



# ANNUAL REPORT 2016

Investing in the Future: the Arbitration Council's Commitment to Sustainable and Harmonious Industrial Relations



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## ACRONYM

<b>AC</b>	: The Arbitration Council
<b>ACF</b>	: The Arbitration Council Foundation
<b>AMWU</b>	: Australia Manufacturing Workers Union
<b>AP</b>	: The Arbitration Panel
<b>CAMFEBA</b>	: Cambodian Federation of Employers and Business Associations
<b>CBA</b>	: Collective Bargaining Agreement
<b>CCAWDU</b>	: Coalition of Cambodia Apparel Worker Democratic Union
<b>DFAT</b>	: Department of Foreign Affairs and Trade
<b>FWC</b>	: Fair Work Commission
<b>GMA</b>	: General Meeting of Arbitrators
<b>GMAC</b>	: Garment Manufacturers Association in Cambodia
<b>IAB</b>	: International Advisory Board
<b>ILO</b>	: International Labour Organization
<b>IR</b>	: Industrial Relations
<b>NIRC</b>	: National Industrial Relations Conference
<b>NGO</b>	: Non-Governmental Organization
<b>MEF</b>	: Ministry of Economy and Finance
<b>MoLVT</b>	: Ministry of Labour and Vocational Training
<b>MoSVT</b>	: Ministry of Social Affairs, Veterans and Youth Rehabilitation
<b>MoJ</b>	: Ministry of Justice
<b>LL</b>	: Labour Law
<b>RGC</b>	: The Royal Government of Cambodia
<b>RTWO</b>	: Return-To-Work Order
<b>RULE</b>	: Royal University of Law and Economics
<b>SAC</b>	: Secretariat of the Arbitration Council
<b>SIDA</b>	: Swedish International Development Cooperation Agency
<b>TDSP</b>	: Trade Development Support Program
<b>TU</b>	: Trade Union
<b>USAID</b>	: United States Agency for International Development
<b>WMC</b>	: Women’s Media Centre of Cambodia

## CHAIRWOMAN'S MESSAGE



The past year has seen several major events such as the July 2016 National Industrial Relations Conference (NIRC), draft law on Labour Dispute Resolution Procedure (the draft law), the new Trade Union Law, and several important meetings between the Arbitration Council, the Foundation and the Ministry of Labour, employer associations, and unions. These events where hundreds of participants from the tripartite constituencies have actively participated, have become a factor that drives the Arbitration Council and Foundation to reach a turning point.

At NIRC and in compliance with the National Employment Policy (2015-2025), which supports the strengthening and assurance of the effectiveness of the labor dispute resolution system, H.E. Minister of Labour and Vocational Training proposed that the Arbitration Council services be strengthened, empowered, and expanded. Since then the Ministry, the Arbitration Council, and Foundation have committed to seeking a way forward in this new endeavour.

The Foundation has learnt that a law on Labour Dispute Resolution Adjudication Procedure is being drafted. The draft law proposes (among other things) that the Arbitration Council handles individual disputes, on top of the existing collective disputes, and to open its own appeal mechanism. This draft legislation has been understood as proposing a big transformation of the Council's organizational structure, responsibilities, and budget.

The Council and Foundation appreciate the Ministry's trust on their work, and the opportunity to pursue the new endeavour. The proposed changes of the institutional roles require a strong cooperation between many industrial relations stakeholders, development partners, and beneficiaries, including workers, employers, the Cambodian Government, donor countries, the Arbitration Council, and Foundation, and international organizations.

The Arbitration Council and Foundation look forward to further collaborating with all their friends and colleagues in the years to come.



Arbitrator CHHIV Phyrum  
Chairwoman of the Board of Directors  
The Arbitration Council Foundation

## OVERVIEW:

### Welcome to 2016 annual report

With this report you will have up-to-date industrial relations, the outlook of disputes and resolution by the Arbitration Council (AC), and supported programs by the Arbitration Council Foundation (ACF).

The report covers significant progress and development in the IR environment in Cambodia and the roles of the AC on:

- Trends of caseload and issues at the AC in the year 2016,
- Service & Outreach activities: training for stakeholders, radio learning program and publication,
- 7<sup>th</sup> National Industrial Relations Conference, labour minister's reconfirmed support of the and AC/F sustainability and of service expansion, and
- Annual Financial statement

ACF with its mandate to support the AC service has so far followed a tri-partite mode of contribution in implementing its sustainability action plan. Since 2015, the Government has contributed about 10% to the AC/F global operation budget while bi-partite contribution is under active discussions and noteworthy progress.

ACF's executive team and its International Advisory Board met different stakeholders including employer/employee representatives, ministry of labour, ministry of justice, ministry of economic and finance and other donors seeking for supports to sustainability of the AC/F and its future function. As a result, both employer and employee representatives have agreed and committed to contribute to the AC sustainability, 2000 Riel per worker per annual. However, a mechanism to collect contributions and a schedule to collect them are still in question and subject to be studied. ACF plans to start the study on bi-partite contribution collection plan in second quarter of 2017. At the same time, another study will underway on feasibility and impact on AC/F as a result of AC taking on top of collective disputes individual disputes and internal appeal.

We hope you enjoy your reading this report and do let us know if you have any comment or question regarding our services.



## ARBITRATION

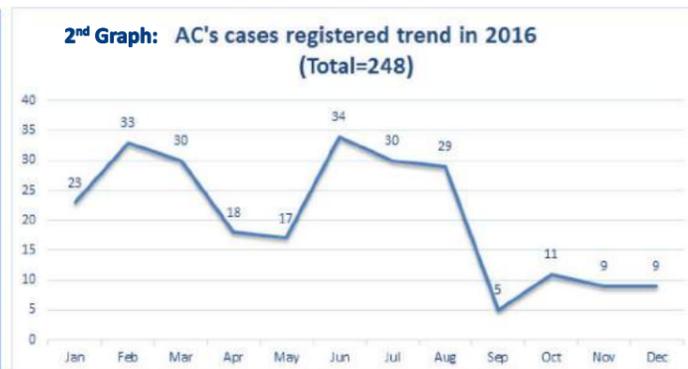
- Caseload Trends
- Significant Case

Workers observe and wait outside the AC's hearing room.



Workers access the collective labour dispute resolution service at the AC office.

## OVERALL TREND OF THE ARBITRATION COUNCIL (AC) CASELOAD:



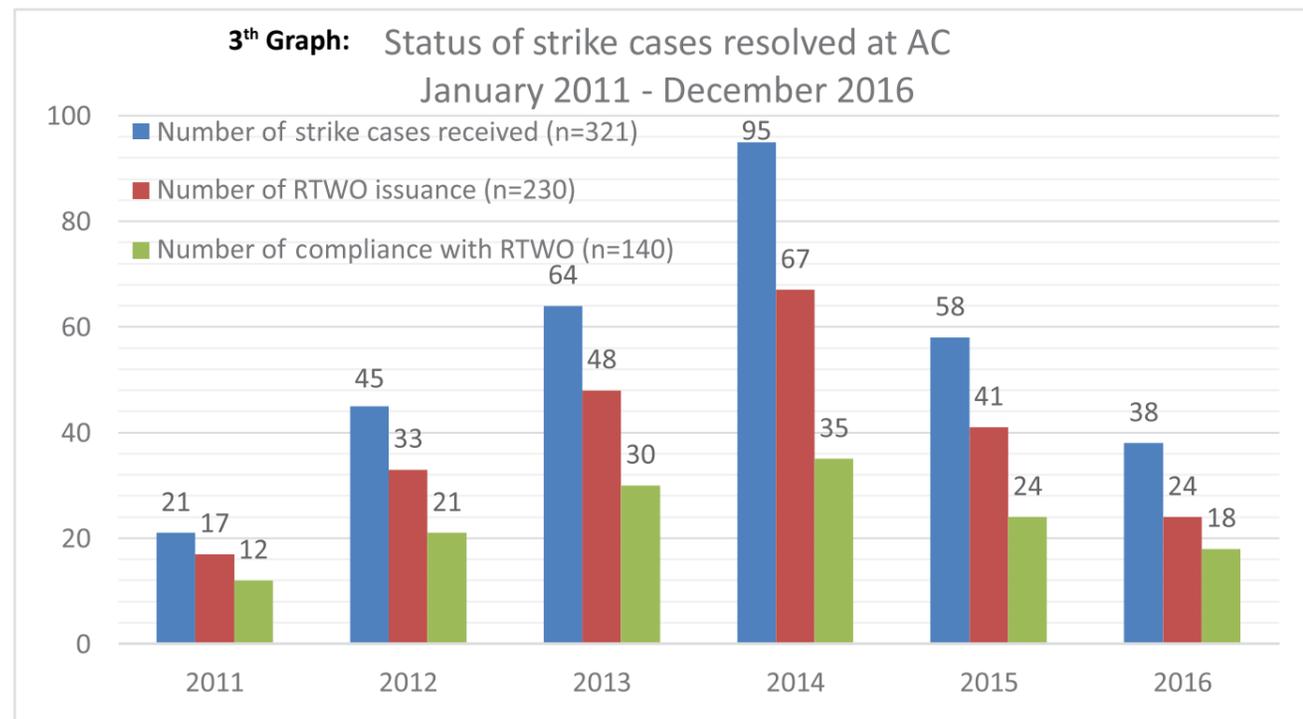
In 2016 (2<sup>nd</sup> Graph), during the first eight months AC caseload is considered at the same number as it ever received even though it declined to 18 cases in April and 17 cases in May due to many public holidays. However, there is a significant drop in the last four months, September to December, which AC registered at average of 8 cases per month. One of reasons of caseload decline may be associated strongly to the implementation of new Trade Union Law as it's fully enforced by MoLVT in September 2016, however a further study of the root cause and its effect should be considered.

