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ARBITRATION COUNCIL FOUNDATION

Terms of Reference

Mid-Term Follow-Up Study and End-Term Study

- Project Number:** World Bank-IDA-Grant Number-H4410-KH
- Project Title:** Cambodia: Demand for Good Governance, Support to the Arbitration Council
- Consultancy:** ACF DFGG Mid-Term Follow-Up and ACF DFGG End-Term Study
- Location:** Phnom Penh (and selected provinces), Cambodia
- Time Frame:** Each study will be conducted on the following dates:
- Mid-Term Study: January 15 2012 to 20 April 2012
 - End-Term Study: 02 January 2013 to 30 March 2013

I Background of the Project

Demand for Good Governance Project and Support to the Arbitration Council

Good governance is a critical challenge facing Cambodia in its efforts to sustain economic growth, reduce poverty and attain the Cambodia Millennium Development Goals. Accordingly, the Royal Government of Cambodia (RGC) gives prominence to improving governance including through the planned Demand for Good Governance (DFGG) Project, which will be supported by grant financing from the International Development Association (IDA) and Australian Agency for International Development (AusAID).

The development objective of the DFGG Project is to enhance the demand for good governance in priority reform areas by strengthening institutions, supporting partnerships, and sharing lessons. The DFGG Project aims to improve governance quality in Cambodia by building the capacities of institutions, and supporting programs/projects and coalitions, that promote, mediate or address demand for good governance.

One of the state institutions which the DFGG Project has selected for institutional support is the Arbitration Council (AC), a national quasi-judicial institution mandated to resolve labour disputes between employers and workers in Cambodia. The AC is supported by the Arbitration Council Foundation (ACF), a registered non-governmental organisation providing technical, managerial and financial assistance to the AC. The ACF is designated as the Project Implementing Entity for the *Support to the Arbitration Council* sub-component of the DFGG Project.

The Labour Dispute Resolution Work of the Arbitration Council

The labour dispute resolution work of the Arbitration Council is founded in the Labour Law of 1997 and related *prakas* of the Ministry. Disputes which cannot be privately resolved between workers and their employers undergo conciliation at the Ministry of Labour. In accordance with the law, collective

labour disputes which cannot be resolved through such conciliation are forwarded to the Arbitration Council for a mandatory arbitration hearing. At the hearing, the Arbitration Council will use conciliation/mediation techniques to help parties attempt to reach agreement to settle their dispute. If the dispute cannot be thus resolved, the Council proceeds with formal arbitration and informs parties of their legal rights (including options for binding and non-binding arbitration) and the procedures for arbitration. During arbitration, the Council assesses the parties' claims and arguments and examines any witnesses or documents related to the case. After the hearing, within 15 days of receiving the case, the Council issues reasoned decisions in writing (based in law and fairness) in the form of arbitral awards.

The Arbitration Council serves as a model of good governance and of how demand for good governance is promoted, mediated, and answered. It embodies several desirable characteristics of a quasi-judicial body. Prior to the establishment of the AC, labour disputes were usually resolved arbitrarily, without citizen involvement, without a clear explanation of how a decision had been reached or what the facts were, and with allegations of influence. The Arbitration Council, with support from the ACF, has changed that situation: it is independent from government and from its users and stakeholders. It is fast – decisions are issued to the parties within 15 days to settle the dispute. It is transparent – users select arbitrators from a list which they have previously approved and decisions of arbitrators are published and disseminated in hard copies and available on the AC's website. It respects justice and the rule of law – cases are decided on their merits and the reasoning and legal basis for the decisions are clearly indicated in the published arbitral awards. These and other qualities have been widely acknowledged nationally and internationally and have led to support from the tripartite stakeholders – government, employers and employees. Having effective counterparts in government (particularly the Ministry of Labour) and in civil society (especially employer associations and unions) is crucial to the AC's ability to respond to and mediate demand for good governance. The AC's success also serves as a model for judicial reform and for other areas of arbitration, including commercial, land or family disputes.

