



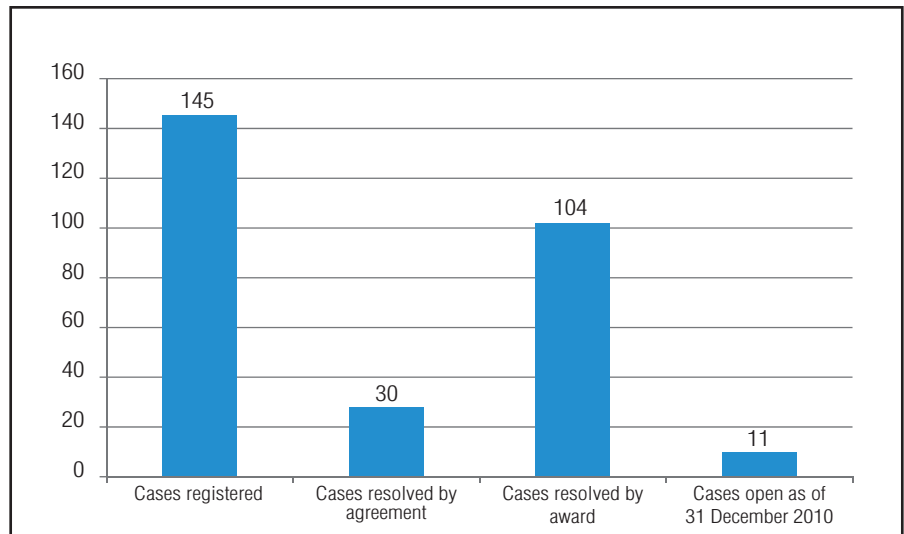
RESOLVING COLLECTIVE LABOUR DISPUTES

Content

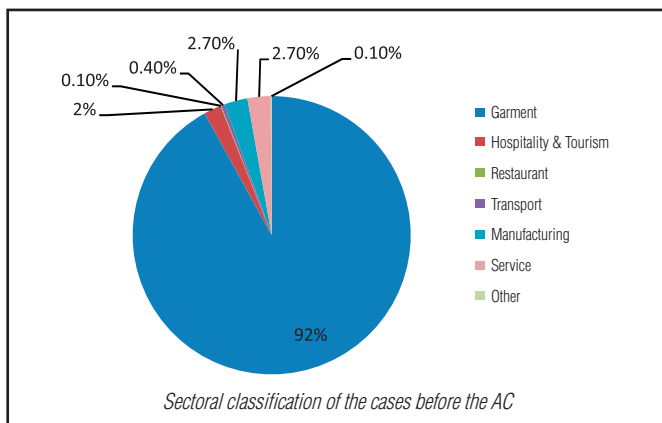
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Arbitration Council Labour Dispute Resolution

(Cases from January - December 2010)

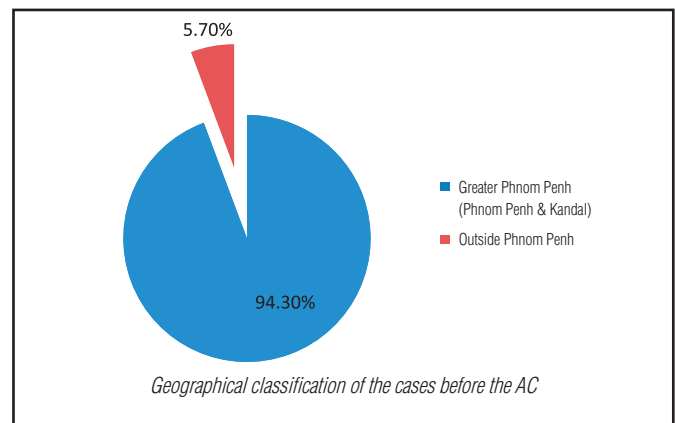


In 2010, 145 cases were brought by employers and unions and workers to the Arbitration Council (AC) for settlement. Among them, 30 cases were resolved through settlement agreements reached by the dispute parties with the AC's assistance, 104 cases were resolved by issuance of arbitral award, and 11 cases were pending and brought forward to 2011 for resolution.



Since its inception in 2003, the AC has received 978 cases in total. The Chart above offers sectoral and geographical classification of the cases before the AC.

As the chart displays, a majority of labour dispute cases before the AC come from the garment industry. In this regard, while it serves other industries, the AC has serviced the garment sector, which accounts for most Cambodia's export and provides jobs and income to approximately 350,000 workers in Cambodia, most of whom are women from rural areas.



Classified by geographical locations, most of the disputes come from greater Phnom Penh area (Phnom Penh and Kandal). This is consistent with the location where garment factories and other industries cluster.

Overall, the AC helps solve labour disputes between employers and unions and workers. By assisting in settling such disputes, the AC removes the disputes which are the hurdles and distraction to the core activities of the enterprises and workers: maintaining and advancing their respective income.

