Research Paper

The Senate, Commission 6 on Legislation and the Judiciary

Dispute Resolution Outside the Judicial System at the National and Sub-National Levels

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Parliamentary Institute of Cambodia
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Executive Summary

Resolution of disputes outside the court system has a long tradition in Cambodia. Seeing the important benefits of remedies outside the judicial system and to improve the access to justice for all in Cambodia, the government has reintroduced this concept as part of the legal and judicial reform strategy. The mechanism known as Alternative Dispute Resolution (ADR) has been established to settle most conflicts in the areas of family, land, employment, and commercial issues.

This research paper examines the practice of conflict resolution at the national and sub-national levels by focusing on the Commune Dispute Resolution Committee (CDRC), the Maison de la Justice and the Cadastral Commission. The experience of the Arbitration Council concerning employment disputes is also assessed as an example of better practice.

The CDRC and Maison de la Justice are state institutions established with a mission to manage and reduce local conflicts by mediating and conciliating disputes if the parties agree. From beginning as a pilot project in 2006 until now, the CDRC and Maison de la Justice have been expanded to respond to the increase in demands from the users. Their work is reported as successful, despite a lack of funds and the delay of the draft of a Sub-Decree on strengthening and enlarging the ADR mechanism, and some significant challenges remain.

The Cadastral Commission (CC) is also another department providing conciliation and mediation services for unregistered land disputes. The three administrative levels of the CC, Municipal/District/Khan Cadastral Commission (MDKCC), Capital and Provincial Cadastral Commission (CPCC), and National Cadastral Commission, are operated in broad compliance with the procedures set out in the relevant laws and regulations. Although the implementation of its procedures is not always complied with, its development is regarded as an achievement.

After its commencement in 2004, the Arbitration Council is considered as a successful arbitration service dealing with employment issues. It is regulated through appropriate laws and regulations, and provides its statutory decisions independently and effectively.

The CDRC, Maison de la Justice and the Cadastral Commission could benefit from learning from the best practices of the Arbitration Council, since its expertise, independence, credibility and effectiveness have been praised by users, stakeholders and international labour organizations.
I. Introduction to Dispute Resolution

1. Settlement before the Courts

The Court is the tribunal that has the authority to adjudicate legal disputes by examining whether the application and execution of laws are correct.\(^1\) Judicial power is not granted to the legislative or executive branch.\(^2\) The courts in Cambodia are organized into three components, which are: municipal/provincial courts (first level court), appellate court (second level court) and Supreme Court (highest level Court).\(^3\) The judiciary has jurisdiction to hear all types of cases, including administrative cases\(^4\). However, only the first instance court functions according to its specialization, which can be Commercial Court, Labour Court or Criminal Court.\(^5\) According to the Constitution, all citizens have the right to denounce, make complaints or claim for compensation or damages, and those claims shall reside under the competence of the courts.\(^5\) In 2003, the courts received more than 12,000 cases in both criminal and civil matters.\(^7\)

2. Settlement by Alternative Dispute Resolution (ADR)

Besides using the Court system, ADR (Alternative Dispute Resolution) is another means to settle disputes. It is a settlement mechanism that people can use as an alternative to deal with disputes outside of the court-centered adjudication system.\(^8\) The concept of ADR dates back to the 1970s and 1980s and has gained in popularity since then.\(^9\) ADR proceedings have been used to resolve family issues, neighborhood disputes, as well as environmental, commercial and industrial disputes.\(^10\) There are various forms of dispute resolution, some

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\(^1\) Nomira, Toyohiro. *Introduction to Civil Law* (JICA, 2014), p. 188.
\(^2\) Cambodian Constitution, Article 130.
\(^3\) Law on the organization of courts, Article 3.
\(^4\) Cambodian Constitution, Article 128. An administrative case is when the claimant goes against rulings made by administrative agencies (government) when implementing the public law. See more explanation in Kai HAUERSTEIN, “Aspects of Administrative Law and Its Reform in Cambodia” in The Cambodian Administrative Law (Konrad-Adenauer-Stiftung, 2014).
\(^5\) Law on the organization of courts, Articles 4 and 5.
\(^6\) Cambodian Constitution, Article 39.
\(^10\) Ibid., p. 2.
of the most common being arbitration, negotiation, conciliation and mediation. The motivating factor that contributes to the increased use of ADR is the high cost of litigation fees and the length of the court process. This means that the longer a litigated dispute takes to resolve, the higher the fees are for lawyer and court services. Besides the cost, the overload of cases before the courts is also an issue that encourages people to use ADR. Currently, with globalization and the rise in technology usage, a new form of ADR has been established: the Online Alternative Dispute Resolution (OADR). This new procedure aims to enable disputants or parties to communicate by electronic means in an attempt to reach an agreement. According to Jordan Goldberg, OADR is the same as ADR, but it uses the internet as the means to conduct ADR proceedings. Another noticeable development in ADR is the introduction of this method in a criminal context. The use of ADR processes in criminal matters is likely to be a new phenomenon in western/developed countries and Australia. The rationale for the use of ADR in the criminal justice system is likely to be linked with restorative justice, which focuses on the “victim-centered” approach by instilling in the offender a sense of responsibility towards the victim and the community. Many programs have been established within this process, including victim/offender mediation, family group conferencing, and victim/offender panels. Nevertheless, it has been argued that the practice of ADR in criminal matters is unlikely to succeed because offenders might feel under pressure to reach an agreement, and the concept of maintaining an ongoing relationship with the victim is not practical. A brief description of the common types of ADR methods is set out below.

