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ADHOC

ALTERNATIVE DISPUTE RESOLUTION TOOL



PREPARED BY
Cambodian human rights and Development association

2013

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Table of Content

	Pages
STEP 1: MEET	2
1. The roles of the mediator	2
2. Studying the details of the conflicts	3
3. How to invite conflict parties	4
3.1 Invitation letter	4
3.2 Contact via phone	5
3.3 Face-to-face meeting	5
4. Lobbying the parties who are unwilling to participate in the mediation process	5
5. How to create a safe environment for parties to talk	7
 STEP 2: TALK	 8
1. How to set basic rules	8
2. Encouraging parties to solve conflicts based on their interests.....	10
3. Leading the parties in the discussion	10
4. How to deal with emotions	11
5. Change of parties’ perceptions	11
 STEP 3: SHARE	 14
Introduction.....	14
1. Establishment of a concept of change.....	14
2. Explanation about legal and social consequences	14
3. How to overcome power imbalances between parties?	15
4. How to encourage parties to make offers?.....	16
 STEP 4: DECIDE	 18
Introduction.....	18
1. How to obtain involvement from a third person?	18
2. How to ensure neutrality of the third person helping to reach a fair decision?	19
3. How to proceed the resolution process with a third person in a just and neutral manner?..	20
4. How to establish a neutral decision-making forum?.....	21
 STEP 5: STABILIZE AND IMPLEMENT	 22
Introduction.....	22
1. Drafting of agreement.....	22
2. Documentation.....	23
3. Use of Witnesses.....	24
4. Starting the implementation of the agreement.....	24
5. Official agreement.....	24
 ANNEX	 25
Annex (A): Roles and rules of mediators	25
Annex (B): Asking questions to collect information	26
Annex (C): Short stories and proverbs.....	26
Annex (D): Setting arrangements	27
Annex (E): Method to select a third person.....	28
Annex (F): Forms to be used	29

PREFACE

We have different mechanisms, such as negotiation, mediation or conciliation, to solve the disputes or conflicts outside the court system. This fits with the culture of Cambodian people countrywide, both in rural and urban areas, since they have used these mechanisms for centuries. However, they do not have any formalized tools or documents for solving conflicts in the future. Currently we find very few documents related to Alternative Dispute Resolution (ADR).

Therefore the ADR Tool that we have prepared can be shared and used in ADR processes with a view to respecting human rights, law and gender-sensitive principles, through the five steps of the Tool. All steps rest on the will of the parties to participate in the processes—they cannot be coerced into using the Tool.

Furthermore, the ADR Tool can be mixed with other mechanisms, such as mediation, conciliation and arbitration (however, “arbitration” here has a different meaning from arbitration by state authorities).

Brief explanation of each mechanism:

Negotiation: It is a common method for solving conflicts by the parties or their representatives. They discuss how to find good solution and reach agreement without the intervention of a third party.

Mediation: A third party intervenes in a free, confidential and neutral way. He/she is referred to as “mediator.”. He/she helps the parties discuss and see their interest in finding solutions to the conflict. But the mediator is neither a judge nor an arbitrator because he/she does not have any coercive powers in the process. He/she only provides advice towards results.

Conciliation: It is a process by which a neutral third party (called a “conciliator”) , who is selected by the parties to the conflict, facilitates conflict resolution. He/she is not a judge or an arbitrator because he/she does not have any coercive powers. He/she cannot make a decision on behalf of the parties, but he/she can provide advice or suggest solutions to stabilize and settle the conflict.

Arbitration: It is an Alternative Dispute Resolution process whereby the parties submit their complaint to a neutral third party (called an “arbitrator”) who is vested with legal powers to settle the conflict. The arbitrator hears answers from the parties and checks all relevant evidence before making his/her decision. But this method can be used only if the parties to the conflict agree to resort to it. Successful resolution and implementation depends on the shared belief that the decisions taken are fair. Arbitration is widely used to settle employment or commercial conflicts.

In this Tool, “arbitration” is intended differently because all of the decisions of third party arbitrators have to be agreed upon by both parties first (See tool. (15) and (18) below.

In conclusion, the objective of the ADR Tool is to allow the parties to use a range of third party mechanisms to reach successful solutions to their conflicts.

STEP 1: MEET

Introduction

Meeting is one of the most important steps to enable the parties to seek mediation voluntarily. There may be challenges because when two people are involved in dispute, one party may not be willing to attend meetings on mediation. However, all disputes can be submitted to (third party) mediators, who use their skills, methods or tools to ensure that the parties are able to become closer and meet each other for discussion, so that the disputes can be resolved successfully. At this stage, some important points are worth stressing, namely:



1. The roles of the mediator

The mediator's role is to help conflict parties to find resolution by themselves, out of their own will, and to control mediation processes to ensure that the two parties can participate in negotiation to find successful resolution. A mediator must be neutral: he/she is not a judge and does not make decisions on behalf of the parties. A mediator should listen to both parties and, as he/she is equipped with ADR skills, can work with local authorities (commune/sangkat councilors) as well as Maison De Justice. The objective of this Tool is to describe the roles of mediators in the ADR Program in detail, and the processes that clients consider as acceptable (see annex "A").



2. Studying the details of the conflicts

To achieve successful mediation, clear understanding of the conflict is absolutely necessary. The presentation of collected information is extremely important for the first meeting, for the mediator to understand the details of conflict between the parties. What's the mediator should study on background of the conflict of both parties?



2.1. Parties' reasons for joining the mediation: The mediator must first ask for information from the parties about their purposes, ensuring that they do want to resolve the conflict through mediation processes. He/she must also attest that their participation in the mediation process is voluntary (free).

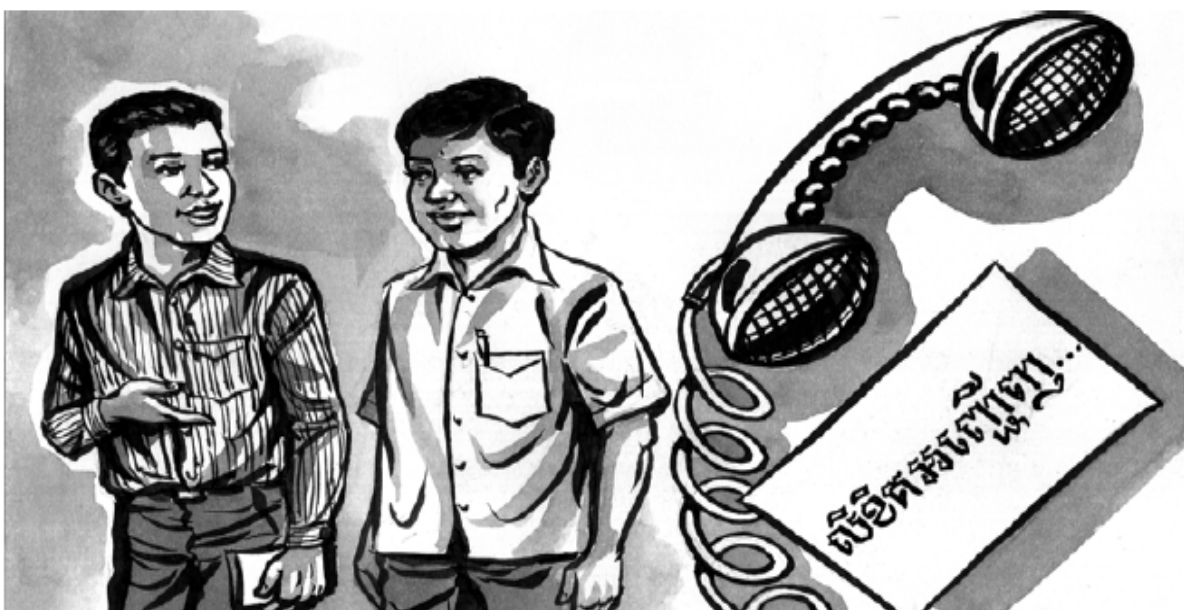
2.2. Research information on the case: After finding that the conflict may be resolved through legally accepted mediation, the mediator must research information on the conflict based on formula of 5W+ 1H in order to identify:

- Causes of conflict and the problems facing the parties;
- Activities that the parties have conducted so far;
- Involved persons (spouses, siblings, relatives, neighbors). The mediator must find whether other parties are involved in the conflict. If this is the case, it is necessary to look for them and do research;
- Interests of the parties. The understanding of interests must be focused on how much interest the parties have in the conflict. The understanding of how much interest each party has helps the mediator to be able to explain or justify reasons to the parties on the importance of resolution through mediation;
- The culture and customs in the area. The mediator must learn about the customs prevailing in the area where the parties live, by focusing on the habits of communication, interactions, social hierarchies and beliefs. More importantly, the mediator must get to know whether the people in the area have experienced mediation methods for resolving conflicts and in what way (see in annex "B").

