

*(RECENT LEGISLATIVE DEVELOPMENTS)*

## **LABOR ARBITRATION IN CAMBODIA: LAW AND PRACTICE**

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This paper elucidates the history of the establishment of Cambodia's labor arbitration body, the Arbitration Council, its structures, functions, and characteristics. It also discusses the arbitral processes and arbitral awards as well as its opposition.

The Arbitration Council was established by Prakas No. 338 on Arbitration Council<sup>1</sup> of MOSALVY<sup>2</sup> dated December 11, 2002, pursuant to Chapter 12 of 1997 Labor Law.<sup>3</sup> It started operation on May 1, 2003, with the support from ILO-Labor Dispute Resolution Project.

The Arbitration Council is not a legal entity and consists of thirty

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<sup>1</sup> Prakas is a ministerial regulation. The Prakas 338 on Arbitration Council dated 11 December 2002 was amended in 2004 and substituted by Prakas 099 on Arbitration Council dated 21 April 2004

<sup>2</sup> MOSALVY stands for Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation. MOSALVY was split into two ministries after settlement of political deadlock in 2004, namely the Ministry of Labor and Vocational Training and Ministry of Social Affairs and Youth Rehabilitation. The Arbitration Council receives its labor cases from the Ministry of Labor and Vocational Training

<sup>3</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 317

part-time volunteer arbitrators.<sup>4</sup> The Council has no president and staff. It is administratively supported by the Secretariat of the Arbitration Council<sup>5</sup> and supported technically by the Arbitration Council Foundation, through financial assistance from development partners such as the US Department of Labor; the United States Agency for International Development; New Zealand's International Aid and Development Agency through the ILO-Labor Dispute Resolution Project,<sup>6</sup> the World Bank, the Australian Agency for International Development; Interchurch Organization for Development Cooperation; the Asia Foundation; and the Levi Strauss Foundation. The Secretariat of the Arbitration Council is under the Department of Labor Dispute Resolution of the Ministry of Labor and Vocational Training (MOLVT).<sup>7</sup> It is headed by a chief with support from two staff appointed by the MOLVT. The Secretariat's main roles are to administer and coordinate the clerical requirements for collective labor dispute resolution by the Arbitration Council.<sup>8</sup>

The main function of the Arbitration Council is to settle "collective labor disputes" as described by the Minister of Labor under article 310 of the Labor Law.<sup>9</sup> Under the Labor Law, a "collective labor dispute" is defined as:

"any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness."<sup>10</sup>

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<sup>4</sup> An honorarium of \$US120 is paid to each arbitrator while he or she is elected by parties to settle a case. There are three arbitrators per case.

<sup>5</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 48

<sup>6</sup> Recently, the Arbitration Council Foundation has been established in order to take over the responsibilities and activities originally carried out by the ILO-Dispute Resolution Project.

<sup>7</sup> See Annex 1 for Organization Chart.

<sup>8</sup> Prakas 174 on the Establishment of the Secretariat of the Arbitration Council dated 9 May 2003, Art. 1

<sup>9</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 310  
Article 310 of the Labor Law provides that "... the Minister in Charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator....."

<sup>10</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation

However, the Arbitration Council has no duty to examine issues other than those specified in the non-conciliation report or matters which arise from events subsequent to the report and which are the direct consequence of the current dispute.<sup>11</sup>

The Arbitration Council is characterized as a tripartite, independent, effective, professional, and quasi-judicial body. It is a tripartite body<sup>12</sup> because it is composed of 30 arbitrators<sup>13</sup> from three lists consisting of an employer's list, employee's list, and the MOLVT's list.<sup>14</sup> The arbitrators are appointed annually by Prakas (Ministerial Regulation) of the MOLVT annually<sup>15</sup> and they are reappointed, unless they have died, resigned, or committed professional misconduct.<sup>16</sup>

The Arbitration Council is an independent body<sup>17</sup> because arbitrators have the power to make decisions independently within the scope of their lawful authority without any interference from the tripartite parties (namely employers), employees, and the ministry though they are nominated respectively by each party. There are several factors contributing to the independence of Arbitration Council namely all arbitrators were properly selected by the ILO-Labor Dispute Resolution Project in consultation with MOLVT at the establishment of the Arbitration Council. The arbitrators are well-educated and highly ethical because they have followed a self-established code of conduct. Arbitral awards are well-structured based on the laws and equity, which helps to promote the respect of the Arbitration Council among all stakeholders.

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of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 302

<sup>11</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 312.