**W**ith an accumulative caseload of 2,656 received by the Arbitration Council (AC) since its establishment in May 2003 until December 2016, it can be clearly seen that the number of labour dispute cases represents an increase in trends despite the drop during some years (see 1<sup>st</sup> graph).

In 2003 AC received only 31 cases for the period of 8 months (May to December). This number has continued to increase until it reached a peak level of 361 cases in 2014. But cases declined to 338 cases in 2015 and continue to decline to 248 cases in 2016.

## STATUS OF STRIKE CASES RESOLVED AT THE AC:

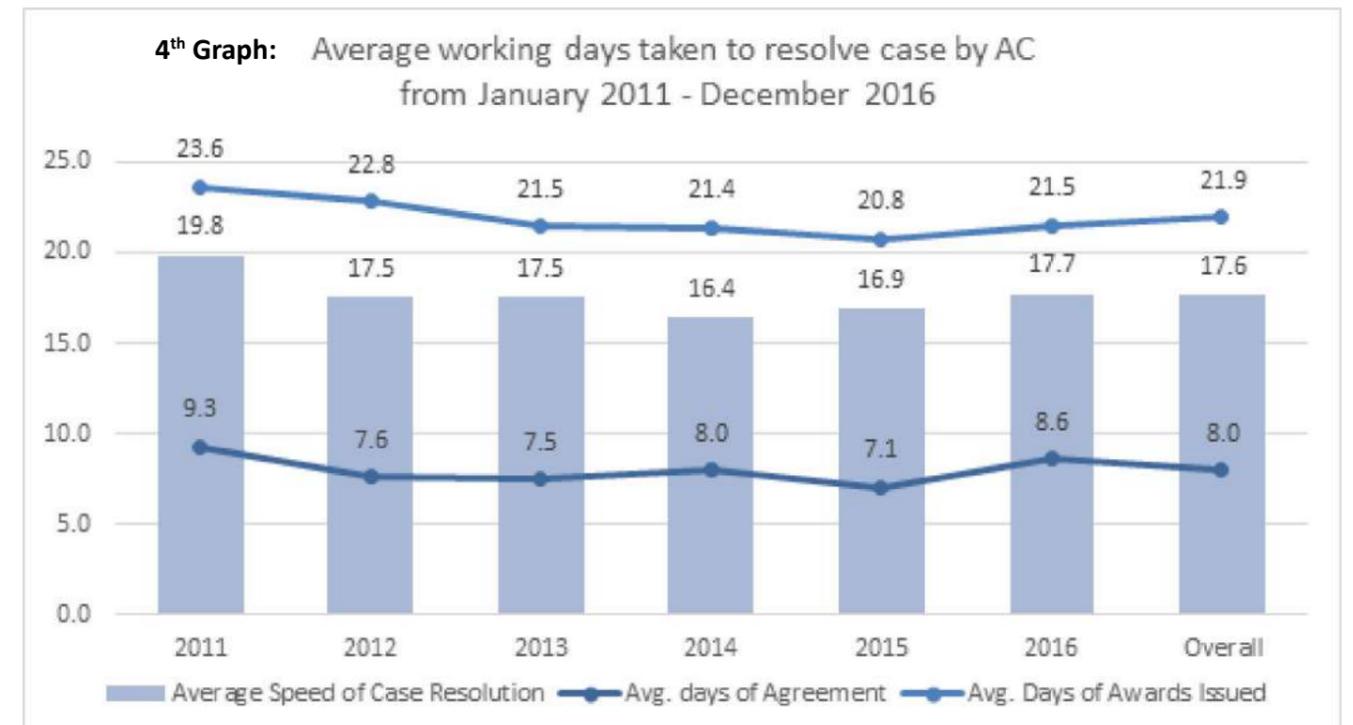
When a case involving industrial actions (strike or lock-out) was referred to the AC, the arbitration panel (AP) issued an Interim Return-To-Work Order (RTWO) directing parties to cease the industrial actions so that the AC process can be preceded. Issuance of RTWO is to ensure strike action ceases and parties come to a peaceful resolution at the AC. Moreover, the panel may invite the parties to an informal meeting to inform them of the AC process and encourage them to negotiate among themselves on the possibilities to defer the action and take advantage of the process to resolve their disputes without unnecessary delay.



This status gives the information about the number of strike cases received, number of RTWO issued by AC and the number compliance with the RTWO. Between January 2011 and December 2016, AC received 321 cases involving strike actions. Among them, AC issued interim RTWO for 230 cases (or 72% of total strike cases). However, there were 91 cases (or 28% of strike cases) that AC didn't issue an RTWO due to the strike action cessation or parties' agreements or withdrawals of the cases before the (AP) formed. The RTWO had effectively stopped 140 strike cases (or 61% of strike cases with RTWO). However, 90 cases (or 39% of strike cases) were closed due to strike continuation during the AC process or party failed to attend AC hearing. In 2016, RTWO compliance rate increase significantly to 75%.

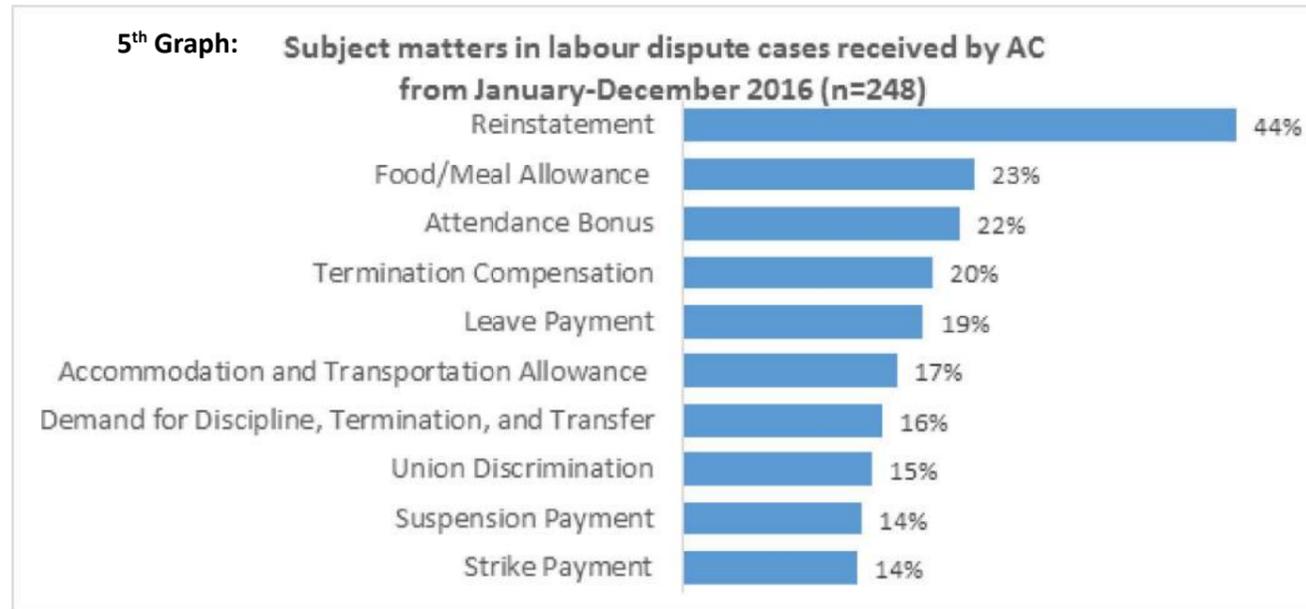
## AVERAGE WORKING DAYS TAKEN TO RESOLVE CASES BY AC:

The description below graph, AC average resolution time is about 17.6 working days. In detailed types of resolution outcomes, the average time for parties' agreement facilitated by the AC takes about 8 working days, settling disputes by arbitral award generally takes about 22 working days. It is worth to note that the AC is bound by a 15-day timeline for issuing arbitral awards but the average resolution time listed here is attributed by external party delays and agreement for the extensions.