Labour and management talk solutions on Collective Bargaining Agreements



Mr. Sok Lor, ACF Executive Director, H.E. Seng Sakda, Director General of General Department of Labour (MoLVT), and Mr. Michael Gay, Commissioner of Fair Work Australia, deliver speech at the 5th NIRC

Representatives from trade unions, employers, government and civil society, on 1 October 2010, gathered to share real-life experiences and discuss collective solutions to the challenges upsetting the industrial peace in Cambodia and hampering the development of Collective Bargaining Agreements (CBAs).

Some of the major challenges include the large number of competing unions in each enterprise, the smaller unions' unwillingness to cooperate with 'most representative status' unions to collectively bargain for a CBA, and both parties' lack of skills and understanding of the real benefits of CBAs, according to speakers at the 5th National Industrial Relations Conference (NIRC) organised by the Arbitration Council Foundation (ACF).

Many of the participants welcomed the agreement reached earlier this week, between Garment Manufacturers' Association in Cambodia and the Presidents of Cambodia's major labour confederations on the resolution of labour disputes, saying that it reflected an increased understanding of the importance of collective bargaining.

According to Mr. Sok Lor, ACF Executive Di-

rector, the main purpose of the conference is to focus on the "key to long-term stability in the Cambodian industrial relations by considering the significance of collective bargaining and binding arbitration at the Arbitration Council (AC)".

"Collective bargaining is essential in industrial relations," he said, adding that, "it promotes economic growth and productivity and advances to social peace. These benefits were raised by most of the participants."

H.E. Seng Sakda, Director-General of the General Department of Labour of the Ministry

of Labour and Vocational Training (MoLVT), also expressed the importance of collective bargaining to ensure sustainable employment relationships.

"Effective Collective Bargaining Agreements will attract foreign investment and promote jobs in not only the garment and textile sector, but also in the hotel, tourism and construction industries," said H.E. Seng Sakda, who also acknowledges the potential impact of the soon-to-be-adapted Trade Union law on industrial relations and collective bargaining.

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Participants at the 5th NIRC

Labour and management...

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Mr. John Ritchotte, ILO Specialist

The need to bargain in 'good faith' was echoed by several of the participants.

Mr. Michael Gay, Commissioner of Fair Work Australia, highlighted the importance of recent amendments in Australia, which has introduced an explicit statutory obligation to bargain collectively in good faith.

"I believe this will be of relevance to you, the statutory obligation to bargain in good faith and to be seen to be, at the various stages of bargaining, genuinely trying to reach agreement," said Commissioner Gay, who conciliated the disputes involving strikes at various luxury hotels in Phnom Penh and Siem Reap back in 2004.

He further stressed that CBAs have to be effective and enduring.

The agreement must be "comprehensive and

watertight to bring industrial peace to a factory," he said. He made a comparison to Australia, where CBAs today extend to outlining "acceptable behaviour" and explicitly state the procedure of dispute resolution.

Mr. John Ritchotte, International Labour Organization (ILO) Specialist, praised the improvement in the state of industrial relations in Cambodia over the last 10 years. However, he said that a better dialogue between the parties and a greater understanding of each other's interests would further benefit collective bargaining. "Bargaining is not a one way street because it should be beneficial to both the workers and the employers", he said.

Both Mr. John Ritchotte and Commissioner Michael Gay urged the participants to adopt standard clauses in CBAs, for binding arbitration, no industrial action during the life of a CBA and restrictions for finality in terms of no further claims.

Mr. Ath Thorn, President of the Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU), Mr. Som Aun, President of the Cambodian Labour Union Federation (CLUF), and Mr. Chhin Sony, Vice-President of the Cambodian Workers Labour Federation Union (CWLFU), agreed that labour unions should bargain collectively with one voice for the development of collective bargaining.

"[A CBA is a] very good manager of relationships between the parties", said Mr. Som Chamnan, Executive Manager and Legal Advisor of the Cambodian Federation of Employers

and Business Association (CAMFEBA).

He encouraged members of the employer associations to participate in training sessions regarding collective bargaining, so as to enable them to negotiate when "the climate allows them to".

Participants agreed that a deeper understanding of the benefits and skills will assist collective bargaining. CBAs would adequately set the parameters for industrial relations and is essential to reach industrial harmony at the enterprise level in Cambodia.

About the National Industrial Relations Conference

The National Industrial Relations Conference (NIRC) is organised by ACF. It 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 5th NIRC was held on 1 October 2010 at the Raffles Hotel Le Royal under funding from the World Bank's Demand for Good Governance Project (DFGG). The theme of the 2010 conference was "Collective Bargaining for Improved Industrial Relations: Collective Solutions to Current Challenges". Four interactive panels focused on the challenges of collective bargaining, its benefits to the workers, the employers, investors and the national economy, and then highlighted key solutions and recommendations for collective bargaining to enable industrial peace in Cambodia.



