

## **Research Paper**

The Senate Commission 1 on Human Rights, Complaint Reception and Investigation

# **Alternative Dispute Resolution: Cambodia and Japan**

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November 2016

**Parliamentary Institute of Cambodia**



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## I. Introduction

Alternative Dispute Resolution (ADR) refers to the way that parties can settle their disputes outside of the court.<sup>1</sup> Informal ADR mechanisms have been used throughout history around the world, including in Cambodia<sup>2</sup> and Japan<sup>3</sup>. There is not a large difference in ADR methods between Cambodia and Japan. These include negotiation, mediation/conciliation<sup>4</sup>, and compromise and arbitration. ADR mechanisms are being used increasingly to settle many types of disputes: land, employment, family, and issues relating to civil and commercial law. Both domestic and/or international methodology can be used in this process.

ADR can be useful because it may offer a solution without going to court. The rationale of ADR resolution is to achieve a solution that is simple, quick, less expensive, and more flexible than going through litigation.<sup>5</sup> Furthermore, ADR does not require extensive paperwork and documentation which results in lower legal costs.<sup>6</sup> ADR is becoming more important in modern dispute resolution, as it is now used in the formal legal system in many countries.

This briefing note will provide a brief comparative study of ADR in Cambodia and Japan. The key findings of the desk review try to address three main research questions, which are:

1. What are the ADR mechanisms outside the judicial system in Cambodia and Japan?
2. What are the benefits of using ADR in Cambodia and in Japan?
3. What are the differences and commonalities between ADR in Cambodia and Japan?

## II. Alternative Dispute Resolution (ADR) in Cambodia

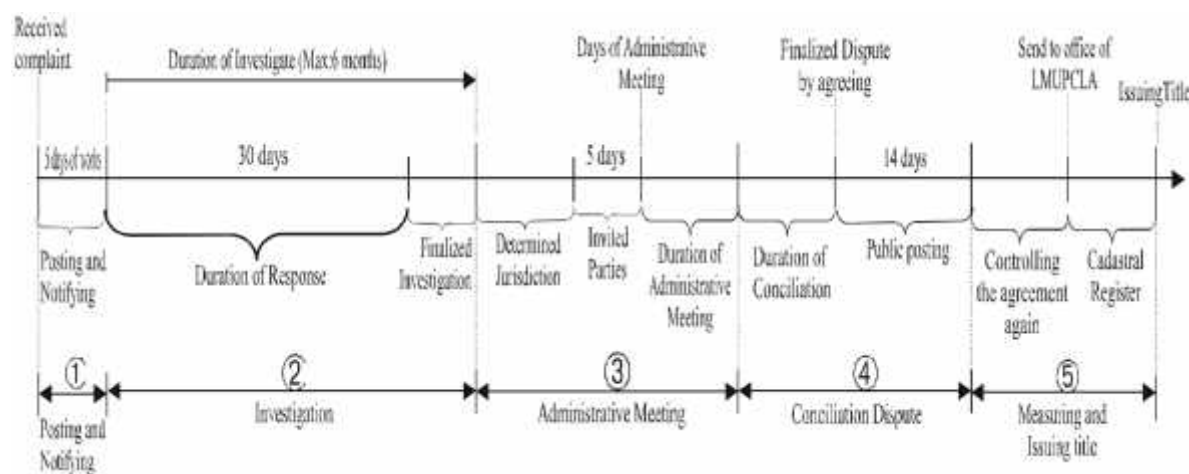
Seeing the importance of ADR, a number of laws passed by the Cambodian parliamentary have begun to incorporate ADR procedures into the legal system as a judicial reform of the Government of Cambodia in order to improve the access to justice to Cambodian citizens.<sup>7</sup> This paper will provide the categories of conflict resolution at the national and sub-national levels. It is a settlement mechanism used to solve civil conflicts<sup>8</sup>, commercial issues, labor disputes, etc.