3. How to invite conflict parties

It is difficult to invite the parties to undergo the mediation process at a particular time and place. Therefore, this Tool provides the mediators with various options that they have at their disposal to invite conflict parties to resolve the conflict.

3.1 Invitation letter



In case the mediator works in a formally recognized organization or institution, then the organization or institution must create a format of invitation letter containing some important information, such as name, sex, current address of invited parties, purpose(s) of the meeting, time and place (see in annex "F").

3.2 Contact via phone

In case the mediator has close relationships with the parties, and regards him/herself as an easy-going person, then it is easier to contact the parties by phone rather than to send a formal letter.

3.3 Face-to-face meeting

A face-to-face-meeting with the parties is the best way to invite them as the mediator may use this opportunity to build confidence and to explain details to parties who are reluctant to get involved in the mediation process. In case one of the parties is hard-headed or stubborn, the mediator may meet that party two or three times to encourage him/her to engage in mediation.

Note: When inviting the parties, the mediator must tell the parties to avoid some behaviours, such as wearing official uniforms, bringing cameras, ICOM, telephone, or weapons or hazardous materials. The mediator should invite the parties at least three days before the meeting (but not more than one week in advance).

➤ Challenges

- Various methods are needed to encourage and inspire different people;
- Letters viewed as too formal may lead the conflict into more complication;
- Participants may change their mind.

4. Lobbying the parties who are unwilling to participate in the mediation process

Volunteer participation of the parties in the mediation process is a key factor to a successful intervention. Therefore, this Tool aims to help the mediator coordinate the relationship with unwilling parties so that they will be able to find benefits in participating in the mediation process. The mediator should communicate challenges that could arise if the party does not participate in mediation. Sometimes, the mediator must lobby the parties before giving an invitation letter, and sometimes also after giving the letter, depending on the situation.

The following arguments (advantages of mediation), based on previous experiences, are helpful for the mediators who have to lobby an unwilling party:

- The party does not spend much time to resolve the conflict;
- Each party does not need to spend money to resolve the conflict, where other systems require the parties to use their own money for this service;
- After the conflict is solved, both parties may resume their relationship as before, with no resentment;
- The mediator is impartial and cannot serve any party's interest since the resolution is based on the decision of the parties;
- The mediator must explain to the parties the systematic process of mediation. For instance, the mediator may spend some money to hire legal advice, pay tax for the complaint, and include other expenses of services;

- The mediator may tell the party about his/her weaknesses such as (based on my observation, I found that you have some illegal issues such as...); consequently, if the other party files complaint against you, you will face consequences. However, in this cases, the mediator must be careful not to appear as threatening or partial;
- The mediator can use proverbs (for example, “A long way takes a lot of food, a long night dreams a lot”);
- If necessary, the mediator may cooperate with the authorities or powerful persons to invite the party who is unwilling to join the mediation process, but these authorities/powerful persons are not allowed to participate in the mediation process itself.



Example (case of domestic conflict)

The mediator must encourage spouses to realize that it is useful to engage in the longer mediation to serve their own interest. If a husband is interested in resolving conflict with his wife to avoid divorce, this provides their opportunity. If an agreement of divorce is made by both husband and wife before mediation, this case can be raised for discussion before the case is brought to the court.

➤ Challenges

- It is hard to persuade influential or powerful parties to resolve their conflict through mediation if they are unwilling to do so;
- Parties can believe that their decision/negotiation will bring about a better outcome than mediation;
- Interference from powerful people.

5. How to create a safe environment for parties to talk

Creating a safe environment for discussion helps both parties feel confident that the mediator really gives them an equal chance to raise their issues and speak about their problems. The following are some good examples that the mediator should follow:

- Place. It is necessary to choose a quiet, clean and neutral place, such as a pagoda, the house of Buddhist ceremonies in villages, a school, the mediator's house, etc. In particular, it is necessary to find a place where both parties agree to meet;
- Seating arrangement. The mediator must prepare seats in advance for discussion, such as a big table, chairs, a U-shape seating arrangement, and avoid the possibility of hazardous materials being used by the parties when they get emotional (such as stones or glasses);
- It is necessary to also prepare a separate room for discussion with each party separately;
- Seating arrangements suggesting hierarchy between parties and the mediator must be avoided (see in annex "F").
- Time setting. The time for discussion must be appropriate—either in the morning or afternoon, as agreed by both parties. Likewise, the duration of mediation must not be longer than 3 hours. Break time must be offered once during or after the 3-hour discussion, by providing refreshments and also by turning the conversation, joking to lighter matters in order to relieve any tension. But the meeting can be extended if the process has almost finished;
- Building confidence. The mediator should take notice, give respect and listen to the parties carefully when they are expressing their concerns so that both parties feel confident in the mediator. And also he/she should pay attention to and welcome them when they arrive and leave;
- Impartiality. In order to make the parties feel calm, the mediator may confirm that he/she comes here, not to support either party, but to help both parties find a resolution together.



STEP 2: TALK

Introduction

Talking is the second step in which both parties must exchange their information and may raise their main problems as well as purposes. Therefore, to encourage them to participate in discussion and reach an agreement, the mediator must try to help the parties bring about a coherent and non-hostile discussion. The mediator may attempt the following:

- Help reduce hostility and emotion between parties;
- Help the parties to engage with major problems;
- Coordinate the parties to talk to each other even when they would rather ignore one another;
- Help the parties confirm and express their ideas;
- Help the parties waver in their stubbornness, allowing them to agree to other alternatives which are impartial;
- Help the parties create and analyze alternative ideas for sustainable resolution.



1. How to set basic rules

Establishment of internal rules is inevitably fundamental before the discussion is carried out. When the parties receive mediation services, it is necessary for both parties to keep their discussion peaceful. Therefore, to ensure both parties respect the internal rules, the internal rules must be formulated based on the agreement of both parties and the mediator must merely help to propose some ideas or suggest some weaknesses as follows:

- **Names:** Both parties are required to confirm what name they want to be called in the meeting and what name the mediator should call them. This is related to culture. For instance, whether they should be called Uncle, Aunt, Nephew, or Older Brother, Older Sister, etc. based on the customs of their people and community.
- **Gestures:** Rude gestures in the meeting like pointing the finger straight at another party's face or knocking on the table must not be allowed. All

participants should turn off their telephones, not smoke, and not take photos.

- **Time:** A specific time must be set for each party—both parties have equal time to speak and they should not go over this time.
- **Speaking and listening:** While one party is speaking, the other party must not interrupt or cut them, and must listen carefully for clear understanding. Polite words should be used. Harsh or insulting words must not be allowed. The discussion is mainly focused on possible solutions to the conflict rather than on raising conflict problems. Raising reasons for parties protecting themselves or making their stance legalized must be avoided.
- **Acknowledgment of minutes:** The minutes of the meeting must be acknowledged by both parties through their signatures or thumbprints. After the meeting, both parties must sign or lay their thumbprints on the minutes.
- **Checking:** Before starting the discussion, the mediator must re-check whether both parties fully comply with the internal rules as agreed. Furthermore, the mediator must remind them of the rules as soon as it is necessary, especially before each party begins talking.