<sup>12</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 3

<sup>13</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 1

The article states that this Prakas establishes an Arbitration Council composed of at least 15 members pursuant to Article 317 of the Labor Law

<sup>14</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 2

<sup>15</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 51

The article provides that in a transition period, during the first, second, and third term of the Arbitration Council, all members of the Arbitration Council shall be appointed by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation on the nomination of the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation after consultation of the ILO Labor Dispute Resolution Project

<sup>16</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 2

<sup>17</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 11

The Arbitration Council has proven itself effective<sup>18</sup> by settling cases within fifteen working days of the Arbitration Panel's formation date. There are no backlog cases at the Arbitration Council. The arbitration process in Cambodia is considered one of the speediest arbitration systems in the world because it can settle cases within fifteen working days stipulated in the Cambodian Labor Law in comparison with foreign arbitration laws. Although all arbitrators are part-time, they can work quickly due to support from the competent Cambodian legal support staff and foreign legal advisers to the Arbitration Council Foundation. Faced with a complicated case, arbitrators ask parties to suspend the due date of the awards and in practice either parties or arbitrators can ask for a suspension of arbitral awards.

The Arbitration Council is a professional body<sup>19</sup> composed of arbitrators who are qualified experts in labor law and have the skills of mediation, conciliation, and arbitration. They have been educated and trained locally and internationally by foreign experts.

With the power to interpret laws like a court, as well as, make decisions based in equity, the Arbitration Council is considered a quasi judicial body. They are also empowered to make inquiries into all enterprises or professional organizations which may be relevant to a labor dispute case, conduct hearings, weigh evidence, and make decision on cases like the court according to Cambodian Labor Law and Prakas on Arbitration Council.<sup>20</sup> Hearings of the Arbitration Council are conducted in a closed session,<sup>21</sup> with awards determined based on the facts, law, and equity surrounding each case.<sup>22</sup> In practice, parties are responsible for submitting evidence, which is then communicated to the other party. Sufficient time is given by the arbitrator for a party to disqualify the evidence of the other parties. The arbitrators rarely visit and inquire into the enterprises or professional organizations where disputes arise to collect evidence due to budget constraints and neutrality issues.

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<sup>18</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 39 and Art. 50

<sup>19</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 6

<sup>20</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 312; and Prakas 099 on Arbitration Council dated 21 April 2004, Art. 34

<sup>21</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 312; and Prakas 099 on Arbitration Council dated 21 April 2004, Art. 29

<sup>22</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 312

When a case is referred to the Secretariat of the Arbitration Council by the MOLVT, both employer and worker parties are required to select an arbitrator from their respective lists to hear the case. The employer party selects one arbitrator from the ten arbitrators on the employer list,<sup>23</sup> while the worker party or union selects one arbitrator from the ten arbitrators on the employee list.<sup>24</sup> The two selected arbitrators have to select the third arbitrator from the ten arbitrators on the ministry's list to form an Arbitration Panel. The third arbitrator acts as the Chairman of the Arbitration Panel. In cases of disagreement regarding selection of the third arbitrator, the arbitrator is chosen by lot from the ministry list.<sup>25</sup>

After the Arbitration Panel is formed, under Labor Law, the Arbitration Council<sup>26</sup> must meet within three days<sup>27</sup> and issue an arbitral award within fifteen working days<sup>28</sup> starting from the date of its receipt of the case.<sup>29</sup> The arbitral award can be binding or non-binding depending on the parties' wishes.<sup>30</sup> The arbitral award is binding if both parties agree on the binding award and if no party lodges an opposition within 8 days. In cases where one party chooses a binding award and the other chooses a non-binding award, then the award become non-binding. In principle, the arbitral award of an Arbitration Panel is considered as an arbitral award of the Arbitration Council.<sup>31</sup> Most arbitral awards are written by the panel chairman with assistance from Arbitration Council Foundation's legal support staff and then communicated to the other two arbitrators. If they agree on the draft award, the award is issued. If any arbitrator does not agree with the draft award, he/she can write

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<sup>23</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 12 (A)

<sup>24</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 12 (B)

<sup>25</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 12 (C)

<sup>26</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 12

The article states any collective dispute submitted to the Arbitration Council under Article 309 of the Labor Law shall be settled by an arbitration panel specially constituted for the consideration of that dispute.

<sup>27</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 310

<sup>28</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 50

The Prakas stipulates that unless otherwise expressly stated, in articles of this Prakas the term (days) means working days for civil government officials.

<sup>29</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 313

<sup>30</sup> The arbitral award of labor arbitration in non-binding under the law, which is different from an arbitral award which is always binding according to the Law on Commercial Arbitration.

<sup>31</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 12

a dissenting opinion in accordance with Labor Law and Prakas on Arbitration Council, but the law requires the arbitration panel to reach consensus in its decisions which means an agreement from three arbitrators in the panel on a written award. If consensus is not possible, the arbitration panel shall make its decisions by majority.<sup>32</sup> After issuing the award, the Arbitration Council must communicate its decision to the Minister of Labor and Vocational Training and he/she immediately notifies the parties. The Labor Law allows parties to lodge an opposition to the arbitral decision by informing the Minister through registered mail or other reliable method within eight calendar days from the date of receiving the notification.<sup>33</sup> However, the Labor Law does not define the term “reliable method”, and in practice, all parties lodge an opposition at the Secretariat of the Arbitration Council and then it is submitted directly to the Minister through the administrative structure of the Ministry of Labor and Vocational Training. If one party lodges an opposition to the arbitral award, the other party can file a lawsuit to a competent court or conduct an industrial action (strike or lockout).