Type of Conflicts	Structure	Roles and Processes
Land Dispute	Three levels of land dispute resolution are applied including: <ul style="list-style-type: none"><li>• Municipal/District/Khan Cadastral Commission (MDKCC)</li><li>• Capital and Provincial Cadastral Commission (CPCC)</li><li>• National Cadastral Commission (NCC)</li></ul>	<ul style="list-style-type: none"><li>• MDKCC :<ol style="list-style-type: none"><li>1. Duty of MDKCC is conciliating conflicts arising outside adjudication areas, and the conciliation shall be conducted based on customary rules along with cadastral techniques.<sup>9</sup></li><li>2. Duration of Investigation maximum 6 months (Figure 1)</li></ol></li><li>• CPCC:<ol style="list-style-type: none"><li>1. Duty of CPCC is conciliation of</li></ol></li></ul>

		<p>disputes that are outside the MDKCC's jurisdiction and cannot be resolved.<sup>10</sup></p> <ol style="list-style-type: none"> <li>If the parties do not agree on the decision of CPCC, parties can appeal to the National Cadastral Commission (NCC) within 30 working days.</li> </ol> <ul style="list-style-type: none"> <li>NCC : <ol style="list-style-type: none"> <li>-Makes decisions on all cases that cannot be conciliated at lower levels and has full jurisdiction to decide on who is the lawful possessor/owner of land.<sup>11</sup></li> <li>-Request by parties to NCC in order to hold a hearing on a dispute</li> <li>There are 30 days of judicial review by NCC if the parties disagree with NCC's decision.<sup>12</sup></li> </ol> </li> </ul>
Labor Dispute	<p>There are two main bodies that involve in Labor Dispute Resolution</p> <ul style="list-style-type: none"> <li>Arbitration Council</li> <li>Ministry of Labor and Vocational Training</li> </ul>	<ul style="list-style-type: none"> <li>Arbitration Council: Duties and Process <ol style="list-style-type: none"> <li>-Arbitration Council has jurisdiction to examine collective labor dispute.<sup>13</sup></li> <li>- According to article 309 to 317 of Cambodia Labor law, Arbitration Council procedure is provided for collective bargaining agreement.<sup>14</sup></li> <li>The maximum process to resolve collective labor dispute is 45 days. The processes of collective labor dispute outline below:</li> </ol> </li> <li>Conciliation Process <ul style="list-style-type: none"> <li>- Collective labor dispute parties shall communicate to labor inspector.<sup>15</sup></li> <li>- Minister of labor shall designate a conciliator within 48 hours.<sup>16</sup></li> <li>-Conciliation shall be carried out within fifteen days.<sup>17</sup></li> <li>-Conciliator shall send record report to the Minister of Labor within 48 hours.<sup>18</sup></li> </ul> </li> </ul> <p>If the issue cannot resolve by the conciliator, It will transfer to Arbitration Council within 3 days.<sup>19</sup></p> <ul style="list-style-type: none"> <li>Arbitration Council Process <ul style="list-style-type: none"> <li>- Arbitration Council must inevitably</li> </ul> </li> </ul>

		<p>meet within 3 days.<sup>20</sup></p> <ul style="list-style-type: none"> <li>- Within 15 days, the Arbitration Council shall communicate its decision<sup>21</sup> to the Ministry of Labor and notify the parties.<sup>22</sup></li> <li>- Parties have rights to appeal of arbitral decision by informing Ministry of Labor within 8 calendar days from the date of receiving the notification.<sup>23</sup></li> </ul>
Civil Disputes	<p>To deal with civil disputes, the Government of Cambodia has provided a substantial level of autonomy to sub-national levels so they can better represent the interest of the people. The entity established to provide dispute resolution is :</p> <ul style="list-style-type: none"> <li>• Commune Dispute Resolution Committee (CDRC)</li> </ul>	<ul style="list-style-type: none"> <li>• CDRC: Roles: Gives advice and resolves disputes manage and decrease local conflicts. <ul style="list-style-type: none"> <li>- To mediate and conciliate arguments if the parties agree to this</li> <li>- To disseminate legal information to the local people</li> <li>- To assist commune councils in the ADR process</li> </ul> </li> </ul>

**Figure1: 5 steps MKDCC process for settling dispute**



There are three main common procedures for ADR in Cambodia.<sup>24</sup>

## 2.1. Negotiation

Negotiation is a simple approach for conflict resolution by the parties without any intervention of a third party. The parties to the conflict discuss with each other in an attempt to get what they

desire from the other side.<sup>25</sup> Negotiation is a basic mechanism used in every stage of the ADR procedure.<sup>26</sup>

