



**វិទ្យាស្ថានសភាកម្ពុជា**  
**PARLIAMENTARY INSTITUTE OF CAMBODIA**  
STRENGTHENING PARLIAMENTARY CAPACITY

## Briefing Note

Senate Commission 1

# Alternative Dispute Resolution in Cambodia

**Author:** Ms. Top Davy, PRCD Instructor  
**Advised by:** Mr. So Sovanarith, PRCD Manager

11 September, 2019

## Notice of Disclaimer

The Parliamentary Institute of Cambodia (PIC) is an independent parliamentary support institution for the Cambodian Parliament which, upon request of the parliamentarians and the parliamentary commissions, offers a wide range of research publications on current and emerging key issues, legislation and major public policy topics. This briefing note provides information on subject that is likely to be relevant to parliamentary and constituency work but does not represent or reflect the views of the Parliamentary Institute of Cambodia, the Parliament of Cambodia, or of any of its members.

The contents of this briefing note, current at the date of publication, are for reference and information purposes only. This publication is not designed to provide legal or policy advice, and do not necessarily deal with every important topic or aspect of the issues it considers as it responds to a specific research problem or requests received.

The contents of this briefing note are covered by applicable Cambodian laws and international copyright agreements. Permission to reproduce in whole or in part or otherwise use the content of this briefing note must be requested in writing form to PIC.

© 2019 Parliamentary Institute of Cambodia (PIC)

## 1. Introduction

This briefing note is prepared by PIC instructors to respond to the request for an overview of the Alternative Dispute Resolution (ADR) in Sihanouk and Koh Kong provinces from Commission 1 of the Cambodian Senate. Through reviewing secondary data which can be assessed from official online websites of the government and international organizations, the research addresses the following research questions,

1. What does dispute resolution outside the court process mean in the Cambodian judicial system?
2. What are the current practices of dispute resolution outside of the court proceedings in Cambodia?

## 2. Alternative Dispute Resolution as an Option for Dispute Resolution Outside of Court Proceedings

Any resolution of a dispute outside the judicial system is known as alternative dispute resolution (ADR). It is sometimes used because of the complexity, length of time, expensive cost and stress of using court procedures. ADR is widely used in Cambodia and commonly practiced in areas of family issues, land disputes, natural resources issues, employment, commercial civil issues and other civil cases [1, 2]. ADR methods have been widely adopted in community natural resource development programs to resolve issues [3]. It takes place when the parties agree to choose the best option for settling their dispute peacefully without going to the courts [2, 4, 5]. ADR is not always the last choice of the parties who may decide to go to the courts if they are not satisfied with resolutions made through ADR process. However, it is more effective in terms of lower costs, quicker and socially acceptable since it is often agreed to by the parties in dispute [4].

## 3. Alternative Dispute Resolution Procedures

There are four common practices used in dispute resolution outside the courts in Cambodia including negotiation, mediation, conciliation and arbitration [4, 6, 7].

**Negotiation** is used by parties to resolve disputes directly through compromise and without the assistance of a third party. It occurs when two parties set forth the type of remedy each desires, and tries to reach some sort of an agreement that satisfies everyone involved. In the best-case scenario, negotiations are done between the parties and both come to a satisfactory agreement. The first step in cases regarding the dissolving of assets can be a negotiation which may consist of:

- Each party preparing a list of what each party wants (house, boat, car, money or comprise)
- Each will decide upon a timeframe to acquire the assets and other details, and
- Each will have an alternative or another option for the settlement of assets.

Once an agreement has been reached, the parties will create a written statement to reflect the terms of the negotiated assets. For example, Article 20 of the Cambodian Investment Law allows the use of negotiation when investment disputes occur [8]. In Cambodia, 92 percent of business firms chose negotiation for dispute resolution for their business operations in 2007[9].

**Mediation** is a process to resolve disputes between two or more parties which requires a neutral mediator, a third party, to help the parties discuss and find a mutually acceptable solution[4, p. 81]. It is a confidential process and what is said in the mediation cannot be used against parties later. The

mediation process is very similar to the traditional conciliation process carried out in Cambodia (Court Mediation Procedures) [4, p.85]. Usually mediation occurs after the parties try to negotiate among themselves, but cannot reach a solution. For a successful mediation, it usually follows seven stages [4, p.104]. These seven stages are: initiating mediation; selecting a mediator; briefing the mediator; opening session; general problem solving sessions; private caucuses; and closure.

**Conciliation** is a different type of mediation in which a conciliator meets with the parties separately (rather than jointly, as in mediation) and seeks concessions from the parties that would help resolve the dispute<sup>i</sup>. It is not legally binding. Like the mediation procedure, according to the nature of the dispute, the conciliation is informally conducted by a third party such as a monk, an Achar, a prominent person the parties trust, or the King (in principle), and formally is conducted by a public officer appointed by the government and/or a judge.

