



RESOLVING COLLECTIVE
LABOUR DISPUTES

AC Newsletter

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

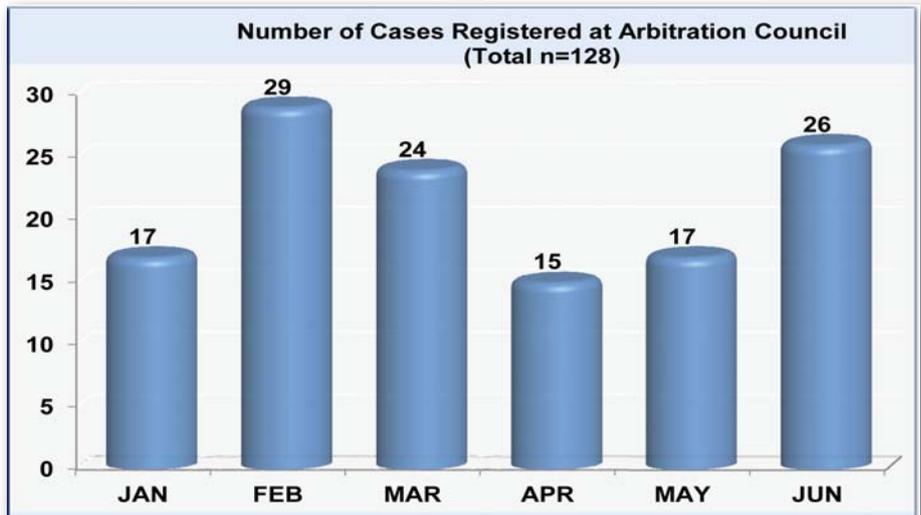
April - June 2012

AC Labour Dispute Resolution April – June 2012

Number of Cases Registered

From 1 January to 30 June 2012, 128 cases were registered for resolution at the Arbitration Council. This is significantly higher than the 67 cases and 78 cases registered in the same period in 2010 and 2011 respectively. To address this sharp increase in caseload, the Arbitration Council has expanded its capacity.

Overall, despite the increase, cases before the Arbitration Council were processed in a speedy manner and, except for the newly registered cases, without any backlog. The chart below demonstrates the number of cases received by the AC on a month-by-month basis. At the close of June, there are 19 open cases being processed by the AC.

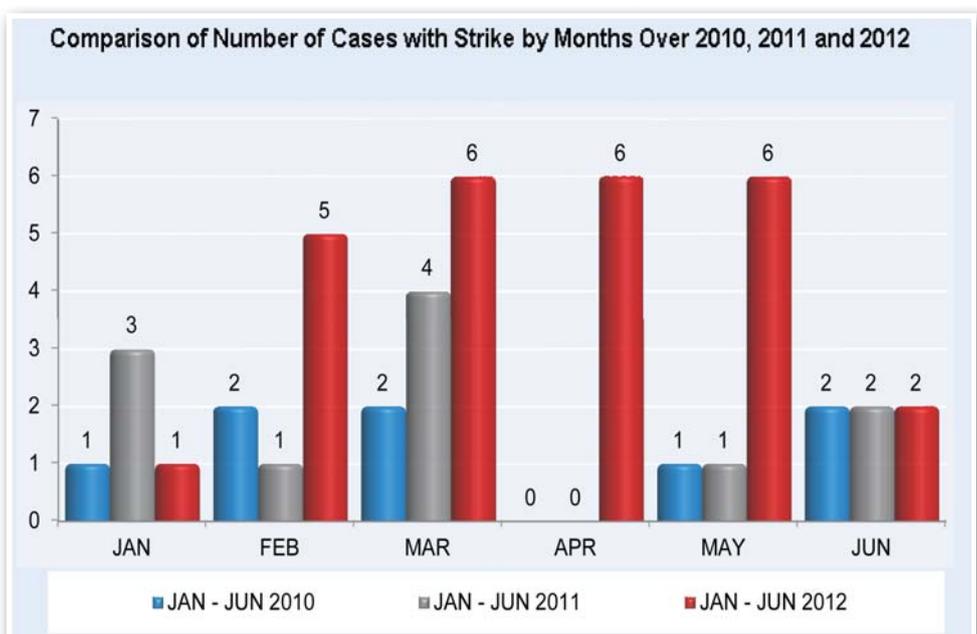


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Cases Involving a Strike before Being Referred to the AC

From 1 January to 30 June 2012, 26 cases involving a strike were registered at the Arbitration Council. Note that this figure reflects only the labour dispute cases registered at the Arbitration Council and does not capture other strikes which were not referred to the Arbitration Council. The strike figure of 26 is more than twice the number of strike cases registered at the Arbitration Council during the same period in 2010 and 2011 of 8 and 11 respectively.



