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## **Towards Institutional Justice?**

A Review of the Work of  
Cambodia's Cadastral  
Commission in Relation to  
Land Dispute Resolution

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**THE WORLD BANK**

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## **A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution**

Center for Advanced Study

In collaboration with

Ministry of Land Management, Urban Planning and Construction – National Cadastral  
Commission Secretariat

The World Bank – Trust Fund for Environmentally and Socially Sustainable Development  
(TF 053970 – Village Level Justice and Dispute Resolution); and

The German Development Cooperation (GTZ)



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## Abbreviations

ADR	:	Alternative Dispute Resolution
CC	:	Cadastral Commission
CSES	:	Cambodian Socio-Economic Survey (CSES)
DKCC	:	District/Khan Cadastral Commission
GTZ	:	Gesellschaft für Technische Zusammenarbeit (German Technical Cooperation)
J4P	:	Justice for the Poor
LMAP	:	Land Management and Administration Project MLMUPC
NARLD	:	National Authority for Resolution of Land Disputes
NCC	:	National Cadastral Commission
NCCS	:	National Cadastral Commission Secretariat
NGO	:	Non-governmental organization
PMCC	:	Provincial/Municipal Cadastral Commission
RGC	:	Royal Government of Cambodia
SRP	:	Sam Rainsy Party (the political opposition)





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## Summary of Key Findings

### Brief answers to research questions set out in the TOR:

#### 1. Impact of pilot on *quantity* of cases being successfully resolved by Cadastral Commission

Aspects of the design of the pilot make it difficult to quantify its impact. Still, the researchers can conclude that the pilot had a positive impact on the effectiveness of District/Khan Cadastral Commissions (DKCCs) to resolve cases, particularly those involving small amounts of land. This is the case because of both the financial incentives and the improved management techniques that were introduced as part of the pilot. In other instances, however, the researchers found that the pilot had limited effects. In these cases, factors such as lack of staff and the underlying causes of disputes, rather than finances, were found to be the primary constraints for effective dispute resolution.

Although resolution rates for cases in the pilot were significantly higher than those for the general population of cases in several provinces, the evaluation finds that these figures overplay the impact of the pilot. An analysis of case file and survey data suggests that the higher resolution rate among pilot cases owes, at least partially, to a tendency i) to select 'easier' cases for inclusion in the pilot; ii) to select more competent DKCCs in the allocation of pilot cases; and iii) to focus on the resolution of pilot cases at the expense of cases outside the pilot. In these circumstances, we are unable to quantify the effect of the pilot on the number of cases being dealt with by the Cadastral Commissions (CCs).

#### 2. Probity of CC procedure in pilot cases in particular

##### a. Was compensation claimed and paid for actual cases?

The researchers did not find any evidence of compensation being paid for manufactured or invented cases. In a small number of cases, however, there were indications of DKCC officers changing dates on selected documents from the case files. This practice raises the possibility that older cases, on which substantial work had already been conducted, were included in the pilot.

While the framework for the incentive payments was clear, the researchers found some inconsistency in the dissemination of this information. In particular, a small number of DKCC chiefs and a more significant number of other officers at DKCC level were not

able to confirm amounts paid. It was not clear if this owed to a lack of knowledge of the payment scheme or to a general reluctance to answer questions about such issues, perhaps for fear of providing the ‘wrong answer’.

**b. Were the relevant case-handling procedures followed?**

The researchers found substantial compliance with the dispute resolution procedures set out in the law. One of the achievements of the National Cadastral Commission Secretariat (NCCS) over the past four years has been the roll-out and consolidation of a standard procedure for dispute resolution. However, the procedures were not always followed to the letter. Issues were identified around: the establishment of hurdles for the submission of complaints; the extent to which parties are informed about the conciliation process and the law; party involvement in the selection of conciliators; decisions regarding the dismissal of cases; and the registration of land once agreements are reached.

**c. Were amounts asked for and/or paid in terms of informal fees?**

27 percent of all parties surveyed reported that informal fees or gifts changed hands in relation to their case before the CC. Payments were reported by 22 percent of parties, although these were generally small to moderate (<US\$20) in size. In about 12 percent of cases surveyed, the parties reported that the CC ‘asked’ for money (as opposed to the parties having offered); in 6 percent, parties reported feeling ‘forced’ to pay.

**3. Were parties generally satisfied with the work of the CC?**

Parties had mixed levels of satisfaction with the work of the CC. 53 percent of respondents whose case was resolved indicated feeling totally or quite free in reaching an agreement before the CC; 47 percent stated that they felt very much or somewhat forced. 41 percent gave a positive answer when asked if the outcome of their case was fair whereas 46 percent said the outcome was somewhat or absolutely unfair. When asked whether they felt the CC treated them fairly, the split was 48 percent (positive) to 35 percent (negative). We can say, therefore, that there was a roughly 50/50 split in terms of party satisfaction with case outcome, whereas the split with regard to how parties perceived their treatment by the CCs was more favorable.

While both these figures and those relating to informal payments indicate significant room for improvement, they are not altogether discouraging given i) the contentious nature of the land disputes with which CCs are dealing and ii) the very low levels of confidence that exist in other

institutions doing similar work, for example the courts. These figures can be seen as baselines against which future progress should be measured.

#### **4. Do CC personnel feel that the five-step process<sup>1</sup> provides a workable approach to resolving land disputes?**

It is unrealistic to expect that the CC will be able to resolve all of the land disputes brought before it. As a body which focuses primarily on conciliation, the CC works as part of a system of land administration and its effectiveness is highly dependent on the work of a range of other institutions. Values and behaviors which prevail in local government, in the courts, in the business community and among villagers have a significant impact on the work of the CC but its ability to influence these institutions is limited. Rather, the CC, like all institutions, tends to be a product of its environment. An appreciation of this context is crucial in order both to appraise fairly the achievements of the CC to date and to be realistic about what impact reform at the level of procedures and processes might be expected to deliver.

Almost without exception, MLMUPC (Ministry of Land Management, Urban Planning and Construction) staff indicated that they felt the CC system for land dispute resolution was an improvement on what had existed before. There were, however, two schools of thought in this respect. On the one hand, some officials expressed regret that under the new system they had ‘no power’ and ‘could not decide’ cases. Although delegation of formal decision-making power to the local level was not a feature of the various land dispute resolution systems instituted since 1979, it would appear that the lack of decision-making power is something which has been emphasized since the establishment of the CC.<sup>2</sup> Combined with the reduction in administrative autonomy enjoyed by local authorities, occurring as the central state has consolidated its power over the past 10–15 years, these developments leave some district-level officials with a feeling of impotence. However, other DKCC staff expressed more commitment to conciliation as a way of resolving land disputes. Those expressing the latter view said that they felt more comfortable in their roles now that these were better defined as conciliators. They advised against instituting a decision-making function at the district on the basis that both capacity and independence were lacking at this level.

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<sup>1</sup> A detailed description of the five-step process is provided in Section 4 of this report.

<sup>2</sup> Discussions with DKCC staff and legal practitioners indicate that provincial and district-level staff of the MLMUPC (and its predecessors) felt as though they had more power to decide cases under previous regimes of land management and in fact exercised this power despite the lack of formal jurisdiction to do so (Cooper, 2005).

In a broad sense then, the CC procedures are workable. Nevertheless, there are difficulties in places and improvements are recommended, for instance in relation to: the procedure for dealing with multi-party cases; coping with parties who will not participate in the process; or the registration of lands once agreements have been reached. These issues are dealt with in more detail in the body of the report.

A crucial but more complex question is whether the procedures work. While focusing on practical procedural issues, this report also attempts to throw some light on the broader questions of why, even with workable procedures, the CC is not able to resolve the majority of the disputes that come before it, and what might be done about this fact.

## **Other key findings**

### *Organization and management*

- Since its establishment in 2002–3, the CC has rolled out a nationwide system for the conciliation of land disputes. The system is being implemented by experienced and competent civil servants who have received training in land law and land dispute resolution. While exceptions were observed in general, the work of the CC is being carried out in broad compliance with the procedures set out in the relevant laws and regulations.
- District offices of the MLMUPC lack staff; existing staff have a proliferation of duties. This makes it difficult for the DKCCs to conduct their work in a timely fashion, particularly in districts with high numbers of land disputes. This problem is compounded in districts where DKCC officials have reached or are reaching retirement age. Staff transition issues are emerging in these instances.

### *Types of cases and case handling*

- Earlier studies have found that the CC struggles to resolve more complex cases, especially multi-party cases and those involving parties from, or with connections to, the government or military. This continues to be the case. In addition, it is noted that CCs are better at resolving disputes over small pieces of land than they are with regard to larger ones, and that people come to them more often with small disputes. The limitations of the CC with regard to more complex disputes are also apparent to parties who frequently pursue these cases in other fora instead of, or in addition to, the CC. To the extent that these disputes are resolved by the CC, it is frequently with intervention or assistance of other authorities.

- The land disputes that are brought to DKCC have usually already been the subject of previous (unsuccessful) attempts at conciliation at village and/or commune level. A small number are being referred by the district or provincial authorities or the courts.
- The number of new cases in the CC system is decreasing, as is the backlog of cases. However, this later figure is decreasing primarily because of an increase in the number of cases dismissed. There are still more cases coming into the CC system than there are cases being resolved.
- There is confusion or uncertainty about the grounds and procedures for dismissing cases. As a result, these decisions are made at different stages in the conciliation process and in an inconsistent fashion.
- There is only very little use of formal (legal) assistance, although the demand for it is high. In the absence of independent sources of counsel, poorer parties may be pressured into accepting unfavorable settlements. 48 percent of respondents with cases resolved reported feeling very much or somewhat forced into reaching an agreement. This figure is high, given that the CC is meant to rely exclusively on conciliation in the exercise of its mandate. This suggests that a degree of informal coercive power is being applied as part of the ‘conciliation’ process.
- Even when district and provincial-level CCs are unable to resolve cases, there is a reluctance to refer cases up to higher levels of the system. As a result, the adjudicatory power of the National Cadastral Commission (NCC) is playing only a very minor role in the dispute resolution process. The absence of formal decision making in the CC system has led to a situation where conciliation at the Provincial/Municipal Cadastral Commission (PMCC) and DKCC levels is not occurring, as designed, in the shadow of a final legally based decision, but rather as the first and last option for the resolution of most disputes over unregistered land.
- Ownership of the well established rice farming land which makes up the bulk of Cambodian land holdings is relatively uncontentious as compared with other sorts of land holdings, particularly *chamkar* land, common pool resources and land which was cleared by the parties themselves.



## Recommendations

### A. Commence a scaled-up pilot with a focus on whole districts

Based on the assessment that the pilot had a positive impact on the quality and quantity of dispute resolution conducted by the CCs, the evaluation recommends the roll-out of a Phase II pilot. Ideally, this second phase would be designed with both operational effectiveness and evaluation in mind. Accordingly, it should involve the selection of whole districts for inclusion in the pilot (rather than individual cases across many districts). Also, more detailed baseline data should be collected prior to commencement. More substantively, a Phase II pilot might:

1. Provide extra skilled staff to support pilot DKCCs. These could come either from the PMCCs or in the form of contract staff.
2. Contemplate a mix of base and incentive payments, calculated perhaps not on the basis of individual cases but on the achievement of set performance targets.
3. Increase the extent to which the NCCS and the relevant PMCCs are involved in managing the performance of the pilot districts.
4. Train a pool of community members from a diversity of backgrounds to serve as *ad hoc* conciliators.
5. Facilitate parties in choosing conciliators whom they trust.
6. Facilitate community monitoring of and feedback on the performance of the DKCC in the pilot district.
7. Aim to clear the entire backlog of cases in pilot districts.
8. Include a policy that cases will be referred up to PMCCs if they can not be resolved within a set period of time.
9. Pilot non-binding arbitration at the PMCC/DKCC level (if parties consent).<sup>3</sup>

### B. Support broader engagement around issues of land dispute resolution, especially at commune and village level

Over the past two to three years, a number of NGOs have been running innovative programs supporting commune and village-level dispute resolution activities (Diprose et al., 2005; CLEC, 2006). These and similar avenues to support more effective land dispute resolution at the commune and village

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<sup>3</sup> Arbitration is a variant of Alternative Dispute Resolution (ADR) in which a neutral third party issues a formal written decision about how a case should be resolved. Usually, this decision is final (and arbitration thus described as binding). Non-binding arbitration is a variant of arbitration where the arbitrator issues a decision about how the case should be resolved but where the parties have a choice to accept or reject that decision. Non-binding arbitration is currently practiced in Cambodia with some success in the field of labor relations.

levels should be encouraged. More active cooperation between the PM/DKCCs, the private sector, NGOs and the lower-level authorities in relation to land dispute resolution should also be pursued. In this respect, Zitelmann's (2005) suggestions regarding the building of multi-stakeholder consultative mechanisms on land issues, perhaps through the increased use of *ad hoc* commissioners within the CC system, should also be considered.

### **C. Enhance the decision-making capacity of the land dispute resolution system**

With the courts, the CCs, the National Authority for the Resolution of Land Disputes (NARLD) and other *ad hoc* committees all active in the field, there is a need for a review of the legal framework for land dispute resolution. The current lack of decision-making capacity in the system is striking and needs to be addressed. Options include: i) the increased use of the hearing officer procedure set out in the circular on hearing procedures for the NCC; ii) the devolution of adjudicatory power to the PMCCs; iii) the expansion of the NARLD; or iv) the establishment of specialist land courts.<sup>4</sup> Hybrid options whereby PMCCs or DKCCs facilitate or conduct non-binding arbitration might also be considered.

### **D. Improve availability of information and support to parties**

Explaining the dispute resolution process and the land law to villagers with limited educational backgrounds is not an easy task. More needs to be done to ensure that people understand the process and their rights within it. In addition to oral communications, parties should be given some printed and/or audio visual material which explains the process. To the extent that appropriate materials are already available they should be distributed to all DKCCs and PMCCs to support communication with parties.

More effort should also be made to put parties in touch with independent sources of advice early in the CC procedure. Rather than waiting until the administrative meeting, which often does not occur until conciliation starts, parties should be informed about their right to seek assistance when they file their complaints/responses. They should also be informed about possible sources of independent assistance at that time. If well informed sources of assistance are not available or overburdened in some areas, investments may need to be made in building this capacity.

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<sup>4</sup> Options iii) and iv) above are clearly outside the capacity of the MLMUPC to implement and would need to be considered as part of a broader program to address issues of land disputes at a whole of government level.

## **E. Clarify issues surrounding dismissal and referral of cases**

Having a large number of cases pending is a problem for any dispute resolution system. Strategies to avoid this happening need to be developed. The issue of lack of deadlines applying for some stages of the dispute resolution process should be addressed. While all efforts should be made to support dispute resolution at the local level, if cases can not be dealt with within certain timeframes they should be channeled up or out of the system. For this to work, rules regarding dismissal and referral of cases will need to be clarified. Particular issues which should be clarified include: i) when cases should be referred up; ii) what to do if plaintiff or respondent fails to participate in the conciliation process; and iii) what cases fall within the jurisdiction of the CC. If the CC takes a more proactive approach to dismissing and referring cases, CC staff will also need to develop the practice of documenting these decisions and explaining them to parties. Given the lack of other options for dispute resolution at the district level, it is suggested that the jurisdiction of the CC be broadened to include all disputes involving land, at least for the purposes of initial conciliation.

## **F. Review and enhance management and information systems**

A key finding of this report is that the DKCCs respond positively to increased planning support and supervision. It would be beneficial to scale up, supervising individual cases that were initiated during the pilot. These include agreements between the PMCC and the DKCC on a work plan for each case and a requirement to report back on progress on these work plans. For such systems to work on a broader scale, however, improved management information systems are required. Currently, only aggregated case handling data is compiled at the provincial or national level in anything like a systematic fashion, and even these datasets are problematic. While useful for reporting figures, such as overall case disposition rates, the data currently being collected is not detailed or flexible enough to use for performance management. In 2003/4 the NCCS and GTZ made an initial attempt to set up an electronic case management database for three provinces. This was not kept up to date (Becker and Cooper, 2004). Hi-tech solutions are not always the most appropriate in developing country contexts. Nevertheless, it is recommended that the NCCS revisit and either revive the case database or, if it is found not to be viable, establish a new system for reporting on cases which allows adequate performance management. The establishment of an enhanced case management system would also allow better information sharing with the public.

Key indicators for the performance of the CCs should also be reconsidered. Performance of the CCs should not be measured purely on the basis of gross

resolution rate (currently 29 percent). The research team suggests the following additional indicators of performance:

1. Average length of time taken to close a case;
2. Average length of time cases currently pending have been open;
3. An indicator of client satisfaction (as measured by a regular party survey).

#### **G. Review and simplify case documentation at district level**

The forms used to document cases at the PMCC and DKCC were generally adequate, although in some cases they were found to be too complex. Steps in the procedure are sometimes conflated and, as a result, some DKCC staff simply omit using various forms. However, except where otherwise noted, this was not found to have major impacts on the fairness of the process. While not a matter of urgency, the process of documentation could probably be streamlined with input from DKCC staff. The most significant problems were encountered with multi-party cases. The procedures and forms used for dealing with these cases should be reviewed as a matter of priority.

#### **H. Increase resources dedicated to land dispute resolution**

For an issue often referred to as one of the major obstacles to equitable development in Cambodia, it is striking how few government or donor resources are devoted to land dispute resolution. To be sure, work is being done to prevent disputes in the long term by investing in land registration, but this process will do little to assist parties to disputes currently arising. The CC is currently severely understaffed and under-funded, particularly at DKCC level but also at PMCC level in non-LMAP provinces. Improvements in the performance of the CCs are likely to require significant increases in skilled personnel, whether civil servants or contract staff. This need will be heightened as senior staff reach retirement age over the next few years and need to be replaced.

Increased resources are also likely to be needed i) for whichever body is going to take responsibility for the adjudication of disputes that can not be resolved through conciliation; and ii) to ensure that parties, particularly the poor, have access to independent sources of advice and support with regard to their rights and the land dispute resolution process.



## 1. Introduction

Who controls land and how it is used are central development issues. In the words of a recent World Bank study on the matter ‘land policies are of fundamental importance to sustainable growth, good governance, and the wellbeing of ... rural and urban dwellers – particularly poor people’ (World Bank, 2003: ix). The intensity with which land issues have been debated in Cambodia over recent years demonstrates the pertinence of this statement.

### **Some background on land management and disputation in Cambodia**

A historical overview of property rights in the Cambodian context might start as far back as the Angkorian era. For the purposes of the current study, however, it is sufficient to say that before the fall of the Khmer Republic, a mixed system of traditional usufruct and French-style land administration prevailed (Griffiths, 2004) and that, since then, the country has seen a rapid collectivization and re-privatization of land. With the coming of the Khmer Rouge in 1975, all private property rights were abolished and an era of state ownership of property began.<sup>5</sup> During the Khmer Rouge period, countless historical documents were destroyed (including much of the old land register), an estimated 1–3 million people were killed or starved to death, and much of the remaining population was displaced, either internally or into neighboring countries. By the time the Khmer Rouge fled Phnom Penh in 1979, pre-existing systems of land rights had fallen into disarray. Although some attempts were made to reclaim prewar properties, these claims were never legitimated by the state. As such, 1979 represents something of a ‘zero hour in the history of Cambodian land regimes’ (Zitelmann, 2005).

The Vietnamese-backed regime which followed the Khmer Rouge restructured land use around communal production/solidarity groups (*krom samaki*).<sup>6</sup> The level of collectivization varied between each *krom samaki*. In some areas (and at some times) solidarity groups shared all production inputs (labor and materials) as well as outputs, whereas in others solidarity groups existed in name only and most, if not all, production was managed at the household level.

In the late 1980s, with the departure of the Vietnamese, the speed of the shift from a socialist to a market economy increased. Among the changes was a

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<sup>5</sup> See Article 2 of the Democratic Kampuchea Constitution, April 1975, unofficial translation from the Documentation Center of Cambodia, available at [http://www.dccam.org/Archives/Documents/DK\\_Policy/DK\\_Policy\\_DK\\_Constitution.htm](http://www.dccam.org/Archives/Documents/DK_Policy/DK_Policy_DK_Constitution.htm). (‘All important general means of production are the collective property of the people’s State and the common property of the people’s collectives.’). Also see Simbolon (2002: 12).

<sup>6</sup> Constitution of the PRK, 25 June 1981.

partial return to private land rights. The first legal step to privatization came through Sub-decree No. 25, which allowed ownership rights over residential property.<sup>7</sup> A month and a half later, Instruction No. 3 to the Council of Ministers brought about the effective end of *krom samaki* by extending household possessory rights to those who used land in an open and notorious manner and by ordering a redistribution of collective land (Simbolon, 2002). In pursuit of equity, land was redistributed according to household composition; thus, bigger families were given more land. However, village chiefs were given the responsibility of dividing the land and in some villages the system was captured. Those who were not in favor with the local authorities were sometimes granted inferior plots (CCC & Catalla, 2001: 9).

Although land conflicts were known under the socialist regime, the current era of land disputation can be said to have begun with the emergence of a land market in the late 1980s and early 1990s (Ashley, 1999; Cooper, 2004; Oxfam, 2005). This process was consolidated with the passing of the 1992 Land Law, which provided for a system whereby ownership of property could be conferred upon legal possessors of land.<sup>8</sup> In the mid-1990s, the government decided that a new land law was necessary. This decision was influenced both by deficiencies in the 1992 Land Law and also by increasing penetration of the land market which emerged with the economic and political transitions of the years following the Paris Peace Accords (Williams 1999b). After much deliberation, the new land law was passed in 2001. It provided for land registration along the lines of the Torrens system. Some of the major changes in the 2001 Land Law included extending private ownership rights to residential land and agricultural land, establishing a system for the systematic titling of land under the control of a single authority, creating a more comprehensive dispute resolution system, and bringing to an end the possibility of legally entering into possession of vacant state land (Sar, 2003). With the roll-out of systematic titling following the passing of the 2001 Land Law, formal title to land is becoming more common. However, land tenure ‘remains insecure for most’ (World Bank, 2006: 86) and, to date, it is estimated that only 15 percent of Cambodia’s 6.5 million plots of privately owned land are titled (GTZ, 2006).<sup>9</sup>

Figure 1 below provides an overview of the various regimes of land administration that Cambodia has experienced since pre-colonial times.

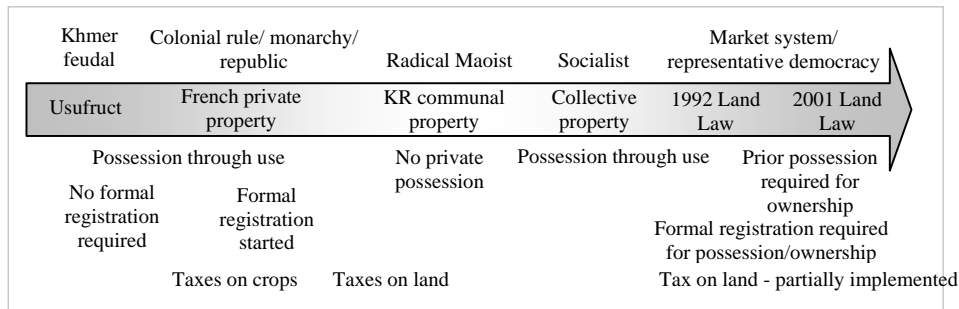
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<sup>7</sup> Sub-decree No. 25, April 22, 1989.

<sup>8</sup> 1992 Land Law, Article 59.

<sup>9</sup> This figure includes both ‘possession titles’ issued before 2005 and ‘ownership titles’ issued under the new law.

**Figure 1: Land management regimes in Cambodian history**



While the specifics of this history are uniquely Cambodian, the difficulties in land management that the country is currently experiencing fit into a number of broader historical patterns. Writing in 1944, Hungarian-American economist, Karl Polanyi argued that an unregulated market ‘could not exist for any length of time without annihilating the human and natural substance of its society’. That society had not been ‘annihilated’ as part of the industrial revolution owed, in Polanyi’s view, to the fact that ‘markets and societies always existed in a lurching relationship and struggle which progressed unevenly as, in a two stage “double movement”, markets dis-embedded themselves from social constraint, and were then re-embedded and thereby secured and sustained’ by movements of ‘enlightened reaction’ (Craig and Porter, 2006: 3). Although this theory was developed in the European context, its relevance to Cambodia is apparent. If the past 10 years has been characterized by a process of markets breaking out from and disrupting the social norms of a previous era,<sup>10</sup> the question becomes, in Polanyi’s terms, whether and how a double movement can be orchestrated with a view to ‘re-embedding’ markets in the social, governmental and regulatory contexts which, while constraining them, also lead to their long-term viability.

In this context, the question of ‘how land and natural resources are managed and administered, by whom, and for whose benefit’ (Leuprecht, 2004) is of crucial importance, as it is around these issues, with their immediate development and livelihoods impacts, that the emergence of new market relations are most disruptive and that the challenge of re-embedding the market is at its most pressing. Once again, this is hardly a uniquely Cambodian phenomenon. In a comparative review of land reform in developing countries, Elwert (1999: 15–16) notes that conflict often accompanies the development of a more active land market and/or changing land usage patterns in circumstances

<sup>10</sup> The rapidly ‘increasing force of the market’ (Kato, 1999) and its penetration into rural areas is widely acknowledged as a defining feature of Cambodia’s recent history. See also van Acker (1999: 6).



where formal systems for securing tenure are weak or absent. ‘Development’ becomes a source of conflict as the modernization of economic and social relations leads to the ‘meltdown of customary usage rights’ or the ‘steamrolling of older institutions of law’. As land increases in price, whether because of the construction of infrastructure or owing to other forces, ‘powerful interests are able to acquire it’. In Elwert’s view, this tendency is attributable not purely to the fragility of ‘traditional structures’ in the face of modernization, but also to ‘elite capture of the law’ (*Vermachtung des Rechts*), a process whereby ‘practices of public administration which are not foreseen by law’ fill the gaps between traditional and modern concepts of law. Elwert goes on to describe how, in these circumstances, the administration rather than the judiciary becomes the arbiter of land disputes, and how such administrative structures tend to decide disputes either in the interests of individual civil servants or are subject to ‘massive pressure’ from ‘wealthy urban investors’ who are able to achieve favorable outcomes through bribery.

Similarly, van Acker (1999) describes the difficulty of ensuring security of tenure as agrarian societies undergo market transitions. Governments, he says, mostly adhere ‘to a “teleological perspective” of modernization’, meaning that they attempt to create a modern sector by redefining property rights, ‘essentially superimposing on the set of customary rules ... a system of formalized rights specified by a national cadastre system’. The result of this process is, however, often to ‘enhance the transferability [of land]’ but at the expense of security of tenure (5).

These findings resonate strongly with the literature on land disputation in Cambodia (as well as with the findings of the current study). A useful starting point for a review of this literature is in Ashley (1999), who proposes a typology of land disputes based on his experience dealing with land issues in his capacity as an adviser to the National Assembly’s human rights commission in the mid-1990s.<sup>11</sup> Ashley describes six types of land disputes, which can be usefully aggregated in three broader categories:<sup>12</sup>

1. *Disputes between the state and ordinary citizens*: These disputes are described as comprising two main sub-types. Firstly, there are ‘disputes where villagers are occupying land which theoretically belongs to the state – including forests, ... concession land or land which is used or put aside for public use, such as a road or school’.

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<sup>11</sup> Zitelmann (2005) notes that such typologies lead to very schematic presentations of the situation with regard to land disputation, and that they represent a ‘recycling of ideas about conflict in a way which is nearer to the spread of rumors ... than analysis’. While heeding this warning, we find that empirically based typologies generated by Ashley and others provide a valuable overview of the types of land disputes occurring in rural Cambodia and their causes.

<sup>12</sup> It is interesting to compare this analysis of the typology of land disputes from the literature with that uncovered by the research team in relation to cases before the CCs (below).

Such evictions are described as occurring even where villagers have acquired such land in good faith and/or have been using it for many years. Secondly, there are cases where the state is appropriating land for public purposes. Here, disputes arise because existing occupants either refuse to give up their land to the state or because they are not satisfied with the compensation offered. Both of these sorts of disputes are very much in evidence today (Oxfam, 2005; Leuprecht, 2004).

2. *Disputes between citizens and representatives of the state – acting either in their own personal interests or as intermediaries for the private sector:* Ashley notes that many of the claims being made to the National Assembly involve individuals from the military or other arms of the government forcibly appropriating land for personal benefit. In such cases, there is a blurring of the distinction between the private sector and the state as government officials are either directly involved in private sector activities or are acting in close cooperation with investors (CAS/WB, 2006). There is, it appears, significant overlap between these first two categories, as many of the disputes described in Category 1 will have arisen from the financial benefit flowing to government officials from the transactions concerned. In Categories 1 and 2, Ashley describes a range of cases, from those in which villagers' legal claims are relatively strong to those in which their claims to continuous occupation are muddled by the vicissitudes of war and poverty.
3. *Disputes involving private parties:* Ashley describes two broad types of disputes involving private parties. The first of these relates to attempts to reclaim pre-Khmer Rouge era properties; these were apparently quite common in the early 1990s but were already settling down in Ashley's time. The second might be described as 'other small disputes', which brings together a range of smaller disputes over boundaries, inheritance and occupation.

A more recent typology of land disputes is found in So Sovannarith et al. (2001: 33–6). This work, based on key informant interviews in six provinces/municipalities, focuses more on smaller disputes than on the larger ones reaching the national level as described by Ashley. So Sovannarith categorizes land disputes falling into seven categories, based primarily on the identities of the parties to a dispute:

1. *Conflict between neighbors:* Conflicts between neighbors are described as arising from the fact that the boundaries of individual plots are often unclear. Although these issues might have been resolved with assistance from neighbors or local authorities in the

past, So Sovannarith et al. suggest that they are becoming more difficult to resolve. Reasons for this include increases in the number of land transactions, changes in land use, and more ‘outsiders’ coming to own land in Cambodian villagers – all of which mean that issues regarding the exact boundaries of land become more important.

2. *Conflicts within families*: Inheritance and other disputes between family members are described as common. In particular, land disputes are found to arise when ‘land that is controlled by one relative is used by other relatives’ (p.34). Land disputes between siblings and spouses are also described.
3. *Conflicts with creditors*: With land increasingly being used as collateral for credit, disputes are found to arise when debts can not be repaid and creditors attempt to foreclose.
4. *Conflict involving local authorities*:<sup>13</sup> Conflicts over land involving local authorities are described as taking a number of forms. These include conflicts arising out of the fact that local (village and commune) authorities have sold or otherwise allocated lands to outsiders. There are also instances of people being removed from land that authorities deem to be state land (CAS/WB, 2006). Conflicts are also reported as arising when different local authorities, often from different political factions, assert competing jurisdiction over land, for example where former Khmer Rouge leaders validate claims which are not recognized by the regular administration.
5. *Conflicts involving state institutions (at higher levels)*: Higher-level institutions of state, particularly the military, are also found to be dealing in land. ‘Despite the advent of peace and security’, the authors explain that various arms and factions of the Cambodian military maintain *de facto* control over significant amounts of land.<sup>14</sup> Whether such land is allocated to decommissioned soldiers, farmed or kept for speculative purposes by higher-ranking officials, the risk of competing claims with local villagers arises.
6. *Conflicts between villagers and private parties and companies*: This category is used to describe i) cases involving private

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<sup>13</sup> This category is a conflation of two of Sovannarith’s categories: (5.2.4) conflicts between villagers and local authorities and (5.2.5) conflict between local jurisdictions.

<sup>14</sup> In fact, it appears that the factional cohabitation and dividing up of land as one of the spoils of peace which was part of the terms of Cambodia’s peace is a significant driver of land disputation (see Zitelmann, 2005).

concessionaires who have been granted usage rights over land by the state and who then come into conflict with villagers who have competing claims to the same land; and ii) instances where conflicts arise between wealthy individuals acquiring land through deals with corrupt local officials, such as when indigenous people's traditional lands are sold to outside investors.

Categories 4–6 above would appear to involve a significant amount of overlap, as local authorities, higher-level representatives of government and the private sector will often be working hand-in-glove with regard to land transactions.

