



**វិទ្យាស្ថានសភាកម្ពុជា**  
PARLIAMENTARY INSTITUTE OF CAMBODIA

# RESEARCH PAPER

The Department of Information of the Senate of Cambodia

## **The Nature and Functions of Cambodia's Parliament and Government: Examined in an International Context**

May 2017

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## Executive summary

A Parliament is a vital element in a democracy: it exists to ensure that the views and concerns of the entire electorate are taken into account by the country's government, and that the government cannot make new laws or impose new taxes without the agreement of MPs, who have been democratically elected by the people to represent them.

This paper aims to provide a brief overview of Cambodia's parliamentary system: how it is structured and why, what its major functions are, and how Senators and MPs are selected. It also places Cambodia in an international context by looking at parliamentary and voting systems in other parts of the world, with a particular focus on the UK, US and France.

In general, international terms, the paper explains the 'separation of powers' in the division of government responsibilities – the legislative, the executive and the judiciary - ensuring that decision-making is not concentrated in any one branch. The exact division of power is often specified in a country's Constitution, but the general purpose is to provide a system of checks and balances in the ruling of the country. The paper then examines the three functions of Parliament – representation, lawmaking and oversight – and what each entails.

Within general parameters, each country's Parliament has unique features that respond to its history, culture and sometimes its religion. The bicameral Parliament of Cambodia was established since 1947 when the first Constitution was enacted, but it was dissolved in 1975. The present Cambodia's Parliament is relatively new as it has just been improving from 1993, and with many aspects it has drawn on the experience of other countries. For instance, its system of government can be described as 'a constitutional monarchy with a ceremonial monarch', which is similar to that of the UK. In contrast, the US has a 'full presidential republic', while France has a 'semi-presidential system'. These differences largely relate to the role assigned to the monarch (if there is one), the role of the President (if there is one) and the way in which the two Houses of a Parliament (Cambodia emulates some 74 other Parliaments in the world that are bicameral) relate to each other, or share power. Voting systems also differ. For instance, the UK's 'First-past-the-post' system means that whoever wins the most votes in a particular constituency within the country is elected, while Cambodia's 'proportional representation' system endeavors to allocate parliamentary seats to parties according to the percentage of the overall vote they receive from electors, nationwide. There is, however, no democratically 'perfect' system in terms of the separation of powers, the system of governance or the voting system.

Focusing specifically on the Cambodian Parliament, the paper then concentrates on its foundation, as laid out in the Constitution, and its development and consolidation since the signing of the Paris Peace

Agreements in 1991. It outlines the different roles of the National Assembly and the Senate, how members of each are selected and appointed, and how the two Houses interact. The separation of power in Cambodia between the executive, legislative and judiciary branches is examined, as is the way in which the Parliament fulfils its legislation, representation and oversight functions. Looking in more detail at how the Parliament performs its roles, the paper then describes the specialized Commissions, and the many Senator Groups that focus on specific issues or international relationships. The paper concludes by outlining the ways in which the Senate liaises with the media so that a two-way communication with all electors (commune/sangkat councils) and the people in the 8 constituencies of Cambodia is promoted and the Parliament is thus understood by the people and is better able to represent their best interests.

## 1. Introduction

This paper aims to provide a brief but comprehensive explanation of Cambodia's government and parliamentary system. It explains why Cambodia has a Parliament, what it does, how it is structured and how Senators and MPs are selected. The paper also places Cambodia in an international context by looking at parliamentary and voting systems in other parts of the world, taking a particular comparative look at the UK, US and French equivalents. The final section examines the progress that Cambodia's relatively young Parliament has made, and the areas in which further development is particularly focused. The ultimate aim of this paper is to provide the information to help new Parliamentarians, parliamentary staff and others to gather a brief but thorough understanding of the context in which they work.

## 2. The role of Parliaments in democratic societies

### 2.1. What is 'democracy'

In the words of the US President Abraham Lincoln, 'democracy' can be loosely defined as 'government of the people, by the people, for the people'. More explicitly, its key elements generally include: the right of the people to choose policy makers in general elections; equality in that every adult has the right to an equal vote; a choice of candidates and the freedom for voters to make their own choice; and the right of the majority to have their way without showing intolerance to the minority view.[1] Although, worldwide, views on what 'democracy' is, and the freedom that comes with it, differ, these key elements are generally considered important, and can be seen in Cambodia's Constitution and to the approach the country takes to its system of government.

### 2.2 Why do countries have Parliaments?

A Parliament is a vital element in a democracy: the existence of a Parliament is not synonymous with democracy, but democracy cannot exist without a Parliament. [2] A Parliament exists, therefore, to ensure that the views and concerns of the entire electorate are taken into account by the country's government, and the government cannot make new laws or impose new taxes without the agreement of MPs. It is also true that developments in communication technology and increasing media coverage of politics have increased the visibility of Parliaments and politicians, raising public expectations of what they can deliver, not all of which are realistic. [2]

It is not, however, feasible for all the electorate to have a say in every decision made in the governance of their country (although referendums provide an occasional means for this kind of 'direct democracy'), so the voting system enables electors to choose people who will act on their behalf, a process otherwise referred to as 'representative democracy'. These chosen people are the Members of Parliament.

