

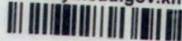
Modules for Understanding and Training on the **Organic Law**

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FOREWORD

The Royal Government of Cambodia's policy for decentralization and deconcentration (D&D) has introduced what Deputy Prime Minister, H.E. Sar Kheng, has described as the most profound and important constitutional development in Cambodia since the adoption of the Constitution in 1993. The Organic Law, adopted in May 2008, is the legal framework that enables D&D policy to be implemented.

With the adoption of the Law, the Royal Government now faces the task to train and provide public education about the Organic Law. The immensity of this task is reflected in the National Committee for Sub-National Democratic Development's (NCDD) National Program for Sub-National Democratic Development 2010 – 2019 (National Program). Training and public education is needed at all levels, with training beneficiaries ranging from senior national ministry officials to governors and other sub-national civil servants, the new councilors, council personnel, and non-governmental stakeholders.

To facilitate the understanding and training on the Organic Law, 16 Modules on the key topics treated in the Organic Law and several sub decrees have been developed. Each of the 16 Modules is short and easy-to-read, with explanations and examples to highlight important points. The Modules may be used by trainers, and may also be used by individuals simply interested to learn about and understand the Organic Law. In addition, there is a 17th Module on Training Methodologies that trainers may use as a resource when preparing and delivering trainings on the Organic Law or other topics.

The Modules are suitable for any training target group. Once a training target group has been identified, trainers must select the Modules (or parts of Modules) that are relevant to that target group. Trainers must then prepare session plans that tailor the relevant Modules by taking into account the duration of the training and the most important issues to be covered. Useful charts, diagrams and graphics are included in the Modules that may be used as handouts and for presentations. As well, each Module includes ideas for possible group exercises, depending on the target group.

We hope these Modules will help to implement the D & D reform, to strengthen local democracy and improve living conditions for all Cambodians.

Together we keep development going

The Modules are current to May 2010.

LIST OF MODULES

- 1 Introduction to the Organic Law
- 2 Democratic Development
- 3 Organization of New Administrations
- 4 Unified Administration
- 5 Council Roles, Authorities and Functions
- 6 Governor and Board of Governors
- 7 Council Committees
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- 9 Council Meetings and Internal Rules
- 10 Inter-Governmental Relations- The Royal Government and Sub-National Councils
- 11 Inter-Governmental Relations- Provincial, Municipal, District, Commune and Sangkat
- 12 Roles and Structures of Sub-National Administrations
- 13 Transfer of Functions
- 14 Planning
- 15 Fiscal Decentralization and Financial Management
- 16 Council Elections

TERMINOLOGY

THE TERM 'COUNCIL'

In all Modules, unless specified otherwise, the term 'council' refers to all of these councils:

- the Phnom Penh council
- provincial councils
- municipal councils
- district councils, and
- khan councils.

The term 'council' refers to commune and sangkat councils **only** if specifically stated.

Modules for Understanding
and Training on the
Organic Law

Module 1:
Introduction to the Organic Law

PART 1:

- 1. Introduction**
- 2. Understanding Decentralization & Deconcentration**
- 3. International Trends in Decentralization**
- 4. Policy Background in Cambodia**
- 5. Main Features of the Organic Law**

Section 1: Introduction

Background

- ✓ The Royal Government of Cambodia's policy for decentralization and deconcentration (D&D) introduces what Deputy Prime Minister, H.E. Sar Kheng, has described as the most **profound and important constitutional development in Cambodia** since the adoption of the Constitution in 1993.
- ✓ At the heart of the Royal Government's policy for decentralization and deconcentration is the **transfer of responsibilities and resources to elected councils at sub-national levels**.
- ✓ The **objectives of D&D reform** are to:
 - **strengthen and expand local democracy**
 - **promote local development and reduce poverty**
 - **(Strategic Framework for D&D Reform, page 5)**
- ✓ The Royal Government first **introduced D&D reform at commune/sangkat level**. In 2001, the National Assembly and Senate adopted the Law on the Administration and Management of Communes/Sangkats and its companion election law. In early 2002, citizens elected councils in 1,621 communes/sangkats across the country. Second elections for commune/sangkat councils were held in 2007.
- ✓ With the success of D&D reform at commune/sangkat levels, the Royal Government has **expanded its policy so as to introduce elected councils at all other sub-national levels**: Phnom Penh, provinces, municipalities, districts and khans.
- ✓ In 2005, the Royal Government issued the policy paper entitled ***Strategic Framework for Decentralization & Deconcentration Reform*** outlining its vision for the expansion of the reform.
- ✓ The **Organic Law** is the legal framework that is necessary in order to implement the vision outlined in the Strategic Framework for D&D Reform.

D&D Reform and Good Governance / Democratic Development

- ✓ The Royal Government has recognized good governance as the **most important pre-condition to sustainable economic development** for Cambodians. D&D reform is recognized as one strategy to enhance good governance. (Rectangular Strategy, page 6; National Strategic Development Plan 2006-2010 pages 8, 9;)
- ✓ Democratic development, which has much the same meaning as good governance, is incorporated in the Organic Law as a key principle. The Organic Law specifically states that each new council must endeavor to establish, promote and sustain democratic development in its area.

See Module 2 for more information on democratic development

How can D&D reform contribute to democratic development and democratic accountability?

- ✓ Every council is the representative of its citizens and the guardian and servant of the interests of all citizens in its jurisdiction. The council, therefore, serves **all** citizens. (Sub-decree Roles – Province, Articles 6, 61, 113)
- ✓ In order to know best how to serve its citizens' real needs, every council must engage with its citizens (**civic engagement**).
- ✓ D&D reform is about bringing **government closer to the people**. Bringing government closer to the people should mean that citizens have greater opportunities to **have their voice heard** in local governance, to **influence** decisions that affect their lives, and to hold their government **democratically accountable** for its policies, decisions, actions and activities and how government authority and public resources are, or are not, used. In addition, with government closer to the people, it may be easier for women and for vulnerable groups (such as the poor) to participate in and influence local governance.

Democratic accountability refers to –

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs.

There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.

Democratic accountability, therefore, involves –

- citizens having opportunities for their **voice** to be heard, understood and considered by councils
- citizens **evaluating** the activities of councils and their use of public funds, providing **feedback**, and **demanding** that actions be taken when council performance is not satisfactory (including the performance of the administration)
- clearly separating the **political choices** that elected councils must make on behalf of their citizens from the technical work of the boards of governors and council personnel
- putting in place rules and processes to ensure that councils make **choices about priorities and making decisions based on evidence**
- ensuring that there is **political space** for councils to discuss and **debate** when setting priorities on behalf of their citizens
- providing councils with a **clear mandate** that includes sufficient **authority and discretion** to be able to address citizens' real needs and concerns
- providing councils with **sufficient discretionary resources** to address those needs and concerns
- providing citizens with mechanisms to **impose consequences** on their elected representatives when those elected representatives are not responsive to their needs

How can D&D reform contribute to sustainable economic development?

- ✓ Bringing government closer to the people should mean that government can **better understand the real needs** of local people. When local government understands the real needs of local people, and when it has sufficient authority, functions and resources (including discretionary finances), and adequate authority and discretion, local government can **better respond** to those needs.
- ✓ In this way, D&D reform can contribute to more responsive governance and to more responsive service delivery, including services related to economic development. More responsive governance and service delivery, in turn, should contribute to more sustainable economic development and to poverty reduction.

Section 2: Understanding Decentralization & Deconcentration

- ✓ Both within Cambodia and internationally, there are many different definitions and understandings of what decentralization and deconcentration mean.
- ✓ The following definitions of decentralization and deconcentration have been approved in Cambodia by the National Committee for Sub-National Democratic Development (NCDD).

DECENTRALIZATION

The Royal Government gives sub-national **councils** the **ownership of government functions, authorities and resources** in order to respond to local needs. The council must be accountable to local residents.

DECONCENTRATION

The Royal Government, a ministry or other government institution **delegates** functions and resources **to their own lower units** or to a level of **councils** in order to **implement on behalf of the Royal Government**, the ministry or government institution.

The units or the councils must be accountable to the Royal Government, ministry or government institution in accordance with the requirements of the delegation.

- ✓ Internationally, the Cambodian concept of decentralization is often referred to as devolution.
- ✓ The following chart uses a purely hypothetical example to illustrate the differences between:
 - **decentralization** (referred to as devolution internationally)
 - deconcentration to councils, which will be referred to as **delegation**
 - **deconcentration** to line ministry units.

The hypothetical example used below relates to the function *to monitor delivery of community pre-schools*. The example does not reflect reality.

<p style="text-align: center;">Decentralization</p>	<p>The Ministry of Education transfers by decentralization the function to monitor the delivery of community pre-schools to district councils. The function is the own function of district councils. Corresponding resources are also transferred to district councils. Personnel of districts councils implement the function. The district council may direct its personnel to implement the function as the council sees fit, subject to the Constitution, laws and other legal instruments, such as any applicable national standards that the Ministry of Education may issue.</p>
<p style="text-align: center;">Delegation (deconcentration to councils)</p>	<p>The Ministry of Education transfers by delegation the function to monitor the delivery of community pre-schools to district councils. The function remains the function of the Ministry. District councils have the role to implement the function on behalf of the Ministry. Corresponding resources are also transferred to district councils. Personnel of district councils implement the function. The Ministry will likely provide detailed guidelines that regulate how the council can implement the function.</p>
<p style="text-align: center;">Deconcentration (to line ministry units)</p>	<p>The Ministry of Education gives the task of monitoring the delivery of community pre-schools to the Ministry's sub-national structures (provincial departments or district offices). The Ministry will also provide resources to implement the task. The line ministry department or office staff implement the function. The Ministry will likely provide detailed guidelines about how the line ministry department or office must implement the function.</p>

The following chart offers another perspective on the differences between **decentralization, delegation** (deconcentration to councils) and **deconcentration** to line ministry units.

	Retaining function at national level	Deconcentrating function to line ministry units	Delegating function to councils (deconcentrating to councils)	Decentralizing function to councils
Policy discretion	The ministry has the policy discretion	The ministry has the policy discretion	The ministry has the policy discretion *	The council has the policy discretion
Responsibility for Implementation	The ministry implements	The provincial department or district office implements	The council implements	The council implements
Control of Funds	The ministry receives the funds The ministry decides how to spend the funds	The ministry receives the funds The ministry decides how to spend the funds	The council receives the funds from the ministry The ministry can decide how the council must spend the funds *	The council receives the funds directly from the national level The council decides how to spend the funds
Control of Personnel	The ministry has its own personnel, and the ministry controls its personnel	Personnel of provincial departments and district offices are personnel of the ministry, and the ministry controls them	Personnel are transferred to the council to implement the function The council controls its personnel	Personnel are transferred to the council to implement the function The council controls its personnel

* The transfer of a function to a council by decentralization or delegation must promote democratic development by:

- providing **maximum authority to the council** so that it can manage and implement the function
- requiring the council to manage and implement the function with **responsiveness** and accountability to its citizens. (Organic Law, Article 225)

Section 3: International Trends in Decentralization

Facts

Throughout the world, there is a clear trend from centralized to decentralized government. Currently **70% of all states have decentralized structures**.

Looking only at the years 1990 to 2000, 70 new D&D reform processes have begun. Examples are: Philippines, Indonesia, Bolivia, Ecuador, Mali, South Africa, Poland and Romania.

Why Introduce Decentralization?

Why do governments decide to decentralize authority, functions and resources to local government?

Decentralization is a strategy to **improve governance**, and is often part of a process of democratization (as is the case for Cambodia).

The world has become more complex, with issues constantly growing. Responsibilities of the central level, therefore, are always increasing. The **multitude and complexity of issues** cannot all be solved at central level. Decentralization is a strategy to address this challenge.

Decentralization brings to the local level decision-makers who must act in the interests of their citizens. Having decision-makers at the local level means that citizens have easy **opportunities to negotiate for and influence decisions** that respond to their needs and priorities.

Having local councils means that citizens should be able to see more easily what government is and is not doing, and how resources are being spent (**transparency**). With opportunities to influence decision-making, and with improved transparency, citizens should be in a better position to hold their elected councils **accountable**.

Decentralization is also a strategy to **improve service delivery**. By bringing governance closer to citizens, local service needs can be more easily identified, and strategies to meet those needs can be tailored to local conditions and realities.

Potential Benefits of Decentralization

- Deepening of democracy
- Contribution to poverty reduction
- Opportunities for local economic growth
- Increased transparency and democratic accountability of government
- Increased civic engagement in political decision-making
- More opportunities for marginalized groups to participate in political decision-making (i.e. women, the poor and poorest, minorities)
- More responsiveness to local needs, interests and priorities
- More creative and locally-appropriate problem-solving
- Improvement in public service delivery
- Improved administrative efficiency
- More diversity and choice among jurisdictions
- Preservation of local environment

Section 4: Policy Background in Cambodia

Provided below are brief summaries of key policy papers that have shaped the Royal Government's sub-national governance reform and the *Law on the Administration and Management of the Capital, Provinces, Municipalities, Districts and Khans* (the Organic Law). The relationship of these policy papers to D&D reform is highlighted. In addition, the Law on the Administration and Management of Communes/Sangkats is briefly described.

Rectangular Strategy

The Royal Government's policy agenda for 2008 – 2013 is its Rectangular Strategy for Growth, Employment, Equity and Efficiency - Phase II. At the core of the Rectangular Strategy is **good governance**, which is recognized as the most important pre-condition to sustainable, equitable and just economic development. The Rectangular Strategy provides that good governance **involves wide participation, enhanced sharing of information, accountability, transparency, equality, inclusiveness and the rule of law.**

In order to achieve good governance, the Rectangular Strategy commits the Royal Government to focus on four reform areas: anti-corruption; legal and judicial reform; public administration reform; and reform of the armed forces. In the area of public administration reform, the Royal Government recognizes decentralization as crucial to **strengthening democracy, to improving the quality of public services in all sectors and improving participatory local development.** (Rectangular Strategy 2004-2008, page 8)

National Strategic Development Plan 2006-2010 and Update 2009-2013

The National Strategic Development Plan (NSDP) is the overarching policy paper containing the Royal Government's priority goals, strategies and actions in each sector, all with a view to reducing poverty and achieving the Cambodian Millennium Development Goals. Like the Rectangular Strategy, the NSDP recognizes that **good governance** is key to sustainable and equitable socio-economic development. The NSDP also recognizes D&D reform as a means of improving and increasing public service delivery and strengthening local development. The NSDP emphasizes the importance of ensuring **adequate finances and own-revenue to new councils.** (2006 – 2010, pages 37, 38; 2009 – 2013, pages 12, 17 – 19, 80, 103)

Law on the Administration and Management of Communes / Sangkats

The Royal Government **began its D&D reform at commune/sangkat level.** In 2001, the Law on the Administration and Management of Communes/Sangkats (LAMC) and its companion election law were adopted. Elections in 2002 established commune and sangkat councils nation-wide. Second elections for commune and sangkat councils were held in 2007.

Commune and sangkat councils have **two roles:** to serve local affairs in the interests of their residents; and to act as agent for the state by implementing delegated functions. The councils have received modest **national fund transfers** with which they have mostly implemented small physical infrastructure projects.

The experience and lessons learned from the introduction of commune and sangkat councils contributed to the Royal Government's new and broader vision for D&D reform, as reflected in the Strategic Framework (see below) and the Organic Law.

Strategic Framework for D&D Reform, June 2005

The Royal Government's key policy document setting out its vision for sub-national governance reform is the Strategic Framework for D&D Reform of June 2005. The Royal Government's vision is '... **to develop management systems at provincial, municipal, district, khan, commune and sangkat levels based on the principles of *democratic participation*. This system will operate with transparency and accountability to promote local development and delivery of public services to meet the needs of citizens and contribute to poverty reduction ...**' (page 4)

The Strategic Framework states that D&D reform is intended to overcome a number of particular constraints at sub-national level. Those constraints are:

- The current sub-national management system is typically centralized, with sector departments implementing policies and plans of their line ministries
- This fragmentation has made horizontal coordination at sub-national levels difficult
- Some functions implemented at sub-national level are duplicative or unclear, leading to additional difficulties in coordinating and providing public services
- As a result, sub-national levels cannot efficiently or effectively plan, budget or manage personnel.

– Strategic Framework – Two Strategic Goals

The Strategic Framework highlights two overall strategic goals for sub-national governance reform:

- to strengthen and expand local democracy, and
- to promote local development and contribute to poverty reduction (page 5)

Strategic Framework – Long Term Objective

... to achieve broad-based and sustainable development and to strengthen vibrant local economic foundations so that every citizen has equal opportunity to participate in local development, effective environment and natural resource management and delivery of quality public services to meet the needs of citizens and poverty reduction by focusing on vulnerable groups, indigenous minorities, women and children. (page 6)

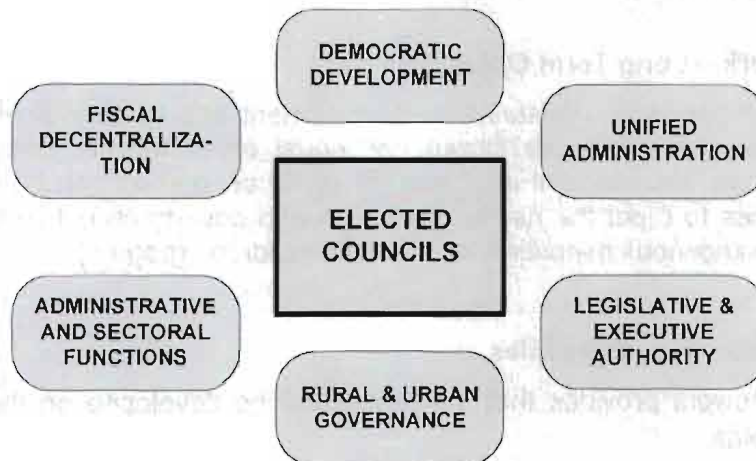
Strategic Framework – Key Principles

The Strategic Framework provides that the reform will be developed on the basis of the following key principles:

- **democratic representation** – the role of elected councils at all levels will be strengthened and expanded in accordance with principles of democracy
- **participation of the people** – systems and procedures will be introduced to ensure that citizens can participate in decision-making (this must include both women and men, and vulnerable groups, such as the poor)
- **effectiveness** – bringing public services closer to the people, and increasing opportunities for citizens to participate in decision-making, will mean local needs and priorities can be met more effectively
- **contribution to poverty reduction** – stronger local capacity can support poverty reduction activities, especially for women, vulnerable groups and minorities. (pages 5 to 6)

Section 5: Main Features of the Organic Law

MAIN FEATURES OF THE ORGANIC LAW



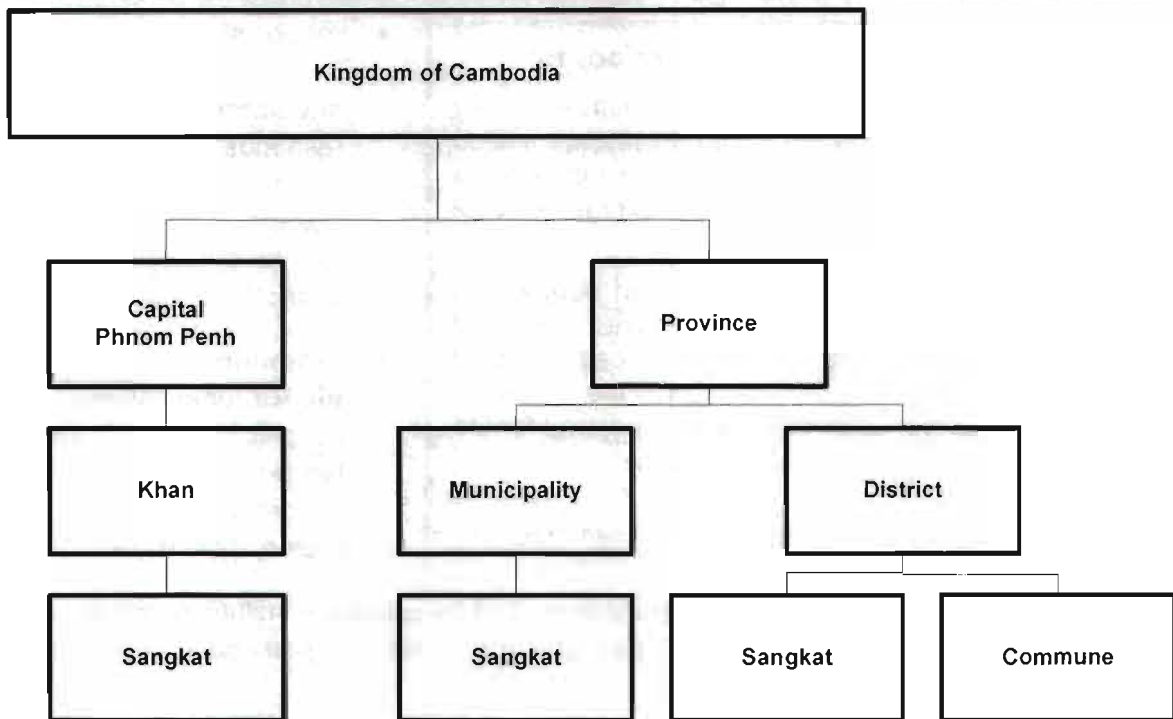
Elected Councils

- ✓ Phnom Penh and every province, municipality, district and khan council is **indirectly elected by commune/sangkat councilors** in its area. (Organic Law, Article 14; Law on Elections of the Capital Council and Provincial, Municipal, District and Khan Councils (Election Law), Article 27)

See Module 16 for more information on council elections

- ✓ The first elections of the new councils took place in May 2009.
- ✓ Commune and sangkat councils continue to be elected *directly* by citizens. (Law on Elections of Commune/Sangkat Councils (LAMC), Article 2)
- ✓ Every council has a **5-year mandate**. (Organic Law, Article 15; LAMC, Article 11)
- ✓ The new **elected councils replace** the former Phnom Penh, provincial, municipal, district and khan **appointed administrations**. (Organic Law, Article 277; Prakas 1249 on Office-Taking Meeting, Articles 6, 7)
- ✓ As of May 2009, **every sub-national level** in Cambodia has an **elected council**. Each elected council has its **own authorities, functions and finances**. Within the scope of a council's authorities, functions and finances, the council has the discretion to make choices and decisions on behalf of its citizens.

New Administrative Divisions



Democratic Development

- ✓ The purpose of every council is to establish, promote and sustain democratic development. (Organic Law, Articles 2, 11, 20)
- ✓ Democratic development is **equivalent to good governance**. The components of democratic development set out in the Organic Law are the same as the key principles of good governance.
- ✓ **Democratic development** includes the following components:
 - public representation – a council represents its citizens and works only in the interests and for the benefit of its citizens
 - local autonomy - a council has sufficient authority and discretion to respond to the real needs of its citizens
 - consultation and civic engagement - all citizens have meaningful opportunities to voice their needs and concerns and to share their ideas about how to address those needs and concerns; every council must develop mechanisms to consult with their citizens, including assigning

Democracy and development are both values articulated in the Cambodian Constitution.

- What does democracy mean to you?
- What does development mean to you?
- What does *democratic development* mean to you?

councilors duties to communicate with citizens in their area (Sub-decree Roles – Province, Articles 14, 70, 132)

Democratic Accountability refers to:

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs.

There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.

- **responsiveness and democratic accountability** – a council responds to the needs, interests and priorities of its citizens; a council answers for its decisions and the impact of its decisions
- **promotion of quality of life for local residents** – a council has specific functions that it implements in order to improve the lives of its citizens
- **promotion of equity** – a council ensures that all its citizens – including women, men, youth, the poor, minorities - have meaningful opportunities to *participate in* and *equally benefit from* local governance
 - **transparency and integrity** – as representative of its citizens, a council is transparent in its decisions and affairs, and the council acts with the utmost integrity
 - **measures to fight corruption and abuse of power** – councilors must not engage in corruption or abuse of their power, and councilors report any case of corruption or abuse of power in their area. (Organic Law, Article 12, 47 to 49)

See Module 2 for more information on democratic development

Two General Types of Sub-National Governance and Administration Systems

- ✓ Under the Organic Law, two general types of sub-national governance and administration systems emerge – one type is at provincial level and the other type is for the Capital, municipalities, khans, districts, communes and sangkats.
- ✓ The **role of provincial councils** with regard to districts and municipalities is to –
 - provide a strategic framework within which districts and municipalities can make local plans and take local decisions
 - put in place and maintain appropriate and enabling mechanisms for the oversight of human resources
 - build the capacity of local systems to function efficiently and effectively.
- ✓ In fulfilling their roles, provincial administrations must treat **districts and municipalities as autonomous**, with district/municipal own mandate and resources.

- ✓ It is the RGC's intention to gradually transfer the **bulk of service delivery responsibilities** to district and municipal councils, as well as to commune and sangkat councils.
- ✓ At the same time, it is the intention to strengthen provincial capacities for strategic planning and investment and for provision of support and oversight of district and municipal administrations.
- ✓ As a result, **provincial administrations** will focus initially on –
 - their regulatory role with respect to **oversight** of districts and municipalities
 - the enabling of provinces to provide **capacity development** to districts, municipalities, communes and sangkats
 - the enabling role of provincial Divisions and Offices regarding **services** such as treasury and strategic planning.

Rural and Urban Governance

- ✓ The Organic Law establishes **different governance structures and systems** for urban areas and for rural areas. A constitutional amendment was approved to Articles 145 and 146 of the Constitution that facilitates this urban-rural distinction.
- ✓ In **Phnom Penh**, there are three governance levels: Phnom Penh, khans and sangkats. In order to ensure coherent and unified development in the urban area of Phnom Penh, khans and sangkats are under the supervision and management of the Phnom Penh council. (Organic Law, Articles 4, 106, 107)
- ✓ **Provinces** are divided into urban municipalities and rural districts. Municipalities are divided into sangkats. In order to ensure coherent and unified development of municipalities, sangkats are under the supervision and management of the municipal council. (Organic Law, Articles 5, 110, 111)
- ✓ **Districts**, even though they are predominantly rural, may have one or more urban sangkats in addition to rural communes. Districts, therefore, are divided into communes and sangkats. (Organic Law, Article 5)
- ✓ Urban areas and rural areas must be identified and demarcated as a first step toward applying the Organic Law provisions regarding rural and urban governance. The Organic Law envisages that **boundaries** may be **created, removed or modified** for Phnom Penh, a province, municipality, district or khan. (Organic Law, Articles 6, 7)
- ✓ Every provincial town has already been identified as a municipality under the Organic Law. As well, a number of additional urban areas have been identified as municipalities, including Soung in Kompong Cham province and Bavet in Svay Rieng province.
- ✓ Cambodia now has:
 - Capital Phnom Penh

- 23 provinces
- 26 municipalities
- 159 districts
- 8 khans
- 1417 communes, and
- 204 sangkats.

(Sub-decree 18 on Number of Councilors)

Article 3. Local Governance

The national law establishes the system of local governance and the division of powers between the central government and local governments. The central government is responsible for the overall management of the country, while local governments are responsible for the management of their respective territories.

In order to ensure the effective and efficient management of the country, the central government shall establish a system of local governance that is based on the principle of decentralization. The central government shall ensure that local governments have the necessary resources and capacity to manage their territories effectively.

Provinces are divided into districts and municipalities. Districts are established in order to ensure the effective and efficient management of their respective territories. Municipalities are established in order to ensure the effective and efficient management of their respective territories. The central government shall ensure that districts and municipalities have the necessary resources and capacity to manage their territories effectively.

Local governments shall be established in accordance with the law. The central government shall ensure that local governments have the necessary resources and capacity to manage their territories effectively. The central government shall also ensure that local governments are able to participate in the national development process.

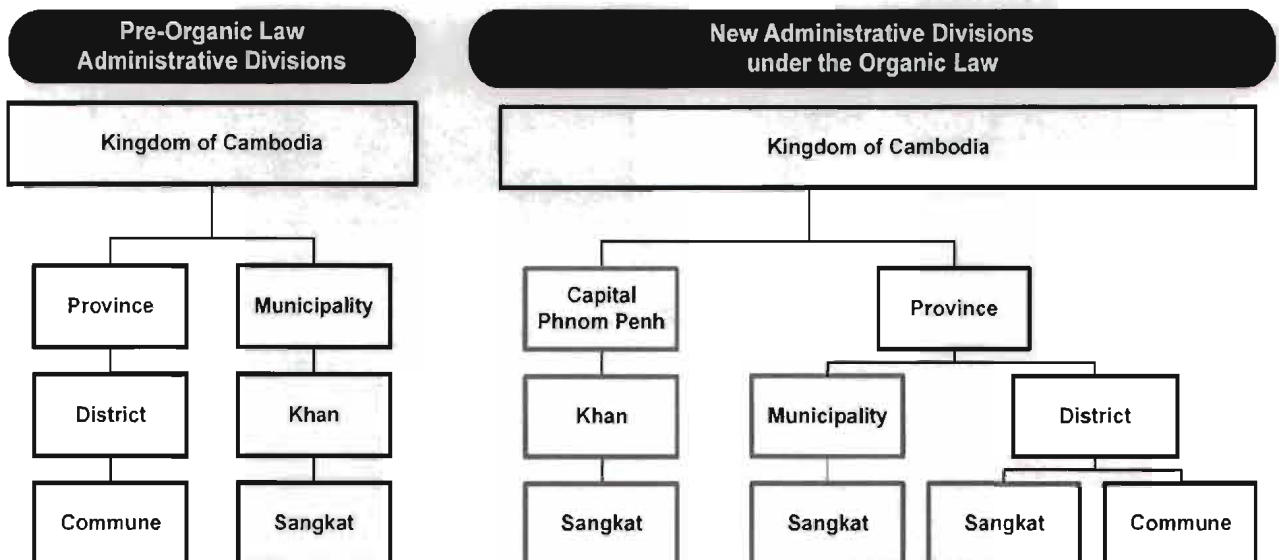
Why distinguish between rural and urban governance?