In Cambodia, the settlement of disputes through conciliation is conducted as part of daily life and people never think of disputes as “criminal” or “civil” cases. If a dispute is not severe enough to significantly harm their interests, people often prefer to use conciliation procedures. Conciliation is permitted, and it is provided for, in various laws, including the Law on Family and Marriage (family disputes), the Labor Law (labor disputes), the Land Law and Regulations (land disputes), and the Code of Civil Procedure (civil cases).

**Arbitration** is a formal process for dispute resolution outside the court where the parties to the dispute are required to submit their complaint to the administrative body of the arbitration council or center<sup>ii</sup>. In the arbitration, the parties involved in the dispute select an arbitrator who they trust (e.g., they have the required educational and professional experience) for reviewing evidence and making decisions[4, p.137]. The advantage is that the parties choose an arbitrator by themselves and participate in a formal hearing where all sides can present evidence[10].

The parties can agree in advance to abide by the arbitrators’ decision by law [4, p.137]. In this case, when the arbitration is complete, the arbitrator issues a written decision that becomes binding. If the parties have chosen non-binding arbitration at the beginning of the process, the decision is not binding on them.

In Cambodia, a number of civil societies and business entities are obliged to provide services for resolving collective labor and/or commercial disputes as an alternative to the court system. For example, the Cambodian Arbitration Council (AC) established By Prakas 099 dated 21 April 2004 for resolving collective labor disputes. It has managerial support from the Arbitration Council

---

<sup>i</sup> Conciliation is permitted and found in various laws such as the Code of Civil Procedures for Civil Case – see Code of Civil Procedures, Art 97, Labor Law (Labor disputes) – see Labor Law, Art.300-301, and 303 (1997), Land Law and Regulations (Land disputes) see Su-decree on the Organization and Functioning of the Cadastral Commission, Art 7-11 (2002), and Royal Decree on the Establishment of the National Authority of Land Dispute Resolution, Art 3 and Article 15 (2006), Law on Management and Administration of Commune and Sangkat Council, Law on Management and Administration of Capital, Provinces, Khans, Municipalities and districts [local conflict] etc.[6].

1. <sup>ii</sup> Aceris Law LLC (2018) Definition of Arbitration [accessed at <https://www.international-arbitration-attorney.com/definition-of-arbitration/>]

Foundation and Ministry of Labor, and technical assistance from the International Labor Organization (ILO)[11]. The Arbitration Council is perceived to be an independent institution which is a key to its credibility and success. As of 2016, the AC has handled 2,656 cases[12]. Labor dispute cases processed by the AC has increased from five in one year after the AC was established, to 11-12 cases every month in 2019[13].

The National Commercial Arbitration Center (NCAC) of Cambodia was created in 2010 to provide businesses with a means for resolving commercial disputes as an alternative to the court system[14]. Its arbitration services function within the Ministry of Commerce based on the provisions of Cambodia’s Commercial Arbitration Law (2006)[15] and Sub-Decree no. 124 on Organization and Functioning of the National Commercial Arbitration Center (2009) (the Sub-Decree)[16, 17].

#### 4. Implications of ADR Practices in Sihanouk and Koh Kong provinces

Despite controversial issues regarding land conflicts over the past two decades, no specific information or data is available on land conflicts that have been settled through ADR in Koh Kong and Sihanouk provinces which can be assessed for this review. However, the types and numbers of dispute cases can be obtained from the Commune Database in 2017 (Table 1). Those disputes were recorded by the Commune Council and compiled in a national commune database by the Ministry of Planning for monitoring purposes but not necessary for using ADR. However, the data suggests which district in each province had higher concerns regarding disputes that needed to be addressed. In this regard, the local authorities of Srae Ambel and Botum Sakor districts in Koh Kong province, Preah Sihanouk and Prey Nob districts in Sihanouk province may have had more experience with ADR as there is a consistent trend of land disputes in those districts between 2006 and 2017 (Annex 1).

Table 1: Dispute Cases by Districts in Koh Kong and Preah Sihanouk province in 2017

	Land conflict	Criminal	Civil cases	Families with domestic violence	Thievery	Total
<b>Koh Kong Province</b>	<b>90</b>	<b>35</b>	<b>119</b>	<b>129</b>	<b>47</b>	<b>420</b>
<i>Botum Sakor</i>	<b>20</b>	<b>4</b>	<b>43</b>	<b>14</b>	<b>12</b>	<b>93</b>
Kaoh Kong	2	0	6	8	0	16
Khemara Phoumin	5	15	14	16	6	56
Kiri Sakor	7	4	1	5	0	17
Mondol Seima	0	6	3	12	0	21
<i>Srae Ambel</i>	<b>56</b>	<b>5</b>	<b>49</b>	<b>67</b>	<b>27</b>	<b>204</b>
Thma Bang	0	1	3	7	2	13
<b>Sihanouk Province</b>	<b>335</b>	<b>75</b>	<b>350</b>	<b>173</b>	<b>159</b>	<b>1092</b>
Kampong Seila	11	1	25	13	41	91
<i>Preah Sihanouk</i>	<b>222</b>	<b>41</b>	<b>193</b>	<b>82</b>	<b>87</b>	<b>625</b>
<i>Prey Nob</i>	<b>92</b>	<b>32</b>	<b>115</b>	<b>72</b>	<b>26</b>	<b>337</b>
Stueng Hav	10	1	17	6	5	39