(left to right) Mr. Ath Thorn, C.CAWDU President, Mr. Som Aun, CLUF President, Mr. Michael Gay, Commissioner of Fair Work Australia, Mr. Chhin Sony, CWLFU Vice-President, and Mr. Som Chamnan, Executive Manager and Legal Advisor of CAMFEBA.

Commitment to Increase the Arbitration Council's Capacity to Resolve Labour Disputes

The Arbitration Council (AC) is committed to continuing to upgrade its institutional capacity to resolve labour disputes for employers and unions and workers. Such institutional capacity is upgraded through a number of programs which expose the Arbitrators and the staff of Arbitration Council Foundation (ACF) to international best practice on conciliation and arbitration.

From 29 November to 10 December 2010, four delegates from the AC held an international exchange visit to Fair Work Australia (FWA), in Australia—an Australian counterpart of the AC.

By engaging in one-to-one pair up with arbitrators and staff of FWA, the delegates gained an in-depth understanding of the overall operational system, dispute case management structure, and conciliation and arbitration skills. They found that the additional knowledge and experience are useful for advancing their capacity for labour dispute resolution, case management and communication services.

“During the international exchange program, I have learnt mostly the conciliation techniques from different FWA arbitrators. I observed that the willingness of dispute parties to settle their dispute is the key factor in successful concili-



AC delegates and Mr. Tim Lee (middle), FWA General Manager

ation. The assistance of the third party called a conciliator also plays a crucial role in a successful conciliation since the conciliator can help clarify the underlying interests and concerns of the parties. The situation where both parties to a dispute fail to communicate directly, the role of the conciliator becomes even more important as he or she can help bridge the communication between them, and in most cases help them reach an agreement that end their dispute,” said Ms. Sou Sorphea, Legal Services Director of ACF.

The delegation comprised of Arbitrator You Sounty, Arbitrator of the AC, Ms. Bo Chan-

veasna, Chief of the AC Secretariat, Ms. Sou Sorphea, Director of Legal Services and Mr. Vandeth Dararoath, Communications Officer.

Fair Work Australia is Australia's national workplace relations tribunal. It is an independent body with statutory power to carry out a range of functions relating to industrial relations, such as providing a safety net of minimum conditions; granting remedies for unfair dismissal; regulating the taking of industrial action; and resolving collective and individual workplace disputes through conciliation, mediation and arbitration.

Representatives of Employers and Unions Learn about the Garment Industry Memorandum and Labour Arbitration Process, Many Unaware of the Memorandum

A Garment Industry Memorandum of Understanding that involves among other agreement items binding arbitration on rights disputes at the Arbitration Council (AC) was signed between the peak body of the garment employers—the Garment Manufacturers' Association in Cambodia (GMAC)—and six union federations and confederations in September 2010. At the invitation of the Arbitration Council Foundation (ACF), managers and unions at the enterprise level who are potentially covered by the Memorandum as well as



Ms. Chum Charya, ACF Senior Legal Officer, explains the Garment Industry Memorandum to union and management at enterprise level

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Representatives of...

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representative from labour institutions attended sessions at the office of the AC in December 2010. From the sessions, the participants gained understanding about the Memorandum and its prospective implication as well as the AC's arbitration process. In respect of binding arbitration, the participants also recognized the importance of good case preparation and presentation of their cases before the AC.

With final and binding arbitration, dispute parties have to implement binding decisions immediately once issued. Unlike non-binding decisions, the parties cannot lodge an objection to the final and binding decision. In this way, the enterprises and workers could put an end to their labour disputes and thus focus on their prime income-generation activities.

Prior to the binding arbitration coming into effect on 1st January 2011, ACF conducted 5 information sessions for the stakeholders. The first information session was held on 9 December 2010 with 11 participants from GMAC, International Labour Organization (ILO)—Better Factories Cambodia, ILO—Labour Disputes Resolution Project, Community Legal Education Center (CLEC), Cambodian Federation of Employers and Business Associations (CAMFEBA), and Worker Information Center. The second information session took place on 13 December 2010 with 14 participants from the major six union confederations (Cambodian National Confederations, National Union Alliance Chamber of Cambodia, Cambodia Confederation of Trade Unions, Cambodia Labour Confederation, Cambodian Confederation of Unions, and Khmer Youth Federation of Trade Unions), signatories to the Memorandum. The third, fourth, and fifth information sessions on 21, 23 and 27 December were conducted with a total of 50

participants from unions and management at the enterprise level who brought cases to the AC. From the session on the Memorandum, ACF trainers found out that representatives of management and unions at the enterprise level were not aware of the Memorandum.