Each type of disputes is described as becoming both more common and more difficult to resolve at the local level, as a product of the extension of the land market:

... When land values were relatively low and there was less demand for land, most of these disputes could be resolved according to traditions and customs that governed land use rights at the local level. However, in the mid-1990s, the nature of the conflicts as well as the parties involved began to change as land values increased. Perhaps the most significant aspect of such changes is that in a growing number of cases involving land grabbing, agricultural concessions, or disputes involving collateral for loans, local people have actually begun to lose their land to other people or institutions from outside the community. It follows that land conflicts now represent an increasingly serious social problem that undermines both the state of people in the system and their ability to achieve sustainable livelihoods (p.33).

A recent study by the authors of the present report (CAS/WB, 2006) documents other aspects of the problematic of land disputes, with particular reference to cases in which a difference in power between parties is manifest. In particular, this study notes the gap between law and practice that has opened up over recent years:

The past 10–15 years have seen an effective privatization of significant areas of state land within a weak regulatory framework. This has allowed officials, particularly those at provincial and district level, to conduct more or less formal land transactions over 'state land' without the need for consultation, transparency or accountability. At the same time, villagers have expanded their agricultural activities onto unused land. Expectations of continuing usage rights are developed on this basis even where these are not supported by the law. The legal framework for state land management is poorly understood and bears little resemblance to current practice or understandings with regard to land use and administration. In the absence of adequate processes for consultation or a commonly accepted basis for decision making, issues of state land management are prone to complex disputes. The involvement of higher-level interests in issues of state land management makes effective dispute resolution of these disputes at the commune or even the district level very difficult (p.32).

The same study also notes the role powerful individuals within the administration are playing in land dispute resolution, which it describes in terms of a ‘predominance of patrimonial over legal/bureaucratic forms of power’ (cf Elwert, 1999).

### **LMAP and the establishment of the Cadastral Commission**

In June 2002, the Cambodian Ministry of Land Management, Urban Planning and Construction (MLMUPC) established the Land Management and Administration Project (LMAP) with a view to improving ‘land tenure security and promot[ing] the development of efficient land markets’. To a significant extent, LMAP focuses on implementing the 2001 Land Law, particularly through the roll-out of systematic land registration.<sup>15</sup> LMAP has five components. Of these, Component 4, ‘Strengthening Mechanisms for Dispute Resolution’, was designed as a direct response to the problem of land dispute resolution described in the previous section. Its key objective is to ensure that land disputes ‘are resolved quickly and to the satisfaction of the parties involved’. In pursuit of this objective, the LMAP project document envisages activities focusing on the establishment and functioning of the Cadastral Commission (CC).

The CC was created under Article 47 of the 2001 Land Law.<sup>16</sup> 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’. On November 26, 2003 MLMUPC and the Ministry of Justice issued Inter-Ministries Prakas No. 02 BRKN.03 ‘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, in short providing for the CC to deal with all cases involving unregistered land except those involving inheritance (between heirs) or contract (between parties to a contract) which would be within the primary jurisdiction of the courts.

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<sup>15</sup> The systematic land registration process involves the roll-out of formal title across the country. Following this process it is expected that all private land will be demarcated and registered between 2015 and 2020.

<sup>16</sup> Art. 47 of the Land Law, the only one which refers to the CC, provides as follows ‘Disputes over immovable property between possessors shall be [*neung trov*] submitted for investigation and resolution under determined procedures. The results of the investigation shall be submitted to the Cadastral Commission created at the Ministry of Land Management, Urban Planning and Construction. This Commission shall make decisions [*s’kedai samrach*] on these disputes. In case of dissatisfaction with the result, the disputants may [*ach*] complain to the court. The organization and functioning of this Commission shall be determined by sub-decree.’

Described in the Land Law only in terms of its jurisdiction, the CC emerged in the regulations referred to in the preceding paragraph as a body with a three-tier structure, with offices at district, provincial/municipal and national levels. Within this structure, the district and provincial level offices are responsible for the initial conciliation of disputes. Cases which can not be successfully conciliated at these levels are referred up to the National Cadastral Commission (NCC) to decide. At the district and provincial level, the CC is headed by the district/provincial governor,<sup>17</sup> whereas the chief of the NCC is the Minister for Land.

In December 2002, the Chairman of the NCC Commission instructed the CC to begin accepting and processing cases. Statistics provided by the National Cadastral Commission Secretariat (NCCS) showed that, as of the end of April 2006, the CC had received 3,949 cases. Of these, 1,146 had been successfully resolved, 773 dismissed and 70 withdrawn. 1,960 cases were pending. According to the NCCS, the majority of successfully resolved cases involved small numbers of families. The CC has resolved few cases involving powerful people or numerous parties.<sup>18</sup> Based on these figures, the CC usually reports a resolution rate of 29 percent (see Figure 2 below). Another way of reporting these figures would be to remove the cases dismissed or withdrawn from the equation because these, assuming that they were dealt with properly, can be considered not within the jurisdiction of the CC. On this basis, the resolution rate increases to 37 percent.<sup>19</sup>

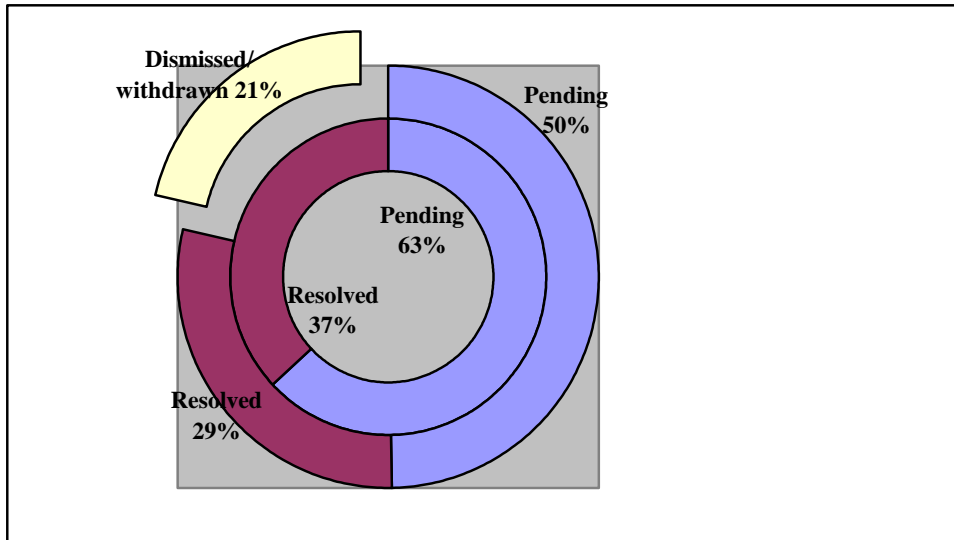
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<sup>17</sup> This has been the case since April 2006. Initially, the DKCCs were headed by the chief of district offices of the MLMUPC.

<sup>18</sup> Case statistics from 2005 showed some 600 unresolved cases involving powerful persons (Zitelmann, 2005); however, this figure hides the fact that many such cases are not being filed with the CCs even though they may technically fall within its jurisdiction (CAS/WB, 2006). Based on existing estimates, some 150,000–200,000 families may be involved in such disputes (Cooper, 2004; 2004; Oxfam, 2005).

<sup>19</sup> Discussions with the NCCS reveal that both of these methods of reporting the success rate of the CC are considered to be problematic because they ignore the considerable work that goes into investigating cases, even if they are later dismissed. As a result of this concern, the NCCS requested the research team to come up with a more appropriate indicator of performance (see Recommendation F above).

**Figure 2: Number of CC cases from December 2002 to April 2006**



*Note:* Inner ring: dismissals excluded; outer ring: dismissals included.

In response to concerns regarding the backlog of cases at the CC and in an effort to support the CC, in June 2005 GTZ agreed to provide financial support towards establishing a pilot project compensating CC personnel for working on cases. Initially, 45 cases were supported. This number was increased to 230 on October 11, 2005. The 230 cases were located in 23 of the 24 provinces/municipalities as well as at national level. Also on October 11, an informal agreement was made that once 100 cases had successfully been resolved, an independent evaluation would be carried out by consultants; it was estimated that this would occur by March 2006. The NCCS reported on March 31, 2006 that, as of that date, 58 cases had been successfully resolved. Rather than wait to reach 100, however, it was decided to proceed with an evaluation at that time.

### **Design of pilot and rationale for evaluation**

The rationale behind the pilot was that land dispute resolution work was not being prioritized by CC staff because; unlike with land titling work, there was no remuneration. According to this rationale, the payment of an incentive for processing CC cases should lead to improved performance. The amounts payable to CC staff were designed to match the extra payments being made to MLMUPC staff working on systematic land titling (US\$8 per day), and were based upon the amount of time taken to process a case through the CC (estimated at 16 person days for a simple two-party case, with increments for

larger cases). Payments were made according to a schedule designed by the NCCS, with 25 percent (US\$32)<sup>20</sup> payable on acceptance of the case into the pilot, and the remaining 75 percent (US\$96) payable if the case was resolved successfully. For cases that could not be resolved, and which were thus sent up to the next level of the CC, the lower-level CC did not receive the full amount, instead receiving only an additional 12.5 percent (US\$16), making a total of US\$48. In addition to the financial incentive, DKCC (District/Khan Cadastral Commission) staff agreed to a work plan for each case, which was accepted into the pilot. This was agreed with their PMCC (Provincial/Municipal Cadastral Commission), and a timeframe for each step of the CC process was set out.

The primary goal of this evaluation was to assess the impact of the pilot. In pursuit of this goal, GTZ and the NCCS engaged a research team to undertake an evaluation of the pilot. This team comprised international and Cambodian researchers from the Center for Advanced Study and the World Bank's Justice for the Poor team. The research was co-funded by GTZ and the World Bank. GTZ, the NCCS and the research team agreed on the following research questions:

1. Is it reasonably likely that the compensation already provided and that will be provided by the pilot has led to significantly more cases being successfully resolved than would have been true without the compensation, or are there other factors which explain these statistics?
2. Were the pilot cases handled in a reasonably proper way in terms of financial issues, meaning that compensation was claimed and paid for actual cases, that in general steps were taken that CC procedures called for (indicated by case paperwork), and that there was relatively little asked for and/or paid in terms of informal fees?
3. Were parties generally satisfied with CC work?
4. Do CC personnel feel that the five-step process provides a workable approach to resolving land disputes?
5. What recommendations should be made to MLMUPC/LMAP regarding the pilot?

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<sup>20</sup> Dollar amounts quoted are for so-called 'simple cases', those involving a single party/family on either side of the dispute. Larger cases, involving more families, received an incrementally higher rate.



Building on Question 4 relating to the ‘workability’ of the CC procedures, the team has undertaken a more comprehensive enquiry into how the CC works, how it is perceived by its ‘clients’, and how its contribution to land dispute resolution in Cambodia could be enhanced. Accordingly, this report becomes both an evaluation of a specific set of pilot activities as well as a component of the Justice for the Poor program’s broader attempt to engage in the debate around issues of land disputes and access to justice in Cambodia.<sup>21</sup>

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<sup>21</sup> The World Bank’s Justice for the Poor (J4P) program is a global research and development initiative aimed at informing and supporting pro-poor approaches to justice reform. J4P seeks to generate empirically based understandings of how the poor navigate and/or are excluded from existing dispute resolution and decision-making mechanisms. Building on an understanding of what can work in different local contexts, J4P promotes programmatic and policy interventions with a view to making justice reform more responsive to the needs of all citizens, but especially the poor.

## 2. Methodology

This research draws on a range of data sources, set out in Figure 3 below.

**Figure 3: Data sources**

<b>Data source</b>	<b>Type of data</b>	<b>Comments</b>
1. Lessons Learned Workshop, Kampong Cham (April 2006)	Qualitative: Notes from observation of workshop	Participants in the workshop discussed their experiences in land dispute resolution; their impressions of what made cases easy/difficult to resolve; their dispute resolution techniques; and their experience of the pilot incentive scheme.
2. Discussions with national level NCCS, MLMUPC, GTZ staff and NGOs	Qualitative: Notes from interviews	Informal discussions and meetings were held with representatives of human rights NGOs, GTZ and MLMUPC staff. More formal interviews were planned but not conducted owing to time constraints.
3. Interviews with PMCC and DKCC staff: five provinces (27 districts) + Phnom Penh (four khans)	Qualitative: Notes from interviews	In addition to questions on the cases selected for detailed analysis (see Item 4 below) DKCC/PMCC staff were interviewed with regard to their professional background; their overall experience of working in land dispute resolution; the functioning of the CCs; and the effect of the pilot incentive scheme. The five provinces were selected on the basis that they had had the highest numbers of pilot cases.
4. Case file reviews	Quantitative: Datasets from 71 cases Qualitative: Notes regarding nature of dispute, resolution and other issues for each case	For each of the cases selected for review, a case file analysis was conducted. This involved going through the PMCC/DKCC case file item by item and assessing compliance with the dispute resolution procedures set out in relevant laws and regulations. A copy of the case file review questionnaire is attached (Annex 5).  The 71 cases were selected from the dispute resolution progress list of 230 pilot cases of the NCCS (May 9, 2006) according to the five provinces with the highest number of pilot cases, stage of process, size of disputed land (as far as available) and disputing parties. The sample included all multi-party cases and prioritized cases that were resolved; a small number were in the stage of conciliation or had been submitted to the higher level. Selection according to different sizes of land was not always possible, as relevant data was lacking for some provinces.
5. Detailed case studies	Qualitative: Notes of in-depth interviews with parties, local authorities and CC staff in relation to three cases	Three cases were selected for detailed study, one in Svay Rieng and two in Kampong Speu. Cases were selected for their potential to throw light on the issue of how the CC system deals with questions of power. The first of these cases was a dispute between a poor family and the local authorities, the second involved a group of families in dispute with a senator and the third was a dispute involving the military.

<b>Data source</b>	<b>Type of data</b>	<b>Comments</b>
6. Party survey	Quantitative: Datasets from 171 respondents	A copy of the party survey questionnaire is attached (Annex 4). Owing to difficulties in locating accurate case lists for some provinces, the party survey was conducted in only two provinces, Kampong Cham and Kampong Speu (where detailed case lists were available). As a result of this limited coverage, it was possible to sample all pilot and non-pilot cases received in 2005/6. For the purpose of analysis, cases lodged after February 2006 were excluded if the case had not yet reached the conciliation stage. For the purposes of comparing pilot and non-pilot cases, cases were weighted in order to balance out the greater number of 2006 cases in the non-pilot group.
7. Cadastral Commission statistics	Quantitative: Reports from DKCCs in Kampong Cham province covering the period 2004 to present	Statistical data generated by the DKCCs allowed a comparison of the performance of the various DKCCs over time. These datasets were, however, somewhat limited in that some reports were missing and the way in which the data was compiled was not always consistent. The issues with this data are discussed in more detail in Section 5 below.
8. Cambodian Socio-Economic Survey (CSES) 2004	Quantitative: Nationally representative survey data	CSES data is used as a point of comparison with our own survey data on land disputes before the Cadastral Commission.

### 3. Overarching Issues

The substantive part of this report begins with a discussion on what were seen to be the most important overarching themes emerging from the research. It then moves to consider issues around the five steps of the dispute resolution process at the CC in detail. Finally, the report considers the impact of the pilot.

#### Trends in caseloads and handling

##### *Decrease in new cases*

The CC system has reported a drop in case intake over the past 12 months. Kampong Cham province provides an example in this respect. Figure 4 below compares the caseload of all CC offices in the province. Row (A) represents the total number of cases received in the 2.5 years from the opening of the CC through to the end of June 2005. Row (B) provides the same statistics through to the end of June 2006. Comparing these figures, we observe that the CC system for the entire province of Kampong Cham only received 71 cases in the year to June 2006, compared with an average of more than 250 cases per year in the first 2.5 years of its operation. Although some of this discrepancy should be attributed to an influx of old cases when the CCs were first established, it nevertheless seems that this represents a dramatic fall in caseload.

**Figure 4: CC caseload in Kampong Cham province**

Date	Received	Resolved	Dismissed	Forwarded to NCC	In process
12/2002 – 06/2005 (A)	676	190	116	1	369
12/2002 – 06/2006 (B)	747	223	202	1	321
07/2005 – 06/2006 (B – A)	+71	+33	+86	0	-48

Figure 4 also shows that there was a reduction in the backlog of cases, from 369 in June 2005 to 321 in June 2006. This result was, however, largely achieved by dismissing cases found to be outside the jurisdiction of the CC rather than by resolving disputes. In fact, at 33, the number of disputes resolved during the 12 months to June 2006 (the period of the pilot) was significantly lower than the average of 76 (190/2.5) resolutions per year achieved during the first 2.5 years of operation.

One possible reason for the decrease in the CC caseload may relate to the progress of the systematic titling process. The CCs only have jurisdiction over unregistered land, so the fact that a higher proportion of land is being registered should lead to a decrease in cases coming before the CC. On the other hand, as of August 2006, work had only commenced on systematic titling in two of Kampong Cham's 16 districts; just 15 out of 186 communes in the province had completed the process. Further, a marked drop in new case registrations was

also noted in districts that had not yet been subject to systematic registration. As such, other explanations for the decreasing caseload need to be sought.

CC staff expressed a number of views as to why the case intakes were falling. In some cases, CC staff said that it was likely to owe to an increasing understanding of the Land Law among villagers and local authorities. This, it was suggested, was leading to a reduction in disputes and to a greater capacity to resolve small disputes at the commune or village level. As one DKCC officer said, 'now land disputes are falling, even though prices are still rising, because people are starting to know and agree on land boundaries and the Land Law is stronger'. Another DKCC officer attributed the fall in caseload to increased public dissemination of the law.

A more critical assessment of why the caseload was falling was offered by one PMCC officer, who suggested that the rise and fall in case numbers related to people's confidence in the institution of the CC. Initially, he said, people had high expectations of the CC but since 2004 they had 'stopped having confidence' (*leng mien chomnua*) and so increasingly sought alternative avenues for land dispute resolution. Another PMCC officer suggested that people were realizing that the CC had difficulties in dealing with disputes involving the powerful and, as such, these disputes were being dealt with elsewhere. Explaining this, he said 'Generally, people who want conciliation are those who have no money; the rich are happy to wait or go to court, particularly if they are in possession of the land. Mainly, we have disputes between the poor here [at the CC].' A tendency for new institutions for land dispute resolution to be set up, to be overwhelmed by cases, to under-perform and then for people to look to other forums for dispute resolution would not be new phenomenon in Cambodia. A 2001 study of the predecessor institution to the PMCC, the Provincial Land Dispute Settlement Commissions, noted a similar trend (Hughes, 2001: 4). More recent research (CAS/WB, 2006) reveals a trend for larger cases to sidestep the CCs, with 'villagers often referring [their] disputes to individual representatives of the state who are seen as having the political power to broker a resolution' because 'formal institutions of justice such as the Cadastral Commissions or the courts [are] perceived as costly, time consuming and biased toward the rich' (p.33).

*Increase in case dismissals (and uncertainty about the rules which apply)*

As mentioned above, an increase in case dismissals over the last 12 months was a feature of many of the CCs studied. The CCs have a right/obligation to dismiss cases in two instances: i) if the case falls outside their jurisdiction (e.g. cases involving registered land; cases where the dispute is contractual; and cases involving inheritance) and ii) if the claim is baseless.<sup>22</sup> It seems, however, that there is some uncertainty among CC staff as to when, why and how cases

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<sup>22</sup> MLMUPC, Prakas No. 112/2002, Arts 17ff.

should be dismissed. Thus, for example, one CC staff member explained that he had dismissed a case because the claimant had inherited the land from his father. Although the dispute was with another person who claimed possession, and not among competing heirs, the DKCC had decided to dismiss the case on this basis. With regard to the case of contractual disputes, there appears to be some confusion as to whether all land which has been subject to a contract of sale is excluded from the jurisdiction of the CCs or whether this exception applies only to cases where the dispute is between the contracting parties. Similarly, the jurisdiction of the CC over state land appears to be unclear. As a result, some cases in which the question of whether the land involved is state land are being processed by the CCs while others are being dismissed on this basis.

Given that the NCC is exercising its decision-making function only occasionally at this stage, it is suggested that the DKCC and PMCC are using their power to dismiss cases as a practical way of getting cases out of the system. The reasons for dismissals are often poorly documented and thus it is difficult to make an assessment of whether this power is being used appropriately. It was noted, however, that dismissals are often occurring quite late in the CC process. Thus, for example, the evaluation team observed a number of instances where a case was dismissed on a questionable basis after one or more conciliations had already taken place. In these instances it is suggested that the dismissal is being used to close cases in a system where formally the DKCC might be required to refer the case up to the PMCC. It would seem that CC staff need more clarity in terms of when to dismiss cases, on what grounds, and how to document these decisions.

### **Types of cases being lodged with the DKCCs**

Our data allows a number of observations on the type of cases being lodged with the DKCCs in relation to i) the size of the land in dispute; ii) the ownership/possession status of the land; iii) the type of land; iv) the parties to the disputes; and v) the causes of the disputes.

#### *Size of land*

The CCs would appear to be dealing mainly with disputes over small amounts of land. Although the CC caseload includes occasional large cases, the median size of land in dispute, according to the party survey, was 963m<sup>2</sup>, with cases over as little as 2.4m<sup>2</sup> being reported.<sup>23</sup> The size of agricultural/productive land in dispute (once again according to the party survey) is considerably smaller

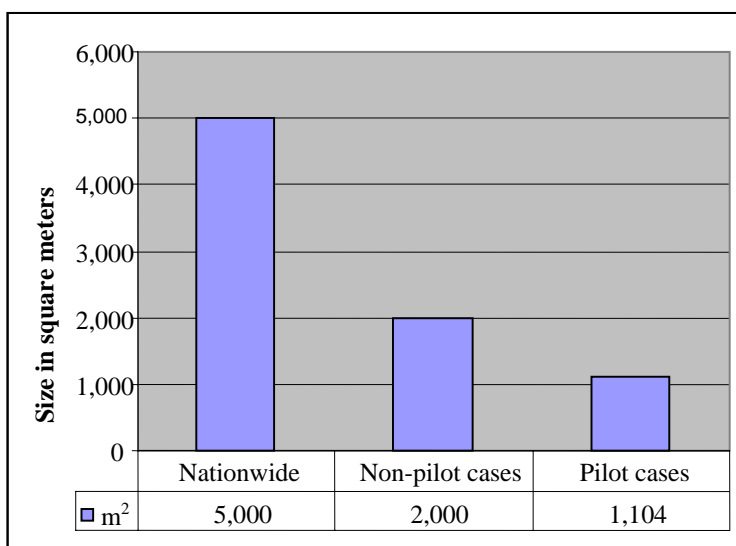
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<sup>23</sup> This case involved a dispute over the construction of a small outhouse toilet.

than the national median plot size.<sup>24</sup> This reflects the fact that in many cases (such as boundary disputes) only a part of the whole plot is in dispute, but perhaps also the observation of DKCC staff that it is mainly the poor, and as such those with smaller plots of land, who are taking their disputes to the DKCCs.

It is also noted that the plot size for cases within the pilot were significantly smaller than those outside the pilot. As noted below, this is felt to reflect the selection of simpler cases for the pilot in some instances.

**Figure 5: Comparison of median plot size (agricultural): national v. cases before CCs**



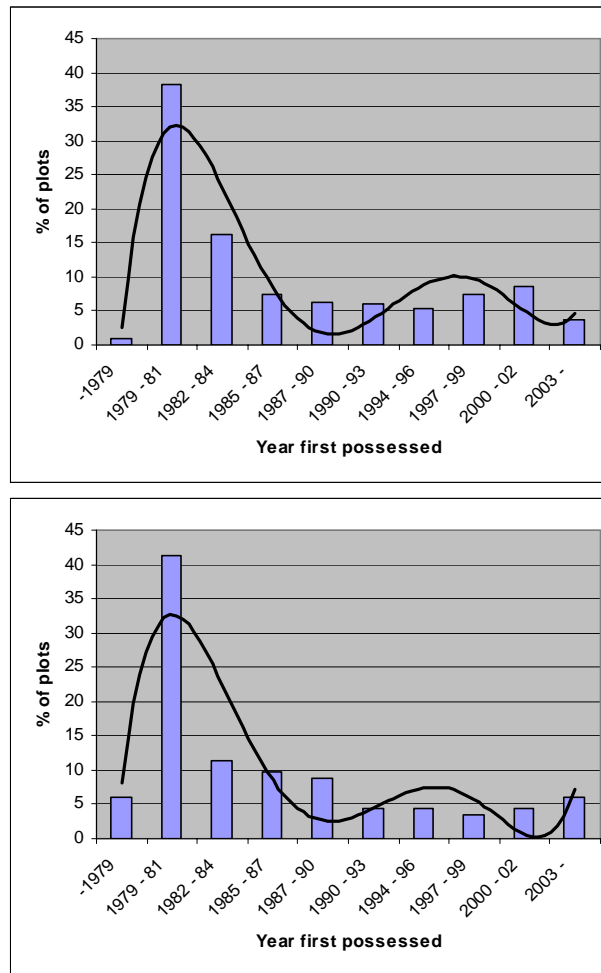
Source: CSES 2004; CC party survey 2006.

*Ownership/possession status*

The possession history of land in dispute before the CC is similar to national patterns, with most parties claiming to have been in possession of their lands since 1979 or shortly thereafter. One notable difference in the possession pattern relates to the higher number of persons claiming to be pre-1979 possessors among cases before the CC (right hand graph in Figure 6 below). This may be a product of the fact that a number of cases before the CCs continue to relate to persons wishing to claim back their pre-Khmer Rouge possessions.

<sup>24</sup> Comparison with national statistics is only possible for non-residential land, as the CSES (2004) only includes data for agricultural land. As such, the data for disputes involving residential land which, according to the party survey, make up some 33 percent of cases before the CC, are excluded from this analysis.

**Figure 6: Comparison of year land acquired: national statistics v. cases before CCs**



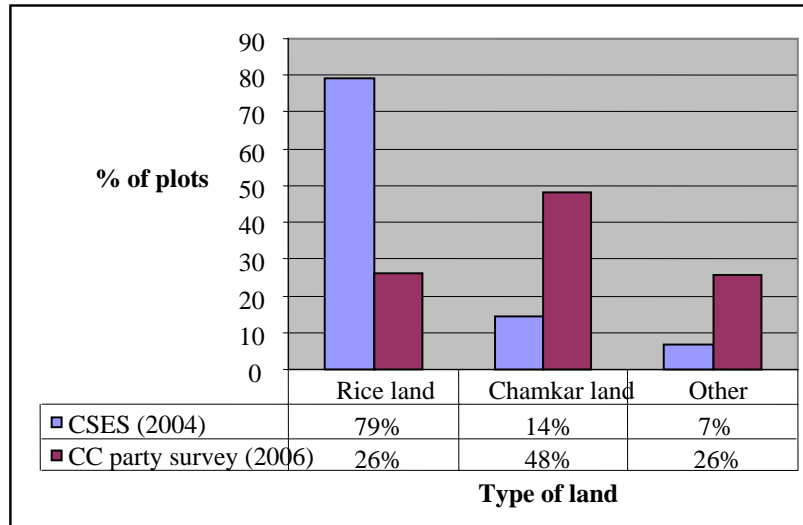
Source: left hand graph, CSES 2004; right hand graph CC party survey 2005.

*Type of land in conflict*

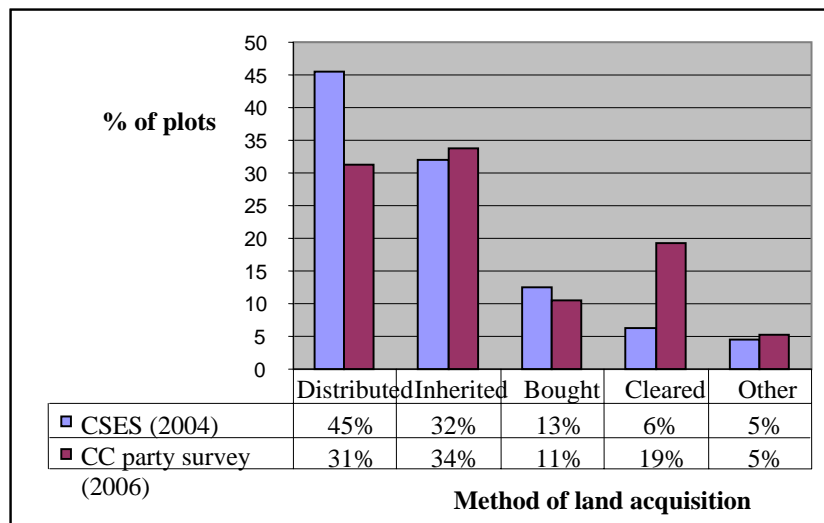
Rice farming land is underrepresented in disputes before the CCs, whereas *chamkar* land and other land, including forest and common pool resources (such as ponds and rights of way) are overrepresented. Similarly, persons who cleared land are overrepresented in cases before the CCs whereas those who had land distributed to them by the government are underrepresented. These findings suggest that issues of ownership of the well established rice farming land which makes up the bulk of Cambodian land holdings is relatively non-contentious as compared with other sorts of land holdings, particularly *chamkar* land and land cleared by the parties themselves (see Figures 7 and 8).



**Figure 7: Comparison of types of land: national statistics v. cases before CCs**



**Figure 8: Comparison of method of land acquisition: national statistics v. cases before CCs**



### *Parties to disputes*

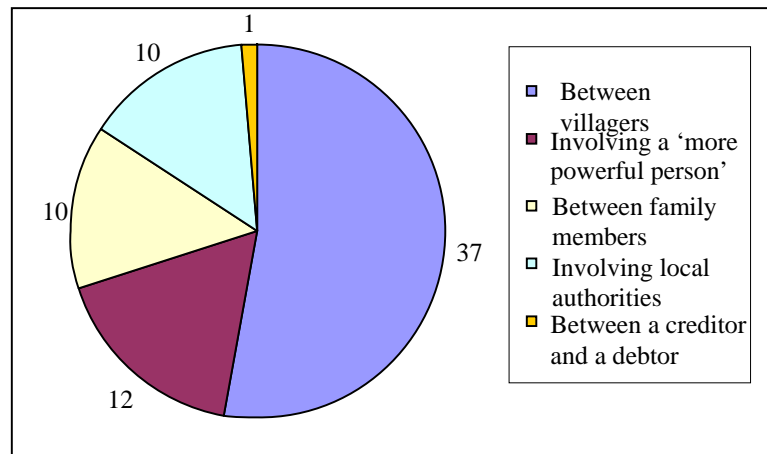
A consideration of the sort of parties involved in cases before the CC is only possible with regard to the 70 pilot cases for which case file analyses were conducted. Even here, only very basic data was collected. Given our comments elsewhere in this report it should be clear that this will not be a representative sample of cases before the CCs. Nevertheless, the following observations are possible:<sup>25</sup>

- The majority of cases (37 or 53 percent) involved disputes between villagers or neighbors.
- 10 (or 15 percent) of the cases reviewed involved conflicts between relatives.
- Significant numbers of cases (12 or 17 percent) involved ‘more powerful people’ (defined as someone who works or described as having connections with the government or military at the district level or above). A further 10 (or 14 percent) of the cases reviewed involved local authorities (primarily the village chief, the commune council or its members).
- One case involved a dispute between a creditor and a lender.
- Cases involving ‘more powerful people’ had the lowest resolution rate (25 percent compared with over 65 percent for other categories). Some of these cases became stalled at the DKCC, with little progress being made in the dispute resolution process. In other cases, conciliation was attempted but failed. In one notable case (discussed below), a high-ranking official failed to respond to requests to participate in the dispute resolution process issued by the DKCC. This finding corresponds with the statements made by DKCC staff, namely, that they feel as though they lack the authority to progress with the dispute resolution process when more powerful individuals are involved.

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<sup>25</sup> A table summarizing the facts of the cases for which a case file analysis was conducted is included in Annex 2.

