



AC Newsletter

NEWS AND UPDATES ON INDUSTRIAL RELATIONS AND LABOUR DISPUTE RESOLUTION IN CAMBODIA

June - September 2011

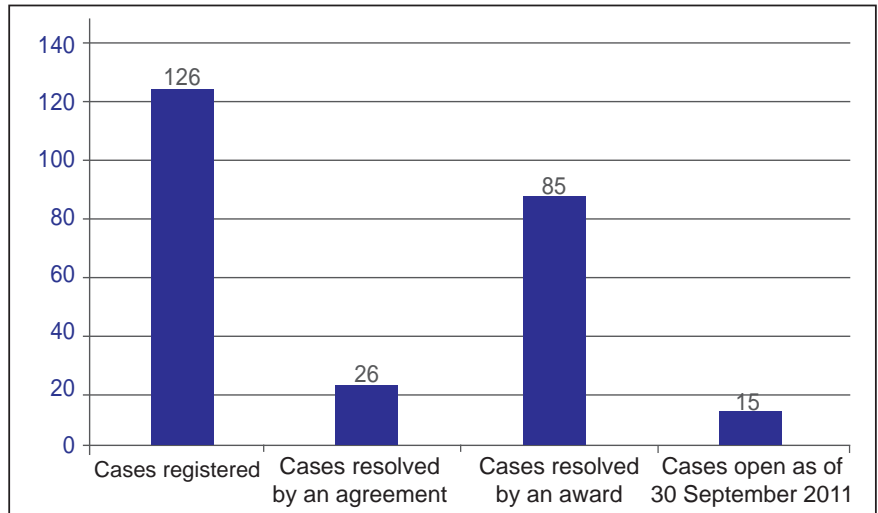
**RESOLVING COLLECTIVE
LABOUR DISPUTES**

Arbitration Council - Labour Dispute Resolution

(Cases from June - September 2011)

Content

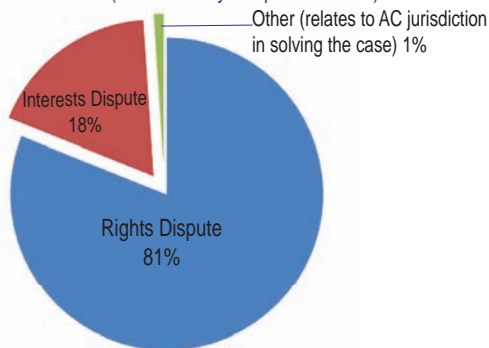
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As of 30 September 2011, 126 cases were brought by employers, and unions and workers to the Arbitration Council (AC) for settlement. Of these, 26 cases (21%) were successfully resolved by an AC-mediated agreement between the disputant parties, and 85

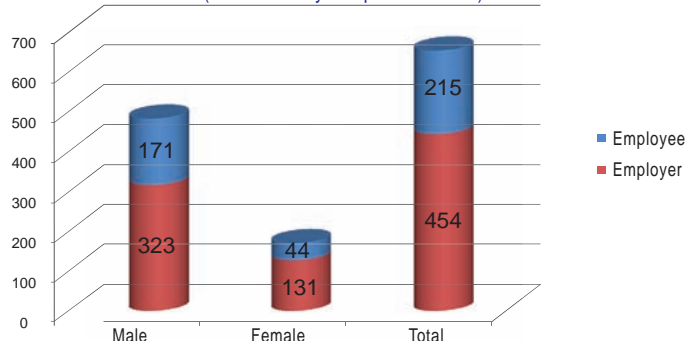
cases (67%) were resolved by the issuance of an arbitral award. A total of 15 cases (12%) were pending and carried over to the next month for resolution. The overall success rate of AC cases since 2003 up to 30 September 2011 stands at 70.14%.

Arbitration Council Rights and Interests Disputes (From January - September 2011)



Between January and September 2011, 62 of the 126 cases registered were covered by the MoU. This chart shows the number of rights and interests disputes in cases resolved by arbitral awards covered by the MoU. As the chart displays, a majority (81%) of issues in MoU cases were rights disputes.

Number of Employers and Employees that Attended the Hearing (From January - September 2011)



Overall, the AC helps resolve labour disputes between employers, and unions and workers. By assisting in the settlement of such disputes, the AC plays a key role in removing obstacles to productivity and the core activity of enterprises and workers: maintaining and seeking to increase their respective incomes.

