



AC Newsletter

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

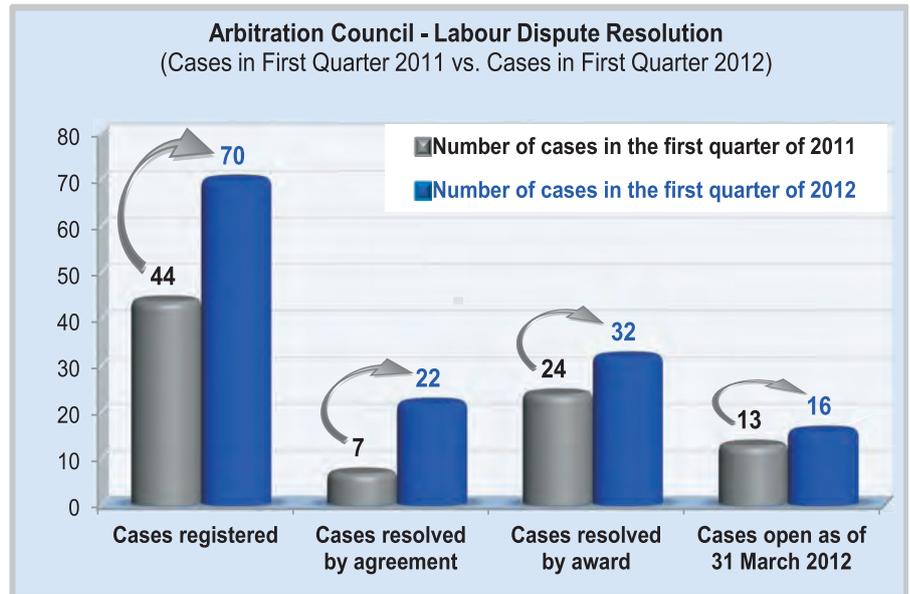
January - March 2012

RESOLVING COLLECTIVE
LABOUR DISPUTES

Content

- Latest Update on AC Labour Disputes Resolution 1
- Mobile Hearing Results in Settlement 2
- 400 Workers Stop Strike to Pursue AC Peaceful Dispute Resolution 3
- Arbitrators Mediated the Parties to Reach Agreement on 28 of 29 Claims 3
- Sustainability of Collective Dispute Arbitration a Shared Challenge for AC and Its Clients 4
- Cambodian Courts Endorse AC Decision 4
- Arbitrators and Judge Thrash out Code of Civil Procedure 5
- ACF Labour Experts Sit on the Preliminary International Commercial Arbitration Moot 6
- What's New? 7
- Keep Abreast of the Labour Law 8

Latest Update on AC Labour Dispute Resolution (January - March 2012)

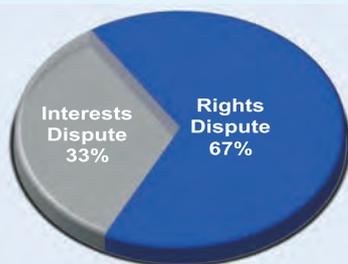


As of 31 March 2012, 70 cases were brought to the Arbitration Council (AC) for settlement by employers, unions and workers. Of 70 cases, 22 were successfully resolved by mediated agreements between the disputant between the disputant parties and the other 32 were

resolved by issuance of an arbitral award. The remaining 16 cases were pending and forwarded to the next month for resolution. The above graph illustrates the significant jump in caseload as it compares the number of cases registered at AC in the first quarter of this year with

the first quarter of last year. AC received 70 cases in the first quarter of 2012 compared to 44 cases at the same time in 2011. This increase in caseload indicates the preference of more Cambodian businesses and workers to use the professional services of the AC.

