

**Fact Sheet:** Institutions Series: The Arbitration Council

**Institution:** The Arbitration Council (the “AC”)



**Snapshot:** The Arbitration Council, established in May 2003, is an independent national institution with quasi-judicial authority responsible for resolving collective labour disputes through conciliation and arbitration.

### Introduction

This fact sheet provides an overview of the AC established with the support of the Ministry of Labour and Vocational Training (the “MLVT”), employers and labor unions, as well as the assistance of the International Labour Organization (the “ILO”), with the aim of providing a transparent and effective system for collective labor dispute resolution. This fact sheet is written by CCHR, a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

### History of the Arbitration Council

In 2002, the ILO began the implementation of its Labor Dispute Resolution Project in Cambodia, providing technical assistance to the MLVT. The Labor Law of 1997 stipulates a comprehensive system for the resolution of labor disputes. However, the high levels of corruption and a lack of transparency within the labor administration and the judiciary seriously limited the system’s effectiveness. In order to address the lack of effective dispute resolution mechanisms, the ILO, after carrying out numerous assessments and consultations with stakeholders and relevant institutions, initiated the creation of the AC. After months of negotiation in compliance with Article 317 of the Labor Law, the MLVT ultimately established the AC by issuing Prakas No. 338 on the Arbitration Council in December 2002, later replaced by Prakas No. 99 on the Appointment of the Arbitration Council in April 2004 (“Prakas No. 99”). On 1 May 2003, the Arbitration Council began operating.

### Function of the Arbitration Council and the Arbitration Hearing Process

The AC is an alternative collective dispute resolution mechanism that was set up to resolve labor disputes in Cambodia. When a collective labor dispute arises, the MLVT will first attempt to resolve the dispute through conciliation. Failing a complete agreement between all parties, the Ministry’s conciliator writes up a non-conciliation report. According to articles 309 and 310 of the Labor Law, in the absence of any collective agreement or any other procedures agreed by the parties, the MLVT shall then refer the case to the AC within three days.

The AC is currently composed of 30 members, who are appointed or nominated by Prakas every year. In order to ensure transparency and independence all arbitrators are nominated in equal proportions by each of the three stakeholder groups: unions, employer associations and the MLVT. The AC receives support from the Secretariat, which is responsible for carrying out clerical and registry tasks and is composed of ministry officials co-located at the AC.

According to Clause 12 of Prakas No. 99, any collective dispute submitted to the AC shall be settled by an Arbitration Panel (the “AP”). The AP consists of three members. Each disputing party is entitled to choose one arbitrator from their representative category, who will then choose the last arbitrator from the category of the MLVT nominees. The parties can appear before the AP in person but may also be represented by a lawyer or by any other person expressly authorized by them. The

AP hears the parties' claims and arguments and examines any witnesses or documents related to the case. The AP's jurisdiction is limited to the resolution of issues contained in the non-conciliation report, including issues that are direct consequences of the dispute but which arise from events subsequent to the date of the report.

As stated in Clause 20 of Prakas No. 99, during the arbitration process, the parties must abstain from carrying out any strike, lockouts or any other activities that may aggravate the conflict between the parties. If a strike or lock-out is in effect at that time, the AP can issue an interim order, directing that the action cease so that the AC can proceed.

### **The Arbitral Award**

The Labor Law states under Article 313 that the AP shall issue its decision in the form of an arbitral award and communicate it to the MLVT within 15 days. All awards are publicly available on the Arbitration Council [website](#) in both Khmer and in English. The arbitrators are supposed to make their decisions by consensus, however when this is not possible, majority rule will apply. The arbitral awards may contain binding orders for the settlement of collective labor disputes through ordering the reinstatement of dismissed employees, the immediate payment of quantities owed to the workers, the termination of any industrial action or any other illegal conduct, etc. However, after the parties of the dispute have been notified as to the issuing of the arbitral award, they are entitled to file an objection against the award via the Secretariat within eight calendar days. A timely objection means the award is unenforceable, and the dispute will be brought before the court for final resolution. In contrast, if neither of the parties oppose to the award, it is final and legally binding for both parties involved.

### **Conclusions**

The AC is considered a transparent authority and is broadly accepted as a reliable institution. The number of cases the AC processes annually has increased significantly since 2003, when it processed only 31 cases. In 2011 this number rose to 189, and 255 in 2012. In December this year it already accounts for 268 cases. Specifically, in the third quarter of 2013 (from July to September) the AC registered the highest number of cases in its history, with 87 cases in only three months — an increase of 30% compared with the same period in 2012, and 77% on the number of cases received in 2011. This indicates that trust and confidence in the institution continues to grow — a great achievement in Cambodia considering the general mistrust of the formal justice system amongst the Cambodian people.

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