

SPECIFIC INSTANCE “VINCI – VINCI AIRPORTS IN CAMBODIA”

11 December 2018

Final Statement of the French NCP

Following its mediation and in the light of the information before it, the NCP considers that the VINCI Group is complying with the OECD Guidelines in a complex national context. It notes that disagreements persist between the International Trade Union Confederation (ITUC) and the Cambodian Labour Confederation (CLC) on one hand, and Cambodia Airport Management Services (CAMS) on the other; it invites the parties to continue their discussions.

On 27 July 2017, the French National Contact Point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises received a referral from two labour confederations: the International Trade Union Confederation (ITUC) and the Cambodian Labour Confederation (CLC). The specific instance in this referral involved the VINCI group with respect to the activities of the Cambodian subsidiary of VINCI Airports related to a labour dispute affecting the three airports in Cambodia operated by Cambodia Airport Management Services (CAMS).

The French NCP is a tripartite body for the non-jurisdictional settlement of disputes related to the implementation of the Guidelines for Multinational Enterprises. Its purpose is to contribute to the resolution of the questions referred to it through its good offices, mediation and conciliation. It endeavours to examine the issues raised as soon as possible, if possible within 12 months of receipt of the specific instance. It publishes its decisions on its website.

1. Presentation of the specific instance

The questions put to the NCP on the effectiveness of the OECD Guidelines concern the conditions for the exercise of social dialogue and freedom of association in the Cambodian subsidiary of VINCI Airports, which benefits from a concession covering the three Cambodian airports (Phnom Penh, Siem Reap and Sihanoukville).

In the initial referral, the ITUC and the CLC implicate the VINCI Group with regard to several allegations of violations of the Guidelines related to the respect for local law (I.2), respect for human rights (IV.1), freedom of association of workers (V.1a), the holding of collective or constructive negotiations with a view to reaching agreements on conditions of employment (V.1b), non-discrimination (V.1e), the promotion of consultations and co-operation between employers, workers and their representatives on matters of common interest (V.3) and allowing authorised representatives of workers to negotiate matters relating to collective agreements and authorise the parties to undertake consultations on topics of common interest (V.8).

The initial referral by the ITUC and the CLC presents elements that can be grouped into four topics: 1) the absence of negotiations for a new collective bargaining agreement for CAMS, 2) the case of several dismissals of trade union activists classified as anti-union (eight cases mentioned in the referral, three cases added in October 2017 and one case added in February 2018), 3) the introduction of new work organisation since 2012 (skills development plan also called “multi-tasking”) and 4) the use of agency workers. Their requests concerning the 12 personal cases

cover 1) the reinstatement of the vice-president of the local union SACTIW-U¹ who was dismissed in June 2015 (case no. 1), 2) “the implementation without delay” of six decisions of a local Labour Arbitration Council (LAC) concerning workers dismissed in August 2014 (case no. 5), in January 2015 (case no. 6) and in May-June 2015 (cases nos. 2, 3 and 4), 3) the withdrawal of charges against two former workers (cases nos. 6 and 8) and other cases (nos. 7, 9 and 12). Subsequently, in November 2018, the plaintiffs supplemented the referral by raising the case of 15 temporary workers whose seniority was alleged to be between two months and 16 years (six of whom were said to have more than five years’ seniority). The complainants accused the Group of “disguised employment” within the meaning of section 13 of ILO Recommendation no. 198. The complainants requested recognition of these violations.

In the initial referral, the ITUC and the CLC seek mediation from the NCP to discuss the issues raised by the referral in order to find solutions. They request resuming collective bargaining, the settlement of 12 personal cases, “putting an end to unfair practices which that were alleged to involve the recruitment of replacement workers during strikes and the recruitment of workers “under short term contracts with illegal trial periods”. The complainants subsequently requested the introduction of arrangements to grant permanent tenure to all the temporary workers and the start of collective bargaining/social dialogue concerning their unionisation and working conditions.

The referral takes place in a complex national context in that several implementing texts (“Prakas”) of Cambodian Trade Union Law, which entered into force on 5 May 2016, have not yet been enacted. These include the conditions for recognition of the most representative status (“MRS”) for trade unions. The implementing text concerning the conditions for granting MRS was published on 2 July 2018. The complainants state that the ITUC, the International Labor Organization, the Office of the High Commissioner for Human Rights and several garment brands criticise this law and that these developments are subject to specific follow-up by the ILO.²

During the NCP’s good offices and mediation, details were brought to the attention of the NCP and of the parties that clarified the referral, facts and measures taken by VINCI since 2012.