Arbitration Council Rights and Interests Disputes
(From Jan to Mar 2012)



This chart shows the number of rights and interests disputes in all issued cases covered by the MoU during the reporting period. Between January and March 2012, 31 of the 70 cases registered were covered

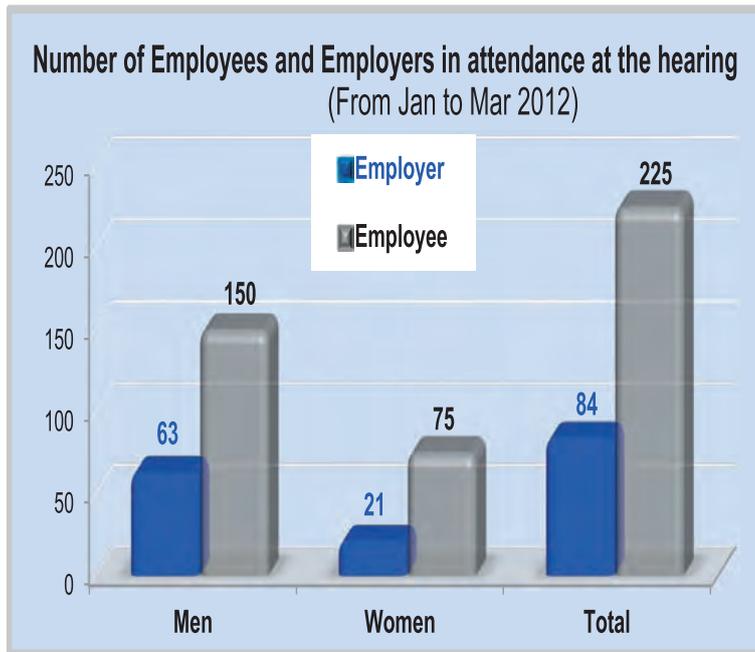
by the Garment Industry Memorandum of Understanding (MoU). As the chart displays, a majority (67%) of issues in MoU cases were rights disputes. In fact, the MoU is aimed at promoting harmonious industrial relations in the

Cambodian garment industry in which the workers promised not to go on strike, while the employer has to abide by the AC award. The agreement between the Garment Manufacturers Association in Cambodia.



Continues on page 2

Continues from page 1



The above chart indicates the number of employers and employees that attended the hearings at the AC from January to March 2012. In total, there were 309 people in attendance at the AC hearings in the first quarter of 2012. Specifically, there were 84 employers (27%) and 225 employees (73%), with 31% of the attendees being women. Considering the fact that women constitute a large majority in the garment and footwear workforce, the AC

encourages more women to attend the hearings to better understand how their issues are resolved impartially and effectively.

Overall, the AC helps resolve labour disputes between employers and unions and workers with a success rate of 71.3%. By assisting in the settlement of such disputes, the AC plays an important role in maintain and seek to increase their respective incomes.

Mobile Hearing Results in Settlement

The Arbitration Council conducted a mobile hearing in Siem Reap province on 23 March 2012 for case 56/12 involving a labour dispute at Blue Pumpkin Co., Ltd and ended the dispute with a mediated agreement between the company and its workers.

The arbitration panel, consisting of Arbitrators Pen Bunchhea, Mar Samborana and Tuon Siphann, successfully mediated all 3 demands the worker party raised for resolution by the Arbitration Council.



Representatives of enterprises and unions presenting their case before AC arbitrators during the AC Mobile Hearing in Siem Reap

Ms. Say Soklaksmeay, human resources manager of the Blue Pumpkin, Co., Ltd felt happy that the Arbitration Council came to Siem Reap to resolve the dispute between labour and management and helped the parties reach an agreement on the spot. She added that she trusted the Arbitration Council for its independence, focus on justice and transparency.

"[All the three arbitrators in the panel] adopted a unified posture although they were selected by the parties and the mediated agreement was fair to both parties," she said, adding that "they gave very clear explanation in each claim, which made the parties feel satisfied."

Mr. Sok Narith, vice president of the Cambodian Tourism and Service Workers Federation (CTSWF), also accepted the AC-brokered agreement, saying the arbitrators' explanations were all based on the labour law.

"I have long acknowledged the advantages of having the Arbitration Council for dispute resolution. [In this case] initial negotiations with the employer did not produce any results" he said. "When the AC helped conciliate it, our dispute was resolved peacefully."

Both disputant parties thanked the AC and expressed hope that the AC will continue to conduct mobile hearings in not only Siem Reap

but in other provinces outside its office in Phnom Penh.

Ms. Say Soklaksmeay said, "If it is possible, I would request the AC to set up offices in the provinces, especially in Siem Reap where there are many enterprises and labour conflict."

