

# BHUTAN ADR CENTRE

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## Annual Report 2022







“It must always be our constant endeavor to perform better, carry out our tasks with greater efficiency, effectiveness and grace, and become exceptional in the world.”

His Majesty the King on the 111<sup>th</sup> National Day at Samtse.

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## **Introduction**

Bhutan ADR Centre (“Centre”) was established in May 2018 in accordance with Bhutan ADR Act 2013, mainly to institutionalize the ADR and to encourage the ADR through institution. Before ADR Centre, ADR services were provided by different institutions in bits and pieces and there was no particular institution, which provided one stop services related to ADR. Arbitration services were provided by Construction Development Board as most cases referred for arbitration were on construction related disputes between government agencies and contractors while mediation was taken up by Bhutan National Legal Institute especially for dissemination and creating awareness to the public to encourage mediation as an alternative form of dispute resolution mechanism.

Despite having Centre in place to provide ADR related service, parties still have a choice to opt ADR without involvement of Center to facilitate it. As much as dispute resolution mechanisms like mediation and arbitration are optional to the parties, so is the institution like Centre, which is optional for the parties. It is up to the parties whether to refer their dispute to the Centre or not, or they can resort to ad hoc mechanism as it is permitted under the Bhutan ADR Act and at the same time such has been always a practice for ADR especially mediation.

Although Centre’s services are provided as a choice to the ADR parties, however, the Centre, since its existence in 2018 guided by its vision to be a ‘leading Centre for ADR in Bhutan and beyond’ has been always striving to improve the efficiency in administration of cases to encourage the institutional ADR, domestic as well as international. As institutional ADR is better than ad hoc ADR, Centre has also disseminated and created awareness on benefits of institutional ADR and why parties should choose institutional ADR. Within the bounds of ADR Act 2013, Centre has formulated its own set of rules in 2019 for administration of mediation and arbitration, which includes the procedure as well as fees structure. Centre also provides pool of arbitrators and mediators along with an appointment services upon request of the parties.

To promote and encourage the institutional ADR, Centre is tasked with various functions under Bhutan ADR Act, and this annual report provides the status of functions carried out by the Centre, which includes the activities, case administration and way forward.