The chart indicates the number of employers and employees that attended the hearings from January to September 2011. In total, 669 people attended the AC hearings in the first three quarters of 2011. Specifically, there were 215 employers (32%) and 454 employees (68%), with 26% of the attendees being female.

Garment industry MoU brings harmony to Cambodia's industrial relations

Nine months into pilot implementation of the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), has marked an important and memorable chapter in the history of Cambodian industrial relations. The Arbitration Council Foundation has observed the implementation of the MoU, and an interesting statistic has emerged at the end of this period.

Of the 126 cases received by the Arbitration Council between January and September 2011, about 60% were submitted for final and binding arbitration. This rate reflects a remarkable increase in the number of cases submitted for binding arbitration by the AC, compared with fewer than 10% per year in previous years. This means that many disputes brought this year have been resolved immediately once decisions have been made. This can shorten the length of disputes, which may contribute to the development of the economy.

The number of strikes has significantly decreased during the operation of the MoU. The garment industry has benefited from this decrease resulting from the MoU and the AC's final and binding arbitration. While official strike data for the period is not yet available, garment employers and unions have confirmed at various forums that fewer strikes occurred during this period, as compared with previous years. At the AC, only 7 strikes, among 62 cases covered by MoU, happened before and during the process.

The AC has observed a good understanding of the MoU among unions and employers who are covered by the MoU. Our figures show that 90% of MoU unions that have appeared before the AC demonstrate a good understanding of the MoU, compared with 75% of MoU employers.

"The Memorandum of Understanding on Improving Industrial Relations in the

Garment Industry is working and I am very happy," said Mr. Van Sou Ieng, Chairman of the Garment Manufacturers Association in Cambodia and Cambodian Federation of Employers and Business Associations in his closing remarks at an event for members of the Arbitration Council and some 45 employer representatives from various industries.

The impact of the MoU on the garment industry and whether or not the MoU should be renewed has been a burning topic of discussion at all labour relations forums, such as buyers' forum and footwear seminar organised by International Labour Organisation (ILO) in early September.

The MoU on Improving Industrial Relations in the Garment Industry was counter signed by the Garment Manufacturers' Association in Cambodia (GMAC) and six major union federations and confederations on 28 September 2010.

Disputes involving 3 enterprises, 7600 workers ended by the AC

During the third quarter of this year, the Arbitration Council's decisions, officially known as arbitral awards, in the three significant cases has put an end to the disputes, involving three enterprises and more than 7,600 workers. The disputes involve of June Textile (054/11), Supertex (084/11), and Cambrew (061/11).

The AC decided in the June Textile case that the burning down of the June Textile factory, caused by an electrical fault, was not considered an "Act of God" which could discharge the employer's obligation to pay the workers' termination payments.

According to the AC's ruling, an event must be unforeseeable and insurmountable by human effort to qualify as an "Act of God". The fact that the employer had a fire safety system, practiced fire drills, installed fire extinguishers, hired a maintenance team to oversee the electricity system and bought insurance to cover fire incidents confirmed that the blaze was generally foreseeable.

The employer agreed to comply in full with the AC's order that it make termination payments to all 4,600 workers. Albert Teoh, Director of the June Textile, said during a news conference at the Phnom

Penh headquarters of the Garment Manufacturers Association in Cambodia (GMAC), on 23 July 2011, that "[i]t was what the workers wanted, so we are following the Arbitration Council's ruling."

Similarly, Supertex agreed to provide the five forms of compensation demanded by workers due to the close down of the factory. Almost 2,000 workers received the five forms of compensation ordered by the AC in early August, including indemnity, damages, lost salary, annual leave and unpaid wages.

Cambrew, the third significant case, involved

Disputes involving 3...

Continued from page 2

34 workers. Angkor beer promoters, who had been striking against Cambrew seeking unpaid overtime and respect, will receive retroactive overtime pay in accordance with the AC's decision, following intervention by city officials.

The Deputy Governor urged Cambrew to honour a July ruling by the AC that ordered Cambrew to adhere to the labour law and pay its beer promoters US\$2 overtime on Sundays. The Council's ruling was retroactive for three years, said Sar Mora, President of the Cambodian Food and Service Workers' Federation.



Approximately 100 Supertex workers waiting outside the offices of the Arbitration Council while their representatives are presenting their case to arbitrators

AC rulings acknowledged as clear, strong, and persuasive

The rulings of the Arbitration Council (AC) have been praised for their clarity, strength and persuasiveness of legal reasoning in an independent legal audit by Australian industrial relations expert, Commissioner Michael A. Gay of Fair Work Australia, dated 12 August 2011.

