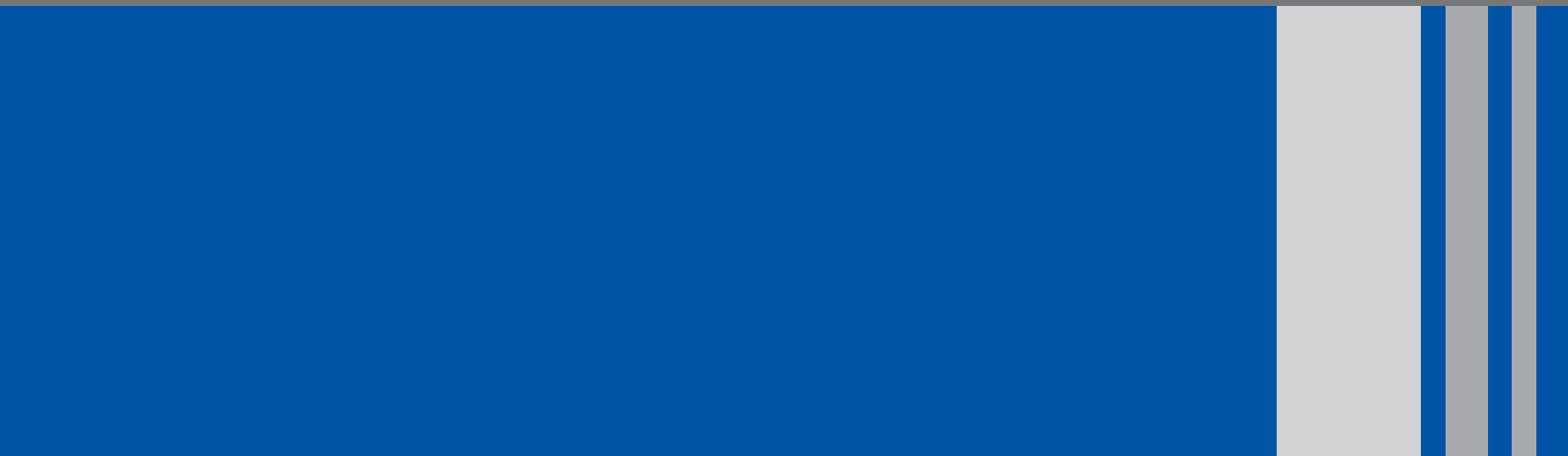




# Annual Report 2009







**Prepared by the Arbitration Council Foundation**

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# Message from the Representatives of the Arbitration Council



**Kong Phallack**

Dear Readers

It is my pleasure to present to you the Annual Report of the Arbitration Council – 2009. The Arbitration Council is an independent, national institution entrusted by law to resolve labour disputes in Cambodia through mediation and arbitration. By resolving disputes efficiently and transparently, based on the law and legal reasoning, the Arbitration Council contributes to constructive social dialogue between employers and workers. A stable climate for investment helps to promote economic growth and social peace in Cambodia.

The Arbitration Council helps to resolve disputes between employers and workers so that normal enterprise operations can continue lawfully and without undue interruption. Since its inception in 2003, the Arbitration Council has received 833 cases – all of which had the potential to jeopardise business operations and affect workers' wages and benefits, as well as the national economy as a whole – involving key sectors of the economy such as the garment, hotels and hospitality and construction sectors. The Council has been able to process cases in a speedy manner and to resolve them without incurring any backlog in the caseload. In instances where strikes or lock-outs occurred, the interim return-to-work orders issued by the Council have helped to stop such action and allow businesses to resume normal operations.

Through its achievements, the Arbitration Council also contributes to the country's broader legal, judicial and developmental reform efforts. The Council is a model institution of justice and good governance in Cambodia, trusted by the community for its independence, credibility and professionalism. The Council's published awards are accessible by the public and its reasoned jurisprudence is helping employers and unions better understand their rights and responsibilities, as well as advancing legal education more generally in Cambodia.

In this report, you will see the key activities delivered by the Arbitration Council and its supporting Foundation and Secretariat to employers, workers and other stakeholders. The activities range from labour dispute resolution to training to raise awareness and understanding of the Arbitration Council, including events like the National Industrial Relations Conference that serve as an annual forum for all stakeholders to engage in discussions for improved industrial relations in Cambodia.

The Arbitration Council's achievements could not have occurred without the active support and involvement from its key stakeholders: the Royal Government of Cambodia – especially the Ministry of Labour and Vocational Training, the employer, and the worker parties. We are deeply appreciative of such support. Our achievement mirrors the achievement of the whole community. As we look to the future, the Arbitration Council is confident that together we can continue to build a stable industrial relations environment and strengthen the development of Cambodia.

A handwritten signature in black ink, appearing to read 'Kong Phallack', with a horizontal line underneath.

**Kong Phallack**

*Arbitrator of the Arbitration Council*

*Member of the Representatives of the Arbitration Council*

*Chairman of the Board of Directors of the Arbitration Council Foundation*

# Joint Message from the Executive Director of the Arbitration Council Foundation and Chief of Secretariat



**Sok Lor**



**Bo Chanveasna**

We are proud to support the Arbitration Council in providing collective labour dispute resolution services to employers and unions/employees. The Arbitration Council Foundation and the Secretariat of the Arbitration Council work together to ensure the independence and credibility of the Council and to promote the efficiency and effectiveness of the Council's labour dispute resolution services. Our support activities include legal and administrative support services to arbitration panels, case management, stakeholder training, and publication of the Council's arbitral decisions and guides to case preparation.

We wish to take this opportunity to extend our sincere appreciation to our donors – the Royal Government of Cambodia, the World Bank, the Australian Agency for International Development, the International Labour Organization, and other key donors – for their funding to support the Arbitration Council. Without their funding, the labour dispute resolution services of the Arbitration Council would not have been sustained.

One of the major challenges continues to be the financial sustainability of the Arbitration Council. By law, collective labour dispute resolution by the Council shall be provided free-of-charge to the users. Despite being a national institution, currently the Council still relies on funds from international donors as the primary source of funding. While other funding and avenues of income-generation may be available to contribute to the Council's operation, it is anticipated that those options may take several years to become realistic. Therefore, funding by international donors continues to play a crucial role in sustaining the Council's dispute resolution services in Cambodia.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sok Lor'.

**Sok Lor**  
*Executive Director*  
*Arbitration Council Foundation*

A handwritten signature in black ink, appearing to read 'Bo Chanveasna'.

**Bo Chanveasna**  
*Chief of Secretariat*

## A national institution with legal authority to resolve labour disputes

- The Arbitration Council (AC) is a state institution with quasi-judicial authority to resolve disputes between employers and employees in Cambodia. It is an independent, efficient and transparent alternative dispute resolution tribunal with powers to arbitrate on labour disputes. The Council's powers are derived from the Cambodian Labour Law (1997) and related Ministerial regulations (Prakas). The Council is mandated to resolve labour disputes through voluntary mediation and mandatory arbitration of collective disputes, which cannot be resolved through prior conciliation by the Ministry of Labour and Vocational Training's Department of Labour Disputes.
- The Cambodian Government acknowledges that good governance is “the most important pre-condition to economic development with sustainability, equity and social justice” in its economic policy agenda, the Rectangular Strategy of 2004 . The Strategy refers to establishing special courts such as “the Commercial Tribunal, the Juvenile Tribunal, the Labor Tribunal and the Administrative Tribunal” (emphasis added) . The Arbitration Council addresses this imperative for the Government and by being a participatory, transparent, fair and independent forum for resolving disputes, contributes significantly to the cornerstone of the Strategy's success, of good governance.
- The Arbitration Council is a national body, which provides the mediation and arbitration services to all sectors and regions in Cambodia. The Council's office is located in Phnom Penh but it can conduct mobile hearings in different regions of Cambodia, to meet the demand for its services in the more remote parts of the country.

