

Fact Sheet: Institutions Series: The Senate**Institution:** The Senate

Snapshot: Cambodia has a bicameral parliament consisting of the Senate and the National Assembly. The Senate plays an advisory role in terms of legislation and is elected indirectly by commune councilors and representatives of the National Assembly. Whilst the Senate is viewed as being in tune with principles of democracy and transparency, the manner in which senators are voted in and the restrictions to its mandate raise substantive questions as to its effectiveness.

Introduction

As Cambodia gears up for the Senate elections - due to take place on 29 January 2012 - this fact sheet aims to provide an overview of the Senate, assess its effectiveness and suggest ways in which it could be improved. This fact sheet is written by the Cambodian Center for Human Rights, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

What is the Senate?

The Senate, combined with the National Assembly, forms the bicameral Cambodian Parliament. The Senate was created by an amendment to the Constitution of the Kingdom of Cambodia (the “Constitution”) in 1999, the result of a political deal between the Cambodian People’s Party (CPP) and the United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) to resolve the stalemate that followed the 1998 General Election. It consists of 61 members – two nominated by the King, two elected by the National Assembly and 57 elected indirectly by commune councils and members of the National Assembly who together comprise approximately 11,000 officials. Votes are for the party, rather than the candidates – the closed-list system means that only party-affiliated individuals can stand for election. The last Senate election was in 2006: the CPP won 45 seats, FUNCINPEC won 10 seats and the Sam Rainsy Party (SRP) won two seats. In the upcoming election - on 29 January 2012 – analysts expect the CPP to win 46 seats, with the SRP expected to win 11 seats. The term of the Senate is six years. The Senate typically holds two sessions per year, each lasting three months. There is a Standing Committee and nine commissions, each with its own specialization. The role of the commissions is to review legislation that falls within their respective specialism and make recommendations to the Senate as regards amendments or approvals.

Functioning of the Senate

Article 51 of the Constitution provides that ‘[a]ll powers belong to the people. The people exercise these powers through the National Assembly, Senate, Royal Government and the Judiciary’. The Senate, then, is intended to be a democratic institution that represents the views of the Cambodian people. It has a duty to co-ordinate work between the Government and the National Assembly and, as a part of the Cambodian Parliament, has a duty to oversee the executive and hold it to account to the people. The Senate’s central duty, however, appears to be to play an advisory role in terms of legislation, specifically reviewing draft laws. When the National Assembly adopts a draft law, it is passed to the Senate for review. The Senate has one month to review the law, however in an emergency this can be reduced to five days. Generally, the Senate approves laws by an absolute majority, however, the approval of changes to the Constitution require the support of two thirds of all Senators. It operates a commission structure similar to that of the National Assembly.

Effectiveness of the Senate

In his most recent report, the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya Subedi, noted that in general the parliamentary practices in the Senate were more advanced and in tune with the principles of democracy and transparency than that of the National Assembly. The various commissions of the Senate, including the Commission on Human Rights, which has received more than 300 complaints of human rights violations from members of the general public, were described as being able to discharge their responsibilities effectively. The Senate, however, is not without its shortcomings:

- *Representing the People* - In the forthcoming Senate election, there are only two political parties, the CPP and the SRP, who are fielding candidates. The electoral system is skewed in favor of larger parties. Even though FUNCINPEC and the Norodom Ranariddh Party both won over 5% of the popular vote in both the 2007 Commune Council and 2008 General Elections, the electoral system operates in such a way that, based on the number of commune councilors they have, the parties would be unable to win a Senate seat. By effectively denying access to political parties with a significant proportion of the vote, the Senate selection system weakens the democratic legitimacy of the Senate.
- *Capacity* –The Senate’s capacity to hold the executive to account is limited by the fact that the National Assembly is under no constitutional obligation to accept any amendments made by the Senate and can proceed to implement the law even if the Senate rejects it. As such, the Senate lacks any real power in Cambodia’s parliamentary democracy.
- *Just a rubber stamp?* - The Senate is often regarded as merely providing a ‘rubber stamp’ to the approved policy of the government. The indirect, closed-list election system makes Senators answerable to their party, rather than accountable to the Cambodian people. This, coupled with harsh sanctions for failing to follow the party line, severely limits the capacity of Senators to act independently of their parties, and has commentators observing that the Senate is strongly influenced by party lines.

Conclusions

The effectiveness of the Senate must be scrutinized in order to create an institution that has a real and substantive role in Cambodia’s parliamentary democracy. To achieve these ends, the following recommendations are made:

- A Technical Working Group should be established to consider reforming the Senate selection system, such as by allowing candidates to stand independently, regardless of their political affiliation, and be elected directly by the people. If the Senate is elected directly through a single district system, it will be more likely to supervise the government and represent the people. Changing the selection system would enable the election of senators from professional groups, increasing the capacity of the Senate to review draft laws.
- The functions of the Senate should reviewed and amended to give the Senate genuine power of oversight in Cambodia’s parliamentary democracy by allowing it to block and force amendments to legislation.
- The Senate should be given the maximum time available to review draft laws, and only in very limited, exceptional circumstances should law review be considered an ‘emergency’.

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