

Mediation in Cambodia

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Introduction

Mediation is "a voluntary process in which a trained and impartial third person, the mediator, helps the parties in a dispute to reach an amicable settlement that is responsive to their needs and acceptable to all sides". It has been one of the traditional dispute resolution mechanisms that has evolved as part of the Cambodian culture and legal system. Although the use of mediation is permitted and is provided for under various laws, there are no uniform procedures of mediation and the procedures employed may vary depending on the type of dispute and the individual mediator's locality and method of personal preference.

This article examines the mediation process under Cambodia's legal framework and the development of mediation in Cambodia.

Mediation under Cambodia's Current Legal Framework

While there are currently no specific regulations and regulated procedures on mediation under Cambodia's legal framework, relevant provisions can be found under various regulations including the Code of Civil Procedures, Labour Law, Land Law and related regulations, Investment law, Law on Management and Administration of Commune and Sangkat Council, Law on Insurance 2014 ("**Law on Insurance**"), etc.

Mediation is in principle distinguished from conciliation by the role of a third party in assisting the parties to seek a settlement - in mediation, a mediator is a third party assisting the disputants to arrive at an agreement while in conciliation, a conciliator is normally an expert appointed to settle a dispute by giving parties suggestions as to how they may resolve

their disputes and persuading parties to reach an agreement. Mediation tends to be led by the disputants while conciliation is led more by the third party.

However, the terms "mediation" and "conciliation" seem to have been used interchangeably under Cambodia's current legal framework. The interchangeable use of these terms might not be unprecedented as the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation also uses the term "conciliation" to encompass all such procedures, including mediation. Mediation and conciliation share a common characteristic, in that the role of the third party is limited to assisting the disputants to reach a settlement and does not include the power to impose any binding decision. Notwithstanding this, the ultimate explanation of why Cambodia uses the terms "mediation" and "conciliation" interchangeably may be that the concept of mediation under Cambodia's current legal framework is rather traditional and differs from the western context where there is a distinguishing characteristic between the two concepts.

Conventionally, mediation under Cambodia's legal framework refers to the process where a mediator is assigned or appointed by the institution/relevant ministry to sit and facilitate the conflict resolution. For example, pursuant to Article 89 of the Law on Insurance, parties to an insurance dispute may bring the dispute to the Ministry of Economy and Finance ("**MEF**") for mediation, whereupon the MEF will assign a neutral officer to facilitate such dispute resolution. Under the Law on Insurance, any mediation agreement reached in front of the mediator is immediately effective for execution. The same law also allows the parties to proceed to arbitration or court if no mediation agreement is reached.

Under Cambodia's legal framework, there are two types of mediation: (a) mandatory mediation and (b) non-mandatory mediation.

1. Mandatory Mediation

Under certain regulations (such as the Law on Telecommunications, Trade Union Law and Land Law), parties are *required* to go through a mediation process to attempt to resolve the dispute first before filing a lawsuit to a court, except in a criminal case. For instance, Article 67 of the Law on Telecommunications *requires* any telecommunications-related dispute to be referred to the Telecommunication Regulator of Cambodia for mediation before bringing the dispute to court, except in the case of a criminal offence.

2. Non-Mandatory Mediation

While certain regulations require disputants to primarily go through a mediation process, most of the regulations provide for the right to refer the disputes to mediations, rather than making it compulsory. For instance, Article 36 of the Investment Law allows any parties to an investment project-related dispute to either: (a) have their dispute resolved by the Council for the Development of Cambodia ("**CDC**") through mediation upon written request to the CDC; or (b) directly file a lawsuit to an arbitration or a court of competence.

Development of Mediation in Cambodia

In Cambodia, outside of the statutory context discussed above, mediation has been noticeably promoted under various initiatives undertaken by the Ministry of Justice ("**MOJ**") and relevant institutions including but not limited to the Cambodia Centre for Mediation (CCM), the National Commercial Arbitration Centre ("**NCAC**"), International Finance Corporation ("**IFC**"), and the Centre for Effective Dispute Resolution ("**CEDR**"). The MOJ has recently put increasing focus and effort on developing the legal framework and capacity-building for community mediation, while NCAC, IFC and CEDR, amongst others, are working towards promoting the use of mediation in relation to commercial disputes.

The Royal Government of Cambodia through the MOJ has established sub-national institutions, such as District Justice Service Centres ("**JSCs**"), to provide legal aid services to local people. The MOJ has established 68 JSCs. These JSCs

have been renamed as "Legal and Local Conflict Mediation Offices", and have been transferred to be under the supervision and administration of district, khan and municipality administrations throughout Cambodia (khan being the equivalent level of sub-national administration as district, as used in Phnom Penh municipality). Currently, the MOJ is studying the possibility of establishing a legal framework on mediation and setting up an institution to provide mediation training, accreditation and quality control with the aim of ensuring the quality of mediation services, consistency of mediation standards, providing public education on mediation and mediators, increasing public confidence in the use of mediation services and maintaining the credibility of mediation.

On 7 March 2022, the MOJ signed memorandums of understanding (MOUs) with Oxfam Cambodia and the Women Peace Makers on projects to strengthen its mediation-related mechanisms and implement sub-national mediation including: (a) preparing and developing legal documents, such as prescribing minimum standards for mediators as sub-national civil servants and their code of ethics, operational manuals for legislative offices and local dispute mediation; (b) providing mediation training; and (c) providing general advisory assistance and technical support for projects that will improve the implementation of mediation.

On the commercial side, the CEDR, with the support from the NCAC and IFC, has organised a training on mediation in late 2021 which resulted in the accreditation of 16 Cambodian mediators. Currently, the NCAC is developing its centre's mediation rules and code of conduct for mediators and other related implementing documents with the aim of introducing and adopting an institutionally-administered commercial mediation service in Cambodia to respond to the needs of the business community in resolving disputes out of court expeditiously, with cost efficiency and outcomes that are determinable and acceptable by the disputants.

Concluding Remarks

Mediation has always been an essential component of Cambodia's legal framework. Gradually, Cambodia has begun to place increasing attention and endorsement on mediation. We can expect that mediation will be more formalised in Cambodia in the near future and become even more important as a mode of alternative dispute resolution.

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