Cambodia is experiencing a dramatic growth in urban areas. Urban areas are expanding rapidly as a result of internal population growth and the migration of people from rural to urban areas. This process of urbanization can be expected to increase in the future.

Each urban area is a geographic, social, economic and political unit with a high population density and high levels of interaction and inter-dependence. Urban areas rely economically on non-agricultural activities that may include manufacturing, industry and services. Rural areas are different, with social capital and interaction associated more with villages, and with economic reliance primarily agriculture-based.

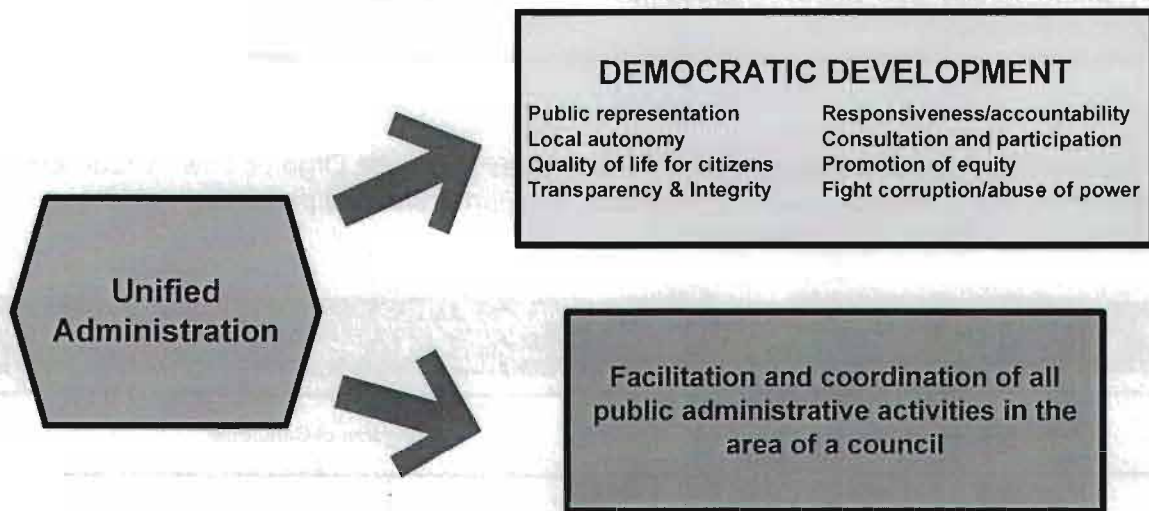
Rural and urban areas have different characteristics, and different needs and priorities. Even where needs and priorities are similar, different mechanisms are often needed to respond appropriately.

The following diagram illustrates urban and rural areas under the Organic Law. Urban areas are shown in **red**. Provinces, although in **black**, are part urban and part rural.



Unified Administration

- ✓ Phnom Penh and every province, municipality, district and khan has a unified administration. (Organic Law, Article 2)
- ✓ The unified administration has two key **purposes**:
 - to **contribute to the achievement of democratic development**
 - to strengthen the unity of the state in order to **facilitate all public administrative activities** within the area of each council. (Organic Law, Articles 2, 8)



A unified administration includes the following elements:

- ✓ At the core of the unified administration is the **elected council** that has its **own functions and resources** (including discretionary finances), and the **right to make decisions** for its area on behalf of its citizens. (Organic Law, Articles 29 to 34)
- ✓ **Council committees** that provide advice to the council. (Organic Law, Articles 114, 115)
- ✓ An appointed **board of governors**, chaired by an appointed governor, that is responsible for assisting the council to implement its work. The board of governors also assists the council to integrate plans and budgets of ministries and government institutions in the area. (Organic Law, Articles 155 to 170)
- ✓ An appointed **governor** who has the authority to supervise, coordinate and direct ministries and other government institutions in the area of the council. (Organic Law, Article 154)
- ✓ Authority of the **council to coordinate** its plans and budgets with the plans and budgets of ministries and other government institutions providing services in the area in the area through a **technical facilitation committee**. (Organic Law, Article 123, 124)
- ✓ Possibility for the **council to negotiate** with ministries and government institutions providing services in the area for particular priorities, activities and budget in order to better respond to local citizen needs.
- ✓ A council **development plan and budget** that integrate services and activities of the council together with services and activities of ministries and government institutions operating in the area of the council. (Organic Law, Articles 36, 123, 124, 166)

See Module 4 for more information on the unified administration

Legislative and Executive Authority

- ✓ Councils have legislative and executive authority. (Organic Law, Article 30)
- ✓ A council exercises its legislative authority by adopting **bylaws**. A bylaw is a legal rule that is approved by the council and that is enforceable. (Organic Law, Articles 32, 53 to 61)
- ✓ A council exercises its executive authority by **making and issuing decisions** in its meetings, and by **ensuring that its decisions are implemented**. (Organic Law, Articles 31 and 33)
- ✓ When a council exercises its legislative and executive authorities, the council is making **political choices** on behalf of its citizens. The council should exercise these authorities after having given **citizens** a chance to **voice** their views and after the council has considered those views. The council should make its decision taking citizens' voice into account and also **evidence** from data, studies, and information about past successes and failures. It is role of the boards of governors and council personnel to provide that evidence to the council. (Sub-decree Roles – Province, Articles 29, 86, 147)

- ✓ When a council exercises its legislative and executive authorities, councilors will need the **political space** to **assess** the merits of different positions, to discuss, **debate** and to **deliberate**.
- ✓ Each provincial council, municipal council, district council, commune and sangkat council has its own **separate power to make decisions**, to implement its functions and to utilize its resources in order to establish, promote and sustain democratic development in its area. (Sub-decree Roles – Province, Article 174)

See Module 5 for more information on council authorities

General Mandate Functions

- ✓ It is planned that councils will have a **general mandate**, in addition to receiving specific responsibilities.
- ✓ The scope of the **general mandate** should only be constrained by the boundaries of national laws. Under this general mandate, a sub-national administration may autonomously act to –
 - develop and enforce local regulations on a wide range of economic and social matters
 - promote local economic development in partnership with private and community organizations
 - secure social protection services for the poorest and most vulnerable in their constituencies
 - co-finance or co-produce services managed by national agencies
 - develop and maintain infrastructure not classified as exclusive responsibility of other agencies, and
 - undertake any other task in the interest of the welfare of their communities, from which they are not explicitly excluded by national law
- ✓ Councils would have **autonomy** in implementing these general mandate functions, only limited by the Constitution, laws and other applicable legal instruments.
- ✓ Councils will require **discretionary funds** in order to be able to take up any of these functions.

Administrative and Sectoral Functions

- ✓ After its first election, at the same time the new council replaced the appointed administration in its area, the council and the board of governors **took over the functions of the governor** appointed prior to the first elections of councils. In addition, the **personnel working in units** of the former appointed Phnom Penh, provincial, municipal, district and khan administrations were **re-deployed** to the new elected councils. (Organic Law, Articles 277, 278, 281; Prakas 1249 on Office-Taking Meeting, Articles 6, 7; Sub-decree Roles – Province, Article 206)
- ✓ Over time, councils for Phnom Penh, provinces, municipalities, districts and communes will receive specific sectoral functions to implement.

See Module 13 for more information on the transfer of functions

At the same time these councils receive a **function**, they will also receive the **finances**, **personnel** and **assets** necessary to implement that function. (Organic Law, Articles 29, 213, 214, 217, 220, 222 to 273)

Example - Education Sector Function

Imagine that district councils will receive the function to *establish and operate pre-schools*. If that function is transferred to district councils, district councils must also receive:

- *finances* to establish and operate pre-schools on an on-going basis
- *personnel*, such as existing pre-school teachers
- *assets* that relate to pre-schools, such as teaching tools, play toys, and perhaps even existing pre-school buildings.

Fiscal Decentralization

- ✓ Having functions to implement without having the corresponding finances would be meaningless. Without adequate and discretionary resources, councils will not have the necessary **discretion** to make decisions that respond to the real needs of their citizens.
- ✓ Every council, therefore, must have the financial resources to implement its functions, to fulfill its legal duties and to cover its administration costs. In addition, a council has sufficient funds to undertake activities that respond to real local needs, and otherwise to **implement its functions and duties in ways that promote democratic development**. (Organic Law, Article 242)
- ✓ The Phnom Penh council, and all provincial, municipal and district councils (but not khan councils) have their **own budget**, and have access to **two main types of council revenue**:
 - **local revenue sources**, including local taxes imposed by the council and fees for services (to be elaborated by additional laws and regulations)
 - **national revenue sources**, including national revenue that is shared with councils, and transfers of funds from the national government (also to be elaborated by additional laws and regulations). (Organic Law, Articles 244, 246 to 251)
- ✓ A khan council receives its **budget** from the Phnom Penh council. A sangkat council in Phnom Penh or a municipality receives its budget from the Phnom Penh or municipal council. (Organic Law, Articles 44, 244)
- ✓ Commune councils and sangkat councils in districts continue to have their own **budget**, as provided under the LAMC. (LAMC, Article 73)

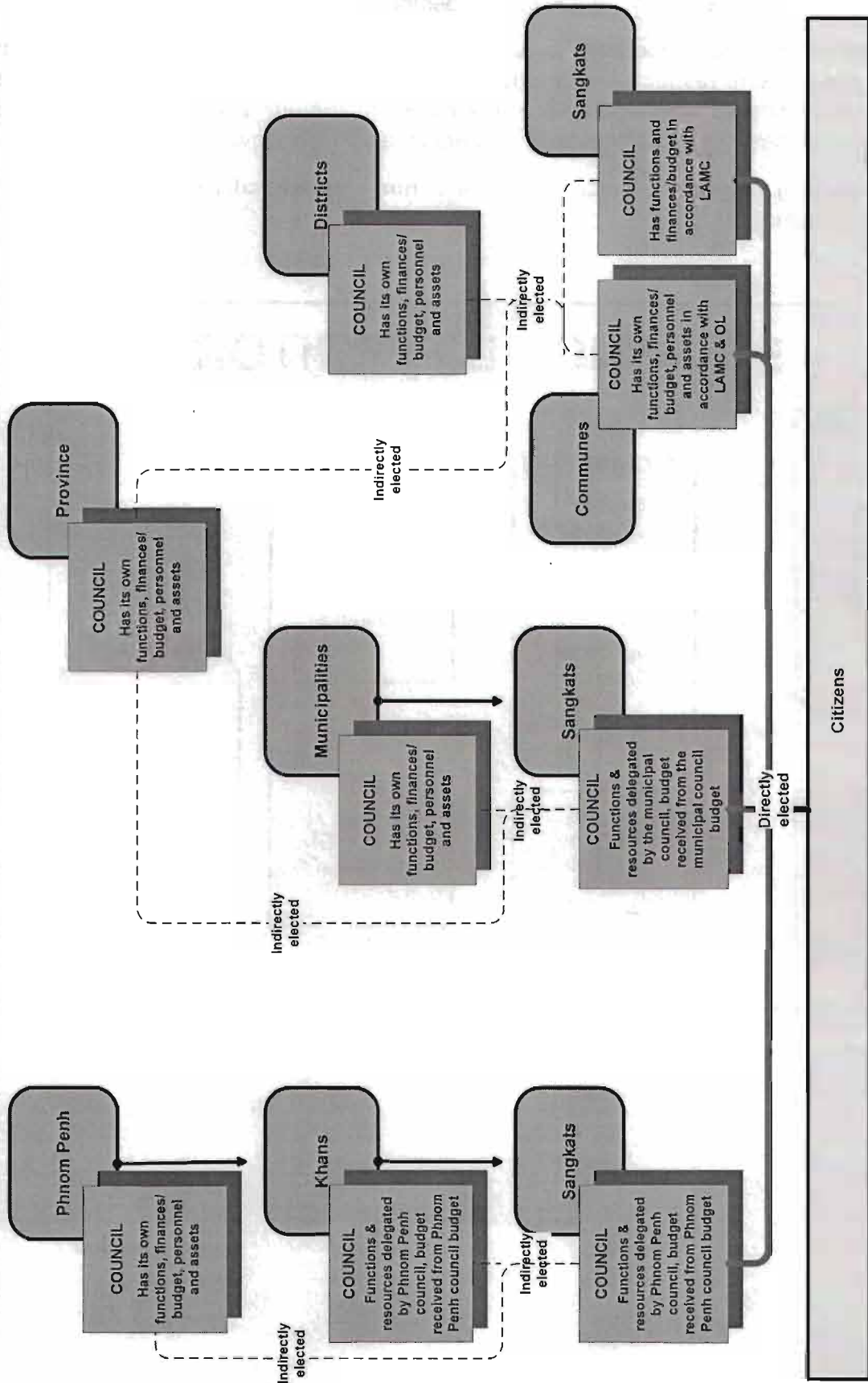
Matters related to fiscal decentralization and financial management must still be elaborated in laws and regulations.

It will be important to listen to the message of the National Strategic Development Plan: in order to make a real difference in the lives of their residents, councils will need **adequate finances** from **national transfers** and from **own-revenue**. (NSDP, pages 37,38)

See Module 15 for more information about council finances

A Law on Sub-National Administration Financial Regime and Management of Assets must still be adopted in order to address many aspects of fiscal decentralization and financial management. (Organic Law, Articles 44 – 46, 137, 244, 245, 248, 253, 255)

NEW ADMINISTRATIVE ARRANGEMENTS

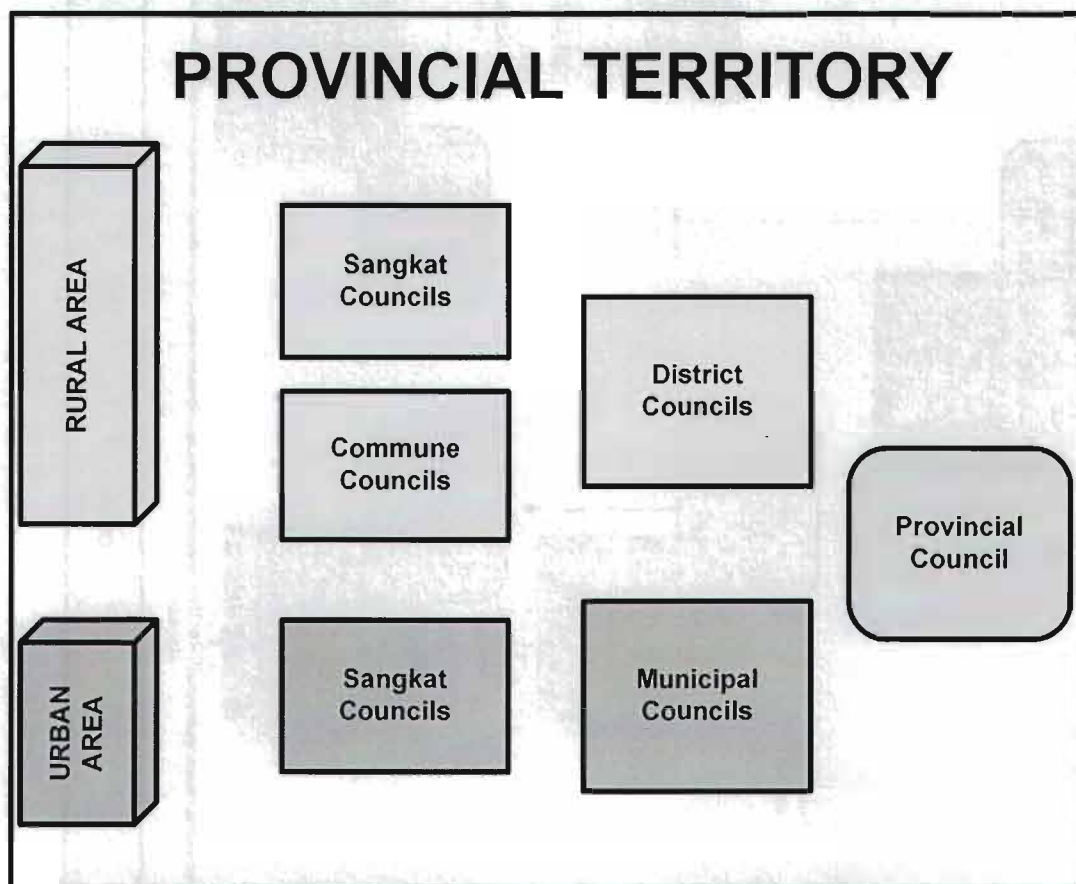


Another Perspective – Non-Hierarchical Diagram of Councils

Each provincial council, municipal council, district council, commune and sangkat council has its **own separate power to make decisions**, to implement its functions and to utilize its resources to establish, promote and sustain democratic development in its area.

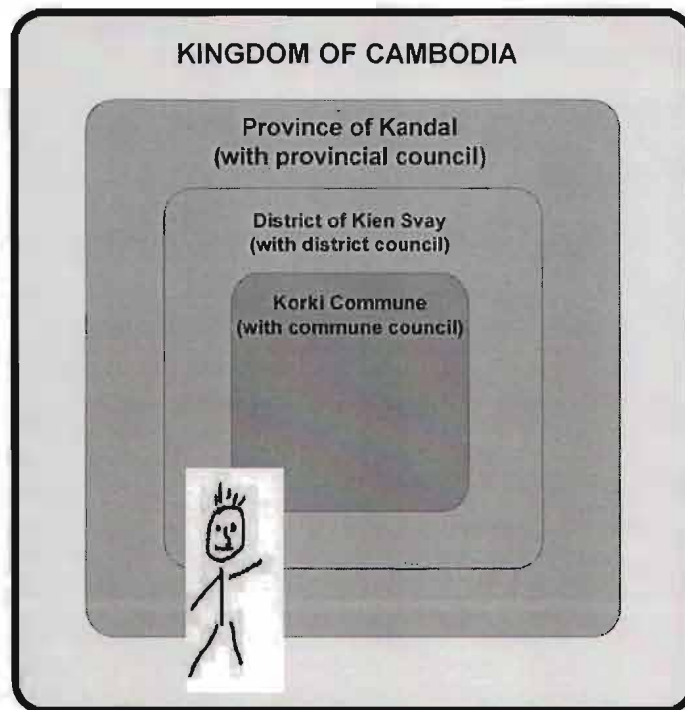
The **autonomy, the deliberative and political space, and the discretionary space of all councils must be respected**. As long as a council legally complies with the Constitution, laws and other applicable legal instruments, no one may interfere with the council's priorities, choices, policies, decisions or bylaws. (Sub-decree Roles – Province, Article 174)

The following diagram, therefore, provides a **non-hierarchical perspective** on the new levels of council.



Every person in Cambodia lives within 4 different jurisdictions

<p>A person living in a rural part of a province lives in:</p> <ul style="list-style-type: none"> • a commune • a district • a province, and • Cambodia 		<p>A person living in an urban part of a province lives in:</p> <ul style="list-style-type: none"> • a sangkat • a municipality • a province, and • Cambodia
<p>A person living in Phnom Penh lives in:</p> <ul style="list-style-type: none"> • a sangkat • a khan • Phnom Penh, and • Cambodia 		



Citizen of:
 Kor Ki Commune
 District Kien Svay
 Province of Kandal
 Kingdom of Cambodia

PART 2:

Summary of Module

- D&D reform is a strategy to enhance good governance and contribute to sustainable economic growth for Cambodians.
- 70% of all states have decentralized structures.
- Cambodia's major policy papers are consistent: good governance – which is the equivalent of democratic development and includes democratic accountability - is the most important pre-condition for sustainable economic growth. D&D reform is one strategy to enhance good governance.
- The main features of the Organic Law include:
 - elected councils
 - democratic development
 - rural and urban governance
 - unified administration
 - legislative and executive authority of councils
 - sectoral functions
 - fiscal decentralization

PART 3:

Resource Documents

1. Rectangular Strategy for Growth, Employment, Equity and Efficiency, 2004
2. Address by Samdech Akka Moha Sena Padei Techo Hun Sen on the Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase 2 to the First Cabinet Meeting of the Fourth Legislature of the National Assembly (September 2008)
3. National Strategic Development Plan, 2006 – 2010
4. National Strategic Development Plan Update, 2009 – 2013
5. Strategic Framework for Decentralization and Deconcentration Reform, 2005
6. Law on the Administration and Management of Communes/Sangkats
7. Law on Elections of the Phnom Penh Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils
8. Law on Elections of Commune/Sangkat Councils, as amended, 2006
9. Good Governance for Commune/Sangkat Councilors, National Committee for Support to Communes/Sangkats, 2005

PART 4:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Democratic Development

Democracy and development are both values that are articulated in the Cambodian Constitution

Discuss in small groups:

- What does 'democracy' mean to you?
- What does 'development' mean to you?
- What does 'democratic development' mean to you?

EXERCISE TWO: Responsiveness

A severe storm has hit District Mayk Ple'an. The storm caused a bridge to collapse. The bridge is vital to the economic life of the District because it connects the district to the large provincial market. In addition, for a number of families, their rice crop for the year was completely destroyed. The storm also caused damage to the bank of the Tonle River. The damage caused the homes of 150 families to slide into the River. Some of those families are now living with family and friends, but others have no place to stay. The District Council of Mayk Ple'an does not have sufficient funds, or access to sufficient funds, to repair the bridge, repair the bank of the river and to assist the families most affected by the storm.

Prepare a role play of no more than 15 minutes. The role play involves holding a District Council meeting.

Actors should include:

- District chief who believes that the bridge should be repaired as a priority
- One district councilor who believes that the families whose crops have been destroyed should be assisted on a priority basis
- One district councilor who believes that the families without homes should be assisted first
- Representative of families whose rice crop has been destroyed
- Representative of families who lost their homes and have no place to live
- Representative of families who use the bridge to sell their wares at the provincial market

The council must hold a meeting to decide how it will spend its limited funds. (Remember that the council does not have sufficient funds to address all problems or to help all people.) Citizens must have a chance to state their needs and their positions during the meeting.

EXERCISE THREE: Transparency

Discuss in your group the following questions:

- Why do you think transparency is important for citizens?
- What is the connection between transparency and accountability?
- What are some creative ways for a provincial council to disseminate information to its citizens? (*other than* posting information on notice boards)
- What are some specific ways to make certain that information from a district council is *actually received* by women? Youth? The poorest? Indigenous peoples?

Modules for Understanding
and Training on the
Organic Law

Module 2:
Democratic Development

PART 1:

- 1. Introduction**
- 2. Definition and Principles of Democratic Development**
- 3. Transparency and Civic Engagement in the Organic Law**
- 4. Responsiveness, Democratic Accountability and Accountability in the Organic Law**
- 5. Equity in the Organic Law**

Section 1: Introduction

The Royal Government's policy agenda for 2009 to 2014 is reflected in its Rectangular Strategy for Growth, Employment, Equity and Efficiency – Phase II. At the core of the Rectangular Strategy is good governance which is at the heart of the Organic Law concept of democratic development. Good governance is recognized as the most important pre-condition to sustainable, equitable and just economic development. The Rectangular Strategy provides that good governance **involves wide participation, enhanced sharing of information, transparency, equality, inclusiveness, the rule of law and accountability.**

In order to achieve good governance, the Rectangular Strategy commits the Royal Government to focus on four reform areas: anti-corruption; legal and judicial reform; public administration reform; and reform of the armed forces. In the area of public administration reform, the Royal Government recognizes decentralization as crucial to **strengthening democracy** and, in all sectors, to **improving the quality of public services and participatory local development.**

The Organic Law incorporates democratic development as one of the key principles on which the law is based. The importance of this key principle is highlighted in **numerous articles** (Organic Law, Articles 2, 11, 12, 19, 20, 34, 42, 96, 97, 99, 101, 103, 106, 108, 110, 112, 134, 213, 225, 241 and 251). The importance of this key principle is also reflected in the name of the new National Committee for Sub-National Democratic Development (NCDD). In addition, the regulations that have been issued under the Organic Law have elaborated the importance of democratic development and have set out mechanisms to ensure that it is realized. It is very important, therefore, that democratic development is well understood.

The subject of this Module is how the Organic Law incorporates the principle of democratic development.

Section 2: Definition and Principles of Democratic Development

Organic Law, Articles 2, 11, 20, 47 – 49

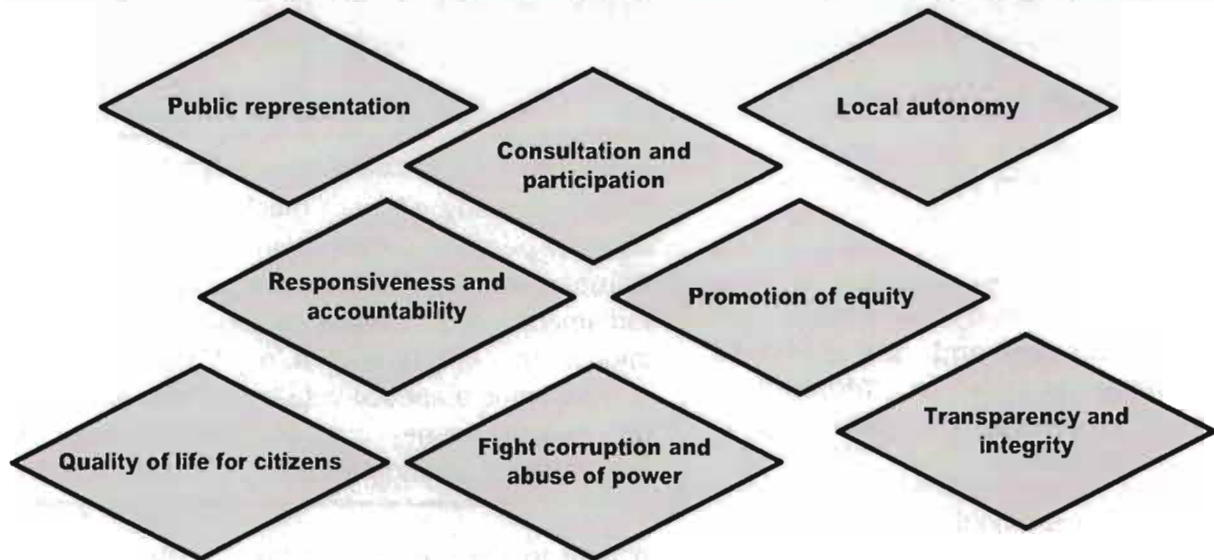
- ✓ **Democratic development and good governance refer to effective political institutions and the responsible use of political power and management of public resources by the State** in the interests and on behalf of citizens.
- ✓ The purpose of every council is to establish, promote and sustain democratic development. (Organic Law, Articles 2, 11, 20)
- ✓ Democratic development includes the following components:
 - **public representation** – a council represents all its citizens and works only in the interests and for the benefit of its citizens
 - **local autonomy and discretion** - a council has sufficient authority and discretion to be able to respond to the real needs of its citizens
 - **consultation and civic engagement** - all citizens have meaningful opportunities to voice their needs and concerns and to share their ideas about how to address those needs and concerns; every council has mechanisms in place to consult with their citizens and promote civil engagement
 - **responsiveness and accountability** – a council responds to the needs, interests and priorities of its citizens; a council answers for its decisions and the impact of its decisions
 - **promotion of quality of life for local residents** – a council has specific functions that it implements in order to improve the lives of its citizens
 - **promotion of equity** – a council ensures that all its citizens (including women, men, youth, the poor and minorities) have meaningful opportunities to participate in and equally benefit from local governance
 - **transparency and integrity** – as representative of its citizens, a council is transparent in its decisions and affairs, and the council acts with the utmost integrity
 - **measures to fight corruption and abuse of power** – councilors must not engage in corruption or abuse of their power, and councilors report any case of corruption or abuse of power in their area.

Every council is a public representative, guardian and servant for the interests of all citizens in its jurisdiction. (Sub-decree Roles – Province, Articles 6, 61, 113)

Democracy and development are both values articulated in the Cambodian Constitution.

- **What does democracy mean to you?**
- **What does development mean to you?**
- **What does *democratic development* mean to you?**

DEMOCRATIC DEVELOPMENT



A Deeper Look at Some Principles of Democratic Development

Civic Engagement

- ✓ The most direct form of people's civic engagement in local governance is **voting in elections**. During elections, citizens vote on the basis of whether they are satisfied with the policies, decisions, actions and performance of their government or not. The government must then accept accountability by abiding by the results of the election. Even in countries with long democratic traditions, however, experience shows that citizens need to be involved in **decision-making between elections**, particularly on sub-national levels, in order for their needs to be better met. Civil engagement may take **many forms** – citizens attending their council office to raise issues; citizens participating in consultative forums; citizens sitting on council committees, to name a few.

Transparency

- ✓ In addition to the right to vote, a pre-condition for citizens to take advantage of their rights are: freedom of the press, freedom of assembly, the freedom to form political parties, and also the **right of citizens and the media to have access to information**. This refers to the right to access information about laws and regulations, and about decisions of government, including sub-national councils. Citizens also have a right to know how their tax money and other public funds are being spent. In order for that right to be meaningful, citizens must have access to information about government budgets and spending.

EXAMPLE – Participation at National level

There are many different mechanisms around the world for people's participation. In Switzerland, for example, the Constitution cannot be amended by Parliament alone. Before Parliament can make an amendment, a referendum must take place. A referendum is a special vote by the people. Only if the people agree can Parliament make the Constitutional amendment.

Equity

- ✓ Equity refers to fairness of treatment for different groups according to their respective needs and interests. This includes ensuring that all groups enjoy the same rights, benefits, opportunities and obligations. All citizens, for instance, must have the same rights to participate in local governance. Equity may also involve targeted interventions to ensure that these rights are, in fact, realized.

EXAMPLES - Equity

- Children of minorities must have equal access to education and schooling as the rest of the population.
- The different needs of women and men must be taken into account in development plans, for example in terms of what kind of medical care is made available. Women and not men, for instance, require maternal care.
- Requests from citizens to the council and its administration must be handled without regard to the social status of a citizen.
- Opportunities to participate in local governance should accommodate all groups. For instance, public meetings should not take place at a time that men tend to be in the field, or at a time that women tend to be busy with household responsibilities. Public meetings should also take into account holidays of minority groups.

Responsiveness

- ✓ Responsiveness is a particularly important principle of democratic development and good governance. Responsiveness refers to the responsibility of elected representatives to **respond to the real needs** of their citizens. It also refers to the responsibility of elected representatives to **listen to the voice of their citizens**, to consider the issues citizens raise and the needs and demands they make, and then to respond as best as possible within their authority and resources.
- ✓ In order to be responsive, councils must have the roles, **functions** and **resources** necessary to be able to respond to citizen needs and interests. They must also have sufficient authority and **discretion** to implement those functions and utilize their resources in ways that respond to actual local needs. (Currently, for instance, commune councils perceive that they cannot meet citizen expectations due to limited functions, authority and resources.)

Accountability

- ✓ Accountability is stronger than participation, stronger than transparency, and stronger than responsiveness. Accountability means that **one group of actors has authority over another group of actors**. An employer, for instance, has authority over the activities of her/his employees.
- ✓ Accountability should involve the right to **impose sanctions**. Imagine, for instance, if a boss had no authority to sanction employees who fail to do their job. In that case, in fact, those employees would **not** be accountable to their boss.

Accountability Example

Employee Accountability to the Employer

- Accountability applies in a wide range of relationships. For instance, an employee is accountable to his/her employer.
- Since the employee is accountable, the employer has the right to review and evaluate the employee's work, and to discuss the work and any need for improvements with the employee.
- If the employer is unhappy with the quality or quantity of the work, the employer is entitled to take measures in accordance with the employment contract and any applicable labour law.
- Measures that an employer may take could include – requiring the employee to perform the task differently; requiring the employee to take on a different task all together; imposing requirements or deadlines in the employee; and even demoting or firing the employee.

- ✓ Citizens, as the key actors in a democracy, have authority over their elected officials. Citizens have authority over their councils because **citizens voted for the councils**. This is referred to as **democratic accountability**, which is discussed below.
- ✓ Accountability does not only refer to government's accountability to citizens. Accountability also refers to **accountability among government actors** (such as the accountability of the board of governors to the council).

Accountability: A Key Concept

Accountability is a key concept in the study of public administration. It refers to the obligation of public officials to report on their actions and decisions to the citizens they serve. This concept is central to the idea of democratic governance, where the power of government is derived from the consent of the governed.

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Section 3: Transparency and Civic Engagement under the Organic Law

Organic Law, Articles 36, 38, 39, 41, 50, 51, 68, 76, 84, 136, 163, 164, 169, 170

The Organic Law identifies democratic development as a key principle on which the Law is based on. Included in this principle is the requirement that the Capital Phnom Penh, provinces, municipalities, districts and khans work in ways that are transparent and that are participatory and consultative so as to promote civic engagement. This Section offers an overview of Organic Law provisions dealing with transparency and civic engagement.

Responsibilities of Councils

- ✓ Council **meetings** are generally **public and open** to citizens. Citizens do not need an invitation to attend council meetings. (Organic Law, Article 68; Model Internal Rules, Article 25)
- ✓ The council must publicly disseminate the **calendar of its ordinary meetings** every year. (Organic Law, Articles 75, 76; Model Internal Rules, Articles 2, 6)
- ✓ At every meeting, the council must make any necessary decisions or bylaws (Deika) about **consultation processes with the public** in its jurisdiction and dissemination of information to citizens. (Organic Law, Article 36)
- ✓ Every council must organize consultative forums every year that are attended by citizens as well as other councils. These forums are important mechanisms for –
 - **transparency**
 - **civic engagement** –
 - consultation
 - participation
 - citizen voice
 - dialogue between government and citizens about development, choices, rights and services
 - inclusiveness - involving marginalized citizens
 - **democratic accountability.**
(Sub-decree Roles – Province, Articles 9, 65, 121)
- ✓ The purpose of the consultative forum is for the council to –
 - **inform** about the council's activities since the last forum

Model Internal Rules

The NCDD has issued model internal rules that councils referred to when they developed and approved their individual internal rules. The model internal rules stipulate **minimum conditions** that may be added to and enhanced by individual councils.

- **respond to requests** of participants
- **discuss and clarify issues** that are raised by participants
- **collect ideas and comments** from participants in order to improve the performance of the council and its responsiveness to local needs.

(Sub-decree Roles – Province, Article 9, 65, 121)

- ✓ Every sub-national administration must be open during **official working hours**. During these working hours, any citizen has the right to –

- communicate and work with the council and board of governors
- receive information from the administration about a request or other matter
- provide comments or suggestions on any matter.

(Sub-decree Roles – Province, Articles 50, 107, 168)

- ✓ The council must create favorable conditions for the public to obtain **public information** about council reports, agendas of meetings, minutes of meetings, bylaws, laws, royal decrees, sub-decrees and prakas relating to the council, as well as other documents of the council. (Organic Law, Article 51)
- ✓ The administration must set up easily accessible public **information boards** in front of the administration office. The information board must display official council information for at least 10 days. In addition, the council must set up information boards in other public places in order to further disseminate information to citizens. The council must also find alternative means to disseminate information to citizens about the administration's work. (Sub-decree Roles – Province, Articles 54, 111, 172)
- ✓ The council must publicly post information about its approved **decisions and bylaws**. (Model Internal Rules, Article 19)
- ✓ Every council must prepare and disseminate an **annual report** on its decisions, activities and performance. (Organic Law, Article 50)

SUB-NATIONAL ADMINISTRATION

Sub-national administration refers to the council and its board of governors. (Sub-decree Roles – Province, Article 2)

Responsibilities of Boards of Governors

- ✓ The board of governors submits proposals to the council on **strategies and processes for consultations with citizens**, relevant ministries and other partners. (Organic Law, Article 164)
- ✓ The board of governors must ensure the availability of **information boards** and other means for information dissemination as needed by the council. Public documents must be posted on information boards or disseminated through other means. (Organic Law, Article 169)
- ✓ The board of governors also ensures that the **public has full access to the information on information boards** and ensures that information boards are maintained. (Organic Law, Article 170)
- ✓ The board of governors is responsible for preparing for council approval an **annual report** on council performance that must be disseminated to citizens within the area of the council. (Organic Law, Article 163)
- ✓ Since the board of governors is accountable to the council, the board of governors must conduct itself in ways that are transparent to the council. For instance, the board of governors reports to the council at least at every council meeting. In addition, minutes must be taken at every meeting of the board of governors. (Organic Law, Articles 159, 165; Model Internal Rules, Article 31; Sub-decree Roles – Province, Articles 31, 88, 149)

Transparency and Civic Engagement in the Planning Process

- ✓ In formulating its development plan and investment program, a council must share information and be **transparent**. The council must **consult** with all citizens in its area and ensure opportunities for **civic engagement** (participation) in the process. (Planning Sub-decree, Articles 5, 13)
 - ✓ The **board of governors** must propose to the council a strategy for consultations with citizens. Consultations with citizens may be undertaken by the council, or the council may ask the board of governors to conduct the consultations on behalf of the council. It is also the responsibility of the board of governors to lead consultative forums during the formulation of the development plan and investment program. (Organic Law, Articles 38, 164; Planning Sub-decree, Article 8)
 - ✓ It is the responsibility of the **council's technical facilitation committee** to coordinate stakeholder participation in the planning process. (Planning Sub-decree, Article 7)
- See Module 7 for more information on the technical facilitation committee
- ✓ In order to promote **democratic accountability**, it is important that **councilors** play a significant role in consultations with citizens.
 - ✓ Immediately upon approval of the development plan, the council must **post its plan in public**. The public can look at the plan at the office of the council free of charge or may purchase the plan from the council at original cost. (Organic Law, Article 41)
 - ✓ A council's development plan must include a **strategy to implement the development plan** in ways that ensure transparency, accountability, participation of citizens within the

area of the council, and effectiveness. (Organic Law, Article 39; Planning Sub-decree, Article 22))

- ✓ The council must arrange for monitoring the progress of implementing its development plan and investment program. The council must also approve an annual report that sets out its progress, and its plans for implementation for the next year. (Planning Sub-decree, Article 26)
- ✓ In order to promote **democratic accountability**, it is important that **citizens** also have opportunities to monitor council performance in implementing the development plan and investment program, as well as other council tasks, such as civil registration.

Transparency in Financial Management

- ✓ The council must ensure that financial management is transparent and that the council is accountable to citizens in how council finances are managed. The council must **publish its annual budget**, must ensure that internal and external **audits** are conducted, and must ensure that there are appropriate procurement processes in place. (Organic Law, Article 45)
- ✓ The **procurement** committee has the duty and authority to ensure that all procurement by the sub-national administration is conducted with **integrity, openness, transparency and fairness**, and in accordance with the Law on Public Procurement. The procurement committee must safeguard the interests of the council and its citizens. (Organic Law, Article 136)

Section 4: Responsiveness, Democratic Accountability and Accountability in the Organic Law

Organic Law, Articles 24, 34, 39 – 43, 46 – 47, 78 – 85, 98, 121, 151 – 152, 154, 157 – 158, 165, 174, 177 – 178, 184, 190, 225, 226

A commitment to **democratic accountability** is a recurrent theme throughout the Organic Law. In many Articles of the Organic Law, it is described that **councils are accountable to their citizens**. There is also a commitment to **accountability** among government actors. The Organic Law and regulations are clear that **committees**, the **board of governors** and **council personnel** are accountable to the council. The **governor** is accountable to his/her council. The board of governors is also accountable for some matters to the Royal Government. For some particular matters, the council is also accountable to the Royal Government.

Unlike accountability, **responsiveness** is not mentioned often in the Organic Law. The Organic Law does, however, provide that councils must receive maximum authority to implement their functions. Councils, should, therefore, have maximum authority and **discretion** to be able to respond to the real needs of their citizens. This is accomplished by transferring to councils **functions** with adequate authority and discretion, together with adequate discretionary **resources**. Responsiveness, therefore, is an integral element of the reform.

This Section offers an overview of Organic Law provisions dealing with responsiveness, accountability and democratic accountability.

Responsiveness of Councils to Citizens

- ✓ Every council is directly accountable to citizens for the **priorities** it selects, for its decisions, and for ensuring democratic development. (Organic Law, Article 34)
- ✓ When a council is transferred **sectoral functions**, the council must be provided maximum authority and discretion to manage the function so that the council can be **responsive to the actual needs of its citizens**. (Organic Law, Article 225)
- ✓ A council's development plan and financial affairs must **respond to the needs of both women and men, youth, children and vulnerable groups** including the poor and indigenous peoples. (Organic Law, Articles 39, 42)
- ✓ Every council is responsible for the effective management and utilization of **state assets** transferred to it or procured by its own means. (Organic Law, Article 46)
- ✓ Commune councils must be responsive to the citizens of their communes. (LAMC, Articles 66 and 82)

Democratic Accountability

- ✓ In order for D&D reform to meet its objectives there must be **democratic** accountability of councils to citizens.

Democratic accountability refers to –

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs.

There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.

Democratic accountability, therefore, involves –

- citizens having opportunities for their **voice** to be heard, understood and considered by councils
- citizens **evaluating** the activities of councils and their use of public funds, providing **feedback**, and **demanding** that actions be taken when council performance is not satisfactory (including the performance of the administration)
- clearly separating the **political choices** that elected councils must make on behalf of their citizens from the technical work of the boards of governors and council personnel
- putting in place rules and processes to ensure that councils make **choices about priorities and making decisions based on evidence**
- ensuring that there is **political space** for councils to discuss and **debate** when setting priorities on behalf of their citizens
- providing councils with a **clear mandate** that includes sufficient **authority and discretion** to be able to address citizens' real needs and concerns
- providing councils with **sufficient discretionary resources** to address those needs and concerns
- providing citizens with mechanisms to impose consequences on their elected representatives when those elected representatives are not responsive to their needs

- ✓ Key elements of democratic accountability have been discussed above – transparency, civic engagement and responsiveness.
- ✓ Additional provisions in the Organic Law and regulations that promote democratic accountability include –
 - the board of governors must arrange for **research studies** on key issues in order to provide quality advice to the council. This will enable the council to make informed decisions and set priorities based on evidence (Sub-decree Roles – Province, Articles 29, 86, 147)

- councils have **monthly meetings** with internal rules that should provide political space for councilors to **discuss and debate** when setting priorities and making decisions on behalf of their citizens (Organic Law, Article 68; Model Internal Rules, Article 25)
- it is the elected council – not the board of governors – that approves bylaws, the development plan, budget, investment plan, the annual report and other key documents (Organic Law, Articles 37, 44, 50, 53)
- councils receive sectoral functions and corresponding resources to deliver services and address citizen rights and entitlements (Organic Law, Article 214) –
 - councils should have a clear mandate to implement their functions, including sufficient **authority and discretion** to address citizens’ real needs and concerns (Organic Law, Articles 225, 231)
 - councils should receive **sufficient discretionary resources** to implement their functions so as to address citizens’ real needs and concerns (Organic Law, Article 235)
- the **Election Law** ensures that citizens can vote for a different political party in the next election in the event they are dissatisfied with the performance of their council
- each council must organize a **consultative forum** annually and provide citizens the opportunity to make requests, to ask for issues to be clarified, and to provide ideas and comments to their council. (Sub-decree Roles – Province, Articles 9, 65, 121)

Each provincial, municipal, district, commune and sangkat council has **its own separate power** to make decisions, implement functions and use its resources. This is a pre-condition for each of those councils to be democratically accountable to citizens. Having its own separate power means that a council can make decisions that are responsive to the real needs of its citizens.

(Sub-decree Roles – Province, Article 174)

- ✓ Any **illegal action or decision** by a council (or the board of governors or council personnel) that adversely affects a citizen must be **recompensed**. (Organic Law, Article 85)
- ✓ Every council must manage its **financial affairs** in a manner that is both transparent and accountable to all its citizens. (Organic Law, Article 43)

Accountability of Councils to the Royal Government

- ✓ The council is accountable to the Royal Government for **compliance with the Constitution, laws** and other legal instruments. (Organic Law, Articles 24, 35)
- ✓ Any action or decision of a council that is outside the scope of its authority is an **illegal action or decision**. (Organic Law, Articles 78 to 85)
- ✓ In the event that the council takes any illegal action or illegal decision, the **Ministry of Interior** will instruct the council to take necessary measures so that they become lawful. The council must make the rectification within one month. The council must immediately

publicly disseminate the instruction of the Ministry of Interior within its jurisdiction. (Organic Law, Article 84)

- ✓ **Provincial councils** have been **delegated the duty to ensure legal compliance in the province**. Provincial councils, therefore, must ensure that municipal and district council decisions and actions are in compliance with the Constitution, laws and other legal instruments. Provincial councils support municipal and district councils to ensure legal compliance by commune/sangkat councils. (Sub-decree Roles – Province, Articles 195, 196)
- ✓ Every council is obliged to report any corruption or **abuse of power** within its area to the Ministry of Interior. (Organic Law, Article 47)
- ✓ Where a line ministry deconcentrates a sectoral function by **delegation to a council**, the council is accountable to the **line ministry** to comply with the terms of delegation. (Organic Law, Article 226)
- ✓ Commune/sangkat councils are accountable to the Royal Government to comply with laws and other legal instruments. (LAMC, Articles 54, 58)

Accountability of Councils to Commune and Sangkat Councilors

- ✓ Phnom Penh, provinces, municipalities, districts and khans councils are accountable not only to citizens, but also to their voters - the commune and sangkat councilors.
- ✓ Municipalities must consult regularly with sangkat councils in the municipality. Districts must regularly consult with commune and sangkat councils in the district. (Organic Law, Article 38; Sub-decree Roles – Province, Articles 64, 65, 70, 112, 116, 118, 121, 180, 181)
- ✓ Commune and sangkat chiefs have the right to attend any district council meeting and raise issues for discussion, they may comment on any matter and they may make requests. (Sub-decree Roles – Province, Article 119)
- ✓ In addition, district councilors are assigned to attend commune and sangkat council meetings in the district in order to report on activities and gather requests, needs and information about commune and sangkat council challenges. (Sub-decree Roles – Province, Article 120)

Accountability of the Board of Governors to Councils

- ✓ The board of governors is accountable to its council regarding implementation of the council's decisions and bylaws. The board of governors is accountable to the Royal Government for implementation of its roles in accordance with the Constitution, laws and other applicable legal instruments. (Sub-decree Roles – Province, Articles 27, 84, 145)
- ✓ The board of governors is accountable to the council and the Royal Government in day-to-day work management and accountable for ensuring the sustainability of work in the area. (Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ The **council monitors and evaluates the board of governors** in order to ensure that the board of governors performs its tasks in accordance with the council's direction and

decisions, and in accordance with applicable laws and legal frameworks. (Organic Law, Article 157; Sub-decree Roles – Province, Articles 17, 73, 135)

- ✓ The board of governors must **report to all meetings of the council**. (Organic Law, Article 165)
- ✓ The council may require the board of governors to **clarify issues at a council meeting**. (Organic Law, Article 157)
- ✓ In the event the board of governors makes a decision or performs an act that has not been authorized by the council, **the decision or act is invalid**. (Organic Law, Article 158)
- ✓ A council may request that a governor or deputy governor be **terminated for poor performance or for abuse of the code of ethics**. (Organic Law, Articles 151 and 152)

Accountability of Governors

- ✓ The governor is the **chairperson of the board of governors** and, wearing that hat, he/she serves and is accountable to the council.
- ✓ The governor is also the representative of ministries and government institutions of the Royal Government in order to **supervise, coordinate and direct all line departments and units** that operate in the area of the council. In this role, therefore, the governor serves and is accountable to the Royal Government, and to the concerned ministries and government institutions. (Organic Law, Article 154)

See Module 6 for more information on governor and board of governors

Other Accountabilities

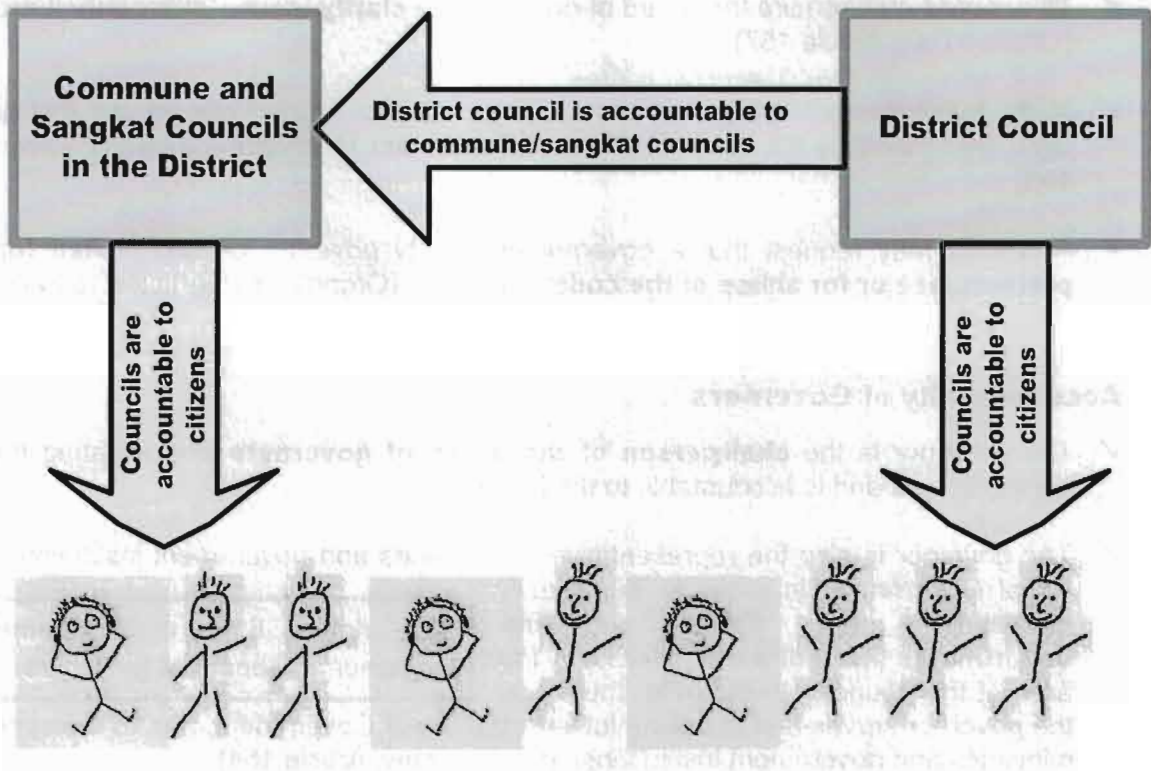
- ✓ Council committees are accountable to the council. Every council is responsible for all decisions and actions undertaken by **council committees**. (Organic Law, Article 121)
- ✓ The **council's personnel**, including the administration director and the chief of finance, are accountable to the board of governors, but council personnel is **ultimately accountable to the council**. (Organic Law, Articles 174, 178, 184, 190)
- ✓ Every **district council is accountable to commune/sangkat councils** in its area for the district council's choices, decisions and performance. (Organic Law, Article 98)
- ✓ A commune/sangkat clerk is accountable to her/his commune/sangkat council. (LAMC, Article 28; Prakas on Roles, Duties and Rights of Commune/Sangkat Clerks, Article 5)

See Module 8 for more information on council personnel

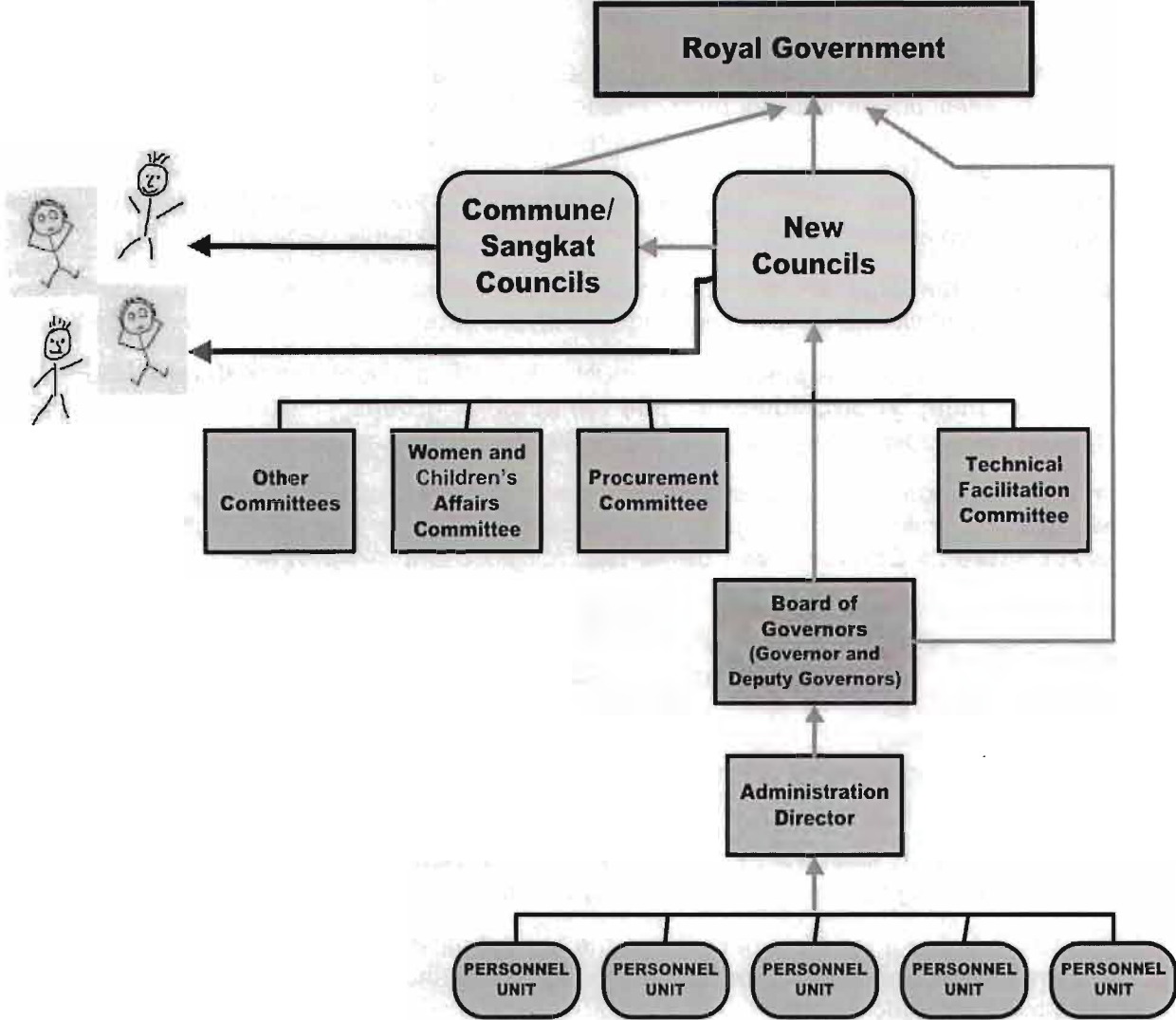
Mechanisms of Accountability

- ✓ The Organic Law sets out the new relationships of accountability, including relationships of democratic accountability, as discussed above. As regulations are issued under the Organic Law, and as new practices are adopted by councils, it will be critical that there be strong mechanisms of accountability put in place that breathe life into the accountability provisions of the Organic Law.

Accountability of District Councils to Commune/Sangkat Councils and to Citizens



Overview of Lines of Accountability



Section 5: Equity in the Organic Law

Organic Law, Articles 12, 39, 114, 118, 128, 129, 176, 215

Dealing with citizens with respect and regardless of social status is another key element of democratic development and good governance. Wealthy or powerful people must not be served better or more quickly than poor or minorities. Every citizen has the same right to public services. The council, therefore, is responsible to ensure that all its citizens – including women, men, youth, the poor and minorities – have meaningful opportunities to participate in and equally benefit from local governance and public services.

As provided in the Organic Law, equity is just as essential to democratic development as transparency, participation and the fight against abuse of power. (Organic Law, Article 12).

- ✓ Every council's **development plan** must take into account the **different needs** of **women, men, youth, children and vulnerable groups**, including the poor and indigenous peoples. (Organic Law, Article 39; WCCC Prakas)
- ✓ In order to ensure that a council takes into account the needs, interests and priorities of women and children, the Organic Law requires that every council establish a **Women and Children's Consultative Committee**. (Organic Law, Article 114).
- ✓ Two **Women and Children's Consultative Committee** members are entitled to **participate in any meeting** of the council, board of governors and other council committees. The **Women and Children's Consultative Committee** members participate in meetings in order to provide recommendations so that gender equality and women and children's issues are always taken into account. The **Women and Children's Consultative Committee** must provide suggestions to the council to encourage women's active participation in governance. (Organic Law, Articles 128, 129).
- ✓ The council must also ensure that **women** are **represented on all committees** of the council, including as chairperson or deputy chairperson. (Organic Law, Article 118)
- ✓ In recruiting and appointing **personnel**, the council must ensure that there is appropriate **representation of women**, including among chiefs and deputy chiefs of council units. (Organic Law, Article 176)
- ✓ The National Committee for Sub-National Democratic Development (NCDD) will review government sectoral functions to transfer to the new councils and to commune councils. The Organic Law lists priority sectors that the NCDD must focus on first. These priority sectors include: health, nutrition and services for people, including other **needs of women, men, youth, children, vulnerable groups and indigenous people**. (Organic Law, Article 215)

Issues to Address

The Organic Law mentions accountability often, but there are still many unanswered questions, such as:

- How can democratic accountability from councils to citizens be implemented in practical ways?
- How can accountability among government actors at sub-national level be implemented in practical ways (i.e. between the council and board of governors)?
- How might the relationship between the Ministry of Interior and boards of governors be clarified in order to promote the authority of councils over the boards of governors?
- What are some ways that a council can hold the governor and board of governors accountable?
- How can accountability and responsiveness to commune/sangkat councils be ensured (for example, to ensure that provinces take into account the needs and demands of commune and sangkat councils)?
- What kind of reporting system is necessary in order to appropriately link districts with their commune/sangkat councils?
- How can communes/sangkats influence district planning and ensure district accountability and responsiveness to their citizens?
- How will sangkats in the Capital and in municipalities be kept informed? How can these sangkats communicate their demands and influence decisions of the Capital and municipal councils?

PART 2:

Summary of Module

- The Organic Law offers the Phnom Penh, provincial, municipal, district and khan councils a variety of mechanisms for them to work in accordance with the principles of good governance, democratic development and democratic accountability.
- Every council is a public representative, guardian and servant for the interests of all citizens in its jurisdiction.
- Responsiveness refers to the responsibility of elected representatives to listen to the voice of their citizens, to consider issues citizens raise, and then to respond as best as possible within their authority and resources.
- Democratic accountability means that elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs. There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.
- Council meetings are generally public and open to citizens. Citizens do not need an invitation to attend council meetings
- The council must organize an annual consultative forum where citizens' voice may be heard, where citizens may make requests, raise issues, and provide their ideas and comments.
- In addition, a council must develop strategies to consult regularly with its citizens so that citizens are informed and engaged, including regarding development plans.
- The council must disseminate to the public bylaws, reports, agendas and minutes of council meetings, development plans, budgets, annual reports and other important council documents and decisions.
- The board of governors is accountable to its council. Council personnel are ultimately accountable to the council.
- A council must ensure that all its citizens - women, men, youth, children, vulnerable groups and indigenous people – have meaningful opportunities to participate in and equally benefit from local governance.

PART 3:

Group work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of not more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Democratic Accountability

Discuss in groups the following questions:

- Do you think that democratic accountability can be established at sub-national levels in Cambodia? Why or why not?
- As councilors, what can you do to establish democratic accountability in your area?

EXERCISE TWO: Accountability

Discuss in groups the following questions:

- What can new councils do to hold the board of governors accountable?
- What can commune and sangkat councils do to hold district and municipal councils and the Phnom Penh council accountable?

EXERCISE THREE: Transparency

Discuss in groups the following questions:

- Why do you think transparency is important for citizens?
- What is the connection between transparency and accountability?
- What are some creative ways for a provincial council to disseminate information to its citizens? (*other than* posting information on notice boards)
- What are some specific ways to make certain that information from a district council is *actually received* by women? Youth? The poorest? Indigenous peoples?

EXERCISE FOUR: Civic Engagement

Discuss in your group the following questions:

-
- What can a council do to encourage its citizens to attend council meetings?
- What are some strategies for a council to use to consult with its citizens during the formulation of the council's 5-year development plan?

Modules for Understanding
and Training on the
Organic Law

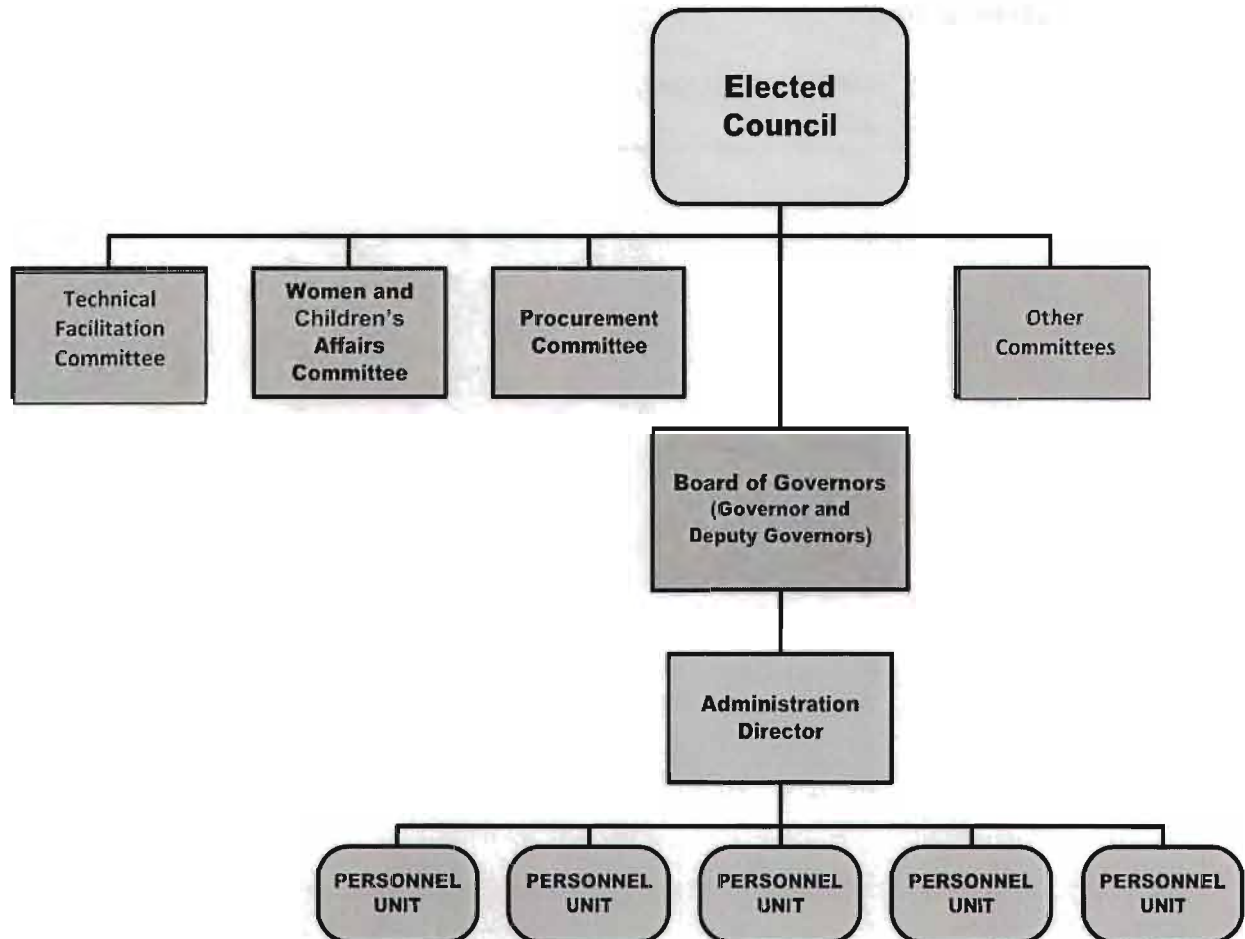
Module 3:
Organization of
New Administrations

PART 1:

- 1. Introduction**
- 2. Council and Councilors**
- 3. Governor and Board of Governors**
- 4. Council Committees**
- 5. Council Personnel**

Section 1: Introduction

- ✓ The Capital Phnom Penh and every province, municipality, district and khan has the same organization, as shown in the following diagram.



- ✓ Each component of this organization is discussed below. The roles and functions of each component are defined in the following Modules:
 - Council Roles, Authorities and Functions: Module 5
 - Governor and Board of Governors Roles and functions: Module 6
 - Council Committees: Module 7
 - Council Personnel: Module 8

MEANING OF 'ADMINISTRATION'

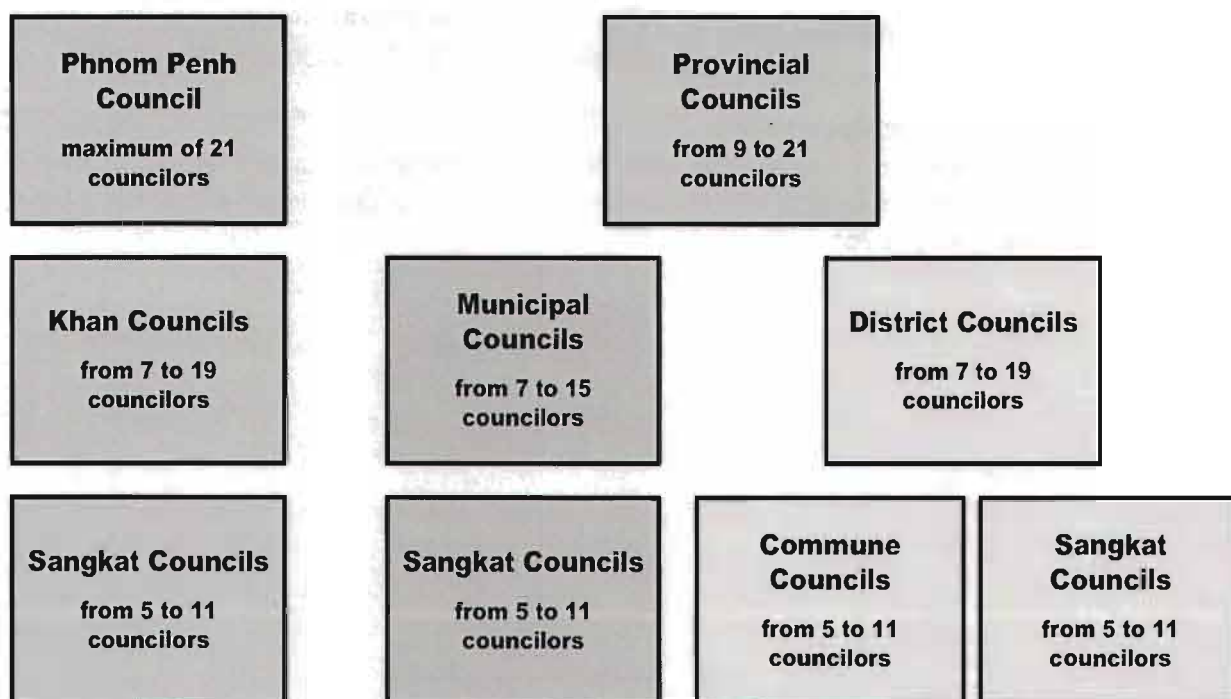
The term '**provincial administration**' refers to the provincial council and the provincial board of governors. The term '**district administration**' refers to the district council and the district board of governors. The same applies to the terms '**municipal administration**', '**Capital administration**' and '**khan administration**'.

(Sub-decree Roles – Provinces, Article 2, Sub-decree Roles – Capital, Article 2)

Section 2: Council and Councilors

Organic Law, Articles 10, 13, 17, 19, 30, 34, 3643, 46, 63, 66 –77, 68 – 69, 71 – 73, 158, 225

- ✓ The Phnom Penh council and every provincial, municipal, district and khan council has councilors who are **indirectly elected by commune/sangkat councilors**. The number of councilors on each council is determined by sub-decree, based on the demographic and geographic features of the area. The Organic Law does, however, specify the permissible range for the number of councilors on each level of council. (Organic Law, Article 18; see LAMC, Article 12 for commune/sangkat councils)
- ✓ For instance, the Phnom Penh council, the Kompong Cham provincial council and the Kandal provincial council each has 21 councilors, while there are only 9 councilors on each of the Mondulhiri provincial council, the Pailin provincial council and the Kep provincial council. (Sub-decree on the Number of Councilors, Article 1)



- ✓ Councilors are **responsible for making all the decisions** for the council. Councilors make decisions on behalf of their citizens. (Organic Law, Articles 10, 13, 19, 30, 36, 158; Sub-decree Roles – Province, Articles 6, 61, 113)

✓ The **council is democratically accountable to its citizens.** (Organic law, Articles 34, 43, 46, 225)

✓ Every council has a **chairperson** who is the chairperson for all council meetings. The chairperson is the candidate at the top of the candidate list that wins the most votes in the council election. (Organic Law, Articles 17, 63; Model Internal Rules, Articles 3, 20, 21)

See Module 5 for more information on councilor's roles, authorities and functions

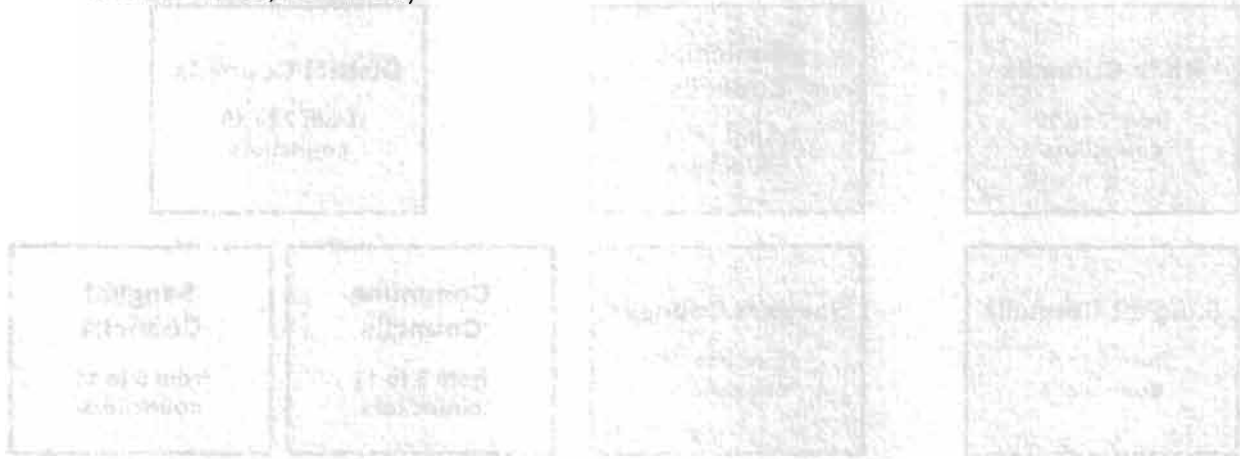
✓ Councilors must attend and take part in **council meetings.** Every councilor has one vote on any matter. In the event of a tie vote, the chairperson has the deciding vote. (Organic Law, Articles 66, 67; Model Internal Rules, Articles 16, 38)

✓ Every council adopts its own **internal rules** which must be followed during meetings. (Organic Law, Articles 69, 71 and 72; Prakas 1249 on Office-Taking Meeting, Article 11; Model Internal Rules)

✓ A councilor has the **freedom to express her/his ideas** in a council meeting. A councilor may not be subject to any punishment for her/his ideas or votes during a council meeting. (Organic Law, Article 73; Model Internal Rules, Article 22)

Model Internal Rules
The NCDD has issued model internal rules that councils may use when they develop and approve their individual internal rules. The model internal rules stipulate **minimum conditions** that may be added to and enhanced by individual councils.

✓ Council meetings **are open to the public.** A citizen does not require an invitation to attend a council meeting. Only in special circumstances may a secret meeting be held. (Organic Law, Article 68; Model Internal Rules, Article 25)



Democratic accountability refers to –

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs. There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions

For more information about democratic accountability, see Module 2 on Democratic Development.

Section 3: Governor and Board of Governors

Organic Law, Articles 138 – 172

- ✓ **Phnom Penh**, and every **province, municipality, district** and **khan** has a board of governors. (Organic Law, Article 138) Communes and sangkats do not have a board of governors.
- ✓ The board of governors consists of an **appointed governor** and a number of **appointed deputy governors**. The governor is the chairperson of the board of governors. (Organic Law, Article 139)

Phnom Penh & Provinces	Municipalities, Districts & Khans
<ul style="list-style-type: none"> • Board of governors has 3 to 7 members • Governor appointed by Royal Decree (senior civil servant, first-rank) • Deputy governors appointed by sub-decree (senior civil servant, second-rank) 	<ul style="list-style-type: none"> • Board of governors has 3 to 5 members • Governor appointed by sub-decree (senior civil servant, third-rank) • Deputy governors appointed by Ministry of Interior Prakas (middle civil servant, first-rank)

- ✓ Governors are senior **civil servants**. Deputy governors are either senior or middle-ranking civil servants. Depending on the sub-national level, the governor and deputy governors are appointed by Royal Decree, by sub-decree, or by Prakas of the Ministry of Interior. (Organic Law, Articles 141 to 145)

What happens if the council and the board of governors disagree?

The board of governors offers technical advice and recommendations to the council, but it is the role and the right of the elected **council to make all final decisions on behalf of their electorate**. The council is the decision-making body for its area. (Organic Law, Articles 10, 13, 19, 30, 36, 158)

In the event that the governor or the board of governors makes a decision that the council has not authorized, that **decision of the governor or board of governors is invalid**. (Organic Law, Articles 149, 155, 156, 158)

- ✓ The **mandate** of a board of governors is **4 years**. A governor or deputy governor may be **re-appointed** for one additional 4-year term. (Organic Law, Article 147)
- ✓ The board of governors **implements council decisions and bylaws**. The board of governors is **accountable to the council**. (Organic Law, Articles 152, 155 - 158; Sub-decree Roles – Province, Articles 27, 28, 84, 85, 145, 146; Prakas 1249 on Office-Taking Meeting, Article 7; Model Internal Rules, Articles 24, 31)

- ✓ The governor and deputy governors may attend and speak at council meetings, but

See Module 6 for more information on the governor and board of governors

they **do not have the right to vote** on any matter. (Organic Law, Article 149)

Termination

- ✓ A governor or deputy governor may be **terminated** from her/his **position** for a number of specified reasons, including: loss of qualifications, poor performance, loss of professional aptitude, abuse of code of ethics. (Organic Law, Article 151)
- ✓ A council may submit a **request** to the **Ministry of Interior** to terminate a governor or deputy governor on the basis of one of the specified reasons. The Ministry of Interior must immediately undertake an **investigation**. (Organic Law, Article 152)

COUNCIL	BOARD OF GOVERNORS
<ul style="list-style-type: none">• Elected by commune/sangkat councilors• 5-year mandate• Makes political choices and decisions for its area• Monitors the board of governors• Accountable to citizens, to the Royal Government • Reviews, discusses, deliberates on and approves development plan and budget• May request termination of governor/ deputy governor	<ul style="list-style-type: none">• Appointed by Royal Government• 4-year mandate• Provides technical advice and recommendations to the council• Implements council decisions and bylaws• Accountable to the council, to the Royal Government• Reports regularly to the council• Prepares draft development plan and budget for council to review

Section 4: Council Committees

Organic Law, Articles 114 – 137

General Purposes of Council Committees

- ✓ Council committees serve to bring together people with expertise and interest who can **focus deeply on one or more issues of importance to the council**. A committee then reports back to the council. Depending on the roles and duties of the committee, a committee may provide one or more of: information, advice and recommendations. A committee does not make decisions.
- ✓ Information, advice and recommendations assist the council to make **better informed decisions**. Council committees, therefore, are meant to improve council decision-making.
- ✓ Committees can also be a mechanism for **participation**. Councils may permit a committee to invite a community representative or an individual citizen to act as an advisor to the committee. (Organic Law, Article 117)

Three Mandatory Committees and Additional Committees

- ✓ Every council must establish three committees:
 - **The technical facilitation committee** – The purpose of the technical facilitation committee is to bring together critical actors in the unified administration to ensure that their work is coordinated and that synergies and efficiencies are optimized. This committee has the responsibility to provide advice to the council and board of governors about coordination of council work with the work of line departments/offices and to ensure that the plans and budgets of ministries, government institutions, departments and units of the Royal Government providing services in the area of the council are *integrated* in the council's development plan and budget.
 - **The women and children's consultative committee** – The purpose of the women and children's consultative committee is to bring together critical governmental actors in order to advise and make recommendations regarding gender equality and women and children's issues. This committee has the responsibility to make recommendations to the council, board of governors and council committees about taking into account and prioritizing women and children's issues, for instance in regard to council policies, decisions, functions and spending.
 - **The procurement committee** – The purpose of the procurement committee is to safeguard the interests of citizens and the council with regard to public funds. This committee has the responsibility to ensure that all procurement of goods and services is conducted with integrity, transparency and fairness.

(Organic Law, Articles 114, 123 to 137; WCCC Prakas; Sub-decree TFC – Province, Article 2)

- ✓ A council may establish **additional committees** to assist the council in its work. In order to avoid duplication, additional committees cannot be given the same duties as one of the three obligatory committees, or the same duties as the board of governors. (Organic Law, Article 115)
- ✓ A council must ensure that there is **representation of women** on every committee. (Organic Law, Article 118)
- ✓ A **citizen** may sit on a council committee as an **advisor**. (Organic Law, Article 117)

See Module 7 for more information on council committees

Section 5: Council Personnel

Organic Law, Articles 173 – 191 262 – 273, 281

- ✓ Every council has its own personnel who implement the decisions and functions of the council, and who perform the day-to-day work of the council. (Organic Law, Article 173)

- ✓ **Some personnel are hired by the council:**
 - Each council has its personnel. A council may appoint personnel, in accordance with the applicable legal framework, to ensure that the council's work is done effectively. (Organic Law, Article 173)
 - A council hires its **chief of finance** who is responsible for financial management. The chief of finance must first be approved by the Ministry of Economy and Finance, upon the request of the Ministry of Interior. (Organic Law, Article 179)

- ✓ **Some personnel are re-deployed to the council:**
 - After the first elections of the Phnom Penh council and all provincial, municipal, district and khan councils, the councils replaced the former appointed administrations in their area. In addition, the **personnel working in units** of the former Phnom Penh, provincial, municipal, district and khan administrations were **re-deployed** to the new Phnom Penh, provincial, municipal, district and khan councils. (Organic Law, Articles 277, 281)
 - When a sectoral function is transferred to a council, the skilled personnel already implementing that function are re-deployed to the council. (Organic Law, Article 262)
 - Personnel re-deployed to a council become personnel of the council, and they are no longer personnel of a ministry. (Organic Law, Article 262)

- ✓ **An administration director is appointed to councils:**
 - Every council has an administrative director who assists in the supervision and conduct of the day-to-day work of the council and board of governors. The administration director is appointed by the Ministry of Interior. She/he is accountable to the council and board of governors. (Organic Law, Articles 183 to 187)

To **re-deploy** means to move to a different position.

To **re-deploy personnel** is to move personnel from their current position as personnel of a ministry to become personnel of the council.

See Module 8 for more information on council personnel

- ✓ A council has **personnel units**. Each unit has a head who is accountable to the council, through the administration director and board of governors. (Organic Law, Articles 189 to 191)

Also see Module 12 for more information on the roles and structure of the council administration

PART 2:

Summary of Module

Every council has:

- councilors whose role is to make the decisions for the council
- a governor who chairs a board of governors; the main role of the board of governors is to assist the council and implement council decisions
- council committees whose role is to provide advice to the council and assist in the work of the council
- council personnel whose role is to implement council decisions and attend to the day-to-day work of the council

OVERVIEW OF THE COUNCIL, THE BOARD OF GOVERNORS AND COUNCIL COMMITTEES

	Composition	How Established	Period of Mandate	Legal Instrument
Council	Chairperson and councilors	Councilors indirectly elected by commune/sangkat councilors from political party lists	5 years (with first election in May 2009)	Organic Law (Articles 14 – 18) Election Law (Articles 2, 16, 27, 53, 89)
Board of Governors	Governor and deputy governors (who are senior and middle ranking civil servants)	Appointed by Royal Decree, Sub-decree or Prakas	4 years (may only be re-appointed once)	Organic Law (Articles 138 – 172) Sub-decrees Roles
Women and Children's Consultative Committee	Councilors, deputy governor, directors/chiefs of selected line units, representative of Police Commissariat, council personnel, chair of Provincial Association of Communes/Sangkats	Council must establish this mandatory committee	On-going committee	Organic Law (Articles 127 – 135) WCCC Prakas
Technical Facilitation Committee	Governor as chairperson, councilors, deputy governor, administration director, council unit chiefs, chief of finance, heads of line units in the area of the council, representatives of the Provincial Association of Communes/Sangkats, representative of the council's Women and Children's	Council must establish this mandatory committee	On-going committee	Organic Law (Articles 123 – 126) Sub-decrees TFC

	Consultative Committee			
Procurement Committee	Details to be provided by regulation	Council must establish this mandatory committee Further details may be provided by regulation	On-going committee	Organic Law (Articles 136, 137)
Other Committees	Decided by the council Must include women representatives, and may include citizens as advisors	Decision of the council	Decided by the council	Organic Law (Articles 115 to 122) Sub-decrees Roles

Modules for Understanding
and Training on the
Organic Law

Module 4:
Unified Administration

PART 1:

- 1. Introduction**
- 2. Former Structure of Sub-National Administrations**
- 3. The New Unified Administrations at Sub-National Levels**

Immediately after the elections in May 2009, the new councils of the Capital, municipalities, provinces, districts and khans replaced their corresponding “old” administrations. Governors who were already in office at the time the Organic Law was implemented continued to hold their positions until a new board of governors was appointed. Similarly, personnel who worked for the former Phnom Penh, provincial, municipal, district and khan administrations continued to hold their positions as personnel of the new corresponding council until they were redeployed to the new councils. (Organic Law, Articles 270, 277 and 281; Sub-decree Roles – Province, Article 206; Prakas 1249 on Office-Taking Meeting, Article 7).

Together with the elections, these steps have introduced the beginning of the Royal Government’s administrative reform. The goal of the administrative reform is to establish unified administrations at sub-national levels in order to facilitate and coordinate all public administrative activities in the area of a council.

The Ministry of Interior estimates that the process will take about 10 years – an ambitious timeframe when compared with the establishment of and development of capacity in commune/sangkat councils and when compared with similar reforms in other countries.

Section 2: Structure of Former Appointed Administrations

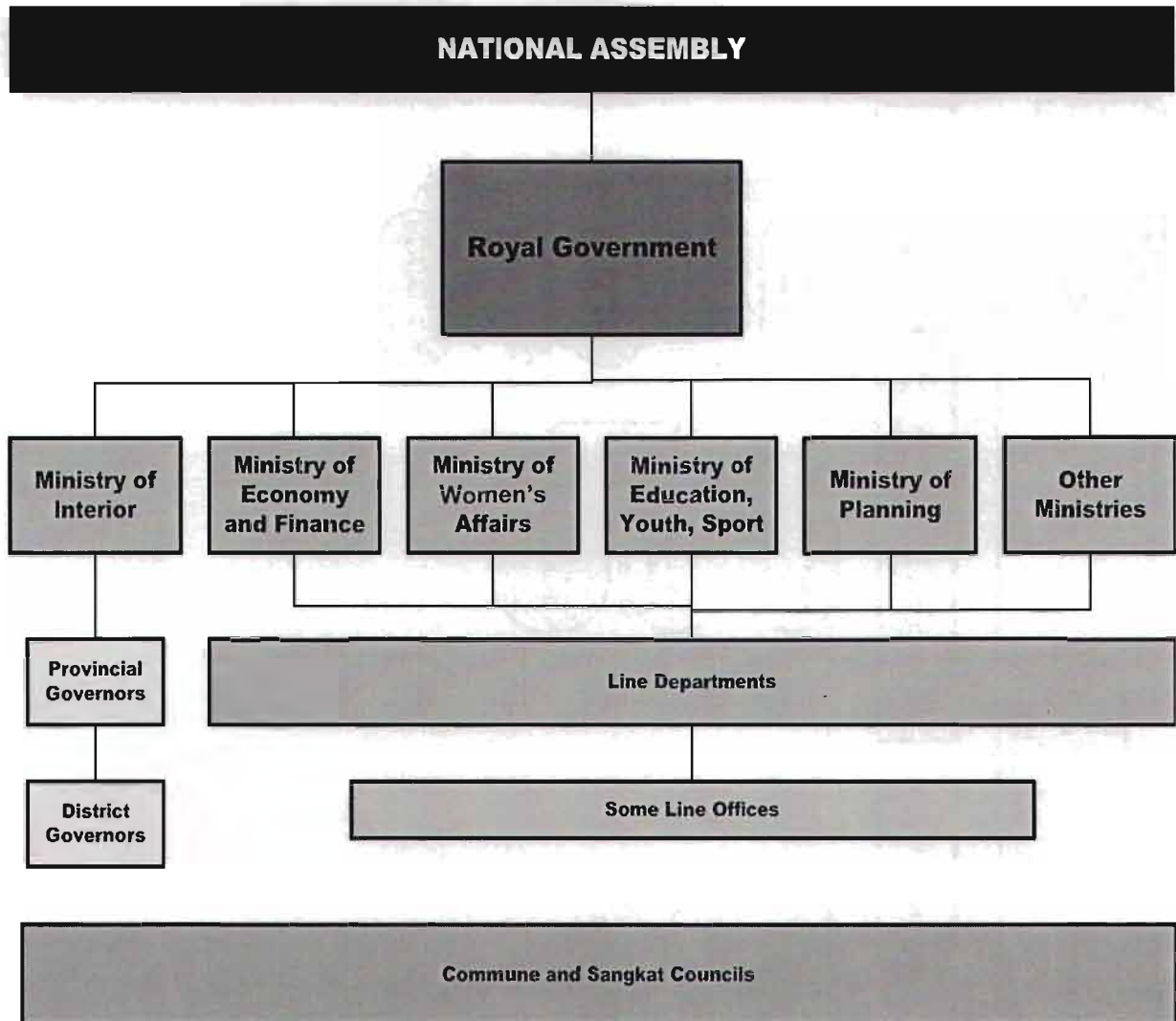
- ✓ Prior to the implementation of the Organic Law, the Ministry of Interior selected a governor and deputy governors for Phnom Penh and for every province, municipality, khan and district. An appointed governor and deputy governors headed the appointed administration and they were bound by the directives of the Ministry of Interior.
- ✓ In addition, various line ministries have line departments in provinces/municipalities and line offices in districts/khans. These line departments and offices are bound by the directives of their respective ministry.
- ✓ Taking a province as an example, sometimes there was overlap between what provincial line departments do, and what the former appointed provincial administration did. Often, communication and coordination were less than optimal between provincial departments and the provincial governor and the appointed administration. Similarly, there was, and is, often inadequate communication and coordination among different provincial departments. Important decisions for the province, therefore, could be made by a national level Ministry without consultation with the provincial governor, or consultation with other Ministries and their provincial departments. Without communication and consultation, coordination and cooperation was difficult. (Strategic Framework for Decentralization and Deconcentration Reforms, 2005, page 3)

Example – Lack of Communication and Coordination

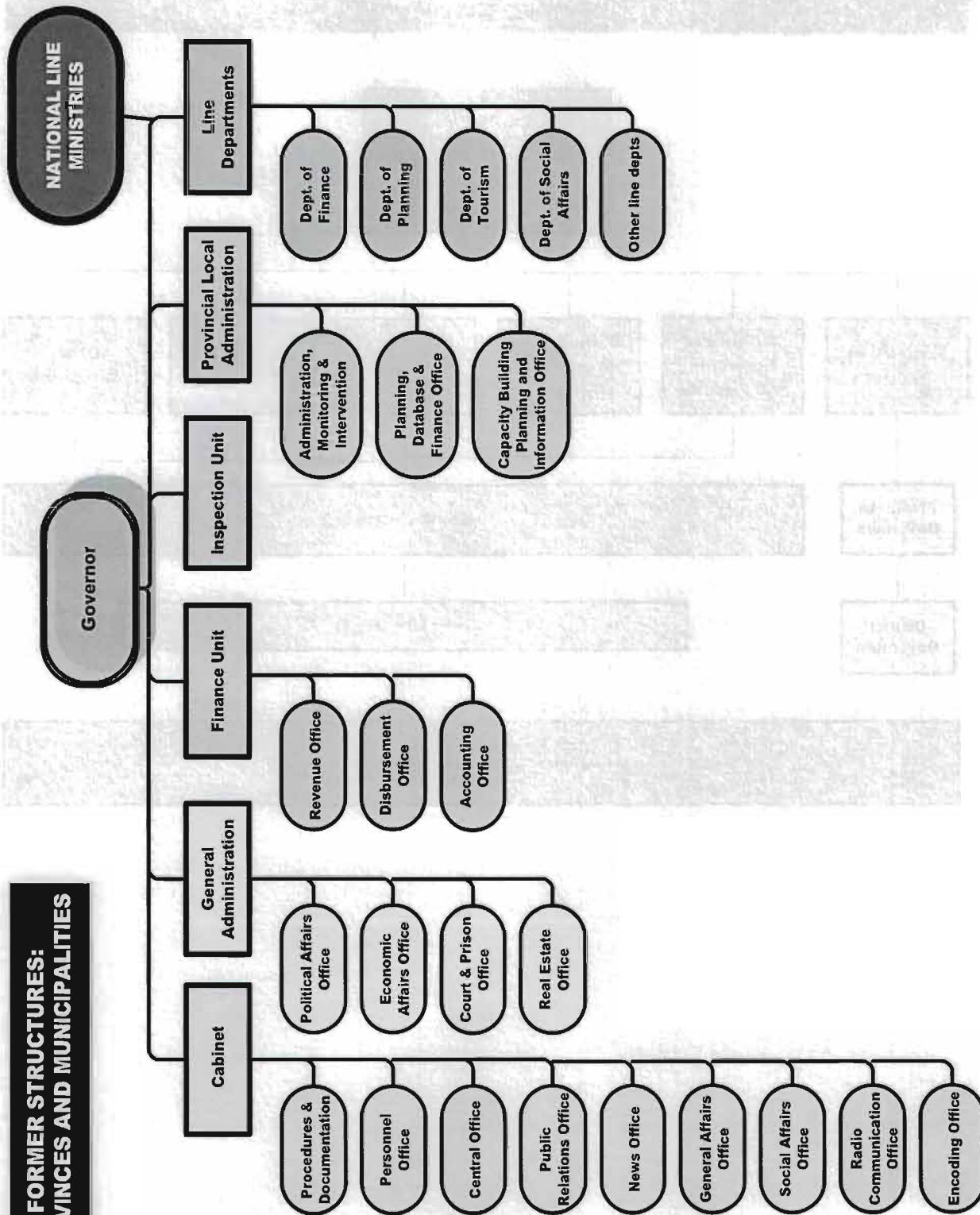
In the course of one year, one of Phnom Penh's streets underwent three different construction projects, each involving its own re-pavement of the street. In the first construction project, the street was repaved in order to fill deep potholes. A few months later, construction workers appeared again, this time to expand the width of the street. This second project involved repaving the street and the sidewalks. Only a few months later, the freshly paved street and sidewalks were torn up once again in order to build a new sewage system. The street had to be re-paved yet again – for the third time that year.

Diagrams are provided below of Cambodia's overall administrative structure; the former provincial/municipal administration structure; and the provincial rural development committee structure.

**Cambodia's Former Administrative Structure
Without Provincial, Municipal, District and Khan Councils**



**FORMER STRUCTURES:
PROVINCES AND MUNICIPALITIES**



Section 3: The New Unified Administrations at Sub-National Levels After Elections

Organic Law, Articles 2, 8, 29 – 34, 36, 114, 123, 124, 154 – 170, 166, 173, 179, 183

- ✓ The Royal Government aims to create a **unified administration at every sub-national level:** for Phnom Penh and for every province, municipality, khan and district.

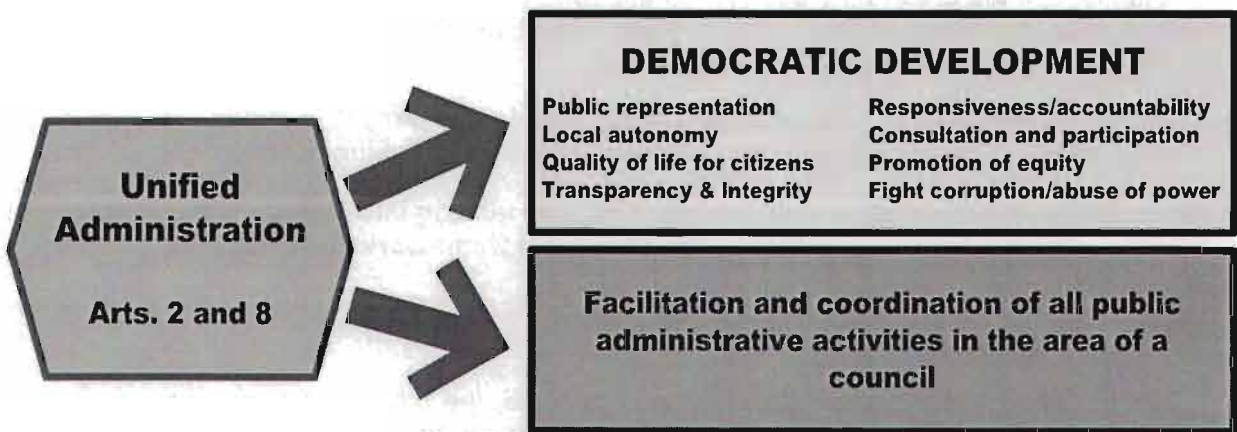
- ✓ The Organic Law, in Chapter 1, Article 2, states:

 The capital, provinces, municipalities, districts and khans shall be governed in accordance with the principles of unified administration in order to establish, promote and sustain democratic development through the policy of decentralization and deconcentration.

- ✓ The unified administration, therefore, must **contribute to the achievement of democratic development.**

Unified Administration in Recent History

Cambodia attempted to introduce unified administrations in its recent past. In **1979**, after the liberation of Cambodia from the Khmer Rouge regime, the Vietnamese established an administrative structure with extensive powers and functions given to provinces and districts. At that stage, however, there were no elected councils and local party structures had a significant influence on provincial and district administration policies.



- ✓ Having unified administrations at sub-national levels is meant to strengthen the unity of the state in order to **facilitate all public administrative activities** within the area of each council. (Organic Law, Article 8)
- ✓ A council, therefore, not only makes decisions within the scope of its functions and duties, but a council must also be a **facilitator and catalyst** in regard to **governance and all development activities** in its area. The council must ensure that there is **coordination of activities** between the council and line units in the area, and also among line units in the area.

Elements of the Unified Administration

- ✓ The **elected council heads the unified administration**. The council has its own functions that it implements and its own resources, and the council has the right to make decisions for its area. The council is the **highest authority** at the sub-national level. (Organic Law, Articles 29 to 34)
- ✓ **Committees of the council** are part of the unified administration. This includes the three mandatory committees: the Technical Facilitation Committee, the Women and Children Affairs Committee, and the Procurement Committee. This also includes additional committees the council may establish. (Organic Law, Article 114)

See Module 7 for more information on council committees
- ✓ The appointed **board of governors**, chaired by an appointed governor, is responsible for assisting the council to lead the unified administration. The board of governors also assists the council to integrate plans and budgets of ministries and government institutions in the area. The integration of plans and budgets in the area of the council is a critical aspect of a unified administration. (Organic Law, Articles 155 to 170)

See Module 6 for more information on the governor and the board of governors
- ✓ In addition to responsibilities to chair the board of governors, the appointed **governor** has the authority to supervise, coordinate and direct ministries and other government institutions in the area of the council. In this role, the governor makes an important contribution to the coordination of all public administrative activities in the area of the council. (Organic Law, Article 154)
- ✓ In his/her capacity as representative of the Royal Government to supervise, coordinate and direct line departments/offices, a governor has the following duties to –
 - provide guidance and instruction to line departments/offices so they implement their duties in accordance with **laws, legal frameworks and national policies**
 - coordinate and direct line departments/offices in the area in responding to **priority local needs**
 - through the technical facilitation committee, the council and governor coordinate and direct line departments/offices to **integrate their plans and budgets** into the council's plan and budget
 - monitor and **assess performance** of heads of line departments/offices
 - consult with the council and then provide suggestions for **appointments** of heads of line departments/offices

- a provincial governor must instruct a director of a line department/office to **correct any irregularity or wrongdoing** found. A municipal or district governor must immediately report any irregularity or wrongdoing of a line office to the provincial governor
 - a provincial governor has the right to request a Minister that the head of a line department/office be **demoted** in the event of an irregularity or wrongdoing that cannot be justified. A municipal or district governor may request the provincial governor to take action for a thechief of a line office who has acted illegally to be demoted
 - receive and comment on reports of line departments/offices and, where the governor agrees, to sign those **reports** together with the director/chief of the department/office.
- ✓ (Sub-decree Roles – Provinces – Articles 35, 92, 153)The **personnel** of the council, including the **administration director**, the **chief of finance** and all re-deployed personnel assist the council to implement its work to lead the unified administration. (Organic Law, Articles 183, 180, 182)
- ✓ A critical aspect of a unified administration is the council's authority to **coordinate** its **plans and budgets** with the plans and budgets of ministries and their line units that are providing services in the area. This happens through the council's **technical facilitation committee**. The technical facilitation committee is composed of the governor as chairperson, councilors, a deputy governor, the administration director, heads of the council administration units (including the chief of finance), heads of line units in the area of the council, representatives of the Provincial Association of Communes/Sangkats, and a representative of the council's Women and Children's Consultative Committee. (Organic Law, Articles 123, 124)
- ✓ Another critical aspect of a unified administration is the possibility for the **council to negotiate** with ministries and their line units providing services in the area for particular priorities, activities and budget in order to respond better to local citizen needs. One forum for the council to negotiate with ministries and their line units is the technical facilitation committee.
- ✓ A council's **development plan and budget** integrate services and activities of the council together with services and activities of ministries and government institutions operating in the area of the council. The council development plan and budget, therefore, include the **services, activities and resources of the whole unified administration**. (Organic Law, Articles 36, 123, 124, 166)

See Module 8 for more information on the personnel and units of the council

The technical facilitation committee plays a critical role in the unified administration.

The technical facilitation committee:

- provides a mechanism for councils to **negotiate for line ministry priorities, activities** and budgeting in the area
- enables **integrated (unified) planning and budgeting** within the area of the council
- enables the council to **coordinate development across sectors** in its area (sector integration).

See Module 14 for more information on planning

Issues to Address

The legal framework for unified administrations will continue to be elaborated through regulations. In addition, it can be expected that the day-to-day workings and relationships involved in a unified administration will evolve through practice over time. Matters to be further elaborated include:

- lines of accountability among the actors in a unified administration
- the relationship between the council and line units
- the scope for line units to be responsive to council requests (bottom-up needs of citizens)
- the scope for line units to coordinate and collaborate with other line units
- the relationship between the governor and line units
- the modes of working of the technical facilitation committee and its relationship to the council
- how the planning process will contribute to a unified administration

PART 2:

Summary of Module

Having a unified administration at every sub-national level is meant to strengthen the unity of the state and facilitate democratic development. The key actors in the new unified administration are:

- the elected council, which is the highest authority and leads the unified administration at each sub-national level
- the committees of the council, including the Technical Facilitation Committee which serves as a link between the council and ministries and their line departments
- the personnel of the council
- the board of governors that assists the council to implement its work to lead the unified administration
- the governor who has the additional role to supervise, coordinate and direct ministries and other government institutions in the area of the council.

PART 3:

Group work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Unified Administration

Discuss in small groups:

- What do you think might be advantages of having a unified administration?
- Do you think there will be any disadvantages to having a unified administration?

EXERCISE TWO: The Council and its Technical Facilitation Committee

Discuss in small groups:

- What flexibility do you think line units have to coordinate their activities with the activities of the council? What are the possibilities? What are the challenges?
- What changes are necessary in order for line units to have the flexibility to coordinate their activities with the activities of the council?

Modules for Understanding
and Training on the
Organic Law

Module 5:
Council Roles,
Authorities and Functions

PART 1:

- 1. Roles and Authorities of Councils**
- 2. General Council Functions**
- 3. Specific Council Functions**
- 4. Commune/Sangkat Council Functions**

Section 1: Roles and Authorities of Councils

Organic Law, Articles 9 – 10, 29, 30 – 33, 53 – 61, 155, 182, 244, 246

Roles of Councils

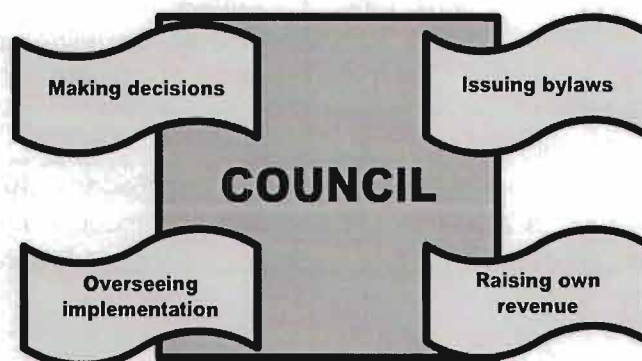
- ✓ Phnom Penh and every province, municipality, district and khan is a **legal entity** in accordance with the relevant laws of Cambodia. Each legal entity **has a council**. (Organic Law, Articles 9, 10)

See Module 3 for an introduction on councils

- ✓ The council has two roles. First, the council must do what is necessary in order to achieve its purpose to **establish, promote and sustain democratic development** in its area. Second, the council has the role to **implement functions** that are transferred to the council under the Organic Law. (Organic Law, Article 29)

Each provincial council, municipal council, district council, commune and sangkat council has its **own separate power to make decisions**, to implement its functions and to utilize its resources to establish, promote and sustain democratic development in its area. (Sub-decree Roles – Province, Article 174)

- ✓ **In fulfilling its overall roles, a council has the following authorities:**
 - legislative authority
 - executive authority
 - authority to raise own-revenue



- ✓ In filling its roles and exercising its authorities, a council is **democratically accountable** to citizens for its policies, decisions, actions and use of public resources. It must be responsive to and act in the best interests of citizens. The council is also accountable to the Royal Government to comply with the Constitution, laws and other legal instruments. (Organic Law, Articles 34, 35, 43, 46, 225)

Democratic accountability refers to –

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs.

There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.

For more information about democratic accountability, see Module 2 on Democratic Development

Authority of Councils: Legislative Authority

- ✓ Councils have legislative authority. A council exercises its legislative authority by adopting bylaws. A bylaw is a legal rule (*Deika*) that is approved by the council and that applies and is enforceable within the area of the council. (Organic Law, Articles 30, 32 and 53 to 61)
- ✓ A council is entitled to adopt a **bylaw** on any matter within the scope of its roles, duties and functions. (Organic Law, Articles 54)
- ✓ A bylaw may **require, prohibit or regulate activities or any matter**. A bylaw may also impose a **monetary fine** for non-compliance with the bylaw. (Organic Law, Articles 54, 59)
- ✓ A bylaw is a powerful tool that the council can use in the interests of its citizens. The council, therefore, should ensure that it hears and considers **citizens' voice** before deciding to issue a bylaw. A bylaw should also take into account other **information and evidence** that will enable the council to meaningfully discuss, **debate** and **deliberate** on the bylaw.
- ✓ A bylaw is only **valid** if the bylaw is approved by at least half the number of all councilors on the council. Approval of a bylaw is usually by raising of hands. (Model Internal Rules, Articles 16, 17).
- ✓ The **justice police** must assist a council in the enforcement of council bylaws, if the council so requests in writing. (Organic Law, Article 61)

Examples of Bylaws

- Leaving cows unattended is prohibited; and failure to comply with the bylaw is punishable by a fine
- Loud music may only be played between 8 am and 9 pm
- Abuse of a child must be reported immediately to the council and to the police
- Every wedding must have security guards present

- ✓ The chairperson of the council must take measures to **publicly post information** about a bylaw within five business days after the bylaw is approved. (Model Internal Rules, Article 19)



- ✓ One-third of councilors on a council may request that the council consider **amending** a bylaw. (Model Internal Rules, Article 18)

Authority of Councils: Executive Authority

- ✓ Councils have executive authority. A council exercises its executive authority by making **decisions in its meetings**, and by **ensuring that its decisions are implemented**. It is the board of governors and the council's personnel who are responsible for implementing council decisions. (Organic Law, Articles 30, 31, 33, 155, 182)



- ✓ Like with bylaws, the council should ensure that it hears and considers **citizens' voice** before making decisions. A council decision should also take into account other **information and evidence** that will enable the council to meaningfully discuss, **debate** and **deliberate** before coming to a final decision.
- ✓ The board of governors must conduct **research studies** in order to provide good advice, information and evidence to the council. The results of studies should help the council to make better informed decisions. (Sub-decree Roles – Province, Articles 29, 86, 147)
- ✓ In addition, in order to **inform** their **decisions**, a council may invite a governor or deputy governor, the board of governors, or other relevant person to discuss –
 - the need to conduct research studies or investigations on any matter that the council considers is important for its citizens
 - the need to disseminate results of any research study or investigation
 - solutions for any urgent or special problems. (Sub-decree Roles – Province, Articles 15, 71, 133)
- ✓ The council must divide among its councilors duties to monitor implementation of the council's work. In addition, in order to **ensure** that its **decisions are implemented**, the council may invite a governor or deputy governor, the board of governors, or other relevant person to discuss –
 - implementation of council decisions
 - instructions for the board of governors to address the results of any research studies or investigations.(Sub-decree Roles – Province, Articles 14, 15, 70, 71, 132, 133)

- ✓ A council decision is only **valid** if the decision is approved by at least half the number of all councilors on the council. Approval of a decision is usually by raising of hands. (Model Internal Rules, Articles 16, 17)
- ✓ The chairperson of the council must take measures to **post information publicly** about a council decision within five business days after the council approved the decision. (Model Internal Rules, Article 19)
- ✓ One-third of councilors on a council may request that the council consider **amending** a decision. (Model Internal Rules, Article 18)
- ✓ A council ensures that its decisions are being implemented by receiving **regular reports from the board of governors**. (Organic Law, Articles 159, 165; Model Internal Rules, Article 31)

Authority of Councils: Raising Own Revenue

See Module 15 for more information on own-revenue

- ✓ Councils have the **authority to impose specified** to raise other non-tax revenues. Permissible local taxes, fees, charges and non-tax revenues will be set out in a separate law. (Organic Law, Articles 244, 246)

Section 2: General Functions of Councils

A council's general functions include to:

- consult with and disseminate information to citizens
- plan for its area
- budget and manage council resources

Consultation and Information Dissemination

Organic Law, Articles 12, 34, 38, 41, 50 – 51, 68, 117

- ✓ Consultation with citizens and dissemination of information to citizens are **integral and on-going responsibilities of councils**.
- ✓ **Consultation is** about a council **reaching out to** its **citizens** in order to obtain information about citizen needs, and also to find out citizen opinions about council policies, decisions, activities and plans. Consultation means that a council does not wait for citizens to come to the council, instead the council takes the initiative and actively seeks out its citizens (outreach). Consultation enables a council to understand the real needs, interests and priorities of its citizens – it enables the council to **hear the voice of its citizens**. A council that understands the real needs, interests and priorities of its citizens can make **informed decisions** that respond to those needs, interests and priorities. Consultation is a key **component of democratic development**. (Organic Law, Article 12)
- ✓ **Information dissemination** is about **transparency**. Transparency refers to councils providing information to citizens about council decisions, bylaws, activities, documents and reports, plans and budgets, the council's calendar for upcoming council meetings, and any other information the council has. Since a council is the elected representative of all its citizens, all council affairs should be transparent to citizens. Transparency is also a key **component of democratic development**. (Organic Law, Article 12)

Dissemination and Consultation Forums

- Every council must organize consultative forums every year that are attended by citizens as well as other councils. These forums are important mechanisms for –
 - **transparency**
 - **civic engagement** –
 - consultation
 - participation
 - citizen voice

- dialogue between government and citizens about development, choices, rights and services
 - inclusiveness - involving marginalized citizens
 - **democratic accountability.** (Sub-decree Roles – Province, Articles 9, 65, 121)
- The purpose of the consultative forum is for the council to –
 - **inform** about the council’s activities since the last forum
 - **respond to requests** of participants
 - **discuss and clarify issues** that are raised by participants
 - **collect ideas and comments** from participants in order to improve the performance of the council and its responsiveness to local needs.

(Sub-decree Roles – Province, Article 9, 65, 121)

Other Provisions regarding Consultation

✓ There are a number of additional provisions of the Organic Law and regulations that require or encourage a council to consult with its citizens.

- Every sub-national administration must be open during **official working hours**. During these working hours, any citizen has the right to –

SUB-NATIONAL ADMINISTRATION

Sub-national administration refers to the council and its board of governors. (Sub-decree Roles – Province, Article 2)

- communicate and work with the council and board of governors
- receive information from the administration about a request or other matter
- provide comments or suggestions on any matter.

(Sub-decree Roles – Province, Articles 50, 107, 168)

- Every council must consider at every meeting **how to consult** with its citizens. (Sub-decree Roles – Province, Articles 14, 70, 132)
- Every council must divide among its councilors duties to consult citizens in the area. (Sub-decree Roles – Province, Articles 14, 70, 132)
- A council must consult with its citizens when formulating and implementing its **development plan** (Organic Law, Article 38; Planning Sub-decree, Article 13)
- A council may **conduct a survey** to learn the views of its citizens (Organic Law, Article 34)
- A council may promote citizen attendance at **council meetings**, where the council can consult with citizens through discussion (Organic Law, Article 68)
- Citizens may act as advisors to **council committees**. (Organic Law, Article 117)

Other Provisions regarding Information Dissemination

- ✓ There are also additional provisions of the Organic Law and related regulations that require a council to disseminate information to its citizens.
 - **Council meetings** are generally open to the public, and a citizen does not require an invitation to attend. (Organic Law, Article 68; Model Internal Rules, Article 25)
 - Every council must consider at every meeting **how to disseminate information** to its citizens. (Sub-decree Roles – Province, Articles 14, 70, 132)
 - A council must do what it can to ensure that the **public has access to information** such as: council agendas, minutes of council meetings, council bylaws, the council's development plan, and other important documents. (Organic Law, Articles 41, 51; Model Internal Rules, Articles 2, 6)
 - The administration must set up easily accessible public **information boards** in front of the administration office. The information board must display official council information for at least 10 days. In addition, the council must set up information boards in other public places in order to further disseminate information to citizens. The council must also find alternative means to disseminate information to citizens about the administration's work. (Sub-decree Roles – Province, Articles 54, 111, 172)
 - The chairperson of the council must take measures to publicly post information about a council **decision** or **bylaw** within five business days after the council approved the decision or bylaw. (Model Internal Rules, Article 19)
 - A council must prepare and disseminate its **annual report** highlighting its activities and performance. (Organic Law, Article 50)

Issues to Address

There should be additional opportunities for citizens to participate in decision-making once more regulations and guidelines have been issued under the Organic Law.

For instance, it is expected that regulations or guidelines regarding the following matters will address citizen participation and consultation:

- development planning
- budgeting
- financial affairs and management
- council bylaws
- working procedures for council committees

Planning

Organic Law, Articles 37 to 41, 124, 166

- ✓ A council must participate in formulating, and must approve and oversee implementation of a **5-year development plan**, a **3-year rolling investment program**, a **budget** and a medium-term expenditure framework. The development plan and investment program must be monitored, evaluated and updated annually. (Organic Law, Articles 37, 40; Planning Sub-decree, Article 4)
- ✓ In preparing its development plan, the council must determine the needs of both **women and men**, **youth**, **children** and **vulnerable groups** (including **the poor** and **indigenous peoples**). (Organic Law, Article 39; Planning Sub-decree, Article 5)
- ✓ In the formulation and implementation of the development plan, the council must be **transparent**, must **share information**, and the council must **consult widely**, including with: all citizens in its area; other councils; relevant ministries; and other stakeholders. (Organic Law, Article 38; Planning Sub-decree, Article 5) Other stakeholders should include **civil society** organizations that are located in or working in the area, including community-based organizations.

See Module 14 for more information on planning

- ✓ A council's development plan must reflect all activities within its area, from all different sectors. The development plan, therefore, must **integrate all development activities** in the area of the council, even where those activities are not under the management or control of the council (Organic Law, Articles 124 and 166).
 - **For example**, the provincial department of agriculture provides services in District Savar. The development plan and budget of District Savar must integrate the services provided within the district by the provincial department of agriculture.
- ✓ The council instructs the board of governors about arrangements to implement the development plan and investment program, including how to implement them with **transparency, accountability, participation** and **effectiveness**. (Planning Sub-decree, Article 22)
- ✓ The **council arranges** for **monitoring** of the implementation of the development plan and investment program. (Planning Sub-decree, Article 25)

Financial Management and Budgeting

Organic Law, Articles 42 to 45, 241 to 245, 253

- ✓ A council must manage its financial affairs in a way that is **open and transparent** to its citizens. A council is **accountable** to its citizens in all aspects of financial management. (Organic Law, Article 43)
- ✓ Phnom Penh, provinces, municipalities and districts have their **own budget**. Sangkats and khans in Phnom Penh and sangkats in municipalities receive their budget from the

Phnom Penh council or from the municipal council. (Organic Law, Article 44)
Communes and sangkats in districts continue to receive their own budget under the Law on the Administration and Management of Communes/Sangkats (LAMC) (LAMC, Article 73)

- ✓ A council must prepare an **annual budget** and a **medium-term expenditure plan**. A budget must maintain a balance between council revenues and council expenditures. (Organic Law, Article 44)
- ✓ A council must manage its finances so as to focus on **providing basic services to its citizens**, to reduce poverty, and to meet the needs of both women and men, youth, children and **vulnerable groups** (including the poor and indigenous peoples). (Organic Law, Article 42)
- ✓ A *Law on Sub-National Administration Financial Regime and Management of Assets*, and other legal instruments, will be adopted to address sub-national financial management, budgeting and asset management. (Organic Law, Articles 44 - 46, 137, 244, 245, 248, 253, 255)

See Module 15 for more information on financial management

Section 3: Specific Functions of Councils

Administrative Functions

Organic Law, Articles 277, 278, 281

- ✓ After the first elections of the new councils, the new councils replaced the former appointed administrations in their area. The new Phnom Penh council, for instance, replaced the former appointed Phnom Penh administration. (Organic Law, Article 277; Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ The existing governors held their positions until they were taken over by the new council and the new board of governors. In addition, the **personnel working in units** of the former appointed administrations have been **re-deployed** to the new elected councils of Phnom Penh, provinces, municipalities, districts and khans. (Organic Law, Articles 278, 281)

Sectoral Functions

Organic Law, Articles 108, 112, 200, 213 to 240

- ✓ The Organic Law sets out general roles and duties of councils. In addition, the Organic Law outlines a process and criteria for **reviewing sectoral functions** to determine which sectoral functions **should be transferred to which councils**, including commune councils. (Organic Law, Articles 200, 213 to 240; Sub-decree Roles – Province, Article 206)

Function

Examples of possible functions:

- to provide agricultural extension services
- to administer primary schools
- to collect and dispose of garbage
- to inspect slaughterhouses

- ✓ Transferring specific sectoral functions to councils will mark a **significant change** from the past. Providing councils with specific sectoral functions should overcome a **current constraint** at commune level. Currently, many commune councils are uncertain about which functions they may or may not implement. As a result, commune councils tend not to undertake sectoral functions. Once councils are transferred specific sectoral functions under the Organic Law, however, there should no longer be any uncertainty.

It is not feasible for councilors to *personally* implement all council functions. This is especially the case for functions that involve technical expertise, such as providing advice on how to increase rice yields. Councils, therefore, will have their **own skilled personnel** whose role is **to implement a council's functions**.

- ✓ The process and criteria set out in the Organic Law will help identify which functions should be transferred to the Phnom Penh council, to provincial, municipal and district councils, as well as to commune councils. (Organic Law, Article 220)

- ✓ Since khans and sangkats are located within a larger urban area, khan and sangkat councils only receive functions that are delegated to them by the Phnom Penh or municipal council. (Organic Law, Articles 108, 112)
- ✓ Sangkats in districts will be treated the same as communes under the Organic Law. Sangkats in districts, therefore, continue to have functions under the LAMC and may receive functions directly from the national level under the Organic Law. (LAMC, Article 43)
- ✓ In the future, it can be expected that different levels of council will have **specific functions to implement in a range of sectors**, such as: education, health, natural resource management, land management, agriculture and economic development. (Organic Law, Article 215) It can be expected that much of a council's focus will be on making decisions about how to implement their sectoral functions, and ensuring that their sectoral functions are implemented appropriately.

See Module 13 for more information on transferring sectoral functions
- ✓ In order for councils to make decisions that respond to the real needs of their citizens, functions transferred to councils must include adequate **authority and discretion** and must be accompanied with adequate **discretionary finances**.

Conflict Resolution

Organic Law, Articles 89 to 95

- ✓ Commune/sangkat councils and district administrations are already mediating certain local conflicts. In the future, **all councils** will have the function to mediate local conflicts.
- ✓ A council is required to take steps to mediate **local conflicts** in its area. A local conflict is a **private conflict** between citizens. (Organic Law, Articles 89, 90)
- ✓ In the event that any person involved in the dispute does not accept the solution that a council proposes, that person is free to pursue other means to resolve the dispute, such as going to court. (Organic Law, Article 92)
- ✓ There are some kinds of disputes that a council cannot mediate, for instance disputes involving divorce and certain criminal matters. (Organic Law, Article 94)
- ✓ During a council meeting, a council may review and take action to address a local conflict in accordance with the applicable legal framework. (Sub-decree Roles – Province, Articles 15, 71, 133)
- ✓ A council may also decide during a council meeting what action to take in order to address a request or a complaint from a citizen. (Sub-decree Roles – Province, Articles 15, 71, 133)

Issues to Address

It is critical that procedures for mediation ensure a minimum standard of fairness in the process. This will serve to build public trust in the new councils

Provincial Support to Other Councils

- ✓ The Royal Government has **delegated** to provincial councils the **function to support** other councils in the province, and also to **conduct legality checking** on decisions and activities of municipal and district councils. The delegation includes –
 - development of strategies to support the capacity development of municipal, district, commune and sangkat councils and their personnel
 - direction, coordination and support to these councils in implementing their functions and duties, and in utilizing their resources
 - ensuring that municipalities and districts provide appropriate support to sangkats in the municipalities and to communes and sangkats in districts.(Sub-decree Roles – Province, Article 196)
- ✓ These responsibilities are carried out by the **provincial board of governors** and **council personnel**. The board of governors must report on these matters to the council at every council meeting. (Sub-decree Roles – Province, Article 196)

District Support to Communes and Sangkats in Districts

Organic Law, Articles 96 to 105

- ✓ Every district council has a **special function to assist commune and sangkat councils** in the district so that commune and sangkat councils can optimally establish, promote and sustain democratic development in their areas. (Organic Law, Article 97)
- ✓ The district council must arrange for **capacity development** of commune/sangkat councils so they can **receive functions and resources**, and so they can implement the functions and use the resources in ways that establish, promote and sustain democratic development.
 - The district council must **evaluate** commune/sangkat council capacity at least once every year.
 - The district council must then arrange for capacity building **training** for commune/sangkat councils and their personnel based on the results of the evaluation.(Organic Law, Article 99, 101 -104; Sub-decree Roles – Province, Article 122)

- ✓ A district council and the commune and sangkat councils in the district must work together in order to ensure that **citizens** have meaningful opportunities to **participate in governance** (citizen engagement) and that the **needs of citizens** in the district **are met**. (Organic Law, Article 97)

- ✓ Every district council has an office to support commune/ sangkat councils in the district – the **Planning and Commune/Sangkat Support Office**. (Organic Law, Article 181; Prakas Offices – Province, Article 26)

The relationship with district councils is designed to strengthen and empower commune/sangkat councils and to ensure that local needs are met. The district council and district board of governors, therefore, must **respect the autonomy of commune/sangkat councils**. (Sub-decree Roles – Province, Article 174) In other words, the role of the district is to maximize – not interfere with – the **deliberative space** of commune/sangkat councils.

- ✓ The district council is also responsible for checking that the **bylaws and decisions** of **commune and sangkat councils** comply with the Constitution, laws and applicable legal frameworks. The district board of governors performs this task on behalf of the council. (Sub-decree Roles – Province, Articles 74, 196; Prakas Offices – Province, Article 4)

- ✓ The support role and legal compliance checking role that the district council plays does not mean that commune and sangkat councils are accountable to the district council. Instead, it is the **district council that is accountable to the commune and sangkat councils** in the district. (Organic Law, Articles 97, 98)

- ✓ A district council is **accountable** to commune and sangkat councils in the district because commune and sangkat councilors vote for district councilors. District councils must be accountable to their voters.

- ✓ A district council, for instance, is required to consult regularly with the commune and sangkat councils in the district and to respond to their requests. One way the district council consults with commune and sangkat councils is through the **dissemination and consultation forums** discussed already above. (Organic Law, Articles 97, 98; Sub-decree Roles – Province, Articles 116, 132)

- ✓ In addition, commune and sangkat chiefs have the **right to participate in every district council** meeting to discuss, provide comments and make requests. (Sub-decree Roles – Province, Article 119)

- ✓ As another way to promote **district council accountability** to commune/sangkat councils, every district council must assign a councilor to participate in meetings of commune and sangkat councils in the district. The **district councilor must report** to the commune or sangkat council about activities and decisions of the district council. The district councilor must clarify any issues raised, and must collect any requests and suggestions, and must learn about challenges the commune and sangkat councils cannot solve on their own. (Sub-decree Roles – Province, Article 120)

See Module 11 for more information on district support to commune and sangkat councils

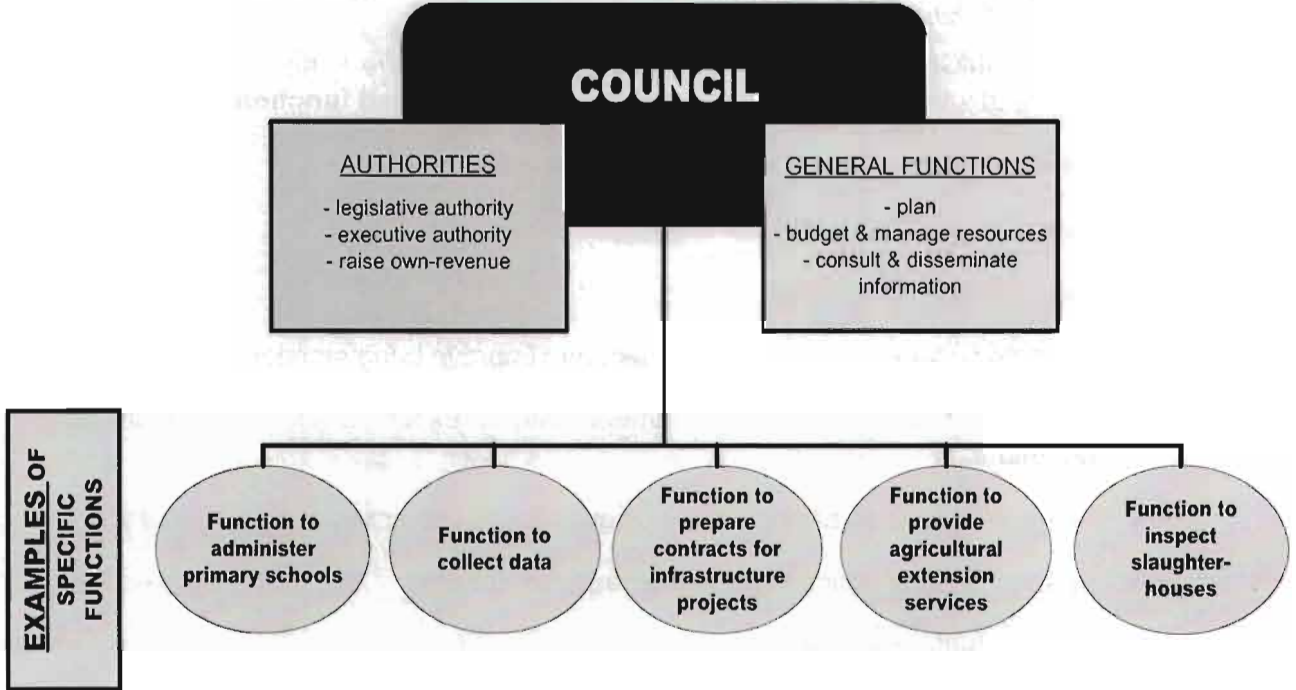
Municipal Support to Sangkats in Municipalities

- ✓ Just as a district council must support commune and sangkat councils in the district, a municipal council must support sangkat councils in the municipality.
- ✓ At every municipal council meeting, the council must consider how to **consult with sangkat councils**. In its meetings, a municipal council may also make decisions regarding **support** to sangkat councils, and **delegation of functions** to sangkat councils. (Sub-decree Roles – Province, Articles 70, 71)
- ✓ The municipal council must actively provide **capacity development support** to sangkat councils so that sangkat councils have the capacity to receive new delegated functions from the municipal council. (Sub-decree Roles – Province, Article 180)
- ✓ Every municipal council has an office to support sangkats in the municipality - the **Planning and Sangkat Support Office**. (Prakas Offices – Province, Article 17)
- ✓ The municipal council must **consult, coordinate and cooperate closely** with sangkat councils in order to identify and address local needs. One way the municipal council consults with sangkat councils is through the **dissemination and consultation forums** discussed already above. (Sub-decree Roles – Province, Articles 64, 180)
- ✓ In addition, the municipal council must **provide** the **resources** (finances and personnel) and capacity development required for sangkat councils and their personnel to **implement delegated functions** effectively. (Sub-decree Roles – Province, Articles 182, 183)
- ✓ In addition, the municipal council is responsible for checking that the **bylaws and decisions of sangkat councils** comply with the Constitution, laws and applicable legal frameworks. The municipal board of governors performs this task on behalf of the council. (Sub-decree Roles – Province, Article 74)

See Module 11 for more information on municipal support to sangkat councils

OVERVIEW

COUNCIL AUTHORITIES, GENERAL FUNCTIONS AND SPECIFIC FUNCTIONS



Section 4: Commune and Sangkat Council Functions

Functions under the LAMC

- ✓ Commune and sangkat councils continue to have functions in accordance with the LAMC. (Organic Law, Article 283)
- ✓ Under the LAMC, commune and sangkat councils have two kinds of functions. First, commune and sangkat councils have their **own decentralized functions** to:
 - ensure maintenance of security and public order
 - arrange necessary public services
 - promote the well-being of citizens
 - promote socio-economic development and improve living standards of citizens
 - protect and conserve the environment, natural resources and the national culture and heritage
 - reconcile the views of citizens to achieve mutual understanding and tolerance
 - perform general affairs to meet the needs of citizens(LAMC, Articles 42, 43)
- ✓ Second, commune and sangkat councils may receive functions to implement as an **agent of the state**. These functions are **deconcentrated by delegation**. (LAMC, Articles 42, 44) For example, the Ministry of Interior has delegated to commune and sangkat councils the function to provide civil registration services to citizens, and also the function to register voters for elections.

Functions under the Organic Law

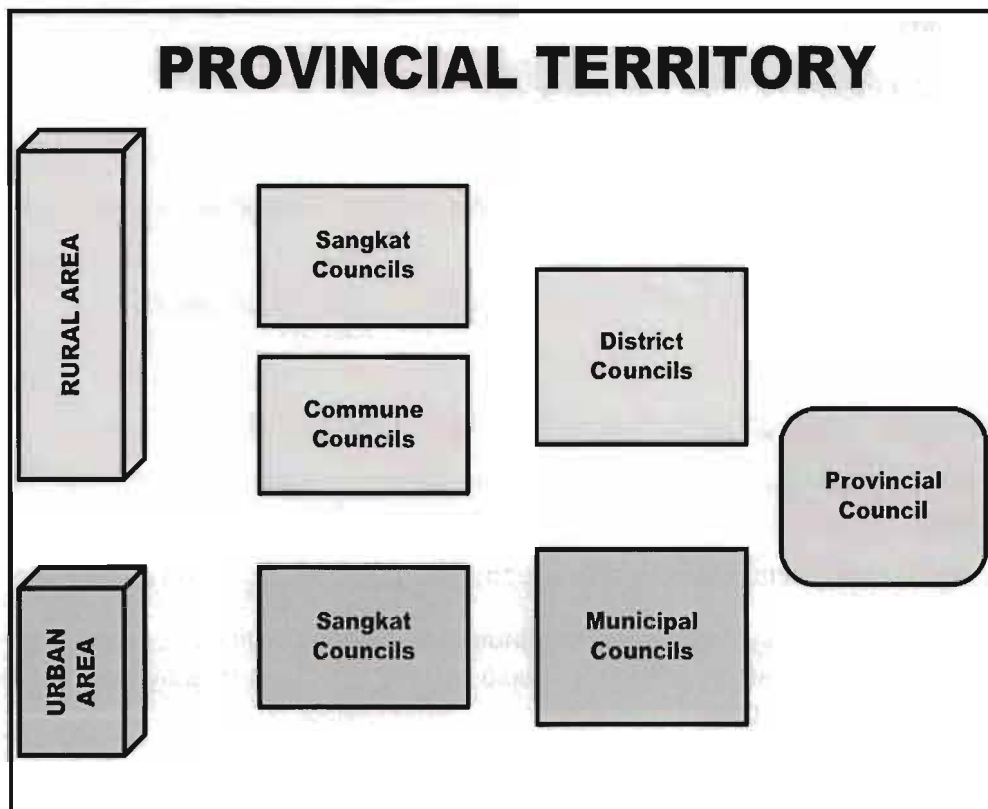
Organic Law, Articles 44, 108, 112, 217

- ✓ In addition to functions under the LAMC, communes and sangkats in districts will have functions under the Organic Law.
- ✓ Commune councils will receive – directly from the national level – sectoral functions to implement. Commune councils will receive their own budget to implement those functions. (Organic Law, Article 217)
- ✓ Sangkat councils in Phnom Penh and municipalities will receive sectoral functions that are delegated to them by the Phnom Penh or their municipal council. (Organic Law, Articles 108, 112) Sangkat councils will receive a budget to implement those delegated functions from the Phnom Penh or municipal council. (Organic Law, Article 44)

- ✓ Sangkats in districts may receive functions under the Organic Law. (Organic Law, Article 217)

Non-Hierarchical Diagram of Councils

- ✓ Each provincial council, municipal council, district council, commune and sangkat council has its **own separate power to make decisions**, to implement its functions and to utilize its resources to establish, promote and sustain democratic development in its area.
- ✓ The **autonomy, the deliberative and political space, and the discretionary space of all councils must be respected**. As long as a council legally complies with the Constitution, laws and other applicable legal instruments, no one may interfere with the council's priorities, choices, policies, decisions or bylaws. (Sub-decree Roles – Province, Article 174)
- ✓ The following diagram, therefore, provides a **non-hierarchical perspective** on the new levels of council.



PART 2:

Summary of Module

- The overall role of every council is to do what is necessary to achieve its purpose of democratic development; and to implement functions the council receives under the Organic Law.
- Councils have specified authorities under the Organic Law:
 - executive authority
 - legislative authority
 - revenue-raising authority
- Councils have general functions:
 - consultation and information dissemination
 - planning
 - financial management and budgeting
- Councils also have specific functions:
 - administrative functions taken over from the previous appointed administration in the area of the council
 - sector functions transferred to the council (that are not yet defined)
 - mediation of certain private local conflicts
 - provincial councils must support all other councils in the province
 - district councils must assist and support commune and sangkat councils in the district
 - municipal councils must assist and support sangkat councils in the municipality
- Commune and sangkat councils continue to have functions under the LAMC. Communes and sangkats in districts will also receive functions directly from the national level under the Organic Law.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Sectoral Functions

You are a district council. You have an opportunity to negotiate with the Ministry of Education to receive education-related functions to implement.

Develop your arguments for why district councils should be transferred the following functions. (Remember that the district council will automatically receive any necessary capacity development, finances, personnel and assets)

- Building, repairing and maintaining schools
- Hiring and supervising teachers
- Organizing parent-teacher committees

EXERCISE TWO: District Support to Commune and Sangkat Councils

You are a district council. You are meeting to develop a plan for how you will support commune and sangkat councils in your area.

- What are some concrete steps the district, commune and sangkat councils can take to ensure that there is meaningful public participation in local governance (apart from holding large village level meetings)?
- What are some creative ways (apart from training) that the district council can use to develop capacity in the commune and sangkat councils in its area?
- What steps will the district council take to ensure that commune and sangkat councils do not feel dominated by the district council?

EXERCISE THREE: Conflict Resolution

Mr. Somlaing Klung lives next to his cousin Mr. Somlaing Tooich. Klung enjoys listening to karaoke music in the evenings, and he tends to play the karaoke music loudly. His cousin, Tooich, does not appreciate the loud music coming from Klung's house every night. The two cousins have had many disagreements about this problem. They have finally agreed to take their dispute to the district council.

You are the district council.

- What will you do to fairly mediate the dispute between Klung and Tooich?
- What are the steps you will take?
- What will happen if Klung and Tooich disagree with your recommendation about how to resolve the dispute?

EXERCISE FOUR: Bylaws

You are a provincial council. In your province there have been many incidents of unattended cattle destroying property. This problem is on the rise and it is causing considerable antagonism in the communities.

Prepare a draft of a bylaw to address the problem. (Review Articles 53 to 61 of the Organic Law.)

EXERCISE FIVE: Budget of Khans and Sangkats

Sangkats and khans receive their budget from the Phnom Penh or municipal council.

Discuss the following questions:

- What do you think are the implications for sangkats and khans of receiving their budget from the Phnom Penh or municipal council?
- How can khans and sangkats negotiate for an appropriate budget?

Modules for Understanding
and Training on the
Organic Law

Module 6:
Governor and Board of Governors

PART 1:

- 1. Roles and Functions of the Board of Governors**
- 2. Roles and Functions of the Governor**

Section 1: Roles and Functions of the Board of Governors

Organic Law: Articles 138 to 172

The board of governors has three types of roles: an advisory role, a management role and a reporting role.

Advisory Role

- ✓ The board of governors has the role to provide comments and advice to the council about implementation of council affairs. (Organic Law, Article 155).
- ✓ The board of governors must **conduct research studies** in order **to provide quality and evidence-based advice** to the council that can help the council make informed decisions. (Sub-decree Roles – Province, Articles 29, 86, 147)
 - The **municipal board of governors** must conduct necessary research studies regarding how to address sangkat council requests and challenges, and regarding what functions should be delegated to sangkat councils. (Sub-decree Roles – Province, Article 86)
 - Similarly, the **district board of governors** must conduct necessary research studies regarding how to cooperate and support commune and sangkat councils in the district, and regarding how to address commune and sangkat council requests, suggestions and challenges. (Sub-decree Roles – Province, Article 147)
 - The board of governors provides comments and advice about strategies for the council to assume **new functions and resources**. (Organic Law, Article 160)
- ✓ The board of governors proposes strategies for consultation with citizens, other councils in the area, concerned ministries and their sub-national units, and other stakeholders in the area. (Organic Law, Article 164)
- ✓ The board of governors makes recommendations to the council about personnel structures, systems and procedures, and about a capacity development strategy for council personnel. (Organic Law, Article 162)
- ✓ The board of governors provides recommendations to the council on the **establishment of additional committees** (Organic Law, Article 168)

Management Role

- ✓ The board of governors has the role to **support the council in fulfilling its functions**, authorities and duties. (Organic Law, Article 155)
- ✓ The board of governors **implements council decisions** and bylaws, and ensures that council officials, personnel and units are effectively implementing council decisions, bylaws and activities. The **council must monitor and evaluate** the performance of the board of governors in fulfilling this role and to ensure that the board of governors is complying with the council's direction. (Organic Law, Articles 157, 161; Sub-decree Roles – Province, Articles 17, 73, 135)
- ✓ The council may request the board of governors to undertake **consultations with citizens** and others on behalf of the council. (Organic Law, Article 164)
- ✓ The board of governors **consults with the technical facilitation committee** to ensure that plans and budgets of ministries, government institutions, departments and units of the Royal Government are integrated well in the council's 5-year development plan, 3-year rolling investment program and budgets. (Organic Law, Article 166)
- ✓ The board of governors ensures that **information** about council decisions and activities is **disseminated to the public**. (Organic Law, Articles 169, 170)
- ✓ The board of governors **prepares a draft** and submits to the council for consideration:
 - the council's 5-year **development plan** and medium-term **expenditure plan**
 - the council's 3-year rolling **investment program** and **budget plan**
 - the council's **annual report**. (Organic Law, Article 163)
- ✓ The board of governors must support the council and its personnel to **report any corruption or other abuse of authority** within the area of the council. (Organic Law, Article 167)
- ✓ The board of governors must support the council to **monitor** all functions, duties and resources. (Organic Law, Article 156)

Women and Children's Consultative Committee

Two members of the Women and Children's Affairs Committee may attend any meeting of the board of governors to offer recommendations about how women and children's issues can be taken into account. (Organic Law, Article 129; WCCC Prakas, Model Internal Rules, Article 14)

Reporting role

- ✓ The board of governors **regularly reports to the council** about the implementation of council decisions and activities, about financial matters, and about all other council affairs. (Organic Law, Articles 155, 159, 160, 165; Sub-decree Roles – Province, Articles 17, 73, 135; Prakas 1249 on Office-Taking Meeting, Article 24; Model Internal Rules, Article 31)
- ✓ The board of governors may attend and **speak during council meetings**. The board of governors does not, however, have the right to vote on any matter. (Organic Law, Article 149)
- ✓ The board of governors may request that an **item** be **added** to the **agenda** of a council meeting. (Model Internal Rules, Articles 5, 30)
- ✓ The council may invite the board of governors or governor to a council meeting in order to **clarify an issue**. At any meeting, councilors may question the governor on progress of implementation of council decisions and bylaws. (Organic Law, Article 157; Model Internal Rules, Article 24)

Model Internal Rules

The NCDD has issued model internal rules that councils may use when they develop and approve their individual internal rules. The model internal rules stipulate **minimum conditions** that may be added to and enhanced by individual councils.

Accountability to Council

- ✓ The **council is the decision-making body** in its area. The board of governors has the role to assist and support the council, and to implement council decisions and bylaws. In this role, therefore, the **board of governors is accountable to the council**. (Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ The board of governors is **accountable to the Royal Government** for implementation of this role in accordance with the Constitution, laws and other applicable legal instruments. (Sub-decree Roles – Province, Articles 27, 84, 145)
- ✓ The Organic Law includes a **number of mechanisms** to assist a council to hold its **board of governors accountable**:
 - A council has a legal duty to **monitor** the **activities** and the **performance** of the governor and board of governors. (Organic Law, Article 157)

Accountability

Both elected councilors and the board of governors are answerable for their policies, decisions, choices, actions and use of public resources.

When it is said that the board of governors is accountable to the council, this means that the council has authority over the board of governors, including –

- the right to monitor and evaluate the performance of the board of governors
- the right to require information from the board of governors
- the right to ensure and assess whether the board of governors has complied with council decisions and instructions
- the right to have a decision or action of the board of governors invalidated in the even the decision or action does not comply with a council decision or instruction
- the right to request the termination of the governor, a deputy governor or the whole board of governors.

- A council is entitled to invite the governor or board of governors to **clarify issues at a council meeting**. (Organic Law, Article 157; Model Internal Rules, Article 24)
- The governor and board of governors may only make a decision or undertake an activity if the **decision or activity** has been **authorized by the council**. A decision or activity that has not been authorized by the council is invalid. (Organic Law, Article 158)
- A council may submit a request to the Ministry of Interior to **terminate a governor or deputy governor** on the basis of one of the specified reasons. The Ministry of Interior must immediately undertake an investigation. (Organic Law, Article 152)

Working Procedures of the Board of Governors

- ✓ The board of governors **meets at least twice every month**. Minutes must be taken at all of their meetings. These **minutes should be available to the public**. (Sub-decree Roles – Province, Articles 31, 88, 149; Organic Law, Article 51)
- ✓ The board of governors must **divide tasks among the governor and deputy governors**, and then request the council to review and approve the division. The Ministry of Interior will issue a guideline on division of duties among the governor and deputy governors. (Sub-decree Roles – Province, Articles 33, 90, 151)

Board of Governors Relationship with the Administration

- ✓ The administration office (sala khet, sala krong or sala srok) is the **office of the council and the board of governors**. The administration office must be open during public working hours. During working hours, citizens have the right to –
 - **communicate and interact** with councilors or the **board of governors**
 - receive information on the requests and other issues from provincial administration
 - participate in providing comments or suggestions on any issues.
 (Prakas Offices – Province, Articles 1, 16, 25)
- ✓ At every sub-national level, each administration unit is under the direct responsibility, supervision and management of the head of the unit. The **head of each unit** is responsible and accountable to the administrative director. The **administrative director** is responsible and **accountable to the board of governors and the council**. (Prakas Offices – Province, Articles 10, 21, 30)
- ✓ The board of governors leads and instructs the administrative director in **assigning tasks to the units** of the administration. (Prakas Offices – Province, Articles 13, 23, 32)

- ✓ The units of provincial, municipal and district administrations have responsibilities to assist the board of governors in performing its responsibilities. For instance, the provincial **Planning Office** makes recommendations to the governor about the legality of municipal, district, commune and sangkat development plans. (Prakas Offices – Province, Article 4)
- ✓ The provincial board of governors leads and instructs the administration director in preparing a **training and capacity development program** for provincial council personnel, with assistance from the Personnel Management Office. (Prakas Offices – Province, Article 15)

COUNCIL	BOARD OF GOVERNORS
<ul style="list-style-type: none"> • Elected by commune/sangkat councilors • 5-year mandate • Makes decisions for its area • Accountable to citizens, to Royal Government • Monitors the board of governors • Approves development plan and budget • May request termination of governor/ deputy governor 	<ul style="list-style-type: none"> • Appointed by Royal Government • 4-year mandate • Implements the decisions the council makes • Accountable to the council • Reports regularly to the council • Prepares draft development plan and budget for council to review

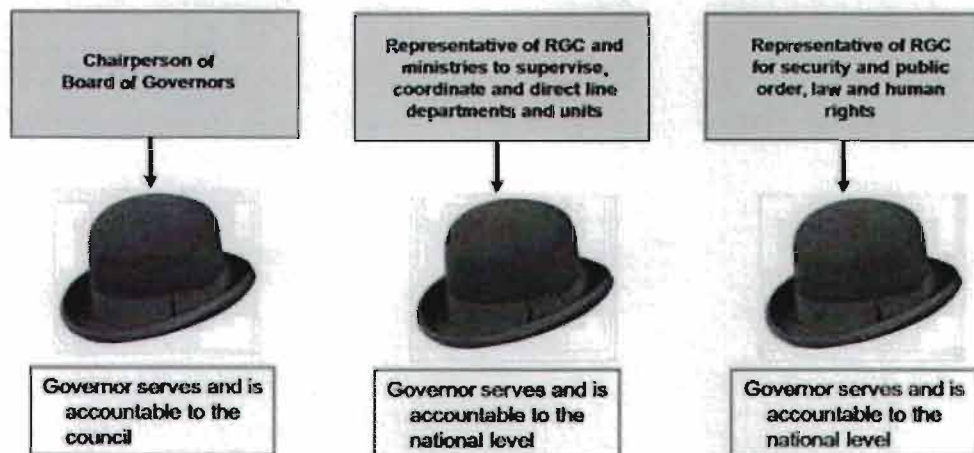
Section 2: Roles and Functions of the Governor

Organic Law, Articles 123 to 126, 138 to 172

Three Hats of the Governor

- ✓ The Organic Law assigns 3 roles to the governor.
1. First, the governor is the **chairperson of the board of governors**. In this role, the governor serves and is accountable to the council. The roles of the board of governors were discussed in the previous section. (Organic Law, Article 139; Prakas 1249 on Office-Taking Meeting, Article 7)
 2. Second, the governor is the representative of ministries and government institutions of the Royal Government in order to **supervise, coordinate and direct all line departments and units** that operate in the area of the council. In this role, therefore, the governor serves and is accountable to the Royal Government, and to the concerned ministries and government institutions. In this role the governor is able to serve as a link between the council and line ministries at the national level. (Organic Law, Article 154; Sub-decree Roles – Province, Articles 35, 92, 153)
 3. Third, the governor represents the Royal Government, ministries and government institutions on issues related to **security, social and public order, law and human rights** within the area. The governor is the chief of the steering committee in charge of military in the area. In this role, the governor serves and is accountable to the Royal Government and the Ministry of Interior. (Organic Law, Article 154; Sub-decree Roles – Province, Articles 36, 93, 154)

Three Hats of the Governor



First Hat of the Governor: Chairperson of the Board of Governors

This role was discussed in the previous Section of this Module.

Second Hat of the Governor: Representative of Royal Government Regarding Line Units

In his/her capacity as **representative of the Royal Government and ministries** to supervise, coordinate and direct line departments/offices, a governor has the following duties to –

- **coordinate and direct** line departments/offices in the area in responding to **priority local needs**
- through the technical facilitation committee, the council and governor must coordinate and direct line departments/offices in the area to **integrate their plans and budgets into the plan and budget of the council**
- **guide** line departments/offices in the area to implement their roles in accordance with law, national policies and applicable legal frameworks
- **monitor and evaluate** directors/chiefs of line departments/offices
- consult with the council and then provide suggestions for **new appointments of directors/chiefs** of line departments/offices
- a provincial governor must instruct a director of a line department to **correct any irregularity** or wrongdoing found. If no correction is made and the irregularity or wrongdoing is serious, the governor must report the matter directly to the concerned Ministry
 - a municipal or district governor must report any irregularity or wrongdoing to its provincial governor. The provincial governor must instruct the line office chief to correct the irregularity or wrongdoing found. If no correction is made and the irregularity or wrongdoing is serious, the provincial governor must report the matter to the concerned ministry
- a provincial governor has the right to request in writing to a Minister that a director of a line department be **demoted in the event of an irregularity or wrongdoing** that cannot be justified (Sub-decree Roles – Province, Article 35)
 - a municipal or district governor must ask the provincial governor to make this request of the concerned Minister regarding the chief of a line office (Sub-decree Roles – Province, Articles 92, 153)
- receive and comment on in advance reports of line departments/office to their ministries and, where the governor agrees, to sign those **reports** together with the head of the department/office. (Sub-decree Roles – Province, Articles 35, 92, 153)

Do you think that line departments/offices will have sufficient discretion to be able to respond to local needs?

- ✓ A **governor must report regularly to the council** about the governor's activities and results in his/her work as representative of the Royal Government. The council may require the governor to report at a council meeting in the event that there is a problem relating to the governor's work as representative of the Royal Government that **impacts on legal interests of citizens or citizens have complained**. (Sub-decree Roles – Province, Articles 39, 96, 157)
- ✓ The council is entitled to provide recommendations and instructions to the governor in his/her role as representative of the Royal Government so that local priority needs and local challenges can be met. The **governor must accept those recommendations and instructions from the council** and apply them when coordinating and directing line units. The governor must then report back to the council. (Sub-decree Roles – Province, Articles 39, 96, 157)
- ✓ The governor is also the **chairperson of the council's technical facilitation committee**. The technical facilitation committee is a critical meeting place for the council and line units in the area. The technical facilitation committee is a very important forum for the council and line units to **coordinate their work**. As chairperson, the governor can use his second hat to coordinate and direct the line units that sit on the technical facilitation committee.

See Module 7 for more information on the technical facilitation committee
- ✓ The governor is accountable to the Royal Government and Ministries in this role. (Sub-decree Roles – Province, Articles 38, 95, 156)

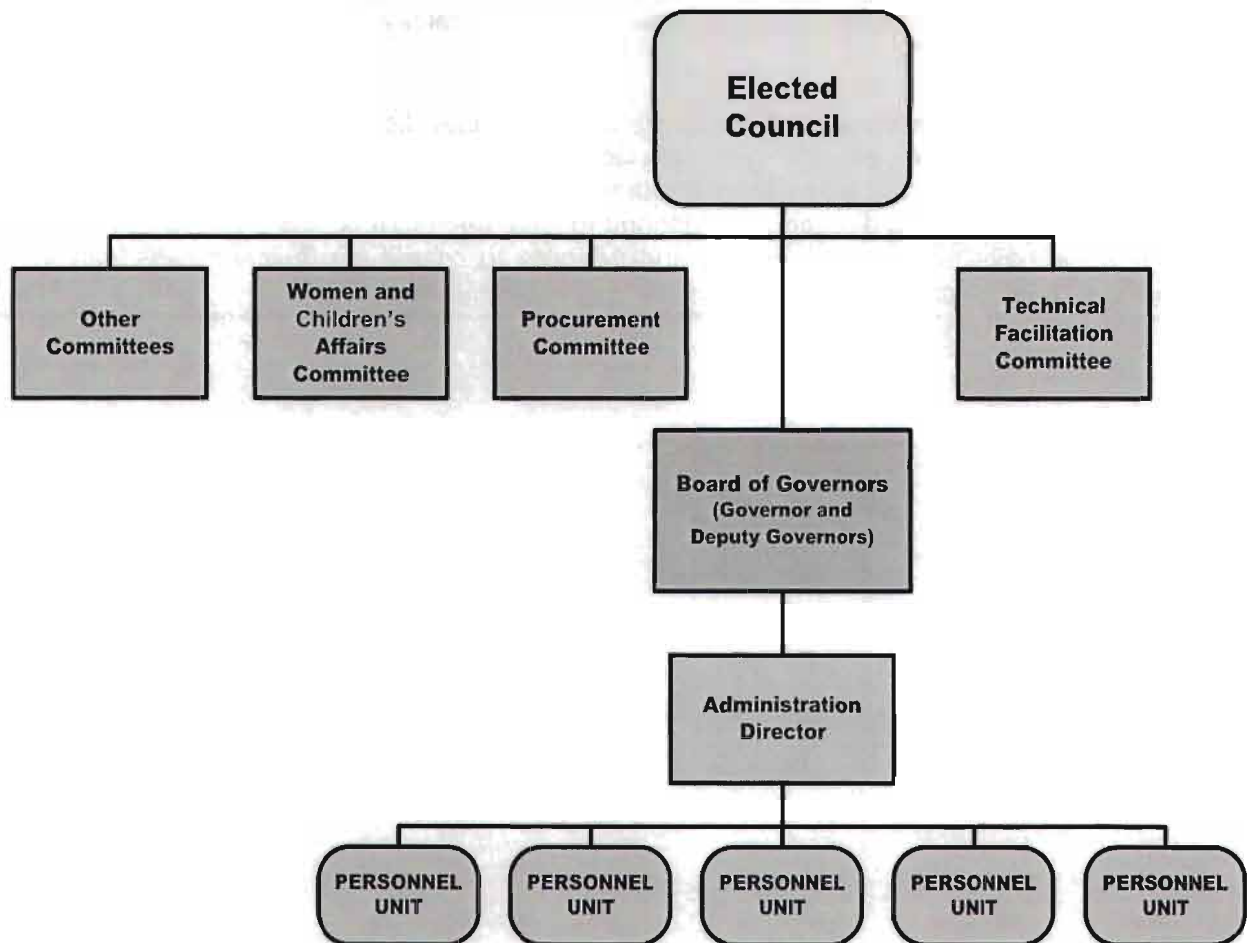
Third Hat of the Governor: Representative of Royal Government for Security and Public Order

- ✓ In his/her capacity as representative for **security, public order, law and human rights**, the governor promotes awareness about laws, ensures that laws are implemented and that human rights are respected (Sub-decree roles – Province, Articles 36, 93, 154)
- ✓ The governor is the **chief of the steering committee in charge of the military** in his/her area. In that capacity, the governor leads and coordinates relevant line units and administrations to maintain security and public order. (Sub-decree Roles – Province, Articles 36, 93, 154)
- ✓ The Organic Law provides that council personnel do **not include** officials of ministries, institutions, departments and units of the Royal Government who are on duty related to security, public and social order, laws, and human rights on behalf of the Royal Government. (Organic Law, Article 175)
- ✓ The Prakas Offices – Province provides that the Inter-Sectoral Division supports the governor in implementing his or her role related to security and public order, law and human rights. The Inter-Sectoral Division participates in meetings of the provincial security steering committee and must monitor the implementation of decisions made during meetings. (Prakas Offices – Province, Article 7)
- ✓ The governor is accountable to the Royal Government in this role. (Sub-decree Roles – Province, Articles 38, 95, 156)

Deputy Governors

- ✓ The governor may divide his/her duties among **deputy governors** so that the deputy governors can assist the governor. This suggests that deputy governors, like the governor, may wear **more than one hat**. (Sub-decree Roles – Province, Articles 37, 94, 155)

STRUCTURE OF NEW COUNCILS



Issues to Address

The governor is a key actor in the unified administration. Recall that the unified administration has the purpose to achieve democratic development. The roles and authorities of the governor, therefore, should be consistent with and should promote the components of democratic development, such as transparency and accountability to citizens, and the improvement of the quality of life of citizens.

As representative of the ministries and government institutions of the Royal Government of Cambodia, the Governor is accountable to the Royal Government. This accountability may be difficult in the case that two ministries, or their line departments, have competing interests in the province (for example the same plot of land is requested by the health department to build a hospital and by the education department to build a school). The NCDD, which has a role to ensure integration of ministry activities at sub-national levels, may have to play a role in these kinds of cases.

Perhaps the biggest challenge will be in creating adequate discretion and flexibility in line units to enable them to respond to bottom-up requests of citizens that councils raise on behalf those citizens. It is a question whether Ministries will give their line units scope to respond to the governor's directions to respond to local needs. It is also a question whether line units will have adequate discretion and flexibility to coordinate their activities with the activities of the council and with the activities of other line units.

PART 2:

Summary of Module

- Phnom Penh, and every province, municipality, district and khan will have a board of governors. The board of governors is composed of one governor and a number of deputy governors.
- The board of governors has three main roles:
 - an advisory role, to provide advice and comments to the council
 - a management role that includes supporting the council to fulfill its authority, functions and duties and to ensure council decisions are implemented
 - a reporting role so that the council is fully aware of council affairs.
- The council is the decision-making body in its area. The board of governors has the role to assist and support the council, and to implement council decisions. The board of governors, therefore, is accountable to the council.
- The head of each administration unit is responsible and accountable to the administrative director. The administrative director is responsible and accountable to the board of governors and the council.
- The governor has three roles (the governor wears three hats):
 - s/he is the chairperson of the board of governors
 - s/he is the representative of ministries and government institutions of the Royal Government with the responsibility to supervise, coordinate and direct all line departments and units that operate in the area of the council
 - s/he is the representative of the Royal Government, ministries and government institutions on issues related to security, social and public order, law and human rights within the area of the council.
- Having these three roles, the governor is able to serve as a critical link between the council and line ministries at the national level.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.

EXERCISE ONE: Relationship between Council and Board of Governors

Discuss these questions:

- How do you think the council and board of governors will work together in practice?
- Why is it important that the board of governors is accountable to the council?

EXERCISE TWO: Relationship between Governor and Line Units

Discuss these questions:

- Do you think line units have the scope to comply with the governor's directions for the line units to respond to local needs?
- If not, what changes do you think are required in order for line units to be able to comply with the governor's directions to respond to local needs?

Modules for Understanding
and Training on the
Organic Law

Module 7:
Council Committees

PART 1:

- 1. Introduction to Council Committees**
- 2. Women and Children's Affairs Committee**
- 3. Technical Facilitation Committee**
- 4. Procurement Committee**

Section 1: Introduction to Council Committees

Organic Law, Articles 114 – 122

General Purpose of Council Committees

- ✓ Council committees serve to bring together people with expertise and interest who can **focus deeply on one or more issues of importance to the council**. A committee then reports back to the council. Depending on the roles and duties of the committee, a committee may provide one or more of: information, advice and recommendations. A committee does not make decisions.
- ✓ Information, advice and recommendations assist the council to make **better informed decisions**. Council committees, therefore, are meant to improve council decision-making.
- ✓ Committees can also be a mechanism for **participation**. Councils may permit a committee to invite a community representative or an individual citizen to act as an advisor to the committee. (Organic Law, Article 117)

Mandatory Committees and Additional Committees

- ✓ Every council is required to establish 3 particular committees: **women and children's affairs committee; technical facilitation committee; and procurement committee**. (Organic Law, Article 114)
- ✓ A council may establish **additional committees** to assist the council in its work. (Organic Law, Article 115) A council may also establish sub-committees or working groups based on a request of a committee or a request of the board of governors. (Sub-decree Roles – Province, Articles 19, 76, 137)
- ✓ A council may appoint a committee to prepare a draft bylaw that the council has decided is necessary. (Sub-decree Roles – Province, Articles 12, 68, 130)
- ✓ The council may appoint a councilor, a governor, a deputy governor, council personnel and representatives of other councils within the area as a member of an additional committee, sub-committee or working group. The council may also appoint a **community representative, an individual citizen** or other relevant person **to serve as an advisor** to a committee, sub-committee or working group. (Organic Law, Articles 115, 117; Sub-decree Roles – Province, Articles 20, 77, 138)
- ✓ The council decides on the number of members, the chairperson and deputy chairpersons for its committees, sub-committees and working groups and how they will be organized and function. The council must **ensure that women are represented** on committees, sub-committees and working groups and among chairpersons and deputy chairpersons of committees, sub-committees and working groups. The council may also dismiss members of a committee. (Organic Law, Articles 116, 118, 120; Sub-decree Roles – Province, Articles 20, 77, 138)
- ✓ The responsibilities of a committee **may not overlap** with the responsibilities of the 3 obligatory committees, or the responsibilities of the board of governors. (Organic Law, Article 115)

✓ The board of governors may request that a committee, sub-committee or working group **study and provide comments** on an issue. (Sub-decree Roles – Province, Articles 21, 78, 139) The results of the study and the comments of the committee, sub-committee or working group can **inform decisions of the council** so that the council can make better decisions.

✓ The council must instruct the board of governors to provide secretarial support, **legal support, technical assistance and other support** to the council's three mandatory committees, any additional council committees and working groups. (Sub-decree Roles – Province, Articles 23, 80, 141).

- The **Council Secretary Office** in the Administrative Division of a **provincial administration** is responsible for supporting council committees. The Council Secretary Office supports committees by: preparing agendas and documents for meetings; by preparing invitation letters to meetings; by organizing meeting venues; by taking minutes of meetings; and by cooperating with other divisions of the administration and the media in order to disseminate information to the public on results and decisions of council committees. (Prakas Offices – Province, Article 3)

- The **Personnel Management Office** in the Human Resource Management Division of a **provincial administration** must provide comments regarding the composition of committees, sub-committees and working groups of the council. (Prakas Offices – Province, Article 6)

- In **municipalities and districts**, the **Administration and Finance Office** of the administration is responsible to: prepare draft agendas, including the content of agendas; prepare documents for meetings; prepare and distribute invitation letters; organize meeting venues; and take minutes of at meetings. (Prakas Offices – Province, Articles 17, 26)

✓ Every committee must **report regularly on its activities** to the council and the board of governors. (Organic Law, Article 119; Sub-decree Roles – Province, Articles 24, 81, 142)

✓ Committees are **accountable to the council**. Councils are themselves responsible and accountable to citizens for the decisions and actions of their committees. (Organic Law, Article 121)

Citizen Advisors to Committees

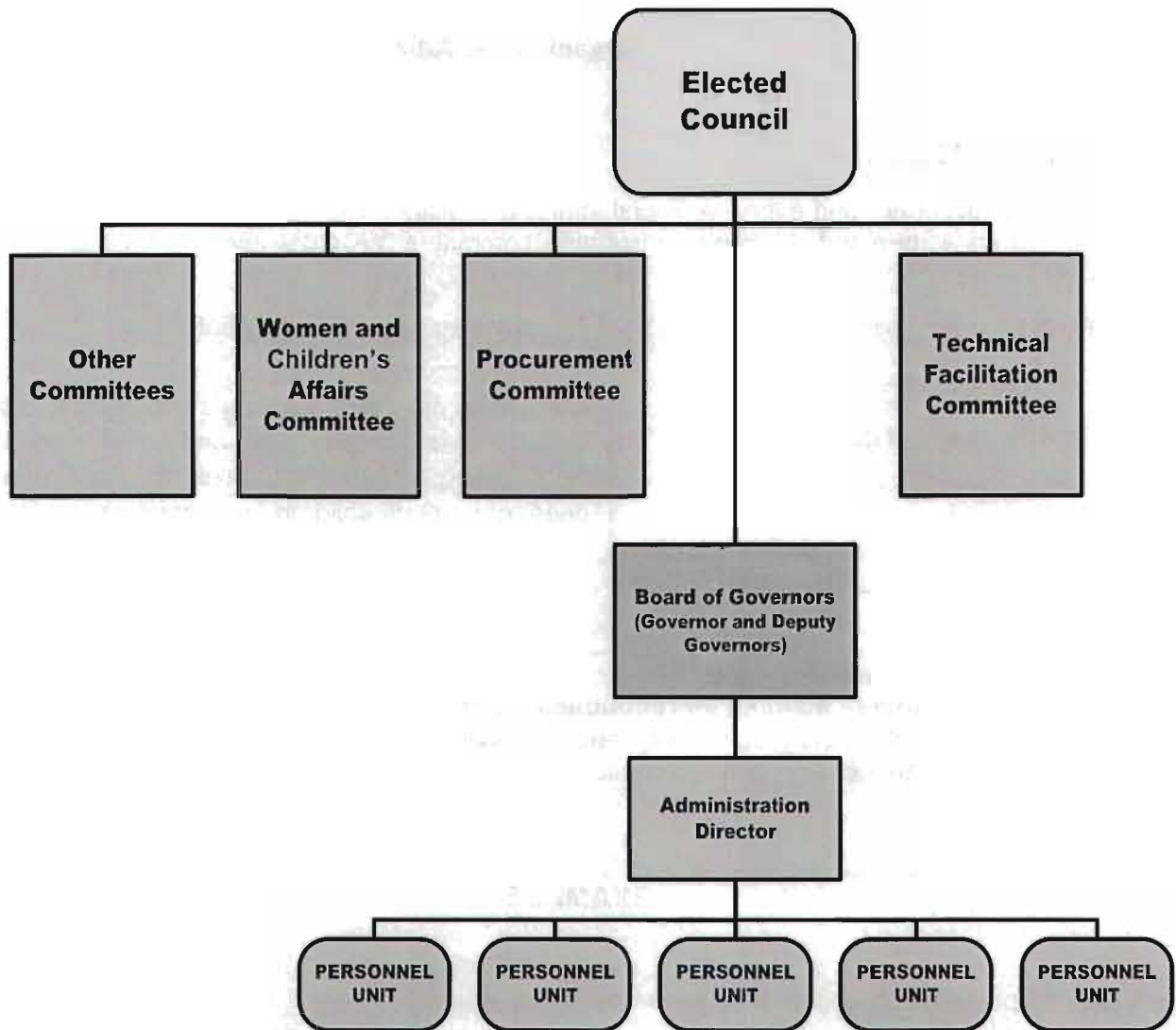
Inviting community representatives and citizens to join council committees works to the advantage of the council and to the advantage of citizens. Having a citizen or community representative sit on a council committee is an example of **civic engagement**.

Imagine a council establishes a committee on health. Inviting a doctor and a nurse to sit on that committee would serve to harness the expertise in the area of the council.

Including citizens on committees is also a way to improve council transparency, to improve citizen participation in governance, and to enhance the accountability of councils.

In addition, committees can be an entry point for citizens and communities who ordinarily do not have opportunities to engage with local government and to raise their voice. This may include women, youth, indigenous peoples, and the poor.

COUNCIL COMMITTEES (in orange)



Section 2: Women and Children's Consultative Committee

Organic Law, Articles 127 to 135; WCCC Prakas

Role of the WCCC

- ✓ The Capital council and every provincial, municipal, district and khan council is obliged to establish a women and children's consultative committee (**WCCC**). (Organic Law, Article 114)
- ✓ It is the responsibility of the WCCC to provide **advice and recommendations** to:
 - the council
 - the board of governors
 - the governor
 - the other committees of the council (Organic Law, Article 128)
- ✓ The WCCC members have the **authority to provide advice and recommendations** to the council, board of governors and other council committees so that gender equality, and women and children's issues, are always taken into account. (Organic Law, Articles 128, 129; WCCC Prakas, Article 2)

It would be difficult, if possible at all, to think of a matter that affects only men, and not women. It would be equally difficult to think of a matter that does not affect children in some way. The scope of responsibilities of the Women and Children's Affairs Committee, therefore, is very wide.

EXAMPLE

A council plans to build and operate a vocational training school. The council wants to ensure that the school benefits men and women, including young women and young men. After consultations with men and women of different ages, the council decides to provide the following training courses:

- Computers, often requested by young women and young men
- Tailoring, often requested by young women
- Motorcycle repair, requested mostly by young men
- Catering, requested by many middle-aged women
- Carpentry, often requested by older men

The courses will be held at times that are convenient for students. The catering course that was of interest to middle-aged women, for instance, will be held in the afternoon when children are at school and household responsibilities tend to be completed.

Composition of the WCCC

- ✓ The composition of the WCCC for provinces and the Capital is shown in the chart below. (WCCC Prakas, Article 3)

COMPOSITION OF CAPITAL AND PROVINCIAL COUNCIL WCCC	
A female councilor selected by the council	Chairperson
A second councilor selected by the council	Vice chairperson
A female deputy governor	Vice chairperson
Director (or deputy) of the Department of Social Affairs, Veterans and Youth Rehabilitation	Vice chairperson
Director (or deputy) of the Department of Women's Affairs	Permanent member
A deputy administration director	Member
Director (or deputy) of the Department of Planning	Member
Director (or deputy) of the Department of Health	Member
Director (or deputy) of the Department of Rural Development	Member
Director (or deputy) of the Department of Education, Youth and Sports	Member
Director (or deputy) of the Department of Labour and Vocational Training	Member
Director (or deputy) of the Department of Agriculture	Member
Commissioner or a representative of the Police Commissariat	Member
Director or deputy director of Inter-Sectoral Division	Member
Chairperson (or deputy) of the Association of Commune/Sangkat Councils	Member
Representatives from other institutions or units as needed	Members

- ✓ The WCCCs of **municipal, district and khan councils** have a similar composition but they draw their members from line offices instead of line departments. The WCCC of municipal, district and khan councils also have as members the **focal persons responsible for women and children affairs for commune/sangkat councils** in their area. (WCCC Prakas, Article 3)
- ✓ Every council must endeavour to include an **appropriate number of women** on the WCCC. (WCCC Prakas, Article 4)
- ✓ Up to 2 members of the WCCC are entitled to **participate in any meeting** of the council, a council committee and the board of governors, except for confidential meetings.

WCCC members have the right to receive **meeting agendas and documents**. Members attending a meeting have the same and **full right to contribute their ideas** during the meeting. (Organic Law, Articles 130, 131; WCCC Prakas, Article 9)

- ✓ A member of the WCCC who is a councilor has the right to vote at a council meeting. A councilor member of a committee does not have the right to vote at a meeting of the board of governors. (Organic Law, Article 132)
- ✓ The council, committees and board of governors **must take into account recommendations** received **from the WCCC** and its members and must give due consideration to whether the recommendations can be implemented. (WCCC Prakas, Article 8)

The council and its women and children's affairs committee must work together to achieve good results for women and children in the area.

Committee members must be able to participate fully in discussions during meetings of the council, committees and board of governors. During those discussions, committee members can share **women and children's perspectives** and **particular needs**, and they can propose on **all local issues** strategies to address them that take women and children into account.

In order to fulfill its responsibilities, the committee cannot be limited to administrative tasks or used exclusively for tasks such as data collection. The committee must have the **scope to engage on the real issues facing the council**.

Key tasks of the WCCC

- ✓ The WCCC has a number of **specific key duties**, including to –
 - participate in preparing the **council's strategic vision for development**, including a vision for gender equality and providing appropriate services to women, youth and children
 - provide **recommendations** about how to promote communication, collaboration and coordination among councils, line departments/offices, NGOs and communities in order **to implement activities that benefit women, youth and children**
 - provide **recommendations** on measures to be taken by authorities to resolve issues related to and **prevent harm to women, youth and children**
 - **collect and analyze information** related to gender and the needs of women, youth and children, and to integrate that information into the council's development plan and investment program
 - provide recommendations on issues related to gender equality and women, youth and children

- **advocate** for women to participate in decision-making relating to development
 - participate in **monitoring and evaluating** the council's annual workplan and budget to promote gender equality and to address issues concerning women, youth and children
 - monitor implementation of policies on gender equality and the situation of women, youth and children
 - **report** on a regular basis **to the council** on gender equality, women's empowerment and issues involving youth and children. (WCCC Prakas, Article 7)
- ✓ The WCCCs of provincial councils have added responsibilities. They must **support municipal, district and commune/sangkat councils** in resolving issues related to women, youth and children. The WCCC of the Capital council must provide the same support to khan and sangkat councils in the Capital. (WCCC Prakas, Article 21)

WCCC Meetings and Reporting

- ✓ The WCCC must organize its own **regular meetings**. More than half the members of the committee must be present for the meeting to proceed. Decisions are only valid if they are made by more than half the total number of members on the TFC. (WCCC Prakas, Articles 17, 18)
- ✓ WCCC **meetings are public**, except for special cases that require privacy (such as cases involving sexual assault). (WCCC Prakas, Article 19)
- ✓ Through its council, the WCCC may invite the chairperson or other representative of any other council, a council committee, line department/office or other relevant person to **participate in WCCC meetings** and to **provide relevant information** to the WCCC. (WCCC Prakas, Article 6)
- ✓ The WCCC **reports to its council** monthly, quarterly, by semester and annually. The WCCC's **annual report** must describe the situation of women and children in the area and offers recommendations for improvement. The report must be included in the council's annual report. (Organic Law, Articles 133, 134; WCCC Prakas, Article 11)

Section 3: Technical Facilitation Committee

**Organic Law, Articles 123 to 126, 166; Sub-decree TFC – Province;
Sub-decree TFC – Capital**

Role of the TFC

- ✓ The Capital council and every provincial, municipal, district and khan council is obliged to establish a technical facilitation committee (**TFC**). (Organic Law, Article 114)
- ✓ Two or more councils, however, may share a TFC. (Organic Law, Article 125)
- ✓ The role of the TFC is to **provide advice** to the council and board of governors **about coordination of council work with the work of line departments/offices**. (Organic Law, Article 124; Sub-decree TFC – Province, Article 2; Sub-decree – TFC Capital, Article 2)
- ✓ As part of its role to coordinate, the TFC must **integrate** into the council's development plan, rolling investment program, expenditure framework and budget the **plans and budgets of ministries**, government institutions, departments and units of the Royal Government that are providing services in the area of the council. (Organic Law, Article 124)
- ✓ There is, therefore, be one overarching development plan and budget in the area of a council. The council's TFC, therefore, serves to **facilitate all public administrative activities** within the area of the council. (Organic Law, Articles 8, 124)

The technical facilitation committee serves as an important **link between national line ministries and the sub-national councils**.

The technical facilitation committee:

- provides a mechanism for councils to **negotiate for line ministry priorities, activities** and budgeting in the area
- enables **integrated planning and budgeting** within the area of the council
- enables the council to **coordinate development across sectors** in its area (sector integration).

Composition of the TFC

- ✓ The **composition** of the TFC for each council is very similar. Below is the composition of the **provincial TFC** (Organic Law, Article 123; Sub-decree TFC – Province, Article 3).

COMPOSITION OF PROVINCIAL TECHNICAL FACILITATION COMMITTEE	
Provincial governor	Chair
One Provincial deputy governor	Deputy chair
Administration director of the provincial administration	Permanent member
At least two provincial councilors	Members
Directors of line departments and units in the province	Members
All directors of provincial administration divisions (including the chief of finance)	Members
Two representatives of the province's Commune/ Sangkat Association (at least one must be a woman)	Members
One representative of the provincial Women and Children's Affairs Committee (WCCC)	Member
Other representatives, as required	Members

- ✓ In addition to the one representative of the Women and Children's Consultative Committee mentioned in the Sub-decree, one additional member of the Women and Children's Consultative Committee is entitled to attend TFC meetings. (Organic Law, Article 131; WCCC Prakas, Article 9)
- ✓ The composition of TFCs for other councils is very similar. The composition of other TFCs can be found in the Sub-decree TFC - Province and in the Sub-decree TFC – Capital.
 - **District** TFC – all commune and sangkat chiefs in the district are members of the district TFC (Sub-decree TFC – Province, Article 21)
 - **Municipal** TFC – all sangkat chiefs in the municipality are members of the municipal TFC (Sub-decree TFC – Province, Article 12)
 - **Capital** TFC – the composition of the Capital TFC is the same as the composition of the provincial TFC (Sub-decree TFC – Capital, Article 3)
 - **Khan** TFC – all sangkat chiefs in the khan are included on the khan TFC (Sub-decree TFC – Capital, Article 12)
- ✓ As chairperson of the TFC, the **governor**, wearing her/his hat as representative of the Royal Government and ministries, can coordinate and **direct the directors of line departments and units of ministries** who sit on the technical facilitation committee. (Organic Law, Article 154)

- ✓ The **board of governors** consults with the TFC to ensure that plans and budgets are well integrated. (Organic Law, Article 166)

Key Tasks of the Technical Facilitation Committee

- ✓ The key tasks of a TFC are to **provide advice to the council and board of governors** in these key areas

Development Plan, Investment Program, Expenditure Framework and Budget

- integrating the plans and budgets of line departments/offices active in the area into the *council's* development plan, investment program, expenditure framework and annual budget
- drafting and updating the council's 5-year development plan, 3-year rolling investment program, annual workplan and budget, medium-term expenditure framework
- mobilizing resources to support investment projects
- proposing an allocation of investment funds to support programs in the area

The Capital and every province, municipality, district and khan will have an **integrated development plan, investment program, expenditure framework and annual budget** that will show **all the governmental activities and resources** in its area.

