

Briefing Note

Commission 1 of the Senate of Cambodia: Human Rights Reception of Complaints and Investigation

Land Dispute Resolution outside Judicial System in Cambodia and the Philippines

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1. Introduction

In Cambodia, land dispute cases have been resolved both through the court system and outside the court system. With regard to land dispute resolution outside the judicial system in Cambodia, the Cadastral Commission (CC) has played a significant role in resolving land dispute cases since its creation in 2002. In addition to the CC, there are relevant key actors and state institutions involved in out-of-court land dispute resolution.

This briefing note shall provide a concise description of land dispute resolution mechanisms outside the judicial system in Cambodia and the Philippines.

2. Land dispute resolution mechanisms outside the judicial system in Cambodia

Besides resolving disputes through the court system, Alternative Dispute Resolution (ADR) is considered as another approach which is employed to settle disputes. It is a settlement mechanism that people can use as an alternative to cope with disputes outside the judicial system.¹ ADR has been used to resolve family issues, neighborhood disputes, and environmental, commercial and industrial disputes.² There are various forms of ADR, the most common being: negotiation, conciliation, mediation and arbitration³. *Please see the enclosed research paper “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels” for more explanation of these forms of ADR from page 1 to page 5.*

2.1 Key actors / state institutions involved in land dispute resolution outside the judicial system in Cambodia

It has been observed that when there is a land dispute case in Cambodia, the disputants tend to get involved with a number of key actors or institutions for resolving their disputes outside the court system as follows:

(i) Community

The resolution of conflicts outside the judicial system has been rooted in Cambodian tradition⁴, with many disputes normally being resolved based on local culture or

¹ Austermilller, Steven. “Cambodian Alternative Dispute Resolution”, in *The Introduction to Law* (Konrad-Adenauer-Stiftung, 2012), 183, accessed on June 08, 2015, URL: http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080906

² Lewis, Melissa and Les McCrimmon. “The Role of ADR Process in the Criminal Justice System: A view from Australia” (Paper presented at At ALRAESA Conference, Entebbe, Uganda 4-8 September, 2005), 2 accessed on June 08, 2015, URL: http://www.justice.gov.za/alraesa/conferences/2005uganda/ent_s3_mccrimmon.pdf

³ Austermilller, “Cambodian Alternative Dispute Resolution,” 183.

⁴ 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, accessed on June 08, 2015, URL: http://www.kas.de/wf/doc/kas_31083-1522-1-30.pdf?120720080906

practice⁵. For example, village elders or village chiefs are approached to help settle disputes in the village. This practice is also known as “Somroh Somruel or Psapsaah”.⁶ *Please see the enclosed research paper on “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels” for more explanations about the historical experiences of dispute resolution in Cambodia from page 5 to page 7.*

According to a survey conducted by the Asia Foundation entitled “Commune Councils in Cambodia: A National Survey on their Functions and Performance, with a Special Focus on Conflict Resolution in 2005”, village chiefs were reported to be mostly involved in small land dispute⁷ resolutions. The commune councils were approached next, followed by the elders. These actors are involved as mediators/conciliators for small land conflict⁸ resolution. Nevertheless, it appears that there is a lack of information on the number of land dispute cases which have been successfully settled by these actors.

(ii) Civil society organizations

Recently, ADHOC, a non-governmental organization, has become involved in land dispute resolution. It has established an Alternative Dispute Resolution (ADR) programme⁹ to contribute to small-scale conflict resolution since 2013. It has offered neutral, cost-free, human rights-based mediation services.¹⁰ Between 2013 and 2014, ADHOC was seized of 157 cases¹¹, most cases concerning conflicts within the family or land disputes. As a result of its mediation process, ADHOC mediators helped disputants/parties reach an agreement in 70% of the total number of cases.¹²

However, there appears to be no information available on the specific number of land dispute cases successfully mediated/conciliated by ADHOC. In spite of this, ADHOC has documented some case studies on how its organization successfully mediates/conciliates land conflicts outside the court system.¹³ It should also be

⁵ Yrigoyen Fajardo, Kong Rady and Phan Sin, *Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples*, (2005), p. 1.

⁶ Ramage, Ian et al., *Somroh Somruel & Violence Against Women*, (Domrei Research and Consulting, 2008) pp. 1-4.

