless in public harm cases, and provide no mechanism for third parties affected by a settlement to access its terms. The uniformity is not coincidental.

A. Singapore: the model and what it omits

7 Section 9 of Singapore's Mediation Act 2017[17] states that mediation communication, which includes anything said, done, or produced during mediation, is confidential. This information cannot be shared unless all parties agree, or in certain limited situations. These situations include when the law requires disclosure, to protect someone from harm, or to enforce a settlement agreement. There is no public interest exception. There is no exception for disputes related to communities, environmental damage, or workers. When a company settles a toxic land contamination claim under Singapore's rules, the affected community does not have the right to access the remediation standard that the parties agreed upon.[18] This standard impacts how much of the poison remains in their soil.

8 One might ask whether the existing exceptions could stretch to cover such cases. The harm-prevention exception applies where disclosure is necessary to prevent or minimise danger or injury.[19] Environmental contamination causes injury in the most literal sense. However, the exception is reactive and narrow: it would require a party to invoke it, and it addresses imminent danger rather than the diffuse, ongoing exposure that follows a settlement. It does not give the community a right of access. The same applies to the law enforcement exception. Regulatory agencies investigating a mass harm may eventually require disclosure, but that depends on an investigation already being underway. The community cannot trigger it. Neither exception creates a general entitlement to know what standard of remediation was promised, and neither substitutes for a purpose-built public interest carve-out.

17 2020 Rev Ed.
18 Karen L Liepmann, "Confidentiality in Environmental Mediation: Should Third Parties Have Access to the Process?" (1986) 14(1) *Boston College Environmental Affairs Law Review* 93.
19 Mediation Act 2017 (2020 Rev Ed) s 9(2)(*c*)(i).

9 This architecture is defended on one main point: mediation is based on voluntary consent, so confidentiality should be agreed upon by the parties involved. Those who choose to mediate should also set the terms of their privacy.[20] This argument holds up well in the bilateral commercial setting that Singapore's international mediation market mainly serves. However, it fails in cases of environmental and community disputes. In these situations, the representative at the table does not truly represent the entire community affected by the settlement. The community members who were not invited to the mediation have no way to consent to anything.[21] This includes the confidentiality that keeps them in the dark about what was agreed to in their name.

10 Singapore's framework matters beyond its borders. The Singapore International Mediation Centre is the region's top institutional mediator, and its confidentiality standards are outlined in the Mediation Act 2017[22] and reflected in its rules. Other jurisdictions, from Thailand to Bangladesh, have intentionally adopted these standards as they update their alternative dispute resolution ("ADR") frameworks. Singapore has shared a commercial confidentiality model, and the region has embraced it for all types of disputes. The United Nations's "Singapore Convention"[23] complicates this issue. It establishes enforcement structures for mediated settlements across 57 signatory states. This setup protects confidential settlements from judicial review at the international level, adding an extra layer of secrecy on top of the existing domestic laws.[24]

B. India: mandatory mediation, sealed outcomes

11 India's Mediation Act 2023[25] is more concerning than Singapore's because it goes further. Section 22 establishes a confidentiality default; all mediation communications are sealed. The exceptions include party consent, legal requirements, or enforcement of settlements.

---

20 Eunice Chua, "The Singapore Convention on Mediation – A Brighter Future for Asian Dispute Resolution" (2019) 9(2) *Asian Journal of International Law* 195.

21 Karen L Liepmann, "Confidentiality in Environmental Mediation: Should Third Parties Have Access to the Process?" (1986) 14(1) *Boston College Environmental Affairs Law Review* 93.

22 2020 Rev Ed.

23 United Nations Convention on International Settlement Agreements Resulting from Mediation (20 December 2018), 3360 UNTS 1 (entered into force 12 September 2020). The Convention is also known as the "Singapore Convention on Mediation".

24 Jie Huang, "Consensus and Compulsion: The Extra-Territorial Effect of Chinese Judicial and Specially-Invited Mediation in Common Law Countries" (2024) 1(1) *Chinese Journal of Transnational Law* 8.

25 Act 32 of 2023 (India).

However, the Act also requires pre-litigation mediation for commercial disputes. This combination is significant. A corporate defendant in cases of industrial accidents, land acquisition disputes, or factory pollution claims now has a legal way to direct the claim through mandatory pre-litigation mediation.[26] This happens before the plaintiff can use the court's discovery processes to access internal documents, technical records, or communications that might prove the cause and extent of harm.

12 The information imbalance at the start is severe. The corporation has spent months handling the dispute internally. It knows what its scientists found about contamination levels. It knows the compensation it has paid in similar cases before. It is aware of its own liability assessment. Meanwhile, the community representative enters the room without any of this information, lacking discovery rights and access to the corporation's internal records, and subject to a mediation confidentiality rule. This rule will keep any limited information that comes up during negotiations sealed from any future proceedings if the mediation does not succeed.

13 India's National Green Tribunal, set up under the National Green Tribunal Act, 2010,[27] has spent 15 years documenting corporate environmental behaviour through contested decisions. The Mediation Act 2023[28] creates a way to bypass the Tribunal before heading to court. The Act does not allow the Tribunal to access or review settlement terms from mediation, even when those terms involve disputes within the Tribunal's area of authority.[29] The lawmakers overlooked this because the groups that established the Tribunal's record – environmental non-governmental organisations, affected communities, and public interest advocates – were not involved in the drafting of the Mediation Act 2023.[30]

26 Shahla Ali, "Conciliation Beyond the Courts: Aspirations and Limits of Mandated and Voluntary Court Mediation Programmes From a Multi-Jurisdictional Perspective" in *Comparative Procedural Law and Justice* (Burkhard Hess et al eds) (November 2024) Part XV, ch 2.
27 Act 19 of 2010 (India).
28 Act 32 of 2023 (India).
29 Shibani Ghosh, "India, Bangladesh, and Pakistan" in *The Oxford Handbook of International Environmental Law* (Lavanya Rajamani & Jacqueline Peel eds) (Oxford University Press, 2nd Ed, 2021).
30 Act 32 of 2023 (India).

