Are women benefiting and are women engaged?
Reflecting on the gender results of the Arbitration Council in Cambodia

Ninety per cent of Cambodians utilizing the dispute resolution services of the Arbitration Council (AC) are women. In its core work to date, the AC has a strong track record of upholding women’s rights-based disputes, and the record over interest-based disputes pertaining to women’s issues is not dissimilar to other interest-based disputes. Despite this strong bias towards women as beneficiaries of the AC services, there has been less success engaging women as primary stakeholders in the process. On the one hand, women are well represented in the Arbitration Council Foundation. On the other, they are significantly underrepresented as advocates and arbitrators. This DFGG project learning note assesses data on beneficiaries, cases and results providing an overview of the role the AC plays in supporting the rights of (mostly female) garment workers and reflecting on women as stakeholders in this labor arbitration process.

Since 2003, the Arbitration Council has provided an independent space for the arbitration of labor disputes, previously lost in the difficulties of navigating the judicial system in Cambodia. Originally established under the ILO Labor Dispute Resolution Project, the AC was established in part to support the Better Factories Cambodia program in the textile, clothing and footwear industry. For ten years, over ninety per cent of cases before the AC have originated from these garment factories, and in that sector – critical to Cambodia’s economic growth – the AC is widely known for balanced, reasoned and just decisions based on law.

Current State of Play
Over the last decade, approximately 650,000 garment factory workers have been party to over 1,350 cases brought before the AC. The vast majority of these workers are women aged between 18 and 30 years. Most of these young women migrate from the rural provinces of Cambodia to take up employment in factories near Phnom Penh. For seventy five per cent of them, it is their first full-time employment in the formal sector, and at least ninety per cent send a significant proportion of their wage back to families living in rural areas. These remittances are a primary source of income for hundreds of thousands of households, are often the only household income, and notably, are known to contribute to the costs of education for siblings.

Despite this contribution, most workers earn the minimum wage of $80 per month (in March 2013) up from $61 in 2010, forcing many to work overtime in order to make ends meet. Unsurprisingly the primary issues brought to the AC involve disputes regarding pay and allowances and unfair dismissal of these women.

Within the labor arbitration process, issues are classified according to: (i) rights disputes (i.e. issues that are established in law, contracts or customary practices such as issues of reinstatement); and (ii) interest-based disputes (i.e. issues not established in law such as requests for payment over the minimum wage).

Results to date
Major issues before the AC, which have significant impact on the largely female workforce, include: wage, allowance and entitlement disputes (45%); unfair dismissal and reinstatement (11%); general working conditions (11%); occupational health and safety (7%); and union discrimination (5%).

With regard to women’s issues brought to the AC, eight percent of the issues across 252 cases received by the AC in 2012 involved issues specifically pertaining to women (e.g. day care, maternity leave and pay, nursing rooms, and pregnancy rights). Of those issues, about seventy five percent were resolved in the dispute resolution process through conciliation or were withdrawn. The remainder were resolved through the creation of an Arbitral Award.

Analysis of the case records shows that the AC has a strong record of upholding women’s rights when they are established by law. One hundred per cent of the cases pertaining to maternity leave and pay have been resolved in favor of women workers. Similarly, the AC has ruled in favor of the workers in seventy eight per cent of the cases requesting nursing rooms and day care centers, also established by law. However, the data suggests that the AC has been less willing to rule in favor of interest-based
disputes or further women’s rights not already established in the law. This record is not dissimilar to other interest-based dispute outcomes. Because these matters are not established in law, there is no immediate legal obligation on the employer and the burden of proof falls on the workers.

In addition to the specific women’s issues mentioned above, women are protected by various anti-discrimination clauses that apply to all workers. And as is the case in many countries, women in Cambodia are most likely to be the primary carers in their family, are more likely to require leave for these purposes. Unsurprisingly, entitlements are the subject of an increasing number of claims.

Women’s representation in AC processes

**Arbitration Council Foundation (ACF) staff.** The human resources of the Foundation (the organization providing technical support to the AC) has a strong gender record. Part of the DFGG gender mainstreaming initiative is to ensure a gender balance in the appointment of ACF staff and interns. At present, 65% of ACF staff are women, including 88% of the legal staff. This includes some of the most senior positions in the organization such as the Director of Legal Services and the Manager of Finance and Administration.

**Arbitrators.** Women are however currently underrepresented on the three-member arbitration panels. To form a panel for a hearing, one arbitrator is chosen by the employer and another by the workers from their respective “lists”. A third arbitrator is then chosen by those two from a Ministry of Labor (government) list. But the lists are mostly male, with only 30%, 20% and 0% women named on the worker, employer and government lists respectively. In 2013, only 13% of arbitrators were women. At just 10%, the average over the decade gives cause for concern given the gender breakdown of AC clients and the sensitivity of issues heard by an all-male arbitral panel.

**Representatives of the parties to the dispute.** The ACF also tracks the number of females representing the parties in the cases (including workers, trade union representatives, employers, managers, employer associations and respective legal advocates). In 2012, out of 975 advocates that appeared before the AC, thirty percent were female.

**Efforts to date**

Given the importance of women in the scope of AC goals, during 2012-3, the ACF has undertaken a number of initiatives to further women’s role in both the dispute resolution process and in the supporting institutional structure.

**Gender mainstreaming and tracking.** As part of the World Bank financed DFGG project, the ACF has undertaken a gender mainstreaming effort to promote gender equality in project implementation. This has prompted the ACF to pay attention to gender equality in all activities – resource allocation, planning and implementation, and monitoring.

**Awareness building.** The ACF produces a range of awareness raising tools, including educational videos, training videos and television public service announcements. However, on reflection, and despite the fact that women are the overwhelming beneficiaries of the AC services, only forty six per cent of actors were women.

**Training and capacity building.** ACF targeting of women and relevant organizations is designed in part to encourage greater gender equality in the AC dispute resolution process. Results are mixed. In 2012, participation of women in training events is still low (at around 25%) and much lower than the representation of women in most stakeholder groups, while female staff and arbitrator participation reached 64% (for international conferences and exchanges, capacity building activities, and continued legal education) – up from 31% in 2009.

**Recommendations**

The AC is committed to building gender equality in the labor dispute resolution process, and to bring this more in line with the strong bias towards female beneficiaries. In order to ensure this goal is realized, the ACF has established a process to:

- to review the gender strategy and to identify areas of action which already lie within the ACF control;
- to work in close partnership with disputant parties to increase the number of female advocates;
- to open a dialogue with all stakeholders regarding targets for the number of female advocates;
- to enhance the training already in place for continued legal education and advocacy workshops on specific gender issues including maternity entitlements, pregnancy rights, and gender discrimination to improve the capacity of women as advocates for matters concerning their welfare.

Given that ninety percent of those directly affected by the AC labor dispute resolution process are women, continued improvements are needed to ensure that women become active participants in the process, and in the building of a sustainable and equitable institution. This is important to all stakeholder groups, but vital to improving the participation of poor women workers who benefit most from AC services.