

# **Full Country Report on Dispute-Resolution Practices in the Galapagos Islands**

## **1.0 Introduction**

The Galapagos Islands, a province of Ecuador, present a unique microcosm for the study of legal pluralism and conflict resolution. This report's central analysis is framed by a foundational tension: the complex, often contradictory relationship between a history of imported mainland norms, such as Kichwa indigenous justice, and a history of locally generated, pragmatic dispute resolution born from the islands' intense resource wars. These dynamics unfold under a national constitutional framework of ambitious but ambiguous legal pluralism. For practitioners in law, conservation, and international mediation, a sophisticated understanding of this interplay is of paramount strategic importance for effective engagement and sustainable outcomes.

As a UNESCO Natural Heritage Site, the Galapagos Archipelago's ecological context is globally significant. Its human population, however, is not indigenous to the islands but is primarily composed of migrants from mainland Ecuador, inhabiting four main islands: Santa Cruz, San Cristóbal, Isabela, and Floreana. This demographic reality means that while the islands lack a pre-colonial legal tradition of their own, their residents bring with them the diverse cultural norms and worldviews of the mainland, including those of Mestizo heritage and indigenous groups such as the Kichwa (Quechua), whose communities comprise 12% of Ecuador's national population.

This report provides a comprehensive analysis of the formal, customary, and unique participatory dispute-resolution practices relevant to the Galapagos. The scope covers their cultural and historical foundations, the contemporary legal framework, the interplay between normative orders, a comparative analysis with Western models, and the practical implications for mediators. Understanding these overlapping systems is critical for effective conservation, sustainable development, ensuring social harmony, and for external practitioners engaging with local communities on the islands. The analysis begins by exploring the cultural and historical underpinnings that inform how conflict is perceived and managed in this complex socio-legal environment.

## **2.0 Cultural and Historical Foundations of Conflict Resolution**

Comprehending the contemporary dispute resolution landscape of the Galapagos requires a deep understanding of its dual cultural and historical context. The islands do not possess a pre-colonial indigenous population; their inhabitants are predominantly migrants from mainland Ecuador. These communities, including those of Mestizo and Kichwa heritage, have imported diverse cultural norms and worldviews that shape their approaches to conflict. This section explores these mainland cultural foundations before examining the specific history of conflict on the islands, which has been defined by the tension between state-led conservation and local human development.

## Mainland Cultural Influences

Among the most significant cultural influences carried by migrants to the Galapagos are those from the Kichwa people. Their traditional mechanisms for resolving conflict, rooted in a worldview that prioritizes community well-being, provide a crucial backdrop for understanding the values that inform some residents. While the following five-step process represents a generalized model, it is important to note as an anthropological point of nuance that specific practices can vary significantly between communities.

- **Goal:** The principal objective is the restoration of peace and harmony (*Buen Vivir* or "the good way of living") within the community. Actions that threaten this harmony are seen as problems for the entire collective, not just the individuals directly involved.
- **Process:** The resolution of internal conflicts often follows a customary procedure:
  1. *Chimbapurana* (Notification): The conflict is brought to the attention of community authorities.
  2. *Tapuykuna* (Investigation): Authorities conduct an investigation.
  3. *Killpichirina* (Resolution): In a public community assembly, the case is heard, and a collective decision is made.
  4. *Chaupina* (Reconciliation): The process involves reproach, advice, and a public apology from the offender to encourage behavioral change.
  5. *Paktachina* (Punishment): Sanctions are carried out publicly to serve as a corrective measure and a community warning.
- **Sanctions:** Punishments are symbolic and physical acts intended to correct, cleanse, and purify. They include cold baths, community work, and whipping with nettle. From a Kichwa perspective, these acts are not considered torture but are medicinal and corrective, aimed at restoring the individual's place within the social fabric.

These practices are underpinned by core principles of **reciprocity**—a cultural expectation of balance between giving and receiving—and a deep-seated **collectivism** that prioritizes community harmony over individual interests.

## Conflict and Management in the Galapagos

The history of conflict *on the islands* contrasts sharply with these mainland traditions. Until the 1990s, resource management was characterized by an "**exclusionary top-down conservation management**" model. This approach generated significant resentment and violent conflict between local stakeholders—primarily fishermen and tourism operators—and conservation authorities over access to high-value marine products like sea cucumbers. This dynamic begs a crucial question: why did the collectivist, harmony-focused norms of mainland migrants not become the dominant mode for resolving these resource conflicts? The answer likely lies in the nature of the conflict itself. As a struggle pitting disparate migrant groups against a powerful state apparatus over finite economic resources, it fostered an interest-based model of dispute. This context gave rise not to the application of imported customary law, but to the development of pragmatic, stakeholder-driven solutions like the *Grupo Nucleo*, designed specifically to forge consensus among competing economic actors. This history of locally generated conflict resolution directly spurred the development of the modern legal frameworks that now govern the islands.

