

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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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 cases⁴. 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.⁶ 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

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.

⁷ YRIGROYEN FAJARDO, Raquel Z., Kong, Rady, and Phan, Sin. *Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples*. (UNDP-Ministry of Justice,2005).

⁸ AUSTERMILLER, Steven. "Cambodian Alternative Dispute Resolution", in *The Introduction to Law* (Konrad-Adenauer-Stiftung, 2012), p. 183.

⁹ Lewis, Melissa and McCrimmon, Les. "The Role of ADR Process in the Criminal Justice System: A view from Australia" (Paper presented at ALRAESA Conference,, Entebbe, Uganda 4-8 September, 2005) p. 1. Accessed from http://www.justice.gov.za/alraesa/conferences/2005uganda/ent_s3_mccrimmon.pdf.

¹⁰ *Ibid.*, p. 2.

of the most common being arbitration, negotiation, conciliation and mediation.¹¹ 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.

¹² 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.¹³ 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.¹⁴ According to Jordan Goldberg,¹⁵ 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 countries¹⁶ and Australia.¹⁷ The rationale for the use of ADR in the criminal justice system is likely to be linked with restorative justice,¹⁸ which focuses on the "victim-centered" approach by instilling in the offender a sense of responsibility towards the victim and the community.¹⁹ 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 on-going relationship with the victim is not practical.²⁰ A brief description of the common types of ADR methods is set out below.

¹¹ Auster Miller. "Cambodian Alternative Dispute Resolution", p. 183.

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=https%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26as_sdt%3D0%2C5%26as_ylo%3D2014%26q%3DAlternative%2Bdispute%2Bresolution%2Bfree%2Bebook#search=%22Alternative%20dispute%20resolution%20free%20ebook%22.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Lewis and McCrimmon. "The Role of ADR Process in the Criminal Justice System: A view from Australia", p. 4.

¹⁷ Lewis and McCrimmon. "The Role of ADR Process in the Criminal Justice System: A view from Australia", p. 4.

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.

¹⁹ Lewis and McCrimmon. "The Role of ADR Process in the Criminal Justice System: A view from Australia", pp. 6-8.

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.

²¹ Austermler. "Cambodian Alternative Dispute Resolution", p. 183.

²² *Ibid.*, p. 185.

²³ YRIGROYEN FAJARDO, Raquel Z, Kong, Rady and Phan, Sin. *Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples.* (UNDP-Ministry of Justice,2005), p. 33.

²⁴ Austermler, Steven M. *Alternative Dispute Resolution: Cambodia A Textbook of Essential Concept* (USAID, 2010), p. 137. Accessed from http://www.americanbar.org/content/dam/aba/directories/roli/cambodia/cambodia_adr_book_english_01_19_09.authcheckdam.pdf.

²⁵ *Ibid.*, pp. 139-140.

Figure 1: The principal forms of ADR

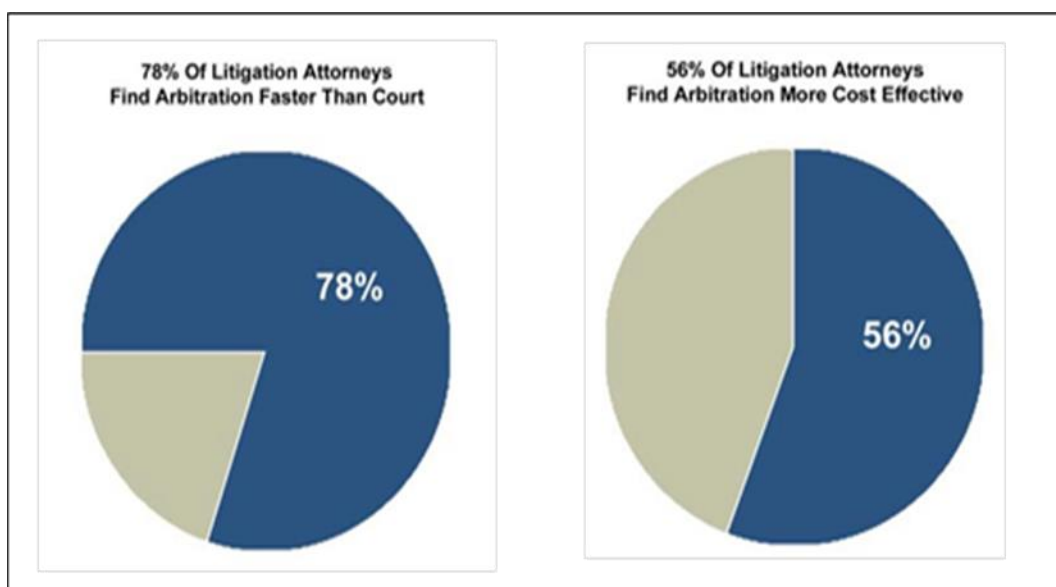
	Negotiation	Mediation	Conciliation	Arbitration
Parties Involved	Parties in conflict	Parties in conflict + Mediator	Parties in conflict + Conciliator	Parties in conflict + Arbitrator
Role of third party	Parties alone resolve their conflict.	Mediator tries to facilitate a solution considering interests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