**Figure 9: Breakdown of parties to disputes for cases included in case file analysis**



*Causes of disputes & their resolutions*

An analysis of the causes of the disputes before the CCs is similarly only possible for the cases for which a case file analysis was conducted. The basic facts with regard to these cases are set out in Annex 2 of this report. From this data we observe that:

- The largest group of cases (more than 42/70 or 59%) is caused by conflicts over what we have described as ‘legitimacy of use.’ These are disputes in which the parties are in effect in conflict over the rules which determine who has rights to land. In this category, we see for example disputes about land which has been left fallow or unused. In such instances, one party considers themselves to be the rightful owner/possessor of land because they cleared it, or farm it, or because it was distributed to them by the local authorities when land was de-collectivized in the 1980s. For a variety of reasons, often because it has been left fallow or farmed irregularly, it becomes the subject of a competing claim from another party who begins to farm it or has it allocated to them by the local authorities. Similar disputes occur when local authorities allocate land to wealthy individuals. In such cases the new allocation may either conflict with existing usage patterns or, if the land is not used intensively, become the subject of subsequent usage based claims. These disputes raise questions about the legitimacy of usage and possession (the basis on which the poor lay claim land) and the right of the administration at various levels to allocate land (the basis on which the rich lay claim land) which lie at the heart of land disputation in Cambodia (cf CAS/WB 2006).

- A second category of legitimacy disputes result when land is the subject of informal lending arrangements. In such disputes, one party claims to be the original owner/possessor of land and to have lent the land to the other party. The second party, who has actually been occupying the land, denies any agreement to lend and sees themselves as the legitimate possessor/owner of the land based on the idea that rights to land arise from usage.
- A third category of legitimacy disputes involve the usage of various types of public or common property including roadside areas, ponds, rights of way, drainage easements and shared courtyards (in urban settings) Conflict occurs when one party feels as though the other party is using the public or common resource in an unreasonable fashion, for example by narrowing a right of way or filling in a pond.
- 17% of the cases reviewed involved boundary disputes. These disputes were often occurring as land boundaries are formalized – for example when land is put on the market or fences are constructed to replace natural boundary markers.
- There are still a significant number of disputes (4 out of the 70 reviewed) involving people trying to claim back land which belonged to their families prior to 1975. Though such rights are not recognized in law, it would appear that there is a widespread sense that historical ties are source of a legitimate claim to land.
- Family, inheritance and credit disputes are also observed, though these represent a relatively small percentage of the cases reviewed.

Resolutions, where they are achieved inevitably involve compromise solutions with one party paying compensation to the other or a disputed piece of land being split between the disputants. Another notable quality of the resolutions is that a number of them seem temporary. Thus for example one dispute about a piece of land along a roadside was resolved on the basis that “parties realized that disputed land is the state land and will give it back to the state in case of need.” The parties to another case agreed to continue to use the land in dispute as usual and await systematic titling. A qualitative analysis of the fairness of the resolutions is not possible on the basis of the case file data. The only data available on the fairness of the resolutions which we can report comes from the party survey and the detailed case studies discussed below.

### **Recent changes to the institutional structure for land dispute resolution**

In 2006, following an internal review of the CC, the Royal Government (RGC) revised Sub-decree No. 47 to appoint the chiefs of districts/khans to be chiefs of the DKCC (previously, DKCCs had been headed up by the head of the district office of the MLMUPC). This was carried out according to Prime Minister Hun

Sen's recommendation during the MLMUPC General Assembly held in February 2006. The revised Sub-decree is No. 34/2006. At approximately the same time, the government created the NARLD, by Royal Decree NS.RKT 0206/097 dated February 26, 2006. According to this Royal Decree, the NARLD serves a complementary function to the CC. Among its duties are to 'Receive complaints, which are beyond the competency of the National Cadastral Commission, to receive complaints from everywhere involving land disputes', and also to 'Monitor the resolution of land disputes by the Cadastral Commissions and the competent authorities of all levels'.

At the closing ceremony of the Kampong Cham workshop on April 27, 2006, attended by the MLMUPC Minister and the Secretary General of the NARLD, the Minister elaborated on recent developments in the institutional set-up for land dispute resolution. He stressed that the two institutions (CC and NARLD) would play a complementary role, with the CCs focusing on the 'soft jurisdiction' of conciliation. Adjudication, the Minister stressed, was a necessary component of the land dispute resolution system, but he expressed concern that the CC did not have a sufficient legal basis to take up this function. In these circumstances, the Minister expressed the view that it was necessary to set up a body with decision-making power to decide the most difficult land cases. These comments were echoed by the Secretary General of the NARLD, who stressed that the NARLD had been set up to complement the work of the CC and that he expected a law to be passed in the near future which clarified the jurisdiction and adjudicatory power of the NARLD. A detailed proposal as to what a revised legislative framework for land dispute resolution might look like has not yet been made public.

The research team asked DKCC and PMCC staff about the impact of these regulatory changes. With regard to the creation of the NARLD, CC staff said that it was too early to notice any impact. To date, they had been asked to compile information on open cases and send these to the NARLD but none could relate any other impact.

Regarding the appointment of the district chiefs to the DKCCs, DKCC staff had mixed opinions. On the one hand, DKCC staff reported that the change in structure tended to slow things down because they now needed to seek approval from the district governor before taking certain steps in the process. On the other hand, DKCC staff welcomed the restructuring, saying that it raised the profile of the DKCC and had led to improved coordination among the various offices at the district level.

In terms of the process of dispute resolution, DKCC staff noted that increased involvement of the district governor in the CC process placed parties under increased pressure to agree to the proposed resolutions. Depending on the DKCC staff approach to conciliation, this could be seen as a positive or a

negative aspect of the recent restructuring. In any case, a number of DKCC staff mentioned that their governors did not necessarily understand either the Land Law or the CC process well and, as such, that they would benefit from some intensive training on these subjects.

### **Organizational and management issues**

Most DKCC officers interviewed were experienced civil servants with high levels of knowledge in relation to land dispute resolution issues. Many have experienced the gradual evolution of operational structures of land management and administration since the late 1980s/early 1990s in their positions of land policy officers, chiefs of newly created district land policy offices (*kariyalay phumbal*) or members of the provincial commission for resolving land policy (*kanakammekar dohsray kolenoyobay deythly*).

With few exceptions, DKCC staff have participated in a range of intensive trainings in land law, land registration, conflict resolution, investigation methods and the CC procedure organized by the MLMUPC. Some have also participated in longer-term trainings on land measurement and administration in the central cadastral authority in Phnom Penh. This finding of reasonable capacity at the district level is in contrast with that of earlier evaluations of the CC which stressed capacity as a key issue (see e.g. Donglemans and Visal, 2004). Also contrary to earlier findings, DKCC officials were found to have a clear understanding of their role in dispute resolution, despite not having written job descriptions. If earlier findings are reliable, it would appear that capacity building efforts undertaken over the past years have had some success.

It was noted, however, that many of the DKCC officers interviewed were close to the retirement age and that generational transition was underway. This process will be accelerated over the next few years, but several DKCC chiefs complained that it was not being well managed so far. Some have already retired but as they are the only staff of DKCC they have to remain provisionally at office (without full competence) because it takes a long time to bring a successor into place. One DKCC chief reported difficulties in handling unresolved cases left by his predecessor. The documentation is often too scanty for understanding the dispute's nature, causes and especially the resolution's obstacles. On the other hand, owing to a great many other duties, he does not have enough time to resume contacts to the disputing parties and to make himself familiar with the dispute in order to arrange meaningful conciliation.

In addition, resolving disputes successfully also depends to a significant extent on the personality, life experience, social reputation and wisdom of the conciliators. Elderly DKCC chiefs often reflected impressive experience in applying different strategies for getting disputing parties to conciliate. If there is

not an unbroken handover to the next generation, an important source of informal knowledge may be lost.

A pressing problem for most DKCCs is a lack of staff. DKCC's are effectively run by the district LMUPC office. Most of the LMUPC district offices visited have one to three fulltime staff. Of this number, one or two are often assigned to other duties, particularly assisting in systematic land registration. This leaves only one or two persons to man the office and deal with not only land dispute resolution but also the other work of a district LMUPC office, in particular issuing construction permits and the conduct of sporadic registration. District LMUPC officers also reported that they were required to undertake various superfluous tasks at the request of their district governor. In these circumstances, it is difficult for the officers to conduct their DKCC work in a timely fashion, particularly in districts with a high number of land disputes. In such cases, financial incentives were seen to be only a partial solution to the problem, a lack of staff not a lack of money being the key constraint to effective dispute resolution.

*Relationship between CCs at different levels; case tracking; statistics*

The duties of the three different levels of CC (district, province, national) are defined by Sub-decree No. 47 and Prakas No. 112 in a way that suggests that each level works independently with regard to dispute resolution. Each level of the CC exercises its mandated jurisdiction. Case files and reports of settlement are referred to the higher levels as appropriate. While the dispute resolution procedures are described in detail, the management structure of the three levels of the CC are left to be implied from these reporting relationships and the hierarchy of the Cambodian civil service within which the CC exists. These issues were raised in an earlier evaluation of the CC (Dongelmans and Visal, 2004) which found that 'the tools and means for the management of the organization have also not been defined nor how authority should be used to reach the objectives of the organization.'

While agreeing with this general diagnosis, the research team found that initial steps toward a more active management style have been trialed by the NCCS as part of the pilot. This occurred quite naturally because the NCCS was in charge of distributing the incentive payments under the pilot. As such, they were able to set requirements in terms of work planning and had an interest in monitoring performance in a more active fashion than had previously been the case. The research team considers the development of this more active management style to be an important outcome of the pilot and one which should be pursued in the future.

Dongelmans and Visal also look at the way in which the DKCCs and the higher levels of the CC interact. This is described as inconsistent and varying between support and control in different instances. The current evaluation supports these

findings. The control model was observed in one province in particular. Here, DKCC staff felt inhibited in taking steps to resolve even small disputes without first consulting or seeking approval from the PMCC and a senior PMCC official was selected to join the DKCC for conciliation in most cases. This model was seen to inhibit effective conciliation at the district level.

Like Dongelmans and Visal, the current evaluation finds that the CC system should focus on resolution at the local level. A careful balance thus needs to be struck between allowing cases to stall at the DKCC level and sending them up to the PMCC and beyond where the strengths of local dispute resolution are lost. One way of addressing this issue, also suggested by Dongelmans and Visal, would be for the higher levels of the CC system to provide more support to the DKCCs in difficult cases. Dongelmans and Visal call this 'bringing the power down' and suggest the establishment of a corps of CC 'flying tigers' to carry out this function (p.30).

Another important finding from the 2004 evaluation relates to the CC's management information systems. A computerized case database was established with the support of GTZ in 2003/4; however, this has not been kept up to date. As can be seen from the discussion of the available statistical data in Section 5 below, existing systems of reporting are currently less than systematic.

### **Procedural issues (compliance/forms)**

According to the case file review, procedure and documentation are in broad terms being followed. This said, varying degrees of compliance were observed. The general impression is that DKCC appreciates the procedure as a useful guideline in securing a systematic process, creating a solid basis for resolving disputes lodged. DKCC staff also felt that following the procedure went some way to preventing them from being perceived as being biased towards one party or the other. Some DKCC staff underlined in particular the importance of proper investigation to provide key information for use in conciliation. Visiting the location, discussing the dispute with the relevant parties and interviewing witnesses were all considered vital in finding an appropriate resolution to the dispute.

However, despite a generally positive assessment, DKCC staff still pointed to some inconveniences in applying the five steps involved in the procedure.<sup>26</sup> The main concerns were:

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<sup>26</sup> The CCs five-step dispute resolution procedure is explained in full in Section 4 of this report below.



- High expense in terms of time and means;
- Complexity of required tasks, especially in terms of documenting all the steps; and
- Lack of a power to compel reluctant parties to participate in the conciliation process.

Carrying out all the steps required under the procedure was identified as time consuming and subject to practical obstacles. DKCC staff stated that having to deal with such realities often led them to take shortcuts and follow informal ways: ‘The procedure is a theory that was worked out by scholars; it is therefore very detailed. We have to work according to the reality to do everything possible for successful dispute resolution.’<sup>27</sup>

A very common example of this was the combination of the administrative meeting (Step 3) with the conciliation meeting (Step 4), holding them both on the same day in order to save time, travel costs and other efforts for all parties involved. These meetings also rarely take place at the disputed land or nearby. Preferred locations are the commune chief’s office or the district governor’s office (*sala srok*), mainly because of the perceived need to bestow on the event an appropriate official formality and professionalism and to emphasize the importance of the authorities in ‘arranging’ a resolution.

If cases are considered small, DKCC staff may pay less attention to the requirements surrounding the posting of information. They may also refrain from interviewing a broad range of witnesses, as it costs DKCC staff a great deal of effort to meet them as they are frequently absent to pursue livelihood activities or are unwilling to testify.

In addition, DKCC staff feel that it is not always practical to separate the steps from each other, and that they do not necessarily occur one after another as the procedure may suggest. Investigation and even conciliation have often already commenced when the complaint is received, as the parties are questioned about the dispute and its background. Informal talks, often in separate sessions and sometimes carried out by actors other than DKCC staff, contribute to getting parties to be willing to conciliate. Many informal efforts towards coming to an agreement are not reflected by the formal documentation. The filling in of many forms for the formal steps is often felt to be an additional burden. DKCC staff commented that the forms have been significantly improved since they were first issued. Nevertheless, requests were heard that the burden of paperwork be further streamlined and simplified.

Some DKCC staff expressed frustration regarding the lack of a mechanism to ensure that parties participate in conciliation. This has sometimes ‘deadly’

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<sup>27</sup> Chief of District Office of LMUPC, Kampong Cham province.

consequences for the whole conciliation process. A virtual deadlock occurs when parties do not participate in the process despite repeated requests from the DKCC. With no means to compel respondents to comply, and a reluctance to dismiss or refer cases on, DKCC staff feel that they ‘can do nothing except wait and wait’. When cases stall for months or even years, disputing parties lose interest and confidence in the DKCC procedure. DKCC officers expressed concern that these sorts of cases cause whole communities to lose trust in the CC as means of dispute resolution.

#### *Multi-party cases*

Dealing with multi-party cases puts additional strain on DKCC in terms of time and paperwork. As there is no specific form for such cases, the common strategy among DKCCs is to let every plaintiff fill in the form and to give each party a separate case file with a separate number. If there are dozens of families involved, forms and files pile up; for every step masses of forms with identical (or very similar) information are filled in. Putting together this sort of paperwork takes up a great deal of time and also makes it difficult to manage the information at hand.

In addition, there is a degree of inconsistency in handling such cases. Some DKCCs reported that they always forwarded multi-party cases to the higher level because these do not come under their jurisdiction (referring to Sub-decree No, 47, Art. 10). Other DKCCs had decided to deal with such disputes by splitting them into individual cases according to the procedure and forms available. In the interests of reducing the workload, a number of DKCC officials suggested that a special procedure be developed for dealing with multi-party cases.

#### *Time limits*

As noted by an earlier evaluation, the CC process is not effectively time bound (Dongelmans and Visal, 2004). As a result, it is possible for cases to languish in the system for months or years with no outcome. While parties should not be unduly rushed in conciliation at the district or provincial level, it is important that the DKCCs and PMCCs have a structure that facilitates the closure or referral of cases which can not be resolved.

### **Difficult cases: what makes them difficult and how they are handled**

When asked why some cases are difficult to resolve, CC staff consistently cited two grounds. Cases were difficult to resolve if powerful people were involved or if one party had powerful ‘backers’ (khnâng)<sup>28</sup> or, alternatively, if parties ‘lack the will’ (*chanteak*)<sup>29</sup> to resolve the dispute.

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<sup>28</sup> In Khmer, *khnâng* or *neak kraoy khnâng*: literally ‘a back’ or ‘someone standing behind them’. Interestingly, this turn of phrase is not only used to describe those with links to higher

If the disputing parties are common people without backers [the resolution] is easy. Disputes which can't be resolved are often disputes where a *khnâng* is involved. People are backed by relatives or acquaintances in higher positions ... This makes them have no will for resolution [PMCC staff].

... Some things we only get resolved if we have found who is behind the parties and so we talk to the *khnâng* too, and coax them. When we do so, we get the *khnâng* to convince parties into accepting the resolution. With this method we can resolve some difficult cases too [DKCC staff].

... Violators have not much fear and so they have no will for conciliation. If we could judge who is right and who is wrong they would be afraid and be willing to resolve [the dispute] because they want to [have a clear decision of] win or lose ... [DKCC staff].

If parties have no will it is very difficult to resolve the dispute. Plaintiff and respondent are not willing to talk to each other. We coax them to cooperate and we give them some ideas for that ... but some continue to be unmoved and are not willing to cooperate. These parties often have had already problems with each other in the past and so they do not listen to each other [DKCC staff].

If disputing parties have the will to resolve the dispute it goes quickly. Sometimes the case is small but they only want to win then there will be no resolution ... Why can [such a dispute] not find a resolution? In fact, the land itself has often not much value, it is the quarrel ... it is the anger at each other. So, even small cases are sometimes hard to resolve [PMCC staff].

Unpacking these explanations, both appear to relate to issues of power and the prevalence of multiple norms with regard to land ownership and management. Dispute resolution as currently practiced by the CC relies on the willingness of the parties to accept compromise solutions as suggested by the CC staff. The ability of the CC to make persuasive suggestions derives, on the positive side, from an acceptance of the authority of the state and its ability to reflect socially accepted norms (whether derived from law or other sources) with regard to land management and, on the negative side, from the lack of alternative forums for dispute resolution. Thus, cases will be resolved where parties either accept the authority of the advice given by the CCs or acquiesce in the absence of other options. Conversely, parties will hold out and a dispute will remain unresolved

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levels of government. Contact with NGOs or the political opposition are also deemed to constitute the right sort of connections, as their involvement also emboldens parties to resist suggestions of compromise offered by the CCs.

<sup>29</sup> Even when connections are not in place, a significant proportion of parties simply do not accept advice from the CCs. These parties are described as lacking the will to resolve their disputes or as simply wanting to win, as opposed to being open to reasonable compromise. Detailed case studies of unresolved small disputes would be needed to unpack this phenomenon further.

where they feel they can resist the power of the CC as a conduit of law and social norms.

In such circumstances, it is unsurprising that the CC system is more successful in resolving small disputes between villagers than it is with larger disputes involving better connected parties. As a form of ADR it will have difficulties in dealing with conflicts that involve conflict parties that are not within [its] system of social control (Zitelmann, 2005). That the CCs are struggling to resolve a significant proportion even of smaller disputes suggests that norms with regard to land management are poorly embedded, even at the local level. For a society which is frequently described as deeply hierarchical, the frequency with which villagers are willing to ‘hold out’ against attempts to conciliate facilitated by village, commune, district and even provincial-level officials is noteworthy.

The three detailed case studies undertaken by the research team throw some light on issues of power and how they are confronting the CCs.<sup>30</sup>

Case Study #1 in Svay Rieng province illustrates the difficulty that a poor family can have when confronted with the power of the state as exercised by the DKCC. In this case, a poor family occupied a new piece of land having become landless after being beset by a series of economic hardships. It is not clear when exactly they began to use this piece of land, though it would appear to have been since the late 1990s. In 2006, the local authorities (commune and village) decided that this piece of land would be allocated to the local water users’ group for the construction of an office. The family tried to object to the eviction by collecting a petition with thumbprints from 60 neighbors and seeking advice from a human rights NGO based in the provincial capital. After conducting an initial investigation, however, the representative of this NGO reached the same conclusion as the local authorities – that the land which the family had occupied was public land – and decided not to pursue the case. This was despite the fact that the land, a scrubby area next to a shallow (wet season) pond was not clearly state public land as defined in the Land Law. Without outside support, the family agreed to the compromise brokered by the DKCC, that they give up the land in question and receive a smaller plot of land ‘on loan’ from the local authorities. Although the family was unhappy with this outcome, they felt powerless to contest it as the DKCC warned them that taking the case to the PMCC would only incur further costs without any change in the outcome.

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<sup>30</sup> See Annex 3 below for a more detailed presentation of these cases. These cases should not be considered representative of the case load of the CC. In fact, potentially difficult cases were selected for detailed study. Case involving multiple parties and or those involving the state were sampled in order to gain some insight into how the CC system is dealing with (or failing to deal with) complex cases.

In Case Study #2, (Phnom Sruoch District, Kampong Speu Province) we see how a small group of farmers can extract a degree of responsiveness from the system, even when they are in conflict with a powerful organization of the state, such as the military. However, this case also illustrates the limitations of the current system of land dispute resolution when dealing with cases involving disparities of power.

This dispute occurred between villagers and officers of the 3<sup>rd</sup> military region. The land in question was allocated to 3<sup>rd</sup> military region as ‘development land’ for decommissioned soldiers in the mid-1990s but was not used by the military at that time. It is unclear whether occupation by villagers started before or after the allocation. The plaintiffs claim that they had been using the land in dispute since the mid-1980s. It is also unclear exactly which land was allocated to the military and whether this allocation was lawful. In any case, the military had been pressuring villagers to vacate the land in question periodically since the late 1990s. In the intervening five to seven years, most of the villagers farming the land agreed to accept small amounts of compensation for the land and vacated it. By 2004, only 16–18 families were still holding out; and by the time final negotiations took place in 2005/6 only three families were still holding out. The final episode of the dispute flared up in 2004 when the military cleared crops from the villagers’ land. In response to this action, a group of villagers made complaints to a wide range of different bodies, including the commune council; the DKCC; the district governor’s office; a local member of the National Assembly; a human rights NGO; and the Minister for National Defense. The DKCC could do little to resolve this dispute given that it involved the military, and in fact it appears that the DKCC actively avoided getting involved in the case.

The dispute was finally settled when a representative of the inspectorate of the Ministry of National Defense attended the land and brokered a compensation package. The compensation paid to those villagers who pursued their claims to the Ministry of National Defense was significantly higher than those who acquiesced early, but still the villagers did not feel as though they had received justice. In the end they agreed to the compensation on offer because they felt intimidated and as though they had no other option in pursuing the claims.

Case Study #3 also in Phnom Sruoch district (Kampong Speu province) further illustrates the difficulties the CCs have in engaging with parties that are more powerful. The land in dispute here (some 40 hectares) was being farmed by a group of 10 families from a nearby village. This group of families was in dispute with a member of the Senate from Phnom Penh who, together with a number of his family members, was registered as the owner/occupier of the land with the local commune council. The basis on which the senator claimed ownership was not clear. The history of the land in question is complicated and very much tied to the history of the area, which is near to one of the last Khmer

Rouge strongholds. As such, it was unsafe until the mid to late 1990s. In fact, the land was part of a larger area which was the subject of a major land dispute in the late 1990s. This original dispute involved a group of 80 families in contest with individuals in the military. The original dispute was eventually resolved in favor of the 80 families after intervention by the Human Rights Committee of the National Assembly and the Ministry of National Defense; however, all but 10 of these families sold their land to district military officials shortly after the original dispute was resolved. The 10 families who did not sell their land are those involved in the dispute here.

The occupation history of the land since 1999 is contested. A man assigned by the senator to guard the land said that the land had been used only intermittently since the late 1990s, and that the 10 families had only recently returned to claim that land. The families, on the other hand, claim to have been using the land continuously since the 1980s. A viewing of the disputed land suggests that much of it has recently been cleared, although parts of it may have been used for farming more continuously over the years. The dispute studied appears to have flared up because the 10 families began to clear more land for farming early in 2005. In response the senator's guard took action:

I put in poles but he took the poles out and threw them away, it was repeated three times, I was exhausted (as I put poles in this day but they were taken away the next day) and people have nothing to eat indeed. In addition, I work hard from day to day until full of sweat. Why do you (the guard) take my things away like this? [Woman, age 58, representative the 10 families]

Some violent interactions ensued (on or around 12 March 2005):

He hurt my feeling, and as a woman, I dare not beat him. But, I did so before and then he took the gun out immediately, as he thought I would be scared of the gun. I'm old enough why should I be afraid of a gun, so he took his rifle to point on my chest. I held the barrel upward quickly to avoid being shot accidentally; I kicked with my leg at him and wrestled with him. Meanwhile, my son stopped his hand-tractor and shouted, "You want to mistreat my mother!" You needn't to do so but you may do something with my body, then he takes off his shirt. At the same time, my husband felt horrible, and cried out, "You want to rape my wife, but now look at my long knife!" He held in his hand with a sharp knife, so the guard would become frightened even though he had a gun with him ... If the land belonged to him, I wouldn't care, but it is actually mine. [Woman, age 58, representative the 10 families]

Both of these quotes reflect a strongly held belief that rights to property accrue to those who work it. This attitude brings the families into conflict with the guard who, as the representative of the Senator, represents an opposing set of norms with regard to land, namely, that it is a commodity that can be allocated at the discretion of the state and its various representatives. Neither of these

views reflects the Land Law, which both restricts the right to gain ownership of land through use and sets limits on how and by whom land can be allocated.

After the episode described above, it appears that the guard retreated and moved some distance further along the road. On March 25, 2005 the families went to complain to a member of the commune council. Noting that the land in question was being contested by a high-ranking official, however, the commune councilor said that there was little he could do and that the families should ‘skip addressing her and go to someone who may be able to solve the problem’. In May 2005, when it became clear that their attempt to resolve their dispute at local level would be unsuccessful, the villagers sought advice from a human rights NGO with offices in the provincial capital. An officer at this NGO advised them to seek a lawyer and go to the DKCC. He also undertook an on-site investigation and wrote a letter to the DKCC requesting its intervention.

The DKCC did not ask the villagers for money but required them to fill in complaint forms individually. As they were illiterate and did not understand how to do this, they were obliged to do so several times because the DKCC refused to receive incorrectly completed forms. The villagers said that it was very hard for them to lodge the complaints as they had to pay a great deal of money on travel and photocopying. The complaint was finally lodged (on June 16, 2005) did not list the senator but rather the guard and a number of locals who had assisted the senator as respondents. On June 23, 2005, the DKCC sent notification of the dispute to the listed respondents. On July 10, 2005, the guard responded to the DKCC’s letter. Another of the named respondents replied on August 17, 2005. The DKCC undertook an initial investigation, which included the conduct of interviews with witnesses on the same day. As a result of this investigation, the DKCC reached the conclusion that the listed respondents were in no position to participate in the CC process as they made no claim to being the real owners of the land. At this stage, the DKCC, in accordance with the law, tried to refer the case to the PMCC.<sup>31</sup> However, an official from the PMCC requested that the DKCC try to solve the case before referring it. Accordingly, on September 15, 2005, the DKCC issued a letter to the senator, requesting his participation in the proceedings. Up until June 2006, when the research team spoke to the DKCC, there had been no response to this letter, although they did hear (through the guard) that the senator was ill and that he would respond when he had the opportunity. In the absence of any method to compel such a senior official to participate in the dispute resolution process and not feeling empowered to pass the case on to the PMCC, the DKCC felt unable to pursue the case. As such, no action was taken on the case

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<sup>31</sup> Article 10 of Sub-decree No. 47/02 requires that a DKCC ‘shall submit the dispute file to the PMCC if the chief ‘Determines ... that it is impossible that an equitable resolution can be reached at the District/Khan level [because] ... [o]ne of the parties is a high-ranking authority ...’

after September 2005. The 10 families continue to farm the land but their status remains unclear.

### **Conciliation in the absence of formal decision making**

Article 47 of the Land Law established the CC as an administrative tribunal for the adjudication of land disputes. However, the regulations for the operation of the CC established a three-tier system, with the CC employing conciliation at the district and provincial levels and exercising its decision-making power only at the national level. Cases to be decided at the national level are i) emergency cases, such as those in which there is a reasonable apprehension of 'arson, use of force or intimidation' (Prakas No. 112) in which cases interim orders may be issued; ii) cases outside of adjudication areas which could not be resolved by conciliation at the provincial or district levels; and iii) cases within adjudication areas which can not be resolved by the administrative commission. As of June 2006, however, the NCC had officially received 79 cases. Of these, three were dismissed, eight were successfully conciliated, and 13 were decided by the NCC. The remaining 55 cases are pending.<sup>32</sup> Although work has been undertaken to establish hearing procedures, these figures indicate that the NCC rarely exercises its adjudicative power. While the case disposition rate of 27 percent (21/79) at the NCC is comparable with that of the CC overall, the number of cases being referred to the NCC for decision is strikingly low (less than 2 percent of the caseload of the CC).<sup>33</sup> Despite the fact that the district and provincial level CCs have many cases that they are unable to resolve, there appears to be a reluctance to refer cases up to the NCC for decisions. Further, it has been suggested that 'the NCC has been sent many cases by PMCCs involving powerful persons but has sent most or all of these back to the PMCCs because the national commission feels itself (sic) too weak to go into a case against the "rich and powerful"' (Zitelmann, 2005). In these circumstances, the adjudicatory power of the NCC is playing only a very minor role in the land dispute resolution process. A practice exists whereby cases are left inactive rather than referred up the system.

At the same time, there is no formal way around the CC system. The CC has exclusive jurisdiction over most cases involving unregistered land (Land Law Art. 47). No recourse can be made to court in these cases without first attempting to resolve the case through the CC system; once the case has been lodged with the CC there is no way back into the court without a decision from the NCC. With the low number of decisions currently being made by the NCC,

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<sup>32</sup> NCCS statistics, June 2006.

<sup>33</sup> Indications that there may be up to 5,000 unresolved cases from the sporadic registration process which have never been referred on to the NCC for adjudication further support the conclusion that the system is lacking in decision-making capacity (Cooper, personal communication with the author).



conciliation at the PMCC and DKCC levels is not occurring, as designed, in the shadow of a final legally based decision, but rather as the first and last option for the resolution of most disputes over unregistered land. This state of affairs has a number of impacts on the way the CC system works as set out below:

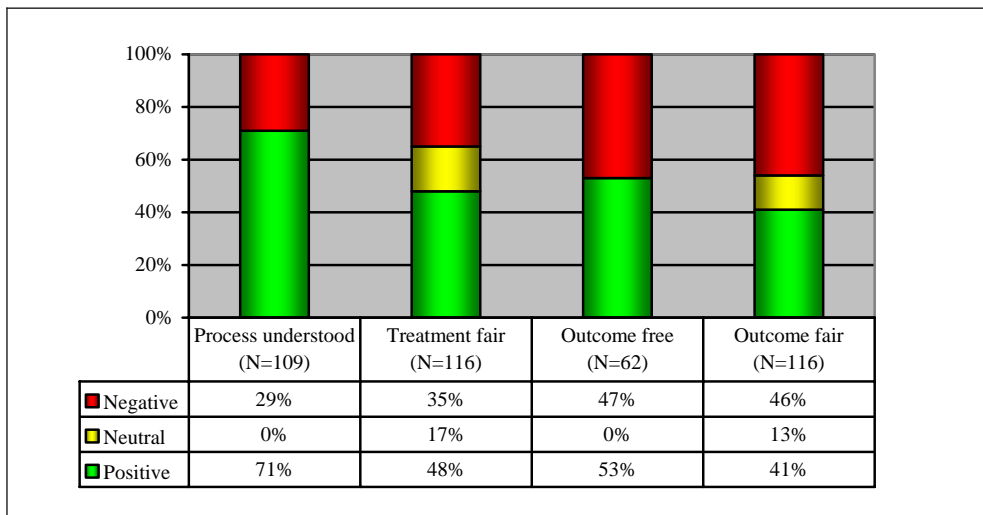
1. *Reluctance to refer cases up*: A sense among DKCC and PMCC staff that the CC lacks an effective system for adjudication leads to a pressure not to refer cases to the higher levels of the system. Cases that are referred up are often sent back to the lower level with instructions to conduct further investigations or to reattempt conciliation.
2. *A feeling of needing to control the process*: Without the real possibility of referring cases to higher levels of the system, there is an increased pressure on the DKCC and the PMCC to control the dispute resolution process. This, we suspect, encourages CC staff to place increased pressure on parties to resolve cases. In this context, it is worth noting that of the 64 respondents to the party survey who reported that they had reached a resolution to their dispute, 31 (or 48 percent) reported feeling very much or somewhat forced into reaching an agreement.
3. *Increased pressure to dismiss cases*: One way in which the CCs can clear their caseload is to dismiss cases. As mentioned above, there appears to be an increasing trend towards doing this. Although it is appropriate to dismiss cases in some instances, it would be unfortunate if an overly narrow interpretation of the jurisdiction of the CCs were being taken so as not to have to deal with difficult cases.
4. *Parties seek other forms of dispute resolution*: Earlier research on land dispute resolution indicates that some stakeholders are critical of the effectiveness of the CC, particularly in relation to more complex disputes. One of the criticisms leveled against the current system is that it takes too long to process disputes and that it is difficult to move the disputes up the hierarchy of the CC. In these circumstances, it has been noted that there is a tendency for parties to sidestep the CC process and look to powerful individuals within the administration to resolve their disputes (CAS/WB, 2006: 24).
5. *High numbers of cases 'pending'*: As noted above, approximately 50 percent of the caseload of the CC is currently pending. Without practical options for resolving cases, they can remain pending for months or years. We suggest that this is partly a result of the lack of adjudication capacity within the system.