### 3.0 Contemporary Legal Framework and Formal Dispute-Resolution Systems

As a province of Ecuador, the Galapagos Islands are governed by a multi-layered legal structure, from the national constitution to province-specific special laws, which formally recognize multiple avenues for dispute resolution. A legal anthropological analysis reveals that these formal structures are not merely a set of rules, but a reflection of political compromises that deliberately institutionalize ambiguity, creating a dual track for justice without providing a clear switching mechanism.

#### Ecuador's Constitutional Framework for Dispute Resolution

The 2008 Constitution of Ecuador establishes a progressive and pluralistic legal foundation, explicitly recognizing both alternative and indigenous forms of justice. From a socio-legal perspective, the constitution deliberately creates parallel normative orders, reflecting a political settlement rather than a coherent, integrated legal strategy.

1. **Article 190:** This article formally recognizes arbitration, mediation, and other alternative procedures for conflict resolution. It provides a state-sanctioned pathway for resolving disputes over matters where compromise is legally possible, operating firmly within the national legal paradigm.
2. **Article 171:** This article recognizes the jurisdictional duties of indigenous authorities to apply their ancestral traditions and legal systems to resolve internal conflicts. This empowers a separate, customary normative order, with the critical limitation that its practices cannot contradict the Constitution or international human rights.
3. **Article 57:** This article guarantees collective rights for indigenous communities, including the right to apply their own legal systems for resolving internal conflicts. This reinforces the jurisdictional autonomy granted in Article 171, further embedding legal pluralism into the state's foundation.

#### Galapagos-Specific Legislation

In response to escalating resource conflicts, Ecuador enacted legislation specific to the Galapagos. The '**Law of the Special Regime of the Galapagos Province' (1998)** and its reformed version, the '**Organic Law of the Special Regime of the Galapagos' (LOREG)**, were created to regulate economic activities and prioritize conservation. Critically, this legislation represents the state's attempt to shift from a purely conservationist paradigm to a socio-ecological one, a move driven directly by the history of conflict. A central feature of LOREG is its mandate for citizen participation, aiming to make local communities "protagonists in decision-making" as a direct response to the failures of the previous top-down model.

#### State-Sanctioned Alternative Dispute Resolution (ADR)

In line with Article 190, Ecuador has a formal system of Alternative Dispute Resolution. Mediation is defined as a voluntary, confidential procedure where a neutral third party assists in reaching a voluntary agreement. This formal system is available for matters that can be compromised, such as traffic disputes, but is explicitly excluded from areas like human rights and domestic violence. The resolution obtained through formal mediation holds the weight of

a final judicial sentence. This formal coexistence of state ADR and recognized customary justice, however, masks profound jurisdictional ambiguities and ideological clashes, which will be examined next.

## 4.0 Relationship Between Customary Practices and the Modern Legal System

While Ecuador's constitution formally recognizes legal pluralism, the relationship between the customary indigenous and state legal systems—two distinct "normative orders"—is fraught with ambiguity and friction. This phenomenon of "interlegality," where different legal systems interpenetrate and clash, is exacerbated by the lack of clear coordinating legislation. This legal grey area creates significant uncertainty, leaving indigenous authorities vulnerable to state prosecution and individuals at risk of conflicting legal outcomes.

### Formal Recognition and Its Limits

Both the 1998 and 2008 Constitutions grant indigenous authorities the right to exercise justice functions. This right is limited by the stipulation in Article 171 of the 2008 Constitution that customary practices **"cannot be contrary to the Constitution and human rights enshrined in international instruments."** This establishes a hierarchy where national and international human rights standards can override customary law, creating a primary point of contention.

### Primary Points of Friction and Limitation

The absence of a law to harmonize the two systems has produced several critical challenges, leaving key questions of jurisdiction unresolved.