## 2.3 The ' separation of powers'

The ' separation of powers' refers to the division of government responsibilities into separate branches to ensure that power within a democracy is not concentrated in any one branch, and that a framework is created that allows for checks and balances in the ruling of the country: decisions are thus generally shared to degrees that vary, internationally, between the three branches of legislative, executive and judicial, in an interaction that is often – but not always - formally set out in a country's Constitution.[3] The executive branch comprises presidents, prime ministers and cabinet ministers, who normally have much of the political power, but they are held to account by the representatives of the legislative branch – in Cambodia, the bicameral Parliament of the Senate and National Assembly - who draft and debate laws. The judiciary's foremost role is to defend and uphold the law in general and, where relevant, the country's Constitution (the UK, for instance, does not have a written Constitution, but its judiciary still exists to ensure that the law in general is being properly interpreted and upheld).[4]

## 2.4 The three functions of the Parliament

As the next section will discuss, although throughout the world parliaments differ in size, how their members are elected, how they relate to political parties, in their interaction with the executive branch of government, in their roles in lawmaking and budgeting, and so on, they are all agreed to have three main functions: [3]

### Representation

In their representation role, Members of Parliament engage with the people to ensure that their worries, problems and suggestions are reflected in the way the country is governed (and more specifically in the laws that are drafted), and that they have confidence in their Parliament to act in their best interests. In a democracy, MPs act primarily on behalf of the people. Indeed, in a 2008 global poll, conducted by World Public Opinion, [5] 85 percent of people questioned said that ' the will of the people should be the basis of authority of the government' thus giving ' representation' a primary role. Of course the degree to which a ' Parliament' aims to represent the people differs. For instance, in Soviet-style systems, such as that of Vietnam, ' Parliaments' meet for only limited sessions, and authority and legislation are derived from the Communist Party: there are consequently fewer mechanisms through which the people can express their opinions. [2] In contrast, Switzerland's focus on national consensus and compromise means that ' direct democracy' in the form of referendums is a regular feature. [6]

### Lawmaking

MPs are also responsible for drafting laws and, importantly, for ensuring that these laws properly reflect the views of the people, that they are as just and

equitable as possible and that they are fit for purpose. They ensure that their lawmaking is comprehensive and thorough by subjecting draft laws, or amendments to laws, to debate, to scrutiny by expert panels, and ultimately to a vote. In democracies (like Cambodia) that have two Houses, these laws are debated and voted on in both to further ensure that no problems have been overlooked.

## Oversight

In justification of the 'separation of power', the third function of the legislative branch (or Parliament) is to oversee government (executive) spending and performance, to ensure that programs are being properly and effectively implemented and that the executive is operating in the best interests of the people. Again, the processes and powers of Parliaments throughout the world in fulfilling this function differ, as does the degree to which there is a separation of power between the executive and the legislative branches (which will be more fully discussed later), but they share a general responsibility for this 'check and balance' function.[7]

That said, the Global Parliamentary Report suggests that, in many parts of the world, people question how effective their Parliament is in holding the government (executive) to account.[2] This has accompanied an overall growth in government, with consequently more for Parliaments to scrutinize.

## 2.5 A framework for a democratic Parliament

Given the role and function of a Parliament in a democratic system of government, the Inter-Parliamentary Union [8] maintains that it should have the following characteristics:

- Representative – that it not just represents the people as one of its three key functions, but that it is also, in itself, representative of the people. I.e. it is socially and politically representative, ensuring equal opportunities and protection for all of its members
- Transparent – that it operates openly, allowing as much media access as possible, and that it is transparent
- Accessible – that people at all levels can be involved in its activities
- Accountable – that MPs are accountable to the people for their activities in office and behave with integrity
- Effective – that MPs are effective in delivering democratic values, and that they perform their legislative and oversight functions in a manner that serves the needs of the population as a whole.

### 3. Different systems of government

#### 3.1. How do Parliaments differ worldwide?

In 2012 it was reported that 190 out of 193 countries had some form of functioning Parliament. [2] Within the general parameters outlined above, it could be argued that each Parliament is unique and reflects its national context, particularly its culture, history and sometimes its religion. Furthermore, many Parliaments are the result of an evolution process that has taken place over many centuries and this accounts for some of their peculiarities and traditions. For instance, Cambodian bicameral parliament was established since 1947, but this system of parliament was dissolved in 1975. The current Cambodian National Assembly was established only in 1993 when the Constitution was enacted, and the Senate in 1999. In contrast, Iceland's Althing (Parliament) can trace its foundation back to 930, [9] and the British Parliament originated in the 11th century.[10] Decisions about who can vote have, over centuries, also had an impact on the composition, traditions and practices of older Parliaments. In the UK, for example, before 1832 only men aged over 21, who owned property over a certain value, could vote, which excluded all women, and 'ordinary' people, especially the poor and working classes. Thereafter, expansions to this limited voter base came only gradually and 'ordinary' women were not given a vote until the relative recent Equal Franchise Act of 1928. [11]

#### 3.2 Different systems of government

Classifying the different systems of government throughout the world can be difficult: for instance, as already mentioned, what is understood by 'democratic' varies. For instance, some countries that describe themselves as 'democratic republics' (such as the Democratic Republic of the Congo, Ethiopia and North Korea) do not adhere to the descriptions of 'democratic' or 'republic' as they are understood in other parts of the world - where the definition of 'one party states' is more likely to be applied. Indeed, in the Economist Democracy Index 2015, these countries were ranked in the 123rd, 144th, and 167th (bottom) places, respectively. [12] It is, however, for the purposes of choosing examples for a simple comparison, possible to list three examples of government systems for this paper. [13]

##### 3.2.1 Constitutional monarchies with ceremonial monarchs

Countries to which this system applies have a monarch who is generally guided by a Constitution whereby his or her rights, duties and responsibilities are spelled out in written law. The Cambodia's political regime adheres to a constitutional monarchy; the King acts in compliance with the Constitution, the principles of liberal multi-party democracy. The King reigns but does not rule. He acts as the Head of State for life, incarnate the symbol of national unity and eternity, and plays a vital role as an arbitrator to guarantee the smooth functioning of public authorities. All power belongs to the citizens; citizens use their power through the National Assembly and the Senate (legislative power), the Royal Government (executive power) which is led by the Prime Minister,

and courts (judiciary). The same system applies to the UK, despite that country's lack of a written Constitution. This system differs therefore from an 'absolute monarchy', such as Saudi Arabia or Brunei, where the monarch rules unfettered by laws, a Constitution or any legally organized opposition.

#### Case study: United Kingdom

In the UK, the monarch is the Head of State in a largely ceremonial role. The Prime Minister – who is the leader of the political party with the majority of elected MPs - is head of the UK Government and is ultimately responsible for the policy and decisions of the government. The Prime Minister, who is also an MP, chooses the government Ministers - who are drawn from Parliament - and chairs the Cabinet (comprising the most senior Ministers). This means that in the UK the legislative and executive branches of government are very closely linked.

