



**DEMAND FOR GOOD GOVERNANCE
PROJECT**

World Bank-IDA-Grant No H4410-KH

**ANNUAL PROGRESS REPORT
2009**

Support to the Arbitration Council

Project Components

As part of the DFGG Project, the *Support to the Arbitration Council* project comprises four components and activities to be implemented during the lifetime of the DFGG Project. Those are:

Component 1: Institutional Integrity and Sustainability: Independence, Credibility, Sustainability

Key Activity 1: Selection/ recruitment of arbitrators: assess the need for the appointment of additional arbitrators.

Key Activity 2: Arbitration Council governance: maintain and strengthen appropriate governance structures including the ACF Board of Directors, Representatives of the Arbitration Council, Regular Arbitrator Meetings, Arbitrators' Retreat and Arbitrator working groups.

Key Activity 3: Sustainability: develop and implement strategies that will help to ensure the AC's institutional and financial sustainability in the long term.

Component 2: Labour Dispute Resolution

Key Activity 1: Resolution of Labour Dispute Cases: continue the AC/Fs core work of conciliating and arbitrating labour disputes.

Key Activity 2: Capacity Building of AC/F and SAC: undertake training and other activities to develop the legal and administrative capacity of Arbitrators, ACF and SAC staff.

Key Activity 3: Expansion of Arbitration Council Services: aim to expand AC's dispute resolution services throughout the country and into a broader range of industrial sectors.

Component 3: Partnerships and Stakeholder Outreach and Training

Key Activity 1: Establishing and maintaining partnerships: develop and maintain relationships with key partners as well as with other relevant organizations and institutions

Key Activity 2: Dissemination of publications and other information: produce, publish and disseminate arbitral awards and other relevant information in order to raise stakeholder awareness and ensure transparency.

Key Activity 3: Media relations and promotion: use media tools to promote AC/F to a wider audience

Key Activity 4: Stakeholder training: continue to run trainings for relevant stakeholders to promote awareness of the AC and the labour dispute resolution process.

Component 4: General Operation and Project Management

Key Activity 1: ACF will continue to provide managerial, technical and financial support to the Arbitration Council. AC/F will develop a more robust M&E system, purchase additional equipment and furniture and relocate to a larger space to accommodate the expansion in activities and increased staffing levels under DFGG.

Summary Annual Progress Report

The annual progress report for 2009 takes into account the period from 1 January 2009 to 31 December 2009. It is noted that DFGG effectiveness was declared on 24 June 2009. Thus while the Arbitration Council Foundation (ACF) was able to execute considerable DFGG project activities in support of the AC from the third quarter of 2009 onward (1 July - 31 December 2009), certain planned activities required revision due to the delay of DFGG effectiveness and other causes. In general, ACF's commitments regarding the key milestones were substantially completed. This executive summary highlights the key achievements that ACF accomplished in support of the AC during the first six months of DFGG Project.

Arbitration Council Governance

ACF organised multiple governance activities and maintained support of governance structures for the AC to continue governing itself effectively and with integrity. During the reporting period, ACF organised multiple Board of Directors (BoD) meetings during which ACF reported to and sought inputs from the BoD on significant achievements, financial matters, and other relevant issues. Since the first term of the BoD was to end in September 2009, ACF organised the election for a new term on 22 August 2009. As a result, arbitrators of the AC elected the new BoD. ACF completed the process of document registration of the new BoD with the Ministry of Interior (MoI), and the new BoD has since convened to carry out its governance responsibilities, including a meeting on 28 December 2009.

ACF organized Regular Arbitrators Meetings (RAM), regularly-scheduled assemblies of the arbitrators and the primary means that the arbitrators use to regulate themselves. Post-DFGG effectiveness, ACF helped to arrange and manage four RAMs: the first RAM was held on 11 July 2009 and included a discussion on the new format of an arbitral award containing a dissenting opinion and approval of hearing guidelines that govern the hearing management of the AC, as well as other businesses of the AC; the second RAM on 22 August 2009, which focused on the election of the BoD for the new term; the third RAM on 11 September 2009, which included updates of the AC/F and results of the BoD election; and the fourth RAM on 23 October 2009 to inform the arbitrators on the achievements thus far by the AC/F.

Arbitration Council working groups

In regard to administrative and legal support to Arbitration Panels (AP) for resolution of the collective labour disputes, ACF formed three AC working groups consisting of arbitrators, ACF and Secretariat of the Arbitration Council (SAC) staff. A working group on “pre-hearing memoranda”, which commenced in May 2009 and completed the task in August 2009, was responsible for reviewing the contents and efficacy of legal memoranda specifically prepared in support of arbitral hearings. As a result of the efforts of that working group, APs have been using an improved form of legal memorandum since September 2009. ACF established another working group on “hearing guidelines” in March 2009, aimed at assisting worker and employer parties in a better understanding of their rights and responsibilities in proceeding through the arbitral hearing process, as well as assisting arbitrators and SAC staff in the conduct and administrative support of arbitral hearings. After the working group produced the hearing guideline, the AC arbitrators approved the guideline during the RAM on July 2009 for implementation. ACF also formed a working group on “evidence guidelines” in June 2009. The working group has conducted a study focusing on issues related to evidence collection in the context of labour dispute resolution process and is in the process of analysing the data that has been collected. The working group is expected to produce recommendations to improve evidentiary practice of the AC at the beginning of 2010.