## **2.2. Mediation**

Mediation is a second major form of ADR in which a third party (called a mediator) directly assists the conflicting parties to reach an agreement. In the process of mediation, the mediator has no power to define a result. However, the mediator listens to the discussion of each party and tries to convince them to compromise. Moreover, the mediator could create specific tools for settling the dispute. In Cambodian society, mediation plays an important role in dispute resolution and is recognized in law.<sup>27</sup> In general, the mediator is an officer not aligned to the participants in a dispute. Possible sources of mediators are the Ministry of Interior (in family disputes), the Ministry of Labor (in labor disputes), Cadastral Commission, National Authority for Land Dispute Solution (inland disputes), National Arbitration Center (commercial disputes), and local commune councils (in small civil disputes such as debts, and land border). In addition, judges also play a role as mediator if a party brings a civil dispute to the court.<sup>28</sup> In this stage, the judge tries to resolve the dispute before it reaches the formal litigation stage. If it fails, the parties proceed with formal litigation.<sup>29</sup>

## **2.3. Arbitration**

Arbitration refers to another mechanism of conflict resolution in which the parties submit their complaint to a neutral third party (known as an arbitrator) in order to reach an agreement. The arbitrator is granted legal power to resolve the conflict. This mechanism mostly applies in labor and commercial disputes.<sup>30</sup> To deal with labor disputes, parties to the dispute can raise the case to the Provincial or Municipal Labor Inspector or the Council of Arbitration before presenting to the court.<sup>31</sup> Moreover, the agreement made before the Labor Inspector is enforceable by law.<sup>32</sup>

# **III. Alternative Dispute Resolution (ADR) in Japan**

ADR has become very popular over the years amongst companies, business people and organizations and Japan has a tradition of ADR in the legal process. In addition, Japanese ADR has a more comprehensive legal framework than Cambodia. Negotiation is a basic mechanism used in every stage of ADR procedures. There are three methods of ADR in the modern Japanese legal system, which are mediation, compromise and arbitration, which are outlined below.

## **3.1. Mediation (in Japanese: *Chotei*)**

Mediation involves a nonpartisan third party to facilitate the dispute process and help the parties reach the best resolution.<sup>33</sup> The third party or the mediator does not need to have legal competency. They are chosen by both parties to the dispute because they are considered to be independent and capable.<sup>34</sup> In a similar process to Cambodia, both parties are required to make a contractual agreement with the mediator regarding the proceedings and the fees.<sup>35</sup> This pattern of ADR may be made in the court or in private,<sup>36</sup> whereby the content discussed is confidential.<sup>37</sup> The mediation is successful if an agreement between both parties is achieved.<sup>38</sup> With mediation, the parties are expected to get help from the mediator since each party has their own issues to discuss, and the mediator provides both parties the opportunity to provide their point of view with regard to the agreement.<sup>39</sup>

### 3.2. Arbitration (in Japanese: *Chusai*)

Arbitration in Japan is very much like the system in Australia, Germany, and the United States.<sup>40</sup> Like in Germany, Australia and the United States, arbitration in Japan is a modern system, which is based on the United Nation Commission on International Trade Law(UNCITRAL) model on International Commercial Arbitration. This type of ADR occurs when there are disputes between (1) two Japanese parties or (2) one Japanese party and one non-Japanese party (foreigner).<sup>41</sup> The parties find a solution to their disputes through an arbitration tribunal<sup>42</sup> (one arbitrator, or two or more arbitrators).<sup>43</sup> The arbitration can be conducted only after there is an allegation in writing,<sup>44</sup> and is mostly made concerning four different aspects including: *construction, environment, labour, and commerce*.<sup>45</sup> In the Japanese tradition, arbitration is not very popular when it comes to domestic disputes, as arbitration is expensive. In contrast, in civil and family disputes the court is used extensively.<sup>46</sup> In disputes regarding construction, the arbitration is conducted under *the Construction Industry Law* and the composition of the arbitration tribunal is chosen by the Ministry of Construction or by a board established in the prefecture. The arbitrator tribunal is composed of one lawyer and two specialists in the construction area who are responsible for hearing and investigating the dispute.<sup>47</sup>

