

A Newborn National Authority for Alternative Dispute Resolution and its Development in Cambodia

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Introduction

Alternative dispute resolution ("**ADR**") has become an important way to resolve various types of disputes outside of the court system in Cambodia. The National Commercial Arbitration Centre ("**NCAC**") handles commercial disputes through arbitration and mediation, while the Arbitration Council resolves labour disputes. Additionally, various government institutions also settle disputes within their respective areas of authority. For example, the Telecommunication Regulator of Cambodia is the exclusive body that mediates telecommunications disputes between operators and between operators and subscribers.

Recently, a new government-run dispute settlement institution called the National Authority for Alternative Dispute Resolution ("**NADR**") has been established to provide mediation and conciliation services. This article will provide an overview of NADR and chart its current status and future development.

Overview of NADR

The Royal Government of Cambodia ("**RGC**") introduced the Pentagonal Strategy-Phase I in the seventh legislature of the National Assembly in August 2023 as the socio-economic policy agendas for growth, employment, equity, efficiency and sustainability. It aims to build a strong foundation towards realising Cambodia's vision for 2050. In line with the Pentagonal Strategy-Phase I and the main initiatives of the RGC, the Ministry of Justice of Cambodia has implemented measures to strengthen and improve the quality and efficiency of the justice system. The focus is on three priorities:

1. establishing additional ADR mechanisms to improve conflict resolution, especially at the local level;

2. expediting court case settlements to enhance the quality and efficiency of the justice system; and
3. investigating and addressing irregularities that occur in courts to bring justice to the people, and to improve the courts' ability to uphold the law and handle cases with transparency, integrity, and fairness.

In light of the priorities, NADR was established on 2 November 2023 by the Royal Decree No. NS/RKT/1123/2381 on the Establishment, Organization, and Functioning of the National Authority for the Alternative Dispute Resolution.

Objectives

NADR was established to create additional ADR mechanisms in order to enhance the quality, efficiency, and speed of resolving disputes. It also aims to reduce the backlog of lawsuits in court and bring the dispute resolution process closer to the local community while upholding social harmony and justice.

To achieve this, NADR will handle civil disputes, commercial disputes, and other disputes through mediation or conciliation, based on the mutual consent of the parties or at the request of the parties, except for disputes that are not subject to mediation or conciliation as determined by the law.

Duties of NADR

The duties of NADR include:

- Leading, coordinating, and implementing ADR through mediation and conciliation;
- Developing policies, strategic plans, guidelines, measures, and regulations for ADR implementation within its jurisdiction;
- Issuing a code of ethics, code of conduct, rules, and regulations for mediation and conciliation within its jurisdiction;
- Resolving complaints through mediation and conciliation;
- Establishing mechanisms to handle out-of-court disputes or complaints at the local level through mediation and conciliation in cooperation with relevant authorities;
- Monitoring, collecting information, and evaluating the progress of ADR work in Cambodia within its jurisdiction;
- Reporting to the head of the government on the progress, challenges, and proposed measures related to ADR within its jurisdiction; and
- Carrying out other duties as assigned by the head of the government.

NADR Mediators

The mediation/conciliation process under the NADR framework will be overseen by a mediator appointed by NADR or by the conciliation working group appointed by NADR. NADR mediators (also known as conciliation officials) will receive training in legal skills and dispute resolution, and must adhere to the code of ethics and code of conduct established by the Ministry of Justice. They must be of Khmer nationality, have no criminal record, and possess one of the below qualifications:

- Former judges, prosecutors, clerks, or bailiffs with a minimum of three years' professional experience;
- Lawyers or notaries with a minimum of three years' professional experience;
- Members of the Arbitration Council or arbitrators with a minimum of three years' experience in ADR;
- Elites or public officials with a minimum of three years' experience in dispute resolution;
- Individuals holding a degree or certificate in dispute resolution recognised by the Ministry of Justice; or
- Individuals with a bachelor's degree or higher and a minimum of three years' experience in ADR.

Mediation/Conciliation Process

The dispute resolution at NADR will be conducted through mediation or conciliation. NADR is authorised to investigate, address, and receive complaints from individuals or legal entities directly or through relevant institutions. NADR may also review and resolve disputes referred by lower courts if the disputing parties are willing to mediate or conciliate. Additionally, parties to a contract may opt for NADR in their dispute resolution clause as the forum for mediation or conciliation in the event of a dispute.