AC's Interim Return-to-Work Orders

In relation to the 26 strikes, the Arbitration Council issued 17 interim orders directed at the workers and employers to resume their work, pending the resolution of their disputes by the Arbitration Council. The other 9 strikes did not require the Arbitration Council's interim orders. In terms of outcome, 10 interim return-to-work orders issued by the Arbitration Council were complied with, which allowed both workers and employers to focus on their work while having the Council process their disputes. The other 7 interim return-to-work orders were not abided by the parties.

Among the labour disputes received by the Arbitration Council, are demands related to wages, wage-related entitlements

and the discipline and termination of employment contracts. In particular, the workers in the garment and footwear industry demanded a sum for a transportation and accommodation allowance, a claim that the Arbitration Council generally declines to consider because the demand lacks a legal basis and the union that brings the dispute for resolution lacks standing as a union with 'most representative status' to bring such an interests dispute to the Council.

Although various factors could have caused the strikes, industrial relations stakeholders reported that the increase in strikes in the first half of 2012 is due to the workers' demand for additional entitlements, such

as a transportation and accommodation allowance. In relation to this demand, the Labour Advisory Committee has met on 11 July 2012. With this is sue being resolved by the Labour Advisory Committee, it is anticipated that the workers' demands and corresponding strikes will ease off in coming months.

Meanwhile, other experts reported that the increase in strike incidents largely results from the fact that the original Memorandum of Understanding on Promoting Industrial Relations in the Garment Industry, signed on 28 September 2010, has not yet been renewed by parties concerned.

Success Rate of AC's Labour Dispute Resolution for January - March 2012

Case monitoring and evaluation of the Arbitration Council (conducted 2 months after each case is ruled on) indicates that the success rate of the January – March 2012 period is approximately 80%, somewhat similar to 79.41%

in respect of cases processed during October – December 2011. This is positive considering the gloomy picture of industrial relations during that quarter. To find out the formula for calculating the success rate of Arbitration Council's Labour Dispute Reso-

lution, please visit the Arbitration Council website at: <http://www.arbitrationcouncil.org/Formula%20for%20calculating%20the%20success%20rate%20of%20Arbitration%20Council.pdf>

Labour Officials across Cambodia Receive Advanced Labour Law Training



More than 60 conciliators, inspectors and labour officials of the Ministry of Labour and Vocational Training

from 23 provinces and 1 capital city participated in two separate training sessions on advanced labour law at the offices of the

Arbitration Council on 5-7 June and 12-14 June 2012.

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Labour Officials...

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Organised in cooperation with the Ministry of Labour and Vocational Training, these three-day training sessions were focused mainly on strengthening and improving conciliation and inspection skills of the conciliators who play an important role in labour dispute resolution and prevention.

During the training, Mr. Tho Bunthan, Deputy Director of the Department of Labour Inspection of the Ministry of Labour and Vocational Training, and also a trainer of this event emphasised the importance of continuing skills-building for labour officials especially in writing non-conciliation reports, effectively forwarding cases to the Arbitration Council and preparing court cases, especially for the execution of the penalty imposed on enterprises that do not respect the Labour Law.

“It is necessary for them to learn

more in terms of their professional skills, thereby contributing more effectively to labour dispute resolution and prevention in Cambodia,” he said.

On the last day of this training, Ms. Chum Charya, Director of the Legal Services Department, discussed the ways in which labour disputes could be better resolved without causing unnecessary loss to the Cambodian workforce and private sector.

“Clear non-conciliation reports from labour conciliators, for example, could clarify misunderstanding not only among the disputant parties but also the arbitrators who resolve the dispute later in the process,” she said.

After the presentation from the experts, the trainees acknowledged that they advanced their skills especially in conciliating

disputes and understanding their role in referring the disputes to the AC.

“Before I did not understand well about conciliation techniques and report writing, but after I have participated in this session, I have become confident that my next conciliation will result in more agreements. And if the case is not successfully conciliated, I will be able to write a better non-conciliation report for the AC as well as for the disputant parties,” said Ms. Khiev Socheat, Deputy Director of Labour Office in Kompong Cham province.

This is the second training of its series that the ACF organised in cooperation with the Ministry of Labour and Vocational Training. The basic training took place on 24-25 May, 14-15 June and 12-13 July 2011.