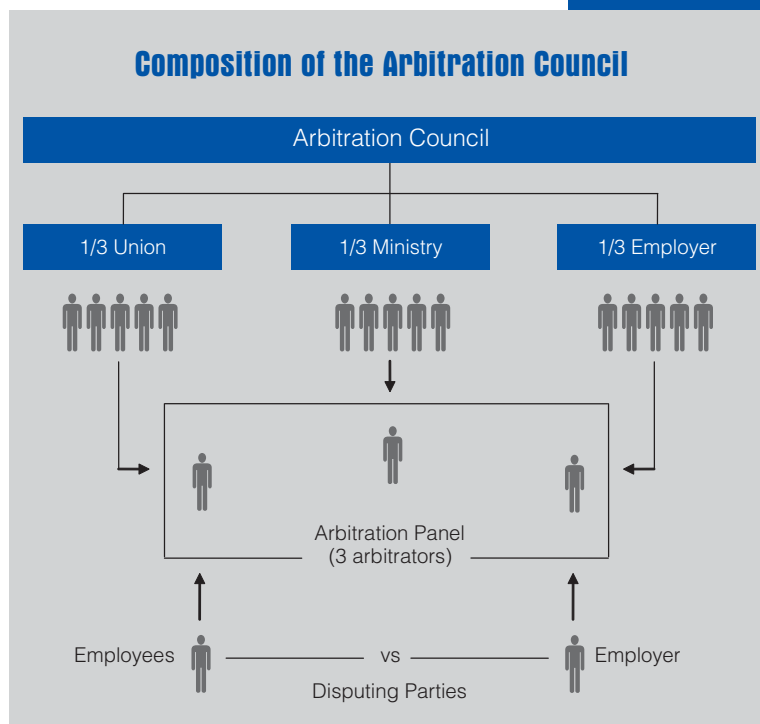


<sup>1</sup> Royal Government of Cambodia, Address by Samdech Hun Sen, Prime Minister, Royal Government of Cambodia, The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia, First Cabinet Meeting of the Third Legislature of the National Assembly at the Office of the Council of Ministers, Phnom Penh, July 2004, page 6

<sup>2</sup> Royal Government of Cambodia, Address by Samdech Hun Sen, Prime Minister, Royal Government of Cambodia, The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia, First Cabinet Meeting of the Third Legislature of the National Assembly at the Office of the Council of Ministers, Phnom Penh, July 2004, page 8

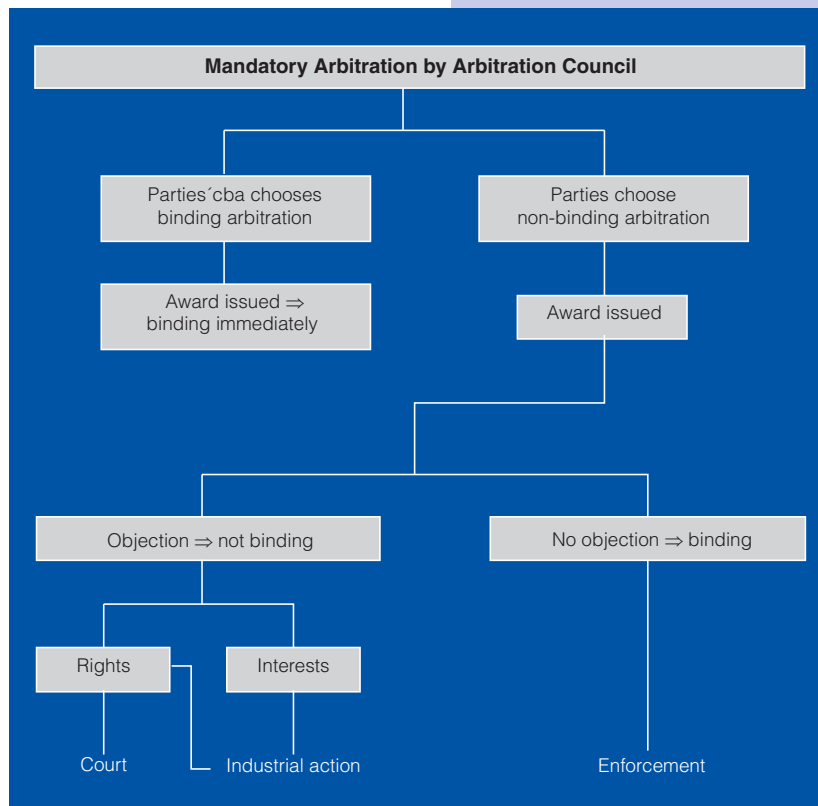
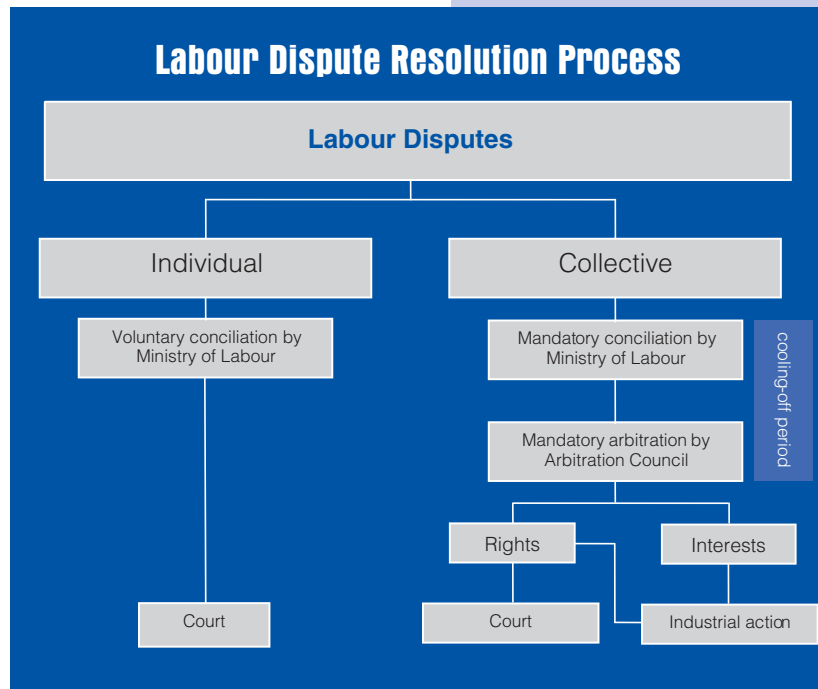
## A unique tripartite structure which ensures an independent and impartial process

- A key feature of the Arbitration Council is its tripartite structure. Unions, employer associations and the Ministry of Labour each nominated 10 of the Council's 30 part time arbitrators. Once a case is referred to the Council, an Arbitration Panel is formed comprising three arbitrators; one selected by the union from the list of union nominated arbitrators; another selected by the employer from the list of employer nominated arbitrators and third is selected by the two chosen arbitrators from the neutral list of Ministry-nominated arbitrators. This ensures representation from all parties concerned with the resolution of the labour dispute.
- The Ministry of Labour and Vocational Training refers collective disputes which cannot be settled at the Ministry's conciliation session to the Arbitration Council. A non-conciliation report is forwarded by the Ministry to the Secretariat of the Arbitration Council (SAC). The Secretariat is responsible for carrying out clerical and registry tasks.
- The Arbitration Council's process takes the following steps:
  1. Appointment of the Arbitral Panel – The Secretariat registers the case; facilitates the selection of an Arbitral Panel for the dispute; schedules and notifies parties of the hearing date; and provides parties with information on procedural matters.
  2. Preliminary discussions and interim orders – If a strike or lockout is in effect, the panel can issue an interim order, to direct that the industrial action cease so that the arbitration process can proceed.
  3. Arbitration – At the hearing, the Arbitration Panel generally attempts to mediate the dispute before proceeding with formal arbitration. The Panel informs the parties of the procedures for arbitration and of their legal rights, including options for binding or non-binding arbitration. The Panel hears the parties' claims and arguments and examines any witnesses and documents related to the case.