On a year by year basis, the speed of case resolution with the AC assisting the parties to reach an agreement has ranged from 8 to 9 working days and cases settled through arbitral awards has taken about 21 to 24 working days. The data further shows AC's speed for cases resolution in the last five years has improved since 2011.

## SUBJECT MATTERS IN LABOR DISPUTE CASES RECEIVED BY AC FOR THE 248 CASES REGISTERED IN 2016:



The graph shows the percentage of the top ten claims/issues in the non-conciliation report that were referred to the AC for settlement from 1 January and 31 December 2016. It is to note that there is more than one issue in one conciliation report. During this period, AC received in total 248 cases and it is clearly seen among the top ten the highest rates of the claims/issues received are related to the demand for reinstatement of workers and/or trade union (TU) activists, 44% of the total cases, second followed by issues related to food/meal allowance, 23%, third is about attendance bonus, 22%, and the fourth on termination compensation, 20%.

## SUCCESS RATE OF CASES SETTLED BY THE AC

Outcomes for Cases 001/16 through 219/16		
Outcome	% of cases	# of cases
Agreement prior to the award at the AC	30.14%	66
Award fully/substantially resolved case	46.58%	102
Post-award settlement based on the award	1.83%	4
Award partially implemented	1.83%	4
Award not implemented	7.31%	16
N/A	12.33%	27
<b>Total</b>	<b>100.00%</b>	<b>219</b>

ACF has been implemented its internal cases monitoring system to tracks implementation of arbitral awards, disputes settled before an award issued or settled by an unopposed award or if an award was issued but was also opposed, and whether the parties nonetheless implemented the award or

reached a settlement based on the award. The monitoring system is a 'case follow up' through phone call to relevant parties after a minimum of 60 days of the award issuance date.

The case monitoring results in 2016 (from case 001/16 through to case 219/16; 29 cases pending) shows that the overall success rate of AC service stands at 78%. This success rate is improved when compared with the rate target in the performance monitoring plan at 75% for 2016.

The ACF considers a successful outcome to be one where the AC has either:

- 1). facilitated an agreement between the parties to settle the dispute (30.14%);
- 2). issued an award which (even if it was opposed) has been fully or substantially implemented to resolve the dispute (46.58%); or
- 3). issued an award which (although it was opposed) has formed the basis for a post-award settlement between the parties and which has resolved the dispute (1.83%).



Garment workers produce shirts at a factory in Phnom Penh in 2011.

## ANNUAL LEAVE PAYMENT VS MATERNITY LEAVE PAYMENT

Significant Case 187/16 – First Gawon Apparel (Cambodia) Co Ltd.

Date of Award Issuance: 31 August 2016

Arbitral Panel: Pen Bunchhea, Seng Vouch Hun, and Tuon Siphann

In this case the local union Coalition of Cambodia Apparel Worker Democratic Union (CCAWDU) (the “Claimants”) brought a claim against First Gawon Apparel (Cambodia) Co. Ltd. (the “Employer”). The Employer’s enterprise is located in Phnom Penh and core business is garment and textile manufacturing. At the time of this case being heard approximately 470 workers were employed.

This case involved seven demands; two of which were withdrawn by the Claimants and the remaining five issues were arbitrated by the Arbitration Panel (AP). Only one demand relating to the inclusion of annual leave payments in the calculation of the 90 days paid maternity leave

will be examined in this case note.

Both parties agreed that the Employer used four and a half days of annual leave divided by two when calculating the 90 days of maternity leave for workers. By doing this, the Employer deducted four and a half days of annual leave by providing wages equal to 2.25 days (four and a half days of annual leave divided by two) to be included in the maternity leave calculations.

The Claimants argued that maternity leave payments have no relationship to annual leave entitlements thus the Employer cannot include annual leave payments into the maternity payment calculations.

The Arbitration Council (AC) examined Article 166, 167, 182 and 183 of the Labour Law (LL) and previous AC decisions.

Article 166 of the LL states: “...all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.”

Article 167, paragraph 2 of the LL states, “If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.”

Paragraph 3 of the same article states: “Apart from this, any collective agreement providing compensation in lieu of paid leave, as well as any agreement renouncing or waiving the right to paid annual leave, shall be null and void.”

In previous AC decisions, the AC considered that the right to annual leave can be exchanged

for a cash payment only when the contract is terminated. (See previous Arbitral Award No. 51/04-Sam Han, issue 5; No. 08/07-Siu Quinh, issue 1; 17/12 - Peace Glory, issue 2 and 029/15-British American Tobacco Cambodia, issue 7)

Furthermore, the AC has decided that LL prohibits payment in lieu of annual leave during the period that workers are working for the Company. (See previous Arbitral Award No. 73/13-Yak Jin, issue 8 and 029/15-British American Tobacco Cambodia, issue 7)

In this case, the AC considered that the intention of the LL is to encourage workers to use annual leave but not payment in lieu if the employment relationship has not ended.

Article 182 of LL states: “...women shall be entitled to a maternity leave of ninety days...”

Article 183, paragraph 1 of LL states: “During the maternity leave as stipulated in the preceding

article, women are entitled to half of their wage, including their perquisites, paid by the employer.”

Based on Article 182 and 183 of the LL the AC considered that during maternity leave workers are still employed by the Employer. Therefore, the practice of the Company to use four and a half days of annual leave payment divided by two to be included in the maternity leave payment is not in the spirit of the LL. Annual leave entitlements cannot be exchanged for cash during the employment contract including during periods of maternity leave.

Meanwhile, Clause 34 (D) of Prakas No. 099 states that the AC, “... has the power and authority to provide any civil remedy or relief which it deems just and fair, including Orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation.”

In its decision, the AC ordered the Employer to cease the above practice and ordered the Employer to reimburse four and a half days of annual leave entitlements to workers which was deducted from their leave balance when they were on maternity leave. Further, workers were ordered to return 2.25 days of annual leave payments to the Employer.

This case highlights the importance of misuse of annual leave payments for maternity leave calculations. The LL encourages workers to use annual leave but prohibits payments in lieu and it can only be paid in cash when the employment is terminated by either party. During maternity leave the employment is not terminated therefore workers should be entitled to full annual leave entitlements even when they are not physically at work.

## SERVICE & OUTREACH ACTIVITIES

- 7<sup>th</sup> National Industrial Relations Conference
- Industrial Relations Stakeholders Training
- Radio Program
- Publications
- The Meet and Greet
- The Arbitration Council Sustainability Update



(From left to right) Mr. MEN Nimmith – ACF Executive Director, Arbitrator CHHIV Phrum – ACF Chairwoman of the Board of Directors, Commissioner Michael GAY – Australian delegates, Ms. Julie CHUNG – Deputy Chief of Mission of the U.S Embassy, Ambassador Anna Maj HULTGARD - Embassy of Sweden and His Excellency ITH Sam Heng - Minister of MoLVT and MoLVT officers attend 7<sup>th</sup> National Industrial Relations Conference in 2016.