➔ *The list of the Guidelines’ recommendations targeted by the referral is attached as Appendix 2.*

2. Procedure followed by the NCP

The French NCP endeavours to conduct the initial assessment of a referral within three months of the acknowledgment of receipt and publishes a statement explaining its decision. When this assessment is positive, it offers its good offices to the parties and examines the case. It endeavours to finalise its action within twelve months of receipt of the referral (Article 31). It then concludes the referral by preparing and publishing a statement or a report in the event of agreement between the parties (Article 35). It may decide to follow up on its recommendations (Article 32).

♦ 1st step: Admissibility and initial assessment of the referral (August-September 2017)

The French NCP received the referral on 27 July 2017. It acknowledged receipt the same day and then on 21 August after having received the complete file. The NCP validated the formal admissibility of the referral on 30 August 2017. On 4 and 5 September 2017, the NCP informed the Group and the complainants of the admissibility

¹ Siem Reap Airport Cambodia Tourism Industries Worker Trade Union

² See memorandum of 15 December 2017: reaction of the ILO (http://www.ilo.org/asia/media-centre/news/WCMS_466553/lang--en/index.htm), the HCHR (http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/TUL_Analysis-Eng.pdf), the garment brands (<https://www.cambodiadaily.com/archives/fashion-labels-concerned-by-new-trade-union-law-54250/>).

of the referral and the forthcoming procedure. It sent a copy of the referral to the VINCI Group and to Cambodia Airports and invited the Group to respond to the referral immediately. Upon receipt of the referral, the VINCI Group indicated its willingness to discuss and cooperate in full transparency with the NCP.

The NCP finalised its initial assessment on 19 September 2017. On 21 September 2017, it informed the parties of the acceptance of the referral and offered them its good offices, which the parties quickly accepted. The NCP adopted the Initial Evaluation Statement on 24 November 2017 after consultation with the parties and then posted it on its website.³ It informed the OECD of the referral and the latter added it to the NCP database.⁴

◆ 2st step: NCP good offices and mediation action (October 2017 - August 2018)

The NCP began its good offices on 2 October 2017. The NCP Secretariat exchanged information between the parties throughout the proceedings and regularly informed them of the NCP's procedural steps and discussions. The ITUC and the CLC completed their referral on 4 October 2017, 15 December 2017 and 13 February 2018. VINCI submitted two files responding to the referral on 9 October 2017 and 11 December 2017. On 13 November 2017, the complainants signed the commitment to respect confidentiality and the exchanges related to the procedure which allowed the transmission of the documents provided by VINCI.

The NCP met with the parties separately on 20 November 2017 at the Ministry for the Economy and Finance and by videoconferencing with the French Economic Department in Phnom Penh: the ITUC and the CLC (meeting held in English) then VINCI and CAMS. The NCP offered to begin mediation. On 18 December 2017, the NCP took note of the information provided by the parties. It noted that VINCI had provided many explanations including on personal cases. It noted the parties' agreement in principle to participate in a mediation meeting in Paris and decided to hold it in February 2018.

The mediation meeting was held on 13 February 2018 at the Ministry for the Economy and Finance and by videoconferencing with the French Economic Department in Phnom Penh. It was held in English. The NCP brought together several entities of the VINCI Group (VINCI, VINCI Airports and CAMS) as well as the ITUC and the CLC represented by the President of the local union SACTIW-U⁵ present at CAMS which is affiliated to the CLC. Some members acknowledged the difficulties of the mediation meeting, in particular the language barrier (Khmer - English), the lack of consultation time for the complainants and the limits of the mediation procedure in light of the disagreements between the parties. However, the NCP followed up on the decisions made at this mediation meeting with the parties.