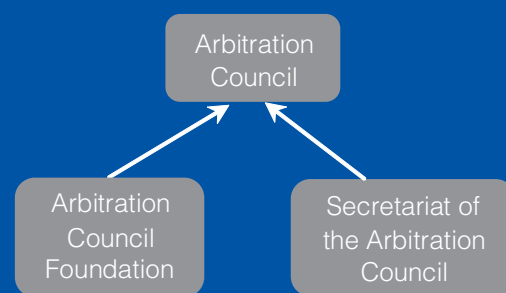
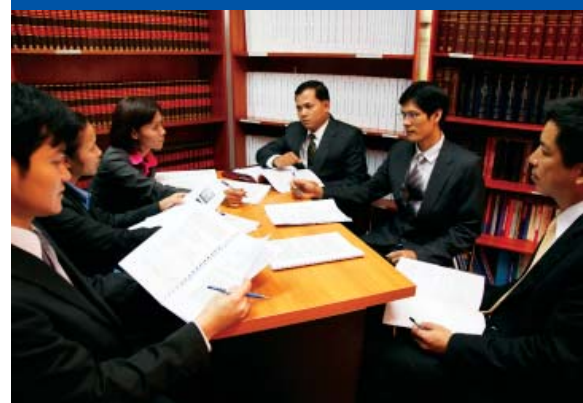
4. Issuance of the Arbitral Award – After the hearing, and within 15 days of receiving the case, the Panel issues its decision in the form an Arbitral Award, which is published on the Council’s website in Khmer and English. All Arbitral Awards from 2003 to 2010 are available publicly from the Arbitration Council’s website: [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org). Bound compilations are also published and distributed to stakeholders such as federations of unions, employer associations, judges, academics and students.
5. Enforcement of the Arbitral Award – If the parties mutually agreed to a binding Arbitral Award, then the decision will be immediately enforceable. If the parties did not agree to a binding award, then they have eight calendar days to file an objection to the award via the Secretariat. A timely objection means the award is unenforceable and triggers the parties’ right to take industrial action in an interests dispute. In the case of a rights dispute, the parties can proceed to the courts. If no timely objection is filed, the award automatically becomes binding and enforceable. Under the law, if either party refuses to abide by an enforceable award, the other party can ask the court to enforce the award.

- This model process for resolving disputes has been in place since 2003. Its success can be attributed to the Council conducting its process fairly, by hearing from both sides; independently, being presided by a neutral chair arbitrator of the panel; lawfully, in accordance with the Labour Law and guided by principled statutory interpretation; efficiently, by hearing and deciding cases within 15 days of registration; and transparently, by publishing decisions of the Council in hard-copy compilations of Arbitral Awards and on the website in Khmer and English.



## A close-knit community of government and non-government, local and international members

- The Council is an amalgam of three separate entities: the Arbitral Panels; the Secretariat of the Arbitration Council and the Arbitration Council Foundation (ACF). The roles of the Arbitral Panels and the Secretariat are explained above. The Secretariat is staffed by seconded employees of the Ministry of Labour and Vocational Training to provide administrative support to the Council and case management. The Arbitral Panels and the Secretariat are essential to the arbitration process at the Arbitration Council.
- The Foundation has also become a critical part of the Council. The Foundation is a not-for-profit organisation established in 2004 to support the labour dispute resolution work of the Council and to enhance its independence, reliability and efficiency. The primary tasks of the Foundation are to:
  - provide legal support to the arbitrators
  - undertake fundraising on behalf of the Council
  - ensure financial and administrative management of the Council
  - undertake professional development of the arbitrators, and
  - undertake communications and awareness raising of the role of the Arbitration Council.
- Before the Foundation was set up, the work of supporting the Council rested on the International Labour Organization (ILO) and a Cambodian non government organisation, the Community Legal Education Center (CLEC). The Council was conceived as a result of the ILO Labour Dispute Resolution Project which began in January 2002. The Project was designed to complement the ILO's garment factory monitoring programme, now known as Better Factories Cambodia. Initially funded by the United States Department of Labor, the Council was established in connection with the 1999 United States-Cambodia bilateral trade agreement known as the Multi-Fiber Agreement.

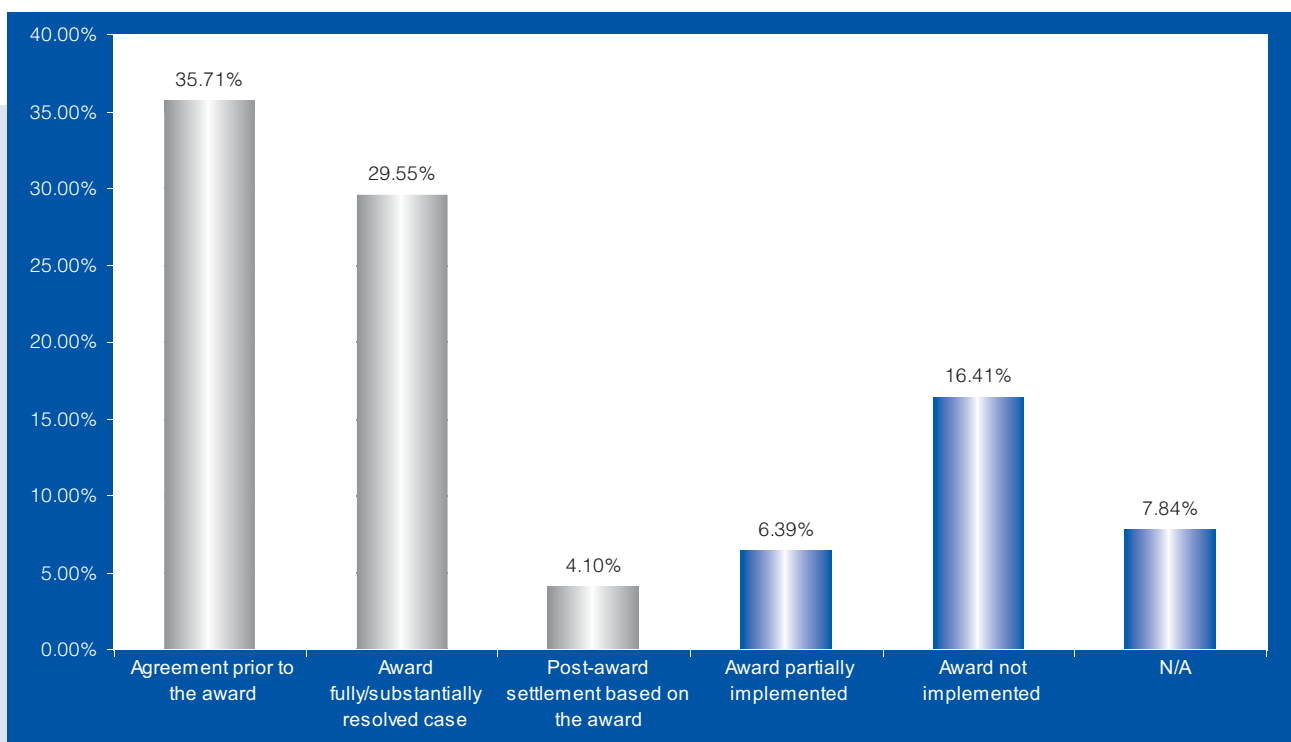


Institutional Structure of the Arbitration Council

# Successes of the Arbitration Council

## 1-Resolving collective labour disputes between workers and management

In 2009, the success rate of the Arbitration Council in resolving disputes was approximately 70% (69.36%). This means that in almost 70% of cases, the AC facilitated an agreement between the parties to settle the dispute (35.71%), issued an award which has been fully or substantially implemented to resolve the dispute (29.55%) or issued an award which formed the basis for a post-award settlement between the parties (4.10%).