Where an individual or legal entity elects to lodge a complaint directly with NADR for dispute resolution, the complaint is to be submitted to the General Secretariat of NADR ("**General Secretariat**"). The complaint must include the identity of the parties, facts, issues, claims, and relief(s) sought, with relevant documents attached. Upon receipt of the complaint, the General Secretariat may register the complaint in a case registration book or dismiss it if it is not in conformity with applicable regulations. The General Secretariat or the parties will then appoint a NADR mediator to resolve their dispute.

Throughout the process, a NADR mediator will facilitate the disputing parties in reaching an amicable resolution. The mediator may also suggest potential solutions and provide advice on the consequences of reaching an agreement. Importantly, any resolution will be based on the parties' intentions and voluntary participation.

The NADR mediator is empowered to summon the disputing parties, witnesses, or relevant individuals to clarify claims, provide details, or gather necessary information related to the dispute. The disputing parties are entitled to be represented by a representative, accompanied by a lawyer or advisor as needed.

Settlement Record

The mediator will issue a settlement record if the parties agree to settle and end their dispute at NADR. The settlement record shall only be made in the Khmer language in one original copy that will be retained by the General Secretariat. The NADR mediator shall issue an authentic copy of the settlement record to each party respectively.

This settlement record can be appealed within 30 days of its issuance. If there is no appeal within this period, the settlement record will have the same effect as a final judgment of the court and can be enforced under Article 350(2)(i) of the Code of Civil Procedure of Cambodia. If the contents of the settlement record conflict with the provisions of compulsory execution, public order, or Cambodian customs, the relevant party may appeal to the competent court of first instance in accordance with applicable laws and procedures.

The legitimate interests of third parties will not be affected by the settlement record. In such cases, third parties can exercise their right to appeal to the competent court of first instance in accordance with the laws and procedures in force.

Established Legal Frameworks

Following the establishment of NADR, there are several legal frameworks in relation to NADR mediators and the mediation formalities and procedures which include:

1. Decision No. 002 on the Formalities, Procedures, and Qualifications of Accreditation of NADR Mediators;
2. Decision No. 004 on the Statute of the NADR Mediators dated 29 February 2024;
3. Decision No. 005 on the Uniform, Logo, and Name Tag of NADR Mediators dated 4 March 2024;
4. Decision No. 006 on the Code of Ethics and Code of Conduct of the NADR Mediators dated 29 March 2024;
and
5. Decision no. 007 on the Formalities and Procedures for Mediation of NADR dated 19 April 2024.

In addition, there are also legal frameworks that focus on the establishment of the general secretariat of NADR, as well as the appointments of composition to NADR and the general secretariat which include:

1. Decision No. 192 on Appointment of the Composition of NADR dated 24 November 2023;
2. Sub-Decree No. 341 on the Organization and Functioning of the General Secretariat of the National Authority for the Alternative Dispute Resolution dated 30 November 2023;
3. Royal Kret No. NS/RKT/1223/2543 on the Appointment of the General Secretary and Deputy General Secretary of the General Secretariat of NADR dated 6 December 2023;
4. Decision No. 36 on the Appointment of Additional Composition of NADR dated 6 February 2024;
5. Sub-Decree No. 82 on the Appointment of Civil Servants in the General Secretariat of NADR dated 6 February 2024; and
6. Sub-Decree No 127 on the Determination of Salary and Benefits for NADR dated 3 June 2024.

Current Status and Future Development

Currently, NADR has recruited and trained 90 mediators and conciliation officials, including 60 volunteer mediators. Since 1 March 2024, NADR has been open to the public for filing complaints for mediation.

Furthermore, NADR is collaborating with institutions, civil society organisations, and development partners to establish and operate mediation services in Cambodia. This includes meetings with Oxfam Organization, NCAC, the United Nations Human Rights Office of the High Commissioner in Cambodia, and the Japan International Cooperation Agency in Cambodia.

Additional legal frameworks on formalities and procedures for transferring cases between Cambodian courts and NADR for mediation are in the pipeline and expected to be adopted and implemented soon.

Conclusion

In conclusion, the establishment of NADR in Cambodia is a significant development. It serves as a suitable and efficient platform for parties to resolve disputes outside the judicial system. This initiative represents a proactive step toward an efficient and accessible dispute resolution mechanism by providing an additional option for parties to resolve disputes and alleviating the backlog of court cases.

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