➤ Challenges

- It may be difficult to make powerful parties follow the internal rules;
- Parties may think that internal rules are infringe on their rights;
- Parties may not have any idea for creating internal rules by themselves.



2. Encouraging parties to solve conflicts based on their interests

In the introduction, the mediator should inform both parties that he/she will help them discuss their problems to find solutions. The mediator wants them to solve the conflict peacefully rather than in a place where they might confront one another like enemies. This Tool aims to help the mediators show both parties the benefits of peaceful, negotiated resolution. The Tool also helps the mediators to realize the parties' aspirations and to recognize their fears and their problems in order to clearly understand the root causes of the conflict, and hence reach a good solution. To clearly understand the root causes of problems and conflicts, the mediator should ask a number of questions as follows:

- What do you think is the root problem causing the conflict?
- What do you think of this conflict?
- If any party has difficulty in speaking, the facilitator can ask: Why are you reluctant to speak about the problem?
- Where does this problem emerge from?
- How can you respond to this problem?
- After that, what happens(ed)?
- How was the situation before the conflict happened?
- If the problem is not resolved, what will happen?
- The mediator needs to create a conflict matrix (tree diagram of conflict) to make sure that he/she and the parties understand the conflict very well.



3. Leading the parties in the discussion

The mediator plays a vital role in leading the conflict parties in discussion. Therefore, this Tool aims to help the mediator coordinate an interesting, constructive discussion between the

parties by diverting their attention from the problems and focusing it on long friendship or good experiences that they have had together before and on future relationships:

- Start the discussion by reminding them of their previous good relationships (if relevant), which would be mutually beneficial to rekindle and keep for the future;
- Present some difficulties that they might face if they still firmly hold on to their position against the other party;
- Regarding domestic violence, the mediator should avoid mentioning “my rights or your rights,” but should raise points related to happy family life, which is a common desire and will hopefully bring the two parties closer;
- The mediator must help the two parties to find a collective solution, support one another and create innovative ideas together.

➤ Challenges

- Party think only of their advantages;
- Party conceit they are win



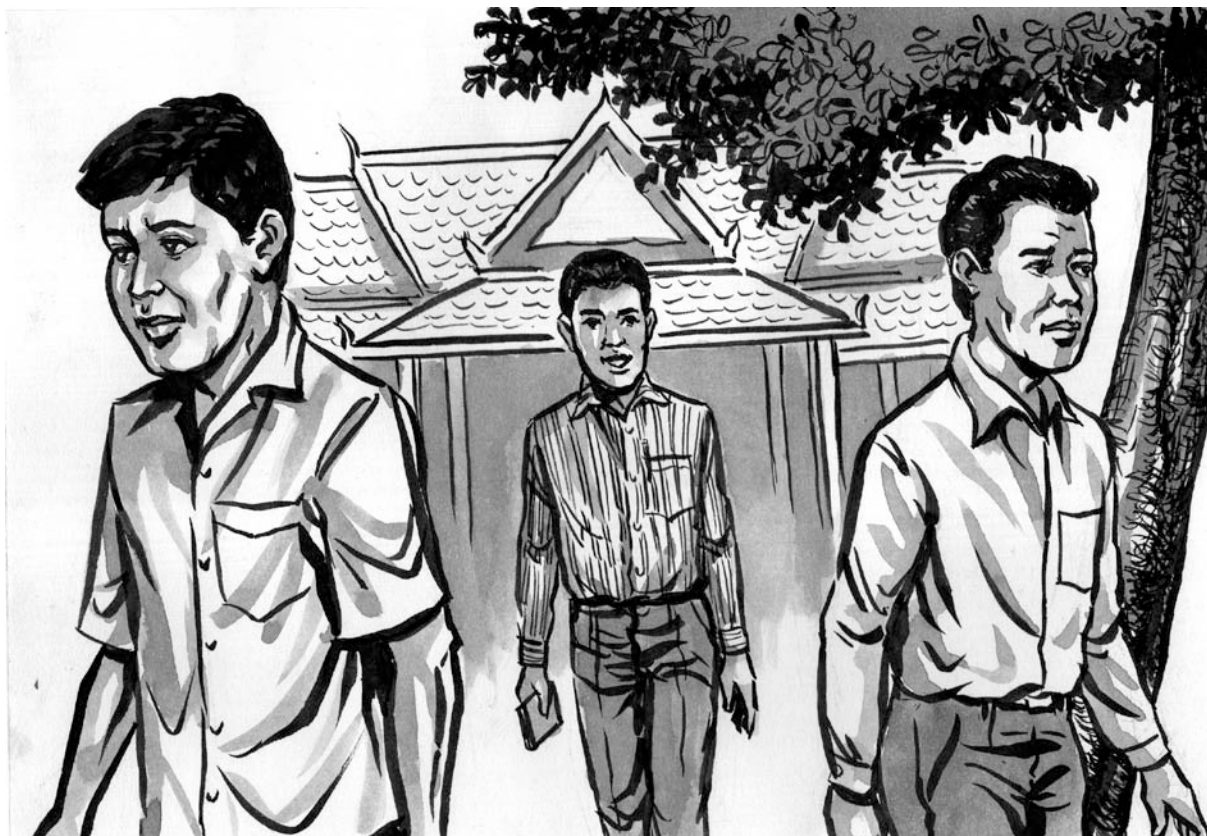
4. How to deal with emotions

Even though the mediator is skillful, conflict resolution through mediation often provokes emotion between parties. Thus, this Tool helps the mediator prepare him/herself for this and helps him/her to relieve agitation or emotion:

- Getting ready for extreme emotion. The mediator should not expect the mediation process to be always peaceful—it should be expected that the parties will show their emotion (cry for instance);
- Additional understanding. When emotion is provoked by a party, the mediator should not apply the internal rules to put pressure on that party who arouses agitation. The mediator must immediately find out the cause of problems that lead

the party to such agitation by using active listening skills and interpreting the use of harsh language. Open questions may be used such as: “Why are you upset?” A soft voice must be used to draw attention to the anxiety felt by the party and to get to the bottom of it;

- Encourage the conflict parties to come up with different ways to reduce emotion;
- Request for a separate discussion with the parties;
- Tea and coffee or refreshment break;
- Tell short jokes (when possible);
- Suspend the mediation process when both parties feel extremely frustrated by allowing them to go back home until their emotion subsides. After that, the discussion can be resumed.



- Challenge:
 - It is sometimes difficult for the mediator to be patient.

5. Change of parties' perceptions



Resolving a conflict is challenging when the parties are stubborn and steadfast in their position. Mediation is important because each party views the problem in a different way. Therefore, this Tool is to help the mediator attempt to change the firm mindsets or attitudes of both parties to reach a compromise as follows:

- The mediator needs to comprehend the key problems of each

party, especially the interest which each party claims in the conflict and their joint interest by using the following questions:

- What advantages do you expect to gain?
 - Why do you think this is important to you?
 - Why is this correct?
 - How can this problem be solved?
- Consequences will arise if they do not cooperate to solve the conflict. Telling stories or reciting poems to change their perceptions can go as follows:
- The poem on “Seedling relying on the soil while women support men” in case of “Domestic violence”;
 - Story of “Tiger and two otter catching fishes together” (see in annex “C”).
- Challenges:
- Finding appropriate stories for different scenarios can be difficult;
 - It may be hard to know the feelings of parties.

