

# Feasibility study on the establishment of Justice of the Peace

## EXECUTIVE SUMMARY



Cambodia



Ministry of Justice



Ministry of Interior

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*Feasibility study on the establishment of Justice of the Peace*

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## CONCEPTUAL FRAMEWORK AND OBJECTIVES

This study builds upon the findings of the previous UNDP *Pathways to Justice* study, completed in 2005. One major finding pointed out the need for a local court or legal authority, based at the district or commune level, which would complement the already existing informal local justice system of conciliation and alternative dispute resolution (ADR). In addition to conciliation, this court or legal authority would have the right to make and enforce binding legal decisions. It would combine the accessibility, convenience, informality, trust, and understanding of local culture-based informal justice methods with the binding legal authority of the formal court system.

This study pursues three major objectives:

1. to determine the possible scope and power of this new local legal authority;
2. to empower target groups (rural poor, women, and indigenous peoples) through consultation and participation; and
3. to propose policy options and institutional/organizational models.

To provide direction and focus in the research, six major questions were examined:

- What would be the functions and scope of this court and legal authority?
- Would the judge or official of this court or legal authority be a member of the judiciary or a paralegal member of the district administration?
- Should this judge or legal official travel the circuit to communes within the district?
- What experience, credentials, and skills would be required for such a position?

- What would be the conditions of employment, supervision, and discipline?
- How would the position be financed?

## **METHODOLOGY**

An “action research” approach, using the core methodologies of consultation and participation, was an integral part of the research. This involved consultations and field studies in four provinces: Kampong Chhnang, Kampong Speu, Mondulakiri, and Rattanakiri.

Consultation and participation components consisted of survey questionnaires, interviews, field visits/observation, and workshops/public consultations. Specific questionnaires were prepared for villagers, village chiefs, commune officials, court officials, and local lawyers. A total of 110 villagers were surveyed, encompassing a diversity of districts and communes in the four provinces.

In addition, interviews were held with provincial governors, deputy provincial governors, and provincial court judges in the four provinces, along with interviews with district and commune chiefs, and leaders of local civil society organizations. Field visits and observations of dispute resolution and conciliation proceedings were also made to provide a better perspective on how conflicts and legal problems are resolved on the local level.

Participatory workshops were held in Mondulakiri and Kampong Speu provinces in order to provide information to local citizens regarding the study, as well as to receive their input, suggestions, and feedback. This encouraged debate and discussion and allowed local citizens to help develop proposals that form the basis for the conclusions and recommendations presented in this report.

In addition, a “national roundtable” of government officials, lawyers, judges, representatives of NGOs and civil society organizations, donors, and other interested stakeholders was held in Phnom Penh. The purpose of the roundtable was to discuss and debate the tentative findings of the study, and to “brainstorm” possible proposals, models and solutions regarding the various questions and issues raised by the study.

Although the research methodology was primarily synchronic rather than diachronic (focusing on the present instead of the past), it was still essential that some research be undertaken regarding the historical framework, including the local justice system during the colonial period, as well as the

history of the old *Sala Lohuc* system. From the lessons of the past, we can gain a better understanding of the many legal, social, economic and cultural challenges involved in creating a local court or legal authority.



## **HISTORIC LEGAL FRAMEWORK**

During the colonial period and after independence, Cambodia's courts were organized in a four-tier court system, in contrast to the three-tier system of today.

The *Sala Lohuc*, the fourth tier court located on both the district and commune levels, was empowered to hear and make legal rulings on minor civil and criminal matters, as well as to conciliate and mediate in civil matters. Unlike the other courts, proceedings of the *Sala Lohuc* were more informal, with little or no involvement by lawyers in the proceedings. Criminal complaints were brought by the local police authorities, instead of a prosecutor, and the *Sala Lohuc* was free to fashion different sentencing dispositions for offenders, including the use of community service in place of jail sentences.

The four tier court system remained in place after independence, with some adjustments and modifications. After the war and the Khmer Rouge era, a new court system was established, and the four tier court system which included the *Sala Lohuc* was discontinued.

The importance of providing a means for local access to justice continues to be recognized today with the development of the Draft Law on the Organization of the Courts, and options presently being considered by the Ministry of Justice regarding the creation of a local mobile court.

## FINDINGS

- ***The existing formal court system is not an option for rural residents***

The formal court system is very rarely accessed by citizens, especially the rural poor and the indigenous communities. This is based on three major factors: convenience, familiarity and trust. For many villagers living in remote areas, it often takes one to two days to travel back and forth from a village to the provincial capital. Travel costs are prohibitive, and are often higher than the total value or cost of the disputes.

Villagers are also unfamiliar with law and court procedures. Villagers often do not even know where the nearest court is located, and many feel that judges and court officials know little about everyday village life and the problems villagers face. Knowledge of the local community and customs is especially important to closely knit, remote rural communities, such as the indigenous peoples living in Mondulkiri and Rattanakiri.

For most villagers interviewed and surveyed, lack of trust is another significant factor in attitudes toward the formal court system. Most villagers surveyed or interviewed believed that the present court system would not be fair to them, or provide them with justice if they attempted to use it, since it was felt that having money, resources, influence or power were the only means by which one could gain a fair hearing or a satisfactory disposition of a problem in a provincial court.

- ***There is strong support for a local court or jurisdictional authority based on the district level***

Even though most rural villagers interviewed and surveyed use village chiefs and commune officials to solve their problems, and are generally satisfied with the results, there is strong support, both among villagers and local officials, for a local court or justice authority based in the district.