C. China: social order as confidentiality's twin

14 China's mediation system works under the People's Mediation Law of the People's Republic of China[31] and the Civil Procedure Law of the People's Republic of China. The way it protects confidentiality is similar to the systems in Singapore and India. However, China's framework has a unique political aspect. Mediation in China developed mainly through directives from the top down. Its main goal is to maintain social stability, not to promote the interests of individuals involved.[32] In commercial disputes, the confidentiality rules that look similar to those in other countries also aim to limit public exposure of corporate practices regarding the environment and labour. Such exposure could lead to social unrest.

15 In 2015, China's Supreme People's Court issued a draft interpretation[33] stating that courts can step in if a mediation agreement harms national or public interests. This provision is the most advanced in any Asian mediation framework concerning this issue. It is also unusual, as it is court-supervised and does not apply to most environmental disputes resolved in private mediation without court oversight. The idea that public interest can take precedence over confidentiality is buried in a footnote that applies only to court-supervised cases. This stance highlights the gap between theory and reality rather than offering a real solution.

D. The Association of Southeast Asian Nations pattern: same rule, less capacity

16 Thailand's Dispute Mediation Act BE 2562 (2019) makes mediation proceedings completely confidential. Disclosure is not allowed unless the parties agree.[34] Vietnam's Decree No 22/2017 on Commercial Mediation has the same rule. In Indonesia, the mediation regulations

---

31 Order No 34 of the President of the People's Republic of China.

32 Jie Huang, "Consensus and Compulsion: The Extra-Territorial Effect of Chinese Judicial and Specially-Invited Mediation in Common Law Countries" (2024) 1(1) *Chinese Journal of Transnational Law* 8.

33 The Supreme People's Court of the People's Republic of China, Interpretation No 1 of 2015, "Interpretation On Several Issues Concerning the Application of Law in the Trial of Cases of Environmental Civil Public Interest Litigation" <http://gongbao.court.gov.cn/Details/97791c48051efa3a54926bbc82d1aa.html> (accessed 16 August 2026).

34 Nguyen The Duc Tam & Nguyen Viet Gia Bao, "The Rise of Commercial Mediation in the ASEAN Countries: Harmonization for a Better Tomorrow", *The University of Melbourne, Melbourne Law School* <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/4356680/NGUYEN-The-Duc-Tam-and-NGUYEN-Viet-Gia-Bao.pdf> (accessed 14 June 2026).

under Supreme Court Regulation No 1 of 2016 require all parties and mediators to maintain confidentiality. There is no exception for public interest. The legal text varies slightly, but the structure is the same.

17 What differs is the ability to enforce regulations. In Singapore, strong environmental laws, an independent judiciary, and a skilled regulatory system create some accountability, even when individual disputes are confidential. In Vietnam, Cambodia, Myanmar, and Laos, the ability to enforce regulations is weak.[35] Institutions lack independence from the Government and large companies. Litigation is also practically out of reach for rural and low-income communities, who cannot afford lawyers or wait years for decisions. Applying Singapore's confidentiality model in these areas leads to different outcomes than in Singapore itself. In Singapore, confidential settlements occur within a regulatory framework that offers other accountability options. In Cambodia, they happen without such support. What is a manageable commercial practice in one place becomes a serious accountability issue in another. Those who created these systems did not clearly acknowledge this difference. The question is: Why not?

III. Three arguments against undifferentiated confidentiality

A. Categorical misfit

18 The case for confidentiality relies on a behavioural claim: Parties are more honest when they believe their disclosures will not be used against them later.[36] This claim is supported by empirical evidence, especially in bilateral commercial situations, and has been tested enough to be credible. The issue is not that the claim is incorrect. The issue is what it reveals about corporate defendants in environmental contamination disputes.

19 For these corporations, the interest in confidentiality is not about honest communication. It is about keeping technical findings on contamination levels, internal communications showing when management was aware of the discharge, and comparisons of payments

35 Nguyen The Duc Tam & Nguyen Viet Gia Bao, "The Rise of Commercial Mediation in the ASEAN Countries: Harmonization for a Better Tomorrow", *The University of Melbourne, Melbourne Law School* <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/4356680/NGUYEN-The-Duc-Tam-and-NGUYEN-Viet-Gia-Bao.pdf> (accessed 14 June 2026); Jieren Hu & Ying Wu, "Source Governance of Social Disputes in China" (2023) 55(3) *Critical Asian Studies* 354.

36 Robert H Mnookin & Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" (1979) 88(5) *The Yale Law Journal* 950.

made to different communities out of any public record accessible to regulators, future plaintiffs, or international supply chain partners conducting due diligence. The role of the confidentiality rule has changed. It no longer promotes honest negotiation. Instead, it manages reputational and regulatory risks.[37] The statutes do not reflect this change because they were designed with the initial function in mind.