The Parliament is bicameral. The House of Commons has the most authority and comprises around 650 Members of Parliament who are directly chosen by the electorate for a five-year term. The House of Lords has less authority and exists to revise legislation and to act as a check on the House of Commons, although its power to block bills is limited to one session: ultimately, therefore, it cannot act against the 'lower chamber'. There is no fixed number of members in the House of Lords, and membership is unelected. Almost all of the members these days are not hereditary peers (as was once the case) but are 'life peers'. This means that they have been chosen by the monarch, on the advice of the government, to sit in the House of Lords for the duration of their lives. They cannot, however, pass this right on to their children. Life peers are generally people who have been distinguished figures in fields such as education, health and social policy, are senior representatives of the Church of England, or who are otherwise considered to have made an outstanding contribution to the country.

For centuries the House of Lords undertook the country's judicial branch of government – which meant that there was no real separation between the judiciary and legislature branches of government. However, in 2009 the judicial powers of the House of Lords were transferred to a separate Supreme Court. [14]

The British Parliament is based in London, but because the UK comprises four countries, it has three devolved administrations. The Scottish Parliament has legislative power over matters that do not involve the UK Parliament and it has some tax-raising powers. The Welsh Assembly has less power and cannot change taxes or legislation: unlike Scotland and Northern Ireland, Wales shares its legal system with England. The Northern Ireland Assembly has some legislative power, but no mandate to change taxation.

### 3.2.2 Full presidential republics

In a presidential system, the head of the government is also the Head of State. He or she (the President) leads the executive branch of government that is separate from the legislative branch and is not responsible to the latter.

Case study: The United States of America

The Constitution of the United States sets out the form of government the country should follow, and is the supreme law of the land. In accordance with the Constitution, the President is the Head of State, and the Commander-in-Chief of the armed forces. The American electorate have the right to vote for the President (through the Electoral College – see below), and he/she also leads the other members of the executive branch of the US government, namely the Vice President, the Cabinet, executive departments, independent agencies, and other boards, commissions and committees.[15]

Americans do not vote for the President directly, instead they elect specific people to the Electoral College. This body comprises 538 electors drawn, proportionally, from each State. However, a set of electors are appointed by each political party in each State so that the winner in each benefits from having his or her electors chosen to cast their votes in the final decision. In other words, people are voting for electors to join the Electoral College rather than for the presidential candidate directly. Most States apply a winner-takes-all approach, which often means (as in the most recent US presidential elections) that the candidate appointed President is not necessarily the one who received the most votes. Indeed, in the 2016 Presidential election, Hillary Clinton received almost 3 million more votes than Donald Trump, who is now President. [16] However, the Electoral College was established by the Constitution as a compromise between election of the President by a vote in Congress, and election by popular vote of the electorate at large [17] so it is unlikely that this method of electing the President will change in the foreseeable future, despite its apparent potential to produce an 'undemocratic' result.

The President shares his/her (executive) power with the legislative branch and the judiciary, which are independent of each other, but rely on each other's input to function. [15] The main presidential duties are to implement and enforce laws passed by Congress, which is the legislative branch of the US government, and comprises the Senate and the House of Representatives (collectively known as Congress).

The 435 members of the House of Representatives are divided among the 50 States according to the number of people living in each: i.e. heavily populated States have more Representatives than those with a more sparse population. Each Representative serves a two-year term before reelection. Each of the US states is given two Senate seats, and each Senator serves for a six-year term before reelection.

Although the two elements of Congress share power in that both have to pass a bill in order for it to become law, as their name suggests, Representatives represent a specific group of citizens, whereas the Senators act (more impersonally) in the interests of their specific States. The Senate is intended to be a more deliberative body, with Senators looking at issues in more depth than their counterparts in the House of Representatives. However, the Constitution does vest certain powers exclusively in the House of Representatives. For instance, it has the power to initiate spending bills, as well as exclusive authority to impeach officials and choose the President in an Electoral College deadlock.

The judicial branch of the US government primarily comprises the Supreme Court and the US Court of Appeals, which includes criminal and civil courts. Its major function is to settle disputes between the legislative and executive branches of government, to interpret the meaning of laws, and to ensure that laws comply with the intentions of the Constitution. Members of the judicial branch are appointed by the President and authorized by the Senate.

The US is unusual since every state in the Union has the power to make its own reforms as long as these are in accordance with the Constitution.

### 3.2.3 Semi-presidential system

Countries with a semi-presidential system of government have a dual executive with power shared between the President of the Republic and the Prime Minister.

#### Case study: France (the Fifth French Republic)

In France, the President is Head of State and is elected for five years in a national vote. His/her job is, among other tasks, to ensure compliance with the Constitution, to preside over Cabinet meetings, promulgate laws, call for referendums, dissolve the Parliament, take command of the armed forces and negotiate and ratify treaties. The Prime Minister is the head of the government, which is constitutionally responsible to the National Assembly. Selected by the President after an election held by the National Assembly, the Prime Minister directs and coordinates the actions of the government, ensures the implementation of laws and exercises regulatory power. Those two people, along with the Cabinet and Ministers (appointed by the President upon a proposal by the Prime Minister), comprise the executive branch of the French government. [18]

The legislature of the French government is bicameral comprising a National Assembly and a Senate who share legislative power. However, if the two Chambers of Parliament fail to agree on a particular bill, the National Assembly has the final say.

The National Assembly consists of 577 MPs, who are elected to five-year terms. They are national officials, but also represent local constituencies. [19]

There are currently 348 Senators, half of whom are elected every three years (the term of office is six years). Senators are elected indirectly by around 150,000 officials ("grands électeurs" or the Electoral College), including regional councilors, department councilors, mayors, city councilors in large towns, and members of the National Assembly. However, 90 percent of the electors are delegates appointed by councilors.

Also significant are the Constitutional Council and the Council of State. The former is a special court that particularly examines the constitutionality of bills and international obligations accepted by France, among other tasks. The latter is an independent tribunal acting both as legal adviser to the executive branch and as the supreme court for administrative justice. [20]

France has a separate judicial branch of government with an independent judiciary that does not answer to, and is not directly controlled by, the other two branches of government.