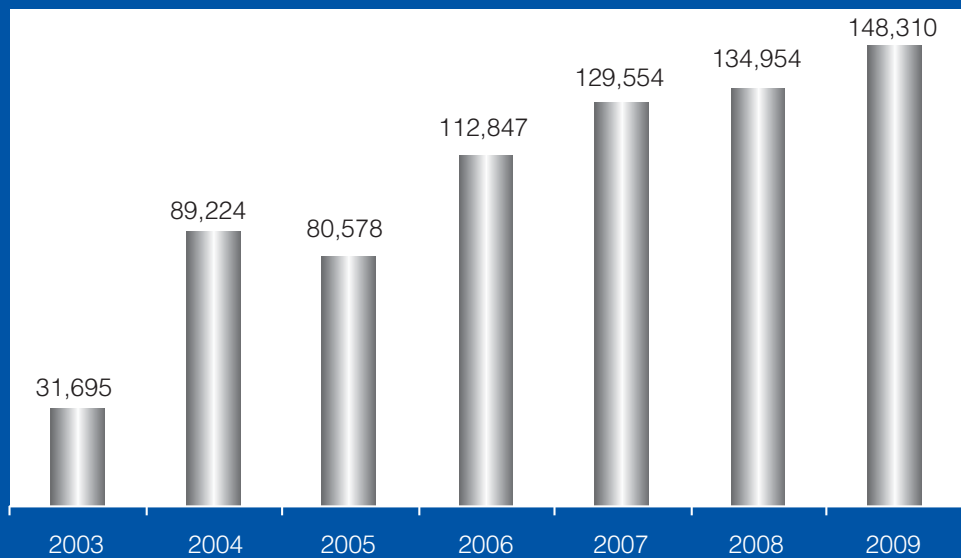


The N/A category in the graphic representation above refers to the cases where the Arbitration Council decided to close the case, for reasons such as the non-appearance of parties or the holding of strike or lockout during the arbitral process.

Although the majority of cases were brought by the garment sector to the Arbitration Council in 2009, we see an increasing number of new sectors which have brought cases to the AC. New sectors included tourism and hospitality, mass media and private sector businesses in services and manufacturing, e.g. carton supply, beverage, sword, gaming, garbage, gasoline, cement and hair production.

As the figure below shows, these cases involved enterprises employing a total of more than 290,000 workers, with a large majority of them being women.

## Number of Workers in 2003 to 2009

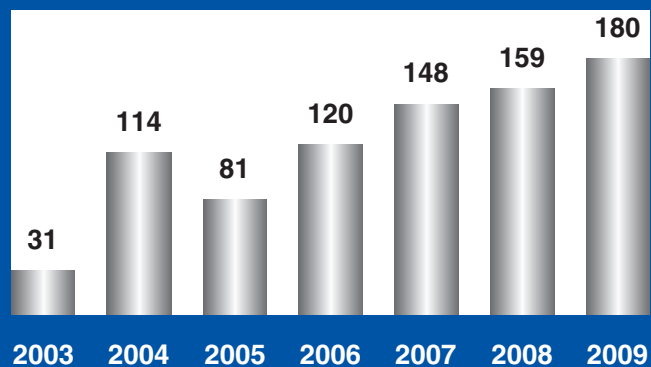


### ● Historical increase in the number of cases brought to the AC

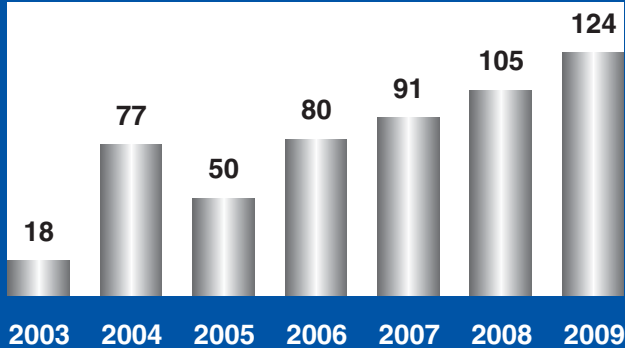
The statistics below show that there has been a significant increase in the number of cases brought to the Arbitration Council in recent years, especially in 2009.

The statistics on the case flow to the Arbitration Council show that the number of received cases reached its peak of 180 cases in 2009. This was an increase of 21 cases from a total of 159 cases in 2008. There was a marked increase in case flow, from 81 to 120 cases between 2005 and 2006. It is noteworthy that in 2003, the first year of the establishment of the Arbitration Council, there were 31 cases, which increased to a total of 114 cases in the very next year, 2004.

## Number of Received Cases

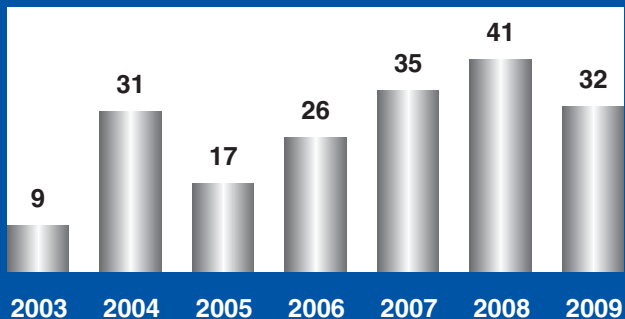


## Number Of Issued Awards



In 2009, the Arbitration Council issued 124 Arbitral Awards. There has been a steady increase in the number of awards issued by the Arbitration Council from 2003 to 2009. The only exception to the upward trend was in 2005 when there was a notable decrease in the number of awards issued (50 Arbitral Awards) from the previous year (77 Arbitral Awards in 2004). The 18 Arbitral Awards which were issued in 2003 were for only seven months of the year, since the establishment of the Arbitration Council in May 2003; during the same period in 2004, 62 Arbitral Awards were issued--representing a dramatic increase.

## Number Of Binding Awards



The statistics on binding Arbitral Awards issued over the six and a half year period show that the number of binding awards has continually increased, especially in the four year period, from 2005 to 2008. The number of binding Arbitral Awards peaked at 41 in 2008 and it decreased slightly to 32 binding awards in 2009.

● **Mediation of cases at the Arbitration Council**

Total number of cases in 2009	Type of case resolution during the arbitral process	
	Total number of agreements (prior to, during or after the hearing at the AC)	Total number of cases for which an Arbitral Award was issued
<b>180</b>	<b>56</b>	<b>124</b>

In 2009, the Arbitration Council received 180 cases from the Ministry of Labour. The AC issued Arbitral Awards for a total of 124 cases and 56 cases were resolved by agreement, either before, during or after the hearing at the AC.

**Post-award settlement of case through mediation**

**169/09- PCCS**

**Arbitrators: Ing Sothy, Tuon Siphann, Pen Bunchhea**

On 30 December 2009, the Arbitration Council ordered PCCS Garments Ltd to reinstate 51 workers who were represented by the Cambodian Union Federation and the Cambodian Union at PCCS Garments Ltd.

However, the parties had some difficulties in fully implementing the Arbitral Award and requested that the Council assist them with further settlement. In this case, the Council convened a mediation session for the parties. Due to the arbitrators' expertise in mediation and the parties' willingness to reach a settlement, the decision of the Council was ultimately implemented, with the cooperation of both parties.

The success of the Arbitral Panel in assisting the parties to reach agreement can be attributed to the arbitrators' extensive skills and experience in labour relations. The Arbitration Council Foundation supports the arbitrators in the mediation process by facilitating training on alternative dispute resolution and international best practice in mediation. International experts in mediation and arbitration are invited to conduct training for the AC's arbitrators. In 2009, a prominent labour-management mediator/arbitrator in the USA, Arnold Zack, who is the President of the Asian Development Bank Administrative Tribunal and former President of the National Academy of Arbitrators, delivered training to the AC arbitrators.

## ● Development of jurisprudence on labour law

During the period, 1 January – 31 December 2009, 180 cases were filed with the Secretariat of the Arbitration Council, bringing the total number of cases filed with the Arbitration Council since its establishment in 2003 to 833. Of the 180 cases filed in 2009, 124 cases resulted in an Arbitral Award being issued by the Council.

### Significant cases:

There were a number of significant cases throughout 2009 concerning high profile parties and those which advanced the development of legal principles in Cambodian Labour Law and industrial relations. The following extracted cases represent a sample of these significant Arbitral Awards. All Arbitral Awards can be accessed from the Council's website in Khmer and English at [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org).