ACF Presents Sustainability Plan to the Private Sector

Mr. Kong Phallack, Chairman of ACF Board of Directors, and Mr. Sok Lor, ACF Executive Director, have presented the ACF’s Sustainability Plan to more than 60 private sector leaders from various sectors. The presentation took place at the CEO Business Luncheon organised by CAMFEBA at the Sofitel

Phnom Penh Phokeethra Hotel on 25 May 2012.

“It is important that the private sector and their employees make a contribution to sustain the Arbitration Council’s labour dispute resolution if they wish to have their labour disputes resolved fairly and effectively without unnecessary distractions from their core

business,” said Mr. Kong Phallack.

The ACF has formulated a comprehensive strategy for the sustainability of the Arbitration Council and is in the process of consulting with concerned parties before taking further steps to operationalise the strategy in 2013.

AC Sustainability Update to Union Representatives

Mr. Sok Lor, ACF Executive Director, presented updates on the Sustainability Plan to trade union representatives at a meeting at the AC office on

28 May 2012. The Sustainability Plan was formulated to ensure continuity of the AC’s labour dispute resolution services after the conclusion of the Demand

For Good Governance Project (DFGG Project) funded by the World Bank in March 2013.

Labour Disputes: A Key Concern of Korean Investors in Cambodia

Ms. Kim Sonya, Technical Advisor of the Arbitration Council Foundation (ACF), presented to Korean managers and lawyers on the role of the Arbitration Council in helping to resolve conflicts between workers and employers, especially in the garment sector. She was invited as the speaker for June in the monthly 'Wednesday seminar' series hosted by the Korean Trade-Investment Promotion Agency (KOTRA). KOTRA is the commercial arm of the Embassy of the Republic of Korea which provides expert advice to Korean investors in Cambodia. There were 15 participants from agricultural, manufacturing, garment and banking industries as well as representatives from law firms and KOTRA at this event.

During the presentation, Ms. Kim Sonya, raised many issues of interest with the participants, such as the recent strikes in the garment industry and the importance of strengthening the rule of law in Cambodia. She played a part of the ACF's recently released educational DVD on labour dispute resolution for the participants so that they can get a glimpse of a hearing at the Arbitration Council.



"The Arbitration Council is an independent institution that will fairly and speedily resolve disputes so that everyone can get back to work and generate income. Having such an effective mechanism which promotes cooperation between the parties and adherence to the Labour Law will help Cambodia attract more investors." said Ms. Kim Sonya.

The ACF continues to strengthen its ties with the Korean business community as Korea is a prominent investor in Cambodia. This is the second presentation of the AC to the Korean community following the event hosted by the Embassy of the Republic of

Korea and the Korean Chamber of Commerce. At this event in April, Mr. Sok Lor, the Executive Director of the ACF presented on the Arbitration Council and labour dispute resolution process in Cambodia.

According to data from the Cambodian Investment Board, between years 2000 and 2011, the total investment from South Korea in Cambodia amounts to US\$ 3.72 billion which represents 11.91% of the total foreign direct investment. South Korea was the second largest investor in Cambodia after China, which financed US\$ 8.57 billion or 27.46 percent of the total foreign investment.

NSSF + AC = Better Understanding of Social Security Law

The Arbitration Council has been prepared for disputes concerning social securities under the National Social Security Fund (NSSF), a fund created for the well-being and the protection of employees and workers. Comprehensive internal research was followed by a discussion session on 26 May 2012

between 12 members of the Arbitration Council and Mr. Sok-Bora, Deputy Director of NSSF's Inspection and Legal Affairs Division.

Taking place at the AC offices, the discussions were focused on relevant law and regulations, governance structure, social

security frameworks and scope, work related accidents, and links between the NSSF and the Arbitration Council in relation to dispute resolution.

Mr. Sok Lor, Executive Director of the Arbitration Council Foundation, evolving, AC arbitrators and

NSSF + AC...

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their support staff need to keep abreast of those new issues brought to the AC for resolution. "It is important for us to be

ready to address issues over social securities under the National Social Security Fund as the AC has ,and will continue

to receive them," he said citing case 111/10-Cambodia Utilities and 57/11-Cambodia Advertising.

ACF Urges Employees and Employers to Resolve Employment Contract Issues

On 27 June 2012, Mr. Sok Lor, Executive Director of the Arbitration Council Foundation, addressed approximately 100 trade union representatives from national union federations and local unions across the country as well as other institutions at the Trade Union Conference on the Current Employment Contract Practices and the Need for Its Changes.