# 1. Centre's Profile

## 1.1. Vision and mission

### *Vision*

To be a leading Centre for ADR in Bhutan and beyond

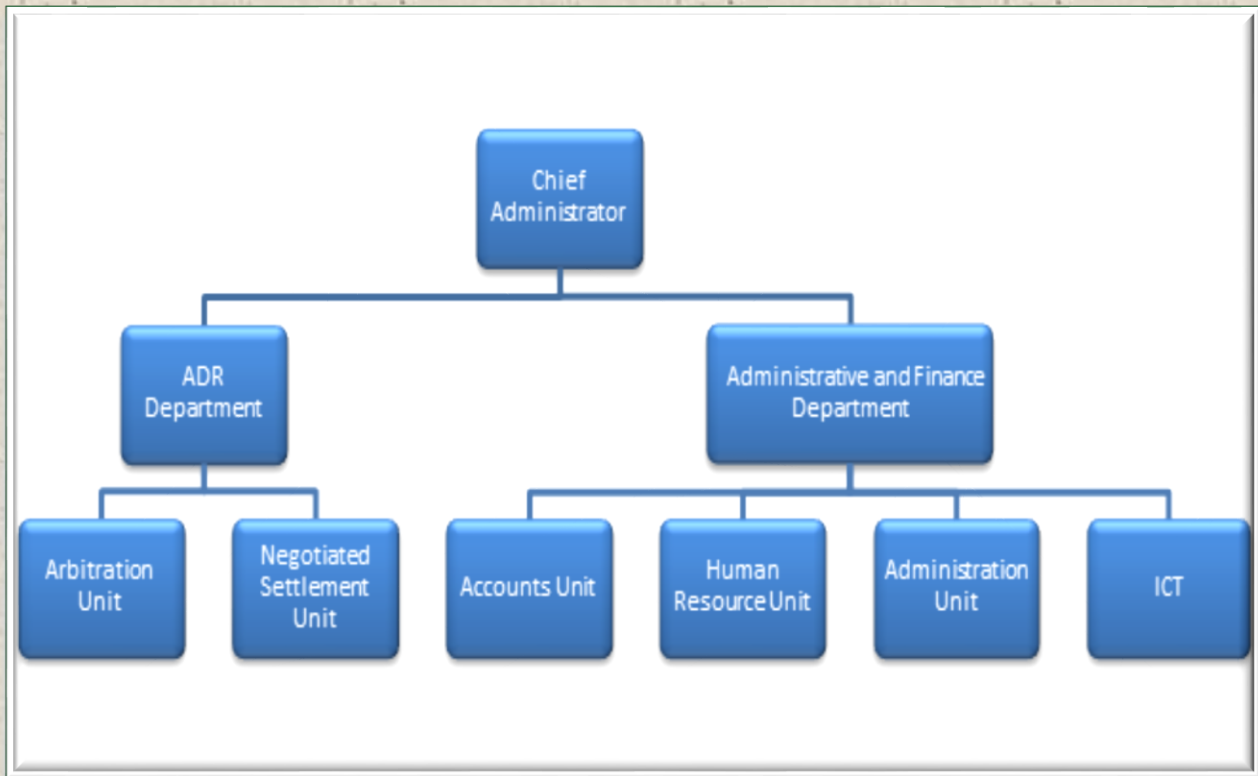
### *Mission*

- To provide neutral, efficient and reliable ADR services
- To render fast ADR services to the clients in Bhutan and abroad
- To build trust and confidence of the public
- To promote consensus and harmony in the society