On 15 March and 7 May 2018, VINCI submitted information memoranda to the NCP on actions taken to implement the decisions of 13 February 2018 (12 documents). These documents were sent to the complainants. To supplement the mediation meeting, the NCP conducted side meetings with the parties. The meeting with the ITUC took place on 15 May 2018 in English and by conference-call (Paris-Brussels) with several suspensions to allow the ITUC to consult its partners (caucus). The meeting with VINCI and VINCI Airports took place on 24 May 2018 at the Ministry for the Economy and Finance. On 30 May and 7 June 2018, VINCI sent new documents in response to questions raised by the NCP which were sent in turn to the complainants. On 29 June and 2 July 2018, VINCI submitted confidential documents to the NCP Chair and Secretariat concerning the calculation of compensation (severance pay), the content of which was explained to the NCP. The ITUC submitted an update memorandum and responses to the NCP on 10 June 2018, and these documents were duly sent to VINCI.

³ <https://www.tresor.economie.gouv.fr/Articles/2017/12/14/24-novembre-2017-communique-du-pcn-france-dans-la-circonstance-specifique-vinci-vinci-airports-au-cambodge>

⁴ web <http://mneguidelines.oecd.org/database/instances/fr0025.htm>

⁵ Siem Reap Airport Cambodia Tourism Industries Worker Trade Union

The NCP regularly discussed the referral at its meetings. In June 2018, it decided to prepare the preliminary analysis of the referral and the NCP adopted it on 12 July 2018 by consensus with the exception of one trade union (CGT). The NCP forwarded the preliminary analysis to the parties on 13 July 2018 for comments before 24 August 2018, and indicated that it was preparing the conclusion of the mediation in order to move towards ending its action on this specific instance. An unofficial English translation of the analysis was sent to the complainants on 29 July 2018. The NCP received comments from VINCI and the ITUC respectively on 23 August and 27 August 2018.

◆ 3rd step: Conclusion of the specific instance (September – November 2018)

At its meeting of 4 September 2018, the NCP took note of the parties' comments, including the ITUC's objections to the preliminary analysis of the referral. It decided to close its good offices to move on to the conclusion phase of the referral. It instructed the NCP secretariat to prepare a final statement. On 7 September 2018, it informed the parties of the closing of the good offices and the preparation of the final statement.

Moreover, the ITUC and two trade union federations of the VINCI Group, which belong to a trade union that is a member of the NCP, carried out an inter-union mission to Cambodia from 17 to 22 September 2018, which visited the three CAMS sites. This information was made public by the President of SACTIW-U⁶ on 10 September 2018.

The NCP adopted the draft final statement by consensus on 6 November 2018 and consulted with the parties. The NCP adopted the final statement on 11 December 2018 by consensus except for two union organisations which, following a decision taken at confederation level, declined to join the consensus. The final version was sent to the parties before it was published on the NCP website.

3. Overview of the NCP's mediation procedure

The different stages of the mediation process are presented in the appendix. The NCP's action focused on the issues raised by the referral: the request for resuming negotiations for a collective bargaining agreement, the dismissal of 11 unionised workers, the rollout of the skills development plan ("multi-tasking") and the use of temporary workers.

➔ *The mediation procedure is presented in Appendix 1.*

4. Analysis of the substance of the questions raised on the effectiveness of the OECD Guidelines

The NCP endeavours to finalise its action within twelve months of receipt of the referral. The NCP notes that its action has yielded tangible results but that disagreements remain between the parties. At the end of its mediation, exchanges with the parties and a careful examination of the various documents in the file, the NCP answers the questions raised about the effectiveness of the Guidelines:⁷

⁶ Siem Reap Airport Cambodia Tourism Industries Worker Trade Union

⁷ The NCP took note of the initial referral and new requests made by the complainants throughout the procedure. The NCP also took note of the response elements provided by the Group and the various actions it took as soon as it received the referral and throughout the procedure both at VINCI Group level as well as by its subsidiary VINCI Airports and their Cambodian subsidiary Cambodia Airports.

Art. I 2 The NCP notes that, following the initial referral, the VINCI Group states that it wishes to apply the decisions of the LAC and that it respects local law.

The NCP's action revived VINCI's efforts to enforce LAC decisions, to settle two cases and to initiate research for a third case. The NCP notes that four workers and the complainants reject the decisions of the LAC and wish to negotiate increased compensation and the reinstatement conditions.

Art. IV 1 The NCP notes that there is no evidence that the VINCI Group has failed to respect human rights for the activities of its VINCI Airports subsidiary in Cambodia.

The referral does not establish how the Group may have failed to respect human rights. Moreover, the NCP has no evidence to show that these dismissals were part of an anti-union action.