(From left to right) Mr. MEN Nimmith – ACF Executive Director, Commissioner Michael GAY – Australian delegates, Ms. Julie CHUNG – Deputy Chief of Mission of the U.S Embassy, Ambassador Anna Maj HULTGARD - Embassy of Sweden and His Excellency ITH Sam Heng - Minister of MoLVT and MoLVT officers attend 7<sup>th</sup> National Industrial Relations Conference in 2016.

## 7<sup>th</sup> NATIONAL INDUSTRIAL RELATIONS CONFERENCE

### “Cambodia Industrial Relations: Maturity and Commitment to Growth”

The Arbitration Council (AC) and the Arbitration Council Foundation (ACF), in cooperation with Ministry of Labour and Vocational Training (MoLVT) held 7<sup>th</sup> National Industrial Relations Conference (NIRC) with the theme “Cambodia Industrial Relations: Maturity and Commitment to Growth” on 5<sup>th</sup> July 2016 at the Raffles - Hotel Le Royal.

The NIRC identified 3 main topics for the panel discussions including: Maturity of Cambodian Industrial Relations, Maturing Industrial Relations: Role and Evolution of Collective Bargaining Agreements (CBA) in Cambodia—A Good Practice of Bargaining and More Effective Workplace Mechanisms were presented to participants by the expert speakers.

NIRC is a national forum for key employment and labour relations stakeholders and partners to engage in social dialogue for improved industrial relations in Cambodia and thereby contributing to broader economic growth and social development. It is a unique opportunity for the tripartite parties and other stakeholders to directly interact with each other on topics of common interest.

The conference was opened with remarks by CHHIV Phyum - Arbitrator and Chairperson of the ACF Board of Directors, Julie CHUNG - Deputy Chief of Mission at the U.S Embassy in Cambodia, Ambassador Anna Maj HULTGARD - Embassy of Sweden and His Excellency ITH Sam Heng, Minister of MoLVT.

In his opening remarks, H.E. ITH Sam Heng

complimented the AC, ACF and international donors for their efforts in organising the NIRC. H.E. stated that the conference is an extremely important forum to discuss the development of industrial relations in Cambodia. H.E. further stated that industrial relations is a hot issue and that the Cambodian government should ensure the sustainability of the textile, garment and footwear sectors with a focus on business and investment in Cambodia.

“I hope this conference will foster more dialogue among trade unions, employers, employees, government officials and civil society members. Such communication can help improve working conditions and make Cambodia’s garment and footwear industry even more competitive in the region”, said Julie CHUNG, Deputy Chief of Mission at the U.S. Embassy to Cambodia.

This conference was attended by approximately 200 interested stakeholders including key representatives from the government, employers and trade unions but also students, private lawyers and advocates, international buyers, development partners and embassies seeking to better understand the overall development, progress and relative maturity of industrial relations in Cambodia.

The conference was made possible through the generous support of donors to ACF and AC including TDSP, SIDA, USAID, Department of Foreign Affairs and Trade (DFAT, Australia), GAP Inc., Levi Strauss Foundation and MoLVT.



Worker and employer representatives participate in the training program on 'Workplace Dispute Prevention and Resolution' at the AC office.



The group photo of the trainees attend the training on "Labour Dispute Resolution and the AC process".

## INDUSTRIAL RELATIONS STAKEHOLDERS TRAINING

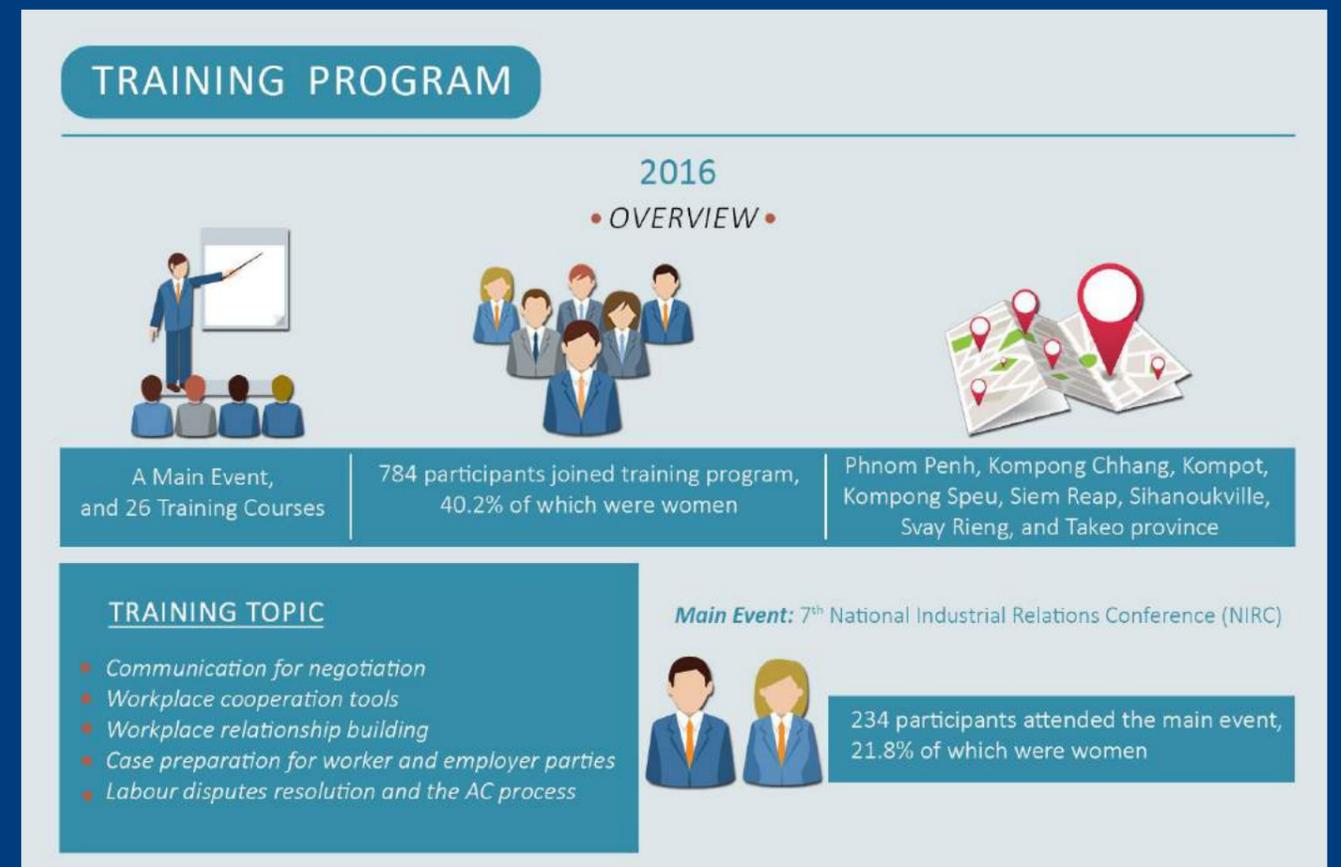
Stakeholder training is a proactive approach in preventing disputes from happening and encourages parties to resolve labour disputes at enterprise level after the parties gain more knowledge about labour rights, responsibilities and workplace cooperation and harmony.

In 2016, there were 17 training courses for worker and employer representatives conducted at the AC office in Phnom Penh on various topics in the industrial relations sector, including communication for negotiation, workplace cooperation tools, workplace relationship building, case preparation for worker and employer parties, labour disputes resolution, and the AC process. This year, stakeholder training courses were attended by 784 participants, (40.2% of which were women) from Phnom Penh and 7 provinces as follows:

- 317 participants, (141 of which were women), from 3 factories in Phnom Penh. In addition, to improve the knowledge of industrial relations with university students, the ACF organized a workshop on Comparative Labor Arbitration in Cambodia and in North America for the Royal University of Law and Economics which was attended by 138 participants, (66 of which are women).
- 329 worker and employer representatives, (108 of which were women), attended 8 separate training sessions on labour dispute resolution, the AC process and case preparation in 7 provinces—Kompong Chhang, Kompot, Kompong Speu, Siem Reap, Sihanoukville, Svay Rieng, and Takeo province.