The Arbitration Council also conducted another mobile hearing in the afternoon of 23 March 2012 in case 57/12 - Siem Reap Airways International-CAMS and successfully mediated 5 of 9 issues raised by the employee party. The arbitration award deciding the four remaining issues will be available at <http://www.arbitrationcouncil.org/awards/2012.html>.

400 Workers Stop Strike to Pursue AC Peaceful Dispute Resolution



Photo by: Pha Lina / The Phnom Penh Post



The parties bring the case to AC

Some 400 garment workers who had protested many days in front of their factory, Kwei Yang (Cambodia) Co, Ltd, returned to work as normal on 20 January 2012 following an order of the Arbitration Council for them to return to work pending peaceful dispute resolution.

The protest began on 31 December 2011 at the factory in Kandal's Ang Snuol district regarding 9 demands. The management of factory and the worker representatives successfully negotiated 7 of them while 2 contentious demands for the factory's recognition of a newly formed union and reinstatement of 7 union leaders, were sent to the Arbitration Council.

Mr. Seng Soeung, local union leader of Coalition of Cambodian

Apparel Worker Democratic Unions (C.CAWDU), recognised that the strike is damaging to both parties and that resolving their dispute at the Arbitration Council was a sensible choice.

"It is good that the case is now with the Arbitration Council because it helped bring [workers] back to work with the assurance that their dispute will be resolved fairly," he said.

Mr. Tok Kim San, the factory's chief of administration, agreed that disputes must be resolved peacefully so they do not interrupt the production and orders from buyers.

"If a strike occurs, we can not produce our goods on time. As a result, the buyers can punish us or no longer order goods from us," said

Mr. Tok Kim San.

The representative of the Taiwanese factory added that the intervention from the Arbitration Council also allowed his factory to operate normally.

"It is good that the Arbitration Council ordered them to stop the strike while waiting for its decision to resolve the dispute," he said. "This is good for both the workers and us."

The Arbitration Council issued the arbitration decision to resolve this case, 12/12 - Kwei Yang (Cambodia) Co, Ltd on 20 February 2012. It is available on the website of the Arbitration Council at http://www.arbitrationcouncil.org/awards/A_1212_K.pdf.

Arbitrators Mediated the Parties to Reach Agreement on 28 of 29 Claims

The Arbitration Council successfully mediated 28 of 29 claims in case 33/12-Dai Young Cambodia Co., Ltd (MOU case). The written agreement reached in mediation suggests effective dispute resolution by the Arbitration Council but more importantly, the parties' full participation in the resolution process for achieving mutual gains without recourse to adversarial proceedings under the law.

The arbitration decision on the remaining issues regarding this case is available on our website at www.arbitrationcouncil.org/awards/2012.html.



AC arbitrators are mediating the disputants during the hearing at the AC

Sustainability of Collective Dispute Arbitration a Shared Challenge for AC and Its Clients

Since its inception in 2003, the Arbitration Council has made a remarkable contribution to improving labour relations and creating a favourable climate for investment in Cambodia. It provides a credible platform for peaceful labour dispute resolution where enterprises and workers can turn to, which helps minimise strike action and disruption to operation. As at the end of March 2012, the Council has heard more than 1,200 labour dispute cases and resolved approximately 71.3% of them successfully. While it services all sectors, the Council receives approximately 90% of labour disputes from the garment industry – Cambodia's key industry that provides jobs to approximately 400,000 workers and in 2011 accounted for approximately 90% of Cambodia's exports with approximately US\$3.3 billion in value.

By law, the AC arbitration services are provided to workers and private sector enterprises free of charge. Due to the financial constraints of the Royal Government of Cambodia, the Arbitration Council has relied on external donor funding to provide its dispute resolution services to date. Currently, its collective dispute resolution services are funded under the Demand for Good Governance Project of the Royal Government of Cambodia supported by the World Bank. The Project is scheduled to conclude at the end of March 2013. Firm financial commitments have not been secured to support the Council's dispute resolution work after March 2013. This has triggered concern among the direct users of the Arbitration Council and other stakeholders over whether the industries and their workers will be able to continue bringing their cases to the AC in the future.