## 4. Election systems

### 4.1. The function of elections

If a democracy is to represent the will of the people, there needs to be a way in which their views can be fundamentally reflected in the government system. This is achieved through elections in which all those who are eligible have the chance to indicate their views through a free vote. Thus, the main function of elections are to ensure that the party composition in the Parliament represents the party views of the electorate, and that the Parliament is accountable to voters and is, therefore, strong and stable. There are, however, a number of different systems, each with its own characteristics. [21] It is also common for countries to use different systems for electing members to Houses in a bicameral Parliament, or to appoint a President or Prime Minister, adding still more complexity to the picture.

### 4.2 How do electoral/voting systems differ?

Although there are many different voting systems, for simplicity this paper will look at the most commonly used in countries worldwide: first-past-the-post; proportional representation (including party list proportional representation); the two-round system; and mixed electoral systems. The benefits and drawbacks of each will be outlined. [22]

#### 4.2.1 First-past-the-post

Also known as Single Member Plurality, Simple Majority Voting, or Plurality Voting, First-past-the-post (FPTP) simply means that whoever receives the most votes is elected. It is, therefore, not necessary for the candidate to have a majority of the votes cast (i.e. more than 50 percent), but simply to have received more than any other candidate (on an individual basis). This system

is commonly used and examples include the election of Members of the UK's House of Commons, for most US States in electing Members of Congress, and for one or more Houses in Myanmar, India, South Korea, Canada, and many others.

### Benefits

The FPTP is simple for voters to understand and easy to count. It maintains a direct personal link between a parliamentary candidate and his or her constituency as the two can, in this system, be directly linked. Given that the main parties stand a good chance of winning most seats, it can also more often produce a strong, stable government, with less need for coalitions and the consequent watering down of policies that can result from the need to find a compromise between parties with widely differing stances.

### Drawbacks

The problems of FPTP focus primarily on 'wasted votes'. The dominance of the major parties often means that smaller parties, although receiving a reasonable proportion of votes, win few, if any, seats. Thus, voters feel that supporting smaller parties means that their votes are wasted. At the same time, the composition of the Parliament does not represent the true views of the electorate, and the party that actually receives the most votes – for example, one for whom votes were more evenly spread across the country - might not be the one that forms the government.

Furthermore, unless enough seats are closely contested, FPTP can also be unresponsive to changes in public opinion in that one party can still lose a lot of support without necessarily losing its overall majority. FPTP is also dependent on the drawing of electoral boundaries which might not keep up with demographic changes.

#### 4.2.2. Proportional representation (including Party List PR)

A proportional representation system eliminates the fear of a wasted vote as parties are represented in the Parliament in accordance with the percentage of the vote they receive. In party-list proportional representation systems (Party List PR), parties make lists of candidates for election and seats are allocated to each party according to the percentage of votes they receive, picking candidates from the top of the list, down. This system is used by Cambodia, along with Austria, Denmark, Mozambique and Poland, among many others.

### Benefits

In proportional representation systems even the small parties stand a good chance of being represented. They also lessen a tendency for 'strategic voting' among the electorate, where people vote not so much for the candidate of their choice, but more for the candidate who might prevent their least preferred candidate from being elected. Also, since it is often the case that no single party holds an absolute majority, the system encourages compromise and consensus-building where a greater spectrum of views is taken into account.

In addition to the advantages of the general proportional representation systems, Party List PR offers the possibility for a wider selection of candidates, perhaps representing minority groups or including women, to appear on the list.

#### Disadvantages

The lack of a clear, strong majority can, however, hamper a Parliament in carrying through reforms: debate can produce little concrete result and too much compromise can render reforms ineffective. If coalitions have to be formed, a parliament can appear weak and indecisive as it tries to move forward by embracing many conflicting views. Furthermore, it can allow smaller extremist parties to gain greater power.

Other disadvantages, particularly in Party List PR, is that the link between parliamentarians and constituents is weakened with the risk that local issues suffer. List PR also places considerable power in the hands of the party leadership who have total control over who is likely to be elected. Furthermore, independent candidates, who do not belong to any recognized party, are likely to be excluded.

#### 4.2.3. The Two-Round System (TRS)

In the Two-Round System (also known as the second ballot, or run-off voting) voters cast a vote for their preferred candidate. If no candidate attracts the required percentage of votes to win outright (usually at least 50 percent), then the candidates with the fewest votes are eliminated with two remaining. A second round of voting then produces a winner. France is among the countries that use this system to elect their President and National Assembly, while many other countries – such as Brazil, Egypt, Indonesia and Peru – use it to pick their President.

#### Benefits

TRS is beneficial in giving voters a chance to change their minds in a second vote, and ultimately produces a clear winner. It also enables losing candidates in the first round to influence candidates in the second round in return for endorsing them among their supporters (who have now lost their preferred candidate and are available to vote for someone else). It also eliminates the FPTP problem when two similar parties split the vote, enabling a less popular candidate to win.

#### Disadvantages

The need for two elections in close succession puts pressure on the electoral administration and can also, like FPTP, produce disproportional results, especially when the runner-up is only narrowly beaten.

#### 4.2.4. Mixed Electoral Systems

To avoid some of the pitfalls of the systems discussed above, some countries use mixed systems, although the compositions vary. There are two major types – Parallel Voting and Mixed Member Proportional (MMP).

Parallel Voting describes a mixed electoral system where voters in effect participate in two separate elections for a single chamber using different systems. Parallel Voting differs from MMP where a single election takes place, and the party vote determines what share of seats each party will receive in the legislature to compensate for any disproportionate results in the district seat election.

Japan, for instance, under the Parallel Voting system, uses both FPTP and Party List PR for elections to its House of Representatives – 295 seats decided by the former, and 180 by the latter. Elections to the 450 seats in Russia's State Duma are equally divided between FPTP and Party List PR. MMP is used in New Zealand and Germany.