⁷ The Asia Foundation, *Commune Councils in Cambodia: A National Survey on their Functions and Performance, with a Special Focus on Conflict Resolution*, by Kim Ninh and Roger Henke, (2005), p. 45, accessed on June 22, 2015, URL: <https://asiafoundation.org/resources/pdfs/CBCCSurvey.pdf>

⁸ One example of small land conflict in this context is about boundary demarcation, according to The Asia Foundation, *Commune Councils in Cambodia: A National Survey on their Functions and Performance, with a Special Focus on Conflict Resolution*, by Kim Ninh and Roger Henke, (2005), p.11.

⁹ This programme has been supported by the European Union and several other international donors, according to “Result of ADR Section in 2013,” ADHOC, accessed on June 22, 2015, URL: <http://www.adhoc-cambodia.org/?p=4374>

¹⁰ “Result of ADR Section in 2013”, ADHOC, accessed on June 22, 2015, URL: <http://www.adhoc-cambodia.org/?p=4374>

¹¹ Those dispute cases include: land, contract, inheritance, family conflict, marriage, wealthy conflict, and other conflicts.

¹² *Ibid.*

¹³ “Land Disputes - A Case of Alternative Dispute Resolution in Banteay Meanchey Province” ADHOC, accessed on June 22, 2015, URL: <http://www.adhoc-cambodia.org/?p=2973>; See also “ADHOC Successfully

noted that ADHOC mainly tries to solve only small-scale land conflicts between villager and villager.

(iii) Government institutions

The Cambodian government has established institutional mechanisms to cope with land disputes outside the judicial system ranging from the sub-national to the national level. These mechanisms briefly include (*please see the enclosed research paper on “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels” for more explanation on these institutions from page 9 to page 18*):

- **Commune Dispute Resolution Committee (CDRC):** This committee was established by the communes/Sangkats in 2006. One of its tasks is to mediate/conciliate land disputes outside the court system, if the parties agree to these processes.¹⁴ Nonetheless, it is suggested that some land dispute cases should not be mediated by CDRC. These cases consist of: land disputes with official title, cases where there is no agreement from the parties to join mediation/conciliation, and where conflicts of interest happen between the mediator/conciliator and the parties.¹⁵ CDRC has received 404 cases of land disputes since its creation until 2013.¹⁶ However, specific information on the number of land conflict cases resolved by CDRC is not available. Please see appendix 1 for the list of CDRCs.
- **The Maisons de la Justice:** this institution was created in 2006 with a number of key tasks including: (i) to provide training and/or technical advice to commune councils on conciliation and certain legal matters regarding disputes, (ii) to assess the demand for legal information at the district and commune level, (iii) to disseminate necessary legal information to the public in the district, (iv) to conciliate and mediate disputes at the request of the parties, and (v) to provide referral services to disputants whose cases cannot be solved at the lower level.¹⁷ From its establishment to 2013, Maisons de la Justice received 489 land dispute cases.¹⁸ However, the number of the land dispute cases resolved by this institution are not available.
- **The Cadastral Commissions (CC):** The three CCs include: (i) Municipal/District/Khan Cadastral Commission (MDKCC) (ii) Capital and Provincial Cadastral Commission (CPCC) and, (iii) National Cadastral

Mediates in Longstanding Land Dispute at Srechar Commune, Snoul District, Kratie Province”, ADHOC, accessed on June 22, 2015, URL: <http://www.adhoc-cambodia.org/?p=3437>

¹⁴ UNDP-Cambodia Operation manual for commune dispute resolution committee (CDRC), (UNDP-Cambodia 2010) p.1. URL: http://www.un.org.kh/undp/media/files/OperationsmanualforCommuneDisputeResolutionCommittee_Eng.pdf.

¹⁵ *Ibid.*, 17.

¹⁶ Ministry of Justice, Report to the Minister of the Ministry of Justice, No. 02 STY/14 dated January 14, 2014.

¹⁷ Inter-ministerial Prakas No. 85Rbk/MOJ/MOI/06, Article 3.

¹⁸ Ministry of Justice, Report to the Minister of the Ministry of Justice, No. 02 STY/14 dated January 14, 2014.