### *Values*

- Excellence
- Professionalism
- Integrity
- Innovation
- Client centric

## 1.2. Organisational structure



## 2. 2022 at a glance

40 NEW CASES RECEIVED

33 ARBITRATED /AWARDED

17 PREVIOUS YEAR DISPUTE (CARRIED FORWARD)

1 WITHDRAWN

23 PENDING & CARRIED FORWARD to 2023

2.124 BILLION AMOUNT IN DISPUTE

13 APPEAL TO HIGH COURT

### 3. Overall statistics at a glance

**191**

Total cases received

**42**

Appeal to High Court

**141**

Total cases administered

**Nu. 4.724 Billion**

Total amount in dispute

**24**

Withdrawn

**Termination of Contract**

Highest dispute in Subject matter

**3**

Dismissed

**7.6 months**

Average turnaround time for  
dissolution of dispute



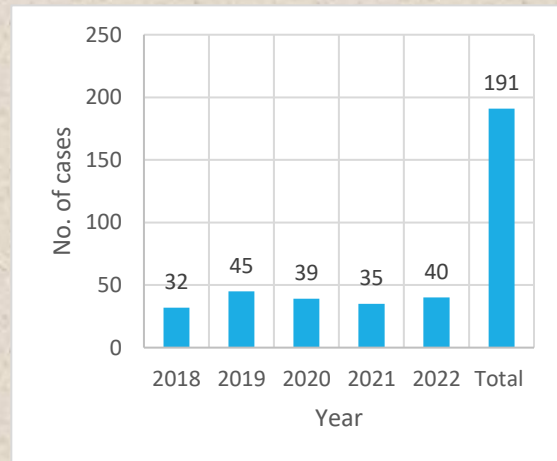
## 4. Case administration

### 3.1 Arbitration administration

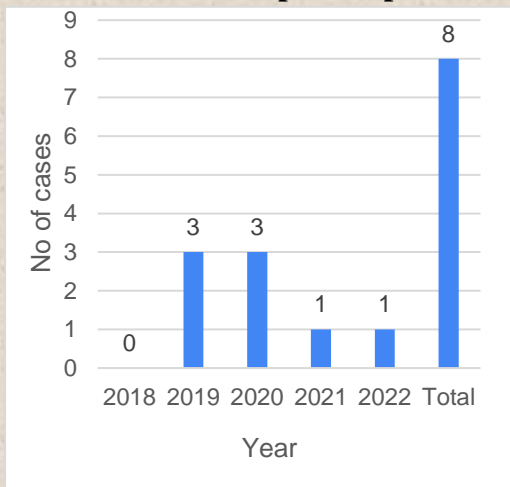
The Centre administers arbitration as well as mediation. Since its establishment in the mid of 2018, it has received and administers mostly the arbitration related to construction disputes.

#### a. Total cases received for arbitration

As shown in this figure, the Centre has received 191 cases in five years and highest being 45 in 2019 and lowest being 32 in 2018. Total cases mean whatever cases the Centre has received in the respective years, which includes withdrawals and dismissals.



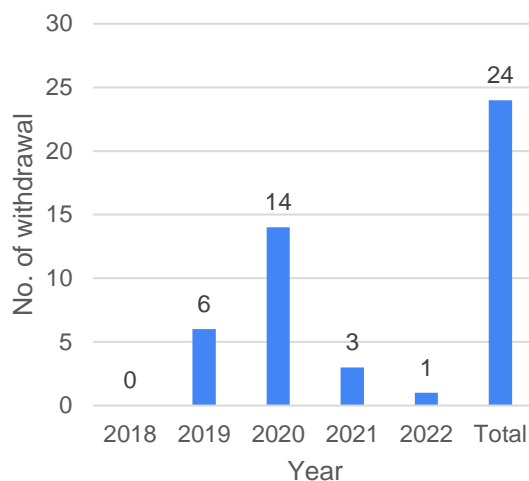
#### b. Arbitration between private parties



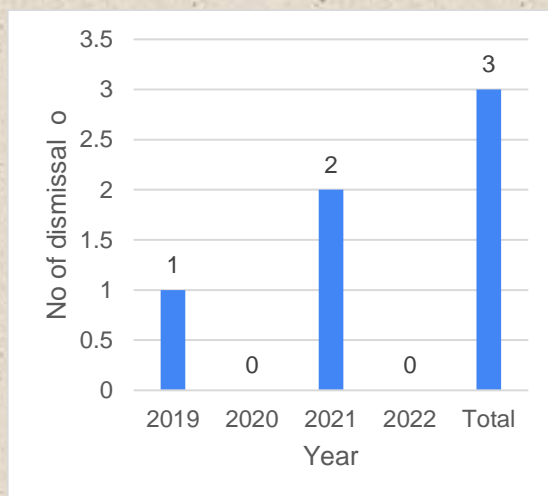
Centre administers all kinds of commercial arbitrations, domestic as well international, be it between the private parties or be it between government agencies and private parties. So far, in five years the Centre has administered arbitration mostly between the government agencies and private contractors. As shown in this figure, in five years Centre has administered only eight arbitrations between the private parties.

### c. Withdrawal

All parties to arbitration have right to withdraw their case. As shown in this figure, in total there were 24 withdrawals. Highest withdrawal was in 2020 with 14 cases. All withdrawals took place after the payment of nonrefundable fees but before the constitutions of arbitral tribunal. Parties withdraw cases mainly due to internal settlement and difficulty in locating parties. In some cases, parties refused to respond the notice of arbitration.



### d. Dismissal



Centre being facilitator does not have any authority to dismiss arbitration referred to the Centre. Only arbitral tribunal has authority to dismiss the arbitration. As shown in this figure, only 3 cases were dismissed in five years. Arbitral tribunal dismissed cases due to lack of jurisdiction to arbitrate and presences of criminal element in the dispute.