Commissioner Gay assigned the AC an overall score of 79/100 in his independent legal review of 12 arbitral decisions issued in each month of 2009. He focused particularly on the legality of the decisions and the drafting of reasoning.

He noted the efficacy, integrity and expertise of the Council, and explained that the AC's commitment to industrial stability "will encourage more highly skilled, capital intensive employers to invest, increasing employment and broadening Cambodia's skills base to include higher technology industries in manufacture and fabrication."

Having conducted a similar review in

2003, Commissioner Gay commented that the Council has remedied a criticism in his previous review concerning an incomplete decision in one case. He was impressed by the quality of the 2009 arbitral awards, which fully explained the issues, applied a clear account of the law, and acknowledged specific facts relevant to the claim.

As a result, he endorsed the work of the Council in effectively resolving disputes in a way that "blurs the dividing lines between adversaries" and leaves parties feeling confident that the Council has considered their interests. He also commented that the Council's commitment to private conciliation further erodes adversarial relationships and provides a basis for more practical and cooperative solutions to industrial disputes.

This legal audit is part of a planned review which tracks the performance of the AC. A legal audit will take place twice during the life of the World Bank's

Demand for Good Governance (DFGG) project, which is funding the work of the Arbitration Council from 2009 until 2013.

Commissioner Gay performed this legal audit on a pro bono basis in his relentless and strenuous efforts to contribute to the development of the AC since its establishment in 2003. "Commissioner Gay's findings attest to the significant progress that the AC has made in only six years in terms of independence, credibility and sustainability of the Council," commented Mr. Sok Lor, Executive Director of the Arbitration Council Foundation. "The Council is grateful to Commissioner Gay for his continued invaluable contribution to the institutional integrity and sustainability of the Council."

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Unions, employer representatives support garment industry MoU

Unions have expressed their support for the garment industry MoU with respect to binding arbitration by the Arbitration Council (AC) and wish to be included as parties to it, according to several union representatives who attended a 'Meet & Greet' with AC arbitrators at Phnom Penh Hotel on 22 July 2011.

MoU parties should consider future entry by other union federations, suggested Mr. Chey Sovann, President of the Khmer Workers Power Federation Union (KWPFU). This suggestion was echoed by other union representatives at the event.

Mr. Vong Sovann, President of the Cambodian Confederation of Trade Unions (CCTU), and Mr. Mai Vathana, Secretary General of the Khmer Youth Federation of Trade Unions (KYFTU), responded that MoU parties would welcome and encourage new members, referring to the preface of the MoU, "[t]he undersigned shall promote and encourage the spirit of this MoU to all



Union representatives meet and greet with arbitrators

employers and workers who are not signatory to this MoU."

The garment industry MoU concerning binding arbitration by the AC, among other things committed to improving industrial relations in the garment industry, was signed by the Garment Manufacturers Association in Cambodia (GMAC) and six major unions on 28 September 2010 and came into effect on 1 January 2011.

"The [Memorandum of Understanding on Improving Industrial Relations in the Garment Industry] is working and I am very happy," said Mr. Van Sou leng, Chairman of the Garment Manufacturers Association in Cambodia and the Cambodian Federation of Employers and Business Associations in his closing remarks at this similar event for members of the AC and some 45 employer representatives from various industries.

Legal clinic students learn about the labour dispute resolution process and the AC

19 legal clinic students have gained knowledge of the Arbitration Council (AC) and labour dispute resolution process in Cambodia and had a chance to meet face-to-face with an arbitrator to understand more of the real experience of arbitrators.

The 19 legal clinic students are from

Royal University of Law and Economy and are chosen under the grant of the East West Management Institute (EWMI) to get an in-depth understanding of alternative dispute resolution (ADR) particularly in accord with labour law.

Ms. Leng Mouy Keang, a year 3 student, said, "I have learnt once [labour law],

however, I have learned a lot more from the training, especially the overall procedure at the Arbitration Council." She added that she also understands that alternative labour dispute resolution provides benefits to both workers and employers such as improving good workplace relation and saving time and money.

Legal clinic students...

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The training on the labour dispute resolution process and the AC was provided by Ms.