Commission (NCC). The Cadastral Commissions have jurisdiction for land conflicts over untitled land.¹⁹ These institutions, at all levels, generally play a role as mediator/conciliator to resolve land disputes outside the court system. As for the CPCC and NCC, it is incumbent on them to make decisions on land dispute cases that cannot be mediated/conciliated at the lower levels, and have the full jurisdiction to decide on who is the lawful possessor or owner of land.²⁰ However, if the NCC has rendered a written decision and if the parties disagree with it, the parties can ask for a judicial review within 30 days after the delivery of the decision.²¹ From April 2003 until the end of April 2014, the Cadastral Commissions at all levels have received 6,224 cases and processed 5,370 of them. Out of the processed cases, 2,742 cases were successfully conciliated.²²

- **National Authority for Land Disputes Resolution**

In 2006, the government created the National Authority for Land Dispute Resolution (NALDR). The authority has jurisdiction to hear all land disputes that are outside the NCC's jurisdiction.²³ The NALDR is currently led by a Deputy Prime Minister, and consists of 26 Ministries and Authorities serving as members.²⁴ Since its establishment until 2010, the NALDR was seized of 1,421 cases, among which 225 (15,83%) were resolved, and referred 1,043 cases (73,39%) to other competent authorities, while 153 cases (10,76%) are still pending.²⁵

It is difficult to ascertain which actor and state institution is the most effective in resolving land disputes outside the judicial system in Cambodia because it appears that there is no specific study on the efficiency of each actor or institution in solving land conflicts. In addition, there are a number of reasons why it is difficult to compare the efficiency of each actor or state institution in resolving land conflicts outside the court system. One of the reasons is that each actor or state institutions (e.g CCs and NALDR) has a different mandate, which gives them the competency to resolve land conflicts. For example, CCs settle only untitled or unregistered land disputes, while NALDR is mandated to resolve any land dispute case outside the CCs' jurisdiction. Another reason is that each actor or state institution has been established in a different time-period. For instance, CCs were established in 2002, whereas NALDR was created in 2006. These factors have led to each actor or state institution receiving different volumes of land dispute cases (*please see in each section of each actor and state institution as they received the land dispute cases as noted above*).

¹⁹ Sub Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002.

²⁰ Sub Decree on Organisation and Functioning of the Cadastral Commission No 47 ANK.BK/May 31, 2002, Articles 19 and 20.

²¹ *Ibid.*, Article 23.

²² *Ibid.*, p. 4.

²³ Royal Decree on Establishment of National Authority to Settle Land Dispute, NS/RKT/0206/097 February 26 2006, Article 3.

²⁴ NGO Forum, *Statistical Analysis of Land Disputes in Cambodia* (Phnom Penh, 2013), 5.

²⁵ GIZ Land Right Program II, Presentation during TWG Land DP meeting, August 2014 as cited in NGO Forum, *Statistical Analysis of Land Disputes in Cambodia* (Phnom Penh, 2013), 5.

2.2 Benefits and challenges of land dispute resolution outside the judicial system

There are a number of challenges facing state institutions in resolving land dispute cases in Cambodia. For the CDRC and the Maison de la Justice, the delay of the draft of a sub-decree on strengthening and enlarging the dispute resolution mechanism outside the court system seems to be one of the significant challenges which has led to a lack of funds to properly undertake their tasks.²⁶ Concerning the Cadastral Commissions (CCs), all levels of CCs appear to be short of human resources and the necessary budget for carrying out dispute resolutions, thus likely contributing to a prolonged conciliation process.²⁷ Although the CCs tend to be better at resolving conflicts over small parcels of land, they struggle to resolve complex cases, particularly disputes involving multiple parties and large parcels of land.²⁸ Regarding ADHOC's ADR programme, lack of long-term funding has posed a crucial challenge to ensure the sustainability of the programme in the future.²⁹ In that respect, both government institutions and the NGO appear to encounter financial constraints which are likely to hinder the smooth implementation of the land dispute resolution process.