20 In 1974, Galanter identified the most useful framework for understanding this issue: repeat players, or parties that appear in the same legal system repeatedly in the same role, gain advantages over one-shot players that accumulate over time.[38] A corporation that has managed 50 confidential mediations in environmental disputes across three countries understands the going rate for a contaminated village. It knows what concessions to offer early to demonstrate good faith. It knows which mediators facilitate favourable settlements. In contrast, the community facing its first and only dispute with a corporation is unaware of these dynamics. The confidentiality rule, which prevents the settlement terms of one case from influencing those of the next, appears neutral but is materially unbalanced: It withholds information that is most valuable to the party with the least knowledge.

21 Menkel-Meadow's research confirmed that advantages for repeat players in litigation also exist in ADR settings.[39] The "haves" generally come out ahead in ADR as well, often more decisively, since the procedural safeguards of formal adjudication that partially limit these advantages are removed in informal processes.[40] In Asia, those protections – discovery, class action aggregation, and mandatory disclosure – are insufficiently robust to counteract repeat-player advantages, even within formal systems. Private mediation, in the absence of these protections, not only maintains the existing asymmetry but also removes the few mechanisms that could mitigate it.

22 One valid objection is that corporations also gain from the certainty and finality of settlement, as they avoid having disputes

37 Owen M Fiss, "Against Settlement" (1984) 93(6) *The Yale Law Journal* 1073; Judith Resnik, "The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75" (2014) 162 *University of Pennsylvania Law Review* 1793.

38 Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" (1974) 9(1) *Law & Society Review* 95.

39 Carrie Menkel-Meadow, "Do the 'Haves' Come Out Ahead in Alternative Judicial Systems?: Repeat Players in ADR" (1999) 15(1) *Ohio State Journal on Dispute Resolution* 19.

40 Carrie Menkel-Meadow, "Do the 'Haves' Come Out Ahead in Alternative Judicial Systems?: Repeat Players in ADR" (1999) 15(1) *Ohio State Journal on Dispute Resolution* 19.

relitigated. This is accurate. However, finality and confidentiality are different issues. The Bhopal settlement of 1989, arranged by the Supreme Court of India for about US$470m to cover claims for over half a million people, was final. It was not confidential, the amount was public, the legal proceedings were documented, and the adequacy of the settlement has been publicly debated and criticised for 35 years, influencing Indian environmental liability law.[41] Achieving finality without confidentiality is possible. The argument for confidentiality cannot rely on the argument for finality as if they were the same issue.

B. Atomisation and destruction of public record

23 Litigation is slow and expensive. However, it creates something that confidential mediation eliminates: a record. A court judgment that a particular company discharged arsenic at twice the allowed concentration into a specific river system is a fact that remains after the case ends. A regulator can use it. A journalist can report it. The lawyer for the next downstream community can refer to it. A parliamentary committee looking into industrial pollution standards can make demands based on it. In contrast, if the same issue is settled through confidential mediation, the fact that arsenic was discharged at twice the allowed level may be discussed during negotiations. However, it only exists in that room, and the confidentiality rule ensures it leaves only in the memories of those present.

24 Fiss made this point in its basic form in 1984, focusing on the American context.[42] He argued that the "individuating" effect of ADR means that, unlike in *Brown v Board of Education of Topeka*,[43] no mediated settlement can create a lasting impact on systemic injustice. This is because the results only apply to the parties involved and cannot shape the law or influence third parties.[44] Asian mediation laws intensify Fiss's critique by clearly establishing an anti-precedent rule that explicitly bans and prohibits the use of any mediation communications in later proceedings, making record destruction a built-in part of the law.

25 Three main harms follow. First, the evidence needed for regulatory enforcement vanishes. Environmental protection frameworks, labour safety rules, and consumer safety systems in Asia rely, to

41 Shibani Ghosh, "India, Bangladesh, and Pakistan" in *The Oxford Handbook of International Environmental Law* (Lavanya Rajamani & Jacqueline Peel eds) (Oxford University Press, 2nd Ed, 2021).
42 Owen M Fiss, "Against Settlement" (1984) 93(6) *The Yale Law Journal* 1073.
43 347 US 483 (1954).
44 Owen M Fiss, "Against Settlement" (1984) 93(6) *The Yale Law Journal* 1073.

varying degrees, on signals from private dispute resolution judgments, disclosed findings, and liability determinations that guide regulators on where to focus their efforts. When a type of harm is consistently settled confidentially, that signal disappears. Regulators in many developing Asian areas, having limited enforcement capacity, become increasingly disconnected from actual harm because it remains hidden.

26 Second, individuals affected by the harm miss crucial information needed to assess their own situation. In a mass contamination case, such as pollution affecting 40 villages or a supply chain involving thousands of workers, each person or community negotiates as if they were alone. The corporation understands the full range of claims it faces and has settled across that entire range. The individual claimant knows only their own situation. The confidentiality rule creates this gap in information, not as an unintended consequence but as a direct result of keeping each settlement private.

27 Third, and most critically, over time, the build-up of confidential settlements weakens the accountability framework. Each settled case makes the next one a bit harder to challenge: there is less precedent to refer to, less evidence of corporate awareness to claim, and less regulatory record to call upon. As information needed to mount challenges disappears, corporate defendants gain an advantage across all claims. This article refers to this issue as the justice deficit compound interest problem: confidential settlements do not just resolve individual disputes; they make it harder for collective accountability with each dispute they settle.

28 In 2018, India's National Green Tribunal recognised a hint of this problem by expressing concern about settlements that prevent environmental enforcement. However, the Mediation Act 2023[45] provides no way for the Tribunal to access the terms of mediated settlements, even when they relate to disputes within its area of authority.[46] In 2015, China's Supreme People's Court acknowledged that courts could step in if mediation agreements harm the public interest.[47] Neither of these rules

45 Act 32 of 2023 (India).

46 Shibani Ghosh, "India, Bangladesh, and Pakistan" in *The Oxford Handbook of International Environmental Law* (Lavanya Rajamani & Jacqueline Peel eds) (Oxford University Press, 2nd Ed, 2021).