Source: PATHWAYS TO JUSTICE: Access to Justice with a focus on Poor, Women and Indigenous

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

very expensive, while using ADR - especially the Arbitration method - costs approximately half the cost of litigation.²⁶ In this regard, ADR does not require extensive paperwork and documentation and therefore results in lower legal costs.²⁷ 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.²⁸ Furthermore, disputants believe that the litigation process has many delays and backlogs in comparison with ADR.²⁹

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



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 public³⁰. The ADR process is also likely to be a better venue for the parties to discuss unsettled or misunderstood issues in a less

²⁶ Paul, William G. "Arbitration vs. Litigation in Energy Cases, Presentation" (paper presented at the First Annual Energy Litigation Program, Houston, Texas, November 7-8, 2002), p. 3. Accessed from <http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2002PaulArbitrationVLitigationInEnergyCases.pdf>.

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

²⁸ *Ibid.*

²⁹ National Arbitration Forum. "Business-to-Business: Mediation/Arbitration vs. Litigation". Accessed from <http://www.adrforum.com/users/naf/resources/GeneralCommercialWP.pdf>.

³⁰ *Ibid.*

intimidating atmosphere.³¹ This can create a win-win solution which allows both parties to move forward amicably.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 Cambodia³³ and disputes are usually settled according to traditional mechanisms and local culture.³⁴ This practice is known as "*Somroh Somruei* or *Psapsaah*" (i.e., disputes are settled by village elders or chiefs)³⁵, which represents the concept of a "culture of peace" and manifests itself in Cambodian villages³⁶. 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)³⁷ and form a nuclear family.³⁸ This social structure is likely to provide a sense of security for its members.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 Somruei*.⁴⁰ Key important actors who play a role as an independent third party are the elderly (*Chas Tum*), the village chief⁴¹, a monk, an *Achar* (knowledgeable expert), or a

³¹ Goldberg. "Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum", p. 14.

³² *Ibid.*

³³ Kong, Phallack. "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.

³⁴ YRIGOYEN FAJARDO, Kong and Phan. *Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples*, p. 1.

³⁵ Ramage, Ian et al. *Somroh Somruei & Violence Against Women* (Domrei Research and Consulting, 2008), pp. 1-4.

³⁶ Hughes, Caroline. "An investigation of Conflict Management in Cambodian Villages: A review of the literature with Suggestions for Future Research", (Cambodia Development Resource Institute (CDRI) 2001), pp.5-6. Accessed from <http://www.cdri.org.kh/webdata/download/cpdpapers/cpd2e.pdf>.

³⁷ *Ibid.*

³⁸ Luco, Fabienne. *Between a tiger and a crocodile: Management of local conflicts, and anthropological approach to traditional and new practices* (UNESCO 2002.), pp. 16-17. Accessed from <http://unesdoc.unesco.org/images/0015/001595/159544e.pdf>.

³⁹ Hughes, "An investigation of Conflict Management in Cambodian Villages: A review of the literature with Suggestions for Future Research", p. 12.

⁴⁰ Ramage et al. "Somroh Somruei & Violence Against Women", pp.3-4.