In practice, any opposition against the arbitral decision is made through the Secretariat of the Arbitration Council as well.<sup>34</sup> The final arbitral decision (if not opposed by either party) is implemented immediately and filed and registered in a manner similar to a collective agreement.<sup>35</sup>

In conclusion, Labor Arbitration is a strong example of a well-functioning dispute mechanism in Cambodia. The former Minister of Labor and Vocational Training referred to the Arbitration Council as a model of legal and judicial reform.<sup>36</sup> The ILO has attributed the Arbitration Council's success to date to a high level of cooperation between key stakeholders including the Royal Government of Cambodia, employer associations, and the

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<sup>32</sup> Prakas 099 on Arbitration Council dated 21 April 2004, Art. 36. The arbitration panel shall attempt to reach consensus in its decisions. If consensus is not possible, the arbitration panel shall make its decisions by majority

<sup>33</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 313

<sup>34</sup> Though the law does not clearly state, in practice, in the award of the Arbitration Council, party is required to appeal against arbitral award through a written letter and sends it to the Secretariat of the Arbitration Council

<sup>35</sup> ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes, Art. 314

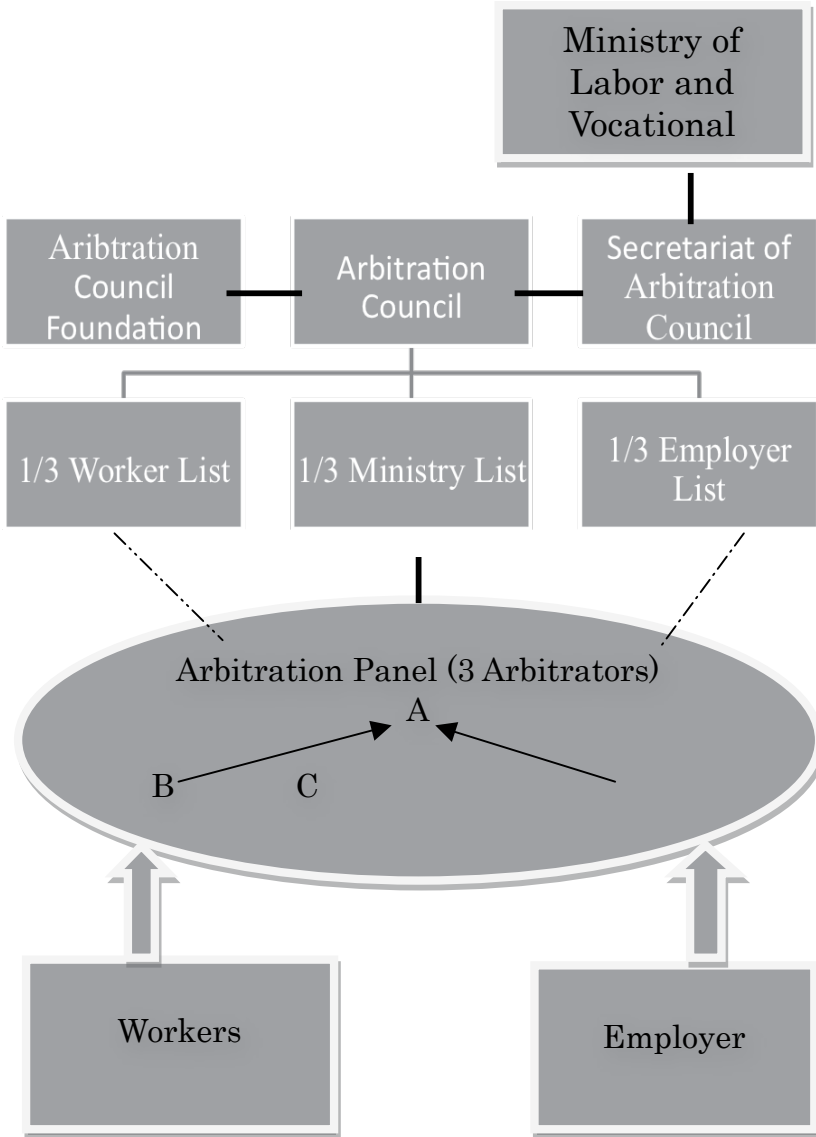
<sup>36</sup> H.E Nhep Bunchin's message dated October 6 2004 (Please see Blue Book, p.2)

unions.<sup>37</sup> Further research on the Arbitration Council's success and its roles that contribute to the model for legal and judicial reform is recommended.

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<sup>37</sup> ILO, *Improving Cambodia's Economy through Better Industrial Relations*, p.2

**ANNEX 1: STRUCTURE OF ARBITRATION COUNCIL**





*Reference:*

ROYAL KRAM CS/RKM/0397/01 dated 13 March 1997 on the Promulgation of Labor Law, Ch.XII, Settlement of Labor Disputes

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