STEP 3: SHARE

Introduction



When parties to a dispute agree to make concessions, it is considered a great success for a mediator because this means a step toward agreement has been achieved to end the dispute. In order to achieve this goal, the mediator needs to fulfill some important tasks.

1. Establishment of a concept of change

In order to establish a concept acceptable to both parties, the mediator needs to collect information and research to reach understanding about where the parties live, their culture, and how they usually solve their daily problems. After that, the mediator should try to bring up to both parties' attention examples from their real-life experience in successful conflict resolution on similar issues.

➤ Challenges:

- It may be difficult to find real-life examples;
- It may be difficult to find methods or options to show the parties.

2. Explanation about legal and social consequences

Making the parties aware of the consequences can allow them to make decisions; thus the mediators must seek to provide them with information about legal and social consequences in case their dispute is not solved now, for example:



- Legal consequences: The mediators can bring up to the parties' attention the loss that may incur when the case is proceeded according to legal procedure: money, time and friendship, etc.

Example:

- Lodging a complaint with the court for civil cases involves paying a compliance tax, judge service in case they investigate, a compliance service form, and other services. If the losing party disagrees they can continue their complain at other levels (Appeals Court, Supreme Court) and the result is uncertain. A Cambodian proverb states that: "A long way takes a lot of food, a long night dreams a lot." Kakal Law "You make compliance until poor, no pot, no plate, no wealthy, no job, don't know how much expend until wine-lost". Social consequences: The mediators can bring up to the parties' attention some social issues that may result if they don't reach agreement now (loss of friendship, loss of relationships with the other party's relatives, damages in terms of honor and reputation, security problems, consequences in terms of stress/feelings, economic consequences...)

Example:

In case of domestic violence: degraded family's economy, children miss school, broken relationship or friendship, etc.

➤ Challenge:

- Some mediators may not have much understanding of legal procedures.

3. How to overcome power imbalances between parties?

In dispute resolution work, it is unavoidable that a party may attempt to abuse his/her power in order to take advantage from the mediation process; thus the goal of this Tool is to ensure

that the mediator is prepared to deal with situations in terms of their behaviour and strategies such as:



- Remind the parties about key points in the internal rules;
 - Ensure that supporters and witnesses of both parties are balanced; and set up clear rules for supporters;
 - Ensure that both parties have an equal chance to talk and express their opinion;
 - Remind them of their rights and duties and request them to respect each other;
 - Empower parties and allow them to make their decision independently;
 - Make sure that both parties offer something in order to reach a solution;
 - But you must not allow a party to use his/her position to put pressure on the other party;
 - Demonstrate your neutrality in order to maintain balanced power-relation between the two parties;
 - Use religious reasoning and proverb (when possible) to warn a party who appears to abuse his/her power.
 - If necessary, bring in someone with higher-power to prevent abuse of power by the more dominant parties.
- Challenge:
- Powerful parties may tend to disregard the rules of the mediation procedure.

4. How to encourage parties to make offers?

In order to reach an agreement through mediation, the parties need to share and make offers to one another. This means that both parties need to make some compromises in order to reach a

solution. The purpose of this Tool is to serve as a means for the mediator to encourage parties to make offers and concessions.

- Tell the parties about good experiences from previous successful resolution;
- Tell stories related to sharing of benefits; for example about Tiger and Two Otters (in annex "C").
- Remind the parties about legal consequences (what will happen if they follow legal procedure by filing a civil law-suit to the court).

➤ Challenge



- The mediators' lack of formal legal knowledge.

STEP 4: DECIDE

Introduction

Mediators need to seek assistance and motivation from a third person because in some cases, mediation cannot reach a solution which both parties can make a decision by themselves. Some tips below will help the mediators to work with a third person.



1. How to obtain involvement from a third person?

This tool includes mediation and arbitration mechanisms, therefore a third party's roles are not to make decision on behalf of the parties, but they are to provide encouragement, education, advice and guidance to the parties (or they can impose some extent of pressure if necessary) and to act as a mediator if the parties agreed (see in a" F").

- Challenge:
 - It is difficult to find a capable person with a genuinely neutral position.



2. How to ensure neutrality of the third person helping to reach a fair decision?

In order to ensure neutrality of the third person to participate in a fair decision making process for the parties, the mediators should:

- Provide the third person with information they have received from the two parties to give him/her a big picture of the dispute , especially in terms of the two parties' demands;



- Spend time explaining some important points, such as the roles of the third person, the principle of neutrality, and informing him/her about the reasons that prevent the parties from being able to make a decision;
- Motivate the third person by telling him/her about the pride they will receive from their act of solving the problem in a neutral manner (for example, they will have good reputation and gain respect from villagers especially from the parties in dispute...);
- Provide him/her with some legal knowledge related to the case.

➤ Challenges:

- It is difficult to maintain the third person's neutral position all the time;
- The third person may refuse to join in the process if the mediator sets conditions for him/her.

3. How to proceed the resolution process with a third person in a just and neutral manner?

As mentioned in tool. 15 above, the mediators need to:

- Allow the third person to meet and explain to the parties in dispute;
- Meet and discuss with the third person to identify new strategies to solve the dispute in a just manner;
- Provide a list of ideas used in past experiences of dispute resolution.



4. How to establish a neutral decision-making forum?

When the parties to the dispute are unable to reach an agreement and there is no one in the position to make a quick and just intervention, the mediation process faces a big obstacle. Therefore, if such a situation is encountered and the parties are willing to continue the mediation, the mediators should:



- establish a forum for group solution (a mediators committee) for suggesting a solution;
- Select a number of participants in the committee until both parties agree—committee members can be relatives, elders, laymen, monks, teachers...;
- The decision of committee members should be agreed by both parties. Therefore before implementing this last resort solution in the Tool, mediators should explain and obtain clear reconfirmation by the parties before they consider establishing a mediators committee.

➤ Challenges:

- It is difficult to find neutral family members;
- It is difficult for the parties to agree on the group membership;
- It is difficult in forum for group solution (mediators committee).