47 The Supreme People's Court of the People's Republic of China, Interpretation No 1 of 2015, "Interpretation On Several Issues Concerning the Application of Law in the Trial of Cases of Environmental Civil Public Interest Litigation" <http://gongbao.court.gov.cn/Details/97791c48051efa3a54926bbc82d1aa.html> (accessed 16 August 2026).

addresses the usual private commercial mediation situation. Both are narrower than the problem they aim to tackle.

C. Consent problem

29 Mediation's claim to justice depends entirely on consent. The argument is that since parties decide to enter mediation, choose the mediator, and accept or reject the settlement, what they agree to shows their informed judgment about their own interests. This argument holds enough weight in the context of bilateral commercial disputes to support mediation. However, it does not hold up in the type of disputes examined in this article.

30 Genuine consent needs three things: information about alternatives; real ability to pursue those alternatives; and freedom from coercive pressure to accept a poor outcome. In environmental and community disputes across South Asia and Southeast Asia, all three are usually missing. For example, a Cambodian farming community facing a development corporation backed by government land concessions and represented by international counsel operates in a legal environment where administrative channels are controlled, and collective action is limited. This community has no meaningful alternatives to mediation, not because the law explicitly states so, but because practical options are limited to mediation, getting nothing, or spending years in litigation that costs more than the claim itself.

31 The informal nature of mediation removes the procedural protections provided by formal adjudication. This can increase, rather than lessen, existing power imbalances.[48] In Asia, the idea that mediation aligns with "Asian values" adds social pressure. Communities and workers from cultures where asserting rights is discouraged not only face structural coercion but also cultural pressure when resisting settlement. Their resistance is often seen as culturally inappropriate, as bad faith, or as a failure to seek consensus. The resulting settlement is then portrayed as a product of free agreement, even though it is actually the result of forced compliance.

32 The confidentiality rule makes this issue worse. A community that accepts a settlement without knowing what similar communities received cannot later determine if the settlement was fair because the confidentiality rule prevents that comparison. The law not only allows the coerced settlement but also hides the information that would make

48 Robert A Baruch Bush & Joseph P Folger, "Mediation and Social Justice: Risks and Opportunities" (2012) 27 *Ohio State Journal on Dispute Resolution* 1.

the coercion apparent afterward. Fiss referred to this as the settlement being an exchange of peace for justice.[49] Resnik documented its effects in American federal courts.[50] The distinctive aspect of the Asian situation is the intensity of the power imbalance. These criticisms apply in American courts, where litigation is a realistic option and where class action mechanisms can combine individual claims. In Asia, they concern mandatory or heavily pressured mediations involving parties for whom litigation was never a viable choice. The context in which settlement happens is not characterised by the threat of a credible court. It is marked by the absence of any other options.

33 An obvious counterargument is that corporations also seek certainty and finality. Lowering confidentiality protections might make corporations less willing to settle, forcing claims back into courts that affected communities cannot afford and that are already overloaded. This concern deserves a thorough response instead of dismissal. Litigation is not always the best way to ensure accountability. Regulatory enforcement, third-party audits, and mandatory disclosure rules can provide accountability without requiring communities to go to court. However, the argument that weakening confidentiality will harm communities by stopping settlements is too strong. It assumes that the settlements currently offered are better for communities than nothing, even when evidence shows they often represent inadequate outcomes accepted under considerable pressure. An inadequate settlement with confidentiality is not clearly better for communities than an inadequate settlement without it; it just remains less visible.

IV. What other jurisdictions have done

A. United States: imperfect counterweights

34 The US does not have a uniform rule for mediation confidentiality. The Uniform Mediation Act[51] offers a model for states to follow, but it does not require any state to adopt it. Federal agencies follow their own specific rules, and individual states have developed their own approaches with varying degrees of protection. This lack of uniformity is not ideal, but it has created something that is missing from Asian systems: mechanisms that help offset the isolating effect

49 Owen M Fiss, "Against Settlement" (1984) 93(6) *The Yale Law Journal* 1073.
50 Judith Resnik, "The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75" (2014) 162 *University of Pennsylvania Law Review* 1793.
51 (US) (2001).

of individual confidential settlements. Class action aggregation, multidistrict litigation procedures, and mandatory disclosure requirements in securities and product liability contexts create frameworks that make purely confidential mass settlements difficult, while allowing for the study of individual settlements in aggregate.

35 Beyond these structural features, specific statutory and procedural rules impose disclosure obligations that directly constrain the reach of confidentiality at the federal level. In major federal environmental settlements, confidentiality is limited because proposed consent decrees must be filed with the court and opened to public comment before they take legal effect. Under § 9622(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act[52] ("CERCLA"), the Attorney General may withdraw or withhold consent to a proposed decree if public comments demonstrate that the settlement is inappropriate, improper, or inadequate. This provision is not merely procedural. It gives members of the public a genuine opportunity to influence whether a negotiated environmental settlement proceeds at all, which means that the confidentiality of the underlying mediation or negotiation does not translate into a confidential outcome. The United States Environmental Protection Agency further requires that proposed environmental settlements be made available for public review and comment for a minimum of thirty days, unless a different period is required by law. This thirty-day window is a meaningful structural check: it introduces a period of public scrutiny between the conclusion of private negotiations and the legal enforcement of the agreed terms. The result is that even where individual negotiations proceeded entirely under confidentiality, the settlement outcome enters the public domain and remains subject to challenge from affected communities, public interest groups, and concerned citizens.