## Quantitative findings on party satisfaction and factors that affect performance

One of the research questions posed in this study was: ‘Were parties generally satisfied with the work of the CC?’ To answer this question, the research team included a number of questions regarding party satisfaction in the party survey. These included questions on party perceptions of i) whether parties felt as though they understood the CC process; ii) their perceptions as to the fairness of the treatment they received from the CC; iii) their perceptions as to the fairness of the outcome of their cases; and iv) whether parties felt forced into reaching agreements.

Figure 10 below shows the responses to the above questions. It is notable that parties’ responses in relation to their understanding of the CC process and their treatment before the CCs were positive overall, whereas those with regard to the outcomes of their cases were neutral or negative.

**Figure 10: Indicators of party satisfaction with the CC**

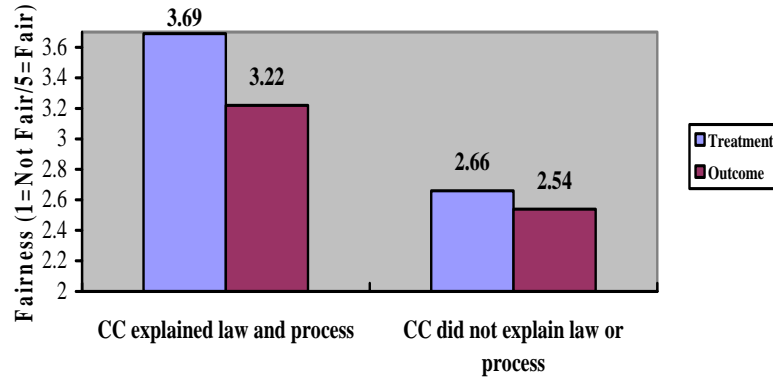


If the above are considered to be indicators of performance, it is also possible to test which behaviors or actions correlate with better performance. In undertaking this exercise, it is important to stress that correlation does not prove causation. That is to say, A correlating with B does not necessarily mean that A causes B or that B causes A. It could be that both A and B are caused by another factor, C. From the party survey, two behaviors or actions were found to correlate strongly with better performance. These were: i) whether parties felt that the CC staff explained the law and process to them; and ii) whether the parties felt they had a choice of conciliator.

*Explanation of law and process*

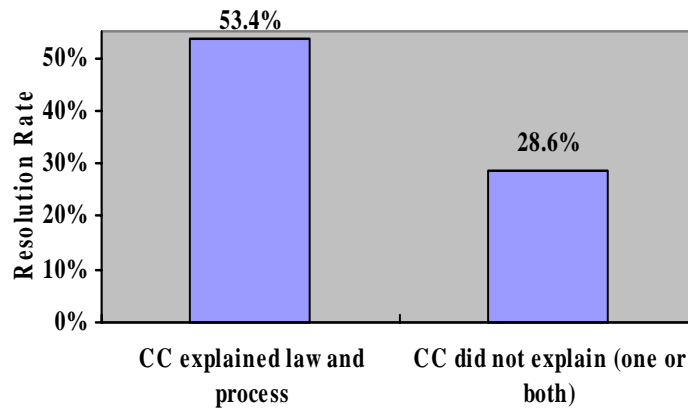
As illustrated below, parties who had the Land Law and the CC process explained to them were more likely to feel as though both the process and the outcome of their cases were fair. These relationships held even controlling for the effects of case resolution.

**Figure 11: Perceptions of fairness of treatment/outcome when law/process explained**



Having explained the law and process also correlated positively with case resolution rates. Those cases where the DKCC had explained the process of the CC and relevant aspects of the law were more likely to be resolved.<sup>34</sup>

**Figure 12: Comparison of resolution rates (explained v. did not explain law/process)**



<sup>34</sup> In discussions with NCCS staff, it was noted that some theories of conciliation stress that the conciliator should promote discussion and compromise without undue reference to legal rights. It was suggested that DKCC staff should be mindful of this when deciding when and how to explain the law.

### *Choice of conciliator*

There was also a correlation between parties feeling that they had the opportunity to choose a conciliator and their perceptions as to the fairness of the treatment they received and the outcome reached. Parties who indicated that they had the chance to choose a conciliator were more likely to indicate that they found the treatment they received at the CC as well as the outcome of their cases to be fair. They were similarly less likely to indicate that they felt forced into a reaching an agreement. The relationship between choice of conciliator and resolution rate was neutral.

**Figure 13: Comparison of performance-based pilot success rate with 2005 success rate**

Province	2005 caseload	2005 success rate	Pilot caseload	Pilot success rate
Prey Veng*	184	33%	40	50%
Kampong Cham*	373	11%	33	39%
Svay Rieng	198	18%	20	5%
Kampong Speu	77	26%	14	36%
Battambang*	247	2%	18	28%

*Notes:*

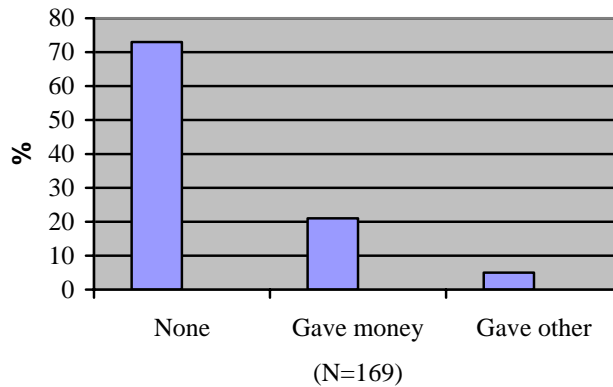
1. These five provinces contained 48% of the overall CC caseload in 2005, as measured by gross caseload minus cases dismissed/withdrawn. They contain 54% of the overall pilot caseload.
2. The cases dismissed/withdrawn were removed so as to present a figure representing all cases theoretically susceptible to resolution. Without removal, the figure is 46%. In this figure and notes, all numbers that involve general CC caseload are minus dismissed/withdrawn cases.
3. These five provinces contain nearly all of the pilot cases on which work began in 2005.
4. The success rate for the entire CC for 2005 was 18%.
5. Prey Veng is noteworthy in terms of its pilot success rate, in that its work on 24 of its 40 cases started in October 2005 and later.
6. Statistics on pilot resolved cases are as of 31 March 2006.

### **Informal payments**

While there is a 'grey zone between corruption and gifts', recent survey research on Cambodia reveals that even giving a small gift of 10,000 riel (US\$2.50) to a government official in return for a good service is on balance considered inappropriate (CSD, 2005: 29). The same study also notes that such payments often place a disproportionate burden on the poor, who are least able to afford them and may avoid using public services because they know they will be expected to hand over 'gifts' which they can ill afford (p.3).

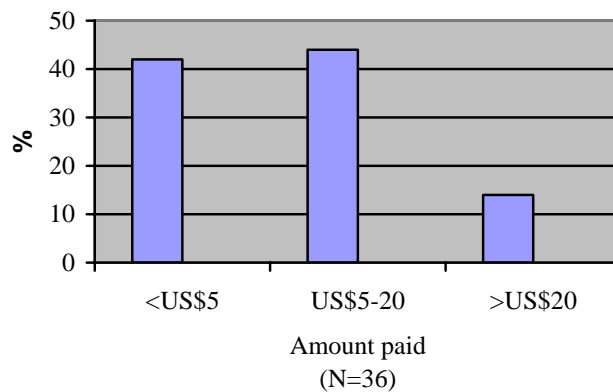
According to the party survey, parties are making informal payments/or providing other gifts to CC staff in a significant minority of cases (approximately 27 percent).

**Figure 14: % of parties who reported making payments/gifts to CC staff**



Payments were reported in 22 percent of cases, although these were generally small to moderate (<US\$20) in size. Only 14 percent of respondents reported having made an informal payment of over US\$20.

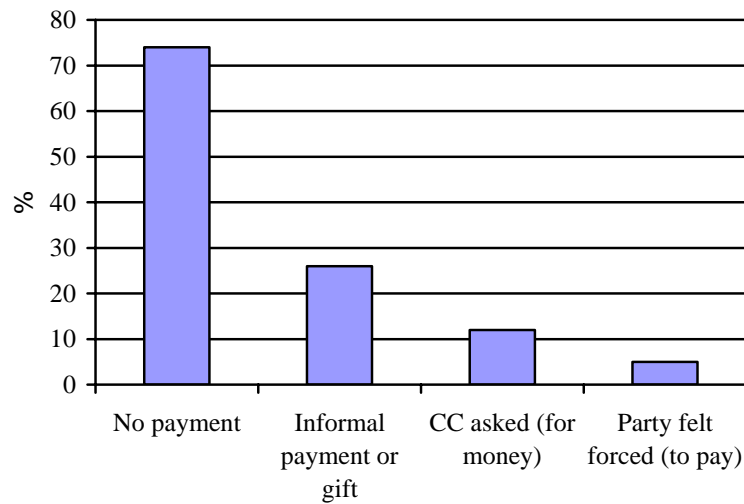
**Figure 15: Amount in US\$ of payments to CC staff (in cases where payments were made)**



As illustrated in Figure 16 below, the parties reported that the CC ‘asked’ for money (as opposed to the parties having offered) in about 12 percent of cases; in 6 percent of cases parties reported feeling ‘forced’ to pay. While there will no doubt be broad agreement even at these levels that such requirements for payment are unacceptable, it should be noted that this situation compares favorably to similar surveys on corruption in which it was reported that between 68 and 100 percent of parties to cases in court were subject to informal payments (CSD, 2005), and that unofficial fees paid to courts averaged over

US\$350 per transaction (p.104). Why parties are willing to make informal payments to officials without decision-making power is unclear. The research team suggests that a mixture of factors is at play, including established patterns of giving to public officials as well as the recognition of the *de facto* authority of the CC staff in matters of land management.

**Figure 16: Reasons for making payment (% of cases)**

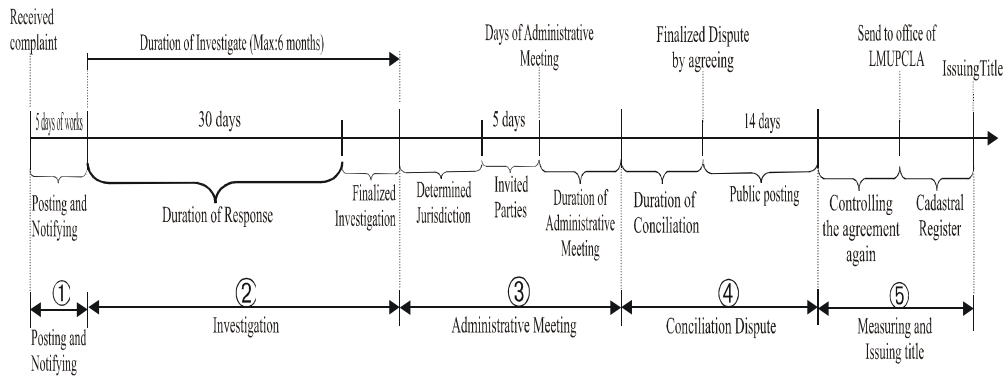


#### **4. Step-by-Step Analysis of the CC Land Dispute Resolution Process**

The regulations establishing the CC provide for a three-tier system with conciliation being conducted by the DKCCs and PMCCs. If conciliation is not successful in resolving the case at these levels, the regulations provide for the case to be referred to the NCC for conciliation and/or hearing.

Conciliation at the DKCC level can be thought of in terms of a five-step process running from the making of a complaint (1); to investigation (2); the holding of an administrative meeting (3); actual conciliation (4); and the issuance of a title (5). This process is illustrated in the diagram below (courtesy of GTZ).

**Figure 17: Presentation of the five-step dispute resolution process used by the CCs**



The following section proceeds to analyze the performance of the CC with regard to each of these steps. However, acknowledging that a case has a history prior to a complaint being made at the CC, and that these histories are crucial to understanding the dynamics of each dispute, our discussion begins with some reflections on what occurs before disputes are registered with the CC.

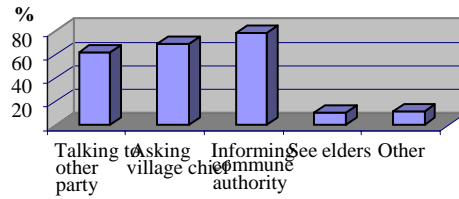
### Pre-CC procedures

Interviews with DKCC chiefs and the survey of the disputing parties indicates that the majority of land disputes are dealt with at village and commune level before they go to the DKCC. In most cases, the village chief is the first contact person for concerned parties seeking help in resolution; these people then involve the commune chief if it is not possible to resolve the dispute at village level.

As several DKCC chiefs emphasized, most land disputes in the district are dealt with by the commune; only if the commune is not able to find a resolution are the cases referred to the DKCC. 88 percent of the 171 disputing parties surveyed reported that they had tried to resolve the dispute at local level either by talking to the other party (62 percent) and/or by asking the village chief (69 percent). 79 percent reported that the commune authority was involved before the case went to the DKCC.<sup>35</sup>

<sup>35</sup> This assessment corresponds with the findings of a 2005 national survey on commune councils which states that the village chief is part of the mediation process in 70 percent of all local conflicts, and commune councils are part of the process in half of all local conflicts. Kim and Henke (2005: 44).

**Figure 18: Steps taken prior to involving the DKCC (% of responses)**



However, the fact that village or commune chiefs are much better known to villagers than district officials is not the only reason they are sought out in dispute resolution. One DKCC chief in Prey Veng province attributed the increasing involvement of local authorities in land dispute resolution to the establishment of the NARLD, which had encouraged village and commune chiefs to take an active role in dispute settlement.

The level of formality of such local conciliation activities prior to involving the DKCC varies significantly. In some cases, the village chief is asked informally to help and invited to initiate conciliation talks. In other cases, formal commune authority meetings occur, involving official letters of invitation and minutes. On many occasions, cases are referred to the DKCC by the district governor. It seems to be common for commune authorities to refer cases they can not resolve to the district governor, who then forwards these to the DKCC.

The involvement of other institutions prior to lodging a formal complaint at the DKCC is often influenced by the nature of the dispute (e.g. whether it is a multi-party dispute, size of land, etc.) and who the disputing parties are. Poor parties usually have no other choice than to go to the village chief and ask for help. Sometimes they turn to NGOs (if available or known) or, in rare cases, to representatives of the opposition party, especially if local authorities or high-ranking people are involved.

Well off parties seem often to prefer going to court, even if their case does not fall under court jurisdiction because of the unclear legal situation of the disputed land. DKCC staff explained that these parties want a fast and definitive decision in their favor, without the need for lengthy procedures and laborious conciliation. Although according to the inter-ministerial Prakas courts are obliged to refer such cases to the DKCC, instances were reported in which the courts were willing to usurp DKCC jurisdiction if the case promises to be lucrative. Instances were also reported in which cases not under the jurisdiction of the DKCC (e.g. inheritance disputes or claims over registered land) were not accepted by the court and then referred to the DKCC.



It is difficult to say with certainty how many cases dealt with by the DKCC involved previous interventions by the court. Cases were noted in which court letters of referral or respective correspondence were attached to the case file, but in general no systemic record is made. The results of the party survey, however, indicate that cases involving court intervention are relatively rare. Of the 171 respondents to the party survey, only two indicated that they had been to court prior to the case reaching the CC.

### **Step 1: Complaint/response**

In virtually all case files reviewed, complaints and responses were made on the correct forms (98 percent) and contained all the necessary information (95 percent). These showed the signature or rather the thumbprint of the plaintiffs/respondents and were signed by the relevant DKCC staff. DKCC staff often assist the plaintiffs/respondents in filling out the form, especially in the case where the plaintiffs/respondents are illiterate or unused to writing. Staff then use this opportunity to carry out further inquiry about the dispute or sometimes to initiate early conciliation attempts. Hand-written complaints and/or minutes of pre-DKCC conciliation attempts also provide relevant information for filling out the standard forms.

In a few cases, DKCC staff dictate that plaintiffs/respondents have to seek outside assistance in filling out the forms, as the only DKCC staff (usually the district office chief of MLMUPC) is overworked and unable to dedicate time to the task. Thus, it also happens that the DKCC rejects complaints on the basis that the forms lack certain information. In some cases, rejection is repeated until the form is filled in correctly or the plaintiff drops the case. However, most DKCC staff report that they are committed to helping and even feel obliged to cover the costs of copying the forms from their own pockets if they see that the disputing parties are poor.

Most complaint/response forms were signed by the DKCC chief and sealed (92 percent), but in a small number the dates were altered. In a few cases, staff seem to have avoided indicating a clear time. This practice can be attributed to varying reasons. Some DKCC staff explained that they are sometimes under so much time pressure with urgent or overlapping duties that they either forget to fix a date or write it wrong and have to correct it later. However, in some cases, the reason for re-dating might also lie in the effort to adjust an 'older' case, which was later listed in the pilot, to the work plan schedule agreed with the PMCC. These 'older' cases, sometimes dating back to 2003, have often been stuck for long times; the pilot has motivated staff to resume conciliation attempts, which brings with it a need also to adjust the whole case to the new timeframe.

The distribution of information and posting of complaints/responses are not well documented. Even if the letters of notice and the like exist on file there is rarely if ever proof that the document is really posted according to the procedure. According to DKCC statements, time and location of posting often varies and depends on local circumstances. In only 63.5 percent of the case files reviewed was it clear that the complaint was posted at the DKCC office within the required five days. The main reason preventing staff from meeting this deadline was quoted as urgent other duties and overwork. This reason is difficult to accept, however, as the time required for posting such information is minimal. It was also noted that few DKCCs had an identified notice board or similar place for posting such information.

Regarding the posting of the complaint at the disputed land and to the respondent, it can be assumed that the time limit of five days has also not been met, but to a much larger extent. There are no records as to when and where such forms are posted. However, this does not mean that the parties do not receive notice. Most DKCCs prefer to send the information form via the commune chief and/or village chief, or sometimes via other reliable persons, such as teachers, school directors or students. And high rates of participation in the investigation/conciliation suggest that parties and other local residents are indeed apprised of the DKCC process.

Several DKCC chiefs stress the importance of involving local authorities in the DKCC resolution procedure from the beginning, as these people are the best informed actors, particularly as they are often involved in relevant pre-DKCC conciliation attempts. One DKCC chief explained that the earlier village and commune chiefs are invited to cooperate and the more they understand about the DKCC procedure, the better are the prospects of resolving the dispute. Another DKCC chief is convinced that if more dispute resolution took place at commune level the resolution process would be shorter, because villagers and local authorities understand each other better. This illustrates why the DKCC often prompts local authorities to post the information at the commune council office (if available) or the village chief's house in addition to or even instead of at the DKCC office. These locations are considered to be public places where the largest possible number of concerned people will receive notice of the dispute. Posting at the disputed land, on the other hand, is often seen as less effective, particularly when the land is far from the village and seldom frequented. In at least one-third of the reviewed case files, DKCC chiefs openly stated that they did not post the complaint at the disputed land for exactly this reason.

The same factors apply to the response. Many DKCC chiefs explain that there was no need to post the response in public (disputed land, DKCC office or other public places). In 54 percent of the case files reviewed, it was openly stated that the response was not posted at the DKCC office but was only sent to the

plaintiff. Again, the DKCC sends this form to the plaintiff mostly via the local authorities.

Although in the cases reviewed the respondent almost always responded (94 percent), DKCC staff often mentioned that, in difficult cases, especially when powerful people are involved, a response is not guaranteed. If repeated efforts by the DKCC to get the respondent to answer remain fruitless, staff feel unable to find a way forward and to proceed in the resolution process. There are no means to compel a response. However, even if the respondent does not answer, as one DKCC staff summarized, ‘the dispute can not be dismissed. DKCC can do nothing except wait and wait.’ This deadlock represents a risk of misuse by respondents who have an interest in keeping the status quo, even when they know that they are in the wrong.

Interviews with the DKCC indicate that there is still confusion or uncertainty surrounding which cases they are to accept and which to reject. When receiving a complaint, there is no clear mechanism for decision making regarding whether the case falls within the jurisdiction of the CC or not. There is often no documentation (e.g. a written explanation to the plaintiff) to clarify on which basis a complaint has been rejected.

DKCC may feel unsure in applying theoretical knowledge of the Land Law to sometimes quite complicated local cases, and in breaking down abstract ideas into their day-to-day practice. In several cases, for example, confusion emerged when a contract of sale was attached as evidence, which led DKCC staff to conclude that the case was not in their jurisdiction. The case was therefore rejected even though the contract of sale itself was not disputed. On the other hand, some DKCCs acknowledge that they sometimes deal with disputes that do not fall under their jurisdiction, such as those concerning hereditary land or land that is already officially registered. These DKCCs take such cases because they feel as though there are few other practical avenues for dispute resolution available to poor people.

A confusing situation is present in dealing with multi-party cases. Most DKCCs are urged to handle such cases, although some point out that they are not actually under their jurisdiction. As there are no prescribed procedures and no separate forms available in these cases, the path taken is to split the cases and to let every concerned person fill out a separate form individually, even in the case that there are dozens of actors. The required paperwork for each party not only puts a strain on the parties and the DKCC, but also adds to the complication of the resolution process. Several DKCCs have many files with separate case numbers at hand concerning only one dispute, and are finding it difficult to keep track of the flood of forms. Special forms that allow listing of all the parties as a group in dispute with another party to file a collective claim or response would considerably reduce the DKCC workload. This could also

simplify the conflict and make the conciliation process easier by, for example, working through representatives officially chosen by the group after having lodged the complaint or response.<sup>36</sup>

As stated, DKCC chiefs mostly use the opportunity of Step 1 for early informal investigation and even conciliation attempts. When filling out the forms, they ask the plaintiffs/respondents about circumstances, process, dispute causes and desired outcomes, and also try to figure out if there is somebody behind the dispute (*kraoy khnâng*) or persons with influence over the parties (e.g. relatives) whom they should involve in the resolution process.

## **Step 2: Investigation**

The DKCC dispute resolution procedure does not determine who at the DKCC should be the case investigator or in which way he or she should be officially assigned. Given staff shortages, common DKCC practice is that either the DKCC chief carries out the investigation by himself or herself in the absence of anyone else (without formal assignment), or that other staff help out by taking on some tasks according to their own availability. In only 10 percent of the case files reviewed was it apparent that someone was officially put in charge of the investigation. Some investigation reports did not even show a name or signature of the investigator.

The median time from submission of a complaint to completion of investigations for the case files reviewed was 70 days (10 weeks), with a maximum of 2.5 years (937 days) and a minimum of five days. These figures are to be considered with caution, as in some cases dates on files were changed or lacking, and in others (16 percent of all cases) the official investigation report was not present at all.

Informal investigation activities often start early, with the lodging of the complaint, or are based on information compiled in minutes and reports of preceding conciliation attempts, which are attached to the complaint lodged with the DKCC. In some cases, no formal investigation is made because the DKCC considers the available local knowledge to be sufficient and feels able to move straight to conciliation. Some investigations have only been carried out at desk because there has been no way to cover travel costs to remote areas.

Commune chiefs and village chiefs are usually informed and involved in the investigation. Sometimes this is carried out by means of an official letter of

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<sup>36</sup> However, some DKCCs noted that representatives may try to make use of the situation to demand land for their own purposes and communication between them and the parties may be poor, so that when families are invited to fill out the complaint they do not show up or can not describe the dispute of which they are allegedly a part.

confirmation from the DKCC investigation mission, signed by the district governor. Some DKCC chiefs ‘borrow’ district officials from other district offices to accompany them when traveling to the location to find witnesses or measure the disputed land.

Delays to the investigation may occur as a result of lack of means, bad weather conditions (e.g. floods or heavy rains that make roads impassable) or urgent tasks staff have to carry out. It also happens quite often that, despite the DKCC having informed village and commune authorities, disputing parties or witnesses are not available as they are busy with farming or other livelihood activities far from the village. This can force the DKCC to come a second or even a third time. A particular challenge for some DKCCs involves investigating multi-party cases, which sometimes requires interviewing dozens of parties and witnesses. Given the shortage of staff, this can not be carried out in a few days or even in one week.

Despite these difficulties, in 75 percent of the case files reviewed the investigation forms with the personal data of the disputing parties were present, and 82 percent of case files contained witness statements. Some DKCCs reported that it was not easy to obtain official witness statements, as many witnesses fear unpleasant consequences should they take someone’s side in public. Sometimes, disputing parties name witnesses in their complaint/response, but when the DKCC comes to ask them they refuse to testify. This is especially common when powerful people are involved in the dispute. One DKCC chief provided an interesting explanation for this, reporting that, in general, willingness to testify as a witness has significantly decreased as a result of negative experiences related to common practices when taking out a loan. Credit institutes request two to three guarantors when granting a loan; in an increasing number of cases, the borrower is unable to repay or disappears, leaving the guarantors to bear the repayment. Such experiences are increasingly influencing other situations in which witnesses are required, with the result that witnesses are unwilling to come forward for fear of having to bear negative consequences.

#### *Measurement of the disputed land*

According to the case files reviewed, disputed land was measured and more or less thoroughly documented in 62 percent of cases. Documentation varies considerably, from very professional maps signed by the surveyor, disputing parties and local authorities with date recorded, to vague hand-drawn sketches without any signature or date.

DKCCs reported that the main difficulties in measurement were lack of appropriate equipment to measure bigger pieces of land, especially forest land or difficult terrain, and insufficient means for transportation to remote areas. Sometimes, it was said to be laborious to explain to disputing parties why they

should enable access to the disputed land for measurement (especially residential land), as they fear this could be to their disadvantage. In a few cases, it was even said to be necessary to ask the police to accompany the mission, as some parties can turn to violence when trying to prevent the DKCC from measuring the disputed land. Some respondents were reported to refuse categorically any access to their land, leaving DKCC no means to obtain a measurement.

Usually, local authorities and disputing parties are invited to attend the measuring. Sometimes, the formally named witnesses or other interested persons, such as neighbors and relatives of the disputing parties, also take part. In other cases, it would appear that measurement has been undertaken without the knowledge of one or more of the disputing parties. This finding is based on the outcome of the party survey: only 50 percent of parties to pilot cases answered that their land had been measured. This compares with the 62 percent of pilot case files which showed evidence of measurement. It is also noteworthy that pilot cases outperformed non-pilot cases with respect to the measurement of land, with only 40 percent of the disputing parties in cases outside the pilot answering that their land had been measured by the DKCC.

In a few cases, the measurement provided an opportunity to get the disputing parties to conciliate informally, as they accepted the outcome of the measurement as a reasonable result for both. One DKCC chief reported that he always took the form to end the dispute with him to the measurement activity, so as to be prepared for such a kind of compromise.

### **Step 3: Administrative meeting**

According to Prakas No. 112 (Art. 20) and the manual for implementing the procedures (pp.82–6), the DKCC is supposed to hold a meeting after having finished the investigation in order to prepare for formal conciliation between the disputing parties. *Ad hoc* members and the disputing parties must be invited to this meeting, at which the conciliation procedure is to be explained and the parties given the chance to choose three conciliators from among the DKCC's permanent and *ad hoc* members.

There is no determination of the timeframe after the completion of the investigation within which the meeting has to be convened; the only regulation states that the meeting should take place not less than 30 days after having posted the complaint. In addition, it is not clear what deadlines exist for the DKCC to make a decision as to whether it is competent to proceed with the conciliation process, and how such a decision should be made. Art. 17 of Prakas No. 112 merely states that, after having finished the investigation, the DKCC has to determine competence. The manual specifies (p.73) that this decision has to become part of the official documentation of the case file and, if

the DKCC chief states that dispute resolution lies beyond the DKCC's competence, the reasons for this should be put down in writing and attached to the case file.

This vagueness of time and process for decision making often leads to a situation whereby the administrative meeting does not receive the importance it theoretically deserves, as the decision regarding competence and date is left to the DKCC chief alone without any formal procedure. However, decision making (or at least announcement) of the DKCC's competence should become an integral part of the administrative meeting in order to ensure its official inclusion in the documentation of every case file, to which the DKCC can later refer to clarify on what basis the decision has been made.

Practice shows that administrative meetings were mostly held on the same day as the conciliation meeting. These meetings were rarely well documented, even in cases where the meetings were conducted separately. According to DKCC statements, the common practice is (especially in small cases) to invite the disputing parties directly to the conciliation meeting and to use the beginning of this meeting to deal with the key business of the administration meeting, such as explaining the process and selecting conciliators. There was a widespread feeling that this shortcut would be in the interests of all parties, saving time and effort (including travel costs). Many DKCCs complained that it was difficult to find a date convenient for all concerned parties, when the need was merely to agree on some administrative matters. As a result, administrative meetings sometimes take place without one or even both parties. In a few cases, it turned out that the parties were not invited at all, as the DKCC considered the meeting to be too big an effort for both sides. With the exception of very few DKCCs, which always conducted separate administrative meetings, with formal invitation to the disputing parties and *ad hoc* members, most DKCCs preferred to organize a separate meeting only if they had to deal with a 'big' or 'serious' case.

#### *Explaining the legal procedures and land law*

In 63.5 percent of the case files reviewed, it was apparent that an administrative meeting had taken place, although it was seldom possible to verify who had been invited, who was present and what was discussed. Often, neither minutes nor invitations were found. As a result, on the basis of the case files, it was not clear to what extent the conciliation procedure summary was fully explained to the disputing parties (52 percent had no record). In 17 percent of the case files reviewed, it was openly stated that no explanation was made. Some DKCCs expressed a conviction that more important than explaining the procedure would be to secure that the disputing parties had the will to conciliate.

In 31 percent of cases, a verbal explanation of the procedure was documented through more or less detailed minutes. However, a hard copy of this summary

being provided to the disputing parties was only evident in 4 percent of cases. In 48 percent of cases, the DKCC stated that they did not provide a hard copy, whereas in the remaining 48 percent there was no proof that they did.

However, according to the disputing party survey, 64 percent of respondents stated that the conciliation process was explained to them and 69 percent of this group answered that they understood the procedure clearly or 'somewhat clearly'. This reflects that more explanation occurs than is actually documented in the case files. It is noteworthy that parties to pilot cases were significantly more likely to respond that the DKCC had explained the process to them (73 percent v. 59 percent).

#### *Selecting the conciliators*

In most cases, local authorities (commune chief, village chief or commune council members) and district officials (district governor, deputy district governor or representatives) were invited to serve on the DKCC as *ad hoc* members. In several cases (seemingly a characteristic of one province), a representative of the provincial authority was involved in the integrated administration/conciliation meeting, both as *ad hoc* member and conciliator. A few DKCCs also involve elders or even the leading monk of a pagoda in order to offer disputing parties a broader choice of possible conciliators and to comply with traditional elements of conflict resolution.

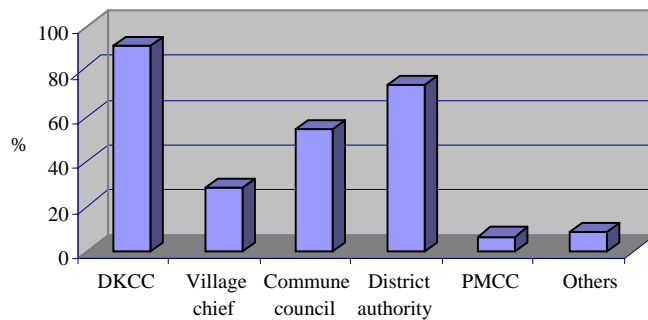
Commonly, the DKCC chief suggests conciliators, including himself, to whose appointment the disputing parties agree, especially if high-ranking persons or authorities, such as the district governor, are present. Although figures in the case file review show that in 71 percent of cases the record suggests agreement, this does not automatically mean a free choice for the disputing parties. According to the disputing party survey, only 40 percent of interviewees confirmed that they felt they had a choice in terms of conciliators.

Whether people feel as though they had a choice of conciliator correlates with how disputing parties assess the conciliation process and its outcome. Almost half of the disputing parties who felt they had a choice in conciliators considered the outcome very fair, or more fair than unfair, compared with only 36 percent of those who felt they had no choice. A similar picture arises regarding the extent to which the disputing party felt that the DKCC had treated him/her fairly. The number of those who felt unfairly treated was significantly less among those who had chosen the conciliators.