In spite of the fact that there are several challenges facing land dispute resolution outside the judicial system, a number of benefits have been observed through this dispute resolution mechanism. Firstly, it is inexpensive for the disputants, if compared to the cost of litigation. This is because resolving disputes outside the judicial system does not involve the preparation of extensive paperwork thus leading to lower legal costs.³⁰ Secondly, it is less time-consuming for the disputants to resolve the conflict by comparison with dispute resolution through the court system. This is due to fact that the methods (mediation, conciliation and arbitration) of conflict resolution outside the court system enable the parties to select the timeline for proceedings based on their availability (including the neutral third party), not based on the court's timeline.³¹ Lastly, settling disputes outside the court system appears to establish a better relationship between the parties because it provides a platform for the disputants to discuss unsettled or misunderstood matters in a less-tense environment. This tends to enable the parties to reach mutual agreement, which provides a win-win solution for both parties.³²

²⁶ Ministry of Justice, Report to the Minister of the Ministry of Justice, No. 02 STY/14 dated January 14, 2014.

²⁷ Manami Sekiguchi and Naomi Hatsukano, "Land Conflict and Land Registration in Cambodia," in *Land and Post-Conflict Peacebuilding*, ed. J.Unruh and R.C. Williams. (London: Earthscan, 2013) 437-448, p. 446 accessed on June 25, 2015, URL: <http://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem-000-Doc-165.pdf>

²⁸ World Bank, Centre for Advanced Study and GTZ, "Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution," p. xiv (2006), accessed on June 25, 2015, URL: <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/TowardsInstitutionalJustice.pdf>

²⁹ Gerben Willem van Dijk, Access to Justice: An Assessment of the Government and ADHOC Alternative Dispute Resolution Systems in Cambodia, 2014, p. 29. [Draft version]

³⁰ Goldberg, "Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum", p.5, accessed on 29 June, 2015, URL: <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1261&context=drlj>

³¹ *Ibid.*

³² Goldberg, "Online Alternative Dispute," p. 5.

3. Land dispute resolution mechanisms outside the judicial system in the Philippines

3.1 Involvement of relevant NGOs

Rather than act as mediator/conciliator for land dispute resolution, many NGOs in the Philippines tend to be involved in land matters ranging from political activism to serving as an agent to bridge the gap between citizens and the State.³³ For instance, as a part of land conflict resolution, the NGOs try to create dialogues between stakeholders in dispute to improve relationships and build peace.³⁴ Several NGOs work to support community groups by providing financing, advocacy and capacity building.³⁵ It appears that the NGOs in the Philippines empower the affected/victimized communities to be able to advocate for dispute resolution by themselves.

3.2 Institutional mechanisms of the government

Besides NGOs involved in land dispute resolution, the government of the Philippines has created institutional mechanisms to resolve land disputes outside the judicial system. The institutional mechanisms consist of:

- **The Department of Agrarian Reform Adjudication Board (DARAB)** was established by the 1987 Constitution and Executive Order No. 129-A. The DARAB plays an important role by creating a forum for the resolution of land disputes.³⁶ Land dispute cases are received by the DARAB through written or oral complaint and are resolved through mediation before the Barangay (or District) Agrarian Reform Committee (BARC).³⁷ The chairperson of the BARC is initially responsible for mediating the dispute. If the mediation fails, the case is brought before the Provincial Agrarian Reform Adjudicator (PARAD) for arbitration.³⁸

After hearing the parties, the PARAD issues an agreement or arbitral award. However, an award issued by the PARAD can be appealed to the DARAB Board.³⁹ Further appeal can be sent to the Court of Appeals. Nonetheless, if there is no appeal, the order becomes final and enforceable by the police.⁴⁰ Based on

³³ USAID, *Philippines-Property Rights and Resource Governance*, (Philippines, 2011), 10, accessed on June 25, 2015, URL: http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Philippines_Profile.pdf

³⁴ Seneca Pellano, "Rapporteur's Report: Panel 2A- Challenges and Dilemmas of Advocacy: Addressing Corporate Land Acquisition (B)" (report documented at the International Conference on Contested Access to Land in the Philippines and Indonesia: How Can the Rural Poor [Re]gain Control?, University of the Philippines Diliman, February 16-17, 2015), accessed on June 26, 2015, URL: <http://calpi.up.edu.ph/?p=272>

³⁵ USAID, *Philippines-Property Rights and Resource Governance*, p. 10

³⁶ Institute of Developing Economies, *Dispute Resolution Mechanisms in the Philippines* (Philippines, 2002), 21. According to this source, DARAB has jurisdiction over disputes arising from agrarian relationships and other land related issues between landlord and tenants, or among cooperative and tenants. The office of DARAB is connected with the Department of Agrarian Reform (DAR).