36 Where environmental or mass-harm claims proceed as a federal class action, a parallel and equally important constraint applies at the procedural level. Under r 23(e) of the Federal Rules of Civil Procedure, a class action may be settled, voluntarily dismissed, or compromised only with court approval, and the court must direct notice in a reasonable manner to all class members who would be bound by the proposed settlement. The rule further requires the court to hold a hearing and make a finding that the settlement is fair, reasonable, and adequate before it can be approved. This judicial gatekeeping function means that the individual mediation sessions leading to a proposed settlement may be confidential, but the settlement itself cannot remain purely private. The terms are placed before a court, scrutinised against the interests of absent

52 42 USC (US) (1980).

class members, and made available to the public through the court record. This structure prevents a situation where a company quietly resolves thousands of individual claims through confidential mediation without any public or judicial oversight of whether the aggregate outcome is just.

37 At the state level, some legislatures have gone further by restricting confidentiality specifically in cases where settlement-related records would operate to conceal a danger to the public. Section 69.081 of the 2025 Florida Statutes ("Sunshine in Litigation Act") is the most frequently cited example. The Act addresses court orders and settlement agreements that have the purpose or effect of concealing a public hazard or information relevant to one, and limits the enforceability of such confidentiality provisions. Under the Act, a court may not enter an order that has the effect of concealing a public hazard, and any such provision in a private settlement agreement is treated as void and unenforceable to that extent. The practical significance of this legislation is substantial. In product liability or environmental harm cases, defendants have historically sought confidentiality clauses as a condition of settlement, preventing plaintiffs from warning others about known dangers. Florida's statute directly disrupts this practice by treating the concealment of a public hazard as an interest that the law will not protect, regardless of what the parties have privately agreed.

38 The Delaware Court of Chancery's arbitration program, which the Third Circuit struck down in *Delaware Coalition for Open Government v Strine*[53] ("*Strine*"), offers further insight into how American constitutional and institutional culture resists the wholesale privatisation of dispute resolution. This program allowed for confidential proceedings in corporate disputes in place of open court hearings, effectively routing commercially significant litigation away from public view. The Third Circuit ruled it unconstitutional, holding that it violated the public's right to access judicial proceedings under the First Amendment. The court reasoned that public access helps stockholders and the broader public understand how commercially significant disputes are resolved and eases legitimate concerns about a process that was available only to business litigants with sufficient resources to participate. What makes this decision particularly instructive for comparative purposes is that the constitutional challenge was brought not by one of the parties to the litigation but by a public interest organisation. This illustrates a broader feature of the American legal environment: Advocacy organisations, constitutional litigants, and courts themselves function as independent sources of resistance to the expansion of private dispute resolution. The reasoning in *Strine* does not draw a precise line between arbitration and

53 *Delaware Coalition for Open Government Inc v Strine* 733 F 3d 510 (3rd Cir, 2013).

mediation, but it identifies an important value, namely public access to dispute resolution, that operates as a structural limit on how far private settlements can displace public adjudication across any category of dispute.

39 None of these balancing factors exist at a meaningful scale in the Philippines, Indonesia, Vietnam, or Bangladesh. These countries lack a functional class action mechanism capable of bringing together individual mediated settlements into a collective claim reviewable by a court. There is no statutory equivalent to § 122(d)(2) of the CERCLA that would require public comment on proposed settlements before they become enforceable. There is no procedural rule equivalent to r 23(e) of the Federal Rules of Civil Procedure[54] requiring judicial approval and notice to affected parties before a mass settlement can bind those who were not individually represented at the negotiating table. There is no legislative measure equivalent to Florida's Sunshine in Litigation Act that restricts the use of confidentiality clauses where a public hazard would otherwise be concealed. Nor is there an institutional culture comparable to the one illustrated by *Strine*, in which public interest organisations can successfully invoke constitutional principles to challenge the architecture of private dispute resolution. The American system is not a perfect model; it did not come about through well-planned design but rather evolved unevenly across decades and faces many of the pathologies of privatisation detailed by Resnik.[55] However, it has produced meaningful counterweights to the isolating effect of confidentiality because various institutional actors, including courts, legislatures, constitutional scholars, and advocacy organisations, were positioned and motivated to challenge the growing privatisation of dispute resolution as it occurred. The Asian legislative context, shaped by an elite group with a shared interest in commercial confidentiality, has not produced a comparable challenge, and the absence of these counterweights means that confidentiality in mediation operates in those systems with considerably less friction and far fewer points of public accountability.

B. Australia: conditional transparency

40 Victoria's Open Courts Act 2013 framework makes public access the default for court proceedings, requiring specific judicial approval

54 (US) (1937).
55 Judith Resnik, "The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75" (2014) 162 *University of Pennsylvania Law Review* 1793.

for any suppression orders based on public interest considerations.[56] Mediation, when tied to court cases, maintains default confidentiality as a matter of course, but it can be conducted in open court where a court order directs this.[57] Australian courts have increasingly examined mediated settlement agreements in environmental and consumer contexts, particularly where the terms of a settlement affect third parties or members of the public who were not present at the negotiating table.[58] This supervisory role is reinforced at the procedural level by the class action framework, which imposes a parallel and independently significant constraint on the confidentiality of settlements reached through mediation or negotiation in representative proceedings.

41 Under s 33V(1) of the Federal Court of Australia Act 1976, a representative proceeding cannot be settled or discontinued without the approval of the Federal Court. This requirement is not a formality. It means that where a class action has been brought on behalf of group members who did not individually instruct lawyers, negotiate terms, or participate in mediation sessions, those group members are protected from being bound by a settlement that they had no meaningful opportunity to scrutinise. The court must be satisfied that the proposed settlement is fair and reasonable, having regard to the claims made on behalf of group members as a whole, before it will grant approval. Settlement terms must therefore be placed before the court, made part of the court record, and subjected to judicial assessment of their adequacy. The confidentiality that may have surrounded the mediation process leading to the settlement does not extend to the settlement outcome itself. Group members are entitled to notice of the proposed settlement, and the court's approval process is conducted in a manner consistent with the open court principles that the Open Courts Act 2013 framework establishes as the starting point for all judicial proceedings.

42 This approach is not without its limitations. As mediation moves into purely private settings, particularly in commercial disputes that never reach or remain within the court system, it often loses the court oversight that makes these transparency mechanisms operational. The frameworks described above apply only where proceedings have been commenced and remain on foot. A settlement reached entirely outside court proceedings, or reached before any proceeding is filed, may fall entirely outside their reach. Still, what the combined operation of the Open Courts Act 2013

---

56 Open Courts Act 2013 (Vic) s 4 and ss 17–18; Open Courts and Other Acts Amendment Bill 2019 (Vic), Explanatory Memorandum and cl 5.

57 Magistrates' Court General Civil Procedure Rules 2020 (Vic) r 1.20.

58 Australian Law Reform Commission, *Uniform Evidence Law* (ALRC Report 102, 2005) at ch 15, "Exclusion of Evidence of Settlement Negotiations".

framework, judicial oversight of mediated agreements in public interest contexts, and the class action approval requirement under s 33V(1) of the Federal Court of Australia Act 1976 establishes is transparency as the structural starting point. Any deviation from public access requires a valid justification rather than being an automatic outcome whenever parties choose mediation over litigation. This reversal of the default is a significant feature of the Australian approach that has no clear equivalent in the jurisdictions under comparison.

43 Asian statutes, by contrast, generally set confidentiality as the default, and public interest is not recognised as a valid ground for departing from it. There is no procedural equivalent to s 33V(1) that would require court approval before a representative or mass settlement can bind those who were not party to the negotiation. There is no open court presumption that forces parties seeking confidentiality to justify it before a court, or that gives affected third parties a point of access through which to challenge the terms of a private settlement. Adopting the logic of the Australian framework would not mean eliminating confidentiality in Asian mediation systems. It would mean treating confidentiality as an exception to the norm of public access rather than the norm itself, and building into mass or representative settlement processes the kind of judicial gatekeeping that prevents privately negotiated outcomes from binding absent parties without scrutiny.

C. European Union: regulatory instruments as substitute

44 The European Union ("EU") Mediation Directive of 2008[59] has the same structural issue as Asian statutes: confidentiality is the default, and public interest is not a recognised exception. However, the EU tackles the problem of settlement confidentiality hindering corporate accountability not through changes to mediation laws, but through separate regulatory tools that function independently of settlements. The Corporate Sustainability Due Diligence Directive,[60] passed in 2024, requires corporations to disclose information and follow due diligence obligations regardless of whether individual disputes are settled privately. The Environmental Liability Directive[61] mandates restoration and public reporting, independent of what the settling parties agree upon.

59 Directive on Certain Aspects of Mediation in Civil and Commercial Matters, EC Parliament and Council Directive 2008/52/EC, [2008] OJ L 136/3.
60 Directive on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, EU Parliament and Council Directive (EU) 2024/1760, [2024] OJ L 2024/1760.
61 Directive on Environmental Liability With Regard to the Prevention and Remedying of Environmental Damage, EC Parliament and Council Directive 2004/35/EC, [2004] OJ L 143/56.

45 This method does not resolve the issue of mediation confidentiality. It lessens the accountability issues tied to confidentiality by ensuring that corporate environmental and labour practices create a mandatory public record through regulatory means that private settlements cannot hide. The limitation is that it assumes what many Asian jurisdictions lack: the regulatory ability to implement these separate disclosure systems and the political will to enforce mandatory rules on corporations regardless of their dispute management strategies. The EU exported the format of its mediation directive without the accompanying regulatory infrastructure. While the format is evident throughout Southeast Asia, the necessary infrastructure is absent.[62]

V. Differentiated confidentiality framework

46 The reform proposed in this article does not aim to eliminate confidentiality altogether.[63] The case for confidentiality in bilateral commercial matters is still valid. A reform that removes confidentiality to protect communities from its misuse would take away real value while addressing a specific problem. What is needed is a legal framework that distinguishes between different types of disputes based on the nature and spread of harm. Full confidentiality should apply where appropriate, while transparency should be required where public interest calls for it.

A. Dispute categorisation before mediation begins

47 The main feature of this framework is a mandatory categorisation process before mediation starts. This is a brief judicial or quasi-judicial step that determines which confidentiality rules apply before any mediation discussions take place. The process divides disputes into two types.

48 Type A disputes involve bilateral commercial matters between experienced parties with similar bargaining power. The harm is limited to their relationship without significantly affecting any third party or public interest. Full confidentiality applies in this case. This is the typical commercial mediation situation, which remains unchanged.