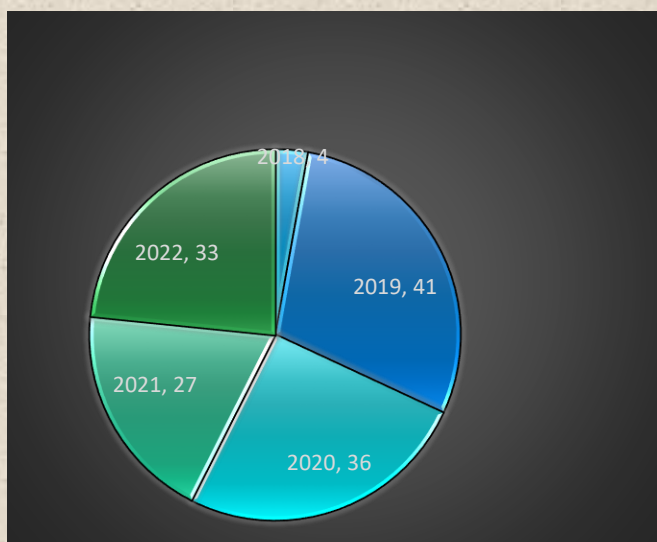
#### e. Subject matter of disputes

All arbitrations referred to Centre were mostly related to construction disputes. As shown in the figure, construction related disputes are grouped under eight categories and it does not include subject matters of disputes which were either dismissed or withdrawn in the respective years. In five years, Centre has administered highest disputes on termination of contract, which is 47 disputes and lowest disputes were on property lease and transaction of flat.

s/no	Subject matter	2018	2019	2020	2021	2022	Total
1	Bill related disputes	14	8	6	10	7	45
2	Termination	6	16	6	13	6	47
3	BoQ ,Price & rate description dispute	7	3	6	1	10	27
4	Ideal charges and ratification	3	2	2	1	2	10
5	LD and Time extension	2	5	3	2	4	16
6	Deviation	0	4	1	2	10	17
7	property lease	0	0	0	1	0	1
8	Buy and sell of flat	0	0	1	0	0	1

#### f. Awards

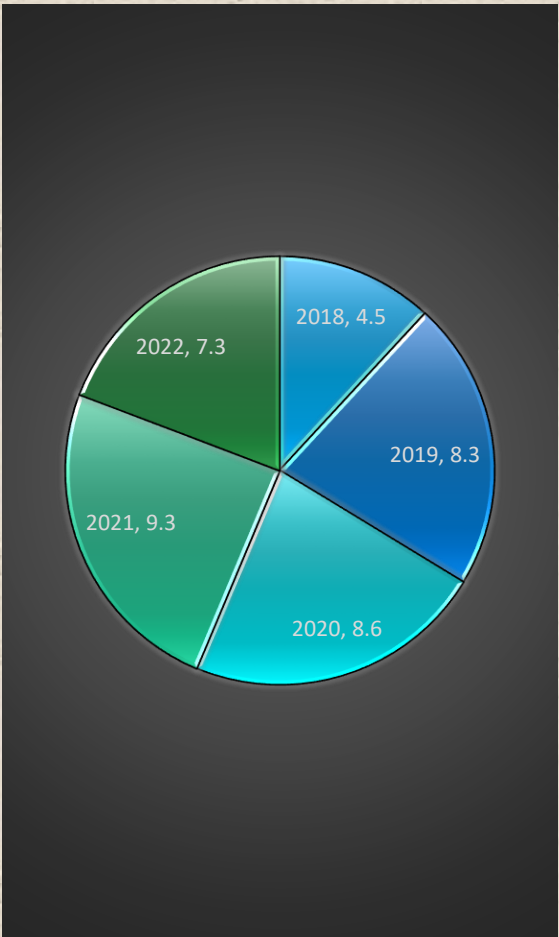
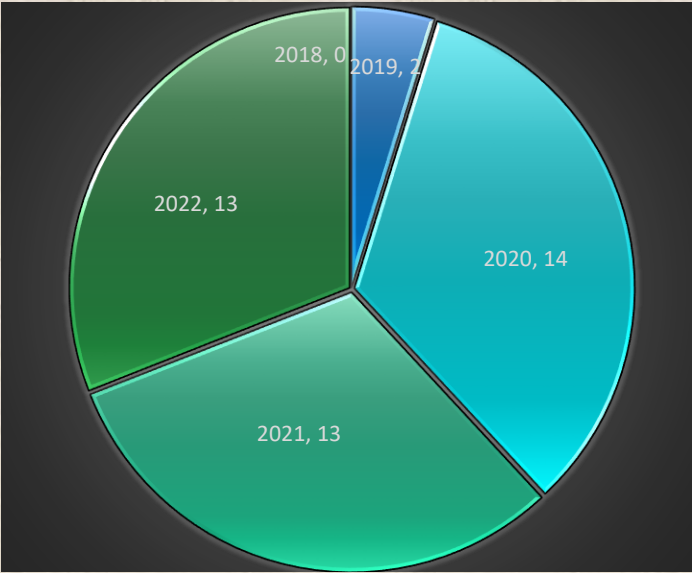
As shown in this figure, of 191 disputes received in five years, Centre has handled 141 disputes. Highest was handled in 2019 with 41 awards followed by 2020 with 36 awards.