Mr. Phien Sophea, the President of a local union of the Coalition of Cambodian Apparel Worker Democratic Unions (C.CAWDU), believes that, without the Arbitration Council, the number of labour disputes would increase significantly. "Without the AC, disputes would get worse in number and form," Mr. Phien Sophea said, adding that he is supportive of the AC continuing its speedy and just services.

Mr. Bun Thuen, an employer representative of Camwell MFG Co., Ltd, considers an end to the AC services would be a great loss for Cambodia and investors. "It would negatively affect workers and employers if the AC could no longer provided its service," he said. "When disputes cannot be resolved by the Ministry of Labour, we have the AC and it takes only 15 days."

Mr. Lay Sokchea, an employer representative of Ocean Garment Co., Ltd, recognises that the labour dispute resolution by the AC is fast and reliable for employers. "If the Ministry of Labour cannot solve a labour dispute, without the AC, we would only have to submit it to the court," he said. "When we send the case to the court, it may cost a lot of money and the workers may not be able to afford it."

To ensure the benefits of the collective dispute resolution are sustainable, the issue of the AC's future financing must be overcome quickly. The Arbitration Council Foundation – the support arm of the Arbitration Council – is making its best efforts to address the issue in close consultation with the Royal Government of Cambodia through the Ministry of Labour and Vocational Training, employer associations

such as the Garment Manufacturers Association in Cambodia and the Cambodian Federation of Employers and Business Associations, and union federations and confederations.

In the Arbitration Council Sustainability Strategy paper, a model of long-term financial sustainability for AC services has been developed, for endorsement and approval by the AC stakeholder group. The strategy will be finalised early in the second quarter of 2012, and, upon finalisation, will be made available to the public. If properly executed, with the cooperation of all of the AC's partners, the long-term AC financial sustainability will be assured.

However, in the short and medium term (from March 2013 to 2016), the Council will need financial support from external sources to ensure the continuity of its dispute resolution services. While the Arbitration Council Foundation has implemented a wide range of activities to raise income to support the AC services (sale of AC publications, provision of fee-based training programs, planned implementation of labour advisory services, etc.), the income generated is not sufficient to support the AC services. Therefore, the Foundation is in close consultation with the Ministry of Labour and Vocational Training to form partnerships with international donors in order to address the projected funding gap.

While a concrete financial commitment for this short and medium term has not been secured to sustain the AC services, the Foundation will continue to work with its client groups in order to achieve requisite funding to ensure the long-term socio-economic growth of Cambodia and her people.

Cambodian Courts Endorse AC Decision

The Appeal Court of Cambodia on 29 February 2012 endorsed the arbitration decision of the Arbitration Council in case 22/11-Banjamat Construction (K Cement).

The case containing 6 claims was brought to the Arbitration Council on 14 February 2011. During the hearing on 1 March 2011, the Arbitration Council successfully conciliated 4

claims, and arbitrated on the remaining 2 for the reinstatement of union leaders and back pay. On 21 March 2011, the AC issued its decision ordering the company to

Continues on page 5

Cambodian Courts...

Continues from page 4

reinstate their union representatives, Chhun Pov and Tep Mao and pay their outstanding wages from the date of dismissal to the date of reinstatement.

On 09 May 2011, Mr. Sok Sovandeth, the president of the Building and Wood Workers Trade Union Federation of Cambodia (BWTUC) filed a complaint with the Kampot Provincial Court of First Instance requesting that the binding decision be executed. The decision became binding following no objection within 8 days. Yet, the employer party failed to abide by the ruling.

On 09 May 2011, **Mr. Sok Sovandeth**, the president of the Building and Wood Workers Trade Union Federation of Cambodia (BWTUC) filed a complaint with the Kampot Provincial Court of First Instance requesting that the binding decision be executed.

The court ordered the company to comply with the AC's decision on the ground that the company did not lodge an objection to the Arbitration Council's Arbitral Award 22/11 within 8 days. However, the company did not accept the court ruling saying it received the

award late and did not have sufficient time to file an objection to the AC decision.

The company appealed the execution rulings by Kampot court on 02 November 2011.

