

## Embracing Principles of Good Governance

Guiding principles of the Arbitration Council are key to achieving standards and results

Since 2003, the Arbitration Council has offered an alternative labor dispute resolution system to over 350,000 workers – mostly in Cambodia’s garment industry. Operating in a context where there is limited trust in the formal court system, it is notable that recent surveys of both employers and unions indicate that this system is achieving targets and standards more similar to countries with well established and trusted legal systems. To garner these results, the Arbitration Council, and the Foundation that supports it, adheres to a set of good governance principles. This note sets out the principles that guide Arbitration Council strategy and operations. Not only are they all critical in explaining why workers and unions are willing to use the Arbitration Council to resolve disputes, but also why it has achieved high levels of confidence as a labor dispute resolution institution.

Cambodia’s Arbitration Council (AC) resolves collective labor disputes outside the court system by conciliating and arbitrating disputes between workers and their employers. Over nearly a decade, confidence in the AC has grown remarkably among users (workers, employers and their respective representatives). According to the independent mid-line study of the AC carried out by a local research institute (CDRI), 92% of users in 2012 reported high levels of confidence in the AC labor arbitration process. In that same year, binding arbitration over rights disputes by the AC was agreed for the second time under the framework Memorandum of Understanding between the Garment Manufacturers Association in Cambodia and eight trade union federations. These actors account for approximately 90% of the cases brought before the AC. This success has been underpinned by a set of principles which guide decision-making and the development of AC systems and human resource management.

**Integrity.** The AC has adopted a code of professional conduct to regulate its own standards. This code specifies the various professional values (honesty, neutrality, independence) with which all members of AC must comply. According to the 2012 independent study, no users reported paying unofficial fees to arbitrators or ACF staff; 98% of AC users believe that arbitrators treat the parties with dignity and respect and, overall, stakeholders, consider arbitrators of the AC to conduct themselves with a high level of professionalism. To execute this code of conduct successfully, arbitrators receive ongoing training regarding their responsibilities, and the AC has established a transparent process for investigating complaints and breaches of the arbitrator code of conduct.

**Independence and neutrality.** A cornerstone of the AC is its independence. It is a quasi-judicial institution, separate

from other judicial and rule of law institutions, regulations, and processes in Cambodia, many of which are still subject to systemic problems. It is also a neutral institution, maintaining an independence from the management of any particular stakeholder and located in its own facilities to reinforce this neutrality and independence to those using its services. The donor financing has also enabled it to retain independence from all stakeholders. While a tripartite funding proposal would be another mechanism to this end, during its infancy, the ACF has received approximately \$2.56 million from the World Bank and about \$0.42 million from other sources (AusAID and other international enterprises and foundations).



Moreover, a selected arbitration panel decides on labor disputes without outside interference or influence. Comprised of the representatives of workers and trade unions, employers, and the Government, the tripartite structure of the AC, replicated in each arbitration panel, further safeguards and enhances its independence and neutrality. If a member of the arbitration panel disagrees with the legal reasoning or ruling of the majority, a dissenting opinion is issued as an attachment to the majority opinion. Of approximately 1,400 dispute cases addressed by the AC since 2003, 5% are rulings with a dissenting opinion. Through the dissenting opinion, the interpretation of law or facts taken by a panel member is independent of the majority. At a broader level this exhibits the legal independence of the decision making of each panel member and enhances stakeholder trust.

**Equity.** The AC has built-in mechanisms to ensure equity in the involvement of workers, employers and their



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representatives in the dispute resolution process. First, as mentioned above, there are three lists of arbitrators: the worker list, employer list, and the government list (Ministry of Labor). Worker organizations, employer organizations, and the Ministry of Labor nominate and endorse arbitrators for appointment to the AC. This tripartite structure is replicated in every arbitration panel: a dispute submitted to the AC for resolution is heard by a panel of three, comprising members from each list (with the government chair nominated by the worker and employer selected arbitrators). Disputing workers and employers have equal opportunity to present their case to the arbitration panel.

**Stakeholder participation.** Regular forums are organized for representatives of workers and employers to discuss and voice concerns and issues to the AC. In particular, the Stakeholder Advisory Group of the Arbitration Council Foundation (ACF), comprised of representatives from the workers, employers, and Ministry of Labor, meets twice a year to discuss matters pertaining to the sustainability, performance, and future direction of the AC. Similarly, “meet and greet” events are organized regularly for representatives of workers and employers to provide feedback to arbitrators on their respective lists.

<http://www.arbitrationcouncil.org>). This includes annual and financial reports, ACF work plans, the AC labor arbitration process, case preparation before the AC, arbitrators’ biographies, and the code of professional ethics. Although this practice started as a DFGG project requirement, the ACF now ensures that transparency is a cornerstone of the institution.

**Predictability.** As is good practice in similar institutions, AC arbitrators are required to adhere to guidelines aimed at maintaining consistency of legal decisions. This ensures that decisions are well-reasoned and based on law and the principles of equity. Unless there is a compelling reason for deviation, arbitrators look to previous decisions for guidance in deciding cases brought before them. Typically, arbitral awards make reference to this precedent. Over the years, workers and employers have reported that due to this predictability, they have a clear benchmark to use when they consider whether or not to settle a case before arbitration (thereby avoiding unnecessary costs). Employers also amend internal rules to ensure conformity with the AC’s arbitration decisions, because they have become standards for the garment industry. Nevertheless, as the AC grows and enters new domains, there are challenges to ensuring consistent jurisprudence.

**Responsiveness.** The AC is required by law to process a case within 15 working days or gain consent of the disputing parties to a longer period, normally 30 days, for more complex disputes. Current data shows that sixty percent of awards are issued within 20 days. This compares well with other similar dispute resolution systems (such as those of Australia, United States, Canada and Sweden) where it can take six months to a year to process a case. This level of responsiveness is also a critical reason for the high levels of confidence and trust.

**Embracing the principles of good governance – integrity, independence and neutrality, equity, participation, transparency, predictability and responsiveness – has enabled the Arbitration Council to differentiate its strategy and operations from many other legal institutions in Cambodia. As the case load has grown, adherence to these principles has resulted in increasing standards of dispute resolution service and improvements in results. The Arbitration Council also sees good governance as a cornerstone for long-term sustainability of AC dispute resolution services in Cambodia.**

*The DFGG Learning Note Series provides quick summaries of the lessons learned in the DFGG project. The information is obtained from progress reports, meetings, workshops and World Bank Implementation Support. It is anticipated that the end evaluations of each component will provide further reflection on these issues.*

*DFGG Learning Note 10 draws on the lessons documented in ACF 2013 Quarterly Report. Written by Sok Lor and Anthony Samson. Series Editor, Janelle Plummer. April 2013.*

**Transparency.** The AC ensures transparency in the arbitration process and arbitral decisions. First-time users are given face-to-face briefings. In the case where a dispute requires an arbitration ruling, the ruling is based on reasons supported by relevant laws and, in some cases, equity. The arbitration decision – known as an arbitral award – is shared with the parties and made accessible on the AC/ACF website. This body of decisions contributes to the long-term development of the rule of law in Cambodia and supports education on law, industrial relations, and dispute resolution for a broader community of practitioners and researchers.

Furthermore, the ACF operates as a transparent institution, publishing and disseminating a range of other documents in both hard copy and electronically on the AC website (see