62 Nguyen The Duc Tam & Nguyen Viet Gia Bao, "The Rise of Commercial Mediation in the ASEAN Countries: Harmonization for a Better Tomorrow", *The University of Melbourne, Melbourne Law School* <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/4356680/NGUYEN-The-Duc-Tam-and-NGUYEN-Viet-Gia-Bao.pdf> (accessed 14 June 2026).

63 Nadja Alexander, "Comparative Mediation Law: Mapping Mediation Law with the Mediation Matrix" in *Comparative Procedural Law and Justice* (Burkhard Hess *et al* eds) (CPLJ, 2024) part XV ch 4.

49 Type B disputes involve more widespread harm. In these cases, the settlement terms impact the rights or risks of parties not involved in the mediation. This includes issues like environmental damage, mass land displacement, systemic labour violations, workplace health issues, or product safety concerns. For these disputes, transparency is presumed, with specific judicial exceptions for genuinely sensitive information like trade secrets or proprietary data, which will be protected on a line-by-line basis while keeping the main terms of the settlement public.

50 The categorisation hearing will be brief and guided by legal factors such as the nature of the alleged harm, how many people are affected beyond the immediate parties, the regulatory implications of the settlement, and if there is enough power imbalance between the parties to undermine the voluntary nature of any agreement. This is not a new procedure; it is based on the class settlement approval process that requires court oversight when the interests of absent parties are affected by a negotiated outcome. The idea is the same. When people who were not at the mediation are impacted by what was agreed to, someone representing the public interest should be able to question whether the agreement is sufficient.

B. What transparency for Type B settlements requires

51 For Type B disputes, the framework requires that the main terms of any mediated settlement be filed with and made publicly available through the relevant regulatory authority. This includes the nature of the harm recognised, the standard for remediation or compensation, any compliance monitoring processes, and the length of ongoing obligations. This does not mean disclosing the negotiation itself; mediation communication privilege will remain intact. It ensures that the outcome, which affects the environment, land, and workforce, is open to public scrutiny.

52 This model resembles the consent decree filing requirement found in US environmental law. There, regulatory settlements must be published and open for public comment before they become binding. The principle is straightforward: When a private settlement sets the remediation standard for a community's water supply, the public's interest cannot be overridden by a company's desire for confidentiality regarding its liability terms.

C. Third-party notice in mass harm disputes

53 When a mediation settlement resolves claims affecting a specific group of people not involved in the mediation, those individuals should

receive notice of the proposed settlement and the chance to object before it binds anyone. This helps prevent misuse, such as a designated community representative settling claims that impact hundreds of individuals who were unaware that mediation was taking place.

54 This mechanism does not require the lengthy class settlement approval processes common in the US. Instead, a registration and notification system managed by the relevant regulatory authority, with a short period for objections, will inform affected individuals about whether the settlement addresses their concerns. The responsibility for this system falls on the settling parties in Type B disputes. This is fair, as the cost of public notification is much lower than the cost a community faces when an inadequate settlement denies them better options.

D. Consent conditions for structurally disadvantaged parties

55 For Type B disputes characterised by significant power differences assessed by factors like relative resources, availability of legal representation, and presence of structural pressure, the framework mandates independent legal advice for the weaker party before any settlement becomes binding. This is not extreme; it follows a model used in many places for unfair contract terms and personal guarantees. It acknowledges that true consent requires conditions that severe power imbalances typically obstruct.

56 The framework also introduces a short review period, allowing affected parties to challenge settlements in Type B disputes based on claims of coercion, unfairness, or inadequate representation. This timeframe will be brief enough to maintain practical finality while long enough to address difficult coercive situations. Courts that review challenges will look at the settlement terms under a limited disclosure process: not the full negotiation records, just the terms. This helps assess whether the outcome was based on agreement or structural pressure. This is the bare minimum needed for "voluntary" settlements to hold real meaning in situations where they currently do not.

VI. Why this reform has not happened

57 The previous five sections have made a case for a reform that is legally possible, doctrinally sound, and practically necessary. An obvious question arises: Why has no one proposed or enacted this reform in the jurisdictions examined in this article? The answer is uncomfortable but significant.

58 Mediation law reform in Asia has been influenced by a coalition that opposes such changes. This coalition includes: commercial law firms representing corporations that manage litigation risks; international arbitration and mediation institutions relying on corporate use of confidential processes; development finance organisations promoting ADR as part of "rule of law" development assistance; and governments looking to attract investment by creating a sophisticated and business-friendly dispute resolution atmosphere. The Asian Development Bank, the International Finance Corporation from the World Bank Group, and bilateral development programmes from Singapore, Australia, and the UK have all invested in promoting mediation throughout the region. However, their efforts have focused strictly on commercial mediation, efficiency, and international consistency, not on the interests of the communities bearing the costs of confidentiality misuse.[64]

59 In terms used by Galanter, these communities are one-shot players, not just in mediation but also in the legal processes that established the mediation systems.[65] They were not included when Singapore's Mediation Act 2017[66] was drafted. They were not consulted during India's law reform committees' work on the Mediation Act 2023.[67] The legislation reflects the interests of the coalition that created it. This is not corruption; it is how a legislative process works when some interests are organised, funded, and represented while others are not.