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.⁴² 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.⁴³ 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 resolved⁴⁴. 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.⁴⁵ Rather than making decisions, the King provided his opinion, which was not binding on the parties.⁴⁶

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 2002.⁴⁷ The Council of Ministers approved the Legal and Judicial Reform Strategy in 2003 and the Plan of Action in 2005.⁴⁸ 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."*⁴⁹ To achieve this goal, seven strategic objectives were introduced. The 6th strategic objective was the introduction of alternative dispute resolution methods.⁵⁰ The Plan for Action aims to *"investigate, build upon and strengthen other alternative and traditional methods of alternative dispute resolution."*⁵¹

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 YRIGROYEN 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.⁵² In this context, out of a population of 13.4 million in 2008, 80% of the people were living in rural areas⁵³, 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.⁵⁴ People in rural areas viewed the courts as being distant, expensive and complicated to use.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.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.

Figure 3: Assumptions with respect to local justice and ADR

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

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.⁵⁷

In addition to the above law, Article 47 of the 2001 Land Law established the Cadastral Commission⁵⁸, which was the first attempt to allow citizens to deal with unregistered land issues without using the court process.⁵⁹ 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.

⁵⁷ Sub-Decree on Decentralization of Roles, Functions, and Power to Commune Councils (2002), Article 61.

⁵⁸ The structure and general procedures were established by Sub-decree No. 47 ANK.BK (May 31, 2002) 'On the Organization and Functioning of the Cadastral Commission'. Procedures were elaborated by Prakas No. 112 DNS/BrK (August 21, 2002). 'On the Guidelines and Procedures of the Cadastral Commission'.

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 implemented⁶¹. 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.*

⁶³ Popovic, Velibor, Melim-McLeod, Claudi. “ The Asia Pacific Rights and Justice Initiative: Cambodia Country Assessment.”(UNDP,2009). Accessed from http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dgttf/cambodia-country-assessment-the-asia-pacific-rights-and-justice-initiative/Cambodia_A2CountryAssessment.pdf.

districts and 1621 communes⁶⁴, with female councilors comprising 17.78% of the total in 2012.⁶⁵ Each commune received approximately 25 dispute cases per year resulting in approximately 40,525 registered disputes at all 1621 communes.⁶⁶ 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 2006.⁶⁷ 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.⁶⁸

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.⁶⁹ 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

⁶⁴ Ninh, Kim and Henke, Roger. "Commune Council in Cambodia: A National Survey on their Functions and Performance, with a Special Focus on Conflict Resolution" (The Asia Foundation, 2005), p. 15. Accessed from <https://asiafoundation.org/resources/pdfs/CBCCSurvey.pdf>.

⁶⁵ Ministry of Women's Affairs. "Neary Ratanak IV: Five Years Strategic Plan For Gender Equality and Women's Empowerment 2014-2018", p. 12.

⁶⁶ YRIGOEYEN FAJARDO, Kong and Phan. *Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples*, p. 106.

⁶⁷ UNDP-Cambodia Operation manual for commune dispute resolution committee (CDRC), (UNDP-Cambodia 2010), p. 1. http://www.un.org.kh/undp/media/files/OperationsmanualforCommuneDisputeResolutionCommittee_Eng.pdf