- **Jurisdictional Ambiguity:** No national law clearly defines the personal, territorial, and material scope of customary versus state justice, leading to uncertainty over which system holds authority, particularly when non-indigenous individuals or serious crimes are involved. This creates opportunities for "forum shopping" but also significant legal risk.
- **Defining "Internal Conflicts":** The constitution limits indigenous jurisdiction to "internal conflicts," but this term remains undefined, leaving no consensus on whether it applies to serious crimes like murder.
- **Risk of Double Jeopardy:** The lack of mutual recognition of proceedings creates the potential for an individual to be punished by both indigenous authorities and the national justice system for the same offense, violating the legal principle of *ne bis in idem*.
- **Conflict with Human Rights Standards:** The customary punishments described earlier, such as whipping with nettle—seen from a Kichwa perspective as corrective and purifying—are precisely the practices that create direct conflict with national and international prohibitions on cruel, inhuman, or degrading treatment. This difference in interpretation places customary practice in direct tension with constitutional law.

### The La Cocha-Guantópolo Case: A Concrete Example

These frictions were starkly illustrated in the **La Cocha-Guantópolo murder case of 2010**. Following a homicide, the indigenous authorities of La Cocha apprehended five suspects and subjected them to customary justice, including whipping. Subsequently, the national prosecutor initiated a criminal investigation that resulted not only in the imprisonment of the five suspects but also in the arrest of three members of the indigenous council (*cabildo*) of La Cocha for administering the punishment. The indigenous authorities acted within what they believed to be their constitutionally guaranteed jurisdiction. The state, however, viewed the matter as a homicide under national law and the customary punishment as a separate illegal act. The case, ultimately brought before Ecuador's Constitutional Court, highlights the profound legal uncertainty defining the country's pluralistic system and the fundamental divergence in values that necessitates a comparative analysis.

## 5.0 Comparative Analysis: Customary/Local Practices vs. Western Mediation

A comparative analysis of the distinct dispute resolution models relevant to the Galapagos context reveals fundamental differences in their core values, processes, and goals. By deconstructing the indigenous Kichwa model, the island-specific participatory model, and the Western facilitative model of mediation (as practiced in places like Australia), practitioners can better understand the underlying assumptions that shape each approach and develop culturally appropriate strategies.

Feature	Customary/Indigenous Model (e.g., Kichwa)	Galapagos Participatory Model (e.g., Grupo Nucleo)	Western/Australian Facilitative Model
<b>Core Values</b>	Collective harmony, restoration of social balance, community well-being, reciprocity.	Consensus-building, stakeholder solidarity, joint problem-solving, sustainable resource management.	Individual autonomy, self-determination, procedural fairness.
<b>Role of Third Party</b>	Elders, community authorities; act as decision-makers and facilitators of purification/correction.	Neutral facilitators, conflict analysis experts; guide a problem-solving process but do not impose outcomes.	Accredited neutral mediator; facilitates communication and negotiation, detached from the substantive outcome.
<b>Formality &amp; Process</b>	Ritualized public proceedings (e.g., community assembly); follows established but unwritten customs.	Structured workshops with agreed-upon ground rules and agendas; two-stage consensus process (group agreement, then ratification by "bases").	Informal process with systematic stages (e.g., isolating issues, developing options) guided by the mediator.
<b>Key Concepts</b>	Focus on purification and correction; public nature of	Impartiality, joint problem-solving,	Confidentiality, neutrality,

	proceedings acts as a community warning.	stakeholder representation, transfer of learning to the wider community.	voluntariness, impartiality.
<b>Communication Style</b>	Hierarchical and ritualized; involves advice, reproach, and public apology.	Task-oriented, analytical, and collaborative; designed to counteract an accusatory atmosphere.	Direct negotiation between parties, facilitated by the mediator.
<b>Outcome Formation</b>	Authority-based decisions, restorative acts (community work, whipping), and community-driven solutions to restore harmony.	Consensus-based proposals developed by the representative group and ratified by the entire stakeholder community.	Consensual settlement, often a legally binding agreement, that accommodates individual parties' needs.

## Analysis of Alignment and Divergence

The most significant divergence lies in the foundational goals and conceptions of "justice" and "resolution." The Kichwa and Galapagos participatory models are fundamentally **collectivist**. The Kichwa model is **restorative**, aiming to repair the social fabric and reintegrate an individual into a harmonious community. The *Grupo Nucleo* model is **consensus-oriented**, seeking a unified solution for the collective good of all stakeholders. In contrast, the Western facilitative model is deeply **individualistic**, designed to empower individual parties to reach a mutually acceptable agreement that satisfies their personal needs. This reveals a core philosophical divide: the Western model's goal is to achieve a final *settlement*, an end-point to the dispute, whereas the customary and participatory models aim for a *restoration of relationships*, an ongoing process of social repair. This fundamental difference shapes every aspect of the process and has profound implications for practice.