Labour Dispute Resolution

ACF continued to facilitate and support the AC in its core work to resolve collective labour disputes between workers and employers. By the end of the reporting period, the AC received 180 cases (registration numbers: 01/09-180/09) in 2009. The 180 cases received by the AC illustrate the highest one-year figure that AC has ever received. Statistics of overall cases registered (833 total cases since 2003) at the AC as classified by location and sectors reported that 95% (or 790 cases) of the cases were from greater Phnom Penh area (including Kandal), and 93% (or 776 cases) of those were from the garment sector. In regard to the overall case outcome, the data showed that 255 (or 31%) out of 833 cases were conciliated by arbitral panels prior to award issuance (agreement reached prior to hearing, at the hearing, and post hearing); 539 cases (or 65%) were settled by arbitral procedure; 8 cases (or 1%) were pending; and 31 cases (or 4%) were concluded by complainant withdrawal. The overall success rate of the AC, from May 2003 to 31 December 2009, in resolving the collective labour disputes is 69.04%.

Institutional and Staff Capacity Building

ACF made substantial progress in institutional and staff capacity building in support of the AC. ACF developed and implemented continuing legal education sessions for arbitrators, ACF and SAC staff: the first covered “Court Enforcement Procedures under the New Code of Civil Procedures” and another reviewed “Witness Protection”, respectively held on 21 May and 17 July 2009. ACF also arranged professional training sessions delivered by foreign expert trainer, Mr. Arnold Zack, a renowned US labour and employment arbitrator and Senior Research Associate at the Labor and Worklife Program of Harvard Law School, from 11-16 October 2009. The trainings included roundtable discussions with arbitrators and Ministry of Labour and

Vocational Training conciliators to share experiences and challenge faced in performing their labour dispute resolution duties; a workshop on conciliation and mediation techniques, resolution of interests disputes and arbitral award enforcement, and legal training sessions for ACF's Legal Services Department staff.

In addition, ACF provided arbitrators, ACF and SAC staff opportunities to participate in numerous other local and international training courses. At local training, ACF staff attended professional courses related to financial management, disbursement, procurement, staff management, project management, communications skills, report writing, critical thinking, bulletin article writing, and monitoring and evaluation. Those sessions were in and out of office trainings; and were delivered or sponsored by World Bank, PCO of MOI, and other ACF partners. At international training, ACF assigned four staff (two arbitrators, Finance Officer and ACF Executive Director) to attend international conferences in Vietnam, Thailand and Australia, respectively.

Partnership establishment

In regard to partnership activities, AC/F maintained and continued to make progress in its good relationships with stakeholders, especially its key tri-partite stakeholders: the Ministry of Labour and Vocational Training (MoLVT), union federations and employers. The ACF has established the Project Collaboration Committee (PCC). The PCC has assisted ACF in the coordination of joint/complementary activities throughout the DFGG Project. Moreover, ACF expects to convene the Stakeholder Advisory Group (SAG) to ensure sharing of information, strategies and feedback between AC/F and key stakeholders. In addition, ACF organised two important "Meets & Greets" sessions with representatives of workers and employers, respectively in August and September 2009. The Meets & Greets provide valuable opportunities for workers and employers to directly interact with arbitrators in a non-adversarial setting.

Besides the key tri-partite stakeholders, ACF maintained and continued its good relationship with other organisations such as ILO-Labour Dispute Resolution Project, ILO-Better Factories Cambodia, ILO-Workers Education Project, Royal University of Law and Economics, Pannasastra University of Cambodia, Royal Academy of Judicial Professions (school for judges, prosecutors, and court clerks), Lawyers Training Center, Community Legal Education Center, American Center for International Labour Solidarity, Garment Manufacturers Association in Cambodia, Cambodian Federation of Employers and Business Associations, Yale Law School, Deutsche Gesellschaft für Technische Zusammenarbeit (German development agency, GTZ), Australian Institute of Mediators and Arbitrators, Washington University, via meetings, visits, workshops, training courses and others. Within the DFGG Project level, ACF partnered with the other Implementing Agencies of the DFGG project: Radio National Kampuchea (RNK) of the Ministry of Information, Ministry of National Assembly-Senate Relation and Inspection (MoNASRI), One Window Service Office (OWSO) of Ministry of Interior (MOI), and The Asia Foundation (TAF). Moreover, ACF signed memorandum of understanding (MoU) with MoNASRI and RNK, whereas TAF and OWSO are on process. ACF is also in the process of formalising partnership with Pannasastra University of Cambodia through an MoU. ACF was also approached by Australian Volunteer International to explore institutional partnership with the Sydney-based Macquarie University.