#### **04/09- E Garment**

**Date issued: 16 February 2009**

**Arbitrators: Ing Sothy, Liv Sovanna, Kong Phallack**

This case was brought by the Cambodian Union Federation (CUF) against E Garment Co., Ltd.

Forty five workers filed their complaint but on the hearing day, only 37 workers continued with their claim against E Garment for reinstatement. The employer party stated that the 45 security guards are not workers of E Garment but that of Grace Company, a security company with whom E Garment signed a contract.

The Arbitration Council considered the demand by considering the following questions:

- What is the employment relationship between the 45 workers and E Garment?
- Is E Garment responsible for the reinstatement of the 45 workers?
- Are the workers entitled to demand reimbursement of wages from E Garment for the period, 23 November 2008 to the date of their reinstatement?

The Arbitration Council found that there was no employment relationship which derives from the employment contract between the 45 workers and E Garment. Grace Company was a sub-contractor who accepted the assignment from E Garment to recruit workers for the supply of security services in E Garment. Thus, the Arbitration Council concluded that E Garment was not responsible for the reinstatement of the workers and is not responsible for the loss of the workers' benefits.

## **06/09- Sang Woo**

**Date issued: 11 February 2009**

**Arbitrators: Mar Somborana, An Nan, Sok Mathoeung**

The National Industrial Federation Trade Union of Cambodia (NIFTUC) and the local Union of National Industrial Trade Union of Cambodia (NITUC) at Sang Woo Factory brought a case against Sang Woo (Cambodia) Co., Ltd. Sang Woo is a garment factory.

The unions demanded that Sang Woo deduct union contribution fees from the wages of its members and that it does not interfere in the union's affairs relating to the deduction of union contribution fees.

The unions had submitted a letter to Sang Woo to request the deduction. The letter included information about the workers' names, identification numbers, name of their group and their thumbprints. Sang Woo claimed that the workers who endorsed the letter with their thumbprints did not realise that it was to authorise the employer to deduct union contribution fees from their wages.

The Arbitration Council found that Sang Woo had the right to verify with the workers, the request to deduct union contribution fees from their wages. However, it considered that the employer is not entitled to ask certain questions that may infringe upon the individual rights of a worker to join a trade union. The Council gave examples of inappropriate questions, such as, "Why did you join the union?", "Between the union and work, which one is more important?" and "Did the company do anything bad that made you join the union?"

The Arbitration Council advised that for those workers who have clearly authorised the deduction, the employer must follow the Labour Law and action the request within the time limit of one month from the union/workers' request.

## **49/09- Bloom Time**

**Date issued: 18 May 2009**

**Arbitrators: Ly Tayseng, Liv Sovanna, Kong Phallack**

This case was brought by the Worker Union at Bloom Time Embroidery Factory against Bloom Time Embroidery Pty Ltd.

One issue was that the workers refused to recognise three worker representatives from the Bloom Time factory asserting that they did not serve the workers' interests on the negotiation of working hours and the employment contract. Bloom Time argued that it does not have any obligation to resolve this issue because it is not a labour dispute between the employer and workers, but rather a conflict between workers and their delegates.

The Arbitration Council considered that this dispute arose between workers and worker delegates, and not between workers and the employer relating to working conditions, processes in the factory or the exercise of rights of a union as a professional organisation. Therefore, the Council determined that this dispute is not a collective dispute as stipulated in Article 302 of the Labour Law.

**31/09- Mary Juice**

**Date issued: 25 March 2009**

**Arbitrators: Seng Vouch Hun, Liv Sovanna, Pen Bunchhea**

**and**

**117/09- Thai Bonrong Cement Company**

**Date issued: 23 September 2009**

**Arbitrators: Kol Vathana, Ann Vireak, Tan Try**

The Thai Bonrong case was brought by the Cambodia Labour Confederation (CLC) and the Mary Juice case was brought by the Cambodian Union Federation (CUF) and the Local Union of the CUF. Thai Bonrong is a cement company and Mary Juice is a company in the food and beverage industry.

In these two cases, the workers demanded the employer provide the US\$ 6 living allowance, seniority bonus and attendance bonus. The Arbitration Council found that, based on its interpretation of the law and jurisprudence, these perquisites apply only to garment industry and footwear workers.

**61/09- Cintri**

**Date issued: 17 June 2009**

**Arbitrators: Kul Vathna, Ann Vireak, Kong Phallack**

This case was brought by the Union Federation for Increasing Khmer Employees' Lifestyle of Cintri against Cintri, a garbage collection company.

Regarding the transfer of workers to a new location in Kompong Som, the union demanded that Cintri restore the workers to their original workplace because Kompong Som is far from Phnom Penh. The Council found that the transfer was a temporary, two week long transfer and that Cintri would address the workers' concerns regarding transportation, accommodation and payment of additional wages. Therefore, the Council rejected the demand.

## **154/09- Radio Free Asia**

**Date issued: 16 December 2009**

**Arbitrators: You Suonty, Huon Chundy, Kong Phallack**

This case was brought by a group of four members of staff of Radio Free Asia against Radio Free Asia. It represents the first case for the Council which originated from the media industry.

The workers demanded a termination payment in accordance with the Labour Law. The Council considered whether or not there was an employment relationship between the workers and Radio Free Asia because the workers perform work for a newspaper that is contracted with Radio Free Asia. Ultimately, the Council ordered Radio Free Asia to pay a termination payment to three workers, with whom it had an employment relationship and who were found to have been terminated without a valid reason.

### **New Jurisprudence:**

The Arbitration Council has the power to interpret and apply the law in labour disputes stemming from Article 312, paragraph 2 of the Labour Law which states that “this Council legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.” In exercising this power, the Arbitration Council aims to maintain consistency in its interpretation and application of the legal provisions. Therefore, in cases where the Arbitration Council decides to depart from an established interpretation of the Labour Law, the Arbitration Council must give reasons for doing so. (Arbitration Council Guideline No. 1 adopted on 13 January 2005)

With Guideline No.1, the Arbitration Council formalised its approach to consistency in the interpretation of the Law to ensure its credibility and also to make sure that parties receive similar treatment and outcomes with different panels and in all cases. A landmark case in the Council's jurisprudence and in Cambodian industrial relations was Arbitral Award 10/03-Jacqsintex which related to the conversion of fixed determination contracts to undermined duration contracts after a period of two years.

In the period between 2003 and 2009, there has been significant development of jurisprudence on industrial relations by the Council. The following extracted cases represent a sample of the notable jurisprudence in 2009.

## **95/09- Tack Fat**

**Date issued: 5 February 2010**

**Arbitrators: Ing Sothy, Ven Pov, Kong Phallack**

This case was brought by the Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) against Tack Fat Co. Ltd, a garment factory.

One of the demands against the company was the continuation of the social fund. The company stated that it is not the obligation of the company to continue to pay the social fund as it has to pay the national social security fund. The Council considered whether or not the payment of the social fund fell under past practice. The definition of "past practice" stated in many Arbitral Awards is a practice that exists for a long time, which occurs repeatedly, is clear and consistent, and recognised and accepted by both the employer and workers. This means that past practice is binding on the parties and a legitimate basis for a demand. In prior awards, the Council gave many different examples of past practice. (See AAs: 21/05(1), 14/06(1), 18/07(2), 136/07(1))

However, in this case, the Council considered more deeply whether and when past practice may cease. The Council determined that past practice can lawfully cease if certain conditions are met: that is, the parties can negotiate or agree to stop a practice, agree to a new practice, or cease the practice if the circumstances are substantially changed.

## **110/09- Berry Apparel**

**Date issued: 8 September 2009**

**Arbitrators: Mar Samborana, Ann Vireak, Pen Bunchhea**

This case was brought by the Khmer Youth Federation Trade Union against Berry Apparel (Cambodia) Co., Ltd.