#### Advantages and disadvantages

Although an advantage of both of these systems lies in their determination to achieve a more accurate and 'democratic' representation of the citizens in their Parliaments, they, nevertheless, tend to create two classes of MPs and still present some anomalies. They are also far more complicated, and can be confusing to voters.

#### 4.3 Overall summary

From the descriptions above, it is clear that there is no 'perfect' blueprint for a Parliament, voting system, or for the separation of power in a country's government: each country has reached its own arrangement, which, for some, has evolved throughout a long history, and for others has been more recently adopted after consideration of existing models developed by other countries. The practice of 'democracy' seems always to be imperfect to some degree and every arrangement has its advantages and disadvantages.

##### 4.3.1. Global statistics in respect of parliamentary budgets and staffing levels

Among the significant facts and figures to emerge from the Global Parliamentary Report, [2] the parliamentary budget is lowest in India, at USD 0.25 per capita, and highest in Iceland, at USD 49.47 per capita. Figures for parliamentary staff show the US in the lead with 15,907, while Cambodia has 1,692 – far fewer, but more than, for example, South Korea (1,454) and Spain (844). Those figures mean that for each US parliamentarian there are 29.7

parliamentary staff. The figure for Cambodia is 9.2 per parliamentarian, a relatively high figure, given that, for French MPs, it is 2.6, for Hungary 1.6 and, at the other extreme, for Malawi it is just 0.8.

#### 4.3.2. The importance of including women as MPs

The Global Parliamentary Report also reveals that women are still inadequately represented among Parliamentarians – they comprise just 19.25 percent of the global total, and in 20.43 percent of Houses (or Chambers) worldwide, women account for less than 10 percent of MPs. [2] According to the NGO Sithi.org, following the 2013 National Election in Cambodia, 25 out of the 123 National Assembly seats were won by women (20.33 percent). [23] The IPU survey of women Parliamentarians in 2000[24] highlighted the following reasons why a more equal gender representation in Parliaments is best. These responses came from the women interviewees themselves:

- Equality and justice – it is only fair that women (who account for around half of the population) should be comparably represented in their Parliaments
- Women change the political process and culture – women tend to be less adversarial and more consensus-driven, seeking solutions to problems rather than scoring political points
- Women change the male bias in policy priorities – women tend to be more sensitive to social problems, especially those relating to poverty and raising children. Women tend to be the first to become aware of economic, education and health problems.

Although the gender balance among parliamentarians is improving worldwide, it still has a way to go to reach 50:50. [8]

#### 4.3.3. Relations between citizens and Parliament

The 2012 Global Parliamentary Report also covers the results of a survey of Parliamentarians about the relationship between citizens and their Parliaments. [2] Asked about what they saw as their most important role, a random sample of 663 Parliamentarians from across the globe cited law-making (this was seen as 'very important' to more than 85 percent of respondents), with 'holding the government to account' in second place. Fewer (60 percent) considered 'solving constituents' problems' to be 'very important', although that was the role they considered would rank highest in the opinion of the public (71.4 percent). A similar disparity emerged in that 41.4 percent of parliamentarians considered that 'supporting the political party line' was 'very important', although only 27 percent thought the public would agree with them in that respect. Asked about problems that hinder their effectiveness, 'a lack of resources for constituency work' came top of the list, with 65.1 percent of Parliamentarian interviewees claiming that it hindered their effectiveness by a 'great deal' or a 'fair amount'.

Within this disparate and varied international jigsaw, the next sections will describe how the Parliament and government work specifically in Cambodia.

#### 4.4 Electoral system in Cambodia

The current electoral provisions of the Cambodian National Assembly were essentially established by the United Nations (1993 UNTAC Electoral Law), which introduced a system of proportional representation in the early 1990s. The Cambodian bicameral parliament system dates back to the time when the first Constitution was established in 1947, but this system was dissolved in 1975. The Cambodian Senate which was reestablished in 1999 in the first legislature (1999-2006) was composed of senators who were selected from the members of political parties in the second legislature of the National Assembly, and who were appointed by the King. The second legislature of the Senate was composed of 2 members appointed by the King, 2 members elected by the National Assembly, and the rest elected through a non-universal election with electors and electoral colleges being the members of the National Assembly and the entire members of commune/sangkat councils who are in position within framework of each region. Local councils are elected, on a proportional representation system, every five years, and there have been three rounds of local elections (2002, 2007 and 2012).

Regarding the National Assembly elections, each province or municipality constitutes an electoral district, and the number of legislative seats allocated to each district is proportional to its estimated population (UNTAC Election Law). The seats in each province were assigned to individual candidates according to closed lists, which were submitted by each political party to the electoral authorities. The candidates were appointed at the discretion of the parties.

According to the UNTAC Election Law, the initial seat allocation gave each party a number of seats according to its proportion of votes. If there were additional seats to be filled, the party with the largest fraction had the first unassigned seat in the district.

This method of election for the Senate and the more than 1,600 communal councils is largely similar to the one used for National Assembly elections. It is a system of proportional representation in which only registered political parties at national level can be in competition. The current electoral rules of Cambodia are therefore the result of the peculiarities of the early stages of the transition process.

The most important feature of the election provisions for the National Assembly is the choice of the province as an electoral district. One Capital City and 25 provinces of Cambodia show a great variation of population. This is because electoral districts reflect capital city/ provincial boundaries and population distribution in 1991/93 and as such do not take into account the last 25 years of economic and social modernization and its resulting demographic shifts. Today, electoral districts show a very large variation in the size of the electorate: the number of voters registered in June 2013 ranged from 25,665 in Kep to 1,200,000 in Kampong Cham, the largest district.

Electoral capital city/ provincial boundaries and the number of seats per constituency remained unchanged from 2008 to 2013, with the gap between "small" electoral districts (in terms of voter turnout / seats) increasing to a historic level in 2013.