Art V 1a and V 1e The NCP notes that in the context of the activities of its subsidiary VINCI Airports in Cambodia: 1) The VINCI Group respects the freedom of association of workers as provided for in the OECD Guidelines, i.e. to respect the right of the workers employed by the multinational enterprise to form or join trade unions and representative organisations of their choice (V 1a) and to be guided, in their activities, by the principle of equal opportunities and treatment in the workplace and not to discriminate against workers (V 1e) and that 2) The VINCI Group respects Cambodian law concerning the freedom of association of workers.

The NCP considers that the explanations provided by the Group on the 2014 strike show that excessive agency work does not seem to have been used. The NCP has no evidence to show that these dismissals were part of an anti-union action. In addition, the good offices of the NCP revealed the company's position as regards the facts that led to these dismissals and allowed it to be noted that CAMS, according to its declarations, had wished to apply the decisions of the LAC since 2015 but that it did not succeed for five cases. The NCP notes with satisfaction that its mediation allowed two cases (nos. 5 and 6) to be resolved and for research into another case (no. 9) to be initiated. It notes that the other three workers are seeking higher compensation than the LAC decisions provide for. It notes that the CLC, through its local affiliate SACTIW-U, is refusing CAMS' offers and that disagreements between the parties remain as regard to the situation of the vice-president of SACTIW-U. The NCP notes that the ITUC and the CLC are continuing their efforts vis-à-vis the ILO to discuss the functioning of the LAC with regard to international labour standards.

- ⇒ **RECOMMENDATION 1:** The NCP invites the parties to continue their dialogue in an attempt to find a favourable outcome to cases nos. 1, 2, 3, and 4.
- ⇒ **RECOMMENDATION 2:** The NCP requests CAMS to inform the NCP, the ITUC and the CLC as soon as it has information regarding case 9 and how it will be handled.

Art. V 1b, V3, V8: The NCP notes that the VINCI Group complies with the OECD recommendations on collective bargaining regarding CAMS's future company agreement, given the complex local legal context.

The NCP notes that CAMS operates in a delicate national context that weakens the position of unions, which risk sanctions if they engage in collective bargaining without being authorised to do so. The NCP believes that some of the actions taken by VINCI and CAMS are likely to move social dialogue forward in this difficult local context. The NCP notes that the ITUC and the CLC are continuing their work at the ILO to discuss the implementation of the Trade Union Act in relation to international labour standards. The NCP notes that the Prakas on the granting of MRS was published on 2 July 2018. It hopes that this will help to rapidly regularise the situation at CAMS and move social dialogue forward.

- ⇒ **RECOMMENDATION 3:** The NCP again invites the ITUC and the CLC to encourage their Cambodian partner, the trade union SACTIW-U, to participate in the negotiations and consultations proposed by CAMS's management to prepare the company's future triennial collective bargaining agreement.

Art V 1b, V3, V8 The NCP notes that the VINCI Group has complied with the OECD recommendations on collective bargaining concerning the skills development plan and that it should formalise a framework for dialogue to hold regular consultations on its implementation.

The NCP notes that collective bargaining could not be started in 2012 and that this work organisation is still an issue for certain CAMS stakeholders. The NCP considers that its action was useful: the Group immediately took two due diligence measures to address the complainants' concerns and the NCP's questions in order to identify psycho-social risks with an audit and then hold discussions about it with its social partners. The NCP welcomes these two due diligence measures while emphasising that this audit could be effectively carried out by an independent body. It hopes that they will allow in-depth dialogue with workers' representatives on the rollout of this system at CAMS to start.

- ⇒ **RECOMMENDATION 4:** The NCP recommends that the Group draw lessons from this audit for VINCI Airports, that is to say to take appropriate due diligence measures if the audit identifies risks of negative incidences vis-à-vis the Guidelines or to remedy possible negative incidences where appropriate. These measures could take the form of a corrective action plan. The NCP recommends that the implementation of this corrective action plan and its follow-up be subject to regular consultation with CAMS's social partners.
- ⇒ **RECOMMENDATION 5:** For the NCP, this risk analysis tool will certainly be useful for the Group to exercise due diligence and vigilance in the airports it manages. The NCP recommends that VINCI include it in its vigilance plan to regularly identify psycho-social risks associated with work organisation at airports, in order to identify the measures to prevent and mitigate the impacts to be taken, and to address negative impacts where appropriate.
- ⇒ **RECOMMENDATION 6:** The NCP recommends that CAMS formalise consultation between management and workers' representatives (unions and shop stewards) about the rollout of the skills development plan which is a subject of common interest within the meaning of the Guidelines.