The training focused on three main subjects the ACF identified as necessary to promote and enhance the understanding of labour disputes which disrupt operations and productivity and how these are best addressed and resolved at the earliest stage possible. The program focused on better understanding of the employment relationship, identifying and developing workplace cooperation tools and finally, learning different styles of communication to assist with conflict resolution and negotiation. The combined program also included a component on the AC process and case preparation for hearings for both worker and employer parties. The knowledge and understanding of the process are necessary to establish and maintain harmonious labour relations by encouraging communication, prevention and resolution of workplace disputes on the factory floor through the most peaceful means possible.

The training program is conducted by arbitrators, ACF and SAC staff, all of whom are Cambodian industrial relations experts. The ACF has extensive experience in providing training to workers, trade unions, employers, employer associations, government officials, judges, lawyers, civil society representative stakeholders and other industrial relations stakeholders and considers industrial relations knowledge sharing to be an essential part of the mission of the AC in Cambodia.





The activities of “Good Employers Good Workers” radio live show at Women’s Media Center of Cambodia Radio (WMC), Radio FM 102 MHz

## RADIO PROGRAM “GOOD EMPLOYER, GOOD WORKER”



From January to November 2016, the interactive radio program, “Thao Keo Laor, Kamakor Laor (Good Employers, Good Workers)”, broadcasted 44 live shows covering various topics ranging from the Arbitration Council (AC) process, workplace cooperation, workers safety, and welfare. Radio audience participants were able to call in and ask questions to a range of knowledgeable and experienced speakers, including representatives from the Ministry of Labour and Vocational Training (MoLVT), the International Labour Organization (ILO), the Garment Manufacturers Association in Cambodia (GMAC), labour lawyers, employer representatives, and members of AC and Arbitration Council Foundation (ACF). In addition, every three weeks, the audience is encouraged to participate in quiz shows covering the topics discussed in the past weeks with prizes including radio sets, helmets, and caps.

“Thao Keo Laor, Kamako Laor”, is a radio learning program in collaboration between the ACF and the Women’s Media Center of Cambodia (WMC), Radio FM 102 MHz, developed

to promote better understanding of labour law and to raise awareness of, and to encourage appropriate use of labour dispute resolution services including the process of the AC among workers and employers in Cambodia.

The first broadcast was in mid-2014 with the radio learning program being funded by Gap Inc. and then re-launched in November 2015 with more interactive and thought provoking topics, and more opportunities for industry stakeholders to learn more about the constantly evolving world of industrial relations in Cambodia. In addition, the new edition of the radio program will be launched in March 2017.

The program airs live every Friday from 11:00 am to 11:50 am with reruns of a summarised version being broadcasted every Sunday from 8:35 am to 9:00 am for listeners who may have missed the original program. The program can also be uploaded on the AC website - <http://www.arbitrationcouncil.org/en/services/training/radio-programs>.



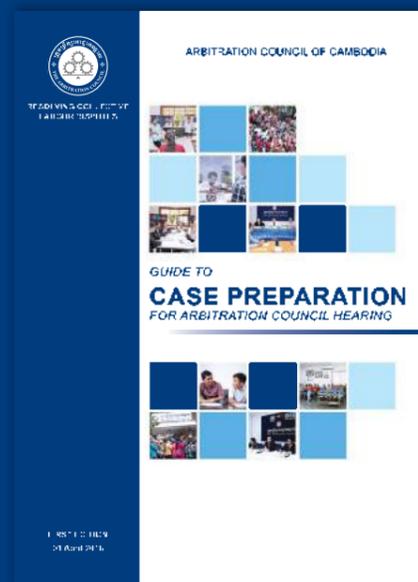


The AC hearing resolves labour disputes for workers and employers.



SAC's officer gives consultation to parties on the AC's process and case preparation for the hearing.

## TWO MAJOR SIGNIFICANT PUBLICATIONS OF THE YEAR

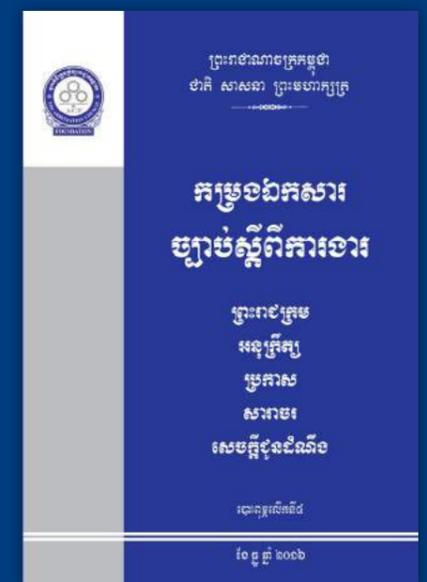


In an effort to improve the public and stakeholders' knowledge regarding case preparation for Arbitration Council (AC) hearings and labour dispute resolution procedures the Arbitration Council Foundation (ACF) in cooperation with the AC and the Secretariat of the Arbitration Council (SAC) has published two books in 2016.

On 1 April 2016, the booklet titled "The Guide to Case Preparation for the Arbitration Council" was published in both English and Khmer and has been developed to assist the parties in preparing their case before the AC. The booklet is not intended as legal advice and is not to be taken as the authoritative view of the AC, on any matter and has simply been produced to give parties a guide. The booklet deals with labour disputes that may come within the jurisdiction of the AC under the terms of the Cambodia Labour Law 1997 and briefly explains the steps which the parties need to take to prepare their case for proceedings to address disputes at the AC. The booklet also consists of the template forms and letters required for case preparation such as representation, reinstatement and authorisation letter.

Secondly "The Fourth Edition of Cambodian Labour Regulation Collection" was published and is a revised compilation of many existing provisions relevant to the settlement of labour disputes, law, prakas, notifications and circulars, which were issued by the Ministry of Labour and Vocational Training (MoLVT) and the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) either following the implementation of a new law or to provide additional detail to the articles of the Cambodian Labour Law.

The Guide to Case Preparation for the Arbitration Council is available free of charge and the Cambodian Labour Regulation Collection costs \$15.00USD per book and are both available at the AC office.





The activities of the AC Meet and Greet between members of the AC, enterprises and trade union

## THE MEET AND GREET

The Arbitration Council (AC) and the Arbitration Council Foundation (ACF) hosted a 'Meet and Greet' event on 20 October 2016 in Phnom Penh. This event was an opportunity to bring together members of the AC, enterprises and trade union labour dispute resolution officers to discuss the AC and have lunch together.

The workshop was divided into two sessions and the first session was facilitated by Mr. MEN Nimmith, ACF Executive Director, focusing on "Information in Relation to Statistics on Industrial Relations and Labour Dispute Resolution" – AC labour dispute resolution status, the establishment of the labour court and the AC sustainability strategy. After the session all the AC arbitrators and participants were invited to introduce themselves for a meet and greet and to allow them to get to know each other.

The second session was facilitated by Ms. CHUM Charya, Director of ACF Legal Services Department to introduce a newly published Guide to Case Preparation for AC hearings. The booklet is available in both Khmer and English language. It contains information to assist all the parties in preparing their case before the AC hearing; however, it is not considered to be legal advice and is not to be taken as the authoritative view of the AC, on any matter.

The booklet deals with labour disputes that may come within the jurisdiction of the AC under the terms of the Labour Law 1997 ("the Law") and briefly explains the steps which parties need to take to prepare a case for proceedings to settle disputes at the AC. The booklet also consists of the templates of workers authorisation letter, employer authorisation letter and nomination of a sub-agent letter.

The publication is available at the Secretariat of the Arbitration Council (SAC).



Mr. MEN Nimmith, ACF Executive Director, has a meeting with Trade Union on the AC Sustainability Action Plan.

## THE ARBITRATION COUNCIL SUSTAINABILITY UPDATE

**A**CF Executive Director Mr. MEN Nimmith made an appeal in 2015 to all industrial relations stakeholders in and outside Cambodia to support and contribute to sustainable development of the Arbitration Council. Following the appeal, in 2016 ACF carried out a number of activities to mobilize stakeholders' participation in contributing to the AC sustainability project. Responses from the Ministry of Labour and Vocational Training, unions, employer associations, and others are pleasing. In the following are a few highlights of those positive responses and the remaining issues to be further addressed in the following years.

Sustaining the Arbitration Council is a complex and long-term undertaking that requires participation by government, employers, workers, brands, international and national development partners, AC members, and ACF staff. ACF, the executive organization, has laid out a sustainability action plan and has been executing it according to a well-prepared and flexible schedule.