STEP 5: STABILIZE AND IMPLEMENT

Introduction

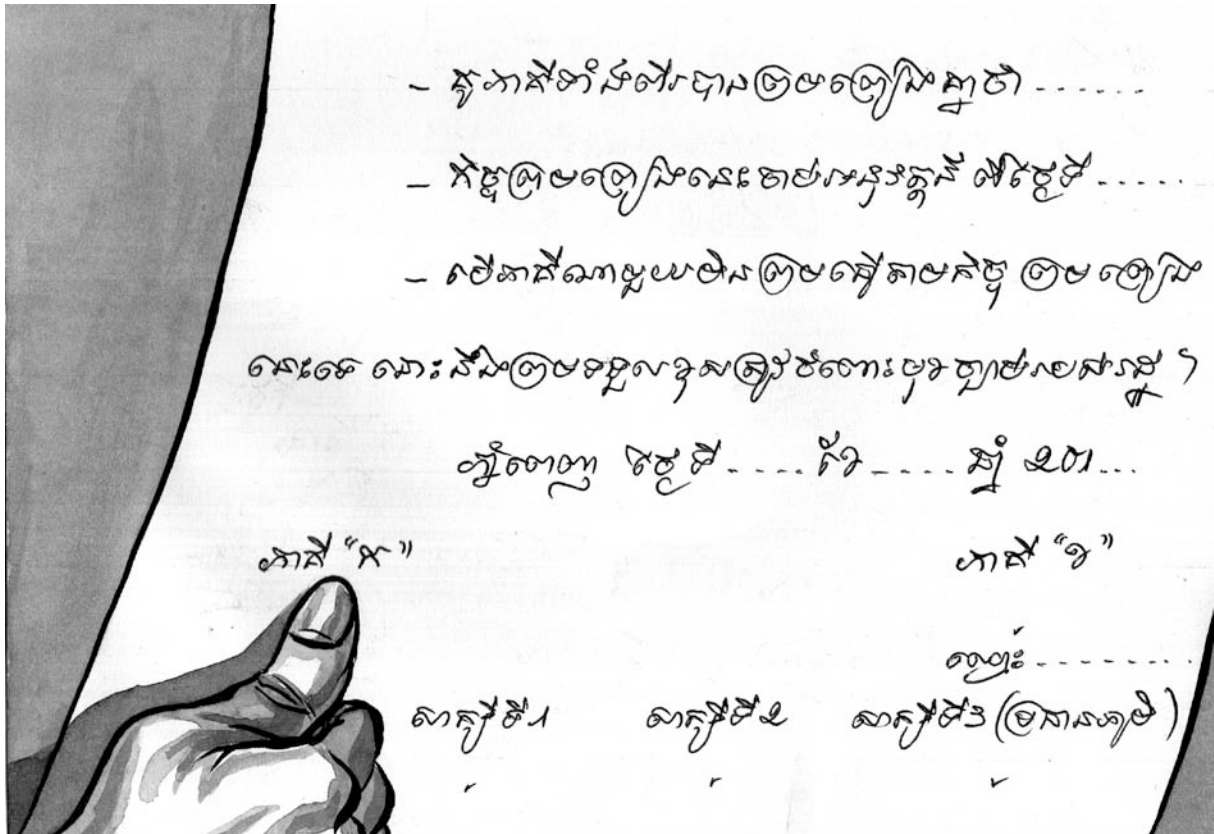


An agreement should be made in writing , after the parties have voluntarily accepted a solution, and in order for the agreement to be worthwhile, the mediators should ensure that the parties to the dispute will implement it. Thus, in order to encourage the parties to implement the agreement, the mediators need to word it clearly with the participation of witnesses.

1. Drafting of agreement

The agreement should summarize the outcome of the mediation process in order to prevent further dispute. It is good for the agreement to include the following information:

- Date of resolution and date of implementation;
- Important points the parties have agreed;
- Some punishment measures in case a party breaches the agreement;
- Both parties and witness(es) need to endorse the agreement by thumb printing it;
- If possible, participation from village or commune authorities shall be included;
- Read and explain the agreement before signature or thumbprint (see in a”).



➤ Challenges:

- It may be difficult to find someone to draft the agreement;
- It may be difficult to obtain thumbprint s/signatures from witness es and local authorities.

2. Documentation

Good documentation and recording of the mediation is very important because it can ensure implementation of the agreement. Moreover, successful solution is monitored and reviewed strictly and this can serve as an experience sharing tool for future work. Therefore, the following answers can contribute to facilitating the mediators' work regarding good documentation:

- Documents and records related to the mediation should be kept at the mediator's office in a confidential file and, if possible, in confidential soft copy (computerized).
- Each party involved in the process should be provided with one copy of the agreement as well as the local authorities, if relevant.

➤ Challenge:

- Maintenance and documentation require human resources and are time consuming.

3. Use of Witnesses

Having witnesses is very important to put pressure on the parties to implement the agreement. Below are some suggestions to help the mediators use witnesses effectively:

- Witnesses should be selected by the parties;
 - Witnesses need to sign the agreement in order to ensure responsibility in the implementation;
 - Witnesses should be influential, adult persons;
 - Witnesses should follow up the implementation of the agreement by the parties;
 - In case of domestic violence: Witnesses should be persons who can exert influence over the family.
- Challenge:
- It may be difficult to ask a witness to endorse the agreement and participate in the implementation of the agreement.

4. Starting the implementation of the agreement

When the parties have entered into and established an agreement, the next crucial step is that both parties start implementing it. Below are some ideas to help the mediators to encourage parties to start implementing the agreement:

- The agreement should state clearly the date of start of the implementation;
- The fact of having witnesses who endorse the agreement can encourage implementation and make it harder for the parties to refuse to do it or delay implementation;
- There must be a paragraph in meeting minutes regarding implementation.

5. Official agreement

In order for the agreement to be official, the mediators must make sure that:

- The agreement does not result from coercion or duress but from the genuine will of the parties;
 - The agreement does not violate human rights principles and norms;
 - The agreement should be linked to official mechanisms, such as village or commune authorities; in case of a land dispute, the agreement should be sent to the cadastral commission to be filed;
 - For ethnic communities, they should organize an announcement ceremony with participation from elders or chiefs of tribe, when relevant.
- Challenge:
- It may be difficult to obtain signature/endorsement from authorities and to file the agreement with them.

ANNEX

Annex (A): Roles and rules of mediators

1. Neutrality

Mediators must be unbiased in order for the parties to regard them as neutral. At the early stage of the process, the mediators need to tell the parties about their institution, their position and the status of the institution they work for. The way they dress (in Nigaragua), their behaviour should be friendly and neutral and express equal treatment. The language they use must not sound like they are blaming a party or taking sides.

2. Confidentiality

The mediators must ensure confidentiality of the information they receive in order for the parties to tell them the truth because they believe that the mediators will not tell their story to outsiders. If the case is brought to the courts, everything that has been said during the discussion will not be able to be used as evidence.

3. Professionalism

The mediators should work with professionalism and demonstrate skills such as:

- Ensuring neutrality and ensuring power-balance between the parties;
- Facilitating discussion in a positive manner and ensuring that both parties participate voluntarily;
- The mediators must listen to each party equally and carefully; they should not interrupt a party speaking and should record the main points of discussion in an easy-to-understand way;
- Summarizing key issues and using open questions;
- Understanding legal principles related to the issue to explaining them to the parties.

4. Studying the conflict

The mediators must understand clearly the type of conflict at stake—what happened? Can it be mediated? In principle, civil cases and criminal cases (involving minor offenses) can be mediated if both parties are willing to engage in the process. In Cambodia some of the conflicts that can be mediated are land conflicts, domestic violence cases, insults and verbal abuse, breaking of engagement, employment conflicts, etc.

5. Additional rules for mediators

- Mediators must not act as decision makers: they must listen but cannot make decisions as to who is right or wrong or who wins or loses;
- Mediators must not show that they are anxious. Although they may see that the outcome is within reach, they should be able to control their feelings;
- Mediators must be patient and tolerant. They should not get emotionally involved in the disputes;
- Mediators must avoid using too much legal jargon;
- Mediators should not assume that the parties understand everything clearly about the mediation process and its internal rules;
- Mediators should not use judgmental and direct questions that may cause additional problems that the parties had not mentioned;
- Mediators should not show that they are impatient or unhappy;

- Mediators should not put pressure on the parties in order to obtain a specific result; Mediators must not abuse their role for personal gains of any kind;
- Mediators must not accept money or valuable gifts from the parties or impose obligations to the parties that may affect their impartiality;
- Mediators must not discriminate against a party on the basis of their race, religious beliefs, traditions, customs, social class or political views; .
- Mediators must not allow a party to dominate the other, whether they are men, women, government officials, villagers, rich or poor, old or young.

Annex (B): Asking questions to collect information

In order to collect relevant information, several important questions must be asked to probe the issue, namely:

- What do you hope to get from this mediation process?
- What do you want to say during this process?
- How do you want the mediators to reach your expectations?
- With a view to solving your dispute, what are your main objectives? For example, what are your concerns or claims about financial compensation, medical treatment, apologies, reputational issues, etc.
- What about the other party, what are its objectives?
- Besides monetary compensation, are there any other available options?
- Have the parties changed their attitudes toward the dispute?
- If yes, what are the changes?
- Up to now, what have been the results of the discussion between parties?
- Why haven't they been able to find a solution?
- Do you have any comment about this conciliation process?
- Do you have any questions or concerns about your roles in the discussion?
- Do you have any questions or concerns regarding the representativeness in the decision making on your problem?