Information disclosure

To upgrade the extent of information disclosure regarding AC services as well as the DFGG Project to stakeholders and the public, ACF employed a consultant firm for the updating and development of a legal database and AC website (available in both Khmer and English languages), primarily under the financial sponsorship of ICCO. The maintenance fees for the implementation of such database and website will be funded under the DFGG Project. To date, the development has been completed and implementation is ongoing; the former legal database is being transferred into the new database; relevant information (arbitral award, AC involvement in DFGG etc) is being uploaded into the new website. Because of the volume of information (including all arbitral awards in English and Khmer starting from 2003) required for uploading onto the database and website, ACF expects to complete the disclosure of the information by March 2010, with ongoing updates. It is noted that the development of the AC legal database and website took many months to complete for the reason that there is link between legal database and website; this means that downloading any information (i.e., arbitral awards, statistics of the case) via the website will be generated by the legal database.

ACF also published copies of the Compilation of Arbitral Awards and Orders, Vol. 10 in Khmer; 'Q&A' booklets; and additional copies of the 'Blue-book"—the Arbitration Council and the Process for Labour Dispute Resolution in Cambodia, by using the funds under the DFGG Project. ACF distributed the Compilation Volume 10 in Khmer to stakeholders (Garment Manufacture Association of Cambodia, Union Federations, MoLVT, etc.); the same version in English is in process for publication. The English volume has undergone final review and it is expected to complete in the next quarter. The Compilation of Volume 11 in Khmer language will be completed and printed in early 2010, and the English version will follow thereafter. During the reporting period, ACF also published the Arbitration Council brochures and leaflets on the Case Preparation before the AC.

ACF organised the 4th National Industrial Relations Conference on 14 December 2009 at Inter-Continental Hotel. The theme of the Conference was *Global Economic Crisis and Industrial Relations: Challenges and Way Forward*. The Conference was presided over by His Excellency Oum Mean, Secretary of State of the Ministry of Labour and Vocational Training, His Excellency Ngy Chanphal, Secretary of State of the Ministry of Interior, Mr. Qimiao Fan, the World Bank Country Manager for Cambodia, and Mr. Sok Lor, ACF Executive Director. It attracted approximately 150 participants from various Government Agencies, civil society organisations, and organisations working in the field of industrial relations. In addition to the issues of industrial relations, the guest speakers were able to address the participants by highlighting the rationales of the Demand for Good Governance project in promoting good governance in Cambodia. The Conference received extensive media coverage. It was reported in various newspapers, internet websites, television, and radio, both local and international, including The Cambodia Daily, The Phnom Penh Post, Koh Santepheap, Rasmey Kampuchea, Xinhua Daily, TVK, Bayon TV, Radio France International, and Radio Moharnokor.

Stakeholder training

ACF engaged in extensive efforts to increase stakeholders' awareness of the AC and the labour dispute resolution process in Cambodia. ACF carried out training activities funded by both its former donor, Interchurch Organisation for Development Cooperation (ICCO), and DFGG Project funds. Under ICCO funding, ACF provided the following trainings in February and March 2009: (i) law students (100 students) on labour dispute resolution and the Arbitration Council; (ii) union representative (30 persons) on case preparation skills, labour dispute resolution process and the Arbitration Council; (iii) joint-training with the Community Legal Education Center (CLEC) to employer representatives (35 persons) on labor laws; and (iv) representatives of workers and employers on labour dispute resolution.

In addition, under the DFGG funds, ACF delivered training sessions to the following stakeholders during the period of DFGG effectiveness: (i) 55 student judges of the Royal Academy of Judicial Professions (RAJP) on labour dispute resolution process and the Arbitration Council; (ii) 30 workers and employers on labour dispute resolution in Cambodia through joint training with CLEC at CLEC Office; (iii) 59 court clerk students on the labour dispute resolution process and the Arbitration Council at RAJP; (iv) more than 20 law students at Royal University of Law and Economics and University of Cambodia on arbitration process; (v) 120 law students of Pannasastra University of Cambodia on a comparison of US-Cambodia labour arbitration at the university; and (vi) approximately 60 of lawyer students on labour dispute resolution process at the Lawyers Training Center.

AC studies within M&E activities

Due to the delay in the DFGG Project Effectiveness and or delays in the procurement process, recruitment of Technical Assistant (TA) Consultant for project management, and procurement issues, most of the studies (i.e., Baseline Study, Economic Value, Sustainability, Fundraising Consultant, Broadcast Media Tools etc) were required to be moved forward to 2010. For the Baseline Study, ACF awarded the contract to Economic Institute of Cambodia (EIC) in mid-December 2009, the whole study will be ended by late March 2010; Study on demand for AC service is on process—the applicant submitted the technical and financial proposal in late December 2009. The contract will be signed in mid-January 2010; study is expected to complete in March 2010. For the ToR development of studies (sustainability/economic value etc) will be completed in early of January 2010; then the procurement will start by mid-January 2010.

For full report, available upon request!