Held and organised at InterContinental Hotel by the International Labour Organization and the Trade Union National Conference, the conference was aimed at raising the awareness of trade unions representatives on the differing interpretations

of employment contract provisions in Cambodia and the impacts on the industrial relations in the country.

"In many instances, strikes occurred as a result of the differing interpretations, and that has inflicted unnecessary damage on our industries and workers", said Mr. Sok Lor, "I urge that employers and trade unions seek a clear middle ground on employment contract provisions to enable a better environment for industrial relations, investment, and job creation", he added.

The differing interpretations of employment contract provisions have been a long-standing

issue on the Cambodian industrial relations arena. Since 2003, the Arbitration Council has interpreted Articles 67 and 73 of the Labour Law 1997 to mean that a fixed duration contract cannot be longer than two years in duration; it can be renewed multiple times provided that the total period of employment does not surpass two years. Meanwhile, the Ministry of Labour and Vocational Training holds a different interpretation. Based on the Ministry's version, so long as each contract period of a fixed duration contract does not exceed two years, it can be renewed a multiple number of times.

The Experience of Cambodia's Arbitration Council Shared with Judges and Government Officials from Asia Pacific Region

On 17 – 22 June, Mr. Mar Samborana, Director of the ACF Board of Directors and Arbitrator, and Mr. Sok Lor, ACF Executive Director, participated in a conference and training pertaining to labour dispute resolution system and international labour standards at the Melbourne Business School in Melbourne, Australia. Organised by Fair Work Australia in collaboration with the International Labour Organization, International Training Center, the event was attended by judges and government representatives from across



the Asia Pacific Region, including Nepal, Sri Langka, Singapore, Australia, Bangladesh, Cambodia, Thailand, Vanuatu, and Vietnam. China, India, Indonesia, Malaysia,

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The Experience of ...

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At the event, the delegates from Cambodia addressed the conference on the experience of Cambodia's Arbitration Council. Particular focus was given in respect of the Council's history, institutional set-up, track record in labour dispute conciliation and arbitration, its social and economic contribution to the industries and workers in Cambodia, as well as key institutional challenges and future prospects. "From this

conference, if compared with other labour dispute resolution systems in the Asia Pacific Region, Cambodia's Arbitration Council is an effective labour dispute resolution system that is supported by solid stakeholder participation", said Mr. Samborana. "It is also gratifying to see that at the current rate, the Arbitration Council offers industries and workers a labour dispute resolution service at an equal

or higher standard than other countries in the Asia Pacific Region", he added.

The other part of the programme centered on the use of international labour standards of the International Labour Organization. Participants were given training on the applicability of the international labour standards on domestic laws.

AC Arbitrator Profile – Give It Your Best to Achieve Your Goal



"I am really happy that I have the chance to improve the Cambodian economy and its social development through working at the Arbitration Council to resolve collective labour disputes," Arbitrator Liv Sovanna said during his interview with the ACF Communications Officer.

Arbitrator Sovanna has lived by his motto of "Work hard and work smart to make your dream come true," ever since his days at his primary school in Chorm Pous Kreak, Kandal province. Years of study paid off for him in 1992 when he won a scholarship from the Royal University of Phnom Penh. After graduation, he

became a defender in the court at Charto Organization, the organisation which focuses on protecting human rights, development, and defending the victims in the court. It was his first job and the job which has laid the foundation of his profession as an advocate and arbitrator.

"I have improved a lot from my first job at Charto Organization and I am delighted to use my professional skills to help Cambodian people who cannot afford defenders," he said.

After a two-year stint at Charto Organization, he received a scholarship at the Bar Association Kingdom of Cambodia where he qualified for certification as a professional lawyer in 1996.

In 2003, the Arbitration Council was established and Mr. Sovanna was selected to be a member of the Employee Arbitrators' list. Being an arbitrator of the AC was a long-held dream of his. Arbitrator Sovanna has played an active and significant role at the AC, not only as an arbitrator but also as a guest speaker and facilitator who provides legal education to the public through

AC activities. He is very committed to the work of the AC as he attends most events held at the AC.

"I love working with the AC as this independent and national institution plays a unique role to resolve labour disputes which helps social and economic development in the country," he said.

Being a successful arbitrator is not easy as there are often obstacles to success and always more to learn. Arbitrator Liv Sovanna suggested that people work hard from the beginning to achieve their goal.

"You should live with your dream and try to make your dream come true though working hard and working smart from the beginning until you reach your goal," he said.



What's New?