Annex (C): Short stories and proverbs

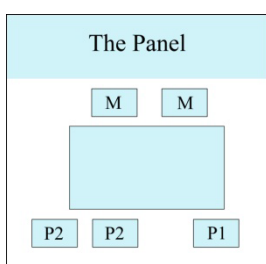
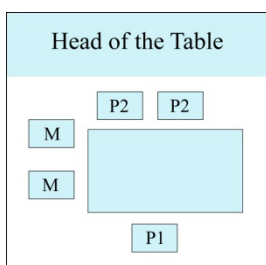
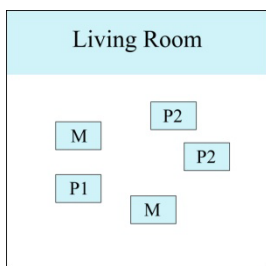
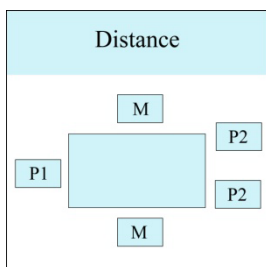
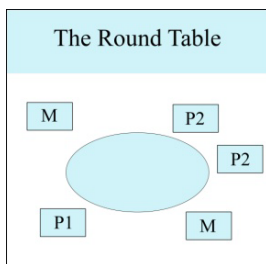
- The story about "A Tiger and Two Otters":
One day, two otters caught a fish in a lake. They could not agree on the division of the fish among themselves. Both wanted the fish head because they thought that part had more flesh. Then a tiger arrived at the spot and asked about the reason of the dispute. After listening to the otters, the tiger said that he could help divide the fish. The tiger cut the fish into three parts: the head, the middle part and the tail. The middle part is the biggest part with a lot of meat. The tiger gives the head to one otter and the tail to the other, and then says: "You should get the head and you should get the tail . I will have the middle part." Then the tiger took his share and walked away. The two otters were very sorry with what they had done.
- The story about
- The story about a

Mr. Krom Ngoy's Law (General for conflict party thinking)

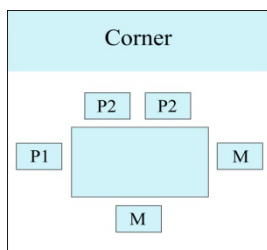
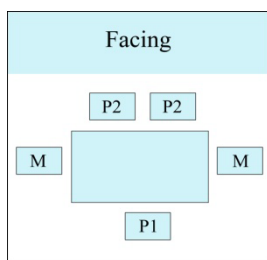
- Don't go to the court because you will lose your property and you have to be aware of all law terms.
- If you go to court, you'll lose both old and new property and even don't have time to take care of your cattle.
- New Law about inheritances conflict paragraph 3)
Don't go to court against your relatives especially about inheritances

- New law about land conflict paragraph 8
Don't grab other people land, land grabbing leading to conflict and court cases.
- New law about land boundary conflict paragraph 9
Don't grab other people land by extending the boundary otherwise you go to court and lose all your property.
- New law about debt conflict paragraph 22 and 23
Before lending money to anybody you need to know precisely
- New law about physical assault paragraph 25
If you do evils you will receive evils and back karma and finally you go to prison.
- New law about land conflict paragraph 8 and 27 and 8
Don't grab other people land, land grabbing leading to conflict and court cases. Don't be to daring and be trouble making you should learn to forgive and forget.

Annex (D): Setting arrangements



1. **Mediator authority #2-the panel:** Sit on one side of the table, facing the parties as in a courtroom or classroom. Friends Conflict Resolution Programs, with its emphasis on empowerment of disputants, has discouraged this pattern but other programs use mediation panels successfully.
2. **Facing:** When parties sit across from each other, this formal position can suggest a “my side versus their side” feeling. Yet it also encourages the parties to speak to each other and to recognize the mediation as a serious, formal session.
3. **Corner:** When parties sit at right angles, it is easier for them to choose how much they look at each other. It also allows mediators to look at both parties without too much head turning. Obviously, you cannot use this seating if the parties feel unsafe seated next to each other.
4. **Diagonal:** When a mediator sits near one party, or finds it physically easier to give attention to one of the parties, the participants (or even the mediators) may feel that the mediator is literally “on that person’s side.” The diagonal arrangement gives each mediator physical proximity to one disputant and visual connection to the other.
5. **Egalitarian-the round table:** A round or square table big enough to accommodate all participants, but not much larger, is ideal if you want to minimize status differences.



- 6. Distance:** Using a table, placing a mediator between the parties, or just distancing the chairs can help provide a sense of safety, especially if you suspect some people are feeling intimidated or physically threatened.

- 7. Closeness-the living room arrangement:** In other situations you may wish to encourage people to let down their guard by foregoing a table, creating a more homey environment, bringing chairs closer together.

Setting arrangements in the mediation process have different styles and different values, but in Cambodia style number 1 (a round table) and style number 2 (a long table) make more sense. Most of the time they should be used in the Cambodian context. Setting arrangements should be adjusted according to the circumstances because it may be hard for some communities to obtain suitable tables and chairs. Mats can be used, but the mediators should organize the settings as to show equality between the parties and to avoid harmful materials to be located nearby the parties.

Annex (E): Method to select a third person

- The third person must be respected and enjoy trust from both parties. They should be neutral, capable and influential. Thus, within the community, in order to make the selection of a third person easier, the mediators should prepare a list of names of approximately seven to ten people (including women and youth) in the village, such as school teachers, elders, clergymen or nuns, etc.;
- The mediators can use the same method to select mediators committee members.

Annex (F): Forms to be used

Kingdom of Cambodia
Nation Religion King



REQUEST FOR MEDIATION (PARTY A)

Name: Sex: Age: Nationality:
Occupation: Current address: House number: Group:
..... Village: Commune/Sangkat: District/City:
Province: Tel:

TO

Mr/Ms:

.....

Subject: Request for mediation on case.....with

Name: Sex: Age: Nationality:

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Occupation: Current address: House number: Group:

..... Village: Commune/Sangkat: District/City:

Province: Tel:

As mentioned in the above subject, I

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I agree that all information provided during the mediation process will be kept confidential and cannot be used as evidence or testimony in any other process.

I also understand that this mediation process is totally voluntary and that the parties to the dispute can terminate it at any time even if no agreement has been reached.

Therefore, I would like to request you to kindly help mediate my case.

Written in Date..... Month..... Year.....

Requester's signature/thumbprint:

Kingdom of Cambodia
Nation Religion King


REQUEST FOR MEDIATION (PARTY B)

Name: Sex: Age: Nationality:
Occupation: Current address: House number: Group:
..... Village: Commune/Sangkat: District/City:
Province: Tel:

TO

Mr/Ms:

.....

Subject: Request for mediation on case.....
with

Name: Sex: Age: Nationality:
.....

Occupation: Current address: House number: Group:
..... Village: Commune/Sangkat: District/City:

Province: Tel:

As mentioned in the above subject, I
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I agree that all information provided during the mediation process will be kept confidential and cannot be used as evidence or testimony in any other process.

I also understand that this mediation process is totally voluntary and that the parties to the dispute can terminate it at any time even if no agreement has been reached.

Therefore, I would like to request you to kindly help mediate my case.

Written in Date..... Month..... Year.....
Requester's signature/thumbprint:

ADHOC
Cambodian Human Rights and Development Association
Provincial branch:



Date:

Invitation of Party

ADHOC's Provincial Coordinator in would like to invite
Mr./Ms Sex: Age: Occupation:
Current address: House number: Group: Village:
Commune/Sangkat: District/City: Province: to participate
in a mediation process regarding

Referring to:

* request letter sent on Date: Month: Year: to
Name:..... Sex: Age: Current address: house
number:..... Group: Village: Commune/Sangkat:
District/City: Province:

* and agreement for mediation made on Date: Month: Year:

* and mediation contract made on Date: Month: Year: with
Mr./Ms: Sex: Age: Occupation:
Current address: House number: Group: Village:
..... Commune/Sangkat: District/city: Province:

Related to (summary of the case):.....
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The parties requested ADHOC to mediate the case to find a solution.