12 Goldberg, Jordan. “Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum” Pepperdine Dispute Resolution Law Journal, 2014, pp. 2-4. Accessed from http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1261&context=drlj&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26lr%3D%26as_sdt%3D0%2C5%26as_ylo%3D2014%26as_adi%3DAltsite%26as_vis%3DA%26as_saf%3DA%26as_sdt%3DA%26as_qdr%3Dy%26as_page%3D1%26as_eq%3DAlternative%2Bdispute%2Bresolution%2Bfree%2Bebook#search=%22Alternative%20dispute%20resolution%20free%20ebook%22.
13 Ibid.
14 Ibid.
15 Ibid.
18 This theory is different from conventional retributive justice, which believes that the act of the offender shall be treated as a violation against the State rather than against the victim.
20 Ibid.
2.1 **Negotiation**

Negotiation is a process between two people or a group of people trying to obtain what they want from the other party.\(^{21}\) This is a common method for settling disputes between people, and it has been used in everyday life and in all relationships. It may be personal, social, professional, or simply a chance meeting with an individual. Sometimes people do not realize that they are negotiating. Generally, negotiation can be done in many ways such as in a formal approach (e.g., meeting, written agreement) or in an informal manner (e.g., by phone, email or letter).

2.2. **Mediation**

Mediation is also an alternative way to litigate. Mediators bring opposing parties together and attempt to work out a settlement or agreement that both parties can either accept or reject.\(^{22}\)

2.3. **Conciliation**

Conciliation is a process in which a third party (conciliator) meets with the disputants separately (rather than jointly as in mediation) in an effort to seek concessions from the parties that would help resolve the dispute.\(^{23}\)

2.4. **Arbitration**

Arbitration is a process that involves a neutral third party (Arbitrator) or arbitration panel to hear evidence from both disputants and render a decision called an “award”.\(^{24}\) Arbitration appears to be similar to court litigation because the Arbitrator has to consider the evidence submitted by both disputant parties. However, what makes arbitration different is that parties can choose between binding and non-binding arbitration, who will serve as the arbitrator, and the place and time for the proceedings.\(^{25}\) This flexibility does not exist in the litigation process.

Figure 1 describes the differences between these 4 techniques in the ADR process.

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\(^{21}\) Austermiller. “Cambodian Alternative Dispute Resolution”, p. 183.

\(^{22}\) Ibid., p. 185.


\(^{25}\) Ibid., pp. 139-140.
The many benefits of ADR have resulted in its increasing popularity for settling disputes. A major benefit is that ADR is more cost-effective and takes less time than litigation. Settling disputes through the courts can be

Figure 1: The principal forms of ADR

<table>
<thead>
<tr>
<th></th>
<th>Negotiation</th>
<th>Mediation</th>
<th>Conciliation</th>
<th>Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parties Involved</strong></td>
<td>Parties in conflict</td>
<td>Parties in conflict + Mediator</td>
<td>Parties in conflict + Conciliator</td>
<td>Parties in conflict + Arbitrator</td>
</tr>
<tr>
<td><strong>Role of third party</strong></td>
<td>Parties alone resolve their conflict.</td>
<td>Mediator tries to facilitate a solution considering interests and proposals of the parties. Parties decide on the solution.</td>
<td>Conciliator brings proposals to the parties to resolve their conflict. Parties decide on the final solution with the help of conciliator.</td>
<td>Arbitrator brings the solution to the case. Parties must respect that decision.</td>
</tr>
<tr>
<td><strong>Initiation of the process</strong></td>
<td>Voluntary</td>
<td>Voluntary</td>
<td>Voluntary</td>
<td>Voluntary (or mandatory by law or previous agreement)</td>
</tr>
<tr>
<td><strong>Result</strong></td>
<td>Depends on the parties alone</td>
<td>Depends on the decision of the parties</td>
<td>Conciliator proposes a solution, but it depends on the acceptance of the parties.</td>
<td>Depends on the decision of the Arbitrator.</td>
</tr>
<tr>
<td><strong>Enforcement of the result</strong></td>
<td>The agreement is like a contract, but if one party does not fulfill the agreement, the other has to go to court.</td>
<td>The agreement is like a contract, but if one party does not fulfill the agreement, the other has to go to court.</td>
<td>The agreement is like a contract, but if one party does not fulfill the agreement, the other has to go to court.</td>
<td>Awards could be enforced through tribunals or by other direct means.</td>
</tr>
</tbody>
</table>

*Source: PATHWAYS TO JUSTICE: Access to Justice with a focus on Poor, Women and Indigenous Peoples, Ministry of Justice and UNDP Cambodia.*
very expensive, while using ADR - especially the Arbitration method -
costs approximately half the cost of litigation. In this regard, ADR does
not require extensive paperwork and documentation and therefore results
in lower legal costs. In addition, the three methods (Mediation, Conciliation and Arbitration) provide flexibility to the parties to choose the
timeline for proceeding whenever there is availability (of the parties and
the third neutral person), and not according to the court's timeline. Furthermore, disputants believe that the litigation process has many
delays and backlogs in comparison with ADR.

Figure 2: Comparison between ADR (Arbitration Process) and Litigation Process in America

![Comparison Chart](source)

Source: National Arbitration Forum, The case for Pre-Dispute Arbitration Agreements: Effective and Affordable

Finally, using ADR tends to foster a better relationship between the
parties. This is because the process is confidential, as opposed to a trial,
which is public. The ADR process is also likely to be a better venue for
the parties to discuss unsettled or misunderstood issues in a less

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27 Goldberg, "Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum", p. 5.

28 Ibid.


30 Ibid.
intimidating atmosphere.\textsuperscript{31} This can create a win-win solution which allows both parties to move forward amicably.\textsuperscript{32} The following sections of this paper shall focus on the historical experiences in dispute resolution outside the court process in Cambodia, the management of conflicts at the national and sub-national levels, and experiences of the Arbitration Council. In addition, the government’s view on this process shall also be discussed.

II. Historical and Current Status of Dispute Resolution in Cambodia

1. Cultural and Historical Experiences
The resolution of conflicts outside the judicial system has a long tradition in Cambodia\textsuperscript{33} and disputes are usually settled according to traditional mechanisms and local culture.\textsuperscript{34} This practice is known as “Somroh Somruel or Psapsaah” (i.e., disputes are settled by village elders or chiefs)\textsuperscript{35}, which represents the concept of a “culture of peace” and manifests itself in Cambodian villages\textsuperscript{36}. The concept is that individuals and/or groups of people in the village gather for practical convenience (e.g., to undertake daily tasks in a collaborative way)\textsuperscript{37} and form a nuclear family.\textsuperscript{38} This social structure is likely to provide a sense of security for its members.\textsuperscript{39}

Traditionally, a close relative or neighbor is seen as a first person to ask for help in settling a dispute before calling on an independent third party to resolve a dispute through Somroh Somruel.\textsuperscript{40} Key important actors who play a role as an independent third party are the elderly (Chas Tum), the village chief\textsuperscript{41}, a monk, an Achar (knowledgeable expert), or a

\footnotesize{\textsuperscript{31} Goldberg. “Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum”, p. 14.}
\footnotesize{\textsuperscript{32} Ibid.}
\footnotesize{\textsuperscript{33} Kong, Phalack. “Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform”, in The Introduction to Cambodian Law, (Konrad-Adenauer-Stiftung, 2012), p. 12.}
\footnotesize{\textsuperscript{34} YRIGOYEN FAJARDO, Kong and Phan. Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples, p. 1.}
\footnotesize{\textsuperscript{35} Ramage, Ian et all. Somroh Somruel & Violence Against Women ( Domrei Research and Consulting, 2008), pp. 1-4.}
\footnotesize{\textsuperscript{37} Ibid.}
\footnotesize{\textsuperscript{39} Hughes, “An investigation of Conflict Management in Cambodian Villages: A review of the literature with Suggestions for Future Research”, p. 12.}
\footnotesize{\textsuperscript{40} Ramage et all. “Somroh Somruel & Violence Against Women”, pp.3-4.}
\footnotesize{\textsuperscript{41} Luco. Between a tiger and a crocodile: Management of local conflicts, and anthropological approach to traditional and new practices, p. 31.}
prominent person the parties trust. The elder, a monk or an Achar might rely on their personal experience and knowledge, as well as on their understanding of tradition and Buddhist’s principles to advise and lecture people on both family quarrels or land disputes. However, when the dispute is serious, it is forwarded to the village chief. Educated village chiefs seem to rely on the principle of tradition and Buddhism to offer solutions, while those with lesser education provide settlements based on their own sense of how the dispute should be resolved. Before 1970, the King also played a role as a third party when he conducted Royal hearings called Preah Reach Savnakar, where citizens could bring their disputes to him for settlement. Rather than making decisions, the King provided his opinion, which was not binding on the parties.

2. Cambodia Moving Towards Dispute Resolution
Following the October 1991 Paris Peace Agreement, the Royal Government of Cambodia (RGC) initiated reforms to the legal and judicial system such as the Supreme Council of State Reform in 1999 and the Council for Legal and Judicial Reform in 2002. The Council of Ministers approved the Legal and Judicial Reform Strategy in 2003 and the Plan of Action in 2005. The goal of the legal and Judicial Reform Strategy is “the establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth.” To achieve this goal, seven strategic objectives were introduced. The 6th strategic objective was the introduction of alternative dispute resolution methods. The Plan for Action aims to “investigate, build upon and strengthen other alternative and traditional methods of alternative dispute resolution.”

42 Kong. “Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform” p. 13.
43 Luco, Between a tiger and a crocodile: Management of local conflicts, and anthropological approach to traditional and new practices. p. 31.
44 Ibid.
45 Kong. “Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform”, p. 13.
46 Ibid.
47 Royal Decree on the Establishment of the Supreme Council of State Reform (1999), Royal Decree No NS/RKT/0602/158 on the Establishment of the Council of Judicial Reform (2002). The Council of Judicial Reform was changed to be under Ministry of Justice’s supervision after the last elections.
48 Ibid.
49 Ibid.
50 Ibid.
51 YRIGOYEN FAJARDO, Kong, and Phan. Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples, p. 36.
There are many factors that led to the increased use of ADR, including barriers to access to the formal justice system because of geographical, economic, social and cultural circumstances of poor and vulnerable groups.\textsuperscript{52} In this context, out of a population of 13.4 million in 2008, 80% of the people were living in rural areas\textsuperscript{53}, and most of the conflicts were mainly between individuals affecting the poor, women and indigenous people. The disputes mainly concerned local conflicts, gender violence, land issues, and criminal activities.\textsuperscript{54} People in rural areas viewed the courts as being distant, expensive and complicated to use.\textsuperscript{55} These factors discouraged the use of the formal judicial system. This, coupled with the fact that the courts had high caseloads and a lack of human resources, further discouraged people from using this system to settle disputes.\textsuperscript{56} Consequently, the legal and judicial reform strategy of the RCG centered on having the courts not deal with every conflict and moving to a larger use of ADR. Figure 3 below provides the expected results based on the current facts that led Cambodia to adopting the ADR process.

\textbf{Figure 3: Assumptions with respect to local justice and ADR}

<table>
<thead>
<tr>
<th>Facts</th>
<th>Principles</th>
<th>Propositions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. There are geographical, economic and socio-cultural barriers for the poor to access the formal justice system (courts).</td>
<td>Easy conflict resolution contributes to poverty reduction.</td>
<td>Strengthen local and informal mechanisms for conflict resolution: they are closer to the people, more economical, and culturally easier to understand.</td>
</tr>
<tr>
<td>2. The courts are overloaded and short of resources.</td>
<td>Opportunity to maximize social investment</td>
<td>Instead of investing more resources in the formal justice system, dedicate more money to ADR.</td>
</tr>
<tr>
<td>3. The courts do not deal with every conflict that arise in society. Rural areas have traditional mechanisms for conflict resolution.</td>
<td>Functional specialization</td>
<td>The courts should not deal with every conflict. Some of these should be resolved outside the courts, as in fact they are.</td>
</tr>
<tr>
<td>4. The courts use adjudicatory Amicable resolution: social peace</td>
<td>It is desirable that most conflicts</td>
<td>It is desirable that most conflicts</td>
</tr>
</tbody>
</table>
3. Development of a Legal Framework Responding to the Government’s Legal and Judicial Reform Strategy Regarding ADR

A number of laws were enacted to further the use of alternatives to the courts for dispute settlement. These are discussed below.

In 2001, the Law on Administration of Commune/Sangkat was promulgated, giving the commune administration the duty to promote the role of conciliating disputes between citizens.  

In addition to the above law, Article 47 of the 2001 Land Law established the Cadastral Commission, which was the first attempt to allow citizens to deal with unregistered land issues without using the court process. If land disputes cannot be resolved by the Cadastral Commission, then the dispute goes to the court for resolution.

To deal with employment issues, the Arbitration Council was established by Prakas 099 in April 2004 and is provided for under Cambodia’s Labour Law.

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57 Sub-Decree on Decentralization of Roles, Functions, and Power to Commune Councils (2002), Article 61.
59 Inter-Ministries Prakas No. 02 BRKN.03 in 2003 ‘On Determination of Duty of the Court and Cadastral Commission Related to Land Disputes’. 
As part of the World Trade Organization (WTO), Cambodia agreed to adopt new laws with a commitment to improve the regulatory environment for trade and investment. The Law on Commercial Arbitration (LCA) was passed in 2006, providing a framework for the private arbitration of business disputes that follow international practices. In 1960, before the adoption of the LCA, Cambodia signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.\(^{60}\) Under this Convention, Cambodia is under an obligation to enforce foreign arbitral awards; however, it is unclear as to whether or not foreign arbitral award enforcement has been implemented\(^ {61}\). Moreover, in 1993, Cambodia signed the Convention on the Settlement of Investment Disputes (ICSID), which Parliament has not yet ratified.\(^ {62}\) The Civil Code Procedure 2006 also allows for a compromise settlement process either inside or outside of the court, even if parties have already filed a complaint to the courts. Article 97 states that “the court may attempt to effect a compromise settlement at any stage of the litigation”. In addition, Article 220 provides that the compromise can be entered into outside the court. All of these legal frameworks play a significant role in the acknowledgment of the importance of Alternative Dispute Resolution in important sectors of society and the economy.

III. Management of Conflicts at the National and Sub-National Levels

1. Sub-National Level

1.1. Commune and District Level

In order to provide a substantial level of autonomy to local governments so that they can better represent the interests of the people, two laws were enacted in 2001: the Law on the Administration and Management of Communes (the Commune/Sangkat Law) and the Law on Commune Elections, which provide the legal framework for decentralization. Commune/Sangkat council elections were held in 2002, 2007 and 2012. Based on UNDP’s assessment,\(^ {63}\) in 2009 there were approximately 171

\(^{60}\) Kong, “Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform”, p. 14.

\(^{61}\) Ibid.

\(^{62}\) Ibid.

districts and 1621 communes, with female councilors comprising 17.78% of the total in 2012. Each commune received approximately 25 dispute cases per year resulting in approximately 40,525 registered disputes at all 1621 communes. In order to deal with these disputes, two entities were established to provide dispute settlement through mediation and conciliation: the Commune Dispute Resolution Committee (CDRC) and the Maisons de la Justice.

1.1.1. Commune Dispute Resolution Committee (CDRC)
The Commune Dispute Resolution Committee (CDRC) was established by the commune/sangkats to assist them in conciliating disputes. This came in response to Article 27 of the 2001 Law on Administration of Commune/Sangkat that allows them to appoint various committees to provide advice on how to resolve disputes. As stated in the Cambodia Operation Manual, the CDRC was established as a pilot in 2006. The roles of the CDRC are the following:
- To manage and reduce local conflicts;
- To mediate and conciliate disputes if the parties agree to these processes;
- To disseminate legal information to the local population; and
- To assist commune councils in the ADR process.

The CDRC is composed of a commune councilor as the chief, a women councilor as deputy chief, the commune police chief and four respected villagers. The majority of disputes deal with:
- Land disputes;
- Debt and contract disputes;
- Marital disputes;
- Insults or defamation;
- Pre-marital contract breaches;
- Moveable property disputes;
- Domestic violence;
- Injury; and

66 YRIGOYEN FAJARDO, Kong and Plan. Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples, p. 106.
68 Ibid.
69 Ibid.
- Other cases.\textsuperscript{70}

It has been suggested that some cases should not be mediated by the CDRC. These include: criminal cases (e.g., rape or murder), land disputes with official title, cases where there is no agreement from the parties to join mediation, and where conflict of interests occur between the mediator and the parties.\textsuperscript{71}

According to the Cambodia Operation Manual regarding the Commune Dispute Resolution Committee, the CDRC should act in a professional manner and follow the same approach as the courts regarding the obligation to maintain confidentiality, trust, equity, justice, and not be in any conflict of interest.\textsuperscript{72} Up to the end of 2013, there were approximately 56 CDRCs comprising 116 women out of 392 members.\textsuperscript{73}

Figures 4 and 5 below provide statistics on the number and types of disputes received by CDRCs since they were established in 2006 until 2013.

**Figure 4: Statistics of cases received by CDRCs**

![Pie chart showing statistics of cases received by CDRCs]

**Source:** Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

\textsuperscript{70} Ibid, p. 14.
\textsuperscript{71} Ibid, p. 17.
\textsuperscript{72} Ibid, p 26.
\textsuperscript{73} Ministry of Justice. Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.
According to UNDP assessment reports dated 2009 and 2010, the CDRCs are likely to gain high levels of trust from the users because the parties to a dispute have the right to choose two of their own mediators (two mediators selected by the parties and the third mediator selected by the CDRCs). The users also expressed their view that the CDRCs play a very important role in increasing the access to justice, and that the services should continue. One of the significant challenges of CDRCs is the non-availability of mediators to hear cases whenever his or her name has been chosen by the parties, which can lead to the same people mediating most

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of the cases (the chief, the deputy and a variable third member). The reasons for the unavailability of the mediators is reported to be the lack of funds (e.g., to pay for the mediator’s gasoline to reach the commune office), and the fact that many of them are too busy with some other work. In spite of these issues, the final report of the UNDP still maintains that the CDRC’s work is successful.

1.1.2. Maisons de la Justice

The Maisons de la Justice were established through inter-ministerial Prakas No. 85Rbk/MOJ/MOI/2006 and have the following tasks:

- To provide training and/or technical advice to commune councils on conciliation and certain legal matters regarding disputes;
- To assess the demand for legal information at the district and commune level;
- To disseminate necessary legal information to the public in the district;
- To conciliate and mediate disputes at the request of the parties; and
- To provide referral services to disputants whose cases cannot be resolved at the local level.

In 2006, the Maisons de la Justice were established for only four districts as a pilot, and in 2013 they were expanded to 31 districts with 29 females out of 93 members. The Maison de la Justice’s officers have to apply the professional code of conduct that is compiled by the Ministry of Justice (MOJ) and the Ministry of Interior to ensure that the officers are familiar with the code and how it operates. The officers are to perform their duties with honesty, integrity, accountability, confidentiality, transparency, no discrimination and no conflicts of interest. The Maison de la Justice of each district is directed by a chief appointed by the MOJ

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76 Ibid.
77 Ibid.
78 Ibid.
79 Inter-ministerial Prakas No. 85Rbk/MOJ/MOI/06, Article 3.
82 Ibid., pp. 2-4.
and one secretary if necessary. The majority of appointed chiefs are often former court clerks supported by MOJ Phnom Penh based staff.

Figures 6 and 7 below provide statistics on the number and types of disputes received by the Maisons de la Justice since their establishment up to 2013.

**Figure 6: Statistics of cases received by the Maison de la Justice**

![Pie chart showing statistics of cases received by the Maison de la Justice]

Source: Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

**Figure 7: Statistics of the number of cases received by the Maisons de la Justice**

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83 Inter-ministerial Prakas No. 8SBk/MOJ/MOI/06. Articles 2 and 6.
85 Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.
The work of the Maisons de la Justice is reported (by the MOJ and the UNDP) to be only partially successful because of a high rate of absenteeism by the Maison de la Justice’s chief, a low number of cases received, a lack of information dissemination, and a lack of supervision and support to the CDRCs in most communes.\textsuperscript{86} All of these factors are attributed to the lack of budget for administrative costs.\textsuperscript{87} Reported challenges noted in the Access to Justice Project in Cambodia: Final Evaluation Report by UNDP is also consistent with the findings in the government report by the MOJ.\textsuperscript{88} The Government also noted that another challenge for both the CDRCs and the Maisons de la Justice is the delay of the draft of a sub-decree on strengthening and enlarging the ADR mechanism, which has led to a lack of funds for this endeavour.\textsuperscript{89}

1.2. \textbf{The Cadastral Commission (CC)}

The Cadastral Commission (CC) was created under Article 47 of the 2001 Land Law, and its structure and general operating procedures were stated under Sub-Decree No 47 ANK.BK (May 31, 2002). The CC has the mandate to resolve unregistered immovable property disputes occurring outside of the adjudication areas, and disputes arising within the

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Chart showing the distribution of cases in Cambodia.}
\end{figure}

\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
\textsuperscript{89} Ibid.
Adjudication areas\textsuperscript{90} that cannot be conciliated by the Administrative Commission.\textsuperscript{91} The Commission has three hierarchical structures: the District/Khan Cadastral Commission (DKCC); the Provincial/Municipal Cadastral Commission (PMCC); and the National Cadastral Commission (NCC).\textsuperscript{92} However, it should be noted that both the DKCC and PMCC have been renamed into the Municipal/District/Khan Cadastral Commission (MDKCC) and the Capital and Provincial Cadastral Commission (CPCC).\textsuperscript{93} The Cambodian Ministry of Land Management, Urban Planning and Construction (MLMUPC) and the Ministry of Justice issued Inter Ministries Prakas No. 02 BRKN.03 in 2003 ‘On Determination of Duty of the Court and Cadastral Commission Related to Land Disputes’. This Prakas clarified the jurisdictions of the courts and of the CC, providing for the CC to deal with all cases involving unregistered land, except for those involving inheritance (between heirs) or contracts (between parties to a contract) which would be within the primary jurisdiction of the courts.

\textbf{Figure 8: Statistics of land disputes that have been settled by the Cadastral Commission 2003-2009}

<table>
<thead>
<tr>
<th>Year</th>
<th>Case Number</th>
<th>Cases that reached settlement</th>
<th>Dismissed cases</th>
<th>Cases referred to the court</th>
<th>Pending cases</th>
<th>Withdrawn cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>1245</td>
<td>271</td>
<td>82</td>
<td>2</td>
<td>890</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>2079</td>
<td>553</td>
<td>125</td>
<td>0</td>
<td>1319</td>
<td>0</td>
</tr>
<tr>
<td>2005</td>
<td>3456</td>
<td>402</td>
<td>382</td>
<td>0</td>
<td>1863</td>
<td>49</td>
</tr>
<tr>
<td>2006</td>
<td>4254</td>
<td>1246</td>
<td>871</td>
<td>61</td>
<td>2058</td>
<td>79</td>
</tr>
<tr>
<td>2007</td>
<td>4689</td>
<td>1439</td>
<td>1066</td>
<td>80</td>
<td>2060</td>
<td>124</td>
</tr>
</tbody>
</table>

\textsuperscript{90} Adjudication Zone is the area that has been discretionary selected to provide land titling and registration both by systematic titling or sporadic land titling systems.

\textsuperscript{91} Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002. Article 3.

\textsuperscript{92} Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002. Article 4.

<table>
<thead>
<tr>
<th>2008</th>
<th>5038</th>
<th>1653</th>
<th>1213</th>
<th>84</th>
<th>1952</th>
<th>220</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>5193</td>
<td>1810</td>
<td>1369</td>
<td>97</td>
<td>1742</td>
<td>272</td>
</tr>
</tbody>
</table>


According to recent update cases received by CC from 2003 until April 2014, there were approximately 6,224 cases in total, and 5,370 cases were processed (out of these, 2,742 were conciliated, 2,011 were dismissed and 617 were withdrawn). 854 cases are still pending. Based on the above statistics in Figure 8 and on more recent statistics, the number of cases has increased from year to year, while at the same time, the number of dismissed cases has also risen even though the dismissal of claims is not encouraged and should only occur when necessary to prevent injustice. According to GTZ-Cambodia and the World Bank’s research, the decision to dismiss cases is made at different stages of the proceedings and in an inconsistent manner.

It has been reported by GTZ that while the CC’s achievement is the development of the dispute resolution procedure, it has not always been implemented properly. This can be seen in issues that have arisen concerning 1) how disputants choose a conciliator, 2) how parties to a dispute are informed about the process and the law, 3) how decisions are reached regarding the dismissal of cases and, 4) how land is registered once an agreement is reached. For example, at the MDKCC, the chief often recommends conciliators including him or herself, rather than letting the disputants make the selection. This may be the reason why only 50% of the parties to a dispute are satisfied with the outcome under the CCs process.

A brief description of the three hierarchical levels of CC is provided below.

### Municipal/District/Khan Cadastral Commission (MDKCC)

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97 Ibid., p. XII.
98 Ibid.
99 Ibid.
100 Ibid.
The district/khan governor is the chair of the MDKCC101, who can invite representatives from district/khan, commune/Sangkat and village authorities and/or local elders to join as ad hoc members. The MDKCC has the duty to conciliate conflicts arising outside of the adjudication areas, and the conciliation shall be conducted based on customary rules along with cadastral techniques.102 If the conciliation fails at the MDKCC, it submits the dispute to the CPCC for the following reasons:103

- One person makes a claim for several parcels of land that are also claimed by small land holders;
- One of the parties is a high-ranking authority;
- There is a conflict of interest with the Chief of the MDKCC; and
- The dispute involves State public land.

The MDKCC also has the right to dismiss any claim that is improper or baseless, or made to harass or intimidate a party. However, dismissal of claims is not encouraged.104 Figure 9 below describes the workflow as well as the duration for settling disputes at the MDKCC. Usually, land disputes that are brought before the MDKCC have already been conciliated by the village and/or commune officers, but not resolved at the village and/or commune level.105

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101 New Article 5 Sub-Decree on the Amendment on Article 5 and Article 28 of Sub Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002 (No.34 ANK.BK/20 April 2006).


1.2.2. Capital and Provincial Cadastral Commission (CPCC)

The CPCC is composed of the provincial/municipal governor, or deputy governor, as the chief, and the chief of the provincial and municipal Department of Land Management, Urban Planning and Construction.\(^{106}\) The CPCC has a duty to conciliate disputes that are outside the MDKCC’s jurisdiction and cannot be resolved.\(^{107}\) Previously, the CPCC did not have any decision-making power. However, beginning in early 2010, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) delegated the power to make decisions to the chief of the CPCC.\(^{108}\) Disputants who do not agree with the CPCC’s decision can appeal to the National Cadastral Commission (NCC) within 30 working days after receiving the decision, and if the appeal is not made within this time frame, the decision of the CPCC stands.\(^{109}\)

2. National Level

2.1. National Cadastral Commission (NCC)

The National Cadastral Commission is the highest level in the system of the CC. The NCC is composed of the Minister of MLMUPC as the Chief, the Secretary of State of the Ministry of Interior, and the Secretary of State of the office of the Council of Ministers.\(^{110}\) It is competent to make decisions on all cases that cannot be conciliated at the lower levels, and it has the