According to the case files reviewed, almost always among the conciliators selected was a person who had received training in conflict resolution (usually the DKCC chief) and someone who had knowledge of the local circumstances of the dispute (village chief and/or commune chief, and the DKCC chief, if he had conducted the investigation by himself, as was mostly the case).



**Figure 19: Conciliators and their backgrounds**



Those most often appointed to conciliate were the DKCC chief (in 83 percent of cases) followed by other representatives of the district administration (74 percent) and the commune chief or other commune-level officials (54 percent). The village chief was appointed in 28 percent of cases. Others represented on the DKCC conciliation panels were a pagoda chief (one case) and elders (three cases). When asked about the choice of conciliators, most DKCC staff explained that they preferred to work with the local authorities, as community representatives were seen as working slowly and lacking expertise.

*Seeking assistance in the conciliation process*

It is striking that in only a very small number of cases (11.5 percent) was someone formally appointed to assist one or other party in the conciliation process. This figure contrasts with the 65 percent of the interviewed parties who reported knowing that they had the right to seek assistance and the 48 percent who answered that they had someone to assist them in the conciliation process. This discrepancy suggests a high level of informal and/or low intensity assistance. For example, in one of the cases studied in detail, the plaintiff sought assistance from a human rights NGO, but this organization did not have the capacity to accompany the plaintiff to the conciliation hearings. Also noteworthy is the unmet demand for assistance. When asked if they wanted to have someone assist in the conciliation process, 75 percent of those who had no assistance answered yes. Competent assistance in legal issues is difficult to come by in rural areas.

Although many of the cases dealt with are small, they are highly significant to the parties involved. Thus, for example, one of the cases studied in detail involved a dispute over a residential block. The plaintiff was a poor villager who had spent some time away from the village working in Pailin. The dispute arose when the land she had lived on was claimed to build an office for a local water users' association. The dispute was resolved at the district level when the

plaintiff agreed to forfeit the land in return for the right to live temporarily on a smaller adjacent plot. However, the plaintiff felt pressured into this agreement when she was told by the DKCC that the law did not support her and that, while she could take the case up to the PMCC, they would only tell her the same thing. Without going into the details of the claim it involved complex legal and factual issues as to the continuity of the plaintiff's occupancy of the plot and its status as state public or state private land. The plaintiff sought support from a local human rights NGO but this organization felt that the case was too small to prioritize. In the absence of support, however, the plaintiff was not able to challenge the opinion proffered strongly by the DKCC that she was in the wrong and should accept settlement on the terms offered. These circumstances illustrate how the lack of skilled assistance can lead to poorer parties being pressured into accepting unfavorable settlements.

Another reason why parties do not seek formal assistance in their cases could relate to the fact that administrative meetings are generally conducted at the same time as the conciliation meetings, and thus when disputing parties are told that they have the right to choose assistance it is in fact already too late to organize this, particularly as the request for assistance theoretically has to be made to the DKCC five days at the latest before the conciliation meeting takes place (p.105 of the manual).

A discussion of unmet demand for legal/technical assistance must remember that the object of the CC was not to create a legalistic forum for dispute resolution. Rather, the idea was to support a form of consensual dispute resolution at the local level in which parties would be able to represent themselves. In this context, it may be entirely appropriate that almost 90 percent of parties go to conciliation without any formal assistance. Whether, however, the system as it currently operates reflects a consensus-based model of decision making is questionable. With 47 percent of respondents to the party survey reporting feeling very much or somewhat forced into an agreement, it would appear that the CC is considerably more coercive than its formal structure suggests. Schematically, there are two responses to this situation: i) to acknowledge the coercive nature of the process and then to invest in increasing accessibility to legal/paralegal assistance; or ii) to work on making the process, at least at the DKCC level, more consensus based, in which case the need for legal assistance would be lessened.

#### **Step 4: Conciliation meeting**

In most cases, conciliation does not commence with the formal conciliation meeting. As already discussed, attempts to conciliate often start off when the complaint is lodged and the disputing parties are questioned about the dispute and its background. This happens in separate sessions and is combined with repeated efforts to figure out what the disputing parties are trying to achieve and how to encourage them to come to an agreement. Some DKCCs consider this to be a promising approach, by means of which the disputing parties have the chance to think about a possible compromise before officially meeting for negotiations.

As mentioned above, the formal conciliation meeting itself often begins with the short administrative meeting, in which the conciliation procedure is explained and conciliators are suggested for official appointment. If disputing parties agree, the conciliators are officially appointed by filling out the necessary forms.

In only 20 percent of cases was the conciliation meeting held at the disputed land or nearby. Most DKCCs prefer to use either the commune chief's office or the *sala srok*. The main reasons cited for this were that the trip to the land cost too much in time and travel expenses, especially in cases where the land is remote. In addition, there are often no appropriate meeting facilities on site. If there are too many people around, a number of DKCC chiefs explained, emotions can easily get high and then it becomes difficult to ensure an appropriate atmosphere for reaching a compromise. However, some DKCCs have achieved good results by choosing neutral locations for conciliation, such as pagodas or schools.

##### *DKCC conciliation strategies*

In conducting the conciliation meeting, the DKCCs use a range of different strategies. It seems common to warn parties of the possible negative consequences if they do not reach an agreement, including the risk of the case being brought to the PMCC or the court, which again incurs more costs (e.g. for traveling) and loss of time. One DKCC chief reported that he organized the first conciliation meeting at local level by explaining to the disputing parties right at the beginning that if they did not resolve their dispute on this occasion, the next conciliation meeting would be at district or even provincial level, incurring far greater costs for travel along with other inconveniences.

A second widespread conviction in the DKCCs is that inviting high-ranking officials, such as the district governor or the deputy district governor, to be conciliators goes much further towards ensuring that disputing parties are willing to comply with conciliation efforts and to agree to a compromise. In one province, in fact, a representative of PMCC is often appointed as conciliator at DKCC level.

In some cases, DKCCs tell both disputing parties in separate sessions that they are wrong according to the law, thus have to find a compromise in order to avoid further negative consequences. However, many DKCCs stressed that often they did not base their explanations on the law, but rather tried to consider sentiments and feelings in order to bring people to an agreement. A good conciliator ‘understands people and has a way with words [*tik moat prae*]’, explained one DKCC chief.

Another DKCC chief explained that he put his trust virtually completely in conciliation based on feelings, beliefs and Buddhist principles, and did not care about filling in a pile of forms. To him, the most important thing was to get the disputes resolved. He stated that this was most successful when referring to the power of Buddha, and knowing the spirit and qualities of the people concerned. A third DKCC chief reported that he preferred to hold the conciliation meeting in a pagoda in the presence of monks in order to remind the disputing parties to respect Buddhist principles, such as prayer and letting go of strife or swearing, as this can give a much better guarantee of coming to a mutual agreement. He also explained that he often refers to old legends as examples of successful resolution, and even includes some superstitious elements if appropriate. In addition, he always chooses the day for conciliation carefully, preferring Wednesday or Friday as these days are favorable for negotiation. Despite the many differences between rural and urban-influenced districts, the reference to Buddhism and tradition as underlying principles in conciliation often shone through in the interviews. The extent to which these traditional traits play a role may also depend on who is involved in the dispute and on the personal background of the conciliators.

One DKCC chief who followed every step of the procedure accurately (and mentioned that he had sufficient financial support from his successful trading family which enabled him to devote himself fully to his work as a civil servant) stressed that too little knowledge on legal procedures, rules and regulations on the part of the disputing parties together with traditional thinking makes dispute resolution according to the law difficult.

Another repeatedly mentioned strategy for dispute resolution consists in involving people who have positive influence on the disputing parties, such as relatives or neighbors. He explained that, in his experience, if these actors support the conciliation and the pursuit of compromise, the disputing parties in

most cases come to an agreement. These persons, called *chhnul* (actually an instrument made of bamboo used to weave fishing nets) are considered an important catalyst in the process by joining hands and enabling compromise. As one DKCC chief explained, ‘we can not conciliate bluntly straight away [because] they do not know us; [they] do not listen to us even if we are big shots. They do not trust us ... but someone they like and trust only needs to say few words and they listen [attentively].’

In this way, the *chhnul* can contribute significantly to softening the combative attitude of disputing parties and to identifying ways to come to an agreement. They can sometimes also bridge big age differences between disputing parties: in one case, for example, a 25-year-old man complained against a 60-year-old man, who initially felt unable to negotiate about such an ‘insult’.

On the other hand, outside persons can also have a quite destructive influence on the conciliation process, especially if they act from a higher-level position. Called ‘people in the background’ (*khnâng* or *bâng-eyk*), it is important for the DKCC to assess whether somebody behind the disputing parties is there to bolster up a persistent attitude and a refusal to compromise. If this is the case, the DKCC may try to involve the *khnâng* in the conciliation process too, although this is often a hopeless undertaking.

Sometimes, powerful people pressure the DKCC by phone to handle the case in favor of a definite outcome or to refrain from proceeding. Some DKCCs have repeatedly had to ward off disruptive actions by lower or middle-ranking employees or ‘envoys’ of the Ministry of Interior during the conciliation meeting. A few reported that they were occasionally intimidated by force of arms in disputes where very rich people were involved and where the disputed land had high value. In such cases, the DKCC may be reluctant to act.

#### *Lack of decision-making power*

Despite using different strategies in pursuing conciliation, several DKCCs pointed out that coming to an agreement remained difficult without having any decision-making power. Particularly in cases where disputing parties lack the willingness to engage in a compromise, it is hard to complete the resolution procedure successfully.

In addition, some DKCCs feel frustrated when, for example, the investigation clearly discovers that according to legal regulations one party is wrong or is intentionally violating the rights of the other party, but is able to obtain an agreement in favor of itself as the other party may feel under (time) pressure to have the land dispute resolved. The DKCC feels unable to intervene here, as it is obliged strictly to follow the procedure of conciliation, leaving them in the position of bringing the disputing parties together but not judging the dispute. Given such lack of clear decision making and the DKCC’s inability to compel

disputing parties to comply with legal regulations, some DKCCs expressed doubt that there was any practical value in explaining the law.

Furthermore, disputing parties increasingly perceive the DKCC as lacking the capacity to resolve the conflict, as it only guides and facilitates voluntary conciliation and tries to plead with people to agree (*ângvârkâr*). Having expected to obtain a clear decision from an arbitrator as to who is wrong and who is right, parties feel left to fend for themselves, having to come to an agreement alone. Dismayed by losing time going through the lengthy procedures, and experiencing getting stuck in the conciliation process, parties are increasingly seeking ways to reach a much faster result based on a clear decision of a third party.

Opinions are divided as to how to resolve the land disputes. Several PMCCs/DKCCs expressed frustration at their lack of power, which apparently makes successful resolution very difficult. Others felt that conciliation was a very fair process. One DKCC chief was convinced that if parties came to an agreement based on their own will, the resolution results would be much better.

### **Step 5: Registration**

After the CC resolves a dispute, official registration of the disputed land should occur according to the agreed outcome. However, none of the case files which the research team reviewed contained evidence that this was occurring. This is in line with the view expressed by Cooper in a 2005 memo on the functioning of the CCs that ‘in almost no “resolved” case has there been registration’. The reason for this, he continues, ‘appears to be that parties are poor and can not afford, or do not see the value, in paying the cost of registration’.

DKCC staff were able to throw some further light on the question of why registration is not occurring. The most common explanation was that disputing parties considered the procedure too expensive. Parties have to pay not only the formal fees but also, according to the interviews, more informal fees in order to get the registration through the process (*routkâr*). As a result, most have decided to wait for systematic registration of their lands. Sometimes, DKCC staff report that people do not see the need for registration, as they feel safe enough with existing documents, including the conciliation agreement written up by the CC. It seems that many people assume that these documents supported by the *bângkan dai* (official confirmation that application has been made for ownership) presents sufficient proof of legitimate ownership of the land. It was also reported that wealthier parties may not want to register because they wish to avoid the land (transaction) taxes imposed upon registered land.



## 5. Impact of Pilot

Upon commencement of the evaluation, GTZ provided the evaluation team with Figure 20, which compares resolution rates of cases in the pilot with the resolution rate for CC cases in general across five provinces. As set out in the ToR, ‘an initial statistical analysis of the table shows that among these provinces (which commenced the pilot in 2005), the rates of successfully resolving cases in the pilot group was significantly higher than success rates for the general population of CC cases in three provinces, Kampong Cham, Prey Veng and Battambang’.

**Figure 20: Comparison of performance-based pilot success rate with 2005 success rate**

Province	2005 caseload	2005 success rate	Pilot caseload	Pilot success rate
Prey Veng*	184	33%	40	50%
Kampong Cham*	373	11%	33	39%
Svay Rieng	198	18%	20	5%
Kampong Speu	77	26%	14	36%
Battambang*	247	2%	18	28%

*Notes:*

1. These five provinces contained 48% of the overall CC caseload in 2005, as measured by gross caseload minus cases dismissed/withdrawn. They contain 54% of the overall pilot caseload.
2. The cases dismissed/withdrawn were removed so as to present a figure representing all cases theoretically susceptible to resolution. Without removal, the figure is 46%. In this figure and notes, all numbers that involve general CC caseload are minus dismissed/withdrawn cases.
3. These five provinces contain nearly all of the pilot cases on which work began in 2005.
4. The success rate for the entire CC for 2005 was 18%.
5. Prey Veng is noteworthy in terms of its pilot success rate, in that its work on 24 of its 40 cases started in October 2005 and later.
6. Statistics on pilot resolved cases are as of 31 March 2006.

The evaluation team has attempted to assess whether the improvements in the case resolution rate suggested in Figure 20 are in fact attributable to the operation of the pilot. Stated in terms of the research questions, the issue is whether it is ‘reasonably likely that the compensation already provided and that will be provided by the pilot led to significantly more cases being successfully resolved than would have been true without the compensation or [whether there] are other factors which explain these statistics?’

In order to assess the impact of the pilot, it would have been useful i) for the pilot cases to have been selected randomly and ii) for there not to have been any interaction between the pilot and the non-pilot cases. Neither of these ideal case scenarios was a feature of the pilot design. Case selection for the pilot was conducted by PMCC/DKCC staff without detailed guidance. Accordingly, there



was a tendency to select cases in an inconsistent fashion. The following were cited when CC staff were asked what influenced their choice of pilot cases: i) choosing small/easier cases; ii) choosing cases that had recently been lodged; and iii) choosing difficult cases (in anticipation of additional technical support from the pilot). Although not always the case, it has been suggested that CC staff often chose ‘low hanging fruit’ for inclusion in the pilot, i.e. cases that they anticipated would be easier to resolve. If this is the case, then at least part of the improved resolution rate of cases under the pilot will be attributable to the choice of ‘lighter’ cases and not to improved CC performance. This suggestion is supported by the party survey, which found that the mean and median size of the disputed land for cases in the pilot was smaller than that for non-pilot cases. Results of the same survey found that smaller cases were easier to resolve than larger cases.

With regard to the relationship between pilot and non-pilot cases, it is also suggested that, in some DKCCs, extra work was carried out on pilot cases at the expense of the non-pilot caseload. If this is so, then a part of the improved performance of the CCs under the pilot will be attributable to a reallocation of resources from non-pilot to pilot cases and not to improved performance *per se*. While it is difficult to quantify the extent to which CC staff shifted their energies from non-pilot to pilot cases, a number of DKCC staff indicated that this was occurring. The party survey reveals a resolution rate in the non-pilot cases that is significantly lower than the overall resolution rate of the CCs, which may also be indicative of a reallocation of work from non-pilot to pilot cases. The argument that a shift in effort took place from non-pilot to pilot cases within the pilot districts is further supported by quantitative analysis of the performance of CCs in districts with pilot cases (pilot districts) and those without (non-pilot) districts (see the figures below).

In the absence of a design allowing straightforward statistical comparison, the improved resolution rates suggested in Figure 13 are less than conclusive of improved performance under the pilot. After some consideration, the evaluation team finds that the pilot likely had a positive effect on the quality and quantity of dispute resolution work undertaken by the DKCCs, albeit that this effect is significantly less than that suggested by the statistics provided. The following factors were weighed in coming to this finding:

*1. Results of qualitative interviews with PMCC/DKCC staff*

DKCC/PMCC staff stressed that land dispute resolution work was difficult and time consuming, with limited resources. With the exception of those from urban districts, all DKCC staff agreed that the establishment of the pilot had increased their motivation to work on land dispute resolution. Interestingly, the monetary aspect of the pilot was identified as only part of the incentive. The increased monitoring and planning activities which went on around the pilot were also identified as important motivators. However, PMCC/DKCC staff also identified

limits to the effectiveness of the pilot. For example, in a district with few cases, the DKCC officer said that the pilot did not lead him to do any more work than usual as he only had a couple of active cases and would have worked on these anyway. The opposite scenario also occurred in busy and understaffed DKCCs. Here, we have the example of a DKCC officer who explained that he was limited in terms of the extra work he could do under the pilot because of a lack of staff and the other demands on his time. While there was no suggestion that ‘fake cases’ were created to gain benefits from the pilot, one DKCC officer warned against establishing an incentive-based scheme in the long term because he feared that such a system would lead to the processing of small cases that could be better dealt with by the local authorities. In other cases, the researchers noted that the dates on documents in the case files had been changed. This appeared to have been done to make the case files match up with the work plans that had been agreed with the PMCCs. In some DKCCs, it appeared that older cases on which some work had already been done were re-dated so that they could be included in the pilot.

In terms of pilot design, it is noted that the impact of pilot was probably less in Phnom Penh and better resourced PMCCs (e.g. Kampong Cham), as other incentives play a bigger role in such places. It was also noted that while pilot incentive payments appear to be reaching the DKCCs, there were some delays in receiving payment and some DKCC chiefs were not clear about amounts due/paid. Other DKCC staff interviewed (other than chiefs) had little knowledge of the scheme.

*2. Detailed analysis of the relationship between inclusion in the pilot and various indicators of performance that emerge from the party survey*

The party survey shows correlations between inclusion in the pilot and a number of indicators of CC performance. The most significant relationships exist between inclusion in the pilot and i) parties reporting that a conciliation meeting occurred; and ii) parties reporting that their case was resolved. The pilot cases also outperformed the non-pilot group (although less significantly) on other indicators of performance, such as i) whether the CC staff measured the land; ii) whether the CC staff explained the process; and iii) whether they felt the process was fair. Interestingly, however, the pilot cases performed worse on issues such as the voluntariness of the settlement and whether the party reported making informal payments.

**Figure 21: Comparison of conciliation rates: pilot v. non-pilot**

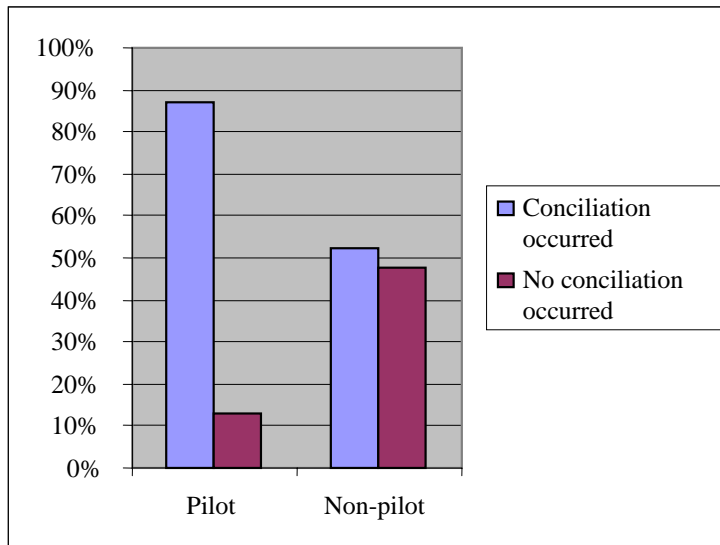


Figure 21 above indicates that conciliation meetings took place more often in pilot cases. 87 percent of parties to pilot cases responded that a conciliation meeting had taken place with regard to their case, whereas only 52 percent of the parties to non-pilot cases answered affirmatively to the same question.

**Figure 22: Comparison of resolution rates: pilot v. non-pilot**

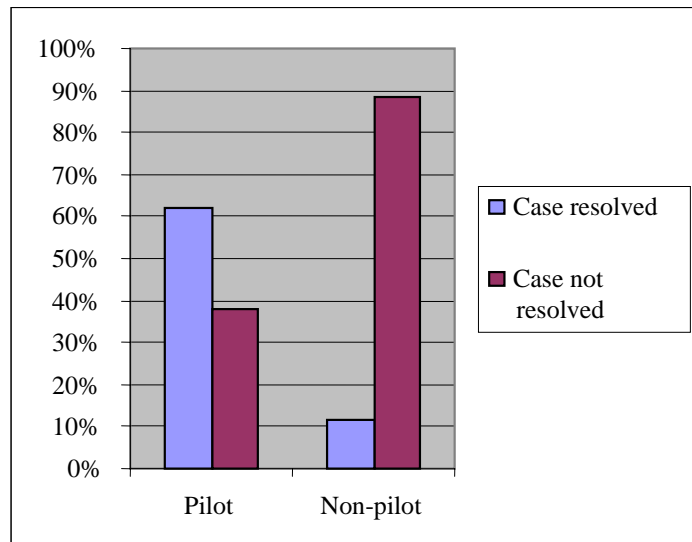


Figure 22 above shows a higher resolution rate for cases inside the pilot. When asked whether their case had been resolved, 62 percent of parties to pilot cases answered yes. Only 12 percent of parties to non-pilot cases answered yes to the same question.

Finally, with regard to the results of the party survey, it was also noted that the reported resolution rate of small cases within the pilot was higher than that for cases of the same size outside the pilot. Thus, for example, comparing cases involving land of less than 850m<sup>2</sup> (the median reported size of land in the pilot) within the pilot, 69 percent of cases were reported as resolved, whereas outside the pilot this rate fell to 30 percent. This is perhaps the strongest quantitative data in support of the effectiveness of the pilot (at least with regard to small cases).

While these results provide encouraging evidence for the efficacy of the pilot, they do not exclude the possibility that i) easier cases were chosen for the pilot; ii) the pilot achieved better results by focusing on the best functioning DKCCs; and iii) there was a net redistribution of effort from non-pilot to pilot cases within the pilot districts. If any of the above occurred, then the improved results achieved on the pilot cases would have been set off against a worse result on the non-pilot cases, with little net benefit. The following section, which compares performance at DKCC level, represents an attempt to take these possibilities into account.

*3. A more detailed analysis of case disposition rates allowing comparison between districts that were included in the pilot and districts that were not*

A DKCC-level analysis of the impact of the pilot is also possible. Although 23 out of 24 municipalities and provinces were included in the pilot, not every DKCC was allocated pilot cases. Thus, for example, in Kampong Cham province only 11 out of 16 districts were allocated pilot cases. Assuming that the pilot had a positive effect on performance at DKCC level we would expect that the pilot DKCCs (those which were allocated pilot cases) would show an improvement in performance vis-à-vis the non-pilot DKCCs. We would expect this effect to be muted, as the 33 cases allocated to the pilot DKCCs made up only a fraction of their caseload. Nevertheless, it should be measurable.

Figure 23 represents a compilation and analysis of the monthly reports prepared by the various DKCCs in Kampong Cham. The data on which it is based is less than ideal in a number of respects. First, it is noted that few of the DKCC datasets were complete. The number of months for which DKCC data was missing ranged from 0 to 10 per year. Secondly, there was a change in the way in which results were reported in 2005, with the result that only a limited subset of the overall data collected is comparable across the two-year period July 2004 – June 2006. In particular, the available data can not be disaggregated to the level of individual cases. Thirdly, data was not always collected in a consistent fashion across districts. For example in some districts multi-party cases were registered as one case and in others as multiple cases. Finally, the quality of data was inconsistent across provinces. For these reasons a cross-district analysis was only undertaken for Kampong Cham, the province in which the best data was felt to be available, and even in this case the

conclusions reached are questionable on the basis of the quality of the data. Nevertheless, the results are deemed sufficiently robust to warrant inclusion and interpretation in light of our broader analysis.

Figure 23 contains a wealth of information which requires explanation. It is divided into four quadrants. On the X axis, data is split in terms of date to allow a comparison between the 12 months when the pilot was operational (approximately July 2005 – June 2006) and the preceding 12 months (July 2004 – June 2005). On the Y axis, the upper section deals with the statistics from the 11 DKCCs which had cases in the pilot; the lower section deals with the five which did not.

Column headings deal with the following:

[A] *Months no info*: The number of months (out of 12) for which no statistics were present from a particular DKCC.

[B] *New cases (gross)*: The total number of new cases reported by the DKCC in each 12-month period.

[C] *Cases dismissed*: The total number of cases dismissed or withdrawn in each 12-month period.

[D] *Cases to PMCC*: The total number of cases forwarded on to the PMCC for resolution in each 12-month period.

[E] *Cases resolved*: Cases in which a conciliated agreement was reported.

[F] *Gross cases closed*: The total number of cases disposed of by the DKCC whether by resolution [E], referral to the PMCC [D], or dismissal [C].

[G] *% Cases resolved (gross)*: Percentage of cases resolved by the DKCC based on the number of new cases received (gross).

[H] *% Cases closed (gross)*: Percentage of cases closed based on the number of new cases received (gross).

[I] *New cases (net)*: Number of new cases received less the number of cases rejected. All net amounts are calculated excluding cases dismissed [C] as these are theoretically outside the jurisdiction of the CCs and hence not capable of resolution.

[J] *Net cases closed*: Cases disposed of by resolution [E] or forwarding to the PMCC [D].

[K] *% Cases resolved (net)*: Percentage of cases resolved on the basis of new cases (net).

[L] *% Cases closed (net)*: Percentage of cases closed by the DKCC whether by resolution or referral to the PMCC on the basis of new cases (net).

Closure and resolution rates both negative and more than 100 percent are possible owing to the fact that each DKCC has a backlog of cases which are subject to action even though they are not counted in the 'new cases' column for a given time period.

Notable aspects of this figure include that:

- Non-pilot districts show lower levels of activity across all fields, both before and during the pilot. Case intake, resolution and closure rates are all lower for the non-pilot districts. The level of statistical reporting is also lower in the non-pilot districts. Together, these factors suggest that the non-pilot DKCCs are less functional than the pilot DKCCs and perhaps that they are less competently managed.
- The intake of new cases dropped by more than 50 percent between the pre-pilot and the pilot period.
- Dismissals decreased in the pilot districts but increased in the non-pilot districts.
- Percentage of cases resolved and closed increased across the province, however, with the exception of the gross percentage of cases closed, which increased significantly more in the non-pilot districts. The extent of the increase was roughly the same in the pilot and non-pilot districts (see Figures 24–6 below).

**Figure 23: Comparison of performance of CCs in pilot and non-pilot districts**

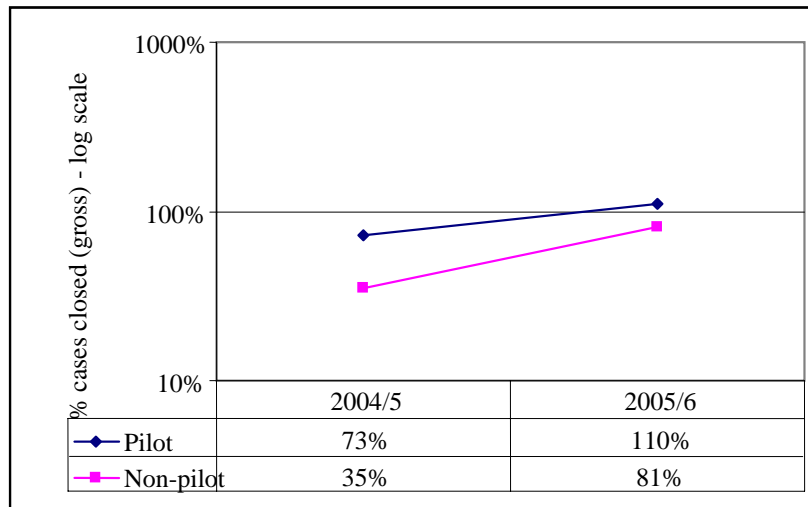
Pilot Districts	July 2004 - June 2005 (Pre-pilot period)											July 2005 - June 2006 (Pilot period)												
	(A) Months no info	(B) New cases gross	(C) Cases dismissed	(D) Cases to PMCC	(E) Cases resolved	(F) Gross cases closed (C+D+E)	(G) % cases resolved (gross)	(H) % cases closed (gross)	(I) New cases net (B-C)	(J) Cases closed net (D+E)	(K) % cases resolved (net) (E/I)	(L) % cases closed (net) (J/I)	(A) Months no info	(B) New cases gross	(C) Cases dismissed	(D) Cases to PMCC	(E) Cases resolved	(F) Gross cases closed (C+D+E)	(G) % cases resolved (gross)	(H) % cases closed (gross)	(I) New cases net (B-C)	(J) Cases closed net (D+E)	(K) % cases resolved (net) (E/I)	(L) % cases closed (net) (J/I)
Memot Kg.	3	24	7	2	4	13	17%	54%	17	6	24%	35%	4	9	3	0	2	5	22%	56%	6	2	33%	33%
Cham Srei	2	3	0	0	1	1	33%	33%	3	1	33%	33%	3	0	0	0	0	0	...	...	0	0	...	...
Santhor Ponhea	1	21	6	3	6	15	29%	71%	15	9	40%	60%	2	3	11	0	3	14	100%	467%	-8	3	-38%	-38%
Kraek Siung	6	15	0	0	3	3	20%	20%	15	3	20%	20%	4	14	2	0	0	2	0%	14%	12	0	0%	0%
Trang Krouch	0	16	2	2	3	7	19%	44%	14	5	21%	36%	0	8	5	0	0	5	0%	63%	3	0	0%	0%
Chhmar Tboung	3	8	3	2	0	5	0%	63%	5	2	0%	40%	2	10	12	0	0	12	0%	120%	-2	0	0%	0%
Khnum Koh	2	14	1	6	2	9	14%	64%	13	8	15%	62%	2	3	0	0	3	3	100%	100%	3	3	100%	100%
Solin Prey	0	35	1	0	6	7	17%	20%	34	6	18%	18%	0	13	16	3	10	29	77%	223%	-3	13	333%	433%
Chhor* O Raing	0	21	31	6	2	39	10%	186%	-10	8	-20%	-80%	4	5	3	0	1	4	20%	80%	2	1	50%	50%
Ouv Kg. Siem	0	8	3	0	3	6	38%	75%	5	3	60%	60%	0	8	0	0	9	9	113%	113%	8	9	113%	113%
Sub total	0	28	21	0	15	36	54%	129%	7	15	214%	214%	0	21	12	0	8	20	38%	95%	9	8	89%	89%
Average	1.5	18.5	7.8	1.9	4.1	13.8			10.7	6.0			2.1	9.4	5.8	0.3	3.3	9.4			2.7	3.5		
Non-Pilot Districts	2	5	1	0	0	1	0%	20%	4	0	0%	0%	0	0	1	0	0	1	...	...	-1	0	0%	0%
Meas Batheay	3	14	5	4	3	12	21%	86%	9	7	33%	78%	6	6	4	1	4	9	67%	150%	2	5	200%	250%

Cheung	2	26	0	0	4	4	15%	15%	26	4	15%	15%	5	11	0	0	2	2	18%	18%	11	18%	18%	18%
Prey	10	3	0	0	0	0	0%	0%	3	0	0%	0%	7	4	5	0	0	5	0%	125%	-1	0	0%	0%
Chamkar	3	4	0	0	1	1	25%	25%	4	1	25%	25%	7	0	0	0	0	0	...	...	0	0	...	...
Leou*	20	52	6	4	8	18	15%	35%	46	12	17%	26%	25	21	10	1	6	17	29%	81%	11	7	55%	64%
Dambae	4.0	10.4	1.2	0.8	1.6	3.6		9.2	2.4			5.0	4.2	2.0	0.2	1.2	3.4			2.2	1.4			
Sub total	37	256	92	25	53	170	21%	66%	164	78	32%	48%	46	115	74	4	42	120	37%	104%	41	46	102%	112%
Average																								
Total																								

\* Statistics amended to show multiparty case as a single case

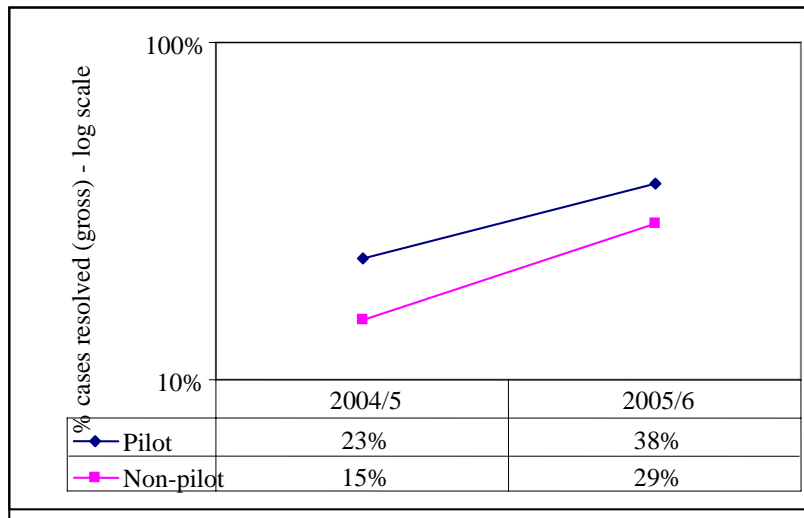


**Figure 24: Rate of change in ‘% cases closed (gross)’: pilot v. non-pilot districts**

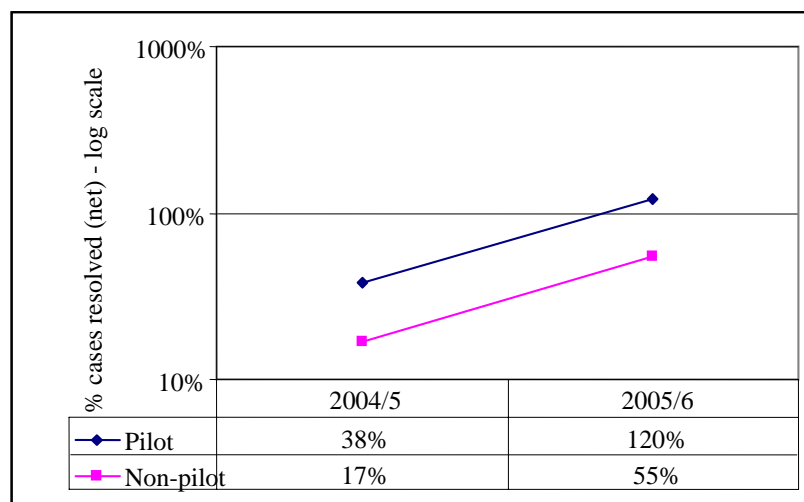


The converging lines in Figure 24 above indicate that the gross percentage of cases closed in the non-pilot districts increased more rapidly than it did in the pilot districts. The gross percentage of cases closed in the non-pilot districts more than doubled (from 35 percent to 81 percent), whereas there was only around a 50 percent increase in cases closed in the pilot districts (from 73 percent to 110 percent). This is a function of the higher number of dismissals which occurred in the non-pilot districts during the pilot period. As the pilot did not envisage payments for cases dismissed, it is possible that the relative decrease in dismissals in the pilot districts was an unintended consequence of the pilot. The overall increase in the percentage of cases closed is a function of the fact that case intake dropped more sharply than did case closures. Figures 24–6 are displayed on log scales to allow easier visual comparison of the rate of change between the pilot and non-pilot DKCCs.