Therefore, I would like to invite you to come to (location/venue):
.....
Village: Commune/Sangkat: District/City:
Province: at (time): on Date:
Month: Year:
Telephone number:

President

Kingdom of Cambodia
Nation Religion King

ADHOC provincial branch:
Alternative Dispute Resolution Section
Code:/...../201...

Minutes of Mediation

Date: Month: Year: Time:
in (location/venue)
Mediation session on case:
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Attendees

- 1..... Position.....
- 2..... Position.....
- 3..... Position.....
- 4..... Position.....
- 5..... Position.....

Between

Requesting Party (Party A)

Name: Sex: Age: Nationality:
..... Occupation:
House number: Group: Village:
..... Commune/Sangkat: District/City:
Province:

And

Consenting Party (Party B)

Name: Sex: Age: Nationality:
..... Occupation:
House number: Group: Village:
..... Commune/Sangkat: District/City:
Province:

Process

1. Opening speech and introduction of the process by the mediator:

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2. Issues and requests of parties:

-Party (A):

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-Party (B):

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3. Results of mediation:

-Agreement points:

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-Disagreement points:

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4. Requests or follow-up plan:

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The mediation process ended at (time): on the same day. These minutes were read for the parties and the parties confirmed that they were accurate. They agreed to sign/thumbprint this document.

Minutes Taker

.....

Party A

Party B

Mediator

Name:
Signature/Thumbprint

Name:
Signature/Thumbprint

Name:
Signature

Kingdom of Cambodia
Nation Religion King



MEDIATION AGREEMENT

Between

Name: Sex: Age: Nationality:
..... Occupation:
House number: Group: Village:
Commune/Sangkat: District/City: Province:,
referred to as “Party (A)”.

and

Name: Sex: Age: Nationality:
..... Occupation:
House number: Group: Village:
Commune/Sangkat: District/City: Province:,
Referred to as “Party (B)”.

Reference:

1. Party A requested mediation on Date: Month: Year:
 2. Party B agreed to join the mediation process on Date: Month: ... Year:
- Minutes of mediation No:/..... on Date: Month: Year:

Both parties agreed to the following:

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Alternative Dispute Resolution Tool

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The minutes were read and free consent of the parties to implement this agreement as it is (without any modification) was gathered. If a party changes his/her mind and does not respect and implement this agreement, he/she may be punished according to the law.
Consent to implement this final agreement was confirmed by signature/thumbprint. This agreement was made in copies, each party received one copy, the local authorities received copies and the mediator's office kept one copy.

Written in Date: Month: Year:

Signature/thumbprint:

Party A	Party B	Witness	Minute Taker
Name:	Name:	Name:	Name:
.....			
Having seen and agreed (Authority)		Mediator	
.....		



សមាគមអាជ្ញាធរ

ការពារសិទ្ធិមនុស្ស និងអភិវឌ្ឍន៍ទៅកម្ពុជា

CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION

ផ្ទះលេខ៣ ផ្លូវ១៥៨ ប្រឡងក្រុងកាង សង្កាត់បឹងរាំង ខណ្ឌដូនពេញ No: 3, St 158 Oukghna Toeung Kang, Beng Raing Daun Penh P.P

Tel: (855-23) 218653 & 990544 Fax: (855-23) 217229 P.O. Box: 1024 P.O. Box 20 at CCC

E-mail : adhoc@forum.org.kh Website: www.adhoc-cambodia.org

ADHOC provincial branch:
Alternative Dispute Resolution Section
Code:/...../201...

Conclusion Information Report

Case:
Conclusion information written by: Position:..... of
ADHOC branch in on Date:

Party information

Requesting mediation (Party A)

Name: Sex: Age: Education.....
Nationality:..... Occupation:
Spouse: Number of children: (daughters: sons:)
Standard of living (rich, poor, medium):
House number: Group: Village:
Commune/Sangkat: District/City:.....Province/state:
Telephone:.....

Consenting to mediation (Party B)

Name: Sex: Age:..... Education.....
Nationality:..... Occupation:
Spouse: Number of children: (daughters: sons:)
Standard of living (rich, poor, medium):
House number: Group: Village:
Commune/Sangkat: District/City:.....Province/state:
Telephone:.....

Background of conflict

Conflict happened on Date: Month: Year: Time:
Session:Place: Village:.....
Commune: District: Province:

Reasons for the conflict:
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Results and compliance

➤ What are the results/outcome of the mediation process? Have the parties complied with them?

1. Party "....." – Compliance:
 Results:.....

2. Party "....." – Compliance:
 Results:.....

3. Party "....." – Compliance:
 Results:.....

4. Party "....." – Compliance:.....
 Results:.....

➤ ADHOC:

1. The activities that ADHOC carried out for this case:

Activities	Results of activities	Challenges	Tool that were used

2. Final Result

- Agreement and implementation:

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- Continue to mediation:

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- Failures/shortcomings:

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3. Recommendations to ADHOC central office:

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Written in Date: Month: Year:
Reporter

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Having seen and agreed
Provincial coordinator

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សមាគមអាជ្ញាប័ណ្ណ

ការពារសិទ្ធិមនុស្ស និងអភិវឌ្ឍន៍នៅកម្ពុជា

CAMBODIAN HUMAN RIGHTS AND DEVELOPMENT ASSOCIATION

ផ្ទះលេខ៣ ផ្លូវ១៥៨ ប្រឡងក្រុងកាង សង្កាត់បឹងរាំង ខណ្ឌដូនពេញ No: 3, St 158 Oukghna Toeung Kang, Beng Raing Daun Penh P.P

Tel: (855-23) 218653 & 990544 Fax: (855-23) 217229 P.O. Box: 1024 P.O. Box 20 at CCC

E-mail : adhoc@forum.org.kh Website: www.adhoc-cambodia.org

ADHOC provincial branch:.....

Alternative Dispute Resolution Section

Code:/...../201...

Follow-Up Report

Case:.....

Follow-up by: Position:

of ADHOC branch: on Date: Month: Year:

Follow-up session on Date: Month: Year:.....

after the agreement was signed

Methology of follow-up:

❖ Parties' situation after the agreement:

1. Have the parties complied with and implemented the agreement?

Implemented the whole agreement Implemented parts of the agreement Have not implemented the agreement

Reasons:

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2.Do both parties have problems? Yes No

If yes: New problem Previous problem

Why:.....

3.How is the relationship between parties?

Better than before Same as before Worse than before Unclear/To be determined

4.How is the living standard of parties?

Better than before Same as before Worse than before Unclear/To be determined

5.Have the parties used this experience to explain the process to other people?

Yes No

If yes: Party "A" only Party "B" only Both parties

Written in Date: Month: Year:

Follow-up by

.....

Having seen and agreed
Provincial coordinator

.....