AC Institutes the Rule and Mechanism for Handling a Conflict of Interest

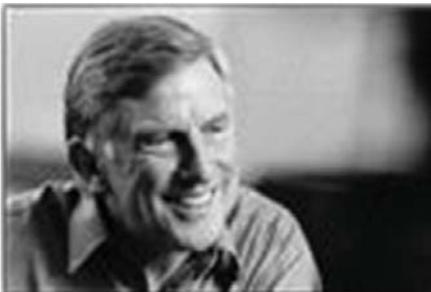
Following several months of drafting and refinement, the Arbitration Council has adopted the Rule and Mechanism for Handling a Conflict of Interest ("RMHCOI"). The adoption of the RMHCOI is to advance the standards for governing professional conduct of members of the Arbitration Council to ensure that the Council resolves labour disputes in an independent, impartial, and professional manner. Coming into effect on 29 June 2012,

the RMHCOI outlines the definition of and situations where a Conflict of Interest occurs and the mechanism for addressing it. A copy of the RMHCOI in both Khmer and English is now available for view on the website of the Arbitration Council at http://www.arbitrationcouncil.org/Rules%20and%20Mechanism%20for%20Handling%20a%20Conflict%20of%20Interest_En.pdf and at the premise of the Arbitration Council's Offices.

The Working Group who initiated and led the whole process for the establishment of this mechanism composes of Arbitrators Sin Kimsean, Mar Samborana, Liv Sovanna and Pen Bunchhea. Without their volunteerism and hard work on the whole number of drafting and revising work, this mechanism could not have been finalised. Their effort is highly appreciated and respected.

International Advisory Board of ACF Established

An International Advisory Board ("IAB") has been set up to guide the Arbitration Council Foundation to advance the Arbitration Council's institutional development. The IAB will provide recommendations on complex legal issues, and extend fund-raising and networking opportunities with potential partners. With a term of 3 years commencing in July 2012, the IAB comprises of 5 members renowned for their integrity and extensive experience in industrial relations:



Russell Lansbury, Emeritus Professor of the University of Sydney and former President of the International Industrial Relations Association based at

the International Labour Organization in Geneva.



Susan Brown, Mediator, Arbitrator and Trainer based in Boston, Massachusetts.



Allen Ponak, Adjunct Professor of the University of Saskatchewan in Canada and Vice President of the National Academy of Arbitrators.



Michael Gay, Commissioner of Fair Work Australia.



Sok Lor, an ex officio member in his capacity as the Executive Director of the Arbitration Council Foundation.

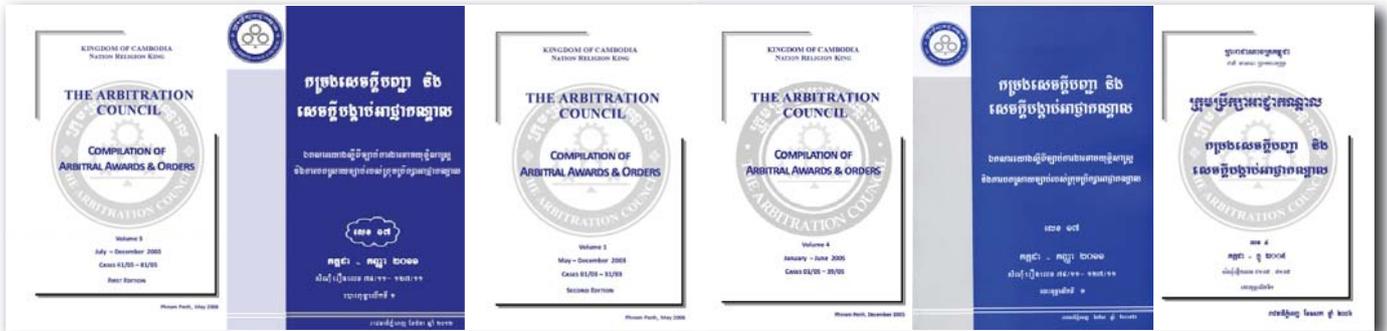
Keep Abreast of the Labour Law

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)

Case Preparation and Presentation before the AC Now Available on DVD

If you are looking for ways to learn effective case preparation and presentation before the Arbitration Council, the good news is that it is now available on DVD in Khmer with English and Chinese subtitles! The 27-minute edutaining video let you visualise several tactics in preparing and presenting your case effectively

at the AC. It has a case study where a group of garment workers and their employers resolve their labour dispute at the AC, which will be a great guide to preparing your case before the Arbitration Council. 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.



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