"I did not understand well about the Memorandum before I joined this information session at the ACF," Oung Sophea, head of the union at PCCS garment factory, said, "I have to be more careful with case preparation as resolving disputes [labour rights dispute] at the AC is binding on both parties." This emphasises the need for relevant employer associations, union federations, and other labour agencies to raise awareness of the Memorandum among employers and unions. Such awareness raising play a key role in ensuring that the Memorandum is implemented successfully and thus contributes to advancing the stability in the industrial relations in the garment industry.

Implementation of the Garment Industry Memorandum Could Promote Profits and Wages

On 28 September 2010, Garment Manufacturers' Association in Cambodia (GMAC) and six major union federations and confederations signed the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry which comes into effect on 1 January 2011. The Memorandum could help boost the productivity and profits of employers and wages of employees in the garment industry by helping to build sustainable, good workplace cooperation, to shorten the process of labour disputes and to reduce the incidence of strikes and lockouts. This is particularly important in the garment industry that provides wages to some 350,000 workers in Cambodia and helps support the livelihood of many more of their relatives.

Mr. Vong Sovann, head of Cambodia Workers Labor Federation of Trade Union (CWLFU), confirm the benefits of having the memorandum on choosing binding arbitration, "once the award issues, both parties implement, so that they are peacefully working with each other as well as the smooth operation of busi-

ness." He added he has been informing unions to comply with this Memorandum.

Under the Memorandum, the parties agreed to a few important principles and commitments, aimed at promoting harmonious industrial relations in the garment industry in Cambodia. Among other things, these include compliance with the national law, support for collective bargaining, support for collective bargaining agreements, support for most representative status unions as the exclusive bargaining agent on behalf of workers in the enterprise, and submission of disputes involving existing labour rights to final and binding arbitration by the Arbitration Council (AC). The Memorandum also specifies that the parties agree to treat the Memorandum and its provisions as a whole package.

Of significance to the AC is the parties' agreement to binding arbitration on disputes over existing labour rights by the AC and to follow the dispute resolution procedures, specifically to not resort to strike or a lockout during the dispute resolution process. For these disputes,

decisions of the AC will be final and binding on the disputing parties, meaning that they have to execute the decisions right away. With good faith implementation of the decisions, the employers and workers will be able to avoid wildcat strikes and lockouts. In other words, they will be able to save a lot of time, energy, and resources, and thus will be able to better spend them on achieving their chief mission: raising profits and gaining wages.

With the anticipation of orders which will be binding on the parties, it is more important than ever that dispute parties prepare and present their cases well when appearing before the AC. The AC is committed to supporting the parties to the MoU in their implementation of the agreement. In 2011, the Council will continue to offer training to employers and unions on effective case preparation and presentation. Moreover, Arbitration Council Foundation (ACF) plans to conduct training that is tailored

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Implementation of...

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to the needs of the Memorandum parties in the garment sector, throughout 2011.

ACF praises the leaders of GMAC and labour unions for having signed the monumental Memorandum that has great potential to in-

crease employer's profits and workers' wages, as well as the livelihood of several thousands of Cambodians. With this Memorandum in place, the ACF looks forward to seeing a successful implementation of the Memorandum in 2011 by GMAC and its members as well as the union federations and confederations and their affiliates. It is hoped the year 2011 will bring more stable industrial relations in the garment industry under their leadership.

Mr. Van Sou Ieng, President of Cambodia Federation of Employers and Business Association (CAMFEBA), said, "We believed that it [Garment Industry Memorandum] is the right thing to do and we must take initiative to prove the union that we are law abiding and want to work in true partnership with the union to bring healtht industrial relation in our garment industries."

AC Secretariat Prepare for administering Labour Dispute Cases Covered by the Garment Industry Memorandum

Binding arbitration clauses stated in the Garment Industry Memorandum of Understanding have affected the Arbitration Council (AC) process. The AC Secretariat has prepared itself, from October to December 2010 for the changes in the administration of the labour disputes cases.

There are some changes to the previous hearing procedure. AC secretariate will explain to the parties, the rules of the hearing and inform

the parties of the effect of binding arbitration regarding rights disputes. Furthermore, AC secretariate will arrange for a separate agreement for the Memorandum parties to sign, to confirm that they are signatories to the Memorandum and thereby have chosen binding arbitration for rights disputes. The parties maintain the right to choose their interests disputes to be non-binding. After the decision is handed down by the Arbitral Panel on the case, AC secretariate will issue the Arbitral Award to the par-

ties and send a letter to the Ministry of Labour and Vocational Training stating that the rights disputes will become effective immediately.

Rights disputes relate to the interpretation or application of an existing right under the law, contracts, Collective Bargaining Agreement or past practice. More information on the distinction between rights and interests disputes will be available through training by and publications at Arbitration Council Foundation (ACF).



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