**g. Appeal**

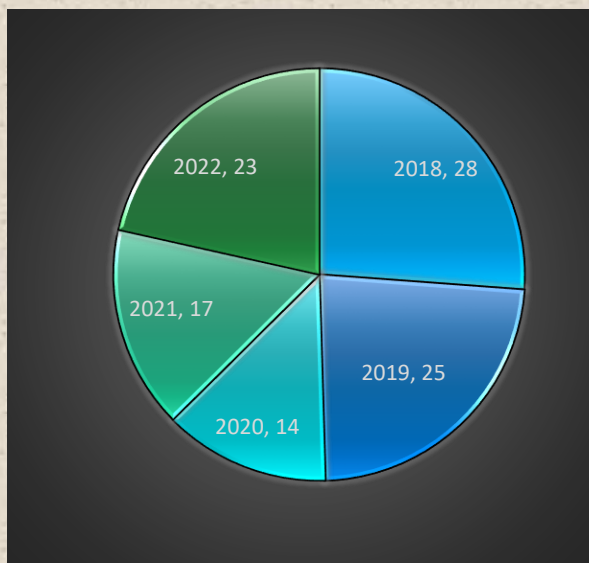
Under the Bhutan ADR Act 2013, any aggrieved party can seek a recourse against the decision of arbitral tribunal to High Court. Unlike in litigation, in arbitration parties can appeal to set aside the award only on limited grounds, which are provided under section 150 of Bhutan ADR Act, 2013. As shown in the figure, 14 awards were appealed in 2020 and 13 awards were appealed in 2022 and 2021.



**h. Turnaround time**

This Figure shows the turnaround time on average for dissolution of disputes through arbitration from the date of receipt of notification until the day of award. On average, highest time was 9.3 months in 2021 and lowest was 4.5 months in 2022.