However, this court must be transparent and free of corruption. The judge or officials of this justice authority must also have the requisite competence in legal matters and the highest standards of integrity.

There was broad agreement among both villagers and local officials that this new court or local legal authority could hear cases related to minor land disputes, domestic violence, divorce, minor crimes, personal disputes, defamation, debts, and money disputes. This would involve the use of both conciliation/ADR and enforceable judicial rulings and orders. Nearly all local officials in the provinces surveyed supported the idea of a mobile court or legal body that would travel to the different communes within the district.

### **Opinion is divided ... regarding the idea of a mobile court.**

- A large majority of villagers surveyed in Mondulkiri and Rattanakiri supported the idea of a mobile court. On the other hand, villagers surveyed in Kampong Chhnang and Kampong Speu provinces were split on the idea.

### **Opinion is divided regarding the idea of a local justice council.**

There was also a split in opinion regarding creation of a local justice council making decisions or rulings instead of a single judge or decision-maker. A large majority of Mondulkiri and Rattanakiri residents supported the idea, while most Kampong Chhnang and Kampong Speu residents instead preferred a single sitting judge or decision-maker. The belief was that because of the low education level of most local citizens, citizen justice councils would often not have the necessary skills, training or capacity to make fair and informed decisions. They would also not be immune from bias and conflict of interest.

**Opinion is divided on whether these new judges or court officials should come from the local community.** Unlike villagers in Mondukiri and Rattanakiri, residents of Kampong Chhnang and Kampong Speu were split on whether these new local judges or judicial authorities should come from the local communities. Kampong Chhang and Kampong Speu residents were more likely to cite competence and capacity as the most important qualifications for these new judges,

whereas Mondulkiri and Rattanakiri residents placed greater priority on familiarity with their communities. **Existing local justice institutions sometimes do not deal effectively with domestic violence cases.** One of the most striking findings in this study was how widespread the problem of domestic violence is in rural areas. In interviews with local officials at every level, domestic violence was constantly cited as one of the biggest problems in rural villages. This was confirmed in surveys and interviews with villagers. In the four provinces studied, domestic violence was cited by nearly all the villagers surveyed as a major problem in their villages. There was also dissatisfaction among some women respondents about how domestic violence cases are resolved in their villages because the offender often continues the abusive behavior even after being educated and counseled by village or commune officials during the conciliation process.

- ***If a new court or jurisdictional authority is to be created, transparency and integrity is essential***

Although there is strong support for a district level court or jurisdictional authority, that support is predicated on it being transparent and free of corruption. Trust, especially on the local level, is essential. Villagers surveyed indicated that they would be willing to use the court if they perceived it as being competent, fair and honest. However, if this new body suffers from the same problems of corruption plaguing the existing formal court system, villagers will not use it, and instead will continue with local practices of conciliation/mediation/ADR with village and commune chiefs.

## **RECOMMENDATIONS**

### **1. Create a separate court or jurisdictional authority based on the district level**

#### **OPTION A: Single judge based in the district**

The court would hear minor penal matters, as well as minor civil cases. It would have the power to hear evidence and issue rulings based on the facts and law, as well as on principles of equity. It would also have the power to conciliate and mediate disputes. There would be a right of limited appeal, but those rights, as well as jurisdictional amounts and subject matter jurisdiction, would be specified by law. Court procedures would be simplified and informal, with no requirement for lawyers, although the parties would be free to bring representatives to speak on their behalf, as well as any supporting witnesses.

#### **OPTION B: Mobile Court**

Similar to Option A, except that the court would be “mobile,” and travel to all the communes in the district on a regular basis.

#### **OPTION C: Justice Council in the district, commune, or village**

This justice or people’s council would be made up of members of the community, and would apply local customs, local language, and informal, simplified proceedings. The council would have the power to conciliate, but also the power to grant rights and enforce orders.

#### **OPTION D: Modified Justice Council with Judge**

Combine elements of a formal court with a justice council. Judge would have the power to investigate the facts of the case and conduct the hearing. The justice council would serve as a jury or tryer of fact, and issue the final decision or verdict in the case.

**2. A local court can be created as a department or division within the existing provincial or municipal court.**

A quick and cost efficient method of implementing a local court would be simply to create a special local division or department within the existing Provincial or Municipal Courts. This local division or department would hear minor civil and criminal cases in the form of a summary proceeding, with informal rules and procedures, much like the *Sala Lohuc* of previous times.

This would not require the creation of a fourth tier court or the recruitment or training of special judges. Judges for this local division or department could come from the existing pool of judges or recently graduated probationary judges. The local division or department could also be a traveling court, which would provide judges, particularly the probationary judges, with a chance to familiarize themselves with the local communities, along with the issues affecting local residents.

**3. Create a pilot program to test feasibility**

Before a local court or legal authority is implemented nationwide, its feasibility should be tested in a three-five year trial program in selected provinces. The program should be tested especially in those provinces that have special issues and problems and which contain significant numbers of target groups such as indigenous peoples. Particular attention should be placed on how this local court deals with domestic violence issues and the enforcement of the Law on Domestic Violence.





UNDP Cambodia  
No. 53, Pasteur Street  
Boeung Keng Kang I  
Phnom Penh, Cambodia  
Tel: 023 216 167  
[www.un.org.kh/undp](http://www.un.org.kh/undp)

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