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

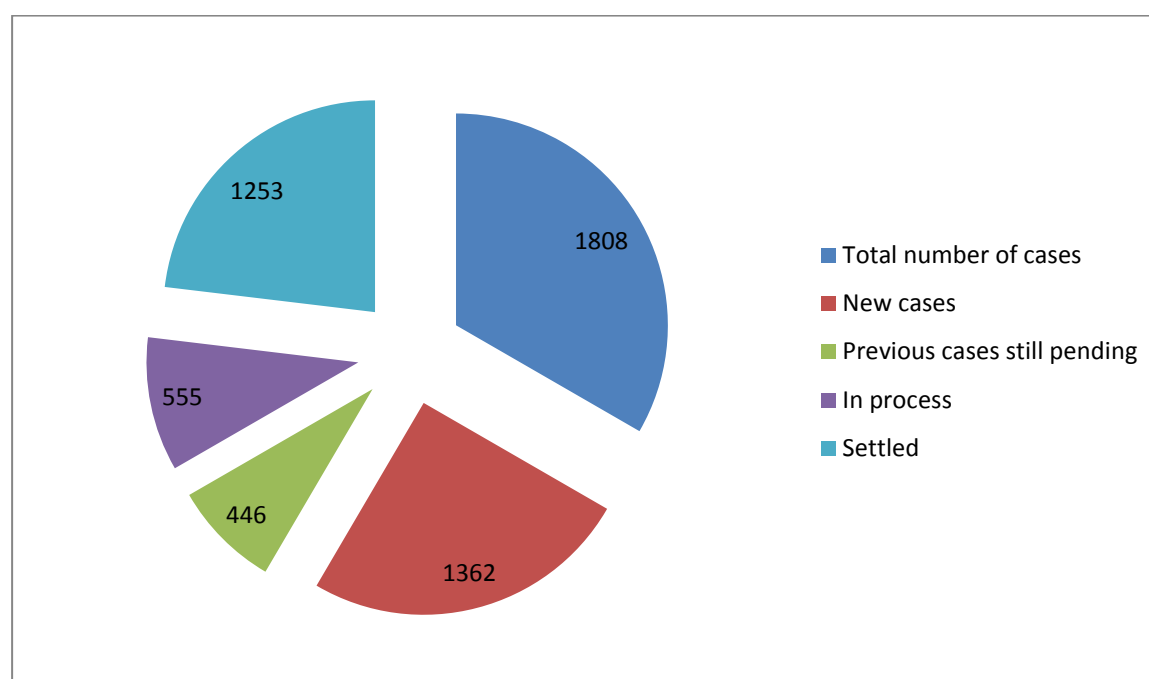
- Other cases.⁷⁰

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.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.⁷² Up to the end of 2013, there were approximately 56 CDRCs comprising 116 women out of 392 members.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



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

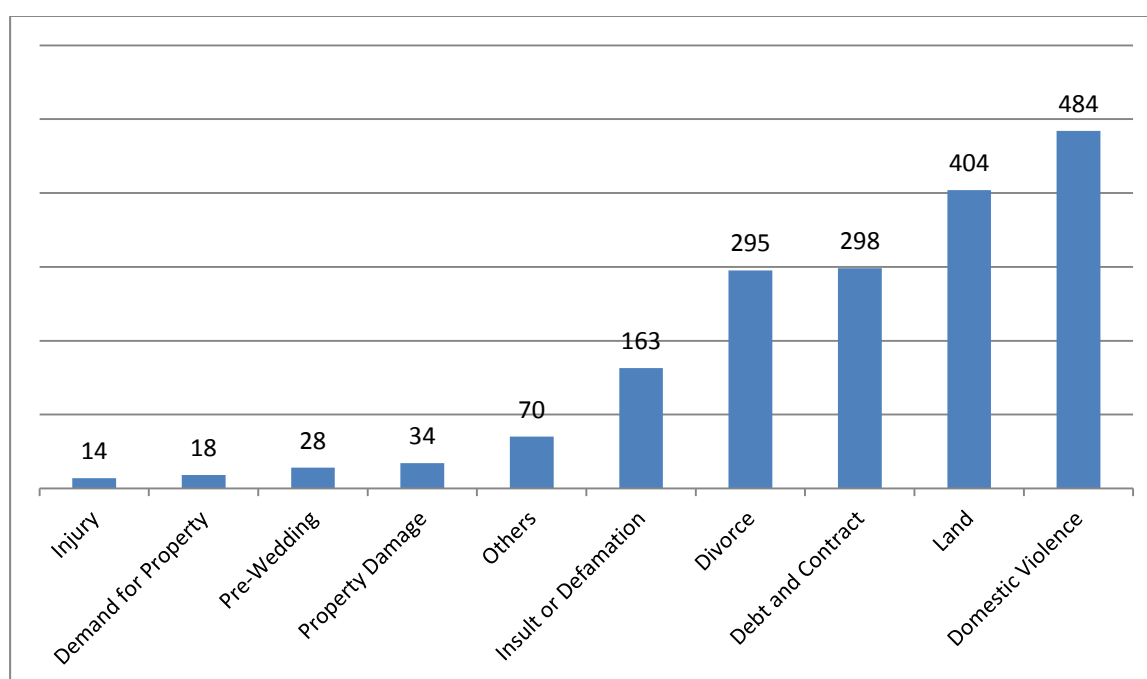
⁷⁰ *Ibid.*, p. 14.

⁷¹ *Ibid.*, p. 17.

⁷² *Ibid.*, p. 26.