**Figure 25: Rate of change in ‘% cases resolved (gross)’:  
pilot v. non-pilot districts**



**Figure 26: Rate of change in ‘% cases resolved (net)’:  
pilot v. non-pilot districts**



The parallel or near parallel lines in Figures 25 and 26 indicate that both the net and gross percentages of cases resolved in pilot and non-pilot districts increased at a similar rate between 2004/5 and 2005/6. Given our findings above, that the pilot did have an impact on individual cases, there are three possible explanations for this result: i) that the statistical data on which these calculations are based is insufficiently reliable; ii) that the small number of pilot cases allocated per district (three on average) meant that the effect of the pilot on performance at the DKCC level was too diluted to be measurable; and/or iii) that the ‘success’ of the pilot owed significantly to a refocusing of DKCC efforts on the pilot cases at the

expense of the non-pilot cases with the result that there was little net gain in productivity at the DKCC level. While it is difficult to reach a conclusion as to the relative importance of these three factors in explaining the above results, this data does little to support the hypothesis that the pilot had a positive effect on DKCC productivity.

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**Annex 1: Table of Previous Studies, Findings and Recommendations Regarding the CC**

	<b>NLDRC/PLDSC 2001-2</b> Hughes (2001) & Williams (2000)	<b>Early CC Findings 2003*</b> ADB Internal Evaluation	<b>CC Findings 2004</b> Dongelmans & Visal (2004)	<b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review	<b>CC Findings 2005</b> Oxfam (2005)
<b>General Case Logistics</b> Issues which interfere with the process of resolution	<p>Government officials contribute negatively to the problem of land dispute resolution because:</p> <ul style="list-style-type: none"> <li>• They try to influence the outcome of the case through pressure and/or bribes.</li> <li>• Their actions are often the source of the dispute.</li> </ul>	<p>'A number of respondents raised concerns about their personal security. The concern was not mentioned generally among the 18 interviewees; however, this concern is very important because personal security naturally impacts directly on the application of the provisional skills and knowledge' (p.10).</p>	<p>High-ranking officials regularly interfere with and derive benefits from the CC process by:</p> <ul style="list-style-type: none"> <li>• Exerting pressure to influence case outcome (having it rejected or resolved in their favor).</li> <li>• Demanding bribes from petitioning party to intervene on their behalf.</li> </ul> <p>There is no standardized petitioning procedure regulating the intervention of 3<sup>rd</sup> parties.</p>	<p>Powerful officials interfere with the CC and, although the DKCC resolves small cases effectively, it lacks capacity to resolve cases with a large number of claimants or which involve powerful persons or institutions.</p>	<p>'The Cadastral Commission was not independent in its work and afraid of losing its roles because majority of the land disputes were related to the powerful persons or intervened by the powerful elites or their management' (p.5).</p>

\* Respondents are CC members.



	<p><b>NLDR/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>Lack of coordination and communication between the many organizations, officials and sectors that get involved in land disputes can make it difficult to resolve whose interest in the case is valid and can contribute to biased research.</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p> <p>There is a lack of cooperation from other public institutions.</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p> <p>Despite ample LMAP technical assistance, NCSS efficiency is low.</p> <ul style="list-style-type: none"> <li>• Low level of trained staff in the CC system; DKCC and PMCC lack both an understanding of CC objectives and organization and knowledge of land laws.</li> <li>• DKCCs receive little technical support from NCCS; frequent contact with PMCC.</li> </ul>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>‘Clear job descriptions are required, [and] targets for better performance must be set’ (p.3).</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p> <p>‘The capacity of the Cadastral Commission on the procedures, techniques, and the skills for solving the disputes through conciliation, especially at district/khan and provinces/municipal levels, was not sufficient’ (p.4).</p>
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	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>There are often conflicts of interest:</p> <ul style="list-style-type: none"> <li>• In some districts, members of the CC are also members of the court or military dispute resolution body.</li> <li>• Members of the commission are themselves subject to dispute.</li> </ul> <p>There is no standard method of case investigation.</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p>	<p><b>CC Findings 2004</b> Dongelmanns &amp; Visal (2004)</p> <p>Owing partly to the involvement of powerful parties and partly to the delayed reaction time of the ministry, emergency cases and complicated cases are often ineffectively managed.</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>Emergency cases are not solved quickly enough.</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p>
			<p>Only a limited amount (if any) of investigation is taking place.</p>	<p>CCs lack a standard approach for handling cases which involve illegal occupation of state land.</p>	
			<p>CC staff exploit parties by requiring informal fees for investigations or documentation.</p>	<p>Reports that some CC staff have charged disputants informal processing fees.</p>	
			<p>Cases stay in the CC system for an unpredictable and often indefinite period of time.</p>		

<p><b>Internal Jurisdiction</b> Internal and external jurisdiction</p>	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>Absence of transparent structure and tension between central and local levels contribute to disputes continuously being passed back and forth between levels.</p> <ul style="list-style-type: none"> <li>• Shortage of appropriate maps and unclear local jurisdictional boundaries create confusion as to which authority should be involved in the adjudication of the dispute.</li> </ul>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p> <p>‘The respondents commonly raise the point that they face difficulties and challenges because there is a lack of clear jurisdiction between the role of cadastral commissions and the role of the courts in relation to handling land disputes. There were a few interesting opinions that indicated that the likely causes were lack of communication and coordination’ (p.10).</p>	<p><b>CC Findings 2004</b> Dongelmanns &amp; Visal (2004)</p> <p>High degree of centralization, little empowerment of departments and legalistic approach reduces efficiency.</p> <ul style="list-style-type: none"> <li>• Roles and responsibilities of each level are uncertain.</li> </ul>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>It is as yet undefined which court has jurisdiction over appeals from NCC decisions.</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p> <p>Owing to a lack of communication and opaque working structure, cases were shuffled between the district, provincial and national level, lengthening the dispute period and avoiding proper resolution.</p> <p>‘For instance, the DKCC conciliated the dispute and submitted to the PMCC. Then, the PMCC transferred this case back to the DKCC to conciliate because it could not solve. In some cases, the PMCC submitted the case to the NCC, and the NCC transferred back to the PMCC to conciliate’ (p.4).</p>
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	<p><b>NLDR/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>General confusion for the CC regarding jurisdiction of the courts and appeal process from PLDSC decisions.</p> <p>PLDSC are overwhelmed and under-resourced to handle volume and complexity of cases.</p> <ul style="list-style-type: none"> <li>Different provinces have a varying level of legal expertise on staff, but all have expressed need for training in land law and human rights, and dispute resolution.</li> </ul>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>CCs do not always understand when cases should be dismissed.</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p>
<p><b>Resources and Support</b> Staff, budget and forms</p>		<p>'Many respondents claimed there was too much workload and demand ... In addition to the claim about the limitation of knowledge and skills, the need for more human resources was frequently mentioned by respondents' (p.10).</p>	<p>Disparity between incentives offered for LMAP systematic registration activities and the lack thereof for CC issues discourages participation in CC work.</p>		<p>'Staff had their main works to do. Moreover, the participation in the dispute resolution at the district/khan and provincial/municipal levels was not enough in response to the increase in the number of the cases. Also, the lack of the budget to provide the staff led them to work outside to earn their income to support their demand for living' (p.4).</p>

	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>There is no identified budget for the Commission Offices, all of which lack resources such as computers, photocopiers, maps, cars, and motorbikes.</p> <ul style="list-style-type: none"> <li>• The sources of disputes are often far from the office and without proper transportation members have difficulties serving those areas.</li> </ul>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p> <p>‘The lack of financial support affects the respondents’ abilities to investigate and conciliate land disputes, especially for traveling in remote areas, and for logistical expenses’ (p.10).</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p> <p>Insufficient funding for office supplies and travel allowances for DKCC and PMCC staff.</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>Lack of logistical support for field offices and delay in providing travel allowances have reduced CC performance.</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p> <p>‘The commission lacked of sufficient budget for the implementation, means of transportation and technical materials necessary for the dispute solving process’ (p.4).</p>
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	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>‘There is no uniform method of dealing with complaints as they are filed, nor any standardized format for complaints’ (Hughes, p.6).</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p> <p>‘The lack of finalized official forms limits respondents’ ability to implement the legal requirements related to their jobs generally and to their ability to investigate and conciliate land disputes’ (p.10). The official forms that have yet to be finalized include several different forms related to the respondents’ duties, not just those related to the work of the CCs.</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p> <p>Current forms are onerous.</p> <ul style="list-style-type: none"> <li>• In multi-party cases, each party must fill in their own form creating unnecessary and bulky paperwork.</li> <li>• Forms are complicated and do not leave enough room to provide sufficient details with which to contextualize the case.</li> </ul>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p>
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<b>Dispute Resolution Process</b>	<b>NLDR/PLDSC 2001-2</b> Hughes (2001) & Williams (2000) ‘Given the inequality of the positions of the parties involved in the majority of matters before the Commissions, mediation is simply not viable’ (Hughes, p.17).	<b>Early CC Findings 2003*</b> ADB Internal Evaluation	<b>CC Findings 2004</b> Dongelmans & Visal (2004) Traditional dispute resolution mechanisms have largely disappeared and conciliation has only worked in solving a limited number of mainly simple CC cases. • The poor are extremely distrustful of mediation or conciliation by civil servants. In some cases, conciliation can infringe on the civil rights of participants because it forces them to accept decisions they otherwise would not have or to compromise in cases where their rights should be clear.	<b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review	<b>CC Findings 2005</b> Oxfam (2005)
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	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p>
			<p>Parties will use alternate methods for solving land disputes including conciliation at the village and commune level.</p>		
<p><b>Information and Monitoring</b></p>	<p>‘The protocol by which files are assigned to a particular committee member or members for investigation differs from province to province.</p> <ul style="list-style-type: none"> <li>• There is little record of the progress in respect of an individual complaint and no central records system for easy reference.</li> <li>• Files often could not be found or were eventually located in one of the ministry departments’ (Hughes, p. 6).</li> </ul>		<p>‘The current system is too crude to derive proper information that reflects the problems faced by the CC with regard to its own operations and the type of cases that it has to deal with’ (p.9).</p> <ul style="list-style-type: none"> <li>• Although there is information about which stage a case is in there is little detail with which to contextualize the case.</li> </ul>	<p>A more comprehensive monitoring system is needed so CC Secretariats can manage multi-party caseloads and can reach a more rapid and fair settlement of disputes.</p> <ul style="list-style-type: none"> <li>• Disputes which are new versus disputes which are carried over are not always clearly marked.</li> </ul>	



	<p><b>NLDR/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>Public knowledge and/or confidence in the PLDSC is low and civil society organizations have not been invited to join in the proceedings.</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p> <p>There is a lack of public awareness about the new land policy and there is an assumption that public and relevant authorities would provide better cooperation if they were more aware of these issues.</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p> <p>Participants are provided with limited access to DKCC staff, limited information regarding the status of their own case, and limited guidance regarding proper case procedure.</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>Parties are unwilling to register land after the case is successfully resolved.</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p> <p>The announcement about the roles and responsibilities, procedures of the Cadastral Commission and rights of the parties was insufficient. The announcement is a main factor that urges and encourages the dispute parties to involve in the dispute solution and conciliation process' (p.5).</p>
<p><b>Access to the System by Disputing Parties</b></p>	<p>The absence of a precise definition of 'final settlement' can cause confusion where the Commission feels it has solved a case whereas the complainants feel resolution has not been reached.</p>		<p>There is a need for public awareness concerning fundamental rights guaranteed by the land laws.</p>	<p>CC conciliators do not always explain relevant law to each party separately.</p>	<p>It is an expensive process, in terms of both time and money, for victims to bring their cases to the CC and often when they are brought complaints are ignored.</p> <ul style="list-style-type: none"> <li>• Some victims must borrow money to afford all of the fees.</li> </ul>

	<p><b>NLDRC/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p> <p>The groups who are especially vulnerable to land disputes are also those who have limited access to information and influence (women-headed households, poor, indigenous minorities, demobilized soldiers).</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p> <p>‘A Legal Assistance Program can provide effective advice and assistance to poor disputants, especially in the major cases, relieving the burden on CC staff’ (p.3).</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p> <p>Disputants can feel disenfranchised by the Cadastral Commission, as:</p> <ul style="list-style-type: none"> <li>• In multi-party cases, each party had to file an individual form; when the group became too large, the Commission would ‘solve the disputes for a few families among all families’ (p.4).</li> <li>• The accused party was not always involved in the implementation of the CC procedure, ‘and, in some cases, they appointed the representatives who had no right to make decision for them’ (p.4).</li> </ul>
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	<p><b>NLDR/PLDSC 2001-2</b> Hughes (2001) &amp; Williams (2000)</p>	<p><b>Early CC Findings 2003*</b> ADB Internal Evaluation</p>	<p><b>CC Findings 2004</b> Dongelmans &amp; Visal (2004)</p>	<p><b>CC Findings 2004</b> An. IV, LMAP Mid-Term Review</p>	<p><b>CC Findings 2005</b> Oxfam (2005)</p>
<p>Disputing parties who have been previously issued titles (even if it is an illegal title) lose trust in the system.</p>					

## Annex 2: Summary of Case File Reviews

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
1.	-Ek Phnom -Prek Khpob -Khvit	020504001	P-Teacher R-Farmer	Residential land (800 m <sup>2</sup> )	<u>Demanding pre-KR inheritance:</u> Plaintiff asked for disputed land by claiming that it is her inheritance before 1975, from respondent who has occupied land since 1997 without legal document.	Investigative stage
2.	-Bovel -Lvear -Tany	020405048	P-Farmer R-Farmer	Rice field (0.5 hectare)	<u>Demanding pre-reintegration land:</u> The plaintiff used to occupy disputed land in post liberation time. After reintegration of Khmer Rouge to royal government of Cambodia, the area of disputed land is provided to the re-integrated Khmer Rouge authority. At that time, plaintiff's land (disputed land) was redistributed to someone else.	Investigative stage

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
3.	-Bovel -Bovel -TumnobToeuk	020405001	P-Tailor R-Farmer (Neighbor)	Residential land (15 m <sup>2</sup> )	<u>Unclear boundary:</u> Children of two families have conflicted, leading to their parents wish to clarify their boundary, which before there is no fence to separate of the two families.	Parties agreed to divide disputed land into two equal parts.
4.	-Mong Russey -Chrey -DaunTry	020605001	P-Market vendor R-Farmer	Rice field	<u>Unclear legitimacy of use:</u> land left fallow: Plaintiff left his land unused for long time; the village chief thought that the disputed land has not yet be occupied, and distributed it to respondent.	Investigative stage
5.	-Mong Russey -Kear -Kear1	020605003	P-Farmer (ex-village chief) R-Farmer (brothers in law)	Rice field (1891 m <sup>2</sup> )	<u>Overlapping claims to inheritance:</u> Both parties used to live on disputed land, plaintiff left it for a period and then came back to demand the entire piece of land.	Plaintiff received disputed land and rice that existing in disputed land, whereas respondent received 630 000 Riel.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
6.	-Samlot -Mean Chey -Ta Norn	No number	P-Farmer R-Farmer	Plantation land (2.5 hectares)	<u>Unclear legitimacy of use:</u> Plaintiff left land unused for long time, while he let the respondent use it for plantation without any contract. Then, when plaintiff wants to get it back but respondent refused.	Plaintiff agreed to sell disputed land to respondent.
7.	-Samlot -Samlot -Samlot	No number	P-Teacher R-Unknown (brother in law of deputy director of the 5 <sup>th</sup> military region)	Plantation land (1 hectare)	<u>Unclear boundary:</u> Plaintiff claimed that respondent has laid claim to a section of the plaintiff's land in order to increase the value of the respondent's adjoining land (according to plaintiff, there is information from other side)	Administrative meeting
8.	-Battambang -Ratanak -Romcheak 2	020305063	P-Retired provincial officer R-Commune council	Shoulder of road (18 m <sup>2</sup> )	<u>Unclear legitimacy of use: state land</u> Plaintiff used to plant vegetables along the shoulder of road in both the front of his house and the respondent's. While respondent stopped plaintiff from planting on land in front of his house, a dispute occurred.	Investigated, and send to PMCC.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
9.	-Koh Krolar -Koh Krolar -Toul Balang	021303050	P-Farmer (Ex-soldier's wife) R-Village chief	Rice field (2 hectare)	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff claimed the neighbor's land located next to her land; this land was left unused for several years.	Conciliation process but not reach an agreement.
10.	-Koh Krolar -Koh Krolar -Koh Krolar	021303003	P-Farmer (ex-soldier) R-Farmer (Parties are in-laws)	Residential land (1 440m²)	<u>Unclear legitimacy of use: disputed lending</u> Plaintiff lets respondent borrow his land to settle without any contract. When the respondent and plaintiff had a conflict, the plaintiff dismissed the respondent from disputed land.	Plaintiff provided 705.6 m² to respondent, and respondent pay 100 000 Riel to plaintiff.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
11.	-Kg. Trabek -Prey Pon -Prey Krang	140305008	P-a Khmer noodle seller R-Farmer (Parties are relatives)	Shoulder of road (44.28m <sup>2</sup> )	<p><u>Unclear legitimacy of use: state land</u></p> <p>Plaintiff have built a new kiosk for selling Khmer noodle but respondent attempted to stop it, because disputed land is in front of his farm land that he considers it belongs to him, even though plaintiff have used it for years.</p>	<p>Parties realized that disputed land is the state land and will give it back to the state in case of need. Respondent allows plaintiff use disputed land for selling Khmer noodle until she died, and if her children/relatives want to keep use this land; they would have to make a new contract.</p>



N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
12.	-Kg. Trabek -Chrey -Chrey	140305012	P-Farmer R-Farmer	Shoulder of road (small pond)	<u>Unclear legitimacy of use:</u> common pool resources. Plaintiff s and respondent's rice fields both border a common pond. Both regularly use the pond for irrigation. The plaintiff used the pond for fishing. When a water shortage occurred, the plaintiff wanted to continue to use the pond but respondent prohibited the former to use the pond.	Failed conciliations (Later, DKCC heard that parties keep using disputed land as before)
13.	-Kanh Chreach -Kok Kong Keout -Kok Krosaing	140405005	P- Village chief R- Farmer	Rice field (0.92 hectares)	<u>Unclear legitimacy of use:</u> <u>disputed lending</u> Respondent used the disputed land for five years. Plaintiff claims to have allowed the respondent to borrow the land without any contract for use. The respondent claims to possess the land referring to the 2001 land law, which entails that prolonged usage, could lead to entitlement. (There is no information from other side)	Plaintiff received disputed land, and respondent was compensated 400 000 Riel.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
14.	-Kanh Chreach -Preal -Po Proeuksa	140404005	P-Farmer R-Farmer (Parties are Relatives)	Rice field	<u>Unclear inheritance:</u> After their parents died, parties inherited the disputed land as their own. The inheritance division was unclear.	Plaintiff agreed to exchange his end of the land with respondent, so plaintiff received disputed land in the middle.
15.	-Kg. Leav -Kg. Leav -Lek Prammuoy	141104005	P- District official R-Retired primary nurse	Residential land (150m <sup>2</sup> )	<u>Unclear legitimacy of use:</u> Plaintiff's land and third party's land adjoin at the end. Then the third party sold this land to respondent. When the respondent settled his house on this land the plaintiff tried to stop it and claimed that disputed land belongs to him.	Investigative stage
16.	-Kg. Leav -Kg. Leav -Lek Prammuoy	141104008	P- District official R-Farmer	Path way (20m <sup>2</sup> )	<u>Unclear legitimacy of use: right of way</u> Conflict on using path: Respondent is a new landowner who has fenced across the path that plaintiff used to walk. Plaintiff claims the land is his.	Respondent allowed plaintiff keep using disputed land.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
17.	-Kg. Leav -Cheung Toeuk -Cheung Toeuk "B"	141104012	P-Teacher R-Farmer	Residential land	<u>Unclear boundary:</u> Land boundary was not straight. Plaintiff demands to build a straight fence which the respondent considers to encroach on his land.	Respondent agreed to straighten land boundary.
18.	-Mesang -Svay Chrum -Thnal Keng	140504005	P-Farmer R-Farmer	Rice field	<u>Unclear legitimacy of use:</u> drainage Respondent put drainpipe protrudes into land of plaintiff, his neighbor.	Respondent received disputed land, and plaintiff was paid 1800 000 Riel.
19.	Mesang Chresh Tuoltary	140505002	P-Farmer R-Farmer (Cousin)	Pond	<u>Unclear legitimacy of use: state land</u> Respondent claims the pond, stating to have dug it before the Pol Pot regime, to be her own property; but respondent claims the pond is his property because after Pol Pot time he restored the pond to be re-used.	Both parties agreed to send their case to PMCC.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
20.	-Mesang -Trapang Stre -Tbeng	140506001	P-Farmer R-Farmer	Levee	<u>Unclear legitimacy of use: communal land</u> In the past, both parties have used this levee communally. The plaintiff then built a fence in the middle of the levee and respondent planted bamboos on the fence, later extending beyond the boundary.	Respondent agreed to remove his fence from the disputed land, whereas plaintiff agrees to cut down his bamboo trees at border.
21.	-Peam Ror -Neak Loeung -Stoeung Slot	140704010	P-Farmer R-Farmer	Shoulder of Road	<u>Unclear boundary between neighbors</u> Respondent planted trees on unused land that bordered the plaintiff's land and later encroached onto the plaintiff's land. Plaintiff claimed to own the land and trees. The respondent demanded payment for the trees.	Plaintiff received disputed land, and respondent was paid 400 US dollars.
22.	-Peam Ror -Prey Kandeang -Ponley	140704015	P-Farmer R-Farmer	Rice field	<u>Unclear legitimacy of use: disputed lending</u> Respondent have borrowed a piece of land from plaintiff's husband, but when her husband died, the respondent denied the validity of the claimed arrangement.	Respondent received disputed land, and plaintiff was paid 100 000 Riel.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
23.	-Peam Ror -Prek Khsay "A" -Oudorm	140704017	P-Farmer R-Farmer (relatives, sibling)	Shoulder of the road	<u>Unclear legitimacy of use: state land</u> Conflict on using shoulder of the road: Although the disputed land is a shoulder of the road, which is considered as state land, both parties consider it as their inheritance and compete for using it	Investigative stage.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
24.	-Sithor Kandal -Kamprao -Kamprao 1	141205016	P-Farmer R-Farmer (Neighbors)	Paddy levee used as path	<p><u>Unclear legitimacy of use: right of way</u></p> <p>Respondent fences off the Paddy levee which he claims to be his after obtaining ownership of land on either side. The plaintiff and villagers use the path to access their land. When respondent has closed the levee, the conflict occurred. .</p>	<p>Both parties ended the dispute through swearing on a resolution that the path would reopen. However, the path is still closed. The respondent denied the plaintiff's claim that the former would reopen the path after a house was built on the disputed land.</p>

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
25.	-Sithor Kandal -Prek Changkran -Prek Changkran Krom	141205019	P-Farmer R-Farmer (Mother and daughter)	Residential land (0.11 hectares)	<u>Dispute among family members:</u> Initially plaintiff and respondent (plaintiff's daughter) have lived in the same residence, later plaintiff wanted to expel her daughter and sell her residential land without leaving land with her daughter. The daughter claims inheritance rights.	Respondent received one third of disputed land, and Plaintiff received two third of disputed land.
26.	-Sithor Kandal -Chrey Khmom -Lam Long	141205020	P-Farmer R-Farmer	Tertiary canal (6 m²)	<u>Unclear legitimacy of use:</u> <u>common water resources</u> Respondent filled in the canal that plaintiff used to irrigate his paddies. The canal was located in the respondent's land that is connected from the main canal and joint to the plaintiff's land.	Plaintiff received disputed land, and respondent was paid 50 000 Riels.
27.	-Prey Veng -Som Roang -Trapeang Chak	140005003	P-Farmer R-Commune councilors	Rice field (0.53 hectares)	<u>Unclear legitimacy of use: land distribution by local authorities.</u> The commune councilors (respondents) claimed to have provided the disputed land to the plaintiff, but later they demanded the land back in order to sell it. The plaintiff insisted he had a legitimate right to the land.	Plaintiff received disputed land, and respondents (commune councilors) was paid 100 000 Riel.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
28.	-Prey Veng -Som Roang -Trapeang Chak	140005001	P-Farmer R-Commune councilors	Rice field (2.304 hectares)	<u>Unclear legitimacy of use: land distribution by local authorities</u> Commune chief and commune councilors claimed to have provided disputed land to plaintiff for plantation, but later this authority (respondents) demanded the land back for the purpose of selling the land, but plaintiff does not agree.	Plaintiff received disputed land, and respondents (commune councilors) was paid 440 000 Riel.
29.	-Prey Veng -Som Roang -Trapeang Chak	140005002	P-Farmer R-Commune councilors	Rice field (1.19 hectares)	<u>Unclear legitimacy of use: land distribution by local authorities</u> Respondents claimed to have provided disputed land to plaintiff, but later this authority (respondents) demanded that the land for selling, but plaintiff does not agree.	Plaintiff received disputed land, and respondents (commune councilors) was paid 300 000 Riel.
30.	-Kg. Ro -Svay Tayean -Ream Cho	200205024	P-Farmer R-Provincial medical staff	Hillock (49m <sup>2</sup> -96m <sup>2</sup> )	<u>Unclear legitimacy of use:</u> Plaintiff has used disputed land for plantation since 1979. A hillock with a small spirit house is on the land. Respondent now demands to construct a meditation building, and put construction material, sand, and cut down the crop.	Investigated and sent to PMCC. (Because the land is considered state public land)



N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
31.	-Kg. Ro -Thmey -Choup Pring	200205025	P-Farmer R-Commune and village chief	Lower land of streamside (2 500m²)	<u>Unclear legitimacy of use: state land</u> Respondent provided a piece of land that village and commune authorities consider as public land for building water users' association office, but plaintiff has used the land for several years and considers the land as hers	Plaintiff agreed to provide 913.5 m² to respondent, and other remaining of disputed land is allowed plaintiff use and will give back to the state in case of need
32.	-Kg. Ro -Svay Teour -Teahean Loeu	200205030	P-Farmer R-Farmer	Residential land (4 500m²)	<u>Unclear legitimacy of use: disputed lending</u> Plaintiff claims ownership of disputed land, but he didn't settle on that land, he left the land for an extended time. The plaintiff claims to have let the respondent use the land for settling, now plaintiff wants to get it back, but respondent claims ownership of the land.	Respondent received disputed land and plaintiff was provided 200 000 Riel

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
33.	-Rom Doul -Bos Morn -Bos Morn Leou	200306001	P-Farmer R-Farmer (3 persons)	Rice field (2 500m <sup>2</sup> )	<u>Unclear legitimacy of use: possession v. distribution</u> DKCC said that both parties have never used disputed land, but now plaintiff claims to be in possession of it since 1979 while respondent claims it was provided to him by commune chief in 1996.	Received complaint (from PMCC.)
34.	-Rom Doul -Kg. Chork -Chork	200304003	P-Farmer R-Deputy chief of Chantrea district	Residential land	<u>Unclear legitimacy of use: sugar palms</u> Plaintiff has used palm trees on land of his relative and when the land was sold to the respondent the plaintiff demanded to continue using the palm trees. The respondent disagreed.	Respondent received disputed land, and plaintiff was compensated 200 000 Riel
35.	-Svay Chrom -Krol Ko -Prek Tanhoy	200505019	P-Seller R-Farmer (Neighbors)	Pond (180m <sup>2</sup> )	<u>Unclear legitimacy of use: disputed lending</u> Respondent had asked to temporarily make a latrine near the pond of the plaintiff, but then developed it into a toilet and now considers that piece of land as his own.	Plaintiff agreed to sell part of disputed land (6m <sup>2</sup> ) to respondent (conciliation succeed at PMCC.)