Source: Commune Database 2017

In 2006 the Ministry of Justice (MoJ) and Ministry of Interior (MoI) jointly established 20 centers for legal services at the city/district/commune level for ADR by inter-ministerial Prakas No. 85Rbk/MOJ/MOI/2006. This collaborative effort was to reduce the backlog of cases at the provincial court and to expedite dispute resolution for the poor. With lessons learned from the success of ADR, the MoJ, continued to operate the 20 centers and established 31 more centers at the city/district level and 56 Commune/Sangkat Dispute Resolution Committees. Questions for further exploration relate to the functionality of centers in those two provinces [17]. Like other provinces, four dispute mechanisms often involved in dispute resolution before going to court for resolving land disputes are; 1) Commune councils, 2) Cadastral Commissions, 3) Administrative commissions and 4) National Authorities for Land Dispute Resolution [18].

### **ADR Advantage**

In Cambodia, ADR can have several advantages over the formal judicial system such as: (1) it is cheaper and less time-consuming than pursuing a case in court; and (2) it enables the parties to avoid court proceedings which are often perceived as unreliable and unresponsive.

### **ADR Disadvantage**

ADR tends to work well within the same or similar economic and social status of the parties to the dispute; and if there is no influence from outside parties. It also works well when the parties voluntarily agree to use it as a method for settling disputes. The choice to participate in ADR depends on the availability of adequate incentives. Without sufficient motivation, the parties may not agree to follow it. This can have unpredictable costs related to future business opportunities, in cases of land or other business disputes.

## **5. Conclusion**

Resolution of disputes outside the court system is not new in Cambodia and is known as alternative dispute resolution (ADR). It is allowed by law as a remedy outside the judicial system to improve access to justice for all in Cambodia. The advantage of ADR is that the parties can choose either negotiation, mediation, conciliation, or arbitration according to the nature of the conflicts and their ability for resolving the conflicts. The government has reintroduced this concept as part of the legal and judicial reform strategy to establish a number of mechanisms at the national and subnational levels to resolve disputes in the areas of family, land, employment, and commercial issues. Despite the lack of data/information on ADR in Koh Kong and Sihanouk provinces, local administrations including commune dispute resolution committees are in place and ready to share their ADR experiences in settling disputes in their respective work areas.

## Annex 1: Land Conflict by Districts of Koh Kong and Sihanouk Province, 2006 - 2017

	2006	2010	2011	2012	2013	2014	2016	2017
<b>Koh Kong</b>	<b>448</b>	<b>344</b>	<b>181</b>	<b>147</b>	<b>102</b>	<b>90</b>	<b>85</b>	<b>90</b>
Botum Sakor	161	51	49	97	33	23	25	20
Kaoh Kong	34	3	12	12	9	1	2	2
Khemara Phoumin	23	17	6	4	9	13	13	5
Kiri Sakor	8	193	12	2	7	13	2	7
Mondol Seima	24	2	4	1	6	5	1	0
Srae Ambel	170	68	95	17	21	22	28	56
Thma Bang	28	10	3	14	17	13	14	0
<b>Preah Sihanouk</b>	<b>523</b>	<b>341</b>	<b>205</b>	<b>156</b>	<b>291</b>	<b>121</b>	<b>209</b>	<b>335</b>
Kampong Seila	99	13	14	12	10	7	16	11
Preah Sihanouk	109	106	49	42	36	49	109	222
Prey Nob	278	213	133	97	242	62	69	92
Stueng Hav	37	9	9	5	3	3	15	10