### 3.3. Compromise (in Japanese: *Wakai*)

Compromise can be used in disputes when the parties voluntarily seek the best solution. That means there will be no compromise if any party is unwilling to settle the disputes. *Wakai* is initiated by a judge during a trial and the judge can make suggestions at any stage of the trial, which makes it different from a simple negotiation.<sup>48</sup> Different from mediation and arbitration, the compromise is conducted through suggestions of the judge<sup>49</sup>. Additionally, the compromise can be made with or without a lawsuit because the disputed parties can alter the proceeding with regard initiating a lawsuit at any phase.<sup>50</sup>

## IV. Comparison between Cambodia and Japan's ADR

In the context of Cambodia, the Civil Code and Civil Code Procedure follows<sup>51</sup> the model of Japanese law.<sup>52</sup> In turn, the Japanese legal system is rooted in German Civil Law.<sup>53</sup> Moreover, the ADR methods in both countries are similar with regard to mediation, arbitration and the process of negotiation. However, Japan has more specific legal frameworks than those of Cambodia related to ADR mechanisms for implementation. (See table below).

Discussion Points	CAMBODIA	JAPAN
Legal Frameworks of ADR	According to legal and judicial reform in 2002, a number of laws were established to use in ADR such as: <ul style="list-style-type: none"><li>• Law on Administration of</li></ul>	Japan has a long history of traditional dispute resolution. In order to resolve disputes, the government of Japan has various laws such as: <ul style="list-style-type: none"><li>• Mediation Act on Land Leasing and</li></ul>



	<p>Commune/Sangkat</p> <ul style="list-style-type: none"> <li>• Arbitration Council: issued by Prakas 099 in April 2004</li> <li>• Labor law <ul style="list-style-type: none"> <li>- Chapter 12: Labor Dispute Resolution</li> </ul> </li> <li>• Law on Commercial Arbitration</li> <li>• Civil Code Procedure <ul style="list-style-type: none"> <li>- Article 97: <i>“The court may attempt to effect a compromise settlement at any stage of the litigation”</i>.</li> <li>- Article 220: <i>“The compromise can be entered to outside the court”</i>.</li> </ul> </li> </ul>	<p>House Renting</p> <ul style="list-style-type: none"> <li>• Tenant Disputes Mediation Act</li> <li>• Commercial Mediation Act</li> <li>• Contemporary Mediation Act for Money Debts</li> <li>• Mediation Law for Personnel</li> <li>• Mediation Act on Mine Accident</li> <li>• Family Affairs Mediation Act in 1947</li> <li>• Civil Mediation Act in 1951</li> <li>• Arbitration in the Construction: The Construction Industry Law <ul style="list-style-type: none"> <li>- Environmental Arbitration</li> <li>- Public Pollution Dispute Settlement Act</li> </ul> </li> <li>• Commercial Arbitration</li> <li>• Arbitration of Labour Disputes <ul style="list-style-type: none"> <li>- Labor Relations Adjustment Law</li> </ul> </li> <li>• Code of Civil Procedure : <ul style="list-style-type: none"> <li>- Article 136<sup>54</sup>(1) and 203<sup>55</sup></li> <li>- Parties Negotiation<sup>56</sup>: Make Agreement<sup>57</sup> (Article 695<sup>58</sup>)</li> </ul> </li> </ul>
Mechanism at the National Level for ADR	<p>The Government of Cambodia has established several mechanisms related to dispute resolution at the national level such as :</p> <ul style="list-style-type: none"> <li>• National Cadastral Commission<sup>59</sup> (NCC)</li> <li>• National Authority for Land Dispute Resolution<sup>60</sup></li> <li>• National Commercial Arbitration Center: to settle disputes related to commercial conflicts.<sup>61</sup></li> <li>• Arbitration Council<sup>62</sup> : is established to examine collective labor disputes.</li> </ul> <p>There are 3 members of the arbitration council which are selected as below:</p> <ul style="list-style-type: none"> <li>• Each party to a dispute has to choose 1 arbitrator</li> <li>• The two arbitrators have to choose the third one from the list of arbitrators.<sup>63</sup></li> </ul> <p>The most common cases at the National level are land disputes<sup>64</sup> and commercial issues and labor disputes.</p>	<p>In Japan, mediation procedures are provided for the courts, administrative organs and private institutions.<sup>65</sup> Additionally, Japan’s professional and administrative mediation organs are:</p> <ul style="list-style-type: none"> <li>• Labor Committee</li> <li>• Public Hazard Adjustment Committee</li> <li>• Japanese Prefecture Public Hazards Review Committee</li> <li>• Central Construction Dispute Supervision Committee</li> <li>• Japanese Prefecture Consumers Lifestyle Center and,</li> <li>• Arbitration Authority</li> </ul> <p>According to the Civil Conciliation Act of Japan, organizer of mediation must be the Mediation Committee :</p> <ul style="list-style-type: none"> <li>• Mediation Committee<sup>66</sup>: 1 Judge and 2 Committee Members (experts in certain fields of the case)</li> <li>• Mediator<sup>67</sup> : Assigned by Supreme Court</li> <li>• Mediation agreement will be enforced the same as a judgment in court</li> </ul> <p>For arbitration in the Construction Industry:<sup>68</sup></p> <ul style="list-style-type: none"> <li>• Central board established by Ministry of Construction</li> </ul>

<p>Mechanism at the Sub-national</p>	<p>Besides settling disputes through the court system, the Government of Cambodia has setup some mechanisms to deal with disputes outside the court at the Sub-national level (by local commune councils). As follow:</p> <ul style="list-style-type: none"> <li>• Commune Dispute Resolution Committee (CDRC) which is in every Commune/Sangkat</li> <li>• The role of the CDRC is<sup>69</sup> : <ul style="list-style-type: none"> <li>- To manage and reduce local conflicts</li> <li>- To mediate and conciliate disputes if the parties agree to these processes</li> <li>- To disseminate legal information to the local citizens</li> <li>- To assist commune councils in the ADR process there is: <ul style="list-style-type: none"> <li>• The Cadastral Commission (CC)</li> <li>• The role of CC is : <ul style="list-style-type: none"> <li>- To resolve unregistered immovable property cases<sup>70</sup></li> </ul> </li> <li>• Municipal/District/Khan Cadastral Commission (MDKCC)</li> <li>• The role of MDKCC is: <ul style="list-style-type: none"> <li>- To settle conflicts outside adjudication areas</li> <li>- Conflict settlement is based on customary rule<sup>71</sup></li> </ul> </li> <li>• Capital and Provincial Cadastral Commission (CPCC)</li> <li>• The role of CPCC is to : <ul style="list-style-type: none"> <li>- Settle disputes outside the MDKCC's jurisdiction</li> <li>- The Chief of CPCC has the power to make decisions<sup>72</sup></li> </ul> </li> </ul> </li> </ul> </li></ul>	<p>There are two kinds of examination boards according to the Code of Civil Procedure:<sup>73</sup></p> <ul style="list-style-type: none"> <li>• Local boards/courts and family courts are available in every prefecture<sup>74</sup> and deal with three types of cases such as construction, environmental and family issues.</li> <li>• Summary court is under the Local court.<sup>75</sup> It settles disputes with respect to residential land or buildings,<sup>76</sup> traffic accidents,<sup>77</sup> environmental pollution, and infringement of interests such as access to sunlight and wind.<sup>78</sup></li> </ul>
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## V. Conclusion

ADR may be defined as any process that leads to the resolution of a dispute through the agreement of the parties without the use of a judge. ADR provides mechanisms that could enable parties to settle their differences without having to go to court. In addition, disputes solved through ADR are usually done more quickly and at lesser cost than through the judicial process. In Cambodia, using ADR at the National and Sub-national level is easier and cheaper than using courts. In contrast, in Japan, mediation in the court system is a cheap way to settle conflicts than using arbitration<sup>79</sup>. Moreover, mediation has the same enforceability as a court judgment. Lastly, arbitration is a key mechanism in commercial dispute resolution in both countries.