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
36.	-Svay Teap -Por Pet -Thlok Pring	200705061	P-Seller (her husband is policeman) R-Retired military officer	Rice field	<u>Unclear legitimacy of use: inheritor v. current possessor</u> After her father died plaintiff found land certificate in the name of her father and demanded this land for herself as inheritance, although it is used by another person (respondent).	Failed conciliation.
37.	-Memot -Treak -Prei	031005136	P-Farmer R-Farmer	Plantation land (15 000m <sup>2</sup> )	<u>Illegitimate sale:</u> Plaintiff let his brother use his land, and then the plaintiff's brother exchanged this land with respondent's land. Finally, plaintiff unaware of the exchange, sued respondent of using his land.	Respondent agreed to give disputed land back to plaintiff (but respondent filed another complaint against the plaintiff's brother)
38.	-Memot -Treak -Somrong Tbong	031005139	P-Farmer R-Farmer	Plantation land (4 900m <sup>2</sup> )	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff has left this land without using it for years, so it has been used by several people in succession. Now plaintiff is demanding it back from the last one (respondent).	Received complaint

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
39.	-Memot -Memot -Chipes	031003045	P-Farmer R-Farmer	Plantation land (2 232m <sup>2</sup> )	Unclear legitimacy of use: Plaintiff has got land from local authority for building his residence but now another person (respondent) is trying to build his house on this land because he claims to have inherited the land from his father	Conciliation failed, at the same time plaintiff lodged another complaint to the provincial court.
40.	-Memot -Memong -Sangke Chas	031004096	P-School director R-Farmer	State land/land for school	Unclear legitimacy of use: state land Respondent attempts to use state land for plantation, which is actually reserved for building a public school.	Investigative stage (parties never ask about the case)

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
41.	-Prey Chhor -Barai -Prei Khcheay	031305008	P-Farmer R-Farmer	Plantation land	<p>Unclear legitimacy of use: disputed lending</p> <p>Plaintiff affirmed that he has occupied disputed land since 1979. Later, he let respondent borrow this land for a plantation, when plaintiff ties to get it back respondent rejects.</p>	<p>Parties agree to stop disputing and accept to seek a decision provided by systematic land registration judgment. if measurement shows that the land is in plaintiff's village it will be provided to plaintiff or vice versa.</p>
42.	-Prey Chhor -Mean -Domnak Pongror	031305005	P-Farmer R-Farmer	Residential land	<p>Overlapping land certificates: Local authority issued land certificates without examination leading to overlapping of neighboring land. (Plaintiff invades the land of respondents at the front part in order to sell his land to a higher price.)</p>	<p>Respondent agreed to give disputed land to plaintiff.</p>

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
43.	-Kg. Cham -Sambour Meas -Prek Chik	030504003	P-Farmer R-Soldier	Plantation land (2 000m <sup>2</sup> )	Demanding pre-KR inheritance Respondent attempted to get back his previous land that was his possession before Pol Pot regime from plaintiff, which claims ownership because he has been occupied it since 1979.	Conciliation but no agreement.
44.	-Tboung -Khmom -Kor -Kbal Boeng -Ses	031605037	P-Farmer R-Farmer	Plantation land (2.29 hectares)	Unclear legitimacy of use: land left fallow Plaintiff said that he inherited disputed land from his father, which was distributed by local authority to his family in 1979. The plaintiff had planted on the land but not regularly. However, the respondent argued that the land was his inheritance before Pol Pot time and he stated that he has occupied the land since 1979.	The disputed land was divided into two parts at the previous boundary for each party.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
45.	-Tboung Khmom -Suong -Suong Lech	031605085	P-Seller R-Seller (ex-commune councilor)	Rice field	<u>Unclear boundary:</u> Dispute about redrawing boundary. One party filled in land, which lead to the erasure a previously clear natural boundary marker, which was a paddy levee. He was accused of invading into the plaintiff's piece of land (5 meters from the boundary).	A new boundary is moved 2.50 meters from the previous one.
46.	-Tboung Khmom -Choup -Slab Kdong	031605086	P-Farmer R-Seller	Residential land	<u>Unclear boundary:</u> Respondent cuts out the trees at border that has been used as natural fence and made a new fence that plaintiff accused him of encroaching into his land (0.80 meters from the boundary).	A new boundary is moved 0.40 meters from the previous one.
47.	-Srey Santhor -Mean Chey -Morn Dob Loeu	031405009	P-Farmer R-Farmer (siblings)	Rice field	<u>Conflict of inheritance:</u> After their mother died, each child wanted to take over the entirety of the land.	Case dismissal: DKCC decided to dismiss the case.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
48.	-Srey Santhor -Prek Romdeng -Prek Romdeng "A"	031405010	P-Farmer R-Farmer (Neighbor)	Residential land	<p><u>Unclear boundary:</u> Respondent built his house on border of adjoining the land of the plaintiff, when plaintiff asked him to move his house from the border in order to build a fence on a straight line, but respondent has rejected.</p> <p><u>Conflict of inheritance:</u> After plaintiff's and respondent's parents died, their children (disputed parties) claimed to divide the disputed land. Plaintiff wanted to divide it into equal parts whilst respondent asked for a bigger part for herself, as her father had recently bought additional land). Plaintiff, respondent, and their parents had lived in the same house (before their parents died, they did not distribute the land between their children).</p>	Case dismissal: DKCC decided to dismiss the case.
49.	-Srey Santhor -Prek Romdeng -Prek Romdeng "A"	031405008	P-Farmer R-Farmer (Cousin)	Residential land (382.5m <sup>2</sup> )	<p><u>Conflict of inheritance:</u> After plaintiff's and respondent's parents died, their children (disputed parties) claimed to divide the disputed land. Plaintiff wanted to divide it into equal parts whilst respondent asked for a bigger part for herself, as her father had recently bought additional land). Plaintiff, respondent, and their parents had lived in the same house (before their parents died, they did not distribute the land between their children).</p>	Plaintiff received disputed land and respondent received money (\$150).



N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
50.	-Stoeung Trang -Preah Andaung -Prek Sdei	031505011	P-Farmer R-Police (Relatives in law)	Residential land and rice field	<u>Conflict of inheritance:</u> Distribution and conflict over legitimate use after their mother has died plaintiff let the respondent use the land, later plaintiff wanted to have it back but respondent refused, explaining he is also legitimate heir of the land	Respondent gave the residential land back to plaintiff. Rice field land was divided into two parts for each party.
51.	-Stoeung Trang -Khpob Ta Ngoun -Au Run	031505015	P-Farmer R-Farmer	Residential land (300m <sup>2</sup> )	<u>Illegitimate sale:</u> Disputed land belongs to three people, but when selling to the plaintiff one of them (respondent) did not make a thumbprint on the purchasing agreement. Now he refuses to have ever agreed to the sale and keep to use the land by settling on it.	Plaintiff received the disputing land and respondent was compensated \$90.

<b>N°</b>	<b>District commune village</b>	<b>Case File No.</b>	<b>Social Background of Disputing Parties (P/R)</b>	<b>Type of Disputed Land</b>	<b>Causes of Dispute</b>	<b>Outcome</b>
52.	-Kg. Siem -Ro Ang -Pror Sam	030606001	P-Farmer R-Butcher/slaughterer	Residential land	<u>Credit dispute:</u> Plaintiff borrowed money from respondent and used his land certificate as collateral. The land is next to the respondent's land. When the contract was overdue, respondent considered as having come into possession of this land, even although plaintiff has now the money to pay back. <u>Illegitimate sale:</u> Disputed land used to be controlled by three people but one of the three sold it to plaintiff while another one of them (respondent) did not agree to the sale and came to settle on the disputed land.	Plaintiff received the disputing land and respondent agreed to receive money (both loan and interest).
53.	-Kg. Siem -Ro Ang -Veal Khsach	030605023	P-Military/Colonel R-Farmer	Residential land (1 250m²)	<u>Illegitimate sale:</u> Disputed land used to be controlled by three people but one of the three sold it to plaintiff while another one of them (respondent) did not agree to the sale and came to settle on the disputed land.	Respondent received the disputing land and plaintiff was compensated \$200.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
54.	-Kong Pisey -Srang -Kraing Khnorng	050305049	P-Seller (representative of 10 families) R-Farmer	Pond	<p><u>Unclear legitimacy of use: right of way</u> Conflict over pathway to the pond: Villagers used to take water from the pond that is on respondent's land. Recently, the respondent restored the pond and built the fence making access to the pond difficult for villagers.</p>	Case dismissal: plaintiff did not participate in the process of resolution.
55.	-Kong Pisey -Prey Nheat -Trapeang Kralanh	050305052	P-Farmer R-Farmer	Plantation land	<p><u>Unclear legitimacy of use: right of way</u> Plaintiff is using land he received after 1979 while respondent was the owner of it before 1975. Now plaintiff constructed a fence that narrowed the customary ox-cart way; respondent and other villagers are used to go across that way. Because respondent repeatedly threatened the plaintiff that he would take back his previous land that plaintiff is trying to get official conformation of his right to the land.</p>	Respondent agreed to give his previous land back to plaintiff, while plaintiff agreed to widen the ox-cart way.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
56.	-Kong Pisey -Prey Nheat -Samdech Ov	050304037	P-Farmer R-Village chief	Plantation land (2.30 hectares)	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff left disputed land unused for longer time; village chief took this land for other purposes and finally distributed it to other villagers, now plaintiff demands this land back.	Land to be sold (money will be distributed to all relating parties).
57.	-Oudong -Khsem Khshan -Domnak Trach	050505001	P-Farmer R-Farmer	Rice field	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff did not use this land for a long time, meanwhile respondent, who lives near disputed land, took it over and farmed on it for several years. Now plaintiff wants to have it back because he considers the land as his inheritance.	Respondent received land. Plaintiff received \$450.
58.	-Oudong -Trach Torng -Krasang Pa Em	050505003	P-Farmer R-Soldier (Relatives)	Rice field	<u>Demanding pre-KR inheritance</u> Respondent attempts to take all his land that was his possession before Pol Pot back. Even though the plaintiff has provided him almost all of his old possession back, the respondent still asks for the rest. The plaintiff claims this is his because he cleared the land.	Investigation process (PMCC. is preparing to dismiss this case).

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
59.	-Bor Seth -Po M'real -Ang Dek Kandal	050105041	P-Farmer R-Farmers (two persons)	Rice field	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff did not use disputed land for long time, respondent who has no land for farming used the land but now plaintiff wants to have it back while respondent refuse.	Plaintiff agreed to give 45 % of disputed land to respondents.
60.	-Bor Seth -Po M'real -Ang Dek Kandal	050505042	P-Farmer R-Farmers (two persons)	Rice field	<u>Unclear legitimacy of use: land left fallow</u> Plaintiff did not use disputed land for long time, landless farmers took the land for use, but now plaintiff wants to have it back while respondent refused.	Plaintiff agreed to give 45 % of disputed land to respondents.
61.	-Samrong Torng -Samrong Torng -Andaung	050704128	P-Farmer R-Farmer	Rice field	<u>Unclear boundary:</u> First, some trees at the border of the rice field was considered as natural fence, but when plaintiff made a new fence along the old one, respondent was accused of having moved the fence into plaintiff's land for 1.5 meters.	Plaintiff agreed to allow respondent move his field boundary 0.5m away from the previous field boundary.
62.	-Samrong Torng -Trapeang Korng -Toul Prich	050705143	P-Seller R-Farmer	Resident land	<u>Unclear boundary:</u> Disputed land had no fence, when respondent built a fence, the plaintiff considered it as encroaching on his land.	Conciliation process.

N <sup>o</sup>	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
63.	-Samrong -Torng -Skous -Au Snor	050705146	P-Farmer R-Farmer	Plantation land boundary (20m)	<u>Unclear boundary:</u> Respondent has farmland bordering disputed land. From day to day the respondent tried to extend his land by further clearing the remaining forest on the disputed land which plaintiff considered his own because he had already partially cleared this land in order to claim it for use	Respondent agreed to give 13m of the land boundary to plaintiff.
64.	-Phnom Srouch -Taing Samrong -Sdok Chrey	050605363	P-Farmer (10 families) R-Senator	Farmer land (40 hectares)	<u>Unclear legitimacy of use: land allocation by local authorities</u> Plaintiffs say that disputed land was their inheritance from before the KR era, and that they have occupied the land for a long time, but the district governor considered it as unoccupied land and provided it to respondent.	Investigation process (respondent did not respond).
65.	-Russey Keo -Toeuk Thla -O Bek Kaam	120704016	P-Housewife R-Housewife	Rice field (820m <sup>2</sup> )	<u>Unclear boundary:</u> Land of both parties has no fence but a small dam. Respondent gradually enlarged her land that plaintiff considers as encroaching on his land.	Failed conciliation (both parties do not have willingness to resolve).

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
66.	-Russey Keo -Phnom Penh Thmey -Tomnab	120704017	P-Police officer R-3 persons (Occupation unknown)	Shoulder of railway	<u>Unclear boundary:</u> Plaintiff bought the land from a journalist who measured the land 30 meters from the center of railroad. Meanwhile, respondents bought the land in front of plaintiff's land from ex-railway worker, which consider 30 meters from the side of railroad. The difference between the starting points of measurement for both pieces of land have led their land claims to overlap. Both parties have legal document confirming their land ownership from local authority	Administrative meeting.
67.	-Toul Konk -Boeung Kok 1 -Phum 9	120403001	P-Retired military police R-Housewife	Resident land	<u>Unclear legitimacy of use: co-tenants</u> Both parties lived in the same house [this is often the case in Phnom Penh as villas were split between families in the immediate post KR period]. Respondent occupied 90% of the house, when plaintiff attempted to renovate his room respondent does not allow.	Failed conciliation. Case was referred to PMCC.

N°	District commune village	Case File No.	Social Background of Disputing Parties (P/R)	Type of Disputed Land	Causes of Dispute	Outcome
68.	-Toul Konk -Toeuk La'ak 2 -Phum 13	120404004	P-Retire medical staff R-Police officer	Parking land	<u>Unclear legitimacy of use: Co-tenants</u> Both parties lived in the same house and used the surrounding land and house gate in common. Later, the respondent prohibited the plaintiff from parking on the surrounding land and entering the gate.	Investigation process.
69.	-Dangkor -Sak Sampov -Khvit	120505018	P-village chief (representative of Khvit villagers) R-village chief (representative of Kamreng villagers)	Hillock for cemetery (0.84 hectares)	<u>Unclear administrative boundary:</u> Disputed land located in the boundary of Kvit and Kam Reng villages. The dispute occurred when a land buyer inquired to purchase the land and each village chief claims that it belongs to their village.	Investigative stage
70.	-Mean Chey -Chak Angre Krom -Prek Talong	120605008	P-Workers, Motor taxi driver, farmers (11 families) R-Ex-worker	Stretch of road (12.6m <sup>2</sup> )	<u>Unclear legitimacy of use: right of way</u> Respondent built fence encroaching on the road, making the road narrow and caused villagers have difficulty in walking.	Failed conciliation, case was referred to PMCC.





### **Annex 3: Presentation of detailed case studies**

#### **CASE I (Kampong Ro district, Svay Rieng province)**

##### *Case Study Description*

This dispute, between a poor family and local authorities arose over a 2500 m<sup>2</sup> piece of land situated along a small stream on the edge of a village in an irrigated rice farming area. Local authorities considered the disputed land to be public land, so in 2005 when the commune chief received a request from both the Ministry of Water and Meteorology and the Commune Water User Community (CWUC) for land for a new CWUC office, he allocated the land in question for this purpose. However, a poor family living nearby claimed to be in possession of this land on the basis that they had used it for several years.

The village chief described the historical use of the land. He claimed the disputed land was once a small stream with an adjacent pond, which had been used by villagers for watering cattle, irrigating rice paddies, fishing and bathing. Gradually, the stream and pond lost public importance because of its growing shallowness to the point where it became more like a marshy area of low-lying land than a stream or pond. Despite this fact, the local authorities (village chief and commune chief) still considered it public property.

The family's claim to the land dates back to the end of the 1990s, when they fell into poverty and sold their farming and residential land. The causes of their poverty related to crop failure, having many dependent children, illness, and debt. According to the village and commune authorities, it was at that time that the woman of the family (the plaintiff) made a request to the village chief to settle on the disputed land. A former commune chief corroborated the village chief's claim that he agreed to allow the plaintiff and her family to live on the disputed land on the condition that they would not sell it and that they would give it back to the state at any time if required. The agreement was verbal and without documentation. The former commune chief quoted the village chief as saying, "...you can live here, but if the state needs the land you have to give it back".

The plaintiff said that she considered it permissible for her to use the disputed land because she had family connections to it. These family connections came about because her sister had lived in a nearby house and had been using the disputed land since the 1990s. Therefore, when the plaintiff became landless, she followed her sister's practice and took up use of the pond and the disputed land (her sister had moved away by this time). The plaintiff never used the land for rice or crop cultivation but did collect fish from the pond. Since she has lived on the land, the plaintiff has considered herself as its legitimate owner.

"...This land [the disputing land] is my grandparents' land...and the land next to my house (adjoined by irrigated flat land) was the state's [Angkar's]<sup>37</sup> land but it was distributed to me... but since the distributed land was small amount, I tried to clear the nearby-unoccupied land (inundated land) and filled in the holes... (Plaintiff).

Later, the plaintiff temporarily moved to Poipet (a town near the Thai border) to seek work, leaving her oldest daughter and nephew in control of the house and the land. It was while she was in Poipet, in May 2005, that the commune chief agreed to allocate the disputed land to the CWUC. When she got notice of the fact that the local authorities had offered a piece of the land her family occupied to the CWUC, she immediately returned home to complain. The plaintiff declared her determination when reiterating her words to the commune authority:

"...Why are you taking my land...I will not give this land to you, Angkar [local authority] or this land can't be taken unless I die because the land is my grandparents and parents' land..."

### *Resolution Process*

The plaintiff made multiple attempts to resolve the problem, however, the final resolution was undertaken by the DKCC (District/Khan Cadastral Commission). The description below sets out the resolution process chronologically.

Initially, after returning to the village, the plaintiff went to meet with the village chief in order to voice her disagreement with the decision. The attempt at resolution failed at this stage because the local authorities insisted on the decision they had made previously. Shortly thereafter, construction started on the disputed land, so the family sought another source of assistance.

On the advice of a relative, the plaintiff contacted the provincial branch of a local human rights NGO and submitted a complaint. At the same time, the plaintiff contacted another relative who was working for the NGO's Phnom Penh central office. The central office then called the director of the provincial branch and requested the director of the branch take immediate action. Upon receiving the request, the NGO's staff felt under pressure to investigate. The NGO's staff conducted an investigation by interviewing villagers, local authorities, and the plaintiff's relatives and supporters. The NGO's investigation report concluded that the disputed land was public property as it was used for a public purpose. The NGO staff stated, "The plaintiff is not really a victim here, because she has a motive to claim this public land [which parties are now interested in]... in order to demand payment or compensation". On this basis, the NGO's staff decided to suspend their involvement in the case and advised the plaintiff to allow the CWUC to use some of the requested land. However, the NGO's decision not to take up the

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<sup>37</sup> It is noteworthy that the plaintiff uses the word *Angkar* (organization) here. *Angkar* was the word that the Khmer Rouge used to describe the state, but it was not generally used to describe the state thereafter. The words usually used today are *roat* (state), or *añarthor* (authorities).

case could also have been influenced by the fact that the relative who referred the plaintiff to the NGO was a Sam Rainsy Party (SRP) activist.

In early July 2005, the plaintiff lodged a complaint with the PMCC against the commune and village authorities. In the complaint, the plaintiff stated her disagreement with the decision that the commune and village chiefs made allowing CWUC to construct an office on land which she had occupied since 1985. In her complaint, the plaintiff demanded (a) to be compensated for the land lost to the CWUC; and (b) to have her ownership of the remaining land acknowledged. The PMCC transferred the complaint back to the DKCC to resolve. It is not clear why the plaintiff submitted a complaint directly to the PMCC when the usual procedure would be to complain to the DKCC, and for the DKCC to refer the complaint to the PMCC if (a) they cannot resolve it, or (b) it falls outside their jurisdiction.<sup>38</sup> The plaintiff claims that she made an earlier complaint to the 'district' but that this complaint was not resolved:

"...I submitted the complaint to the district, but the district did not Chum Reas [resolve]. So I submitted another complaint to the provincial level and the provincial transferred it back to the district telling me that the district will seek justice...but, no, the situation remains the same..." (Plaintiff)

Feeling vulnerable to losing the land, the plaintiff tried to mobilize support from other villagers. The plaintiff collected thumbprints from 60 supporters to include with the complaint, which she lodged at the district. She explained that she did this in order to put pressure on the local authorities and to get them to take her claim seriously when they had previously dismissed her completely. According to the DKCC, the plaintiff and her relatives went house to house to collect thumbprints. The village chief said that the plaintiff gained villagers' support by claiming her land was grabbed. However, the effort failed as a majority of her supporters refused to testify to the DKCC staff. According to the village chief, after he explained that the land was public property and not her inherited land, the plaintiff's supporters revoked their support. One witness, who thumb-printed the plaintiff's petition, explained that she provided her thumbprint because the plaintiff convinced her that the plaintiff's land was being grabbed. However, the witness said she withdrew her support when she later found out that the plaintiff had used land near to the disputed land but not the disputed land itself.

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<sup>38</sup> According to the law (ANK 47/02, Art. 10) the DKCC should refer disputes to the PMCC for resolution if they involve state public land; state public land being defined relevantly as "any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores." As such, there would be an argument that the pond and small stream claimed by the plaintiff were state public land. There would, however, also be an argument that such small bodies of water do not meet the definition of state public land.

The DKCC followed the procedures of the cadastral commission including informing the public of the case and requesting the respondents to answer to the complaint. About two weeks following the receipt of the complaint, the commune chief submitted a letter of response stating that the disputed land was state property so the plaintiff had no right to compensation. In the response letter, the commune chief claimed that the plaintiff had submitted the complaint against local authority because she was incited by a political party representative (SRP). The DKCC investigation report concluded (a) that the disputed land was in fact public property and (b) the plaintiff was unable to be persuaded by the DKCC on this point as she was being incited by others. As such the DKCC requested support from the PMCC in resolving the case.

At the end of September 2005, the DKCC resumed activities by convening formal conciliation meetings. After two unsuccessful meetings, the plaintiff explained that she realized the local authorities' position was strongly supported by the representative of the DKCC. After the initial conciliation meetings, the plaintiff thought that she would pursue the case at the provincial level, but the DKCC staff told her that the PMCC would only tell her the same thing and that she would just be wasting more time, effort and money on the case. This led the plaintiff to feel increasingly under pressure to give up her demand for the land and accept an agreement presented by the DKCC. The plaintiff said that in the first conciliation meeting, she requested \$3000 in exchange for her labor for clearing the land; but the request was rejected. In the following conciliation meetings, she claimed that she was told about the land law, but that she did not understand the explanations she was given.

#### *Outcome*

This case was finally settled by an agreement brokered during the third conciliation meeting convened by the DKCC. According to this agreement the CWUC was allowed to occupy 1000 m<sup>2</sup> of the disputed land while the plaintiff was allowed to "borrow" the remaining land from the local authorities on the condition that she would give it back when the state set in motion its plan to dig a channel on the land or otherwise demanded its return. In exchange, the CWUC committed itself to filling up a ditch that they dug on the plaintiff's remaining land.

According to the plaintiff, she felt this agreement was not completely voluntary and felt forced into accepting it.

In the absence of support, the plaintiff was not able to challenge the firm view held by the DKCC and the local authorities that she was wrongly claiming state land and should accept settlement on the terms offered. Though other villagers appeared to have some initial support for her position, this support evaporated once the supporters had direct communication with the authorities.

Although the plaintiff agreed to a compromise solution, she indicated that she felt uncomfortable with the outcome and that she was treated unjustly. At the time the case study was conducted (8 months after reaching the agreement), the CWUC had not yet met its obligation to fill up the ditch. The plaintiff is considering lodging a new complaint with higher-level institutions if the CWUC does not fulfill their end of the agreement.



## **CASE II (Phnom Sruoch district, Kampong Speu province)**

### *Case Study Description*

This dispute arose over approximately 30 to 40 hectares of degraded forest located in one commune of the district. The dispute occurred between villagers and the “development unit” of the third military region. The development unit of the military claimed the land, which they considered unoccupied state land. From their perspective, the land in question was rightfully theirs because the Ministry of National Defense (MND) had allocated it for use as a development area for demobilized soldiers in 1995.

On the other hand, villagers (16 – 18 families) from at least two villages asserted that the disputed land was their legitimate possession because they claimed to have been cultivating the land from dates ranging between the late 1980s and early 1990s. In addition, at least three families among the 16-18 families were in possession of official receipts acknowledging that they had made applications for recognition of their possession of the lands in question, one in 1996 and the other two in 2000.<sup>39</sup> Being in possession of these receipts, the villagers felt that they were legitimate landowners. However, from the point of view of the military unit, the land was still considered state land.

In the 1980s and early 1990s, the situation surrounding the disputed area was insecure, due to continued armed clashes between Khmer Rouge and government soldiers. Nevertheless, farmers more or less successfully continued to cultivate rice and even to clear new land for agriculture. The villagers who cleared new land did not have any documents to prove their possession though they said that they cleared land after informing local authorities. Villagers said they cleared as much new land as possible, but according to a commune chief, each family was only officially allowed to occupy a maximum of 5 hectares. It seems some of the villagers were driven to clear new land for occupation and use, because they lived in “new villages”, which were formed in the mid-1980s, and as such missed out on receiving an ‘official’ allocation of land by the state.

During the 1980s and 1990s land was systematically allocated to demobilized soldiers as the initiation of ‘development projects’ for soldiers was initiated by the Ministry of National Defense. In compliance with the development policy of the government, in 1995 the Ministry of National Defense (MND) approved a development project in the third region of the military allocating land for retired, demobilized and disabled soldiers. The third region was then given the task of identifying a specific area of land for the project.<sup>40</sup> However, neither the exact area

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<sup>39</sup> These receipts (*bangkan dei*), though not legal title, are a common form of evidence of land ownership.

<sup>40</sup> The size of the requested land for the project was not clearly known. According to a local human right NGO staff based in Kampong Speu, the military unit did not take immediate steps to demarcate the land when it was assigned to them in the mid 1990s.



of land designated for the project nor the number of soldiers involved is clear. The project was meant to implement some development activities such as constructing roads, canals and plantations, and to reserve some pieces of land for distribution to soldiers and their families. While it is not clear how much land was finally assigned to the unit, according to a military official from the third region the proposed land allocation was approved by both commune and district authorities. The decommissioned soldiers were to have the choice of getting either materials (such as electric generators and sewing machines) or a piece of land. In the end, the official said, almost all of the decommissioned soldiers decided to take the materials instead of land that they considered as infertile. This meant that much of the land ended up being used by the military development unit (those who are still serving in the military) for agriculture.

There is crucial information which could not be verified by official documentation: a) the exact time villagers occupied the land, some claiming initial use it in the mid 1980s and others in early 1990s; b) how the military unit came to occupy the disputed land and whether or not their development land allocation was approved by local authorities. One of the plaintiffs recalled the words of a deputy provincial governor during a resolution meeting at the provincial town:

"...It [the identification of the land boundaries by the military unit] was not approved by local authorities such as commune, district and province. It was made by the third region military itself."

Since the late 1990s, the military development unit launched repeated attempts to clear the villagers from the land in question. From the villagers' perspective, these represented acts of intimidation and threats. From the military's perspective, these were legitimate acts designed to stop encroachment on military property. Villagers said that though they were prevented from using the disputed land in the morning, in the evening when the military officers were not present, they continued farming and undid the earthworks that the military were carrying out during the day.

At the end of 2003, however, the military unit imposed a ban and refused any access to the disputed land. The villagers said that they were threatened with violence if they did not comply. The situation escalated in early 2004, when the military started to clear the land (including the rice fields belonging to the villagers) in order to construct a canal.

According to a complaint filed by villagers against the military development unit, a villager's cottage was burned down at this time. Villagers believed that the land was being guarded by the officers of the military not for the officers themselves, but for an unknown person with a speculative purpose. These activities prompted 16 families to file an official complaint about the development unit's representative with his superior, the chief of the third military region.

### *Resolution Process*

The dispute resolution process is divided into two phases. In the initial phase, dispute resolution was done at the local level with the presence of the commune chief and the military development unit representative. The first phase of the dispute involved about 300 villagers and the third military region's development unit. In late 1997, there was a partial resolution of the case. At this time, some villagers agreed to receive money and vacate the land, while some others resisted. Those who resisted were not satisfied with the agreement because they thought that the compensation offered was too small and that the representative of the military unit was simply grabbing their land in the name of the unit.

The second phase started in early 2004, at this time the dispute involved 16-18 families and the military unit's representative. From January 2004, villagers filed complaints and submitted them to various institutions starting from the commune council and reaching up to the Ministry of National Defense in Phnom Penh.

In mid-January the representative of the development unit and the plaintiff made an informal attempt to resolve the dispute. As a result, the representative of the military promised to look for new land in exchange for the land that had been destroyed by the development unit (according to a complaint submitted at a local human rights NGO based in the provincial town). Yet, after waiting for nearly a week, there was still no action by military.

Later, in January 2004, the plaintiff claims to have sent a complaint to the district office of LMUPC, which houses the DKCC. The plaintiff has an official complaint which was endorsed by the commune chief dated January 2004. However, contrary to what is indicated in the plaintiff's documents, the DKCC claims not to have received a complaint at that time. The official complaint on file with DKCC is dated July rather than January 2004. The plaintiff said that he had lodged at least two complaints with the district office of LMUPC, but he claimed that there was never any action taken by the DKCC. The plaintiff complained about this inaction on behalf of the local authorities saying:

"...It is really strenuous [to talk about]...I was very scared [of losing land] but they ignored...the commune, the district, the province are scared of the soldiers that is why they did not resolve [my case]...."

In February 2004, a complaint was submitted to the chief of the third military region's development unit. According to the plaintiff, after having witnessed the military destroy the villagers' paddies, decided to collect thumbprints from those who had been affected to include with his complaint. Still, the plaintiff, himself did not bring the complaint to the chief of the development unit, he sent it through his friend.

It is unclear when the various different affected families acquiesced. According to the complaint lodged with District Cadastral Commission (DKCC), there was only

one plaintiff, our key informant. The plaintiff explained that some families decided to accept small amounts of money because they felt threatened by the military and were worried about losing the land without compensation. The plaintiff also said that the dispute resolution process was very expensive. As such, we can assume that cost may also have been a factor in encouraging the various other parties to settle.

In late February 2004, one day after the plaintiff's hut at the disputed land was burned down, a resolution was attempted at the commune council, involving a commune council member and a military police officer from Phnom Penh whom the plaintiff claimed was the real landowner behind the military development unit. The dispute was not resolved at this meeting because no agreement could be reached as to an acceptable amount of compensation for the land.

Next, a day after the meeting at the commune office, the plaintiff submitted a complaint to the provincial branch of a local human rights NGO. After having received the complaint, the NGO staff issued an official letter requesting intervention from the DKCC, and went to the disputed land to investigate and requested the DKCC to take action. When the NGO's intervention proved fruitless, the plaintiff sought help from other sources and lodged a further complaint with a member of the National Assembly based in Kampong Speu province. This approach was also unsuccessful.

In May 2004, the previously reluctant commune chief issued a letter for the plaintiff claiming that the plaintiff as well as nine other families, had been using the land since 1982. This letter was attached as support for later complaints to the DKCC and other authorities. The commune chief had previously refused involvement because he felt as though it would be over-stepping his authority. Having written support from the commune chief appeared to be an important factor in the plaintiff's ability to get higher level officials to take his complaint seriously.

The DKCC reports that they received an official complaint from the plaintiff and initiated an official investigation in July 2004. The DKCC claims that an investigation was initiated at this time but was not completed because the DKCC officer was unsuccessful in his attempts to locate the plaintiff. The investigation report shows that the DKCC was able to interview the military officer (respondent). The plaintiff claimed to be unaware of any action or investigation by the DKCC.

Having not completed the investigation stage, the DKCC took no further action in relation to the dispute. Further dispute resolution efforts were undertaken by various other persons and institutions, however, the exact course of these are unclear.

At around the same time, it seems that the intimidations ceased for a while and several farmers, including the plaintiff, continued to use the land (perhaps because of the NGO's pressure):

"The [NGO] representative came to the village and told villagers to use the disputed land.... The resolution by that NGO was informal and not effective, it could only suspend the threats for a while..." (Plaintiff)

In mid 2005, the military tried to clear the land again, leading the plaintiff to approach the provincial governor's office to file another complaint and request assistance in resolving the dispute. In response, two deputy provincial governors arranged three conciliation meetings between the plaintiff and the military officer. These conciliation attempts failed even though two deputy provincial governors (in separate meetings) supported the claim of the plaintiff and tried to find compromise solutions acceptable to both sides. However, the military declined to pay the compensation demanded and continued to use heavy equipment to level the fields.

Following these events, one of the deputy governors informally recommended that the plaintiff turn directly to the Ministry of National Defense (MND) to seek help instead of going to court where he said the plaintiff would be sure to lose a lot of money.

In early September 2005, the plaintiff submitted a complaint to the MND, traveling to Phnom Penh at least three times to ensure that his complaint had been forwarded to the relevant person within the ministry. According to official documents provided by the plaintiff, the complaint was forwarded to the Deputy Prime Minister and the Co-Minister of the MND. The initial contact with the ministry was arranged with the help of the deputy provincial governor who had advised the plaintiff to complain to the MND.