One of the notable issues was a dispute about an overtime meal allowance which the workers demanded the company pay wages, weekly. In previous Arbitral Awards, the Council held that the payment of overtime meal allowance shall be made daily. (See AAs: 47/07(5), 79/07(5), 85/09(10))

However, the Council found that this interpretation does not fit all circumstances because sometimes the workers can manage the expenditure of overtime meal allowance even if it is not paid daily but rather made weekly or monthly.

**126/09- Emperor Garment**

**Date issued: 6 October 2009**

**Arbitrators: Mar Samborana, An Nan, Pen Bunchhea**

This case was brought by the Workers' Union Federation against Emperor Garment Industry Co. Ltd.

The workers demanded that the company pay wages to them every 15 days while the practice of the company is to pay wages once a month, on the 10th day of the following month.

The Council considered that the workers who are working in the Emperor Garment factory are sewing workers and therefore, fall under the definition of "Labourer" in Article 166 of the Labour Law and Circular 1903/08. The Labour Law provides that labourers should be paid twice per month.

Thus, the Council ordered the employer to pay workers' wages twice per month with a maximum interval of 16 days between each pay day.

## 2-Developing professional skills in labour dispute resolution

### ● Well-trained arbitrators making better settlement of disputes

International experts in mediation and arbitration are invited to conduct training for the AC's arbitrators. In 2009, a prominent labour-management mediator/arbitrator in the USA, Arnold Zack, President of the Asian Development Bank Administrative Tribunal and former President of the National Academy of Arbitrators, delivered training to the AC arbitrators. Arbitrators also receive training from their peers and Legal Advisors at the ACF.

In 2009, training focused on various topics relating to their arbitral function:

- The role and responsibilities of arbitrators in the Industrial Relations and labour law context
- The role of the arbitrator as an educator versus a legal advisor
- Considerations in weighing up evidence, especially the burden of proof and witness testimony
- Hearing management: separating conciliation from arbitration; the inquisitorial system versus the adversarial system
- Legal and ethical code of conduct of mediators and arbitrators
- Drafting legal decisions
- Legal analysis, statutory interpretation and contract interpretation, and
- Comparative labour arbitration systems in Australia, USA, Canada and France.

The increased capacity of arbitrators benefits both parties in dispute. Arbitrators become more effective in resolving labour disputes as they apply their training and utilise the tools to become impartial questioners and active listeners as well as educators for the parties.

Mr. Ath Thorn, President of the Cambodian Labour Confederation (CLC), had a high opinion of the Arbitration Council, saying that the AC is a reliable platform for labour dispute resolution in Cambodia.

"AC arbitrators get better over time," said Mr. Ath, who presented his first case before the Arbitration Council in 2004, a few months after its inception. "Their ways of mediating [labour disputes] also are very mature now."

The explanation given at the hearing about the arbitration process is a "good way of educating the parties," he said.



“At first, some arbitrators did not have sufficient knowledge in labour law”, observed Mr. Cheath Khemara, Senior Legal Officer of Garment Manufacturers Association in Cambodia (GMAC), adding that their “capacity has improved significantly.”

“Now [AC arbitrators] seem to have improved their questioning skills, making the employer party feel that [arbitrators] are fair in the hearing and in dispute resolution,” said Mr. Cheath, who has represented the employer party since the very first case settled by the Arbitration Council.

Every year, the arbitrators share their experience with their counterparts overseas through participating in international conferences and study tours.

### ● **Supporting the arbitrators with sound and comprehensive legal research**

In order to effectively support the work of the arbitrators, the Legal Services Department (LSD) has developed three legal research tools - the Legal Database, the Case Brief Chart and the Benchbook.

The Benchbook was produced for use by the arbitrators at the ‘judicial bench’ when sitting on an Arbitral Panel. It is a compilation of case analysis categorised by legal issues. The Benchbook serves as a reference document of legal issues that have frequently appeared at the Arbitration Council. Through a structured explanation of cases, the Benchbook explains the settled jurisprudence and tracks its development.

The Case Brief Chart is an important reference tool for LSD to assist the arbitrators. The Case Brief Chart contains all the key information related to each case brought to the AC. It is a handy guide to the entire collection of AC jurisprudence, which summarises the legal analysis related to every issue and which also records helpful observations from the hearings and reflections on the Arbitral Awards that may be of benefit to future work.

In 2009, ACF completed the development of a new Legal Database. The Database was designed to enable effective access and research into a growing body of AC jurisprudence. It contains all relevant information on AC cases and contains a variety of research resources such as Arbitral Awards, the Case Brief Chart and the Benchbook.

The legal tools help in the research on issues that come before the Arbitration Council in order to promote and ensure effective resolution of labour disputes. The tools are used throughout the arbitral process at the AC from the date of receipt of a case to issuance of the Arbitral Award.



**THE ARBITRATION COUNCIL**

## **LEGAL BENCHBOOK**

Second edition  
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### 3-Improving the state of industrial relations in Cambodia

- **National Industrial Relations Conference – an annual forum for social dialogue on key concerns**

The National Industrial Relations Conference (NIRC) is organised annually by the Arbitration Council Foundation. The NIRC is a forum for key employment and labour stakeholders to engage in social dialogue for improved industrial relations in Cambodia and thereby contribute to broader economic growth and social development.

The 4th NIRC was held on 14 December 2009 with funding from the World Bank's Demand on Good Governance Project (DFGG). The theme of the conference was "Global Economic Crisis and Cambodian Industrial Relations: Challenges and the Way Forward". Four interactive panels focused on the impact on individual workers, the private sector and the national economy and then moved on to highlight key strategic responses and recommendations for improved industrial relations during and beyond the economic crisis.

The NIRC has been held successfully for three years. The first conference was held on 3 November 2005, on "Present Practices and Future Opportunities" with more than 200 participants in attendance. The second NIRC took place on 18 December 2006 with the theme, "Working towards Stronger Workplace Relations" which attracted more than 100 participants from various organisations. The third conference on "Collective Bargaining Agreement and Union Representatives: Improving Working Conditions and Productivity", was held on 29 January 2008 with approximately 200 participants.



## ● Key players share strategies to combat the economic crisis at National Industrial Relations Conference 2009

In 2009, representatives from trade unions, employers, the government and civil society gathered to share their experience and discuss strategies to cope with challenges facing the Cambodian industrial relations community during and beyond the global economic crisis.

Participants at the 4th National Industrial Relations Conference organised by the Arbitration Council Foundation included leaders of major labour unions, executives of employers' associations and officials from the Ministry of Labour, as well as researchers, experts and members of the public. Other participants included representatives from other government agencies, the Arbitration Council, the ILO, the World Bank, embassies and international buyer associations.

Collective strategies discussed by conference participants include stronger workplace cooperation and improved systems for regular dialogue, early crisis warning systems, and common procedures agreed by employers and unions to resolve existing or potential workplace grievances.

At the conference, Mr. Sok Lor, Executive Director of the Arbitration Council Foundation stressed the importance of practical cooperation between employers, workers and the government. He stated “[a]s the key actors in industrial relations, we need to work together in order to ensure that enterprises continue to survive, to minimise further losses of profits and jobs while finding opportunities to prepare for and to produce new opportunities for our businesses and people.”

“Achieving this common goal will require joint action, especially among the employers, unions, and government,” he said. Joint action and the need for improved social dialogue among the industrial relations community was a sentiment that was echoed by many at the conference.

According to His Excellency Oum Mean, Secretary of State of the Ministry of Labour and Vocational Training, just as good industrial relations has been a key factor in Cambodia's rapid economic development over the past 10 years, it is also a key factor in Cambodia's response to the crisis. He urged workers and employers to maintain good employment relations for Cambodia to deal with the challenges of the economic crisis.

“It is now a difficult time for both the world and Cambodia's economy, yet [the Ministry of Labour and Vocational Training] finds it to be an opportunity for Cambodia to strengthen the cooperation between the government, employers and employees to join hands to combat the crisis, support the economy of Cambodia and create

harmonisation in industrial relations for improved productivity, sustainability in production and reduced job losses,” said H.E. Oum Mean.