§ 49 of Chapter V on "disguised employment": the NCP notes that the VINCI Group complies with the recommendations of the OECD, which follow those of the ILO. It notes that VINCI has planned due diligence measures vis-à-vis the temporary worker agencies that are its business relations according to the Guidelines. It also points out that the VINCI Group has proposed criteria for granting permanent tenure to long-term temporary agency workers to address the complainants' concerns.

An ILO note entitled "Disguised employment/Dependent self-employment"⁸ distinguishes wage employment, as the reference for the regulation of work, from self-employment and indicates that "disguised employment lends an appearance that is different from the underlying reality, with the intention of nullifying or attenuating the protection afforded to workers by law" (...) and that "workers are almost invariably classified as independent contractors, despite the fact that their work may be closely supervised". . The note then refers to the rise of the "gig or "on

⁸ https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang--en/index.htm

demand” economy. In the case in point, the NCP notes that the actual legal status of temporary workers is known;⁹ they are hired by temporary agencies; their recruitment corresponds to the activity flows of the airports.

The NCP notes that the mediation meeting and its follow-up action yielded significant results. VINCI committed to take a due diligence measure by auditing the temporary employment agencies with which CAMS works. The NCP notes the Group’s commitment to conduct these audits: this will firstly enable it to identify the risks inherent in these CAMS business relationships and then to take appropriate due diligence measures if any risks of negative incidences arise. This is in line with the OECD recommendations on corporate due diligence with respect to risks arising from business relationships with regard to the OECD Guidelines.

On the other hand, the NCP notes that the Group reacted quickly to the complainants’ concerns by proposing criteria for granting permanent tenure to temporary workers with a seniority of five years or more (i.e. six people) mentioned in the referral. The NCP believes that this proposal is a gesture of goodwill that goes beyond the Guidelines. The NCP notes that the Guidelines do not make specific recommendations on the use of temporary employment. The NCP regrets that in the absence of a response from the complainants, personal situations have not yet been able to be examined.

Finally, the NCP takes note of VINCI’s commitment to continue taking account of temporary workers in CAMS recruitment. It also notes VINCI’s desire to gradually reduce the use of temporary work based on the implementation of the skills development plan and provided the growth in activity is confirmed.

The NCP notes that the ITUC and the CLC are maintaining their allegations of “disguised employment” regarding the use of agency workers at CAMS. Some members of the NCP consider that there are still some points to clarify. However, the NCP considers that the facts put forward by the complainants have not been substantiated in order to continue the analysis. It notes that ILO Recommendation No. 198 is not legally binding.

- ⇒ **RECOMMENDATION 7: In order to report on due diligence measures to its stakeholders, the NCP invites the Group to inform the workers’ representatives of the results of the audits of the temporary employment agencies.**
- ⇒ **RECOMMENDATION 8: By capitalising on the lessons learned from the audits of CAMS’s temporary employment agencies, the NCP invites the Group to examine the specific situations of long-term temporary workers (over five years’ seniority) who may be present at CAMS on the basis of the criteria validated by the NCP.**

⁹ See Commentary on Employment and Industrial Relations, Chapter V of the OECD Guidelines, § 49: “In addition, it is recognised that working arrangements change and develop over time and that enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices. A disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status”.

5. Conclusion

- The NCP considers that, in view of the information provided, the VINCI Group complies with the OECD Guidelines. In a delicate national context, it is striving to maintain social dialogue in the company.
- The NCP thanks VINCI for its cooperation in the work of the NCP and its high level commitment. The human resources departments of the VINCI Group and VINCI AIRPORTS acted quickly, proactively and transparently throughout the procedure by taking appropriate due diligence measures with respect to their Cambodian subsidiary, which also participated in the mediation. This commitment enabled the Group to respond to all the questions raised by the referral and to quickly implement remediation actions. The VINCI Group has also been responsive to the complainants' and the NCP's questions and has authorised the transmission of its information to the complainants.¹⁰
- The mediation action of the NCP has had a real impact and allowed the completion of several due diligence measures enabling several problems raised by the referral to be remedied: local consultations with the unions on the 2018 agreement and to prepare the future MoU, making contact with workers to implement the decisions of the LAC, settling two personal cases, making an approach to a court concerning another worker, launching an audit of the psycho-social impact of the skills development plan, announcement of temporary employment agency audits, drawing up criteria for granting permanent tenure to temporary workers with long-term seniority (more than five years).
- During the procedure and its mediation, the NCP explained its mandate and the purpose of its action to the parties: to work towards ensuring the effectiveness of the Guidelines and to help the parties resolve their conflicts. However, it noted that some of the complainants' requests went beyond the mandate given by the OECD to NCPs. This is why it is inviting the ITUC and the CLC to continue their efforts at ILO level on questions raised concerning the conformity between international labour standards and Cambodian labour law. It is also inviting the ITUC and the CLC to continue helping potentially affected workers to use local remedies to challenge local administrative or jurisdictional decisions, and to refer the matter to the relevant Cambodian bodies as necessary/where appropriate.
- The NCP regrets that, despite its efforts to mediate, disagreements persist between the parties. The NCP also regrets that the dialogue between the SACTIW-U, a union affiliated to the CLC, and CAMS remains difficult in a complex local legal context, despite VINCI's commitment and availability throughout the NCP procedure. It hopes that the discussions that will begin after its final decision will help the parties to engage in calm and constructive dialogue in the interest of the Group and its workers.

The NCP is terminating its mediation and closing the referral. In accordance with Article 34 of its Bylaws, it has decided to follow up its recommendations. It asks the parties to keep it informed of developments in six months' and twelve months' time. It will then organise a follow-up meeting and publish a follow-up statement if it considers it relevant.

→ *Appendix 1: Overview of the NCP's mediation procedure*

→ *Appendix 2: Recommendations of the 2011 Guidelines targeted by the referral*

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¹⁰ With the sole exception of certain personal and financial data concerning workers that has been considered confidential as provided for by the NCP Bylaws.

APPENDIX 1: Overview of the NCP's mediation procedure

The mediation meeting held on 13 February 2018 did not resolve all the disputes between the parties but it made it possible to move forward on several subjects by allowing the parties to exchange their points of view directly in a neutral venue. This meeting had important results for the rest of the procedure. It resulted in points of agreement between the parties. It highlighted the persistence of disagreements on other points. It allowed the NCP to identify a number of concrete solutions that could remedy and answer several questions raised by the complainants. The NCP decided to continue its mediation and good offices, which enabled the exchange of information on elements underlying the referral and on possible options. At the same time, the NCP analysed the issues raised by the referral on the effectiveness of the Guidelines in the light of the details and explanations it became aware of as the procedure progressed.

◆ Regarding the resumption of the negotiation of a collective bargaining agreement (CBA) for the company:

The referral found that in 2017 and 2018 the unions present at CAMS - including SACTIW-U,¹¹ which is affiliated with the CLC and has the most members at CAMS - did not obtain most representative status ("MRS"). The NCP notes that they have stated that it is difficult for them to participate fully in the negotiations, discussions and consultations organised by CAMS. The NCP also notes that this situation means that CAMS has been unable to resume collective bargaining since the end of 2016. The NCP further notes that since the end of 2016, CAMS has regularly consulted its social partners to establish an annual company agreement (for 2017 and then for 2018) and to prepare for the negotiation of the next triennial company agreement (collective bargaining agreement or "CBA") in the form of a Memorandum of Understanding (MoU). The ITUC disputes this fact.

The mediation meeting did not lead to any significant progress on this point. The complainants asked the NCP to recognize the SACTIW-U union as CAMS's unique contact for the negotiation of the next CBA or, failing that, to determine its representativeness within an inter-union delegation. The NCP explained to the ITUC and to the Chair of SACTIW-U, who represented the CLC at the mediation meeting, that this request did not fall within the mandate of the NCP, while stressing that CAMS had invited all representative organisations of workers to the discussions. The NCP invited the Group to continue its consultations with workers' representatives in order to establish social dialogue despite the absence of MRS and without breaking the law.

The NCP monitored these consultations. In May 2018, CAMS presented the conditions for the preparation of the MoU and proposed setting up working groups to lay the groundwork. In June 2018, the ITUC informed the NCP that local unions felt they lacked clarity on the proposed process. At the beginning of July 2018, the NCP understood that the local unions were not, at that stage, in a position to participate in the discussions that the Group was proposing to them. In August 2018, the NCP was informed that in July 2018, the SACTIW-U union had advised CAMS of its refusal to participate in the negotiations or consultations on the next company agreement as long as seven personal cases - including six submitted to the NCP- which were still pending, had not been settled.

◆ Regarding the dismissal of 11 unionised workers:

The complainants raise the issue of anti-union dismissals, including the case of the vice-president of the local union SACTIW-U (case no. 1), and the refusal of CAMS to apply five decisions of the LAC - the Labour Arbitration Council (cases nos. 2, 3, 4, 5 and 6). The NCP reviewed 11 of the 12 cases submitted by the complainants (the last

¹¹ Siem Reap Airport Cambodia Tourism Industries Worker Trade Union

case was submitted too late). The NCP noted that four out of 11 cases were in fact already settled before the filing of the referral (cases nos. 7, 8, 10 and 11). The NCP consulted the eight LAC decisions of June and August 2015¹² mentioned to in the referral (cases nos. 1 to 8). They include two requests for reinstatement with payment of compensation without indicating the type of contract (cases nos. 2 and 3) and six authorisations for dismissals. They are a dismissal without compensation (case no. 1), four dismissals with compensation (cases nos. 4, 5, 6 and 7) and a special case (case no. 8). In three of these six cases, the LAC rejected CAMS's grounds of dismissal as "serious offences" and awarded severance pay (cases nos. 4, 5 and 6), specifying the elements of its calculation.

From the beginning of the good offices, the Group explained to the NCP the reasons for these 11 dismissals: six cases of suspicion of theft or corruption (cases nos. 1, 3, 6, 8, 9, 11¹³), three cases of inappropriate conduct at work (cases nos. 4, 5 and 7¹⁴) and two other reasons.¹⁵ VINCI indicated that CAMS systematically committed itself to accepting LAC decisions at the beginning of the LAC process but that it failed to implement five decisions that are the subject of the referral. VINCI explains that the vice-president of the union was dismissed for theft; CAMS followed the special procedure for a protected worker and applied the LAC decision which endorsed the June 2015 authorisation of dismissal without compensation given by the Ministry of Labour.

On 13 February 2018, the complainants challenged the LAC decisions and raised the issue of anti-union dismissals. Disagreement about the case of the vice-president of the union (case no.1) persists: the complainants are requesting his reinstatement, his compensation and the resumption of the trade union action. The mediation meeting nevertheless led to an agreement between the parties: VINCI undertakes to continue its efforts to implement the LAC decisions and the complainants agree to help it to contact five former workers. In May 2018, the Group indicated that two cases had been settled (cases nos. 5 and 6) and that CAMS was taking steps before a court in case no. 9.¹⁶ In June, following questions from the NCP, CAMS established a new methodology for calculating severance pay that is more favourable to workers. A final settlement has been prepared for the former vice-president but he still has not come to collect it.

At the end of the NCP action, five cases remain pending: the vice-president of SACTIW-U (case no. 1), two requests for reinstatement (cases nos. 2 and 3), an authorised dismissal with payment of compensation (case no. 4) and a special case (case no. 9). The NCP notes that the three former workers (cases nos. 2, 3 and 4) are refusing CAMS's offers and are claiming compensation for higher amounts than those laid down by the decisions from the LAC. The NCP notes that the vice-president of the local union has not appealed to the Supreme Court to challenge the decision of the Ministry of Labour. The NCP notes that on 2 July 2018, SACTIW-U informed CAMS that the settlement of seven cases - including cases nos. 1, 2, 3, 4, 9 and 12 submitted to the NCP - was a prerequisite for collective bargaining for the MoU.

◆ Regarding the implementation of the skills development plan ("multi-tasking"):

During the good offices, VINCI explained the origin of the skills development plan (new airport security standards, number of people "under the plane", response to the increase in activity) which is a work organisation system in place at all VINCI Airports. VINCI explained its content and the stages of its gradual rollout in Cambodia. In 2012, CAMS wanted to negotiate but the unions refused to enter into negotiations thinking that the workers would refuse this programme. As collective bargaining was not possible, management decided to implement the scheme on a

¹² 116-15 of 23 June 2015, 201-15 of 26 August 2015 and 200-15 of 2 September 2015.