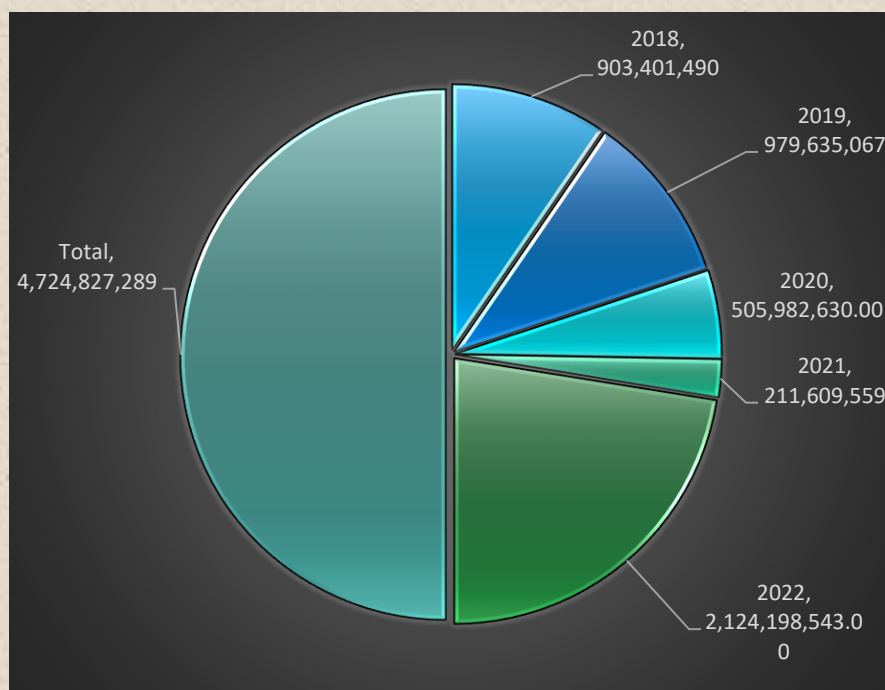
**i. Arbitration Pending list**



This Figure shows the cases received by Centre for arbitration, which were in the proceeding stage and not disposed of in the respective years. It means that pending at the end of every year after deciding the new cases received in the year as well as pending carried forward from the previous year. In 2022, there were in total 57 cases, 40 new cases and 17 carried forward from 2021. Of 57 cases, 23 are pending and carried forward to 2023.

**j. Total sum in dispute**

In last five years, Centre has received 191 cases for arbitration, which has, in total, a sum of Nu. 4,724,827,289/- in dispute. In terms of annual aggregate, 2022 has highest sum in dispute with Nu. 2,124,198,543/- and 2021 has the lowest sum in dispute with Nu. 211,609,559/-.

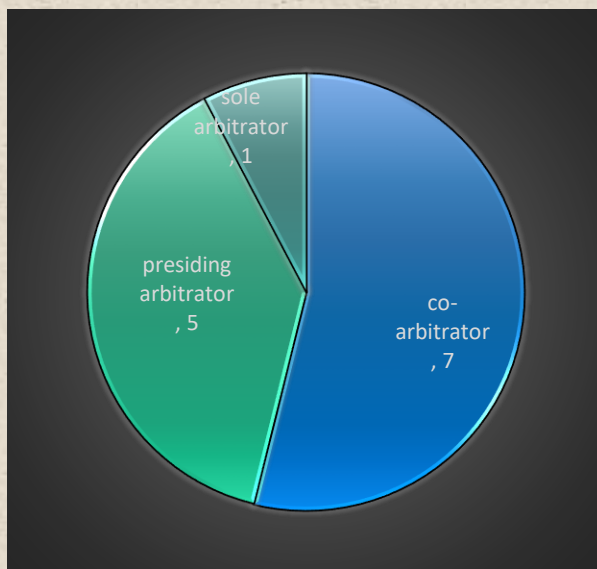


### 3.2. Mediation

In the last five years, Centre did not receive any particular case specifically referred for mediation. However, in the midst of arbitral proceedings, in two cases, the parties opted for settlement and the arbitral tribunal issued same settlement agreements as arbitral award.