In addition to its primary labour dispute resolution work, the Arbitration Council and the ACF promote awareness and understanding of the arbitration process and procedures among a wide spectrum of stakeholders, including the employers and union organisations, the Ministry of Labour's conciliators, other government officials and civil society representatives, judges, lawyers, law students and others.

The overall objective of the *Support to the Arbitration Council* sub-component of the DFGG Project is to contribute to an effective governance environment for private sector development by enhancing the extent to which a well-functioning labour arbitration system builds confidence in workers, employers, investors and the public that labour disputes will be resolved effectively and fairly.

More information regarding the Arbitration Council is available in the Annex to this ToR and at www.arbitrationcouncil.org.

II Purpose of the Mid-Term Follow-Up Study and End-Term Study

The ACF DFGG Mid-Term Follow-Up Study and End-Term Study are proposed to be conducted at the middle stage and the end of project implementation. The results of the Study will benefit the Arbitration Council and the Arbitration Council Foundation in understanding the progress of its service delivery (labor dispute resolution) and specifically, will provide the information on outcomes, effectiveness, efficiency, relevant of its service compared to the baseline data in the Baseline Study 2010, as defined in the ACF DFGG's results framework.

The general objective of the ACF DFGG Mid-Term Follow-Up Study and End-Term Study are to establish mid-term data to measure its progress against with baseline data and to shape future direction of the Arbitration Council in which the service can be improved.

To accomplish the overall objective of the above Studies, specific objectives are:

- 1) To determine the level of confidence in the independence, credibility, and effectiveness of the Arbitration Council among union and employer organisation representatives and stakeholders.
- 2) To determine the level of awareness of the Arbitration Council and labour arbitration process among union, employer organisation representatives.
- 3) To determine the percentage of AC clients who do not report paying unofficial feesto arbitrators, SAC or ACF staff for resolving their labour disputes.
- 4) To determine such other information and data as may be appropriate and relevant to accomplish the overall objective of the Study.
- 5) To use the findings to make reasonable recommendations for the service improvement and present the results of the study to the Arbitration Council and its Foundation.

III Research Methodology

1) Methodology

The contracted consultant will identify key indicators, both qualitative and quantitative, to address the specific objectives of the ACF DFGG Mid-Term Follow-Up Study and End-Term Study. They are proposed that the ACF DFGG Mid-Term Follow-Up Study and End-Term Study will employ a mix-method. The data for this survey will be collected through interview surveys (semi-structured interviews), key informant interviews, and focus group discussions.

The successful consultant will work closely with ACF's M&E Coordinator to further develop, identify, and discuss whether or not the indicators developed in the research proposal are appropriate or sufficient to meet the overall objective of the research.

2) Location of the study

It is proposed that the focus of the ACF DFGG Mid-Term Follow-Up Study and End-Term Study will be the greater Phnom Penh area (including Phnom Penh, Kandal, and Kompong Speu provinces) as the majority of the collective labour disputes forwarded to the Arbitration Council arise from garment factories in these areas. However, ACF may require the successful consultant to include other selected provinces (i.e., Sihanoukville) in the study.

3) Sample Criteria

The ACF DFGG Mid-Term Follow-Up Study and End-Term Study will be undertaken within a formal economy, primarily the garment sector. However, other sectors (such as hospitality & tourism, manufacturing, construction, etc.) shall be taken into account in consultation with ACF. The target group for the study should include union and employer organisation representatives and other stakeholders (e.g., officials of the Ministry of Labor and Vocational Training).