In March 2015, Cambodia's parliament unanimously approved two new election laws, the Law on the Election of Members of the National Assembly (LEMNA 2015) and the Law on the National Election Committee (NEC Law 2015). The legislation resulted from a compromise between the CPP and the CNRP. [25]

The new electoral law increases the number of seats from 123 to 125 for the 2018 National Assembly elections, but such a modest increase will do little to equalize the ratios of seat voters in the districts. [26]

In addition, rural provinces are largely over-represented, while the capital city/most populous (urban) provinces are under-represented. Finally, most of the Cambodian constituencies are quite small: the median district chooses only four Members of Parliament and 13 of the 25 districts elect five or fewer.

## 5. Cambodia's Parliament

### 5.1. What is the form and nature of Cambodia's Parliament?

#### 5.1.1. Recent history

After a long period of bitter civil war, the signing of the Paris Peace Agreements in 1991 marked a new and more peaceful phase in Cambodia's development, laying the foundations for a ceasefire, and the establishment of democratic elections in 1993. [27] This resulted in the formation of a coalition government led by Prince Ranariddh and Hun Sen as first and Second Prime Ministers. A new Constitution was promulgated in September 1993 establishing the Kingdom of Cambodia as a constitutional monarchy with a democratic multiparty political system. [28] This meant that the King was the head of state, while an elected Prime Minister was the head of the government (in common with the British system).

#### 5.1.2. The Constitution and system of government

The Constitution [29] lays the foundation for the way in which Cambodia is governed. It outlines in detail the power of the monarch (Chapter 2) and also stipulates that all Khmer citizens are equal before the law, regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status (Chapter 3). It further enshrines the principle of the separation of power, and while the three branches of powers are organically separate, their functioning depends closely on their cooperation, allowing for a system of checks and balances of power (Chapter 4), thus ensuring that they are performing appropriately. Cambodia's Constitutional Council is responsible for interpreting the Constitution and settling disputes relating to the election of members of the National Assembly and the Senate. [30]

Like the monarch in the United Kingdom, the Cambodian King acts as Head of State in a largely ceremonial role based on Khmer tradition that has evolved during two thousand years, but has no political power. He reigns but does not rule while the Prime Minister, as head of government, leads the executive branch of government. The Constitution establishes a semi-parliamentary system which, by virtue of the responsibility of the Government before the National Assembly, may remove a member of the government or defeat the government as a whole by the vote of a motion of censure. However, the government is not at risk from Parliament, since the Cambodian Prime Minister, like his or her French counterpart, can ask the King to dissolve the National Assembly.

Additionally, unlike the Prime Minister of the United Kingdom, the Cambodian Prime Minister does not need to choose the government ministers and members of the government from elected MPs. This means that the Cambodian legislative and executive branches are not as closely linked as they are in United Kingdom.

This way of composing the government is reminiscent of France, which in its Constitution of 1958 limited the powers of Parliament, in particular those of the National Assembly, while reinforcing the powers of the government, fearing a relapse into the dictatorship of Parliament or what was called "absolute parliamentarianism" during the regimes of the 3rd and 4th republics. Moreover, the method of electing Members of Parliament and Senators shows that Cambodian bicameralism is very similar to that in France. Furthermore, the Cambodian Prime Minister exercises a large regulatory power like his or her French counterpart. It should also be noted that Cambodia is a unitary state, like France, and its system of government is different from that of the US which has a federal structure. Furthermore, with its Senators elected and not appointed for life by the King as they are in the United Kingdom, and with a written Constitution, its system of government, and in particular its parliamentary system, is closer to the French system than to that of the United Kingdom.

The Prime Minister's power is also close to that of the US president as he / she leads the Vice Prime Ministers, the Cabinet, the executive departments, independent agencies, and other boards, councils and committees.

### 5.1.3. A period of Parliamentary Consolidation

As Cambodia's democracy continues to develop, the balance of power has yet to settle evenly, with the executive currently largely unchallenged by the other two branches. [31] But, the fact that the democratic system has only recently been established, and given that the Constitution and its provisions for the way the country should be run are less than 25 years old, it could be argued that a much longer period is needed for a balance to emerge: and it is unrealistic to presume that Cambodia's recent history of violence, and its historical inexperience in the principles of democracy, could lead to changes overnight. Furthermore, even in countries that have had many hundreds of years to settle (including the UK), the balance of power remains in constant flux. [32] However, as Section Four outlines (below), the Cambodian Parliament has

already developed many procedures in order to fulfill its three functions, while Section Five indicates how it continues to work towards improvement.

#### 5.1.4. The Three Branches of Government [33]

##### 5.1.4.1. The executive branch

The Cambodian Constitution confers executive power to the “Royal Government of the Kingdom of Cambodia”. The process of appointing members of government follows a mechanism that meets the traditional requirements of parliamentarianism. The executive branch of Cambodia’s government is formed by the party that wins the greatest number of seats in the National Assembly elections, which take place every five years. As in the British system, the Prime Minister is a member of the National Assembly, but is appointed by the King on the recommendation of the President and Vice Presidents of the National Assembly (who are selected according to a vote among members of the National Assembly). The Prime Minister appoints a Council of Ministers (who may or may not be Members of the National Assembly).

In addition to its main task of strengthening and protecting national independence, sovereignty and territorial integrity of the country, the Constitution also requires the Government to adopt a policy of national reconciliation to ensure and strengthen national unity, morality and Khmer customs. Moreover, it has the traditional missions of the executive branch which are the maintenance of public order and security, as well as the enforcement of the law.

The Cambodian government reaffirms clearly and repeatedly in its policy documents its priority to carry out its mission of defending the independence, sovereignty and territorial integrity of the country, which must be understood in terms of the very deep post-conflict crises and the geopolitical position of Cambodia.

Its mission of implementing a policy of national reconciliation also results from the conflicts and political crises that prevented the development of the country for many years.

In addition to the inherent powers of the government provided for in the Constitution, the Cambodian legislative branch contributes to increasing the power of the executive branch by establishing administrative authorities with regulatory power such as:

- the Authority for the Protection and Management of Angkor and the Siem Reap Region (called Apsara)

- the Security and Exchange Commission of Cambodia
- the Anti-Corruption Unit
- the Electricity Authority of Cambodia
- and the National Petroleum Authority of Cambodia.

Some are separate structures within an administration, and some have an industrial and commercial mission.

#### 5.1.4.2. The legislative branch

Cambodia's Parliament is bicameral (it is one of 75 bicameral Parliaments throughout the world) [2] comprising a Senate and a National Assembly that together constitute the legislative branch of government.

The Constitution sets the number of members of the National Assembly to "at least" 120 representatives who are elected. Suffrage is universal, free, equal, direct and secret. The renewal of the members of the National Assembly is total. The term of the legislature is five years. There are currently 123 members of the National Assembly elected according to the Party List Proportional Representation system: any Cambodian citizen who has reached the age of 18 is eligible to vote. MPs are responsible for debating and approving law, and for passing laws proposed by the executive or by MPs. Candidates for a seat in the National Assembly are not allowed to be a member of any other institution provided for in the Constitution (unless they are required to serve in the executive branch of the government). This is to avoid conflicts of interest. The President of the National Assembly is, in particular, an ex-officio member of the Council of the Crown which elects the king, and he has the right to submit requests to the Constitutional Council for the Council to make its constitutional review (he can send the laws adopted by the National Assembly to the Constitutional Council for examination before their promulgation or he still can request the Council to examine the constitutionality of laws after they have been promulgated).

The Constitution limits the number of senators by stipulating that they not exceed half of the total number of members of the National Assembly. The Senate elected for a six year term. The Senate has currently 61 members, two appointed by the King, two elected by the National Assembly and the rest elected by commune councilors and members of the National Assembly. The Senate examines and advises draft or proposed laws that have been adopted by the National Assembly as well as issues submitted by the National Assembly. The Senate can send recommendations back to the National Assembly for consideration but these can be rejected: the National Assembly's decisions ultimately override those of the Senate. The Senate coordinates the work between the National Assembly and the government; this is a significantly important political role of the Senate. The Speaker of the Senate is the first prime dignitary who is granted with the role as the acting Head of State (acting as Regent) when the King is not present. He is also a member of the crown council. The King needs his agreement to declare the state of emergency when the nation faces danger. The speaker of the Senate is also the chairman of the congress of the Parliament.

Members of both parliamentary chambers enjoy parliamentary immunity for opinions expressed in the performance of their duties. Immunity may be waived with the approval of the National Assembly. However, it is not enforceable in the case of *flagrante delicto*.

In total, Cambodia has 184 Parliamentarians – far fewer than the 3,000 in China, and lower than the global average of 245; the average for the Asia-Pacific region is 325. [2] The number of inhabitants per MP is around 86,000 – considerably better than the global average of 146,000.

It should be noted that the initiative for drafting the laws belongs also to the head of government, and not only to the Parliament. In reality, this allows the executive branch to occupy a dominant place in legislative life, as the overwhelming majority of laws are adopted or amended at the initiative of the Prime Minister.

#### 5.1.4.3. The judiciary branch

The judicial branch of government applies and interprets law passed by the legislature. It includes the Supreme Court, the Appeals Court, the Municipal Provincial Courts, the Military Court, the Extraordinary Chambers in the Courts of Cambodia and the Supreme Council of Magistracy.

Under the Constitution, the judiciary is responsible for all disputes, including administrative litigation. The ordinary courts of first instance are the provincial and Phnom Penh courts of first instance. They have jurisdiction concerning all disputes (in civil, criminal, commercial, labour and administrative matters). Under the principle of a double level of jurisdiction (the right to appeal to a higher court), the citizens can appeal the judgments delivered by the courts of first instance. The ordinary appeals courts are the Courts of Appeal and the Supreme Court which has the highest jurisdiction in the country. It has its headquarters in Phnom Penh.

Jurisdictions at all levels are competent to deal with all disputes except those for which jurisdiction has been conferred by law to other exceptional jurisdictions. The trial judges of the first and second level ('juridictions du fond') are, as in France, competent to rule in law and in fact. Unlike these jurisdictions, the Supreme Court is not a third level of jurisdiction. It is a judge of the law and it cannot examine the facts as found by the trial judges except in exceptional cases.

There are currently only a few exceptional jurisdictions which are established in matters strictly determined by law or by constitutional amendment. An Act of 8 February 1993 established a military court under the authority of the Ministry of Defense. In 2001 the Cambodian Parliament passed a law to create a special court to try serious crimes committed during the Khmer Rouge regime 1975-1979 which is called the 'Extraordinary Chambers in the Courts of Cambodia' or ECCC. In addition, the constitution provides the National Elections Committee and the Constitutional Council with the role to solve electoral disputes.

## 5.2. How does Cambodia's Parliament fulfill its three functions?

### 5.2.1 Representation

Article 77 of the Constitution stipulates that members of the National Assembly should represent all the Khmer people, not just citizens from their own constituencies. This representation role requires the MPs to gather the views and concerns of the people and to bring them to the National Assembly for debate and, where possible or feasible, for solutions or for further action. The Senate has a direct responsibility to represent the Commune/Sangkat councils in the constituencies, as well as Khmer citizens as a whole. The major mechanisms through which Parliamentarians interact with the people are workshops, public consultations and forums. At these events, MPs disseminate information about legislation, but, as importantly, encourage people to provide their views, comments and opinions. Field missions, expert hearings, and international field trips enable MPs to gain information and to contribute to debate at local, regional or international level. To enable the Parliament to tackle issues in more depth, the National Assembly and the Senate create Working Groups and Commissions that focus on specific areas of parliamentary concern, both at home and abroad. Increasingly, use is being made of the Parliament's websites and social media, as well as the national and local media, to deepen interaction with Cambodian citizens.

### 5.2.2. Legislation

The first draft of a law is created by the government or Parliament and then checked by legal working groups and inter-ministerial commissions before it goes to the Council of Ministers. From there it is passed to the National Assembly for more editing, and then travels to and fro between the National Assembly and the Senate who consider the draft, and debate its contents to ensure that it meets its goal in as equitable and effective a way as possible, until a final version is produced. At the same time the Constitutional Council will be requested to check that the draft law does not contravene any aspects of the Constitution (organic laws). Ultimately the draft is signed by the King and then promulgated. The Parliament also approves or repeals international treaties and conventions.