Source: Commune Database 2006 - 2017

## References

1. CLEC. (2012). National Consultation Workshop on Alternative Dispute resolution Practice in Cambodia. In, Imperial Garden Villa & Hotel: CLEC. Available at: <http://www.clec.org.kh/proact.php?actID=60&pID=3#.XV-ad3sxXIU> [Accessed 23 Aug. 2019].
2. Find Law. (n.d). *What is Alternative Dispute Resolution?* [Online]. Find Law. Available at: <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/alternative-dispute-resolution.html> [Accessed 23 Aug. 2019].
3. Pailler, S., Naidoo, R., Burgess, N., et al. (2015). Impacts of Community-Based Natural Resource Management on Wealth, Food Security and Child Health in Tanzania. *PLoS ONE* [online] 10(7). Available at: <https://doi.org/10.1371/journal.pone.0133252> [Accessed 2 Sep. 2019].
4. Austermiller, S. (2010). *Alternative Dispute Resolution: Cambodia: A Textbook of Essential Concepts*, Phnom Penh, Cambodia, A publication of the American Bar Association's Rule of Law Initiative, p. 3.
5. IFC, The World Bank Group and MPDF. (2005). *Alternative Dispute Resolution: What it is, and why it is relevant to Cambodia*. [online] Phnom Penh, Cambodia: MPDF, Available at: <http://documents.worldbank.org/curated/en/815321468231847217/pdf/368240Alternat1on0BIB91Cam11PUBLIC1.pdf> [Accessed 23 Aug. 2019].
6. CAJC. (2017). *Overview of Cambodian Alternative Dispute Resolution System* [Online]. Phnom Penh, Cambodia: CAJC. Available at: <https://cacj-ajp.org/web/cambodia/overview-of-cambodian-alternative-dispute-resolution-system> [Accessed 23 Aug. 2019].
7. Zahidul, I. (2013). Legal Enforceability of ADR Agreement. *International Journal of Business and Management Invention*, 2(1). Available at: [https://www.ijbmi.org/papers/Vol\(2\)1/Version\\_2/E214043.pdf](https://www.ijbmi.org/papers/Vol(2)1/Version_2/E214043.pdf) [Accessed 23 Aug. 2019].
8. Law on the investment of the Kingdom of Cambodia (1994, August 4) National Assembly of Cambodia. Available at:

[https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_45.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_45.pdf)  
[Accessed 02 Sep. 2019].

9. International Finance Corporation's Mekong Private Sector Development Facility (IFC-MPDF) and The Asia Foundation. (2007). *The Provincial Business Environment Scorecard in Cambodia: A Measure of Economic Governance and Regulatory Policy*. Phnom Penh, Cambodia IFC-MPDF and The Asia Foundation, p. 40. Available at: <https://sites.duke.edu/malesky/files/2014/07/Scorecard-in-Cambodia-2006.pdf> [Accessed 30 Aug. 2019].
10. The Arbitration Council. (n.d). *History, role and function of abitration council* [Online]. Phnom Penh, Cambodia: The Abitration Council. Available at: [http://www.arbitrationcouncil.org/en/about\\_us/arbitration\\_council/our\\_role](http://www.arbitrationcouncil.org/en/about_us/arbitration_council/our_role) [Accessed 22 Aug. 2019].
11. AC. (n.d). *The Arbitration Council* [Online]. Phnom Penh, Cambodia: The Arbiration Council. Available at: <https://www.arbitrationcouncil.org/about-ac/the-arbitration-council/> [Accessed 26 Aug. 2019].
12. Arbitration Council Foundation (ACF). (2016). *The Arbitration Council - Annual Report 2016*. Phnom Penh, Cambodia: ACF, p.6. Available at: <https://www.arbitrationcouncil.org/download/annual-report-2016/?wpdmdl=2841&refresh=5d63abc9ee8ed1566813129> [Accessed 26 Aug. 2019].
13. Voun, D. (2019). Sweden government grants \$268,000 for arbitration work. . *The Phnom Penh Post*, [online], Available at: <https://www.phnompenhpost.com/national/sweden-government-grants-268000-arbitration-work> [Accessed 26 Aug. 2019].
14. EuroCham Cambodia. (2019). *EuroCham elected to the NCAC board* [Online]. Phnom Penh, Cambodia: EuroCham Cambodia. Available at: <http://www.eurocham-cambodia.org/post/604/EuroCham-elected-to-the-NCAC-Board> [Accessed 26 Aug. 2019].
15. The commercial arbitration law of the Kingdom of Cambodia (2006, March 6th) The National Assembly. . Available at: [http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4\\_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf](http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf) [Accessed 30 Aug. 2019].
16. National Commercial Arbitration Centre. (2018). Phnom Penh, Cambodia: NCAC. Available at: <https://www.ncac.org.kh/page/73-Arbitration-Services> [Accessed 22 Aug. 2019].
17. Royal Government of Cambodia (2006). The commercial arbitration law Phnom Penh, Cambodia: National Assembly of Cambodia.
18. Hean, S. (2015). *A study on land disputes in four provinces of Cambodia: mapping, impacts, and possible solutions*. [online] Cambodia: The NGO Forum on Cambodia, Available at: <http://ngoforum.org.kh/files/5308155d9421e8c8436b13d783eef490-Report--Study-on-Land-Disputes-in-Four-Provinces-of-Cambodia-Eng.pdf> [Accessed 4 sep. 2019]