⁷³ Ministry of Justice. Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

Figure 5 : Statistics of the type of disputes



Source: 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).⁷⁴ 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.⁷⁵ 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

⁷⁴ Popovic, McLeod. "The Asia Pacific Rights and Justice Initiative: Cambodia Country Assessment." (UNDP, 2009), p. 13. McGrew, Laura and Doung, Virorth.. "Access to Justice Project in Cambodia: Final Evaluation Report (UNDP-2010), p. vi.

⁷⁵ McGrew and Doung. "Access to Justice Project in Cambodia: Final Evaluation Report".

of the cases (the chief, the deputy and a variable third member).⁷⁶ 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.⁷⁷ In spite of these issues, the final report of the UNDP still maintains that the CDRC's work is successful.⁷⁸

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:⁷⁹

- 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.⁸⁰ 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.⁸¹ The officers are to perform their duties with honesty, integrity, accountability, confidentiality, transparency, no discrimination and no conflicts of interest.⁸² The Maison de la Justice of each district is directed by a chief appointed by the MOJ

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Inter-ministerial Prakas No. 85Rbk/MOJ/MOI/06, Article 3.

⁸⁰ Ministry of Justice. Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

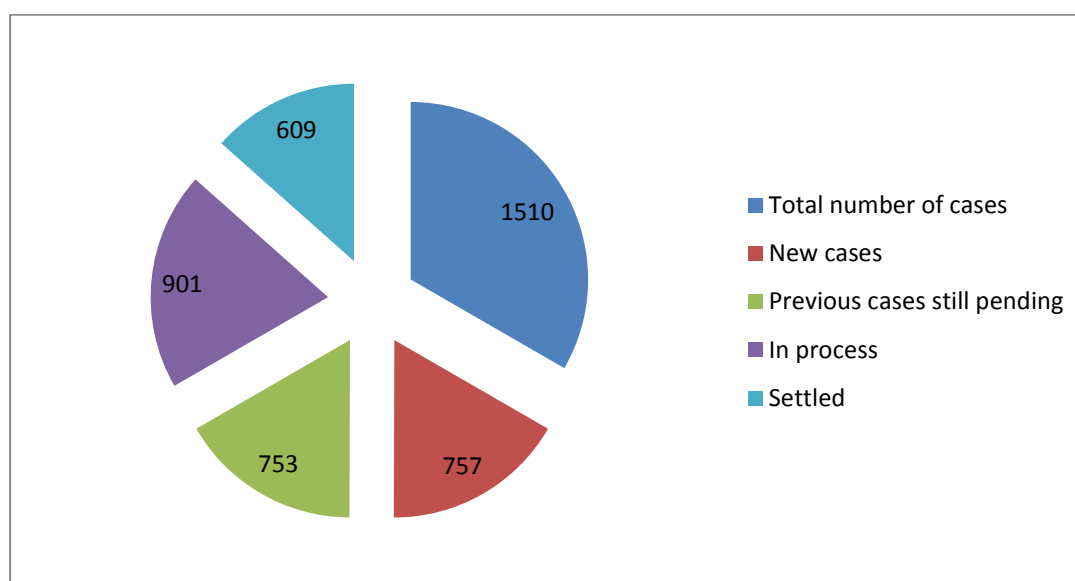
⁸¹ *UNDP-Cambodia Operation manual for the maison de la justice (UNDP-Cambodia 2010)*, p. 1. Accessed from http://www.un.org.kh/undp/media/files/OperationsmanualforCentreofJusticeService_Eng.pdf.

⁸² *Ibid.*, pp. 2-4.

and one secretary if necessary.⁸³ The majority of appointed chiefs are often former court clerks supported by MOJ Phnom Penh based staff.⁸⁴