Sou Sorphea, Director of the Legal Services Department at the students' university on

14 July.

Following the training, all legal clinic students got a chance to meet with

arbitrator Liv Sovanna to learn about his first-hand experience. Arbitrator Liv Sovanna gave a presentation at the AC office on 18 July 2011 on the overall understanding of the AC and shared his own experience.

Mouy Kea said Arbitrator Liv Sovanna provided her, as well as the other students, with a really good account of his experience and knowledge of the labour dispute resolution process.

In his closing remarks, Arbitrator Liv Sovanna praised the students' passion to learn and their good understanding after the session. He encouraged them to be good arbitrators or good labour law practitioners in order to bring peace and harmony to the whole community and the country.



Arbitrator Liv Sovanna shares his arbitration experience with legal clinic students from Royal University of Law and Economics

Peace fellows, Japanese law students separately learn labour dispute resolution in Cambodia

On 9 August 2011, Arbitration Council Foundation hosted 19 peace fellows (9 female) of the Rotary Peace Center of Chulalongkorn University, Thailand. Arbitrator Ann Vireak made a presentation to the group on the labour dispute resolution process at the AC and answered at least ten questions related to, for example, issues that appear most often before the AC, standard wages in Cambodia, benefits of the tripartite structure of the AC, the definition of individual labour disputes, the role cultural differences play in conflicts, and the perception of fairness in industrial relations.

"The presentation was really helpful for [the Rotary Peace Fellows] to gain knowledge about the functions and features of the Arbitration Council for industrial peace," said Jenn Weidman,

Deputy Director of Rotary Peace Center at Chulalongkorn University, after the presentation.

The session was followed by a factory visit to Grand Textile Garment to witness first-hand the production and operation of a garment factory and learn how labour relations are maintained between worker representatives and management.

Rotary Peace Fellows are leaders in promoting national and international cooperation, peace, and the successful resolution of conflict throughout their lives, in their careers, and through service activities. Fellows earn either a master's degree in international relations, public administration, sustainable development, peace studies, conflict resolution, or a related field, or a professional development certificate in peace and conflict resolution.

In late August 2011, the ACF hosted another visit by Aoyamagakuin University in Tokyo, Japan. Arbitrator Nhean Somunin of the AC provided 16 law juniors (9 female) with training on labour dispute resolution.

The topics covered included types and definition of labour disputes, the conciliation process at the Ministry of Labour and Vocational Training, and the mediation and arbitration process at the AC.

Labour Law Professor Hisaaki Fujikawa, who led the group at the AC, said that the knowledge Arbitrator Nhean Somunin shared with his students was useful for his labour law class.

"I really appreciate your taking valuable time to share your knowledge of the labour dispute resolution process in Cambodia

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Peace fellows, Japanese...

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with my students," he said. "It will be very useful for our class on Japanese and South-East Asian Labour Law, which will begin right after we return to Japan."

Professor Fujikawa specialises in South-East Asian Labour Law and is a member of the Japanese-Asian Law Study association, consisting of 10 well-known Japanese labour law professors. He is responsible for Cambodia, Indonesia, Malaysia and Singapore.



Arbitrator Nhean Somunin of the Arbitration Council explains labour dispute resolution process to Japanese students

AC family, ministry officials learn effective arbitration skill from Canadian experts

AC family and officials from Ministry of Labour and Vocational Training (MoLVT) gain knowledge on effective arbitration skill from Canadian experts, Professor Allen Ponak and Daphne Taras on two consecutive weekends, 30-31 July and 6-7 August 2011. The AC family consists of Arbitration Council Foundation (ACF), Secretariat of the Arbitration Council (SAC) and Arbitration Council (AC).

A four-day training on effective conciliation and arbitration for AC family and labour

conciliation and inspection officials of the MoLVT took place at the Phnom Penh Hotel.

The topics for the training included arbitrator ethics, effective mediation/conciliation techniques, persuasive decision writing, contract interpretation and application. "The purpose of this session [on mediation] is to broaden your skill sets that enable parties to be able to come up with their own solutions," Professor Taras said in her session on mediation on 31 July 2011.

Professor Ponak said in his welcome remarks, "Today's training is the end

product of the plan made in 2005 when I met with Mr. Nimmith Men (former ACF Executive Director) in Baltimore, the US."