### 5.2.3. Oversight

In addition to overseeing the proper enforcement of the law, Parliament has a duty to propose questions to the executive branch and to invite any government ministers to clarify issues in fields that fall within their areas of responsibility. Keeping an eye on government performance and inviting senior officials to provide clarification in respect of relevant issues is another way in which MPs are entitled to hold the executive to account.

### 5.2.4 Nature and Functions of Commissions and other Groups

Before 1999, the Cambodian Parliament was unicameral but it was changed to bicameral in accordance with an amendment to the Constitution in 1999. [34] This amendment was the result of an agreement between the two main parties - the Cambodian People's Party and the FUNCINPEC - after the National Election in 1998. In conjunction with this, the Senate of Cambodia was formed as the Upper House to coordinate work between the Executive and the National Assembly. Before the National Election in 2013 there were nine specialized Commissions in the Senate and the National Assembly. [35] Then, (the fifth legislature of the National Assembly and the third legislature of the Senate) due to a compromise between the Cambodian People's Party and the Cambodia National Rescue Party, a tenth Commission was established, namely the Commission on Investigation and Anti-Corruption. Therefore, the Internal Rules of both the Senate and the National Assembly needed to be amended to include the tenth Commission. The 10 specialized Commissions are: [36]

- Commission on Human Rights, Complaints and Investigation
- Commission on Economics, Finance, Banking and Auditing
- Commission on Planning, Investment, Agriculture, Rural Development, the Environment and Water Resources
- Commission on the Interior, National Defense and Civil Service Administration
- Commission on Foreign Affairs, International Cooperation, Information and the Media
- Commission on Legislation and Justice
- Commission on Education, Youth, Sport, Religious Affairs, Culture and Tourism
- Commission on Health Care, Social and Veterans' Affairs, Youth Rehabilitation, Labor, Vocational Training and Women's Affairs
- Commission on Public Works, Transport, Telecommunication, Post, Industry, Commerce, Land Management, Urban Planning and Construction
- Commission on Investigation and Anti-Corruption. [36]

Additionally, the Permanent Standing Committee, as stated in the Internal Rules of the Senate and the National Assembly, is a crucial mechanism whose members consist of the President of the Parliament and his/her first and second deputies, and all of the Chairpersons of the Commissions of the Senate. This group has the obligation to support parliamentary processes, especially convening meetings such as the Permanent Standing Committee meetings, the plenary sessions and extraordinary meetings. [36] Besides the Commissions and the Permanent Standing Committee, in the third legislature of the Senate, the Senate established political groups, and Senator groups of each region who are assigned to coordinate the works of the Senate and communicate closely with their constituents (Commune/Sangkat Councils) [37] while the National Assembly members are assigned as the citizens' representatives as a whole. [38] At the same time, the Senate created bilateral and multilateral Friendship Groups to work with other Parliaments as follows:

Bilateral Friendship Groups:

- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the National Assembly of Lao PDR
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the National Diet of Japan
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of France
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the National Assembly of the Socialist Republic of Vietnam
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Chinese People's Political Consultative Conference
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of the Republic of the Union of Myanmar
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of Australia and New Zealand
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Legislative Assembly of Thailand
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of Belgique
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of Turkey
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Council of the Federation of the Federal Assembly of the Russian Federation
- Bilateral Friendship Group of the Senate of the Kingdom of Cambodia with the Parliament of Mongolia

#### Multilateral Friendship Groups:

- Senator Group for Parliamentary Assembly of the Francophonie (APF)
- Senate Networks for Combating HIV, AIDS, Tuberculosis and Malaria disease
- Senator Group for ASEAN Inter-Parliamentary Assembly (AIPA)
- Senator Group for Inter-Parliamentary Union (IPU)
- Senator Group for Cambodia-Laos-Vietnam Inter-Parliamentary Affairs for Promoting and Overseeing the Cambodia-Laos-Vietnam Development Triangle Area (CLV).

## 6. Parliamentary development in Cambodia

### 6.1. How is the Parliament working to become more effective?

As the Global Parliamentary Report states, [2] almost every Parliament recognizes the need to improve the understanding and impression the public have of its work, and many have implemented projects and capacity development to achieve this.

## 6.2 Relationship between the media and the Senate

The media in Cambodia has developed rapidly since the end of the Khmer Rouge Regime in 1979, and the People's Republic of Kampuchea around 1990. [39] By 2016, around half of Cambodian citizens had access to the internet, such as reading news (73 percent), using social media (63 percent), accessing varied websites (42 percent), and so on. [40] These tools provide quick access and are crucial for information dissemination, nationwide. For instance, during the National Election in 2013, the penetration of social media, especially Facebook, had a dynamic influence on politics and voter opinion. [41] The media consequently play important roles for the Cambodian Senate. They are a tool for underlining the Senate's determination to act with transparency towards citizens. Through the media, the Parliament and its members can send messages to the public quickly, especially using information and communications technology (ICT). Social media in particular are effective tools for both citizens and Senators, supporting the exchange of views, news and information. [42] Sharing information with the public is recognized as a major responsibility for the Senate and this has encouraged its secretariat to set up tools for information dissemination as well as for communication with citizens. The following tools are used:

- Facebook pages: Senate Spokesperson, Senate News, Democracy and Rule of Law
- Twitter: Senate Spokesperson (@spssenate)
- YouTube: SPSS Senate
- The official website of the Senate: [www.senate.gov.kh](http://www.senate.gov.kh) [42]  
A Mobile Application, called "Senate News", which can be used with the Android or IOS to see the activities of the Senate. [43]
- A Senate magazine which is issued monthly.

Moreover, during meetings of the Senate, journalists are welcomed. For example, journalists are hosted by the Information Department when there are receptions (held by Senators), and meetings such as those of the Permanent Standing Committee, the plenary session, and the specialized Commissions. Journalists are allocated a room in which they can watch the plenary sessions. Activities during the plenary sessions are broadcast live on national television and radio. [42]

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