"The company did not know about the exact date the award was issued and when they received it, they had only 2 days to lodge an objection to the award. Moreover, it took many hours to travel from Kampot to Phnom Penh," argued **Mr. Uon Sakal**, a lawyer of employer party, at the hearing of the Court of Appeal on 16 February 2012.

On 29 February 2012, the Court of Appeals upheld the Kampot Provincial Court's ruling and ordered the company to follow the arbitration award in case 22/11 – Banjamat Construction, reasoning that the Arbitration Council properly followed the procedures in its decision making.

Mr. Sok Sovandeth, president of BWTUC, said the arbitral award was acceptable to him as it provided clear reasoning and fairly considered each point that the parties raised during

the hearing.

"I support the AC's award since it always makes a judgment in accordance with the Cambodian labour law," he said.

Mr. Sok Lor, Executive Director of the Arbitration Council Foundation, regarded the Kampot court and the Appeal Court's endorsement of the arbitration decision in case 21/11 as a landmark verdict for improving law enforcement in Cambodia.

"Our hope is that the courts can rely on the reason-based decisions of the Arbitration Council when considering their rulings on labour disputes, especially those that affect thousands of Cambodian workers and a great amount of company profits," he said.

The Civil Code Procedure (Articles 349 and 251) provides for the court execution of an arbitral award that has become final and binding. The final and binding decisions of the Arbitration Council come from the mutual agreement of the parties or a failure to lodge an objection within 8 days after the arbitration decision is issued.

Arbitrators and Judge Thrash out Code of Civil Procedure



The Arbitration Council Foundation has invited Judge Seng Neang of the Phnom Penh Court of First Instance to discuss with arbitrators of the Arbitration Council certain legal and procedural issues arising from the implementation of the Code of Civil

Procedure. The event was organised on 31 March 2012 at the offices of the Arbitration Council with the participation of arbitrators and their support staff. **Mr. Sok Lor**, ACF Executive Director, viewed the session as important dialogue for achieving consistency in law enforcement by

courts and the Arbitration Council that will benefit industries and their workforce.

"It is necessary for the Arbitration Council to discuss these issues to avoid undue confusion in the application of the laws in future decisions," he said.

Continues on page 6

Arbitrators and Judge Thrash out...

Continues from page 5

Judge Seng Neang appreciated the opportunity to give training and thanked the Arbitration Council Foundation for organising the event. He added that such a dialogue should continue between the court and the AC so that there is better understanding between the two institutions because their work is related to each other.

“[The reason-based decisions of the AC] makes it easy and efficient for courts to resolve their cases. For example, in the case of binding arbitration, a party can file a complaint to the court if the other party fails to carry out the decisions,” he said adding, “the court will then order the execution of the arbitration session.”

The discussion session was held as part of the Continuing Legal Education program designed to keep arbitrators and their support staff abreast of recent changes in the law and to enhance their skills in providing high quality services for private sector enterprises and their workers.

ACF Labour Experts Sit on the Preliminary International Commercial Arbitration Moot

3 legal experts of the Arbitration Council Foundation (ACF) joined the Preliminary International Arbitration Moot at the Royal University of Law and Economics (RULE) on 2-3 March 2012. This is a program which is designed to improve arbitration skills and case preparation so that law students become capable of presenting cases effectively before arbitration tribunals.

Mr. Sok Lor, Executive Director, **Ms. Khem Vansok**, Senior Legal Officer and **Ms. Chum Charya**, Director of Legal Services Department, acted as arbitrators to evaluate performances by 12 teams to represent Cambodia in the 9th International Commercial.



Ms. Chum Charya and Ms. Khem Vansok, ACF legal experts are evaluating the contestants at RULE

Arbitration Moot, an annual competition of teams representing law schools throughout the world, to be held in Hong Kong on 19th to 25th March 2012. At the competition, the contestants presented their facts and arguments and rebut those by the opposing team. Ms. Chum Charya said that participation in this event is characteristic of the Arbitration Council because it has always shared knowledge of arbitration and the labour law especially with law students.

“This competition will help the students to improve their skill, especially in case preparation,” she said, adding that she hoped the students would use their legal skills

and share them with their peers or people who wish to learn about arbitration and labour law.