## References

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- <sup>1</sup>In other words, the disputed is coordinated outside of the traditional adjudication system.
- <sup>2</sup>ADHOC 2013. *Alternative Dispute Resolution Tool*, Phnom Penh, ADHOC.
- <sup>3</sup>DIEDRICH, F. 2015. Myth and Legal Reality of Alternative Dispute Resolution in Japan: a Comparative Analysis. *Hitotsubashi Journal of Law and Politics* 43.
- <sup>4</sup>Conciliation is the term most commonly used in international documents. For example, the UNCITRAL Conciliation Law on international commercial law. However, mediation is the term most commonly use in the American legal system “American Uniform Mediation Act”.
- <sup>5</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].
- <sup>6</sup>G, W. 2002. *Alternative Vs Litigation in Energy Case* [Online]. Available: <http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2002PaulArbitrationVLitigationInEnergyCases.pdf> [Accessed 21 October 2016].
- <sup>7</sup>AUSTERMILLER, S. 2010. Alternative Dispute Resolution: Cambodia: A Textbook of Essential Concepts. *A publication of the American Bar Association’s Rule of Law Initiative*
- <sup>8</sup>In contrast, 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 on-going relationship with the victim is not practical. Moreover, the Code of Conduct does not use ADR.
- <sup>9</sup>2002. Sub Decree on Organisation and Functioning of the Cadastral Commission *No 47 ANK.BK*. Phnom Penh. Article 6.
- <sup>10</sup>2007. Law on Civil Code Procedure. Article 13.
- <sup>11</sup>*Ibid.*, Article 19 and 20.
- <sup>12</sup>*Ibid.*, Article 21.
- <sup>13</sup>Collective dispute is the dispute involves one or more employers and employees
- <sup>14</sup>1997. Labour Law. Article 309-317.
- <sup>15</sup>2007. Law on Civil Code Procedure. Article 303.
- <sup>16</sup>*Ibid.*, Article 304.
- <sup>17</sup>*Ibid.*, Article 305.
- <sup>18</sup>2007. Law on Civil Code Procedure. Article 306.
- <sup>19</sup>*Ibid.*, Article 310.
- <sup>20</sup>*Ibid.*
- <sup>21</sup>The right to strike can be exercised when the Council of Arbitration has not rendered or informed of its arbitration decision within the time periods.
- <sup>22</sup>2007. Law on Civil Code Procedure. Article 313
- <sup>23</sup>*Ibid.*
- <sup>24</sup>SOPHEA, S. 2015. Dispute Resolution Outside the Judicial System at the National and Sub-national Levels. . Phnom Penh, Cambodia.
- <sup>25</sup>AUSTERMILLER, S. 2010. Alternative Dispute Resolution: Cambodia: A Textbook of Essential Concepts. *A publication of the American Bar Association’s Rule of Law Initiative*
- <sup>26</sup>2007. Law on Civil Code Procedure. Article 97, 104
- <sup>27</sup>*Ibid.* Article 97
- <sup>28</sup>*Ibid.* Article 97, 104
- <sup>29</sup>AUSTERMILLER, S. 2010. Alternative Dispute Resolution: Cambodia: A Textbook of Essential Concepts. *A publication of the American Bar Association’s Rule of Law Initiative*
- <sup>30</sup>ADHOC 2013. *Alternative Dispute Resolution Tool*, Phnom Penh, ADHOC.
- <sup>31</sup>1997. Labour Law. Article 300-310

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<sup>32</sup>Ibid., Article 301

<sup>33</sup>DIEDRICH, F. 2015. Myth and Legal Reality of Alternative Dispute Resolution in Japan: a Comparative Analysis. *Hitotsubashi Journal of Law and Politics* 43.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid.

<sup>36</sup>YASUI, A. *Alternative Dispute Resolution System in Japan* [Online]. Available: [http://www.iadcmeetings.mobi/assets/1/7/18.2\\_-\\_Yasui-ADR\\_System\\_in\\_Japan.pdf](http://www.iadcmeetings.mobi/assets/1/7/18.2_-_Yasui-ADR_System_in_Japan.pdf) [Accessed 21 October 2016].

<sup>37</sup>DIEDRICH, F. 2015. Myth and Legal Reality of Alternative Dispute Resolution in Japan: a Comparative Analysis. *Hitotsubashi Journal of Law and Politics* 43.

<sup>38</sup>YASUI, A. *Alternative Dispute Resolution System in Japan* [Online]. Available: [http://www.iadcmeetings.mobi/assets/1/7/18.2\\_-\\_Yasui-ADR\\_System\\_in\\_Japan.pdf](http://www.iadcmeetings.mobi/assets/1/7/18.2_-_Yasui-ADR_System_in_Japan.pdf) [Accessed 21 October 2016].