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107 Ibid., article 13.
110 Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002, Article 10.
full jurisdiction to decide on who is the lawful possessor or owner of land.\footnote{Ibid., articles 19 and 20.} Upon the request of the parties, the NCC also can hold a hearing to decide upon the merits of the case.\footnote{Ibid., article 21.} If the NCC has made a written decision and if the parties disagree with it, the parties can ask for a judicial review within 30 days after the decision has been delivered.\footnote{Ibid., article 23.} The court can decide to forward the case to the CC if the court finds that improper procedures were followed, a conflict of interest took place, and/or it is outside its jurisdiction.\footnote{Ibid.}

In 2006 the government established another department called the National Authority for Land Dispute Resolution.\footnote{Royal Decree on establishment of establishment of National Authority For Land Dispute Resolution, NS/RKT/0206/097 February 26, 2006.} The chief of this authority is the representative of the Prime Minister and the Minister of MLMUPC serves as a deputy as well the representative of relevant NGOs.\footnote{Ibid., article 1.} The authority has jurisdiction to hear all land disputes that are outside the NCC’s jurisdiction.\footnote{Ibid., article 3.} It appears that the authority’s jurisdiction is overlapping with the court’s with regard to registered land issues, which is outside the jurisdiction of the NCC.\footnote{Inter Ministries Prakas No. 02 BRKN.03 in 2003 ‘On Determination of Duty of the Court and Cadastral Commission Related to Land Disputes’.} From its establishment until 20 September 2009,\footnote{Horng Try., “Land Conflict in Cambodia2001-2009”, p. 111.} there were approximately 1192 (See Figure 10 below) disputes lodged with the authority and only 38 resolved.

**Figure 10: Statistics of cases lodged to the National Authority to settle land dispute 2006-2009**
IV. Experiences from the Arbitration Council

The Arbitration Council was established in 2004 by Prakas 099, although it was provided for under Cambodia’s Labour Law since 1997. The Council has jurisdiction to examine collective labour disputes when the arbitration council procedure is provided for in collective bargaining agreements, or provided for by Articles 309-317 of the Labour Law. Once a dispute is received by the Arbitration Council, a 3-member arbitration panel is appointed to hear and decide the case. One member of the panel is chosen from the council by each of the parties to the dispute. These two arbitrators then choose the third one from the list of arbitrators. The Council legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. Additionally, the council also has the power to investigate the economic situation of the enterprise and has the power to make enquiries and require parties to submit all relevant evidence and documents. However, the hearing of the council is held behind closed doors, and the council keeps the testimony and all documents confidential. The Council must render an award within 15 days after

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121 Cambodian Labour Law, articles 309-317.
122 Collective dispute involves one or more employers and a number of employees, as a group or trade union (Article 302 of the Labour Law).
123 Cambodian Labour Law, Article 309.
125 Cambodian Labour Law, Article 312.
126 Ibid.
127 Ibid.
being seized of the case - which includes the time for a hearing and investigation -, and an extension can only be made if the parties agree.\textsuperscript{128} The parties can choose to accept the decision of the council immediately after it renders the award, or to file an opposition to the award within eight calendar days.\textsuperscript{129}

The Arbitration Council is perceived to be an independent institution, which is crucial to its credibility and success.\textsuperscript{130}

In 2013, the Council handled approximately 285 cases (the highest caseload in its history), compared to 255 in 2012.\textsuperscript{131} The majority of cases in 2013 (approximately 85\%) were received from the garment and footwear industries, with the rest coming from manufacturing (4.2\%), the service sector (5.1\%), hospitality and tourism (2.5\%), construction (1.5\%), and other cases (2.1\%).\textsuperscript{132} Based on its growing caseload and its independence and credibility, the Council is likely to continue as a reliable body for dispute resolution.\textsuperscript{133}

\textbf{V. Conclusion}

The introduction of ADR systems in Cambodia both at the sub-national and national levels is a key means to increase the access to justice for Cambodians. Although the funding obstacles at the sub-national level for the CDRCs, especially for the Maisons de la Justice, seem to be a key issue, the government commitment to the process, as well as the support from UNDP, will probably help to make this initiative successful. In the near future, a clear legal framework for the functioning of both the CDRCs and the Maisons de la Justice, as well as their use of the expertise from the Arbitration Council, will probably improve the functioning of these organizations.

\textsuperscript{128} Cambodian Labour Law, article 313; and Prakas 099, clause 30.
\textsuperscript{129} Prakas 099, Clauses 40 and 42.
\textsuperscript{131} \url{http://www.arbitrationcouncil.org/en/about-us/statistics}.
\textsuperscript{132} Ibid.
\textsuperscript{133} Ibid.
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