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 2013.⁸⁵

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



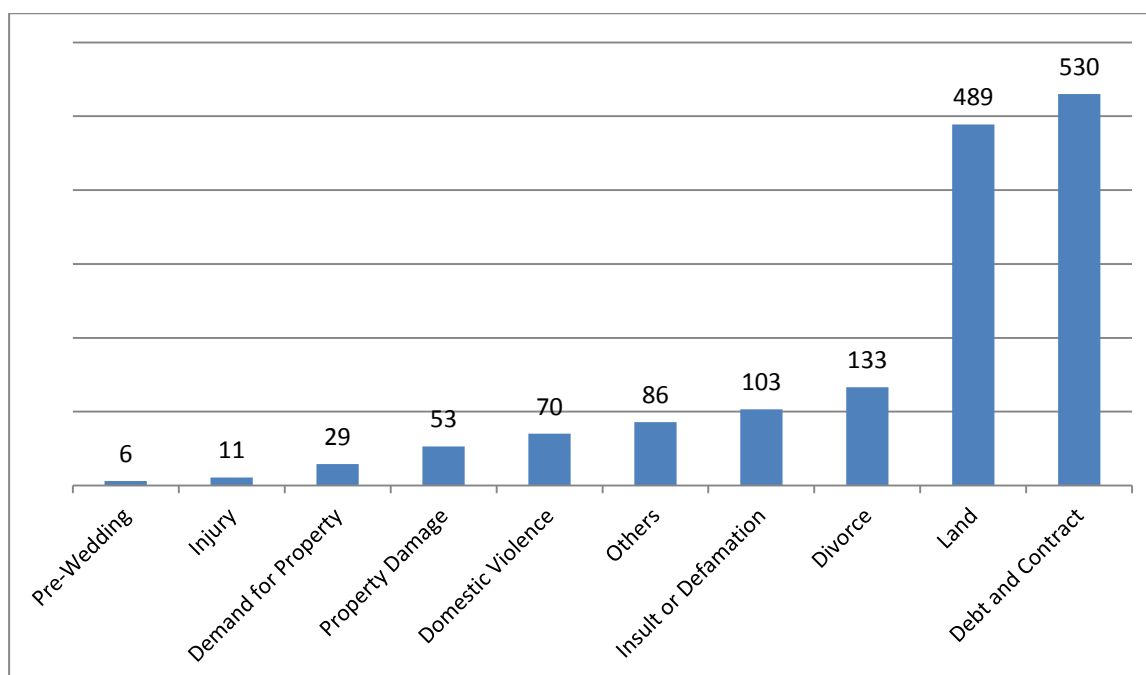
Source : Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

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

⁸³ Inter-ministerial Prakas No. 85Rbk/MOJ/MOI/06. Articles 2 and 6.

⁸⁴ McGrew and Doung. " Access to Justice Project in Cambodia: Final Evaluation Report", p. 17.

⁸⁵ Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.



Source: 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.⁸⁶ All of these factors are attributed to the lack of budget for administrative costs.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.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.⁸⁹

1.2. 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

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

adjudication areas⁹⁰ that cannot be conciliated by the Administrative Commission.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).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).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.

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

Land Disputes that have been settled by the Cadastral Commission 2003- 2009						
Year	Case Number	Cases that reached settlement	Dismissed cases	Cases referred to the court	Pending cases	Withdrawn cases
2003	1245	271	82	2	890	0
2004	2079	553	125	0	1319	0
2005	3456	402	382	0	1863	49
2006	4254	1246	871	61	2058	79
2007	4689	1439	1066	80	2060	124

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.

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

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

⁹³ Royal Kram on Law on Constitutional Amendment on Article 145 and 146 NS.RKM/0208/008/February 15, 2008; and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans. May 22, 2008.

2008	5038	1653	1213	84	1952	220
2009	5193	1810	1369	97	1742	272

Source: Secretariat of National Cadastral Commission Annual Report from 2003 to Semester 1 2009 (July 16, 2009) as cited in Try Horng , Land Conflict in Cambodia 2001-2009 (Royal Academic of Cambodia-2012)

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.⁹⁴ 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.⁹⁵ 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.⁹⁶

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.⁹⁷ 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.⁹⁸ For example, at the MDKCC, the chief often recommends conciliators including him or herself, rather than letting the disputants make the selection.⁹⁹

This may be the reason why only 50% of the parties to a dispute are satisfied with the outcome under the CCs process.¹⁰⁰ A brief description of the three hierarchical levels of CC is provided below.

1.2.1. Municipal/District/Khan Cadastral Commission (MDKCC)

⁹⁴ The NGO Forum on Cambodia. *Statistical Analysis of Land Disputes in Cambodia, 2013* (NGOForum, 2014), p. 4.

⁹⁵ Prakas No 112 DNS/Brk on The Guidelines and Procedures of the Cadastral Commission. Article 19.