60 The Singapore Convention[68] introduces an international aspect that reinforces the coalition's stance. By establishing a multilateral enforcement system for confidential mediated agreements, the Convention creates treaty obligations that may limit the domestic legislative freedom of signatory states to require transparency in mediated outcomes. If a signatory state mandates disclosure for Type B settlement terms, it could face a strong claim that it is imposing conditions on enforceability not anticipated by the Convention. It bears noting that Art 1(2) expressly excludes certain categories of dispute from the Convention's scope, including consumer, family, inheritance, and

64 Nguyen The Duc Tam & Nguyen Viet Gia Bao, "The Rise of Commercial Mediation in the ASEAN Countries: Harmonization for a Better Tomorrow", *The University of Melbourne, Melbourne Law School* <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/4356680/NGUYEN-The-Duc-Tam-and-NGUYEN-Viet-Gia-Bao.pdf> (accessed 14 June 2026).
65 Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations On the Limits of Legal Change" (1974) 9(1) *Law & Society Review* 95.
66 2020 Rev Ed.
67 Act 32 of 2023 (India).
68 United Nations Convention on International Settlement Agreements Resulting from Mediation (20 December 2018), 3360 UNTS 1 (entered into force 12 September 2020). The Convention is also known as the "Singapore Convention on Mediation".

employment matters.[69] Some Type B disputes fall within these excluded categories, particularly those involving systemic labour violations or workplace health concerns, and for those, the treaty tension this paper describes would not arise in the same way. This dynamic international commercial treaty obligation limiting domestic public interest regulation is well-documented in the investment treaty arbitration literature.[70] Its relevance to the Singapore Convention framework deserves more exploration and represents a real legal hurdle to national reform, beyond just a political one.

61 The framing of mediation as "Asian values" plays a specific role in this political landscape. By portraying mediation as culturally fitting and adversarial rights assertion as culturally inappropriate, it legitimises corporate preference for private settlements and undermines community calls for transparency and accountability. This framing misrepresents history. Asian legal traditions are as diverse as European ones, and the idea that Confucian harmony or Buddhist conciliation dictates the exact structure of commercial mediation is a selective bias favouring institutional preferences.[71] Yet this political strategy is effective; it provides a way to dismiss calls for accountability reform as Western interference, rather than addressing them as valid concerns about institutional design.

62 The commercial legal sector will claim that varied confidentiality creates uncertainty that hampers settlements. International mediation institutions will say that transparency makes them less appealing to corporate clients. Governments will highlight the need to maintain a favourable investment climate. Each argument serves self-interest. None confronts the actual question posed in this article: What is the cost, to affected communities and regulatory systems, of the current confidentiality structure? That cost is high. It is felt most by those least able to bear it. The failure to publicly assess this cost answers the question of whose interests the existing framework serves.[72]

69 United Nations Convention on International Settlement Agreements Resulting from Mediation (20 December 2018), 3360 UNTS 1 (entered into force 12 September 2020). The Convention is also known as the "Singapore Convention on Mediation".

70 Jiangyu Wang, "Dispute Settlement in the Belt and Road Initiative: Progress, Issues and Future Research Agenda" (2020) 8(1) *The Chinese Journal of Comparative Law* 4.

71 Fan Kun, "An Empirical Study of Arbitrators Acting as Mediators in China" [2014] 15 *Cardozo Journal of Dispute Resolution* 777.

72 Deborah R Hensler, "Suppose It's Not True: Challenging Mediation Ideology" (2002) 2002(1) *Journal of Dispute Resolution* 81.

VII. Conclusion

63 Consider Jiangsu, the 12 villages, and the sealed settlements. The 12th village negotiated without knowledge. The regulator received no signals. This is not a failure of mediation; it is its success by the standards set by its designers. The process resolved disputes efficiently and privately, without creating the public record necessary for accountability. The farmers in the 12th village did not need to understand theories of repeat-player advantage or fragmented collective harm. They simply needed the information that the confidentiality provisions of China's Civil Procedure Law[73] kept from them.

64 Three structural arguments illustrate how a rule intended to aid honest commercial negotiation became a tool for hiding corporate harm in developing Asia. The default rule of confidentiality is wrongly applied to public harm disputes, shifting from aiding honest disclosure to managing reputational and regulatory risk. Individual confidential settlements erase the evidence needed for regulatory enforcement and future claims, leading to a gradual breakdown of accountability mechanisms over time. Furthermore, the idea of voluntary consent in these disputes is a legal fiction; settlements are produced under structural pressures, then shielded from scrutiny that could reveal these pressures.

65 Other jurisdictions have developed partial solutions: the US through class action aggregation and constitutional limits on confidential adjudication; Australia by making transparency the standard; and the EU with regulatory measures that work independently of settlement terms. None of these fully address the issue. None transfer directly to Asian jurisdictions where institutional capacity and political conditions differ greatly. They do show that the choice between confidentiality and accountability is not black and white, that varied approaches are feasible, and that the Asian legislative consensus on blanket confidentiality reflects political interests rather than necessity.

66 The suggested differentiated framework, with mandatory pre-mediation categorisation, making transparency the default for Type B disputes, third-party notice for mass harm cases, and real consent conditions for disadvantaged parties, is attainable. It does not require eliminating mediation's confidentiality safeguards. It calls for applying them appropriately and refraining from using them where they cause clear harm to people who were not involved in the creation of the rules which they are now expected to abide by.

73 Civil Procedure Law of the People's Republic of China (China) (as updated in 2023).

67 The reform faces a coalition that has a vested interest in stopping it. This coalition is powerful, well-funded, and active in every ministry meeting and law reform committee across the region. The communities that would gain from the reform are scattered, underfunded, and systematically excluded from such consultations. This imbalance is not a reason to abandon the argument; it *is* the argument. A mediation system designed and operated to favour one group at the expense of another is not a justice institution. It is a dispute management service that uses justice language.

68 The original promise of mediation law in Asia was to expand justice. What has developed, however, is its privatisation. The communities bearing that burden deserve, at least, a legislature that can distinguish between the two.