## 6.0 Implications for Mediators Working with People from the Galapagos

The preceding analysis can be translated into actionable guidance for practitioners through the framework of **Adaptive Mediation**. This approach, rooted in complexity theory, moves beyond predetermined, "cookie-cutter" models to emphasize flexibility, local ownership, and processes that emerge from the specific context. For mediators working with individuals or groups from the Galapagos, adopting an adaptive posture is essential. It requires moving beyond standard Western paradigms to incorporate deep cultural sensitivity and procedural flexibility, recognizing that a failure to do so risks imposing solutions that are not only inappropriate but counterproductive.

### Key Cultural Sensitivities and Risk Factors

An adaptive mediator must be acutely aware of several cultural dynamics and contextual risks:

- **Collectivism vs. Individualism:** The foremost risk is imposing an individual-focused solution where community harmony and collective relationships are paramount. A private, confidential agreement between two individuals may be seen as insufficient if the conflict has disturbed the broader social equilibrium.
- **The Concept of Reciprocity:** The cultural expectation of a balance between giving and receiving can profoundly shape perceptions of fairness. A process or solution that does not honor this balance may be rejected, even if it appears logically sound from a Western perspective.
- **Role of Authority:** Misunderstanding the role of elders or community leaders is a significant risk. These figures may be expected to provide guidance or decisions rather than merely facilitate dialogue. A mediator strictly adhering to a non-directive role may be perceived as unhelpful, undermining trust.
- **Legal Pluralism:** A critical risk is ignoring the parallel jurisdiction of customary law. A mediated agreement that conflicts with customary norms or is developed without consulting community authorities may be unenforceable or create a new layer of conflict.

## Strategies for Adapting Mediation Processes

To maintain procedural fairness while adapting to the local context, mediators can employ the following strategies rooted in an adaptive approach:

1. **Conduct Pre-mediation Context Analysis:** Before initiating a process, ascertain the cultural background of the parties and whether community or collective interests are at stake. This analysis is crucial for designing an emergent process rather than imposing a predetermined one.
2. **Adapt the Process Design:** Co-design a flexible, multi-stage process. This may involve a "two-stage decision process" akin to the *Grupo Nucleo* model, where tentative agreements are taken back to families or community groups for consultation and ratification, ensuring local ownership.
3. **Incorporate Culturally Congruent Practices:** Suggest the inclusion of respected third parties, such as elders or community representatives, not as decision-makers but as advisors or support persons to ensure outcomes align with community values.
4. **Reframe Confidentiality:** Openly discuss the appropriateness of strict confidentiality. In a context where public acknowledgment may be culturally expected to restore social harmony, parties should consciously decide what level of privacy or disclosure is needed for a resolution to be meaningful and lasting.

Ultimately, practitioners should see their role not as directors of a pre-set process, but as facilitators of an adaptive one. This posture prioritizes local ownership of the solution and recognizes that the most durable resolutions are those that emerge from, and are validated by, the community itself. This prepares us to consider the concluding lessons from the Galapagos case.

## 7.0 Conclusion

This report has detailed the multifaceted landscape of dispute resolution in the Galapagos, revealing a dynamic system shaped by unique local conflicts and broader national legal structures. The key insight is the dual nature of conflict management in the province: the modern, stakeholder-driven participatory models developed for resource conflicts, and the persistent influence of mainland indigenous customary law within Ecuador's national framework of legal pluralism. The island-specific experience with models like the *Grupo Nucleo* serves as a practical, historical antecedent to the principles now articulated in global theories of Adaptive Co-Management (ACM), demonstrating the Galapagos's significance as a case study.

Looking forward, ACM presents a promising framework for integrating community needs with conservation goals, building on this participatory legacy through its focus on trust-building, social learning, and collaboration. However, a persistent challenge remains in the national legal sphere: the urgent need to enact coordinating legislation that clarifies the jurisdictional boundaries between state and customary justice. Without such legal certainty, the ambiguity and friction highlighted in this report will continue to undermine the full potential of Ecuador's pluralistic system.

For legal and mediation practitioners in Australia and the broader Western context, the Galapagos case offers a compelling lesson. It demonstrates the critical need to move beyond one-size-fits-all models of dispute resolution. In an increasingly globalized world, effective practice demands culturally-aware, flexible, and context-specific approaches that respect local values and empower communities to forge their own solutions.

## 8.0 Full Citations

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