⁹⁶ *GTZ-Cambodia and The world Bank, Toward Institutional Justice? A review of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution* (GTZ-Cambodia and The world Bank, 2006), p. XV.

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

Figure 9: 5 steps MDKCC process for settling disputes

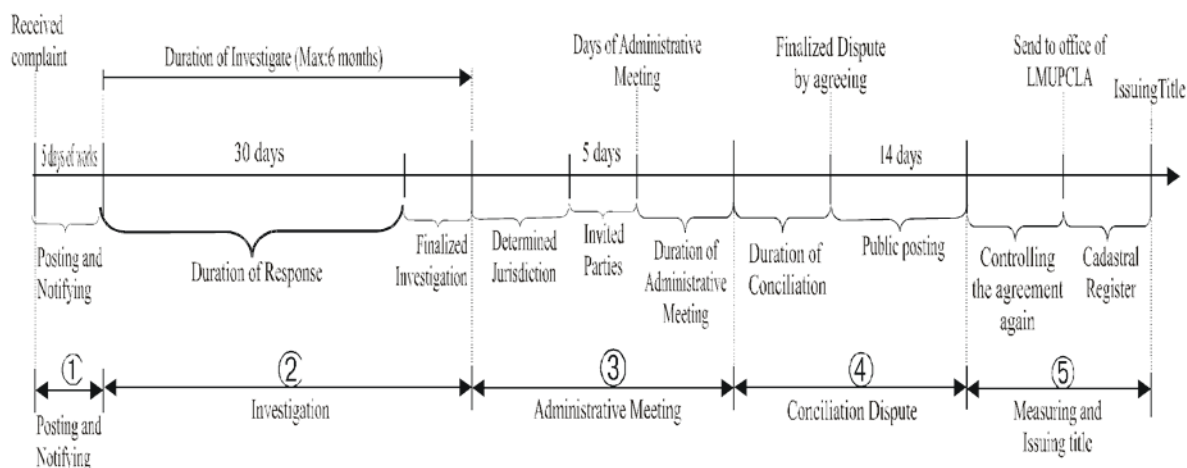
¹⁰¹ New Article 5 Sub-Decree on the Amendment on Article 5 and Article 28 of Sub Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002 (No.34 ANK.BK/20 April 2006).

¹⁰² Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002. Article 6.

¹⁰³ Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002. Article 10.

¹⁰⁴ Prakas No 112 DNS/Brk on The Guidelines and Procedures of the Cadastral Commission. Article 19.

¹⁰⁵ GTZ-Cambodia and The world Bank Toward Institutional Justice? A review of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution, pp. 118-119.



Source: *Toward Institutional Justice? A review of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution* (GTZ-Cambodia and The world Bank, 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

¹⁰⁶ Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002. Article 12.

¹⁰⁷ *Ibid.*, article 13.

¹⁰⁸ Prakas on Power Delegation to Governor and Capital and Provincial Councilor 032 BRK.DNS/KSC dated January 21, 2010.

¹⁰⁹ Circulation on the Procedure to implement the decision of Capital and Provincial Cadastral Commission dated January 21, 2010.

¹¹⁰ Sub-Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002, Article 18.

full jurisdiction to decide on who is the lawful possessor or owner of land.¹¹¹ Upon the request of the parties, the NCC also can hold a hearing to decide upon the merits of the case.¹¹² 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.¹¹³ 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.¹¹⁴

In 2006 the government established another department called the National Authority for Land Dispute Resolution.¹¹⁵ 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.¹¹⁶ The authority has jurisdiction to hear all land disputes that are outside the NCC's jurisdiction.¹¹⁷ 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.¹¹⁸ From its establishment until 20 September 2009,¹¹⁹ 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

¹¹¹ *Ibid.*, articles 19 and 20.

¹¹² *Ibid.*, article 21.

¹¹³ *Ibid.*, article 23.

¹¹⁴ *Ibid.*

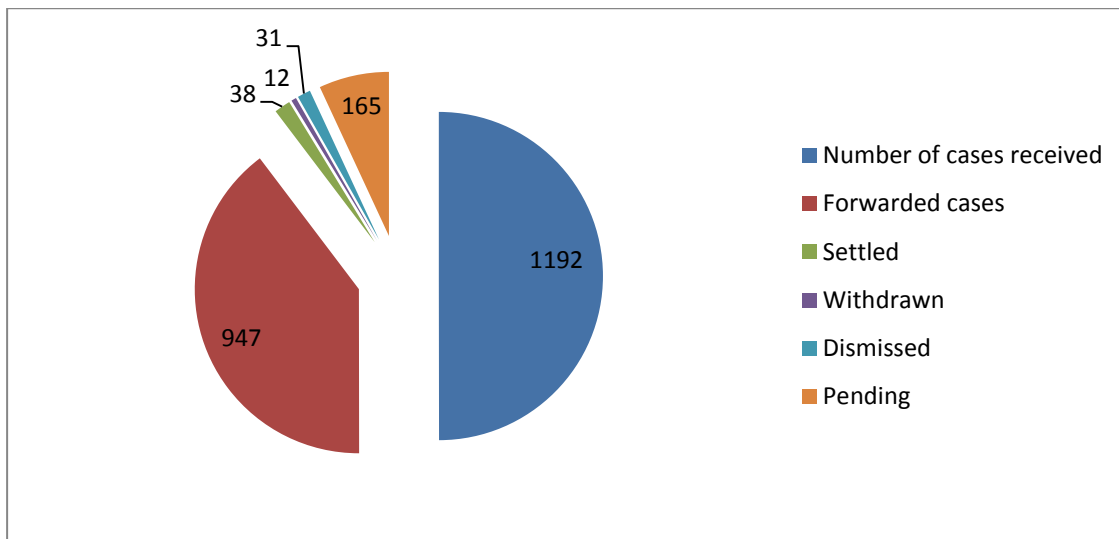
¹¹⁵ Royal Decree on establishment of establishment of National Authority For Land Dispute Resolution, NS/RKT/0206/097 February 26, 2006.

¹¹⁶ *Ibid.*, article 1.

¹¹⁷ *Ibid.*, article 3..

¹¹⁸ Inter Ministries Prakas No. 02 BRKN.03 in 2003 'On Determination of Duty of the Court and Cadastral Commission Related to Land Disputes'.

¹¹⁹ Horng, Try., *"Land Conflict in Cambodia 2001-2009"*, p. 111.,



Source: the National Authority to settle land dispute Report No 003 RBK OrPD 2009 as cited in Try Horng , *Land Conflict in Cambodia 2001-2009* (Royal Academic of Cambodia-2012)

IV. Experiences from the Arbitration Council

The Arbitration Council was established in 2004 by Prakas 099,¹²⁰ although it was provided for under Cambodia's Labour Law since 1997.¹²¹ The Council has jurisdiction to examine collective labour disputes¹²² when the arbitration council procedure is provided for in collective bargaining agreements, or provided for by Articles 309-317 of the Labour Law.¹²³ 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.¹²⁴ The Council legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.¹²⁵ 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.¹²⁶ However, the hearing of the council is held behind closed doors, and the council keeps the testimony and all documents confidential.¹²⁷ The Council must render an award within 15 days after

¹²⁰ Prakas 099 , Arbitration Council, April 21, 2004.

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 .

¹²⁴ Prakas 099, Arbitration Council, April 21, 2004.

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.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.¹²⁹

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

In 2013, the Council handled approximately 285 cases (the highest caseload in its history), compared to 255 in 2012.¹³¹ 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%).¹³² Based on its growing caseload and its independence and credibility, the Council is likely to continue as a reliable body for dispute resolution.¹³³

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.

¹²⁸ Cambodian Labour Law, article 313; and Prakas 099, clause 30.

¹²⁹ Prakas 099, Clauses 40 and 42.

¹³⁰ Van Noor, Hugo, S. Hwang, Hans, Bugeja, Kate. "Cambodia's Arbitration Council: Institution-building in a developing country", p. 15 (ILO-2011), Working Paper No. 24. Accessed from http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_166728.pdf. See also: Recently, the Council was praised by an ILO specialist and the Minister of Labour and Vocational Training for labour dispute resolution. (<http://thekhmerdaily.com/home/detail/23575>).

¹³¹ <http://www.arbitrationcouncil.org/en/about-us/statistics>.

¹³² *Ibid.*

¹³³ Noor, Hwang, Bugeja. "Cambodia's Arbitration Council: Institution-building in a developing country", pp. 10-13.

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