Mr. Qimao Fan, World Bank’s Country Manager, also stressed the importance of workers and employers engaging in dialogue and finding cooperative strategies during the period of the economic crisis. “Improved industrial relations is important today - it is probably the most important [time] in Cambodia’s history,” he said at the conference.

Mr. Ath Thorn, President of the Coalition of Cambodian Apparel Workers’ Democratic Unions, and Mr. Som Aun, President of the Cambodian Labour Union Federation, agreed that it was time for unions and management to hold strategic conversations if they were to combat the crisis.

In her presentation on socially responsible transition, Ms. Ann Vireak, Executive Director of Integrating Human to Quality, also encouraged good cooperation between management and worker representatives. “All corporations we talked to [in my case studies on ensuring socially responsible transition] agreed that consulting with unions or worker representatives prior to implementing the solution is a recommended strategy during and beyond the crisis,” she said.

“You don’t have to spend much money to improve communication with workers,” said Mr. Jeung Hae Won, Corporate Social Responsibility Manager of Cambodia Handsome Co., Ltd, adding, “just show them you care and you will be cared for too.”

Most participants agreed that critical support and involvement is also necessary from the government, development partners and key industrial relations institutions and organisations like the Arbitration Council, the national independent institution established by the Labour Law to resolve collective labour disputes in Cambodia.

## 4-Renowned as a trusted institution in resolving labour disputes

“Arbitrators make working in my garment factory go smoother,” said Phou Sun, Human Resources Manager at New Wide Garment Co., Ltd. Mr. Phou said that the problems at his workplace have been resolved by the Arbitration Council (AC). He added the parties reached agreement on some issues while others were arbitrated.

“I want my case to end at the Arbitration Council because arbitrators have techniques and knowledge to solve the disputes,” added Mr. Phou, “I trust in the experience of the arbitrators.”

Mr. Phou stated that he chooses a binding Arbitral Award (that is the company will be bound by the arbitrators’ decision) every time he brings cases to the AC. As stated by law, the parties have a choice of either choosing a binding or non-binding Arbitral Award. For a binding Arbitral Award, the parties have to implement the orders immediately once the award is issued while parties who have chosen a non-binding award, can lodge an objection to the decision within eight days of the date of issue of the award.

Mr. Phou explained, “[t]he AC is the best place to resolve labour disputes. I don’t want to go anywhere else.”

Since the establishment of the AC in May 2003 until the end of 2009, 832 cases were brought to the AC and these cases have been resolved either by agreement or arbitration. The AC has maintained a success rate of 70% and these results show that the AC is effective in resolving labour disputes.

The AC is trusted by the employers and employees to resolve cases.

Chun Tuy, a union representative at Huy Hou Garment factory, said during his case in 2009, there are a few issues which were difficult to resolve. He said, “[w]e have tried once in the factory, and later complained to the Federation. Still, it could not be resolved. Later, we lodged the case with the Ministry of Labour and Vocational Training, and yet it still could not be resolved. Finally, the AC is the one that settled the case by stating the law, specific reasons and supporting evidence. We, as employees, and employers can work with this decision, based on mutual understanding and to our satisfaction. Through this process, the AC improved the working conditions of my workplace.”

Each and every decision of the arbitrators, known as Arbitral Awards state clearly the reasons for the position of arbitrators who consider the merits of the case. The Arbitral Awards are published in hard copy and electronically on the AC website.

“The AC is transparent because the reasons for all decisions are stated in the award and distributed to the public in bound books and posted on the website,” said, Rem Bora, President of Federation Union of Khmer Democratic Workers (FUKDW), “One

cannot be their own judge—the public is the true judge.” He added that there is nowhere else which gives reasons for its decisions.

Many on both employer and worker sides said they do not see any bias to any party in their award.

Government, students, international and local NGOs, and other institutions are also interested in and trust the AC to resolve labour disputes and to provide independent, reasoned decisions.

The report in USAID’s Labor/Industrial Productivity Evaluation (2009) mentions that “the Arbitration Council alone has produced a consistent record of efficient decision making based on the evidence presented and applicable provisions of the labor law without regard to personal interest or the potential for unofficial payment which might be offered by a party to a dispute.”

Mom Silakboth, Professor of Law at Royal University of Law and Economics, wrote in The Cambodia Daily 08 August 2010 that “the AC is one of the very few national institutions that employers and unions consider corruption-free, independent and transparent in its decision-making—to help resolve their dispute.”

It is widely recognised that the AC is a state institution which helps to resolve collective labour disputes between employees and employers and help raise awareness of parties by provide training to its stakeholders.

In 2009, ACF has received funding from several donors for different activities.

- International Development Association (IDA-World Bank) is funding the implementation of the Demand for Good Governance (DFGG) Project through the Royal Government of Cambodia (RGC) represented by Ministry of Economic and Finance (MEF). The project will be financed for a four-year period, from June 2009 to March 2013.
- International Labour Organization (ILO) financed ACF's core operating costs before the commencement of the DFGG project, from January to November 2009. ILO has been a supporter of the AC/F since 2003.
- Interchurch Organisation for Development Cooperation (ICCO) funded some of the operational costs and training to stakeholders during the first quarter of 2009. ICCO has been a donor since 2006.
- The Asia Foundation financed some of the operating costs for the first quarter of 2009.
- Levi Straus Foundation is providing 'gap funding' to ensure continuity of ACF's operations.
- adidas Sourcing Limited contributed a charity donation to ACF for Labour Dispute Resolution in Cambodia.

## ● ACF Board of Directors



**Arbitrator KONG Phallack**

An arbitrator of the Arbitration Council and a member of the Bar Association of the Kingdom of Cambodia, Arbitrator KONG Phallack is the Managing Director of KhmerLex Legal Solutions. He is also serving as Dean and Professor of Laws and Politics at the Faculty of Law of Paññāsāstra University of Cambodia (PUC); an adjunct Professor at Royal School of Judicial Professions (Cambodian Commercial Judge Training); and used to be an adjunct professor at Royal University of Law and Economics. Arbitrator KONG Phallack has extensive professional experience in the field of business law, labor law, intellectual property law, ADR, legal and judicial reform, human rights, legal research, project management and evaluations with local and foreign firms; development partners such as JICA, Ausaid, DANIDA, DIHR, USAID\_EWMI, GTZ, Konrad Adenauer, etc; and the Council of Legal and Judicial Reform of the Council of Ministers. Arbitrator KONG Phallack received his LL.M. in Laws and Politics from Nagoya University, Graduate School of Law in Japan, LL.B. from Royal University of Law and Economics and DDS from Royal University of Health Sciences in Cambodia.



**Arbitrator Mar Samborana**

Arb. Mar Samborana is currently working as a Legal and Regulatory Manager for CamGSM (Mobitel), Cambodia's leading Telecommunications Company. Prior to his current position, Arb. Mar Samborana was a Senior Associate for the Sciaroni & Associates, where he provided consultation on rules and procedures for conducting business and investment in Cambodia, land transaction, legal compliance, the Labour Law, labour dispute negotiations & settlement, and commercial & non-commercial registration of enterprises. He holds a Master's Degree in Science Engineering from the former USSR and a Master's Degree in Law and Political Science from the Build Bright University, Cambodia.



**Arbitrator Sin Kim Sean**

Arbitrator Sin Kim Sean currently works as Bar Liaison and Legal Aid Grants Coordinator at the East-West Management Institute. Prior to her current position, she worked as Programme Officer at The Asia Foundation, Legal Instructor at the University of San Francisco and then Community Legal Education Center based in Phnom Penh, Programme Officer at the Human Rights Task Force in Cambodia, and Legal Assistant at the Legal Center for Research Documentation of the National Assembly. Arbitrator Sin Kim Sean holds her Masters Degree in International Laws and Economics from World Trade Institute in Switzerland, Bachelor of Laws from National Institute of Management and Royal University of Law and Economics in Cambodia, and a Certificate as Legal Research Scholar at the University of Michigan, Law School in the United States.