Following a comprehensive interview with the plaintiff and having received the documents supporting his claim, the Inspector for Dispute Resolution of the MND came to the disputed land and visited the plaintiff's house. Three meetings between the parties and the representative of the MND took place over the ensuing weeks. During the third meeting, both parties reached an agreement. However, the plaintiff felt that resolution was unfair, as he was given no options besides accepting the agreement. The alternative, he felt was to lose the land without compensation, as he was presented with further avenue to pursue his grievance. The plaintiff reported the representative of the MND as saying: "*...the [MND] will help to resolve. You should take the money. Land disputes are difficult [for the military] to resolve....*"

### *Outcome*

In early 2006, during the final round of negotiation, the plaintiff agreed to accept the compensation offered and give over the land. Although the plaintiff accepted this agreement, he felt the outcome was unjust. It was just something he had to accept because he had exhausted all other options. Fear was also a factor in the resolution of this dispute, as the plaintiff and his family felt understandably intimidated by the military. Though he received much more money than the other villagers who acquiesced earlier, the compensation he received, he said, was not enough to buy new land of similar size. He also claimed that the dispute resolution process (informal fees, travel and the like) cost him an amount equivalent to almost 50% of the compensation paid. *"They [the military] took my land to sell it..."* he said *"[they] will sell it at a higher price. 'Development' is when they take my land and give it to someone else."*

### **CASE III (Phnom Sruoch district, Kampong Speu province)**

#### *Case Study Description*

This land dispute also occurred in Phnom Sruoch district of Kampong Speu province. The size of the land in the dispute was about 40 hectares. Ten families and a member of the Senate were involved. The plaintiffs, 10 families from a nearby village, claimed the disputed land was their inherited land from the pre-war era, while, the Senator also claimed legitimate possession of the land.

The overall situation in this commune is not different from Case II. The majority of residents in this commune are military families. In the 1980s, the state implemented a land re-distribution policy, and nullified pre-war land possession. However, in the early 1990s, the situation of land management and occupation in the district was confusing, specifically after repatriated people from the border refugee camps claimed their pre-war land back. Individuals also conducted informal land exchanges to obtain their pre-war land or preferred land. Since the situation in the district was unstable, it was suggested that the local authorities pretended to know nothing about individuals' private exchanges. A former commune chief referred back to the time in 1993 when at least seven people were killed because of disputes over inherited (pre-war) land.

In the early to mid 1990s, a larger part of the district was a Khmer Rouge stronghold and a densely wooded area. However, villagers claimed that the land in the area had the potential to be cultivated. In contrast, a commune chief said that the area was wooded and very unsafe. He said that no one dared to travel across or use the disputed land in the 1980s and early 1990s with the exception of some parts of the land along a stream. In this specific case, at least ten families used the land along the stream in the 1980s, and later on, some villagers extended their cultivation activities to surrounding land.

This dispute occurred in two phases. In the first phase, which started as early as 1999, the military tried to annex land on which 80 families claimed to be cultivating rice. Villagers resisted and tried a range of strategies to resolve the issue. On more than one occasion this involved protests in front of the National Assembly. Members of the Human Rights Committee of the National Assembly and the Ministry of National Defense intervened in the case; finally, the disputed case was settled in favor of the 80 families. Seventy of the families living to the west of the road then sold their land to district military officers at a very low price. However, ten families to the east of the road refused to sell because they considered the land as essential for their livelihood.

Selling the land at only 150,000 Riel is not an option for us. It's about having so many children... and thinking about how there will be enough land for them? So selling land is absolutely impossible, go to any area of land, it belongs to someone; [villagers] cannot clear [new land]...this land is Chinese property, the land over there is also the Chinese, sooner or later the Khmers will not be able to find any land to live on!" [Man, age 42, representative of the 10 families]

The second phase of the dispute concerned the remaining ten families. However, the initial dates for this dispute process are not clear, as some people claim that it started in 2002 and others 2003. This dispute arose when the ten families who did not sell their land complained against a man who was guarding the disputed land. The ten families claimed the disputed land was their pre-war land, recognizable because there was a large palm tree and a small pond in the disputed land.

In 1998, according to the former commune chief, the district governor decided to give a section of land (500m x 800m) to a member of Senate in Phnom Penh. A year after receiving the land, the Senator submitted a letter of request for the management and use of the land to the commune (commune A) in which the disputed land was located<sup>41</sup>. According to the commune's register book (a book for registering request letters for land management and use), twelve people were registered as the owner/occupant of the forty-hectare piece of disputed land (all of them are relatives of the member of Senate). After lodging his request with the commune council, the Senator hired a guard<sup>42</sup> to look after the land.

The occupation history of the land since 1999 is contested. From the various persons who were interviewed we assume that the 10 families started using the land with increasing intensity once it became safe to do so in the late 1990s. The current dispute appears to have flared up as the 10 families began to clear more land for farming early 2005. In response to this the Senator's guard took action:

I put in poles but he took the poles out and threw them away, it was repeated three times, I was exhausted (as I put poles in this day but they were taken away the next day) and people have nothing to eat indeed. In addition, I work hard from day to day until full of sweat. Why do you (the guard) take my things away like this? [Woman, age #, representative the 10 families]

Some violent interactions ensued (on or around 12 March 2005):

He hurt my feeling, and as a woman, I dare not beat him. But, I did so before and then he took the gun out immediately, as he thought I would be scared of the gun. I'm old enough why should I be afraid of a gun, so he took his rifle to point on my chest. I held the barrel upward quickly to avoid being shot accidentally, I kicked with my leg at him and wrestled with him. Meanwhile, my son stopped his hand-tractor and shouted, "You want to mistreat my mother! You needn't to do so but you may do something

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<sup>41</sup> In 2000, the disputed land, originally located in commune A was transferred to be under the administrative control of the nearby commune (commune B).

<sup>42</sup> The land guard is a retired soldier from the local district.

with my body”, then he takes off his shirt. At the same time, my husband felt horrible, and cried out, “You want to rape my wife, but now look at my long knife!” He held in his hand with a sharp knife, so the guard would become frightened even though he had a gun with him ... If the land belonged to him, I wouldn’t care, but it is actually mine. [Woman, approximate age 58, representative the 10 families]

Both of these quotes reflect a strongly held belief among villagers that rights to property accrue to those who work it. This attitude brought the families into conflict with the guard, who, as the representative of the Senator, embodied an opposing set of norms with regard to land – namely that it is a commodity, which can be allocated at the discretion of the state and its various representatives. Neither of these views reflects the land law, which restricts both the right to gain ownership of land through use, and sets limits on how and by whom land can be allocated.

### *Resolution Process*

After the initial confrontation described above, it appears that the guard retreated and went to live some distance further along the road. On 25 March 2005, the families went to complain to a member of the commune council (commune A). Noting that the land in question was being contested by a high ranking official, however, the commune councilor, said that there was little she could do and that the families should “skip addressing her, and go to someone who may be able to solve [their] problem.” It should be noted that the chief of commune B also refused to be involved in the dispute.

In May 2005, when it became clear that their attempt to resolve their dispute at the local level would be unsuccessful, the villagers sought advice from a human rights NGO with offices in the provincial capital. An officer at this NGO advised them to seek a lawyer and go to DKCC. He also undertook an on-site investigation and wrote a letter to the DKCC requesting its intervention.

The DKCC did not ask the villagers for money but required them to fill in complaint forms individually. As they were illiterate and did not understand about how to fill in the complaints this caused quite some difficulty - the DKCC refusing to receive the incorrectly completed forms. The villagers mentioned it was very hard for them to lodge the complaints, as they had to pay a lot of money for travel and photocopying. The complaint was finally lodged (on 16 June 2005) did not list the Senator, but rather the guard and a number of locals who had assisted the Senator as respondents. The researchers observed when comparing documentation that paperwork required by the respondents was filled in the handwriting of the DKCC official, perhaps indicating that the DKCC assisted the respondents to deal with the claim more than they did the plaintiff.



On 23 June 2005, the DKCC sent notification of the dispute to the listed respondents.

On 10 July 2005, the guard responded to the DKCC's letter. On 17 August 2005, another of the named respondents replied. At that time, the DKCC undertook an initial investigation, which included conducting interviews with witnesses on the same day. On the basis of this investigation, the DKCC reached the conclusion that none of the listed respondents were in a position to participate in the Cadastral Commission (CC) process as they made no claim to being the real owners of the land. At this stage, the DKCC, in accordance with the law,<sup>43</sup> tried to refer the case to the Provincial Cadastral Commission (PMCC); however, an official from PMCC requested that the DKCC try to solve the case before referring it.

On 13 October 2005, the DKCC issued the last of several letters to the Senator, requesting his participation in the proceedings. Up until June 2006, when the research team spoke to the DKCC they had not received any response to this letter, though they did hear (through the guard) that the Senator was ill and that he would respond when he had the opportunity.

### *Outcome*

The dispute case was not resolved, though the DKCC had conducted investigations and sent letters of notification to the respondent.

Absent of any method to compel the high ranking respondent to participate in the dispute resolution process, and not feeling empowered to pass the case on to the PMCC the DKCC did not pursue the case. The case lay idle from October 2005 through until June 2006 when the research team spoke to the DKCC. The 10 families continue to farm the land but their status remains unclear.

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<sup>43</sup> Article 10 of Sub-decree 47/02 requires that a DKCC “shall submit the dispute file to the PMCC if the chief determines (...) that it is impossible for the that it is impossible that an equitable resolution can be reached at the District/Khan level [because] one of the parties is a high ranking authority...”

## Annex 4: Party survey instrument

Case Number:	
Interview Date:	Province:
Interviewer's code:	District:
Starting Time :	Commune:
Finishing Time:	Village:

1 **Respondent name:** \_\_\_\_\_

2 **Age:** \_\_\_\_\_ years old

3 **Sex:** (Circle one)

Male = 1

Female = 2

4 **Education:**

Primary = 1

Lower Secondary = 2

Higher Secondary = 3

University = 4

No education = 5

5 **How big is the size of the disputed land?**

\_\_\_\_\_ m<sup>2</sup>

6 **For what is the disputed land used?**

Rice field = 1

Chamkar = 2

Residential = 3

Forest land = 4

Others = 5

**7 Since when is the disputed land in possession of the *interviewed* party?**

\_\_\_\_ \_ (Year, e.g. 1995)

**8 How came it into their possession?**

Cleared	=	1	
Inherited	=	2	
Bought	=	3	
Distributed	=	4	
Others(Specify)			_____

**9 Does the *interviewee* have any document proving the possession?**

Yes	=	1	
No	=	2	→ Go to Q.12

**10 If yes, since when? (*multiple answers possible*)**

Before 1992	=	1
Between 1992 and 2001	=	2
After 2001	=	3

**11 If yes, the document is issued by whom? (*multiple answers possible*)**

Ministry of LMUPC	=	1
Provincial department of LMUPC	=	2
District office of LMUPC	=	3
National Cadastral Commission	=	4
Provincial Cadastral Commission	=	5
District Cadastral Commission	=	6
Village chief	=	7
Commune chief	=	8
Commune council	=	9
District governor	=	10
Provincial governor	=	11
Others (Specify)		_____

**12 When did the dispute start?**

Month: \_\_\_\_\_; Year: \_\_\_\_\_

**13 Did the *interviewee* do something before going to the DKCC?**

Yes = 1  
 No = 2 → Go to Q.16

**If yes, which of the following steps did the *interviewee* undertake?**

*(multiple answers possible)*

Talking to the other party = 1  
 Asking the village chief = 2  
 Informing the commune authority = 3  
 Go to the court = 4  
 Go to police = 5  
 See elders = 6  
 Others (Specify) \_\_\_\_\_

**14 When were these steps taken? *(multiple answers possible)***

	Month	Year
Talking to the other party		
Asking the village chief		
Informing the commune authority		
Go to the court		
Go to police		
See elders		
Others		

**15 Who complained to the Cadastral Commission (CC)?**

Interviewee = 1  
 Another party = 2

**16 When was the complaint lodged with the CC?**

Month: \_\_\_\_\_; Year: \_\_\_\_\_

**17 Did CC staff come to the disputed land?**

Yes	=	1		
No	=	2	→	Go to Q.22
DK	=	3	→	Go to Q.22

**18 When did CC staff come for the first time?**

Month: \_\_\_\_\_; Year: \_\_\_\_\_

**19 When did CC staff come for the second time?**

Month: \_\_\_\_\_; Year: \_\_\_\_\_

**20 When did CC staff come for the third time?**

Month: \_\_\_\_\_; Year: \_\_\_\_\_

**21 Has the CC staff interviewed *the interviewee*?**

Yes	=	1
No	=	2

**22 Did the CC staff measure the disputed land?**

Yes	=	1
No	=	2
DK	=	3

**23 Did the CC staff interview other persons?**

Yes	=	1
No	=	2
DK	=	3

**24 Did the CC staff explain the conciliation process to the *interviewee*?**

Yes	=	1		
No	=	2	→	Go to Q.28

**25** If yes, did the CC staff explain the conciliation process clearly to the interviewee?

Very clear	=	1
Somewhat clear	=	2
Not so clear	=	3
Not clear at all	=	4

**26** Did the interviewee feel that he understood the process?

Very clear	=	1
Somewhat clear	=	2
Not so clear	=	3
Not clear at all	=	4

**27** Did CC staff explain something of the land law or any other legal text related to land to the interviewee?

Yes	=	1
No	=	2

 → Go to Q.30

**28** If yes, did the interviewee understand the explanation?

Very clear	=	1
Somewhat clear	=	2
Not so clear	=	3
Not clear at all	=	4

**29** Did the interviewee know that he had the right to have a friend, lawyer or NGO representative assist him in the conciliation process?

Yes	=	1
No	=	2

**30** Did the interviewee have someone who assisted in the conciliation process?

Yes	=	1
No	=	2

 → Go to Q.33

**31** If not, did interviewee want to have someone assist in the conciliation process?

Yes	=	1
No	=	2

**32 Did the *interviewee* have a chance to choose conciliators?**

Yes	=	1	
No	=	2	→ Go to Q.35

**33 If yes, was the *interviewee* able to choose somebody who he trusted?**

Absolute trust	=	1	
Somewhat trust	=	2	
Somewhat distrust	=	3	
Absolute distrust	=	4	

**34 Did the *interviewee* feel that the CC staff did a proper investigation of the case?**

Yes	=	1	
No	=	2	
DK	=	3	
Refuse to answer	=	4	

**35 Did the *interviewee* give something to the CC staff beyond of necessary information and documents?**

Yes	=	1	
No	=	2	→ Go to Q.40

**36 If yes, what did he give?**

Money	=	1	
Others things	=	2	→ Go to Q.40

**37 If money, which amount?**

Less than 5\$	=	1	
5-20\$	=	2	
21-50\$	=	3	
More than 50\$	=	4	

**38 Did the *interviewee* feel obliged (forced) to give money to the CC staff?**

Yes	=	1	
No	=	2	
Refused to answer	=	3	

**39 Did the CC staff ask for something else beyond of necessary information and documents?**

Yes = 1  
No = 2 → Go to Q.43

**40 If yes, did they ask for money?**

Yes = 1  
No = 2 → Go to Q.43

**41 If yes, which amount?**

Less than 5\$ = 1  
5-20\$ = 2  
21-50\$ = 3  
More than 50\$ = 4

**42 Did the *interviewee* feel the outcome of the case was fair?**

Very fair = 1  
More fair than unfair = 2  
As much fair and unfair = 3  
More unfair than fair = 4  
Not fair at all = 5

**43 Did the *interviewee* feel that the CC staff treated him fairly?**

Absolute fairly = 1  
Somewhat fairly = 2  
As much fair and unfair = 3  
Not so fairly = 4  
Not fairly at all = 5  
DK yet = 6

**44 Some disputing parties felt forced to agree in something, others said they did not feel forced to agree at all. Related to the agreement that has been reached how has the *interviewee* felt when having agreed?**

Very much forced = 1  
Somewhat forced = 2  
Quite free = 3  
Totally free = 4

**Thanks**





**Annex 5: Case file review instrument**  
**Case information sheet**  
*(District/Khan Cadastral Commission DKCC)*

1. Case number: \_\_\_\_\_

2. Complainant name: \_\_\_\_\_

3. Complainant background: \_\_\_\_\_

4. Respondent name: \_\_\_\_\_

5. Respondent background: \_\_\_\_\_

6. Province: \_\_\_\_\_

7. District: \_\_\_\_\_

8. Commune: \_\_\_\_\_

9.

10. Village: \_\_\_\_\_

11. Date complaint lodged with DKCC: \_\_\_\_\_

12. Current status:

Complaint received = 1

Investigation = 2

Administrative meeting = 3

Conciliation = 4

Solved = 5

Forwarded = 6

Type of land:

Rice field	=	1	Residential	=	3	Others	=	5
Chamkar	=	2	Forest	=	4			

13. Brief description of facts:

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14. Immediate cause of conflict:

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15. Outcome of dispute:

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Procedural steps in for CC				
A. Complaint lodged	Yes = 1	No = 2	No record = 3	Date
14. Is the complaint in a correct form?				
15. Does the complaint contain all necessary information?*				
16. Has the complaint been sealed?				
<b>Comment:</b>				
<p><b>Q.15</b> – necessary information means information about:</p> <ul style="list-style-type: none"> <li>• complainant (<i>name, age, profession, residence address, disputed land</i>)</li> <li>• defendant (<i>name, contact details</i>)</li> <li>• dispute description (<i>by the claimant</i>)</li> <li>• documents (<i>provided by the claimant</i>)</li> <li>• witnesses (<i>name, contact details</i>)</li> <li>• signature / thumbprint of the complainant</li> <li>• received by; date of receipt; number of the file</li> </ul>				
B. Notice of complaint posted within 5 working days	Yes = 1	No = 2	No record = 3	Date
17. Was the notice of complaint posted within 5 working days at DKCC?				
18. Was the notice of complaint posted within 5 working days at land?				
19. Was the notice of complaint posted within 5 working days to the named respondent?				

<b>Comment:</b>				
<b>C. Response to complaint by other party</b>	<b>Yes = 1</b>	<b>No = 2</b>	<b>No record = 3</b>	<b>Date</b>
20. Did CC receive response to the complaint from the other party?				
21. Is the response to the complaint in the correct form?				
22. Does the response contain all necessary information?*				
23. Has the response been sealed?				
24. Was the response to the complaint posted at DKCC?				
25. Was the response to the complaint posted at the disputed land?				
26. Was the response to the complaint provided to the complainant?				
<b>Comment:</b>				
<b>Q.22</b> necessary information means information about:				
<ul style="list-style-type: none"> <li>• defendant (<i>name, age, profession, residence address, disputed land</i>)</li> <li>• other defendants (<i>name, contact details</i>)</li> <li>• dispute description (<i>by the defendant</i>)</li> <li>• documents (<i>provided by the defendant</i>)</li> <li>• witnesses (<i>name, contact details</i>)</li> <li>• signature / thumbprint of the complainant</li> <li>• received by; date of receipt; number of the file</li> </ul>				

<b>D. Investigation</b>	<b>Yes = 1</b>	<b>No = 2</b>	<b>No record = 3</b>	<b>Date</b>
27. Was the official for investigating the case assigned?				
28. Did the investigator visit all parties?				
29. Was the disputed land measured and demarcated?				
30. Did the investigator interview witnesses?				
31. Has a written report about the investigation been made?				
32. If yes, is the written report prepared in standard form?				
33. Does the investigation report contain all necessary information?*				
<b>Comment:</b>				
<b>Q.33</b> necessary information means information about:				
<ul style="list-style-type: none"> <li>• number of the file; location of the disputed land; description of the dispute</li> <li>• results of the investigation</li> <li>• documents</li> <li>• summary of the evidence provided by the disputing parties</li> <li>• conclusions</li> <li>• signature of the investigator</li> </ul>				

E. Administrative meeting	Yes = 1	No = 2	No record = 3	Date
34. Was a meeting of DKCC convened?				
35. Were ad hoc members invited? ( <i>profession &amp; function of them?</i> )				
36. Were the parties informed of the meeting 5 days in prior?				
37. Was the conciliation procedure summary provided to the parties?				
38. Was the conciliation procedure summary explained to the parties?				
39. Were 3 conciliators appointed by agreement? ( <i>profession &amp; function of them?</i> )				
40. Were 3 conciliators appointed by DKCC chief? ( <i>profession &amp; function of them?</i> )				
41. Was a conflict of interest declared?				
42. If so, was the conflict interest dealt with?				
43. Has one member of the conciliation committee received training?				
44. Is one member knowledgeable of local circumstances?				
45. Did the conciliators agree a schedule for conciliation with the parties?				
46. Did the disputing parties select somebody who assisted them? ( <i>profession &amp; function of them?</i> )				
47. If yes, has been used the correct form for listing the assisting persons?				
48. Does the listing of the assisting persons contain all necessary information?				
49. Has the listing of the assisting persons been signed by the disputing parties?				
50. Has the listing of the assisting persons been sealed?				
<b>Comment:</b>				



<p><b>Q.48</b> necessary information means information about:</p> <ul style="list-style-type: none"> <li>• number of the file; location of the disputed land; description of the dispute</li> <li>• name, address of the complainant or defendant</li> <li>• name, address, profession of the assisting person</li> <li>• received by, date of receipt</li> </ul>			
<b>F. Conciliation</b>	<b>Yes = 1</b>	<b>No = 2</b>	<b>No record = 3</b>
51. Did conciliation meeting occur?			
52. Was the meeting held at or near the disputed land?			
<i>The agreement was reached</i>			
53. Is the agreement in written form?			
54. If so, was the agreement read to the parties?			
55. Is the case disposition report written?			
56. Is the case disposition report in the correct form?			
<b>57.</b> Does the disposition form contain all necessary information?*			
58. Is the case disposition report signed by the disputing parties?			
59. Is the case disposition report sealed?			
60. Was the case disposition form posted?			
61. Was the settlement reported to PMCC?			

62. Was the settlement reported to the district office of LMUPC?					
63. Did the district office of LMUPC confirm the settlement with parties?					
64. Did the district office of LMUPC started to conduct the procedure for registering land?					

<p><b>Comment:</b></p> <p><b>Q.57</b> necessary information means information about:</p> <ul style="list-style-type: none"> <li>• number of the file; location of the disputed land</li> <li>• name, age, profession, address of the disputing parties</li> <li>• description of the agreement</li> <li>• attached documents</li> <li>• received by, date</li> </ul>													
<p><b>No agreement reached</b></p>													
<p>65. Was the non-conciliation report completed?</p>													
<p>66. Is the non-conciliation report in the correct form?</p>													
<p>67. Does the non-conciliation report contain all necessary information?</p>													
<p>68. Is the non-conciliation report signed by the 3 conciliators?</p>													
<p>69. Is the non-conciliation report sealed?</p>													
<p>70. Has the case been forwarded to the PMCC?</p>													
<p>71. Has the case been forwarded in the correct form?</p>													
<p>72. Does the form of forwarding the case contain all necessary information?</p>													
<p>73. Is the form of forwarding the case signed by the chief of the DKCC?</p>													
<p>74. Is the form of forwarding the case sealed?</p>													

**Comment:**

**Q.67** necessary information means information about:

- number of the file; location of the disputed land, description of the dispute
- name, age, profession, address and current situation of the disputing parties
- description of the conciliation process, opinion of the conciliators
- attached documents
- received by, date

**Q.72** necessary information means information about:

- forwarding DKCC; receiving PMCC; number of the file; location of the disputed land
- name, address of the disputing parties
- reasons of forwarding the case
- attached documents
- prepared by, date

<b>G. When non-competency has been determined</b>	<b>Yes = 1</b>	<b>No = 2</b>	<b>No record = 3</b>	<b>Date</b>
75. Was the case forwarded to PMCC on request from both parties?				
76. Was the case forwarded to PMCC on request from one party?*				
77. Was the case forwarded to PMCC because of conflict of interest?*				
78. Was the case forwarded to PMCC because of dispute involves state public land?*				
79. Was the case forwarded to PMCC because of military involved in the dispute?*				
80. Was the case forwarded to PMCC because of involvement of high ranking party?*				
81. Was the case forwarded to PMCC because of involvement of more than 2 parties?*				
82. Was the case forwarded to PMCC because the disputing parties could not find a satisfying solution between each other?*				

**Comment:**

**Q.76** requested by the claimant or defendant?

**Q.77** conflict of interest related to whom?

**Q.78** What kind of state land?

**Q.79** What kind of military (function, unit)?

**Q.80** What kind of high-ranking party? (level, function, institution)

**Q.81** Who are these parties? (social background)

**Q.82** What was the obstacle? What did the complainant or defendant demanded?

*Revised Version of 07 June 2006*

## **Annex 6 – Cadastral Commission Performance Enhancement Initiative Concept for Phase II Pilot**

In the body of this report, the research team recommended that the NCCS “commence a scaled-up pilot with a focus on whole districts.”

What follows is an outline of a work-plan for implementing a pilot along the lines recommended.

### **A. Determine ballpark budget for initiative**

The scope of the initiative will depend on the budget available. Though the budget will need to be flexible to the needs of the initiative, an initial indicative budget should be allocated in order to guide the planning process.

### **B. Determine performance criteria**

It will be important to determine performance criteria for the pilot. As discussed in the body of the report, some changes are recommended over the current indicator system. Suggested performance indicators might be:

- Average length of time taken to close a case [with breakdowns for multi-party cases and cases involving powerful figures];
- Average length of time cases currently pending have been open [with breakdowns for multi-party cases and cases involving powerful figures];
- An indicator of client satisfaction (as measured by a regular party or citizen survey).

### **C. Select pilot districts**

As mentioned above the pilot would work at the level of whole districts with the aim being to clear the entire backlog of cases in pilot districts. An assessment of the impact of the pilot would ideally compare pilot districts with selected control districts. Districts should be selected to represent a range of DKCCs (with regard for example to predominant land types (rice / chamakar / forest); remoteness; prevalence of land disputes etc. This will require some statistical analysis.

A minimum of 10 pilot districts with 10 matching control districts, in 3 provinces would be recommended. A greater number of districts could be included depending on budget.



**D. Conduct baseline study in these districts**

In order to measure progress, a baseline study should be conducted in each of the pilot and control districts. This will be necessary because the existing data being collected by the NCCS will not be sufficient to determine a baseline with regard to the agreed performance indicators. Along with the conduct of the baseline, recommendations would need to be made about what information the pilot and control districts would need to collect in order to report against the agreed performance indicators.

**E. Determine package of pilot interventions**

There is a need to agree on a package of pilot interventions which is ambitious in pushing forward the work of the CC, but not too complex to implement or evaluate.

A list of possible interventions was provided in the recommendations contained in body of this report. This should by no means be seen as a definitive list. In order to get buy in to the pilot, it would be ideal to discuss these ideas with CC staff at various levels in order to get their views as to the workability of the various options.

An annotated version of this list follows:

Group 1 Initiatives – Staffing & Payment

1. *Provide extra skilled staff to support pilot DKCCs. These could come either from the PMCCs or in the form of contract staff.*

One of the key problems identified in our research was that many DKCCs have insufficient staff to conduct their dispute resolution work. The idea, of having mobile teams who provide specialist dispute resolution assistance to the DKCCs has already been discussed within the Ministry of Land. In the context of the pilot, these staff should be assigned the pilot districts as a matter of priority. Internal discussions within the Ministry suggest that retired DKCC chiefs might be hired for this work. It may be worthwhile pairing these experienced staff with younger staff who could gain experience in CC work in this manner.

2. *Contemplate a mix of base and incentive payments, calculated perhaps not on the basis of individual cases but on the achievement of set performance targets.*

A system of performance payments for dispute resolution work may create perverse incentives for DKCC staff. It is, however, acknowledged that DKCC staff have low salaries and that they have competing demands on their time. Rather than designing phase II of the pilot around case based performance payments it is recommended that staff at pilot DKCCs receive an increased base salary in line with RGC policies on priority mission groups. Recognition (financial or otherwise) for PMCCs / DKCCs which meet performance targets might also be considered.

3. *Increase the extent to which the NCCS and the relevant PMCCs are involved in managing the performance of the pilot districts.*

Management of the pilot should be coordinated by the NCCS through the PMCCs. The research team found that one of the most effective aspects of the original pilot related to the work planning and follow up which the PMCCs conducted with regard to the pilot cases. These methods should be institutionalized in the pilot districts.

#### Group 2 Initiatives – Procedure & Outreach

4. *Include a policy that cases will be referred up to PMCCs if they cannot be resolved within a set period of time.*

In order to ensure that cases do not lie dormant at the DKCC level for extended periods of time, the NCCS should implement a clear policy that cases which cannot be resolved or dismissed within a certain period of time must be referred to the relevant PMCC.

5. *Pilot non-binding arbitration at the PMCC/DKCC level.*

Piloting non-binding arbitration at the PMCC or DKCC level could provide an interim step between current conciliation practices, and the adjudication offered (in theory by the NCC). A non-binding arbitration procedure for the PMCC might provide for the following:

- *Prior to referring a case on to NCC, the PMCC shall issue parties with a written advisory decision which represents their assessment of a lawful and equitable resolution of the case. The parties are free to accept or reject this decision. If both parties accept the decision then the case is resolved. If one or both parties does not agree to the decision with 7 days, the case shall be submitted to the NCC/PMCC for further processing.*
6. *Train a pool of community members from a diversity of backgrounds to serve as ad hoc conciliators and resource people;*

One of the key findings of the research was that parties felt a higher degree of confidence in the dispute resolution process when they had the chance to choose a conciliator who they trusted. DKCC staff, however, explained that there were few people with skills to assist in conciliation. One way to deal with this issue is to invest in the capacity of a pool of potential conciliators at the district level. Basic land law and dispute resolution training could be provided to such persons. This would have a two-fold function – training them to be potential conciliators, but also independent resource people for parties involved in disputes.

7. *Facilitate community monitoring of and feedback on the performance of the DKCC in the pilot districts.*

This concept responds to the concern that people have limited awareness of or trust in the cadastral commissions. To address this issue, DKCCs could conduct regular outreach activities, where they make public reports, solicit feedback and provide information on land management issues, thus enhancing their accountability and responsiveness to local citizens and their representatives (especially commune councilors).

A more sophisticated design, which would be possible if a sufficient number of districts (say 24) were included in the pilot, would allow different combinations of initiatives to be piloted in different districts as set out in the matrix below:

*control districts*	Districts piloting group 1 initiatives only
Districts piloting group 2 initiatives only	Districts piloting group 1 & 2 initiatives.

**F. Write up project document and provide full information to participating DKCCs on the pilot**

Once agreed upon in principle pilot activities would need to be transformed into a budgeted project document.

Participating DKCCs will need to be fully briefed on the operating principles for the pilot. This information sharing should extend beyond the POMLUPC chief and include other key staff at the district level.

**G. Conduct regular internal reviews of the pilot**

Regular internal reviews and information should be conducted during the life of the pilot.

**H. Conduct a final external review of the pilot**

*[After 12 months of operation]*

A final external evaluation of the pilot should be conducted to compare progress against the baseline.

## Contact

Land Management and Administration Project (LMAP)  
Ministry of Land Management, Urban Planning and Construction  
(MLMUPC)  
# 771-773, Monivong Blvd.,  
Khan Chamcarmon,  
P.O. Box 2291  
Phnom Penh, Cambodia

GTZ Team Leader  
Dr. Franz-Volker Müller  
Phone: +855 (0)23 21 38 17  
Fax: +855 (0)23 22 41 34  
e-mail: [franz-volker.mueller@gtz.de](mailto:franz-volker.mueller@gtz.de)  
Internet: [www.gtz.de](http://www.gtz.de)

Authors:  
Daniel Adler  
Kristina Chhim  
Heang Path  
Hak Sochanny

The World Bank  
Public Information Center  
70 Norodom Blvd.  
TEL: (855 23) 210 922 / FAX: (855 23) 210 373  
[www.worldbank.org/justiceforthe poor](http://www.worldbank.org/justiceforthe poor)  
Justice for the Poor Team Leader: Daniel Adler  
email: [dadler@worldbank.org](mailto:dadler@worldbank.org)



**THE WORLD BANK**

Deutsche Gesellschaft für  
Technische Zusammenarbeit (GTZ) GmbH  
Dag-Hammarskjöld-Weg 1-5  
65760 Eschborn/Germany  
Phone: +49 (0)61 96 79-0  
Fax : +49 (0)61 96 79-11 15  
E-Mail: [info@gtz.de](mailto:info@gtz.de)  
Internet: [www.gtz.de](http://www.gtz.de)