<sup>39</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].

<sup>40</sup>Ibid.

<sup>41</sup>Ibid.

<sup>42</sup>Ibid.

<sup>43</sup>GOVERNMENT, J. 2003. Arbitration Act.

<sup>44</sup>According to Article 2 of the Arbitration Act, a written allegation refers to documents, which the parties prepare and submit to the arbitral tribunal in an arbitration procedure.

<sup>45</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].

<sup>46</sup>DIEDRICH, F. 2015. Myth and Legal Reality of Alternative Dispute Resolution in Japan: a Comparative Analysis. *Hitotsubashi Journal of Law and Politics* 43.

<sup>47</sup>Ibid.

<sup>48</sup>YASUI, A. *Alternative Dispute Resolution System in Japan* [Online]. Available: [http://www.iadcmeetings.mobi/assets/1/7/18.2\\_-\\_Yasui-ADR\\_System\\_in\\_Japan.pdf](http://www.iadcmeetings.mobi/assets/1/7/18.2_-_Yasui-ADR_System_in_Japan.pdf) [Accessed 21 October 2016].

<sup>49</sup>1996.Civil Code Procedure. Article 136

<sup>50</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].

<sup>51</sup> According to Article 97 of Cambodia Civil Code Commentary indicated that “Attempt to compromise” this article have follow Japanese Code of Civil Procedure article 89 and Japanese Civil Code article 21, 127 and 128.

<sup>52</sup> It is because JICA supported the Royal Government of Cambodia to design the Codes

<sup>53</sup>YASUI, A. *Alternative Dispute Resolution System in Japan* [Online]. Available: [http://www.iadcmeetings.mobi/assets/1/7/18.2\\_-\\_Yasui-ADR\\_System\\_in\\_Japan.pdf](http://www.iadcmeetings.mobi/assets/1/7/18.2_-_Yasui-ADR_System_in_Japan.pdf) [Accessed 21 October 2016], FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].

<sup>54</sup> At any stage of the court procedure in the case, the court may admonish the parties to join the process of arrangement for settlement-in-court presided over by the judges.

<sup>55</sup> If entered in the court record in the presence of the judge, the registrar, and both parties or their agents, the concluded settlement-in-court and conciliation-in-court final reached by both parties may be recognized as having the same binding effect as that of a final court decision.

<sup>56</sup> If the parties negotiation successfully to an agreement for resolving the dispute.

<sup>57</sup> It is called compromise outside the court

<sup>58</sup>1896. Civil Code. Act 89.

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- <sup>59</sup>2002. Sub Decree on Organisation and Functioning of the Cadastral Commission *No 47 ANK.BK*. Phnom Penh.
- <sup>60</sup>2006b. Royal Decree on Establishment of National Authority to Settle Land Dispute *NS/RKT/0206/097*. Article 17.
- <sup>61</sup>2006a. The Commercial Arbitration Law. *In: ASSEMBLY, N. (ed.)*. Phnom Penh.
- <sup>62</sup>2004. Prakas on Arbitration Council *In: LABOUR, M. O. (ed.) No.99*.
- <sup>63</sup>*Ibid.*
- <sup>64</sup>2006b. Royal Decree on Establishment of National Authority to Settle Land Dispute *NS/RKT/0206/097*.
- <sup>65</sup>1951. Civil Conciliation Act. *Act 222*.
- <sup>66</sup>*Ibid.*
- <sup>67</sup> Mediators are lawyers who do this task on a part time basis and have the same powers as a judge.
- <sup>68</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].
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- <sup>74</sup>NISHIKAWA, R. Judges and ADR in Japan.
- <sup>75</sup>*Ibid.*
- <sup>76</sup>1951. Civil Conciliation Act. *Act 222*. Article 24
- <sup>77</sup>*Ibid.*, Article 33
- <sup>78</sup>*Ibid.*, Article 33
- <sup>79</sup>FUNKEN, K. 2003. *Alternative Dispute Resolution in Japan* [Online]. University of Munich. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=458001](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=458001) [Accessed 24 October 2016].