The cornerstone of the long-term sustainability of the Arbitration Council is bipartite contributions from both employers and workers as clients of the Council and beneficiaries of labor arbitration services. The bipartite model also contemplates continued supplementation from the government. The process of seeking stakeholders' commitment to the direct bipartite contribution system in particular, and the broader sustainability strategy in general, requires extensive outreach and dialogue.

ACF has taken important steps toward the realization of the sustainability model. In the second and third quarter of 2016, ACF executive team conducted a number of intensive meetings with worker and employer representatives from 25 union federations and confederations who had used disputes resolution services of the AC. ACF team also met separately with representatives of Garment Manufacturers Association in Cambodia

(GMAC), and Cambodian Federation of Employers and Business Associations (CAMFEBA), development partners (ILO, Sweden, USAID, AUSAID, European Union, Canada, and international buyers (GAP Inc., Levi Straus, H&M, C&A). As a first-step satisfactory result, all representatives of the above stakeholders and partners had shown their strong support for the sustainability action plan. In 2015 and 2016 the Cambodian government, through MoLVT, played a role model by transferring its funds of approximately 10% of ACF's total annual budget to the ACF. However, challenges remain.

Broad stakeholder backing for the Arbitration Council and its sustainability plans is being further discussed, secured and maintained. A number of legal, financial, administrative and management systems and frameworks are required. The financial sustainability model is premised on multiple factors, including the establishment of a transparent, efficient and secure financial collection mechanism by which contributions from employers and workers can be transferred to an Arbitration Council Foundation financing facility. The Council's sustainability strategy envisions establishment of such collection mechanism through a legislative/regulatory framework. However, the necessary commitment and political will to proceed with the preparation of requisite laws and regulations to develop the collection mechanism have yet to be obtained. Furthermore, certain administrative, political and other issues must be understood and addressed to move forward.



**PROFESSIONALISM:**

- 2<sup>nd</sup> General Meeting of Arbitrators
- Exchange Visit to the Fair Work Commission

**PARTNERSHIP:**

- Govt's Support to Sustainability of AC/Foundation
- IAB Notable Activities in Cambodia
- Myanmar Ministers pay courtesy to MoLVT

ACF International Advisory Board delegation pay courtesy to H.E. ANG Vong Vathana at Ministry of Justice.



The Arbitrators and the chief of SAC participate in the General Meeting of Arbitrators on 12 May 2016.



The Activities of ACF staff during the exchange visit at the Fair Work Commission in Australia on 24-28 October 2016

## PROFESSIONALISM: 2<sup>nd</sup> GENERAL MEETING OF ARBITRATORS

On 12 May 2016, the second General Meeting of Arbitrators (GMA) was held with present of arbitrators from the three lists of the employers, employees, and the Royal Government of Cambodia. This meeting was facilitated and organised by the Secretariat of the Arbitration Council and the Arbitration Council Foundation at the Raffles Hotel Le Royal.

The GMA is an annual arbitrator meeting aimed to improve quality of services and technical expertise of the Arbitrators. This year, the meeting focused on the review and discussion on the implementation of improvement plan from first GMA in 2015, authorisation forms, hearing management, arbitration decision making, the issuing of arbitral award as well as drafting document for new arbitrators recruitment. All arbitrators have exchanged their opinions and legal views to promote the profession and sustain the AC with some action plans that need to be review in the next year meeting.

## EXCHANGE VISIT TO THE FAIR WORK COMMISSION IN AUSTRALIA

Under the partnership with the Fair Work Commission (FWC), ACF sent two legal officers, Ms. BON Borany and Ms. PAT Navy, a manager of training, communications and public relations and arbitrator, Ms. ANN Vireak, and a manager of finance and administration, Ms. TENG Ratana, on an exchange visit to FWC in Melbourne, Australia, from 24-28 October 2016.

The exchange visit aimed to increase capacity and understanding of the staff in various areas. The two legal officers learnt the context of industrial dispute resolution system in Australia and two other managers learnt the communication strategy, operation and finance management.

Each legal officer was placed with a different commissioner with whom they had opportunity to observe the FWC hearing and witness the conference on voting for industrial action including strike, observe on-phone conciliation on unfair dismissal cases, and sit in the meeting on the matter of

reviewing and registering Collective Bargaining Agreement (CBA). They were briefed on hearing management strategies, remedy for unfair dismissal and the appeal system in the FWC as well as the experience of the commissioners on how to effectively help parties to settle the disputes. They were able to receive the insightful image of the similarities and differences of the functions between the Australian commissioners and AC arbitrators. The legal officers interestingly noted that, except arbitration, telephone conciliation and telephone conference are new, low-cost and less time consuming techniques to help parties to settle their disputes. Due to its long experience, FWC has undoubtedly solved 80 percent of unfair dismissal cases by conciliation and the remaining 20 percent are arbitrated. This is a precious experience with a very warm host from the FWC and it significantly gives the legal officers the quality foundation to improve their knowledge and capacities for providing better supports to the Arbitration Council (AC) and ACF.

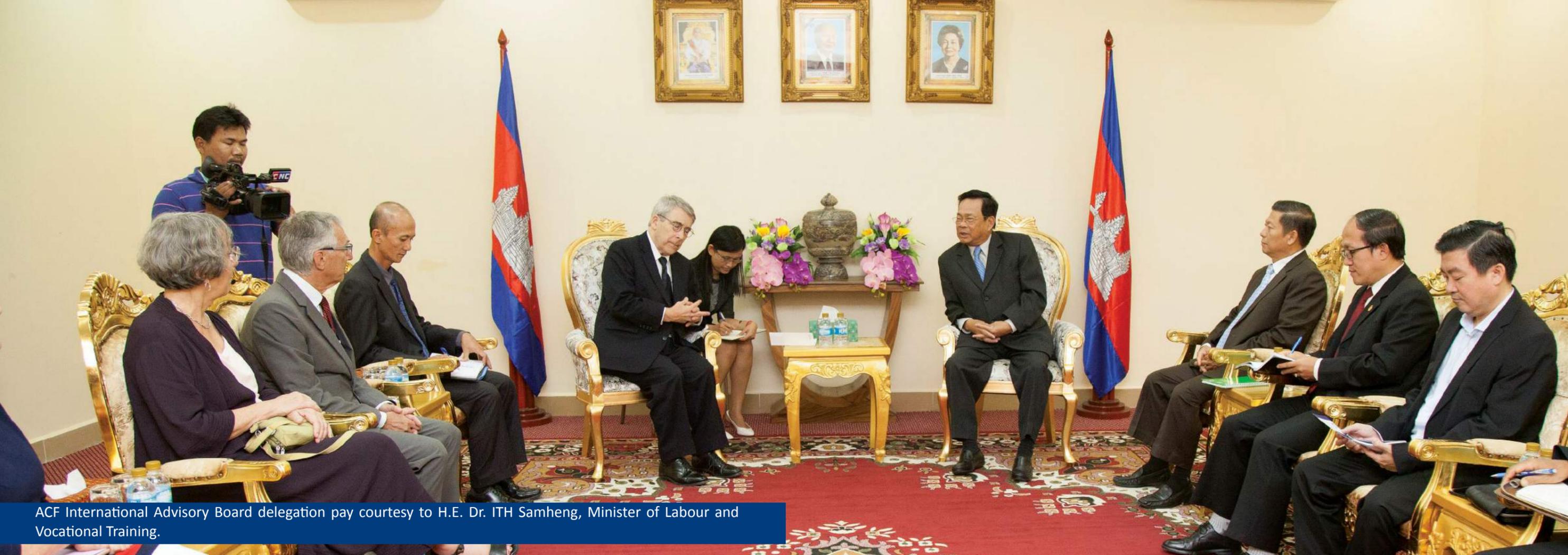
The managers, Ms. Vireak and Ms. Ratana, were arranged to meet people from different departments to understand the structure of the FWC and its overall operation management.

Ms. Vireak discussed and learned from the communication team of the FWC on their strategies. Communications extend beyond outreach activities (public presentation at selected universities, mock arbitration, and enterprise based service) over to the function of the website, publications, new approaches, plain language project, client services and registry. Vireak also observed on-phone conciliation.