IV Specific Deliverables

- 1) *Inception Report*: The consultant is expected to submit an inception report giving details of the proposed research design and work plan. The inception report shall cover the details of the proposed research methodology (i.e., tools for data collection, sample size, sampling frame, etc.); proposed activities (i.e., field worker, pre-testing of the questionnaires/interview guideline etc.); project management team (i.e., responsibilities of the team leader, project coordinator, senior researchers, etc.); and timeline. The report shall be submitted to the ACF within 2 weeks of signing the contract. The successful consultant will work closely with ACF's M&E Coordinator in designing such report.
- 2) *Progress reporting*: At the request of ACF, the contracted consultant shall submit updated progress information detailing progress made against the agreed work plan for ACF monitoring purposes.
- 3) *Final reporting*: The final report shall be submitted to the ACF at the end of the contract. At the request of ACF, the contracted consultant shall present the findings of the study to ACF or stakeholders as required. A draft of the report will be shared with ACF for review and input a week before the end of the consultancy to allow time for refinement before the preparation and release of the final report.
- 3) The contracted consultant shall report in English. Outputs, reports, and documentation as generated under this study will be delivered in both electronic (editable format) and hard copy, and they will remain the property of the ACF. Moreover, questionnaires sheets and final data entry in SPSS version/MS Words/Excels shall be submitted and will remain the property of the ACF.
- 4) ACF will provide overall technical support, advice and supervision to the contracted consultant as well as necessary information and documents for the effectiveness, efficiency and relevance of the ACF DFGG Mid-Term Follow-Up Study and End-Term Study. The ACF will also arrange and facilitate contact and liaison with informants, union and employer group representatives and stakeholders as appropriate.

V Qualification and Selection Criteria

- 1) Non-governmental organisations or commercial firms duly registered with the Royal Government of Cambodia.
- 2) A minimum of 4 years of demonstrated experience relevant to designing and delivering similar social survey work and other social research assignments, including baseline and mid-term follow-up monitoring and evaluation for development projects.
- 3) Prior experience and knowledge of Cambodian laws and legal systems, especially in relation to labor dispute resolution, Cambodian industrial relations, legal organisations and institutions of justice will be an asset.
- 4) Experience with World Bank/IDA-funded projects and/or RGC projects will be an advantage.
- 5) Fluency in Khmer and English among the consulting team is required.

VI Estimate Qualified Personnel Required

The successful consultant should meet the following criteria regarding to the key professional staff required include the minimum qualifications and experience requirements.

Personnel	Number of Positions	Minimum Qualification
Team leader	1	<ul style="list-style-type: none"> • Master Degree or higher degree in economics, business administration, public administration, law, social science or related fields • A minimum of 5 years demonstrated experiences relevant to designing and delivering similar survey work and other research assignments, including baseline and mid-term follow-up monitoring and evaluation for development projects.
Research Advisor	1	<ul style="list-style-type: none"> • Master Degree or higher degree in, economics, business administration, public administration, law, social science or related fields • A minimum of 10 years demonstrated experiences relevant to research topic in designing and delivering similar survey work and other research assignments, including baseline and mid-term follow-up monitoring and evaluation for development projects
Team Member	2	<ul style="list-style-type: none"> • Bachelor Degree or higher degree in economics, business administration, public administration, law, social science or related fields • A minimum of 3 years demonstrated experiences relevant to designing and delivering similar survey work and other research assignments, including baseline and mid-term follow-up monitoring and evaluation for development projects.
Team Assistant	1	<ul style="list-style-type: none"> • Bachelor Degree or higher degree in economics, business administration, public administration, law, social science or related fields • A minimum of 2 years experiences relevant to designing and delivering similar survey work and other research assignments, including baseline and mid-term follow-up monitoring and evaluation for development projects.
Field Supervisor	4	<ul style="list-style-type: none"> • Bachelor Degree or higher degree in economics, business administration, public administration, law, social science or related fields • A minimum of 2 years experiences relevant to field supervision, data collection and quality control.
Interviewers	Reasonable number commensurate with the scope of work	<ul style="list-style-type: none"> • Bachelor Degree in economics, business administration, public administration, law, social science or related fields • A minimum of one year demonstrated experiences relevant to data collection and quality control.