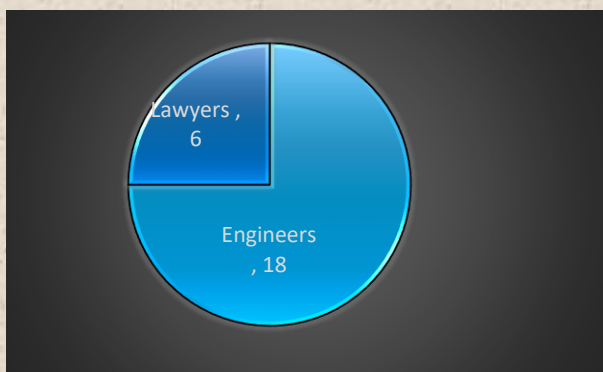
## 5. Appointment services

One of the main functions of the Centre is to provide appointment services. Centre appoints arbitrators, which includes co-arbitrators as well presiding arbitrators. Co-arbitrators are appointed upon request from the parties or when the parties fail to appoint within 30 working days from the date of receipt of request from other party. Presiding arbitrators are appointed upon request from the co-arbitrators or when co-arbitrators fail to appoint after 30 working days of their appointment. As shown in this figure, Centre has appointed 5 presiding arbitrators and 7 co-arbitrators in 2022. Centre has also appointed one sole arbitrator for the first time to decide the dispute as one member tribunal.



## 6. Arbitrators

### 6.1. Arbitrators by profession

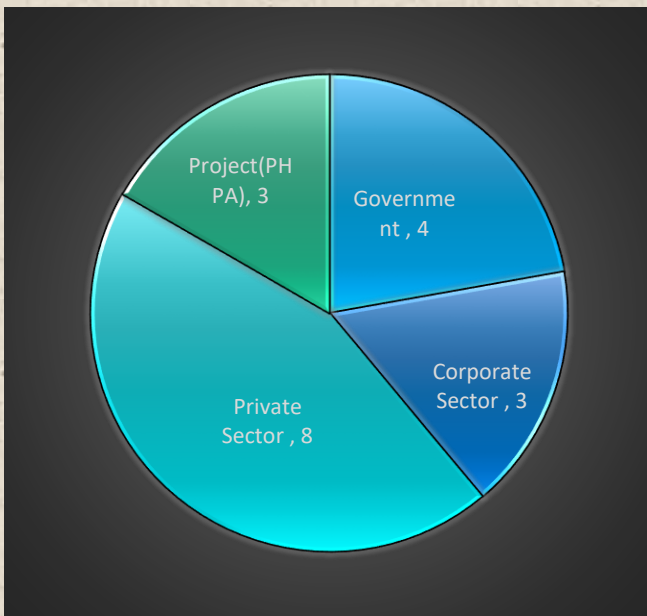
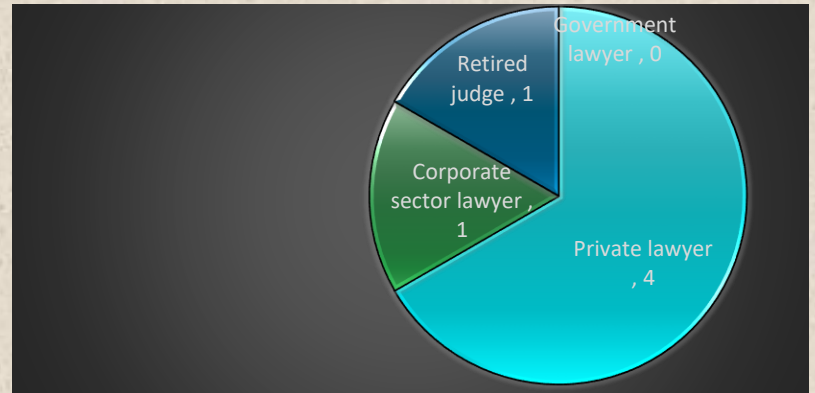


Bhutan ADR Act 2013 mandates the Centre to list the arbitrators from diverse profession. Currently, as Centre receives only construction related disputes, Centre has listed arbitrators with legal and engineering background. As shown in this figure, there are 24 active arbitrators; 6 lawyers and 18 engineers.



## 6.2. Lawyer arbitrators

As shown in this figure, of 6 arbitrators with legal background, 4 are from private while one is from corporate sector and other one is a retired Supreme Court Justice.



## 6.3. Engineer Arbitrators

Among the 18 engineer arbitrators, 8 are working in the private sector while 4 are civil servants. Other 6 engineers are in the project and corporate sectors.

## 7. Training and dissemination

In keeping with the mandate of the Bhutan ADR Act 2013, the Centre has trained 22 arbitrators and mediators in 2019.