Ms. Ratana observed the budgeting and internal auditing system when an external auditor inspected the system as part of FWC governance policy. She spent most of the time with Finance and Resources Manager to understand budget controlling and allocating for the departments. She then looked at the online procurement systems being used and finally at FWC human resource practices with particularly staff evaluation, job descriptions and internal regulations setting out staff pay and conditions.

The ACF's delegation extended their visit to employer association, AiGroup, and union, and Australia Manufacturing Workers Union (AMWU), to learn about their function and services and share Cambodian experiences.

On the last day the delegations visited the FWC library and the exhibition of the FWC history from the initial establishment in 1900s until the present.



ACF International Advisory Board delegation pay courtesy to H.E. Dr. ITH Samheng, Minister of Labour and Vocational Training.

## PARTNERSHIP: GOVT'S SUPPORT TO SUSTAINABILITY OF AC/FOUNDATION

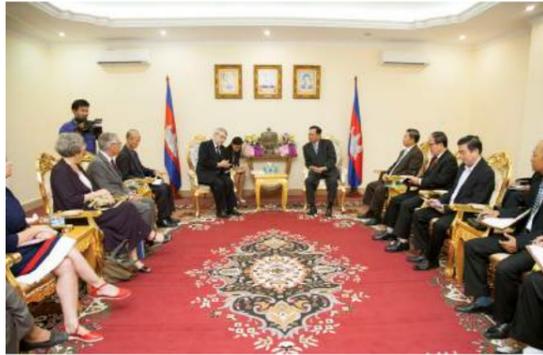
On the afternoon of 16 December 2016, Commissioner Michael GAY, a member of the Tasmanian Industrial Commission, and Mr. MEN Nimmith, ACF's Executive Director, led the delegation group of the International Advisory Board to a meeting with H.E. ITH Samheng and the ministry delegation at the Cabinet of Ministry of Labour and Vocational Training in Phnom Penh. Commissioner Michael GAY expressed his gratitude and thanked to the minister who always provide support and good cooperation to the Arbitration Council in performance its work independent, professional and sustainable. This brings the council to gain recognition and reputation among the national and international communities. In addition to

that, he also mentioned of good cooperation as the results in implementation of Memorandum of Understand between the Ministry of Labour and the Fair Work Commission in Australia.

Minister for Labour, H.E. ITH Samheng, reconfirmed again that he will keep the ministry words and commitment in continuing the supports to the council and its sustainability in the future. He added that the council plays an important role in dealing with labour dispute as alternative dispute resolution mechanism in an industrial relation sector. Moreover, the new draft law on Labour Dispute Adjudication Procedure will serve to strengthen and extend the roles of the council before sending to the labour court.

The ACF's International Advisory Board members attend the meeting were Commissioner Michael GAY- a member of the Tasmanian Industrial Commission, Prof. Allen PONAK – Adjunct Professor of the University of Saskatchewan in Canada and former President of the National Academy of Arbitrators, and Ms. Susan BROWN – Mediator, Arbitrator and Trainer (Boston, Massachusetts) and Mr. SOK Lor - Former ACF's Executive Director. The ACF's IAB member mission in Cambodia was from 16 December to 22 December 2016. The IAB was to have high level meeting at ministry level with MoLVT, MoJ and MEF, providing training and meeting with AC, ACF, SAC, stakeholders, employer association and trade unions.

## NOTABLE ACTIVITIES OF THE ARBITRATION COUNCIL FOUNDATION INTERNATIONAL ADVISORY BOARD DURING THE VISIT TO CAMBODIA IN 2016



A courtesy visit to the Minister of Labour and Vocational Training on 16 December 2017



The first meeting between the International Advisory Board and the Arbitration Council Foundation on 17 December 2017



A courtesy meeting with the Minister of Justice on 19 December 2017



A discussion meeting with Garment Manufacturer Association in Cambodia (GMAC) and Cambodian Federation of Employers and Business Associations (CAMFEBA) on 19 December 2017



**Australian Embassy  
Cambodia**

A courtesy meeting with the representative of the Australian Embassy to Cambodia on 20 December 2017



Capacity building training session on “Women at Work” (Work-Life Balance) on 20 December 2017



A discussion meeting with the union representatives in Cambodia on 20 December 2017



Capacity building training session on “Labour Dispute Mediation and Conciliation Skills and Techniques” for conciliators from MoLVT on 21 December 2017



Public Seminar on “Cambodian Arbitration with Comparison to North American Countries” at RULE on 21 December 2017



A courtesy meeting with the representative of the Ministry of Economy and Finance on 22 December 2017



AC/F and Myanmar Ministers of Labour, Employment, and Social Security pay courtesy to H.E. ITH Samheng, Minister of Labour and Vocational Training.

## PARTNERSHIP: MYANMAR AND CAMBODIA EXCHANGED EXPERTISE IN INDUSTRIAL RELATIONS

**A**rbitration Council Foundation (ACF) accompanied a delegation from Myanmar Ministry of Labour, Employment, and Social Security and Arbitration Council to a meeting with H.E. ITH Samheng, Minister of Labour and Vocational Training and his colleagues at the Ministry on 26 January 2016.

During the meeting, the Minister welcomed the Myanmar delegation and shared information about the history of Cambodian industry since the 1990s, the draft Law on Trade Unions, Minimum Wage Mechanism, and other industrial relations mechanisms including the Labour Advisory Group. The Minister also spoke about the importance of the Arbitration Council (AC) in resolving labour disputes; a significant challenge as industry grows, and the number of federations and local trade unions increase.

“Ministry of Labour provides AC full independence in dispute resolution. Parties accept AC decisions due to three factors: first, AC interpretation is based on legal provisions; second, legal reasoning is good and understandable; third, the decisions are not only supported by stakeholders but also trade partners, namely, buyers. The Ministry also supports the decisions and avoids making different interpretations,” H.E. ITH Samheng stated.

The Minister added that the ministry was working on sustainability of the AC and promoting the establishment of AC in various provinces in the long term.

Responding to a question from the Myanmar delegation regarding the proposed establishment of a labour court, the Minister claimed that AC was distinct from the labour court because AC is an alternative dispute resolution mechanism while the labour court would resolve its own cases through court processes.

H.E. U SAW Naing, Head of Myanmar delegation, extended his appreciation to the Minister of Labour and Vocational Training, the International Labour Organization in Myanmar (ILO), and AC for exchanging knowledge and experiences during his visit, which served to support better understanding regarding the different systems employed by each country.

The Myanmar delegation visited Cambodia after a Cambodian delegation, led by Mr. MEN Nimmith, ACF Executive Director along with Arbitrator AN Nan, and Mr. TENG Chesda, Senior Legal Officer, visited Rangoon and Nayyidaw in September 2015. The Cambodian team made the visit in response to an invitation by and in coordination with ILO Myanmar specifically to outline the arbitration system establishment, development and current status in Cambodia to Myanmar arbitration and labour ministry officials.

# FINANCIAL REPORT

- Statement of Sources of Fund and Expenditures
- Statement of Financial Position



The Arbitration Council office at No. 72, St. 592 (corner of St. 327), Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh, Cambodia

**Arbitration Council Foundation  
Statement of Sources of Fund and Expenditures  
For the Year Ended 31 December 2016**

	2016 US\$	2015 US\$
<b>Incomes</b>		
Funds received from donors	577,577	667,572
Other income	<u>36,289</u>	<u>22,762</u>
<b>Total incomes</b>	<b><u>613,866</u></b>	<b><u>690,334</u></b>
<b>Expenditures</b>		
<b>I. Institutional integrity and sustainability</b>	<b>46,331</b>	<b>63,360</b>
Selection/recruitment of arbitrators	-	-
Arbitration Council governance	11,931	12,793
Sustainability	34,400	50,567
<b>II. Labour dispute resolution</b>	<b>272,522</b>	<b>277,695</b>
Resolution of labour dispute cases	242,928	246,503
Capacity building of AC/F and SAC	28,771	10,855
Expansion of AC services	823	20,337
<b>III. Partnerships and stakeholder outreach and training</b>	<b>110,168</b>	<b>94,790</b>
ACF support to AC outreach and training	44,969	44,082
Establishing and maintaining partnerships	10,380	8,745
“Dissemination of publications and other information to raise stakeholder awareness”	13,776	3,664
Media relations and promotion	24,150	24,993
Stakeholder training	16,893	13,306
<b>IV. General operations and project management</b>	<b>246,686</b>	<b>200,803</b>
Salaries and benefits	147,820	107,189
Occupancy	50,560	50,619
Supplies	12,427	11,105
Equipment	9,125	5,839
Communications and postage	6,592	7,250
Vehicle and Transportation	2,781	2,345
Contractual services	14,113	14,232
Project monitoring and evaluation	-	-
Hospitality	<u>3,268</u>	<u>2,224</u>
<b>Total expenditures</b>	<b>675,707</b>	<b>636,648</b>
<b>Excess/(deficit) of income over expenditure</b>	<b>(61,841)</b>	<b>53,686</b>
<b>Fund balance at beginning of year</b>	<b><u>554,709</u></b>	<b><u>501,023</u></b>
<b>Fund balance at end of year</b>	<b><u><u>492,868</u></u></b>	<b><u><u>554,709</u></u></b>