VII Note

This ToR is a combination for the Mid-Term Follow-Up Study and the End-Term Study. However, these studies will be conducted with two phases. The Mid-Term Study is proposed to conduct from

02 January 2012 to 20 April 2012 while the End-Term Study will be conduct at the end of the project implementation from 2 January 2013 to 30 March 2013. Therefore, the successful consultant will sign the contract for Mid-Term Follow-Up Study signed first. If the performance of the consultant for Mid-Term Follow-Up Study is satisfactory, the contract for End-Term Study can be signed later. In addition, both Studies will be bid and evaluated together.

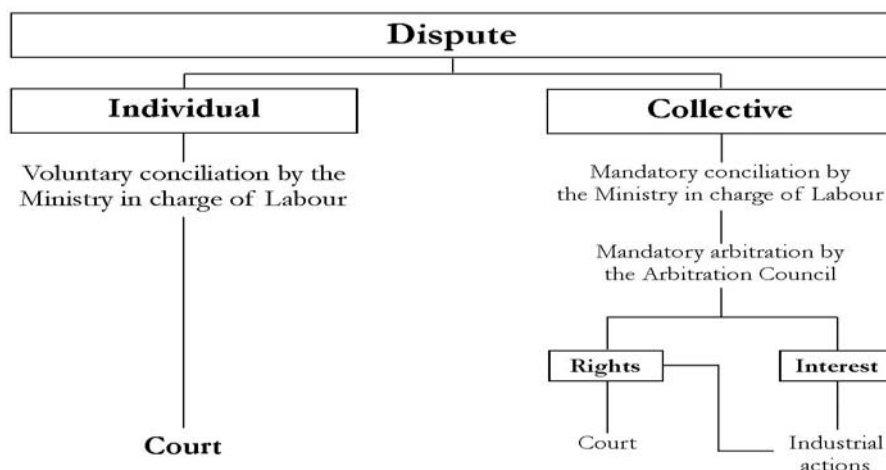
ANNEX

The Arbitration Council

The Arbitration Council is provided for in the Labour Law of 1997 and related *prakas* of the Ministry of Labour and Vocational Training (Ministry of Labour or Ministry).¹ Its legal status is that of a national state institution with quasi-judicial authority. That is, the Arbitration Council is a tribunal established according to Cambodian statutes which endow it with legal and equitable decision-making authority with regard to labour dispute cases. 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. These disputes are either ‘rights disputes’, related to existing rights under the law, contract or collective bargaining agreement or ‘interests disputes’, related to future benefits (mostly in the context of collective bargaining). The collective nature of these disputes means that such disputes could threaten the effective operation of an enterprise or jeopardise social peace.

An overview of this labour dispute resolution process is illustrated in **Figure 1** below.