**Mr. Brian Rohan**

Mr. Brian Rohan has been a resident of Cambodia since 2003. He is currently working as the Land and Livelihoods Advisor for the American Bar Association. In this position he oversees several legal advocacy initiatives focusing particularly on land rights. Prior to his work in Cambodia, Mr. Brian Rohan worked with the ABA's Rule of Law Initiative in Washington, D.C. first serving as Country Director for Moldova, Ukraine and Director of the Environmental Law Programs, and later as Associate Director of the Asia Division. In addition to Cambodia, he has lived and worked on rule of law and environmental governance projects in East Africa and the former Soviet Union. He graduated from New York University Law School in 1990 and is admitted to practice in the United States.

## ● Arbitration Council Foundation Management Team



**Sok Lor**

### **Executive Director**

Expertise in organizational management, strategic planning, project management, Cambodian industrial relations and labor law; Lecturer of Law, Royal University of Law and Economics (RULE) and Pannasatra University of Cambodia (PUC). Previous experience: Chief Legal Officer, Deputy Executive Director, ACF. Education: Master of Laws (LL.M), Transnational Law and Business University, (South Korea); Bachelor of Law, RULE.



**Mrs. Sou Sorphea**

### **Director of Legal Services**

Expertise in capacity building, Cambodian industrial relations, labor law, civil and criminal law; Member of Bar Association of Kingdom of Cambodia (BAKC). Previous experience: Legal Officer, Senior Legal Officer, ACF. Education: Bachelor of Law, RULE, Bachelor of English, Institute of Foreign Languages, Royal University of Phnom Penh (IFL-RUPP); Lawyer Certification, Lawyer Training Center, BAKC.



**Mr. V Samphy**

### **Manager of Training & Communications**

Expertise in media and communication strategies, alternative dispute resolution, Cambodian industrial relations. Previous experience: Legal Officer – Workplace Relations Group, Community Legal Education Center (WRG-CLEC); Translator/Interpreter and Writer – Cambodia Press Review, Media Consulting & Development. Education: LL.M, Nagoya University Graduate School of Law (Japan); Bachelor of Teaching English as a Foreign Language, IFL-RUPP; Bachelor of Law, RULE.



**Mrs. Teng Ratana**

### **Manager of Finance & Administration**

Expertise in financial management, project management, procurement and administration. Previous experience: Finance Manager - Project Support Unit, Ministry of Agriculture, Forestry and Fisheries. Education: BBA in Finance and Banking, National University of Management. Pursuing ACCA program for CPA.



**Mr. Saing Hay**

### **Monitoring & Evaluation Coordinator**

Expertise in designing social research, monitoring and evaluation, and project management. Previous experience: Monitoring and Evaluation Officer - Secretariat of National Democratic Development, Ministry of Interior; Researcher, Japan International Development Agency. Education: Master of Applied Population Studies, Flinders University of South Australia (Australia); Bachelor of Sociology, RUPP.



**Mr. Hans S. Hwang**

### **Senior Legal & Technical Advisor**

Expertise in capacity building, organizational development, Cambodian labor law. Previous experience: Legal Advisor – WRG-CLEC; Associate - Business Finance and Restructuring Dept, Weil, Gotshal & Manges LLP (New York). Education: Juris Doctor, The University of Michigan Law School; Bachelor of Arts (Philosophy), The University of Michigan.

## ● Chief of Secretariat of the Arbitration Council



**Ms. Bo Chanveasna**

Expertise in case management, administrative work, procedure and conciliation of labor dispute, Cambodian industrial relation, Cambodian labor law, capacity building, communication with parties of dispute and stakeholder; Deputy Director of Department of Labor Dispute, Ministry of Labor and Vocational Training (MoLVT). Previous Experience: Officer of Department of Labor Dispute, Ministry of Labor and Vocational Training (MoLVT); Officer of Secretariat of the Arbitration Council; Head of Labor Dispute office 3 of Department of Labor Dispute; Education: Master of Public Administration, Royal University of Law and Economics (RULE); Bachelor of Economic Development, Royal University of Law and Economics (RULE); Kramakars Civil Servant Certificate, RSA (Royal School of Administration).

## ● Legal Advisor of Arbitration Council Foundation



**Ms. Sonya Kim**

Expertise in legal/policy advice, organisational development and project management; legal practitioner in Australia. Previous experience: Senior Legal Officer - Australian Government Attorney-General's Department; Graduate Officer – Australian Public Service; Complaints Liaison Officer – Anti-Discrimination Board of NSW, Australia. Education: Master of Laws, The Australian National University; Bachelor of Laws, University of Sydney; Bachelor of Commerce (Honours in Industrial Relations), University of Sydney.

## ● Arbitrators

### ■ Arbitrators from the ministry list

Mr. Kong Phallack  
Mr. Ang Eng Thong  
Kim-Yeat Dararith  
Mr. Koy Neam  
Mr. Men Nimmith  
Mr. Nhean So Munin  
Mr. Pen Bunchhea  
Mr. Run Saray  
Dr. Sok Mathoeung  
Mr. Tan Try

### ■ Arbitrators from the employer list

Mr. Mar Samborana  
Ms. Chhiv Phyum  
Mr. Hem Hour Naryth  
Mr. Ing Sothy  
Mr. Kao Thach  
Mr. Kol Vathana  
Mr. Ly Tayseng  
Mr. Ouk Ry  
Ms. Seng Vuoch Hun  
Ms. You Suonty

### ■ Arbitrators from the employee list

Ms. Sin Kim Sean  
Ms. Ann Vireak  
Mr. Huon Chundy  
Mr. Liv Sovanna  
Mr. Song Vansinn  
Mr. Suong Sophal  
Mr. Tuon Siphann  
Mr. Ven Pov  
Mr. Vong Vanna  
Mr. An Nan



## ● Arbitration Council Foundation (Staff Members)

**Ms. Saing Kuntheapini**

Senior Legal Officer

**Ms. Chum Charya**

Senior Legal Officer

**Ms. Chou Sokcheng**

Legal Officer

**Ms. Mouly Vichhra**

Legal Officer

**Mr. Sar Chesda**

Legal Officer

**Mr. Thong Sopymakara**

Legal Education & Translation Officer

**Mr. Vandeth Dararoath**

Communications Officer

**Ms. Soeung Sophea**

Training Coordination Officer

**Ms. Chhen Vanny**

Finance and Admin Officer

**Ms. Sorn Visey**

Receptionist

**Ms. Moeun Somaly**

House Keeper

**Ms. Mao Bony**

House Keeper

**Mr. Huot Chanda**

Driver/Messenger

## ● Secretariat of the Arbitration Council

**Mr. Pen Savat**

SAC Official

**Mr. Chrun Theravong**

SAC Official



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# Arbitration Council Foundation

## Income and Expense Report

### As of 31 December 2009

I. Opening Balance at 1st January 2009	326,283
II. Fund Received	290,222

<b>Total Fund</b>	<b>616,505</b>
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### III. Expenditure

1. Institutional Integrity and Sustainability	2,762
Selection of Arbitrator	-
Arbitration Council Governance	2,762
Sustainability	-
2. Labour Dispute Resolution	194,158
Resolution of Labour Dispute Cases	176,995
Capacity Building of AC/F and SAC	17,163
Expansion of AC services	-
3. Partnership and Stakeholder Outreach Training	49,481
ACF support to AC outreach and training	18,157
Establishing and Maintaining partnerships	6,024
Dissemination of Publications and other Information	23,031
Media Relations and Promotions	-
Stakeholders Training	2,269
4. General Operations and Project Management	200,551
Support to Project Management and Operation	78,224
Occupancy	61,226
Supplies	8,227
Equipment	26,029
Communication	13,122
Vehicle and Transportation	1,804
Contractual services	9,928
Project Monitoring and Evaluation	1,991

<b>Total expenditure</b>	<b>446,952</b>
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<b>Deficit/ Surplus</b>	<b>169,553</b>
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