Alternative Dispute Resolution Tool

The Cambodian Human Rights and Development Association (ADHOC)
Provincial Branch:.....
ADR Section

Summary of activities and expenditure list

Case: Code No:/...../.....
Village: Commune: District: Province:
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No.	Name of activity	Date	Place	Distance	Expenditure	
					Description	Amount
Total amount:						

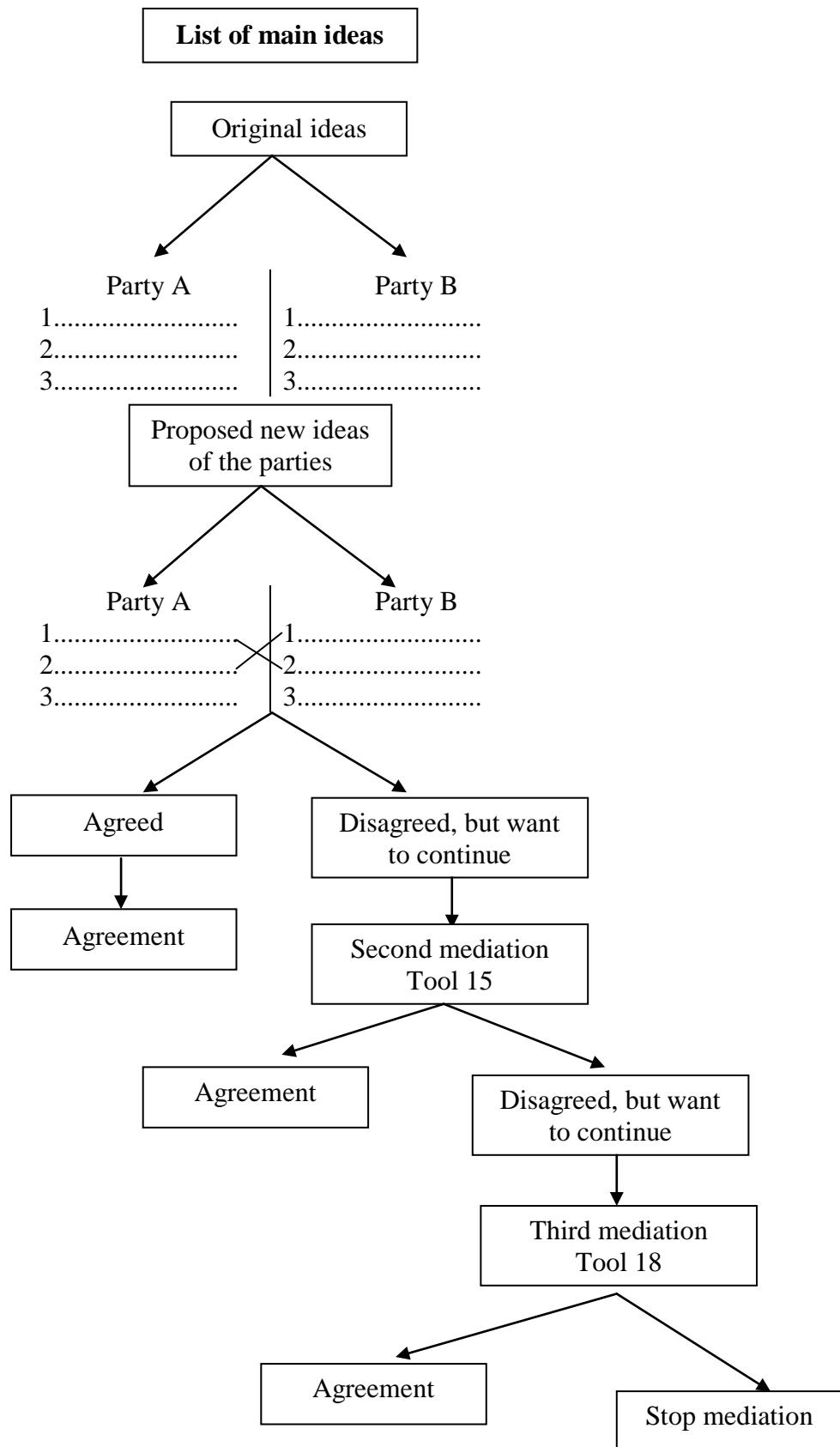
Written in Date: Month: Year:.....
Signature

.....

Having seen and agreed
Provincial coordinator

.....

Annex (G): List of main ideas



Annex (H): Guide for implementing the Tool

In order to make implementation of the Alternative Dispute Resolution Tool easier, below is a guide for mediators:

I-Before the mediation process

At this stage, the role and functions of the officer in charge of ADR activities (ADHOC staff member or community committee representatives) are the following:

1. First meeting
 - Welcome and invite the guest to your office;
 - Ask the guest what he/she comes for and how he/she knows about the mediation process;
 - Check whether the conflict can be mediated;
 - (If yes) Explain the process of ADR based on the Tool; in particular, tell them about the mediator's role and the power of parties.
2. Request for mediation form (if the parties agree to choose you as a mediator)
 - Guide them in writing the mediation request (form) (two copies with stamp and code number) and write this in the complaints book. Give one copy to the requesting party (party A) and keep one copy at your office;
 - After that for easy work, ADR officer can ask the party the conflict (form) by making minute, to avoid expend for mediator meet party again.
3. Meeting for lobbying purposes and gathering of information
 - At least 5 days after receiving the mediation request form from party "A", the ADR officer should try to meet and lobby with party "B" to encourage him/her to participate in the mediation process;
 - If party "B" agrees to participate in the process, implement step 2. like with party "A".
4. Preparation before mediation
 - Meet with relevant staff or commune ADR committee members for discussion and provide information related to the case;
 - Contact both parties to set a time, place and the number of participants in the mediation process with the agreement of both parties;
 - Set up the date (it can be three to five days after receiving the mediation form from party "B").
5. Parties invitation: After agreement by both parties, the ADR officer invites parties to attend mediation through:
 - Telephone;
 - Invitation letter ;
 - Face to face discussion.

II-The Mediation process

6. Welcoming: The ADR officer should:
 - Welcome both parties at the gate/entrance of the venue, showing respect and friendliness, and invite them to enter the meeting place;
 - Opening speech: "I appreciate your commitment and encourage you, Uncle, Aunt, etc. (as relevant)...; you are brave. This shows that both of you try to reach a solution. I wish both of you get a successful outcome as a result of this mediation process;

- Explain about the process of mediation, the role of the mediator and the rights of the parties, according to the Tool (to ensure parties clearly understand the rules and process).
7. Selecting mediators: ADR officer should:
- Present the list of possible mediators (if available at this point);
 - Introduce all possible mediators by themselves and their function within the institution (“I, Name: Position: at ADHOC provincial branch in: or at commune ADR committee:”);
 - Tell about the process of cooperation between the parties to select one mediator.
8. The mediation process in itself: The role of mediators is:
- To introduce the participants in this process and get approval from both parties of the rules;
 - To summarize the mediation process again and the role of mediators;
 - To establish internal rules for discussion, as agreed by the parties;
 - To allow parties to have ideas by focusing on the conflict and possible solutions;
 - Mediators should listen to parties and summarize the discussion;
 - The Secretary/minute taker should write down the problem points and requests from each party, as well as the list of main ideas so that both parties can see them;
 - The mediator should re-ask and re-check all of the points on which there is no agreement and study as fast as possible which points are problematic; the mediator should explain to both parties using the Tool. 12 and 15) to help them reach an agreement;
 - The mediator can start writing an agreement (using the relevant form) to end the conflict as soon as an agreement is within reach;
 - In case it is impossible to reach an agreement, but the parties continue to discuss, the mediator can proceed by using the Tool. 15) to select a third person (of course with the agreement of the parties); If the parties cannot reach an agreement but still wish to use the mediation process, the mediator can implement the Tool (18) by setting up a mediators committee.



សមាគមអាឌអិច
ADHOC

ឧបត្ថម្ភដោយ



សហភាពអឺរ៉ុប

អាសយដ្ឋាន: ផ្ទះលេខ៣ ផ្លូវ១៥៨ ឬឧកញ៉ាទ្រៀងកាង សង្កាត់បឹងរាំង ខណ្ឌដូនពេញ
រាជធានីភ្នំពេញ | P.O.BOX : 1024,
ទូរស័ព្ទលេខ: (855-23) 218 653, (855-23) 990 544, | ទូរសារលេខ: (855-023) 217 229,
E-mail: adhoc@forum.org.kh | Website: www.adhoc-chra.org

ចំនួនបោះពុម្ព
២៥០០ច្បាប់