Figure 1. Overview of Labour Dispute Resolution Processes

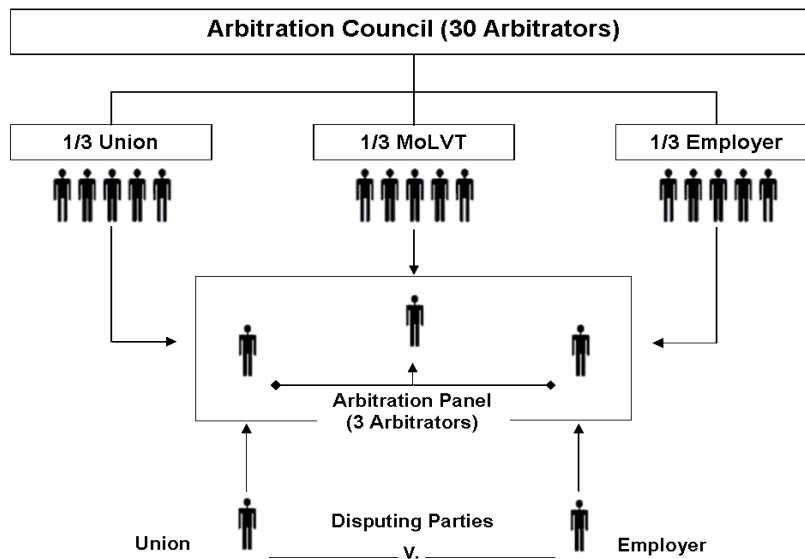


One of the keys to the Arbitration Council’s success lies in its tripartite structure: it is comprised of 30 part-time arbitrators nominated by unions, employer organisations, and the Ministry of Labour. The Arbitration Council’s tripartite structure is replicated at the level of each particular dispute. Once a case is referred to the Council, an arbitration panel is formed comprising three arbitrators, two of whom are selected by the parties themselves (from the respective lists of union- and employer-nominated arbitrators), and who, in turn, select the third arbitrator (from the neutral list of Ministry-nominated arbitrators).

The composition of the Arbitration Council and its arbitral panels is illustrated in **Figure 2** below.

¹ Prakas 99 MOSALVY – 2004 (supersedes Prakas 338 MOSALVY - 2002), hereinafter referred as the “Prakas on the Arbitration Council.”

Figure 2. Composition of the Arbitration Council



The arbitration process: How the Arbitration Council works

When a labour dispute arises, if the parties are not able to settle the matter among themselves at the enterprise level, Cambodian law provides that the Ministry of Labour will attempt to conciliate the dispute. If the Ministry’s conciliator is unsuccessful in assisting the parties to resolve the dispute, the conciliator writes up a Non-Conciliation Report, which is forwarded to the Arbitration Council via the Secretariat of the Arbitration Council (SAC). The SAC is composed of (currently three) Ministry officials co-located at the Arbitration Council who carry out specific clerical and registry tasks – similar to the functions performed by a tribunal registry or court clerk – in accordance with law and *prakas*. It is at this point that the Arbitration Council process begins, following the steps outlined broadly below:

- Referral of dispute, appointment of arbitral panel, scheduling and procedural matters
The SAC receives the case from the Ministry of Labour. The SAC then registers the case; facilitates the selection of the arbitration panel members; schedules and notifies parties of the arbitral hearing date; and provides them with information on procedural matters.
- Preliminary discussions and interim orders
If any industrial action (such as a labour strike or lock-out) is in effect at that time, the panel can invite the parties to attend an informal meeting to inform them of the Arbitration Council process and encourage them to use it to resolve their dispute; the panel can also issue an interim order, known as a Return-to-Work Order, directing that the industrial action cease so that the Arbitration Council process can proceed.
- Mediation and arbitration
On the hearing date, the panel offers the two parties an opportunity to resolve the dispute via attempted mediation by the panel. If the parties decline the panel’s offer, or if all points in dispute are not able to be successfully mediated, then the panel proceeds with formal arbitration. The arbitrators inform the parties of their rights (including their options for binding or non-binding arbitration) and the Arbitration Council procedures for arbitration. During the arbitration

proceedings, the arbitrators assess the parties' claims and arguments and examine any witnesses or documentary (or other) evidence related to the case.

- **Issuance of arbitral award**

After the hearing, and within 15 days of receiving the case, the panel issues their decision on the case in the form of an arbitral award. Arbitral awards follow a prescribed format, setting out the issues in dispute; the panel's finding of facts; the relevant law applicable in the dispute; and the panel's reasoning for the final decision and its orders.

- **Parties' recourse under binding vs. non-binding awards, enforceability**

If the parties opted for binding arbitration, the award will be immediately enforceable. If they did not opt for binding arbitration, then they have eight calendar days to examine the award and, if they so choose, to file an objection via the SAC. If either party files an objection (also known as an opposition), the award is not legally enforceable: this triggers the parties' rights to take industrial action or, in the case of a rights dispute, to proceed to the courts. If no objection is filed within the eight-day period, the award automatically becomes binding and enforceable.