Mr. Lay Sopheak, lecturer of the International Commercial Arbitration course for the English Language Based Bachelor of Laws program at RULE and coordinator of this event,

said that this event helped provide the students with experience and ideas to compete with the other law students from around the world. “Our students gained practical knowledge from the ACF legal experts who all received post-graduate degrees in law from abroad and have extensive experience as legal practitioners,” he said, adding that it was an important event for his students; even though, they did not get the champion winner during the competition in Hong Kong.

This is the 9th International Commercial Arbitration Moot was held in Hong Kong where representatives of law students from 26 countries around the world participated in.

What's New?

Gap Inc., Donates US\$ 10,000 to the Arbitration Council

Gap Inc., a global brand in fashion products for men, women, children, and babies has donated US\$10,000 to support the Arbitration Council's work of resolving collective labour disputes among workers, unions and other businesses in Cambodia.

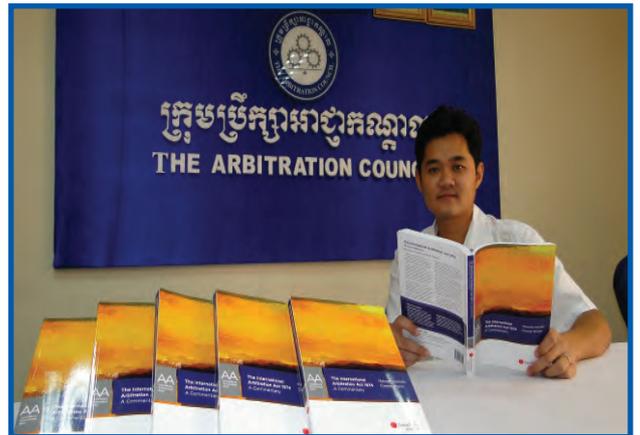
The Arbitration Council sincerely thanks Gap Inc for its support and contribution to the AC so that AC can continue to be productive, assured of the Arbitration Council as a credible institution which resolves their labour disputes.



"We are proud to make a contribution to the Arbitration Council as we believe it is a credible platform for peaceful labour dispute resolution in Cambodia, which benefits the Cambodian workers and the suppliers with whom we partner. We invite other brands to join us in supporting

the Arbitration Council and the positive work that they do," said **Mr. Sean Jung**, Senior Manager of Social & Environmental Responsibility NE & SE Asia Region with Gap Inc.

Book Donation from a Leading Australian Publisher



In March 2012, the Arbitration Council received 39 copies of the International Arbitration Act 1974: A Commentary from LexisNexis

Australia. The book is a detailed explanation of the Australian law on international arbitration and will provide guidance to the AC commu-

nity in the development of arbitration law in Cambodia.

Keep Abreast of the Labour Law

Knowledge of the labour law is required of human resources professionals, employers, trade union officials and community leaders who deal with labour and employment related issues. Labour law and regulations develop as the society and economy keep evolving.

For example, do you know about the latest decisions concerning labour contracts, payment of wages and bonuses and paid leave? Therefore, whether you are an HR professional, labour advocate, a law student, professor or researcher, it is important that you to keep

abreast of the developments in the labour law at the Arbitration Council.

The Arbitration Council Foundation has published the following resources to help you do just that:



- Compilation of Arbitration Awards and Orders Volumes 1-11 (English)
- Compilation of Arbitration Awards and Orders Volumes 1-16 (Khmer)
- Compilation of Labour related Laws and Regulations 2011 (Khmer)
- Handbook on the Arbitration Council and Labour Dispute Resolution

All of these publications are available for sale in bookstores and the offices of the Arbitration Council. Please contact Ms. Soeung Sophea, ACF Training Coordination Officer, now for your copy: ssoeung@arbitrationcouncil.org or 023-881814 (ext. 110).

Your purchase supports the platform for peaceful labour dispute resolution in Cambodia.



No. 72, Street 592 (corner of St. 327), Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh, CAMBODIA
 Tel: +855 23 881 814
 Fax: +855 23 881 918
 E-mail: info@arbitrationcouncil.org website: www.arbitrationcouncil.org

If you have any news or information you would like to share with the AC Newsletter, please contact:
 Mr. Ly Sokheng
 Communications Officer
 Tel: 023 881 814
 H/P: 012 411 417
sly@arbitrationcouncil.org