³⁷ The BARC consists of ten members representing the DAR, the Department of Environment and Natural Resources, the Land Bank and other agricultural organizations, Ibid.

³⁸ Ibid.

³⁹ The DARAB Board consists of the DAR Secretary, two Undersecretaries and one Assistant Secretary, Ibid.

⁴⁰ Ibid.

the report of Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) entitled “CSO Land Reform Monitoring in Asia in 2012”, the DARAB received 14,000 dispute cases, of which 96% of the total received cases have been resolved.⁴¹ It should be noted that the increasing cases received by DARAB is due to the fact that this institution has moved its focus from land acquisition to private land since 2000.⁴² However, more data and explanation is required to clarify the reason why there is a high percentage of dispute cases resolved by DARAB.

- **The Commission on the Settlement of Land Problems (COSLAP)** was set up as a quasi-judicial body by Executive Order No. 561 in 1979. The COSLAP plays an important role in settling land problems through mediation/conciliation measures.⁴³ It is primarily tasked to resolve all types of land disputes involving occupants/squatters and rubber concessionaires, occupants/squatters and public land claimants, and other similar land problems (e.g. demolition), etc.⁴⁴

When a disputant files compliant documents to the COSLAP, the dispute resolution process commences. A mediation committee, which consists of representatives from various relevant government agencies, is responsible for mediating the dispute.⁴⁵ If mediation fails, a hearing is held in order to arbitrate the dispute. Given the fact that the COSLAP is not strictly governed by the rules of procedures and evidence, this gives the commission a wide scope for preparing agreements on the procedures to speed up the resolution process.⁴⁶ The decisions of COSLAP are binding on the parties and all relevant government agencies on land issues. However, it appears that there is some difficulty in implementing the decisions of COSLAP due to fact that other government agencies have their own procedures for investigating a dispute, and do not allow for an automatic execution of a COSLAP order.⁴⁷

According to the Department of Justice Annual Report 2009, the COSLAP has resolved 1,805 dispute cases (including cases carried over from the previous year), which exceeded its 1,700 target for 2009. This was probably made possible because the COSLAP has attempted to strengthen its mediation process and other alternative methods in land dispute resolution.⁴⁸

⁴¹ ANGOC, *CSO Land Reform Monitoring in Asia*, (Philippines, 2012), 137-152, accessed on June 25, 2015, URL: http://www.landcoalition.org/sites/default/files/documents/resources/CSO_Land_Monitoring_Full.pdf

⁴² *Ibid.*, p. 144.

⁴³ Department of Justice, 2009 Department of Justice Annual Report, 26, accessed on June 17, 2015, URL: <https://www.doj.gov.ph/files/2009Annual.pdf>

⁴⁴ Institute of Developing Economies, *Dispute Resolution*, p. 25.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Department of Justice, 2009 Department of Justice Annual Report, 26.

4. Conclusion

Although there is increasing involvement from NGOs in land dispute resolution outside the court system in Cambodia, the government institutions remain key actors for settling land dispute cases at the local to the national levels. For example, the Cadastral Commissions appear to increasingly resolve land conflict cases (2,742 cases out [or about 44%] of the 6,224 total received cases) since its establishment. However, more efforts on the part of these governmental institutions are needed to speed up the resolution of land conflict cases .

Several NGOs working on land issues in the Philippines play a role as agents to bridge the gap between citizens and the State through establishing dialogue among stakeholders in disputes to improve their relationship (e.g., make it less confrontational). Similar to the government of Cambodia, the Philippines' government has created institutions to settle land disputes outside the court system, including the Department of Agrarian Reform Adjudication Board (DARAB) and the Commission on the Settlement of Land Problems. DARAB appears to have a good record of resolving dispute cases as it settled approximately 96% of the total cases it received. However, more information is required in order to assess why the DARAB has successfully resolved a high number of dispute cases.

Generally speaking, both in Cambodia and the Philippines, government institutions are the main actors in settling land disputes outside the judicial system. The benefits of settling land disputes outside the court system include: (i) inexpensive fees for the disputants, (ii) less time-consuming for the disputants and (iii) maintain parties relationship.

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