Allen Ponak is an arbitrator, a professor Emeritus of Industrial Relations at Haskayne School of Business, University of Calgary and Director of the Industrial Relations Research Group. He is also co-author of *Union-Management Relations in Canada*, a leading textbook and *Strikes in Essential Services*, a national study of the effectiveness of current dispute procedures. He served as executive producer, narrator and scriptwriter of a 40-minute documentary film entitled *Beyond Collision: High Integrity Labour Relations*, which showcases the successful approaches of four employers and their unions.

Professor Taras is Dean of the Edwards School of Business at the University of Saskatchewan. She has published five books and over 50 journal articles and book chapters, and co-edited journal symposia for *Journal of Labor Research*. She has also mediated labour law disputes and facilitated union-management committees.



Arbitrator Allen Ponak (right), Dean Daphne Taras (left) of University of Saskatchewan, Canada, presents effective conciliation and arbitration skills to AC members and labour ministry officials

Briefs

ACF, peace Fellows visit factory

On 19 August 2011, staff members of the Arbitration Council Foundation (ACF) and more than 20 Rotary Peace Fellows and staff of Chulalongkorn University, Thailand, visited Grand Textile Garment factory. The visit gave ACF staff

the opportunity to witness first-hand the production and operation of a garment factory. A brief meeting with union representatives was also organised, for them to gain basic understanding of how industrial peace is maintained between the

management of the factory and union representatives.

The factory visit was inspired by the fact that 90% of cases before the AC come from the garment sector.

Labour dispute resolution process presented on Radio

A representative of the Arbitration Council Foundation (ACF), on 23 August 2011, spoke about the labour dispute resolution process in a calling show on Voice of Democracy (VOD) radio.

Mr. Y Samphy, ACF Manager of Training & Communications, explained the legal procedures that workers and employers are required to follow according to the

Cambodian Labour Law when they have labour disputes in their workplace.

Mr. Sok Kruey, lawyer with the American Center for International Labour Solidarity (ACILS), was a co-speaker on 'The Safe Work' program, a joint program between ACILS and VOD. It lives on Tuesdays of the second and fourth week on FM 106.5 (VOD). The program is designed to improve

workers' knowledge about rights protection, good workplace cooperation, and working conditions.

The calling show can be listened to on the VOD website at <http://www.vodhotnews.com/km/2011-01-23-15-13-21/145-safeworkprograms/755-safeworkprograms>.

ACF director presents development of garment industry MoU implementation at buyers' forum

On 6 September 2011, Mr. Sok Lor, Executive Director of the Arbitration Council Foundation (ACF), conducted a presentation to representatives of big brands and leading labour unions and organisations on observations and findings about the implementation of the garment industry MoU on binding arbitration by the Arbitration Council (AC).

As of end of August 2011, the AC received

113 cases and 58 of them were covered by the garment industry MoU, according to Mr. Sok's presentation to around one hundred representatives from big brands such as Nike, Adidas and Puma, as well as union and labour organisations.

About 90% of MoU unions that have appeared before AC demonstrate a good understanding of MoU, compared with 75% of the MoU employers, he continued.

Compliance rate is high with 9 of 15 binding arbitral awards issued in the first quarter of 2011 being followed by disputant parties.

The forum participants expressed a high opinion of the work of the AC in labour dispute resolution in Cambodia.

Employee and employer representatives discuss benefits of binding arbitration

On 26 August 2011, 39 employee and employer representatives (11 female) discussed the benefits of binding arbitration by the Arbitration Council (AC). The session, which formed part of the Workshop on Collective Bargaining Agreement: Pathways

to Good Workplace Cooperation organised by Integrating Human to Quality (IHQ) at Phnom Penh Hotel, was facilitated by Arbitrator Liv Sovanna of the AC.

The participants agreed that binding

arbitration by the AC could speed up the process of labour dispute resolution and therefore enable parties to labour disputes to focus on productivity, which in turn benefits the industry and the national economy.

Publications for Sale

Compilation of Arbitral Awards and Orders volume 1 - 11 (English), 1 - 15 (Khmer), Compilation of Labour related Laws and Regulations 2011 (Khmer), the Arbitration Council and the process for Labour Dispute Resolution in Cambodia (English and Khmer) are available for sale at the Arbitration Council office.



Contact Ms. Soeung Sophea now for your copy: ssoeung@arbitrationcouncil.org 023-881-814 (ext. 110)

Support the Arbitration Council by purchasing our publications. The sale of our publications will raise revenue for effective labour dispute resolution that contributes to the development of Cambodian labour law, social welfare and the growth of the economy.



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