**Arbitration Council Foundation  
Statement of Financial Position  
As at 31 December 2016**

	2016 US\$	2015 US\$
<b>Assets</b>		
Cash and bank balances	489,263	550,818
Retal Deposit	<u>8,709</u>	<u>8,709</u>
	497,972	559,527
<b>Liabilities</b>		
Salary tax payables	2,196	2,543
Withholding tax payables	<u>2,908</u>	<u>2,275</u>
	5,104	4,818
<b>Total Net Assets</b>	<b><u>492,868</u></b>	<b><u>554,709</u></b>
<b>Accumulated Excess of Sources of Fund Over Expenditures</b>	<b><u><u>492,868</u></u></b>	<b><u><u>554,709</u></u></b>

## ARBITRATION COUNCIL COMMUNITY

- The Arbitration Council
- The Secretariat of the Arbitration Council
- The Arbitration Council Foundation



The group photo of the AC arbitrators, ACF and SAC staff at the AC office in 2010



The group photo of the AC Arbitrators and SAC officers attend 2<sup>nd</sup> General Meeting of Arbitrators in 2016.



SAC officers provide administrative support to the AC's hearing.

## THE ARBITRATION COUNCIL

### VISION

“A just and economically vibrant Cambodia renowned for industrial peace.”

### MISSION

“Provide effective labour dispute resolution services that both workers and employers can trust.”

Established in 2003 by the Labour Law of Cambodia and prakas (Ministerial Decree) the Arbitration Council (AC) is an independent body whose function is to resolve collective labour disputes in the Cambodian private sector that could not be resolved by conciliation at the Ministry of Labour and Vocational Training (MoLVT).

The AC has a tripartite structure comprised of arbitrators nominated by unions, employer associations, and MoLVT. At present 30 arbitrators are appointed to the AC.

## THE SECRETARIAT OF THE ARBITRATION COUNCIL

The Secretariat of the Arbitration Council (SAC) is a body established by the prakas and provides administrative support to the AC.

SAC is an administrative body providing support to the AC including: case management, assisting parties with procedures, not legal advice, and communications with parties as parties cannot have direct contact with arbitrators except on the day of the hearing.



The group photo of ACF staff attend 7<sup>th</sup> National Industrial Relations Conference in 2016.

## THE ARBITRATION COUNCIL FOUNDATION

Arbitration Council Foundation (ACF) is a non-governmental organisation (NGO) registered with Ministry of Interior. ACF was established in 2004 to provide administrative and financial support to the AC and was set up with the support and endorsement of the Ministry, union federations and employer association, and with the assistance of the International Labour Organization (ILO).

The AC has oversight of the ACF through the election of one arbitrator from each stakeholder group as representatives, who form a majority of the voting members of the ACF Board of Directors.

The ACF comprises three departments: Finance and Administration, Legal Services and Training and Communications. ACF staff do not provide legal advice or opinion about the merits of a case, interpret the meaning of Arbitral Awards for, comment on any decision handed down by the AC, or recommend a particular firm, union or person to represent parties or undertake research.

### The Arbitration Council Office

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**Website:** [www.arbitrationcouncil.org](http://www.arbitrationcouncil.org)

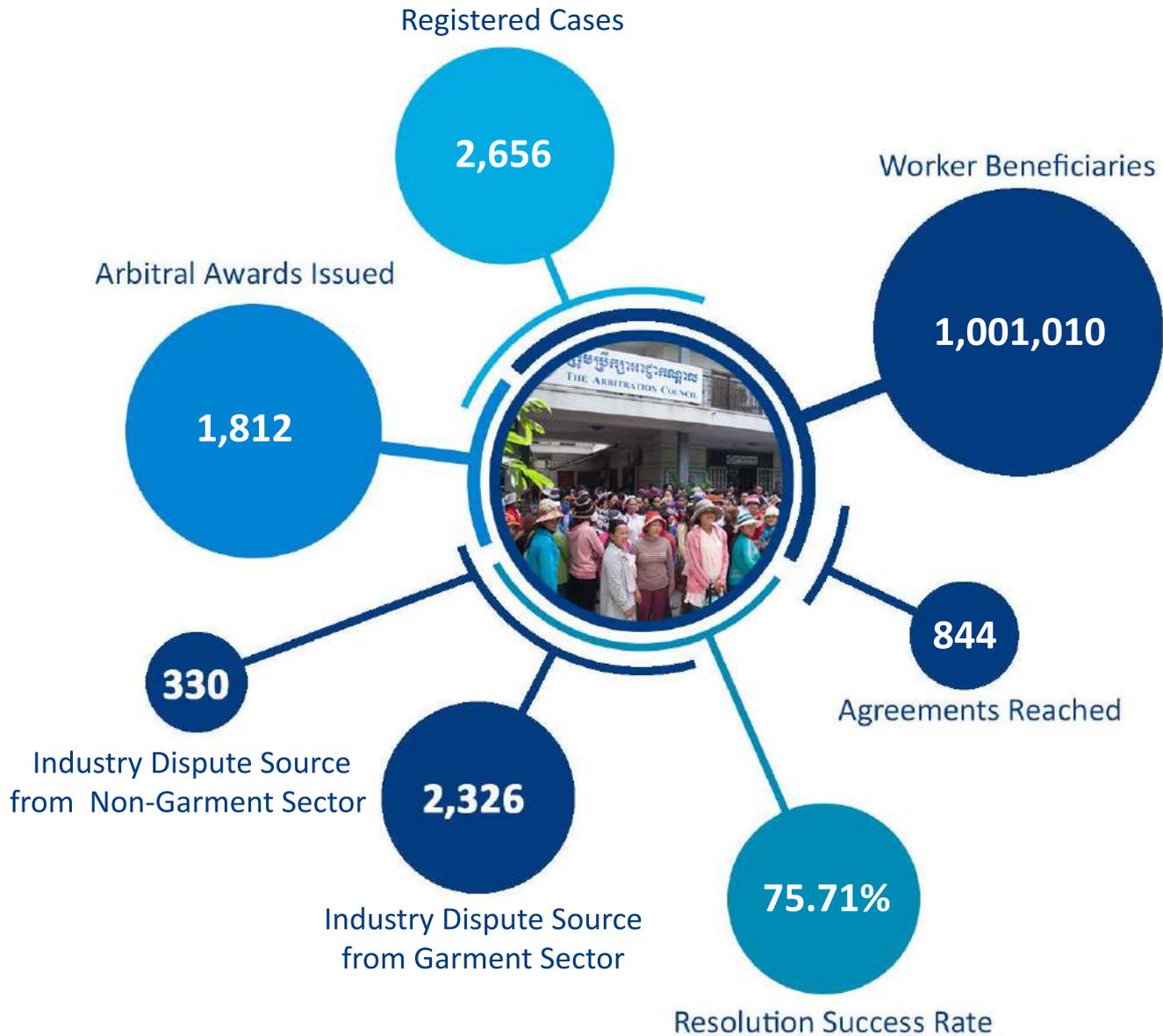
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**Twitter:** [www.twitter.com/AC\\_Cambodia](http://www.twitter.com/AC_Cambodia)

**Youtube:** Arbitration Council Cambodia

# HIGHLIGHTS

## The AC's Key Milestones and Achievements (2003-2016)



### SUPPORTED BY:

