

Briefing Note

On

**“THE ROLE OF THE SENATE IN RELATION TO SUB-NATIONAL DEMOCRATIC
DEVELOPMENT (SNDD)”**

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Parliamentary Institute of Cambodia

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The Role of Parliament in Sub-National Democratic Development in Cambodia

I- Introduction to Decentralization Reforms in Cambodia

Decentralization is defined as the process of transferring of responsibilities for performing public service obligations from the central government to local or sub-national governments. Decentralisation reforms have been implemented throughout the developing world over the past two decades. Reforms are stated to have a number of beneficial effects:

- Enhancement of democratic culture and the participation of citizens in public decision-making;
- Balancing the power of the central government by transferring power to local authorities;
- Making the state more responsive to the needs of citizens;
- Improving the accountability of local authorities; and
- Delivering more efficient and effective local services that can respond to specific local needs and issues.

The Royal Government of Cambodia (RGC) has stated that the aims of Sub-National Democratic Development (SNDD) reform are to:

- Deepen popular democracy and accountability;
- Improve citizen participation; and
- Empower commune councils to help the government target rural poverty and deprivation more efficiently and effectively.

Forms of decentralisation include:

- ‘Fiscal Decentralisation’: the transfer of financial responsibilities to local authorities, in the form of grants from central government and/or powers to raise their own revenue;
- ‘Political Decentralisation’: giving citizens and their elected representatives more power in public decision-making. This implies that political representatives of local people (such as parliamentarians) and local officials can better understand the needs of their constituents;

- ‘Democratic Decentralisation’: the local election of Sub-National Authorities (SNAs) which are representative of and downwardly accountable to local populations, as is the case with commune councils in Cambodia;
- ‘Administrative Decentralisation’, where responsibilities and the corresponding resources to carry them out are transferred downwards from central ministries, either to branches of the ministry at different sub-national levels (called ‘de-concentration’), to SNAs to carry them out independently while still accountable to the central ministry (‘delegation’) or to independent SNAs with full decision-making authority (‘devolution’).

In Cambodia, the Sub-National Democratic Development (SNDD) process began in 2001 with the Law on Administrative Management of the Commune/*Sangkat*, which introduced directly-elected councils charged with producing five yearly development plans and annual investment plans for their jurisdictions through participatory processes. Transfers of funds from central authorities are given to commune councils to deliver services to meet the priorities stated in these plans, and other service providers. The services to be delivered to meet local priorities are funded through transfers from central level and can be met by other actors such as RGC line ministries at district and provincial level and Non-Governmental Organisations (NGOs).

The 2008 Law on Administrative Management of the Capital, Province, Municipality, District and *Khan* (the ‘Organic Law’) allowed for indirectly-elected councils at provincial and district level, began the process of detailing and mapping the functions and fiscal resources to be given to sub-national authorities (SNAs) and defined the relationship between Cambodia’s 24 provinces, 193 rural districts, urban municipalities and *khans*, and 1,633 communes/*sangkats* (hereafter ‘communes’). The current focus of reform is on the district/municipal level and will target improved service delivery which can achieve economies of scale where there is a common need across communes.

II- Successes and Challenges

SNDD reform has achieved a lot in a short space of time. Local elections have brought stability, all political entities have worked together to serve the people, and trust has been built between local authorities and citizens through collaboration on the management, preparation and implementation of local projects. Budgets to the commune level have topped \$200m and capacity in financial management has been built under the principle of ‘learning-by-doing’. These achievements are especially notable in a country without a long history of democratic governance or bottom-up participation in political life.

However, a number of challenges in the SNDD process still persist and are important in the next phase of reforms. These are:

1- Coordination between different key actors to advance SNDD reforms

Decentralisation is a reform of the whole government and involves 15 different ministries working together to decide on the responsibilities (or 'functions') in their sector that should be given to SNAs, with corresponding resources and capacity building programmes. Some ministries are well-advanced in this task, but others have been held up by a lack of coordination between the policies and planning of the ministries and the goals of decentralisation. In the long term, if all ministries do not work together this can result in insufficient resources for SNAs to meet their duties. It can also lead to incomplete local service delivery as often functions and resources from different ministries go together to deliver a service, such as a health programme delivered in a local school.

2- Communication at the local level

Good communication is of key importance at the local level so that SNAs understand their responsibilities and how they can use the revenue given to them to meet local needs. It is also important to let citizens know what to expect from their SNAs and how they can become involved in the planning, delivery and oversight of local services. Within SNAs, there may be rivalry or political problems that can hold up communication and coordination. For example, commune chiefs may seldom delegate tasks to first or second deputy chiefs as their representatives. As a result, commune work can stall if the chief is absent.

3- Lack of clarity in legislation

Decentralisation legislation detailed roles and responsibilities of SNAs and the relationships between them. However, some details remain unclear and were left to implementation. For example, legislation does not clearly define the role of the first and second deputy commune chiefs, as well as the commune clerks. Moreover, while the process of handing over powers and responsibilities to SNAs from the centre is included, mandatory and specific functions are not detailed which may cause confusion amongst SNAs about their precise duties.

4- Accountability and participation

At the commune level, officials are responsible for their actions both upwards to central authorities and higher levels of SNA, especially regarding use of funds, and downwards to citizens for the decisions they make on local priorities and for ensuring democratic development within their jurisdiction. Downwards

accountability is a new concept for many countries with a history of hierarchical governance, and the concept of accountability has not yet been completely understood and responsively implemented. The voluntary participation of people in both planning processes for local services and in overseeing the actions of local authorities is key for accountability and the efficiency of decentralisation generally. This can be difficult when citizens have little experience in becoming involved in local decision-making. In rural areas, citizens may have time to participate but may not know how to do so effectively and may not have the confidence to voice their opinions and needs. In urban areas, citizens may have more understanding about how they can make a difference but less time to become involved. This shows the need for a balance between national and locally-specific policy and regulations for decentralisation. In many cases the planning process may still be confusing to citizens and commune councils alike.

5- Funds for SNAs

Commune councils need sufficient funds to support local service delivery, through central transfers and locally-collected revenue. The Commune/*Sangkat* Fund (CSF) is a transfer from central to local government, and in future the district will also be given a fund for service delivery. At present, the CSF only represents a small proportion of GDP, 0.26%. A survey of 37 developing countries shows that, on average, the common rate of central transfers for local authorities to meet their duties is around 3% of GDP. International best practice shows that there should be a mix between central transfers and locally-generated revenue to allow SNAs to act autonomously. At present, despite being mandated by law, very little locally-sourced revenue is collected. Communes could be allowed to collect small fees from traders at markets or on common products within the commune, which would help improve local revenue and pilot revenue collection processes until SNAs have more responsibilities in this area.

6- Capacities of SNAs

Most of the elected commune council members particularly in the rural areas are the older and respected residents in the community. Except for the commune clerk, many of them may have low experience and may find new ideas and practices such as financial management challenging. Though training has been provided to councillors by the Ministry of Interior and other actors such as development partners, often these are seen as too broad, not comprehensive enough and lacking locally-specific detail. Capacity is especially important in financial management and there may be problems with understanding how to deliver all types of services rather than only certain types such as small-scale infrastructure. Evidence shows that commune councils mainly use the CSF to deliver small-scale infrastructure and may be unsure about how to deliver important social services needed for

poverty reduction. It may be important for capacity building programmes to allow officials to visit and learn from other SNAs with good practice in financial management and service delivery.

III- The Role of the Parliament in the SNDD process

Based on the needs for SNDD reform generally stated above and international best practice, the parliament can have a key role to play in the following areas:

1- Improving the implementation of SNDD reforms through the Parliament's representation function

Parliamentarians can strongly influence the SNDD process through their representation role, holding public consultations at the local level and following up with the RGC and relevant Ministries on specific issues raised. Public consultation programmes aims:

- To obtain information from citizens to help the RGC and Parliament to make decisions in the interest of citizens;
- To inform citizens and SNAs about SNDD legislation and policy; and
- To help address challenges that may have occurred during implementation of SNDD legislation.

If carried out effectively, it can not only help legislators successfully fulfil their representation roles, but can also provide them with information that can help them execute their oversight and lawmaking roles. As stated in the Senate Internal Rules, Senators are obliged to initiate seminars or forums with participation by citizens and SNA councils to either find out information about issues in a constituency or to conduct a consultation on a specific topic or issue, including some of the challenges for SNDD that are mentioned above.

Benefits of holding consultations in constituencies for the SNDD process also include:

- Creating links between citizens and the parliament, and showing that the Parliament can address local issues. By getting involved in local problems and helping citizens, parliamentarians can show that parliamentary democracy can affect people's lives. A parliamentarian who understands local issues through public consultation will not only generate support from voters at election time but will also demonstrate their value to the party, meaning they are more likely to advance politically than a member who has remained silent on issues important to their constituents.
- Allowing parliamentary commissions to hear the views of witnesses and stakeholders who are unable to come to the capital. This lets parliamentarians understand more about the types of

services that are required in their locality and whether these needs are being addressed by SNAs. This helps to identify gaps in implementation of SNDD legislation through input from those that are directly affected by it.

- Providing citizens and SNAs with detailed information and answering questions about the SNDD aims, process and legislation. Parliamentarians have the access to information and the ability to receive answers from relevant authorities which is often unavailable to local elected officials and other community representatives. This can be done through the the Regional and Provincial Offices of the Parliament (the Department of Collective Territory and Regions of the Senate and the Department of Provincial Constitutional Offices of the National Assembly), which, if used correctly, represent a valuable community resource.
- Empowering citizens to use the SNDD process and legislation to become involved in local decision-making. When parliament works with local officials, non-governmental organizations and ordinary citizens, these groups are motivated to work together improve their lives and their communities.

It is important for parliamentarians to follow up on what occurred during consultation so that local people continue to engage in future exercises. This can be achieved by:

- Writing to relevant Ministries no more than one week following the consultation to address issues raised, with letters also delivered to SNAs through the Provincial/Regional Offices of the Parliament;
- Holding roundtables and meeting with Ministry and RGC representatives to get full explanations of issues raised in public consultations, reporting back their findings to constituents and drawing up plans of action to address the issues raised;
- Using the Provincial/Regional Offices to communicate with SNAs and the public.

2- Promoting good policy and a positive environment for SNDD reforms through the Parliament's legislation and oversight functions

The Royal Government of Cambodia will require expertise and assistance to design reforms and write legislation to support reform. In its legislation role, it is critical for the parliament to have a strong knowledge of SNDD legislation, and to attempt to ensure that this legislation is clear and accurate. In the internal rules of the Senate, Senators are to be actively involved in drafting legislation with regard to SNDD. Article 32 of the Internal Rules of the Senate states that *“All Senators are obliged to scrutinise draft or proposed laws, focusing on the whole content of those draft or proposed laws which are related to Decentralization and De-concentration implementation in their own region, and must submit their*

comments no later than 3 days, or 1 day if urgent, before the commission meeting". Parliament can also scrutinise the National Budget Law and make recommendations on the level of central funding to SNAs.

The Rules also state that the Senate should invite government and ministry representatives, experts, the public and other relevant stakeholders to explain key issues, and give recommendations regarding problems raised by their constituents. Usually this type of public consultation is conducted by specialised parliamentary commissions. A commission be used by parliamentarians to give commissions the information they need to provide more accurate input into proposed legislation and amendments to existing legislation. Organizing public consultation together with two or more commissions is a useful way to coordination parliamentary response to specific local citizen problems and issues and reduces difficulties arising from contradictory actions and proposals, helping to save limited financial resources.

The Internal Rules also suggest that not only the specialised commissions of parliament working on SNDD should attend, but also other commissions of Parliament must take into consideration the issue of SNDD as a cross-cutting topic that need to be integrated in their plans of action. Expertise in attempting this can be built by holding regular consultations with people in a parliamentarian's constituency, involving local civil society organisations and other institutions that are close to citizens in order to link reforms closely to realities at the local level, then using these realities to influence drafting or amending of legislation.

IV- Conclusion and Recommendations

Based on the strong potential of the Parliament to promote successful SNDD through fulfilling its constitutional duties, a number of recommendations for further action to account for some of the challenges in the SNDD process can be made:

- Requests for research to PIC on any of the topics/challenges mentioned in this paper.
- Holding consultations with commune councils in their constituencies to understand more about: issues of local capacity to deliver services; types of services delivered; adequacy of funding for service delivery and possible sources of local revenue collection; understanding of roles and mandates; how the council communicates with each other and citizens; and the level and activeness of citizen participation.
- Holding consultations with local citizens and civil society organisations to understand more about: how they participate and interact with their commune council; any issues or concerns they feel with

the performance of commune councils; and the extent to which their commune council responds to their concerns and service priorities.

- Holding forums at the district level, inviting representatives from district and provincial level and involving different commune councils in their constituency to draw attention best practices in certain communes and discussing common issues or problems.
- Holding expert hearings and inviting representatives from Ministries involved in the SNDD process to promote inter-ministerial coordination and to highlight issues of concerns uncovered during constituency visits.
- Requesting regular meetings with the National Committee for Sub-National Democratic Development (NCDD) to help the Parliament have an up-to-date knowledge of the current dynamics of reform, and to allow parliamentarians to offer advice on policy design based on lessons learnt through parliamentary outreach activities.
- Proposing alterations or additions to legislation based on issues raised during constituency visits, and discussing these alterations with national stakeholders such as relevant Ministries and NCDD.

1- Case study - Cambodian Parliamentarians Undertake a Series of Public Consultations in Early 2010

In the first three months of 2010, a number of public consultations were carried out in different provinces of Cambodia, focused on specific issues of importance identified by the parliament and local communities, with the participation of MPs and Senators as well as development partners working with the Cambodian parliament.

In early January 2010, a cross-party delegation led by H.E. Mr. CHEA Cheth, together with support from the Cambodia Canada Legislative Support Project (CCLSP), UNDP-LEAP and the TCS, organized a field mission to Kampong Thom and Preah Vihear provinces to allow Senators to familiarize themselves with the work and challenges of the commune councils in those provinces in relation to the execution and implementation of the budget law, and to discuss how to further involve women in commune councils and local development. Throughout the second half of January, meetings led by representatives of the 8th Commission of the Senate, H.E. Mrs. PUM Sichan and H.E. Mrs. LOR Kheng, were held in eight districts of Phnom Penh. These meetings were co-organized by CCLSP, together with the Senate's Territorial Department, Women's Caucus and women commune council members. They were held to discuss progress towards Cambodian Millennium Goals 3, 4 and 5, relating to gender equality in political

representation, the mortality rate of children in Cambodia, and women and children's health. These meetings allowed Senators to find out on-the-ground facts about progress towards these goals, and to discuss local government issues and challenges with the commune councils.

In February 2010, parliamentarians visited the provinces of Koh Kong and Mondolkiri. In Koh Kong province, a cross-party delegation led by H.E. Mr. KONG Sareach, Chair of the Fourth Commission of the Senate, met with commune councils and local civil society organizations to increase their awareness of local issues and schemes such as credit and savings groups, eco-tourism projects and environmental protection. This mission met with the provincial governor to raise these issues and concerns and discuss follow-up action. The mission to Mondolkiri was organized by the Department of Women's Affairs with the support of CCLSP and Heinrich Böll Stiftung and led by H.E. Mrs. MEAN Soman, Chair of the Women's Group of the Senate. Topics discussed during this meeting in the provincial capital included the operation and challenges of commune councils in the province, health care for women and children and gender issues.