Once an arbitral award becomes enforceable the Ministry of Labour is empowered to assist in its implementation. If either party refuses to abide by an enforceable award, the other party can ask the court to enforce the award.²

All arbitral awards and decisions are publicly available on the Arbitration Council website and from the SAC, and are published and disseminated in hardbound editions – making the Arbitration Council the sole legal body in Cambodia that consistently publishes written, reasoned decisions accessible by the public. This allows parties (as well as potential parties, law practitioners and the industrial relations community) to see that cases are decided and awards issued in a consistent manner, and previously held interpretations of law are respected. One consequence of such transparency is that it would be much harder for the arbitration process to be improperly influenced or corrupted, as the reasoning upon which decisions are based is stated explicitly in the awards. Publication of awards also signals to potential parties (and others) how the Arbitration Council interprets the law, and allows parties to monitor and respond to the Arbitration Council's evolving interpretations of the law, as well as encourages parties to analyse how the Arbitration Council might rule in a given dispute; this in turn encourages the early settlement of disputes.

The Arbitration Council's track record

It is critical for parties and stakeholders that collective labour disputes be settled fairly and expediently so as to limit potential damage of such disputes to the productivity and profitability of the enterprise and to Cambodia's economy as a whole, as well as to the future relationship between employer and workers. As noted above, the Arbitration Council answers these demands for a speedy and transparent process by issuing well-argued decisions based on the law within only a few weeks. Its efficiency, competence and credibility have been widely acknowledged nationally and internationally. Therefore, as the first tribunal of its kind in Cambodia, the Arbitration Council is seen as a prototype institution for justice which has the capacity to play a significant role in the ongoing push for legal and judicial reform in Cambodia.

In eight years of operations, the Arbitration Council's records show that it received over 1000 collective labour disputes. The Arbitration Council's monitoring and evaluation data indicates a high rate of success based on the labour dispute

² In practice, however, because of a variety of reasons (including the challenging environment of judicial reform), parties rarely take their cases to the courts.

resolution work of the Council. For example, overall, the large majority of cases brought to the Arbitration Council have been resolved successfully, when considering the following factors:

- a) the Arbitration Council facilitates agreements between the parties to settle the dispute prior to any further need for arbitration or issuance of an award;
- b) when the Arbitration Council issues an award with its decisions to resolve disputes, then (even if it was a non-binding award that was opposed in a timely manner) many of those arbitral decisions are fully or substantially implemented by the parties to resolve the dispute;
- c) when the Arbitration Council issues an award which, then (even if it was opposed) the arbitral decision can form the basis for a post-award settlement between the parties and which resolves the dispute.

The Arbitration Council Foundation

As noted above, the Arbitration Council currently comprises thirty arbitrators. However it does not itself employ any support staff. The Arbitration Council Foundation (ACF) carries out the necessary managerial and technical functions to support and facilitate the work of the Arbitration Council. The ACF is a non-government entity, which has been registered by the Arbitration Council with the Ministry of Interior. The ACF is specifically mandated by its statute³ to:

- a) Support and facilitate the work of the Arbitration Council;
- a) Enhance the independence, reliability and efficiency of the Arbitration Council's work; and
- b) Develop individuals and institutions to resolve labour dispute.

The ACF's functions cover the gamut from operational services (including day-to-day managerial and administrative tasks such as the acquisition and maintenance of supplies, equipment and property), to broader responsibilities such as financial control and management (including fundraising); planning, critical capacity development; public relations and raising stakeholder awareness and understanding of the Arbitration Council; and legal research and development of legal tools for the arbitrators.

³ Statute of the Arbitration Council Foundation, registered with the Ministry of Interior by letter no. 121 SCN dated 2/09/2004 (hereinafter "ACF Statute").