In collaboration with Construction Association of Bhutan, the Centre has also conducted a virtual dissemination program for the contractors to disseminate on ADR and arbitration procedures. Further, on October 27, 2022 Centre also conducted an awareness program on the BBS about the Centre and ADR.

## 8. Financial Report

Bhutan ADR Act 2013 authorizes Centre to levy fees for its services. Accordingly, Centre has prescribed its detail fees in the Bhutan ADR Rules 2019. For arbitration, Centre charges two kinds of fees; nonrefundable registration fees and administration fees. For arbitrators, Centre charges training fees and annual membership fees. Table below shows the yearly break down of fees collected in last five years from arbitrators and parties to arbitration.

Year	Registration fee	Administration fee	Annual Membership fee	Training fee (income)	Adjudication fee	Total Nu.
2018	0.00	4,764.00				4,764.00
2019	75,000.00	1,196,988.61		163,000.00	10,000.00	1,444,988.61
2020	205,000.00	2,001,595.31				2,206,595.31
2021	255,000.00	1,556,090.49	76,000.00			1,887,090.49
2022	205,000.00	1,903,007.28	69,000.00			2,177,007.28
<b>Total Nu.</b>	740,000.00	6,662,445.68	145,000.00	163,000.00	10,000.00	<b>7,720,445.68</b>

## 9. Change of chief administrator

In accordance with Bhutan ADR Act 2013, the National Judicial Commission appointed the first Chief Administrator of the Centre, Mr. Chimi Dorji, in January 2017. As his tenure of five years ended in April 2022, National Judicial Commission appointed another Chimi Dorji, an assistant judge, as acting chief administrator of the Centre on June 27, 2022.



Chimi Dorje

(Jan 2017 – April 2022)



Chimi Dorji

(June 2022 till date)

## 10. Year ahead, 2023

### 10.1. Adoption of revised ADR Rules

In keeping with the changing landscape in the field of settlement of commercial disputes and recent developments in the field of arbitration and mediation, the Centre has decided to revise its rules for administration of arbitration and mediation, which will be consulted and adopted in 2023. In the revised ADR Rules, the Centre has included the following recent developments for efficient and expeditious administration of arbitration and mediation:

- Joinder, consolidation and multi-party contract
- Expedited procedures
- New qualification and standard for arbitrators and mediators
- Early dismissal procedures
- Emergency arbitration



### **10.2. Online application**

For making the ADR services faster, cost effective and more convenient to the parties and at the same time for enhancing the efficiency in administration of arbitration, the Centre is in the process of developing an online application system for referring the arbitration to the Centre. With online application system in place in 2023, the parties will have an option to file the notice of arbitration online as well as calculate the total estimate cost of arbitration fees online.

### **10.3. Certification and listing of new arbitrators**

To give more choices to the parties to select their arbitrators, the Centre is in the process of increasing the pool of arbitrators, domestic as well as international arbitrators. In the Revised ADR Rules, Centre has also revised the qualification and standard for arbitrators. Centre will train, certify and list the new arbitrators in 2023 upon fulfilment of new standards and requirements in the revised ADR Rules.

### **10.4. Institutional linkages**

One of functions of the Centre is to liaise the Centre with international ADR bodies. In line with this function, for exchanging the expertise and knowledge in the field of arbitration and mediation, the Centre has negotiated a MoU with Bangladesh International Arbitration Centre. Centre is in the process of seeking government's review and approval of MoU.

## 11. Annexure

### Over all case statistics

Year	No. of Cases received	carried forward from previous year	total cases in a year	withdrawal	dismissed	award	appeal	pending
2018	32	0	32	0	0	4	0	28
2019	45	28	73	6	1	41	2	25
2020	39	25	64	14	0	36	14	14
2021	35	14	49	3	2	27	13	17
2022	40	17	57	1	0	33	13	23
<b>Total</b>	<b>191</b>		191	24	3	141	42	107