¹³ <http://arbitrationcouncil.org/en/ac-decisions/arbitral-decisions>.

¹⁴ Information sent by VINCI: misappropriation of luggage containing I-Phones (case no. 1), theft of a tablet (case no. 3), \$150 requested to accept baggage (case no. 6), theft of a camera (case no. 8 and case no. 9), \$15 requested for a seat (case no. 11).

¹⁵ Information provided by VINCI: refusal of tasks (case no. 4), absence and lateness (case no. 5), serious misconduct (case no. 7).

¹⁶ Information sent by VINCI: end of short term contract (case no. 2), following a road accident (case no. 10).

¹⁷ Information provided by VINCI: flight suspension in 2017.

voluntary basis by providing flexibility in joining the programme. CAMS conducted consultations with workers in groups and individually. VINCI indicated that the subject is - and has been - regularly invoked during meetings with union officials.

At the mediation meeting, the complainants criticised the impact of this work organisation on the health of workers (without providing details). VINCI has announced that it will conduct an independent audit of the psycho-social impact of the skills development plan. The audit methodology was presented to the workers' representatives at the beginning of June 2018. The audit is in progress. Its results will be presented to the unions.

◆ Regarding the use of temporary workers:

In the initial referral, the complainants raised the issue of the violation of freedom of association through the use of temporary workers to “break the strike” in 2014. On 4 October 2017, they further raised the issue of the discrimination of temporary workers concerning working conditions and dismissals of temporary workers following their unionisation (citing three cases) that allegedly dissuaded them from joining unions. They believe that excessive reliance on temporary work creates a risk to workers' rights and that this issue must be the subject of the company's due diligence with the unions. Then, on 15 December, 2017, the complainants accused the Group of “disguised employment” with regard to ILO Recommendation No. 198. They referred to an estimate of 1,000 temporary workers, who, according to them, represented 40% of CAMS's workforce, without explanation of the figure, and they provided the names of 15 people, six of whom were alleged to have more than five years' seniority. They indicated that there were other potential cases. They considered that the conditions of employment of temporary workers corresponded to the criteria of Article 13b of ILO Recommendation No. 198 in respect of the duration of employment at CAMS, the fact that temporary workers work solely for CAMS, the fact that they are under the supervision of CAMS, the fact that they use equipment provided by CAMS and the fact that they are trained by CAMS. According to the complainants, this corresponded to the criteria drawn up by ILO Recommendation No. 198 for establishing a relationship between the worker and the enterprise and represented disguised employment within the meaning of the ILO. The complainants called for the granting of tenure for these 15 “disguised workers”, the opening of collective bargaining regarding the employment of temporary workers during seasonal peaks and the introduction of a system to grant permanent tenure to all temporary workers.

During the course of the procedure, the Group indicated that CAMS did not use agency workers during the October 2014 strike and that CAMS employs agency workers to respond to the seasonal peak activity increase, to replace staff in training and to limit the use of overtime. The Group indicated that temporary workers are employed by temporary employment agencies who are responsible for their working conditions, particularly for wages: there is no “disguised employment”. The Group provided detailed information on the number of temporary agency workers correlated with seasonal peaks and air traffic (between 21% and 27% of the workforce in 2017 in Siem Reap).

During the mediation meeting, VINCI refuted the charges of “disguised employment” and indicated that the temporary employment agencies will be audited. The Group proposed developing criteria to grant permanent tenure to long-term temporary workers (over five years) as requested by the complainants. These criteria were sent to the NCP on 7 May 2018. It validated them on 15 May 2018, and forwarded them to the complainants on 16 May 2018. The complainants criticised them but forwarded them to the relevant workers. The complainants did not authorise the NCP to forward the names of the six potentially affected workers to VINCI, and the latter is therefore unable to examine these situations.

APPENDIX 2

Recommendations of the 2011 Guidelines targeted by the referral:

Chapter I on Concepts and Principles

2. Obeying domestic laws is the first obligation of enterprises. (...).

Chapter IV on Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Chapter V on Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1.a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

1.b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

1.e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

3. Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

The specific instance also refers to Commentary 54 on Chapter V.

Website: <http://www.pcn-france.fr> and [#PCN France @ Trésor-Info](#)

Email: pointdecontactnational-France@dgtresor.gouv.fr

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