- preparing progress reports

Coordination of the Council with Line Departments/Offices

- cooperating, consulting and coordinating council work with the work of line departments/offices
- coordinating service delivery and development activities of line departments/offices so that they respond to local needs
- facilitating resolution of any conflict between the council's work and the work of line departments/offices
- making recommendations to ministries about improving service delivery and development activities in order to better respond to local needs.

Cooperation and Coordination within the Unified Administration

- formulating consultative and participatory mechanisms for the unified administration
- developing systems, procedures and communication mechanisms for the unified administration
- solving conflicts within the unified administration.

Cooperation and Coordination among Councils

In Provinces	In the Capital
<ul style="list-style-type: none"> • developing consultative mechanisms among provincial, municipal, district and commune/sangkat councils 	<ul style="list-style-type: none"> • developing consultative mechanisms among the Capital council and khan and sangkat councils
<ul style="list-style-type: none"> • responding to recommendations and 	<ul style="list-style-type: none"> • responding to recommendations and

requests of municipal, district and commune/sangkat councils when those councils cannot meet local needs in their area	requests of khan and sangkat councils when those councils cannot meet local needs in their area
<ul style="list-style-type: none"> • solving conflicts among provincial, municipal, district and commune/sangkat councils 	<ul style="list-style-type: none"> • solving conflicts among the Capital council and khan and sangkat councils
(Sub-decree TFC – Province, Article 4)	(Sub-decree TFC – Capital, Article 4)

Cooperation and Coordination with Related Councils

- formulating consultative mechanisms among bordering councils and other related councils
- facilitating resolution of conflicts among bordering councils and other related councils.

Tasks Related to Functions & Resources

- taking measures to promote effectiveness in implementing functions and utilizing resources
- preparing the council for receiving and implementing new functions and resources
- initiating functions and resources to transfer to councils
- assessing performance in implementing council functions and utilizing council resources. (Sub-decree TFC – Province, Articles 4, 13, 22; Sub-decree TFC – Capital, Articles 4, 13)

The **Capital council** TFC must also consider what functions, together with resources, should be delegated by the Capital council to khan or sangkat councils.

Similarly, a **municipal council** TFC must consider what functions, together with resources, should be delegated to sangkat councils in the municipality.

The municipal TFCs and district TFCs have similar duties. (Sub-Decree TFC – Province, Articles 13, 22)

EXAMPLE

The technical facilitation committee of District A has a meeting. The director of the department of the Ministry of Public Works and Transport attends the meeting. The Ministry communicates its plan to pave the main road through District A. Through the technical facilitation committee, it is discussed that:

- The Ministry will pave the main road through the district
- District A had planned to pave the main road, but can now instead build a junction road that goes from the main road directly to the provincial market

The plans and the budgets for both the main road and the junction road are included in District A's development plan and budget.

Technical Facilitation Committee and the Planning Process

- ✓ The Planning Sub-decree provides that the TFC is responsible to –
 - coordinate **stakeholder participation** in the planning process
 - provide **comments** to the council before approval of the council's development plan and 3-year rolling investment program
 - provide comments to the council on **implementation** of the development plan and 3-year investment program.

(Planning Sub-decree, Article 7)

- ✓ With agreement from the council, and with support from the TFC, the board of governors establishes a **working group** that is responsible for formulating a draft development plan and draft investment program. Directors/chiefs or other representatives of line departments/offices must be members. The composition of the planning working group is very similar to the composition of the TFC. (Planning Sub-decree, Articles 7, 10)
- ✓ TFC members, therefore, will be required to make a significant time commitment in order to complete the tasks of the TFC and to participate in the planning working group.

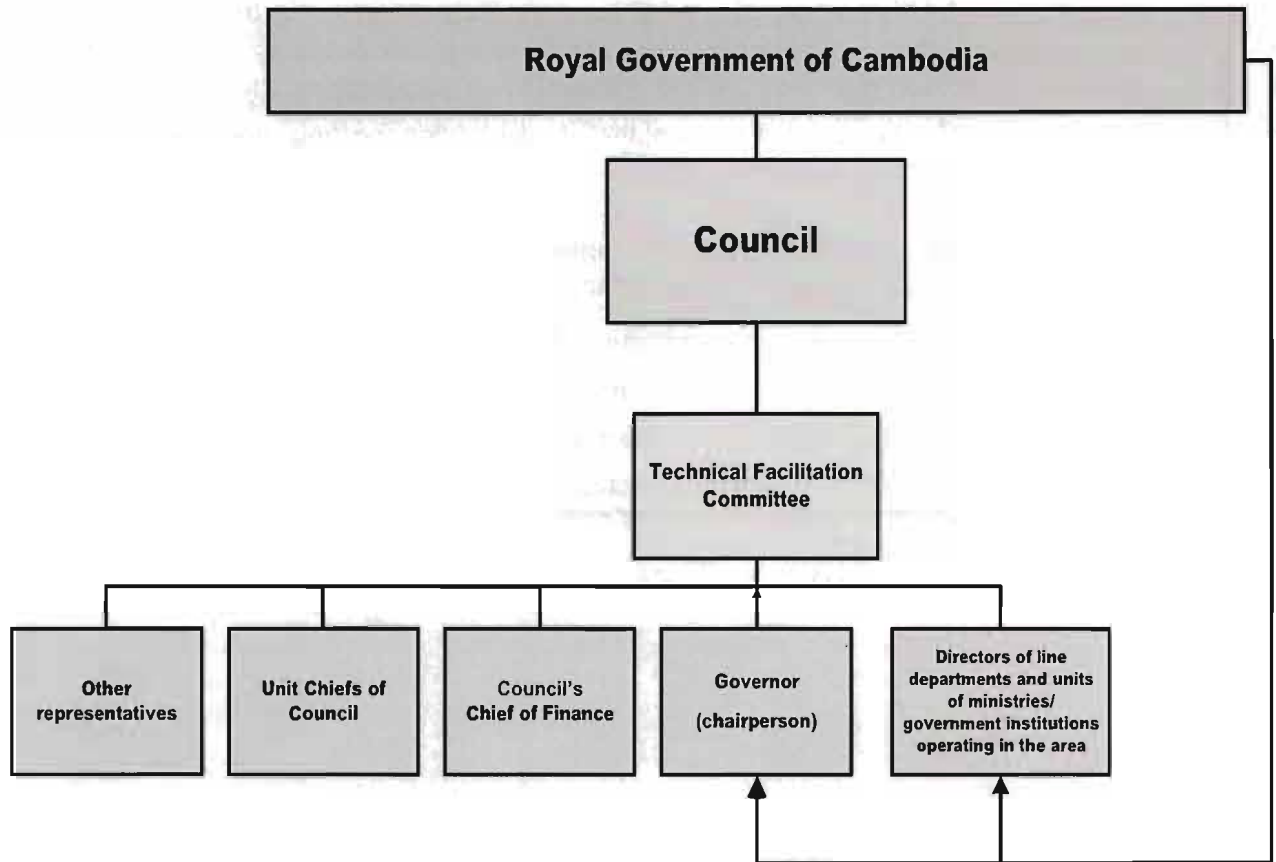
Technical Facilitation Committee Working Procedures

- ✓ Technical facilitation committees must **meet at least once every two months**. More than half the members of the committee must be present for the meeting to proceed. Decisions are only valid if they are made by more than half the total number of members on the TFC. (Sub-decree TFC – Province, Articles 5, 14, 23; Sub-decree TFC – Capital, Articles 5, 14)
- ✓ TFCs may develop their own **internal rules and working procedures**, and they may allocate duties among the members. (Sub-decree TFC – Province, Articles 5, 1, 14, 23; Sub-decree TFC – Capital, Articles 5, 14)
- ✓ From time to time, the TFC may need **input from persons who are not members**. The governor, therefore, may request a deputy governor, an official, a technical advisor or other person to join a TFC meeting. Such a person may contribute ideas, but has no right to approve any matter. (Sub-decree TFC – Province, Articles 7, 16, 25; Sub-decree TFC – Capital, Articles 7, 16)
- ✓ A TFC may request that the council create one or more **TFC working groups**. (Sub-decree TFC – Province, Articles 11, 20, 29; Sub-decree TFC – Capital, Articles 11, 20)
- ✓ The **agenda** of a TFC meeting should be based on –
 - needs of the council
 - needs of the board of governors
 - needs of council committees
 - requests from at least one-third of the total number of TFC members
 - any legal requirements.

(Sub-decree TFC – Province, Articles 8, 17, 26; Sub-decree TFC – Capital, Articles 8, 17)

- ✓ The governor, with assistance from the administration director, must prepare **reports to the council** on the results of TFC meetings. (Sub-decree TFC – Province, Articles 10, 19, 28; Sub-decree TFC – Capital, Articles 10, 19)

TECHNICAL FACILITATION COMMITTEE



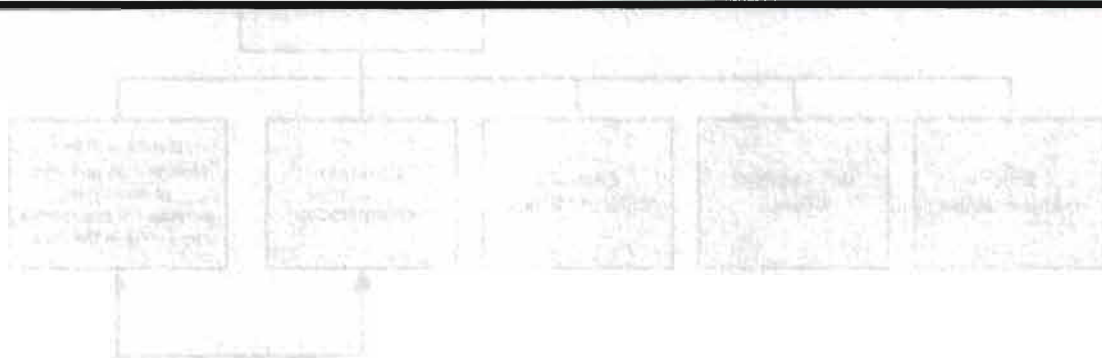
Issues to Address

It is not clear yet what 'integration' of plans and budgets means in practice. For instance:

- To what extent can councils, especially commune and sangkat councils, negotiate about ministry plans and budgets?
- Will the TFC promote bottom-up planning and increased accountability to citizens by ministries? If so, how?
- What if plans identify contradicting priorities or projects (for instance the council believes that increasing access to education requires providing school buses; the department of education, however, plans to build more school in order to address the same problem)
- Should plans of other councils and plans of civil society organizations be integrated? How?

It can also be questioned to what extent line departments/offices will be involved in advising regarding internal council matters as indicated in the sub-decrees, such as:

- developing systems and working procedures for units of an administration
- conflict resolution related to the performance of units of an administration
- developing consultative mechanisms among elected councils
- facilitating resolution of conflicts among elected councils.



Section 4: Procurement Committee

Organic Law, Articles 136, 137

Role of the Procurement Committee

- ✓ The Capital council and every provincial, municipal, district and khan council is obliged to establish a procurement committee. (Organic Law, Article 114)
- ✓ The procurement committee has the responsibility to: **ensure all procurement is conducted with integrity, transparency and fairness**, and in accordance with the Law on Public Procurement. (Organic Law, Article 136)
- ✓ The purpose of the procurement committee is to **safeguard the interests of the council and citizens**. (Organic Law, Article 136)

Council's Accountability for Procurement

The Organic Law is clear that the council is accountable to citizens for how it manages its financial affairs, including procurement. (Organic Law, Articles 43, 136)

It will be critical, therefore, that the procurement committee is transparent and accountable to the council. Otherwise, the council's accountability to citizens will be empty.

Issues to Address

A Prakas must be issued to deal with the establishment, organization and functioning of the procurement committee.

Since it is essential that the procurement committee be accountable to the council, it would be ideal to have councilors as members of the procurement committee.

PART 2:

Summary of Module

- A council is required to establish 3 committees: women and children's affairs committee (WCCC); technical facilitation committee (TFC); and procurement committee. A council may establish additional committees to assist in its work.
- The council may appoint a councilor, governor, deputy governor or official of the council as a member of an additional committee. The council may appoint an ordinary citizen or community representative to serve as an advisor to a committee. Women must be represented on committees, including among chairpersons and deputy chairpersons of committees.
- The WCCC provides recommendations to the council, the board of governors, the governor and the other committees of the council in order to ensure that women and children's issues are always taken into account.
- The TFC coordinates the work of the council and line departments/offices. In fulfilling that role, the TFC integrates into the council's development plan, rolling investment program, expenditure framework and budget the plans and budgets of ministries, government institutions, departments and units of the Royal Government providing services in the area of the council.
- The members of the TFC include: governor, deputy governors, councilors, unit chiefs of the council, chief of finance, and directors of line departments and units of ministries and other government institutions providing services in the area of the council.
- The TFC serves as an important link between national line ministries and the sub-national councils. The TFC:
 - enables the council to coordinate development across sectors in its area (sector integration)
 - provides a mechanism for councils to negotiate for line ministry priorities, activities and budgeting in the area.
- The procurement committee has the responsibility to ensure all procurement is conducted with integrity, transparency and fairness, and in accordance with the Law on Public Procurement.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Women and Children's Affairs Committee

The District Council of Sokapeeup is planning how it will support the district's health clinic.

Assign the following roles to the members of your group:

- 4 district councilors
- 1 governor
- 1 member of the council's health committee, who is a midwife
- 2 members of the Women and Children's Affairs Committee

The 4 district councilors are planning to devote most of their health budget to providing HIV prevention and treatment services. The governor has also made the suggestion that funds could be spent on a public awareness campaign on tuberculosis, and on tuberculosis treatment. The councilors and the governor believe these are the most critical health issues in the district.

The midwife and the 2 members of the Women and Children's Affairs Committee disagree. They feel that there is a great need to introduce a vaccination program for children. They think that providing vaccinations will prevent the children from contracting many types of illnesses later in their lives. The midwife and members of the Women and Children's Affairs Committee also believe that there is a critical need for more midwives. A number of women in the district recently died in childbirth because there were not a sufficient number of trained midwives.

Present a role play of a district council meeting where the topic for discussion is: what should be the council's priorities for its health budget?

The role play is meant to illustrate the importance of the women and children's committee.

EXERCISE TWO: Procurement Committee

Arrange 5 chairs in a tight circle. Ask for 4 volunteers to sit in 4 of the chairs. Leave one chair empty.

The 4 volunteers will discuss one or more the questions below.

If a volunteer wishes to leave the discussion, she/he must first invite a replacement to join the discussion.

The empty chair is available to anyone who wants to join the discussion (even if not invited)

RULE: at least 4 chairs must be occupied at all times (no more than 1 chair empty)

Discussion questions:

- Who do you think should be the members of the procurement committee, and why?
- How could the council ensure oversight of the procurement committee?

Modules for Understanding
and Training on the
Organic Law

Module 8:
Council Personnel

PART 1:

- 1. Introduction**
- 2. Personnel of the Council**
- 3. Personnel Units of the Council**
- 4. Management of Personnel and Personnel Units and Accountability**
- 5. Re-deployment of Personnel**

Section 1: Introduction

- ✓ After the May 2009 elections, new councils with sub-national administrations were established for the Capital and for every province, municipality, district and khan. (Organic Law, Article 277). The first step in establishing new administrations was the **transfer to the new councils of units, personnel and administrative functions** of the former administrations of the Capital, provinces, municipalities, districts and khans. (Organic Law, Article 281; Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ By transferring existing units, personnel and administrative functions to the new councils, there should be a smooth continuation of work in all sectors, **without undue disruption** in government services and activities of development partners. (Preliminary Implementation Framework, National Committee for Sub-National Democratic Development (NCDD), Chapter II.2)
- ✓ In coming years, every council will receive additional personnel as the council receives new functions from the national level. The Organic Law provides that the transfer of new functions will proceed together with the **transfer of** resources including revenue, finance, **personnel**, property, and capacity for managing and fulfilling the respective functions. (Organic Law, Article 200)

SUB-NATIONAL ADMINISTRATION

Sub-national administration refers to the council and the board of governors. (Sub-decree Roles – Province, Article 2)

EXAMPLE - Environment

The municipalities receive responsibility for waste management in their localities. In order to achieve this, the municipalities require:

- *finances* to provide the service, including administrative costs (including salaries), operating costs for service delivery, any capital costs, and any on-going maintenance and other costs
- **personnel for administration**; they can be drawn from the departments, that were previously responsible for this responsibility. The municipality will receive salary for garbage men, drivers, and disposal site workers.
- *assets*, for example the land for the disposal site and garbage trucks.

Section 2: Personnel of the Council

Organic Law, Articles 162, 173 – 188, 262

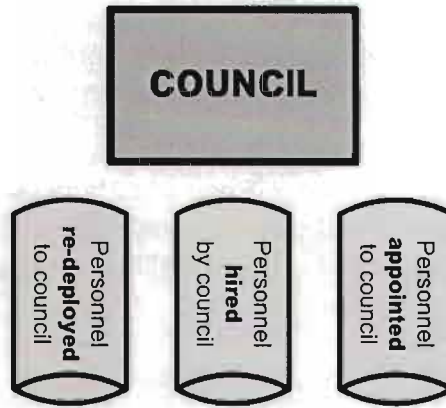
- ✓ The Organic Law provides that every sub-national level is governed in accordance with the principles of **unified administration**. (Organic Law, Article 2)
 - implementing the council's **decisions and bylaws**
 - implementing or facilitating council **activities**
 - assisting the council to lead the **unified administration** in the area.
 - ✓ It is also the role of council personnel to ensure that the council has **quality information and evidence on which the council can base its decisions**. Administration units, therefore, are responsible for conducting studies and research and for providing comments to the governor who then passes information to the council. (Prakas Offices – Province, Articles 13,23, 32)
- See Module 4 for more information on unified administration

Sources of Council Personnel

- ✓ Every **council has its own personnel**. Council personnel implement the functions and perform the day-to-day work of the council. (Organic Law, Articles 173, 182)
- ✓ Some council personnel are **hired by the council**. A council is entitled to recruit personnel as it sees fit. (Organic Law, Article 173, 176, 177)
- ✓ Some personnel are **appointed to work with the council**. The Ministry of Interior appoints an **administration director** to work with each council. (Organic Law, Articles 173, 183)
- ✓ Some council personnel have been **re-deployed** from ministries and other government institutions. The Organic Law provides that when a sectoral function is transferred to a council, the **skilled personnel** already implementing that function must be transferred (re-deployed) to become council personnel.
- ✓ Personnel who are re-deployed to a council are moved from their current position as personnel of a line ministry to become personnel of the council. (Organic Law, Article 262)

- ✓ Ministry of Interior personnel who worked in the former sub-national administration are an **example of re-deployed personnel**. Those personnel have been transferred to the new sub-national administrations.

Three Sources for Council Personnel



PERSONNEL FOR SECURITY, PUBLIC AND SOCIAL ORDER

Personnel responsible for security, public and social order, law and human rights remain the personnel of their respective ministry.

The Organic Law states: Personnel of the council shall not include officials of ministries, institutions, departments and units of the Royal Government or other officials who are on duty related to security, public and social order, laws, and human rights on behalf of the Royal Government. (Organic Law, Article 175)

Personnel Management

- ✓ The council has extensive **authority to manage its personnel**. (Organic Law, Articles 36, 174, 177, 178, 182, 184,)
- ✓ The council makes decisions on the **appointment, termination, salary level** and other **benefits** for council personnel positions. These decisions must be made in accordance with a statute for sub-national personnel. The statute for sub-national personnel has not yet been completed. (Organic Law, Articles 176, 177, 264)
- ✓ The **board of governors** must **advise the council regarding:**
 - **hiring, promoting and terminating** council personnel

- defining responsibilities and preparing **terms of reference** for personnel
- preparing **capacity development** strategies for council personnel.

(Organic Law, Article 162)

- ✓ The **recruitment** and appointment of personnel by the council must be conducted through transparent competition. (Organic Law, Article 176)
- ✓ In recruiting and appointing council personnel, the council must ensure that there is appropriate **representation of women** among chiefs and deputy chiefs of personnel units. (Organic Law, Article 176)
- ✓ The provincial administration has a Human Resource Management Division. The Division is responsible for dealing with provincial council personnel, and for supporting municipalities and districts to manage their personnel. (Prakas Offices - Province, Article 6)

The Administration Director

- ✓ Every council has an administration director and two deputy administration directors who work with the council. The administration director and two deputies are **appointed by the Ministry of Interior** upon the request of the governor and approval of the council. (Organic Law, Article 183; Sub-decree Roles – Province, Articles 42, 99, 160)
- ✓ The administration director acts as an **assistant to supervise the administrative work and personnel of the council**. The administration director also ensures the continuity of daily administrative operations, both of the council and the board of governors. (Organic Law, Article 184; Sub-decree Roles – Province, Article 45, 48, 101, 166,)
- ✓ The administration director provides **technical input** to the council and board of governors in the form of comments. For instance, the administration director may comment that a budget does not conform with applicable legal instruments. (Organic Law, Article 185; Sub-decree Roles – Province, Articles 47, 104, 164)
- ✓ The board of governors leads and instructs the administrative director in **assigning tasks to the units** of the administration. (Prakas Offices – Province, Articles 13, 23, 32)
- ✓ **Heads of the units** of each sub-national administration report to and are accountable directly to the administration director. (Organic Law, Article 178; Sub-decree Roles – Province, Articles 56, 112, 173)
- ✓ In turn, the administration director reports and is **accountable to the council and the board of governors**. (Organic Law, Article 184)
- ✓ The administration director has the following specific duties to –
 - **prepare day-to-day matters** in accordance with applicable laws and legal instruments for review by the board of governors for reviewing and decision

- provide comments to the council, council committees and the board of governors to manage the **day-to-day work** of the council and board of governors
- assist the board of governors to **report to the council**
- prepare rules and principles for **implementing bylaws and decisions** of the council
- provide legal, technical and any other necessary **support** for the preparation of **draft bylaws and decisions**
- ensure that council personnel **implement the decisions and bylaws** of the council
- ensure that the **chief of finance** performs his/her duties correctly
- act as **secretary to the governor and to the chairperson of the council**, including to prepare draft agendas and documents for council meetings for approval by the board of governors and then the council,
- act as secretary to the council for the preparation and distribution of meeting invitation letters, preparation of meeting venues and taking of minutes of meetings
- make necessary preparations for meetings of the board of governors
- ensure that letters and documents are appropriately distributed to councilors, the governor and deputy governors as well as ministries, departments, units and other stakeholders
- ensure proper maintenance of all documents and legal instruments
- manage and use the **stamp of the administration**
- perform other duties as assigned by the council, board of governors or any law or other legal instrument.

(Organic Law, Article 185 - 187; Sub-decree Roles – Province, Articles 12, 45, 68, 96, 102, 105, 130, 157, 163)

- ✓ The **board of governors may delegate work to the administration director**. The governor, wearing his other hat as representative of the Royal Government, may also delegate tasks to the administration director. (Organic Law, Article 186; Sub-decree Roles – Province, Articles 49, 106, 167)
- ✓ The administration director has the **right to participate in and contribute ideas during council meetings**, meetings of council committees and sub-committees, and also meetings of the board of governors. The administration director may not vote in any meeting, however, unless the administration director has been appointed as a member of a council committee or sub-committee. (Sub-decree Roles – Province, Articles 46, 103, 163)

The Chief of Finance

- ✓ Every council has a chief of finance. S/he is hired by the council after receiving approval of the Ministry of Economy and Finance based on a request of the Ministry of Interior. (Organic Law, Article 179)
- ✓ The chief of finance is responsible for financial management and procurement for the sub-national administration. S/he ensures that audits are properly carried out in accordance with the Organic Law and other applicable laws and regulations. (Organic Law, Article 180)

Section 3: Personnel Units of the Council

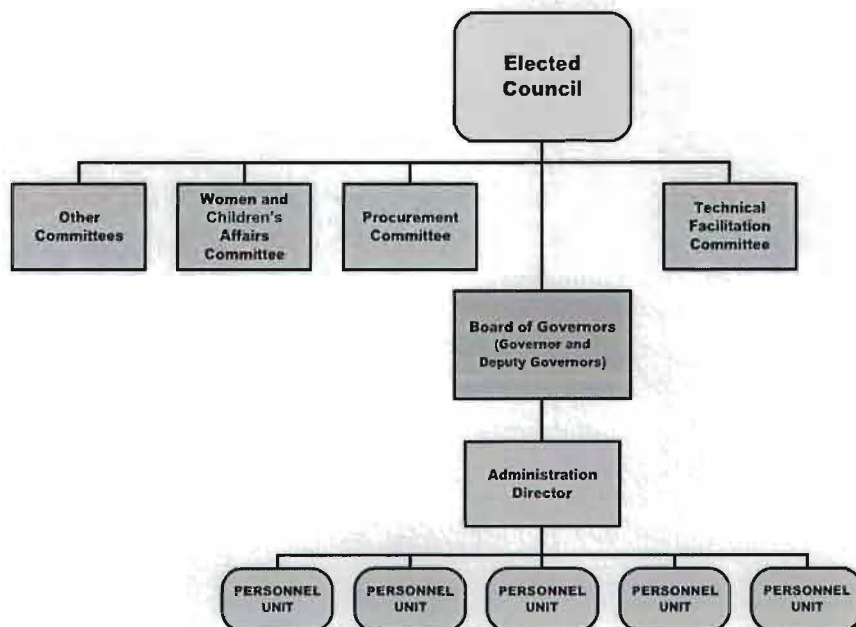
Organic Law, Articles 189, 277

- ✓ Every council has personnel units. Each council establishes its **own personnel units** as necessary. (Organic Law, Article 189). The particular personnel units for each sub-national administration are discussed in Module 11.
- ✓ Some personnel units – units that carry out core administrative functions – will very likely be established soon after the elections of the new councils. For example, the Finance Unit and the Social Affairs Unit that existed under the former administrations have been integrated into the new sub-national administration. The Finance Unit of the former administration of the District of Battambang, therefore, is now integrated into the new District of Battambang Administration and Finance Office. (Organic Law, Article 277)
- ✓ The units of provincial, municipal and district administrations have responsibilities to assist the board of governors in performing its responsibilities. For instance, the provincial **Planning Office** makes recommendations to the governor about the **legality of** municipal, district, commune and sangkat **development plans**. (Prakas Offices – Province, Article 4)
- ✓ Further personnel units will be established over time. The personnel units that are established will likely relate to which sectoral functions are transferred to the new councils. For instance, if health functions are transferred to districts, district councils may choose to establish a Health Unit.

Section 4: Accountability of Personnel and Personnel Units

Organic Law, Articles 174, 178, 182, 190, 191

- ✓ **All council personnel are accountable to the council.** (Organic Law, Articles 174, 190)
 - All council personnel are responsible and accountable directly to their respective immediate supervisor, and indirectly to the administration director, governor, board of governors and council **according to the hierarchy.** (Organic Law, Articles 174, 178, 190; Prakas Offices – Province, Articles 10, 21, 30)
 - Personnel and personnel units are under the direct responsibility, supervision and management of the **board of governors on behalf of the council.** (Organic Law, Articles 174, 190)
- ✓ In addition, council personnel perform their daily work carrying out the decisions of the council and board of governors under the guidance of their unit chief. (Organic Law, Articles 182, 191)
- ✓ The administration director, under the leadership of the board of governors, must ensure that council personnel work in accordance with all laws and legal instruments, as well as decisions of the council and the board of governors. (Sub-decree Roles – Province, Articles 48, 105, 166)



Section 5: Re-deployment of Personnel

Organic Law, Articles 176, 262 - 273, 277, 281

- ✓ The process of transferring functions and resources (including re-deploying personnel) may be the most difficult task faced by ministries, by the National Committee for Sub-National Democratic Development (NCDD) and by councils. The Organic Law provides general principles for undertaking the process. How exactly the process will unfold, however, is still unknown.
- ✓ There was an initial re-deployment of personnel during the transitional period immediately after elections of the new councils. Ministry of Interior personnel who worked under former appointed administrations have been re-deployed and are now personnel of the corresponding new elected council.
- ✓ In addition, there will be a longer term process of re-deploying personnel to councils. The Organic Law requires that sector ministries review their functions and identify which of their functions should be transferred to councils. When a sectoral function is transferred to councils, the skilled personnel who have been implementing that function must also be transferred (re-deployed) to the council.

Re-deployment of personnel during the transition period

- ✓ After the elections in May 2009, the new councils replaced the former administrations of the Capital and every province, municipality, district and khan. For instance, the new Svay Rieng Provincial Council replaced the former appointed administration of Svay Rieng. (Organic Law, Article 277; Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ The Ministry of Interior must ensure that the **new administrations integrate existing personnel** who are within the body of civil servants of the Ministry of Interior. These personnel are mainly administrative personnel. These integrated personnel and contract staff are now **supervised and managed by the council and board of governors**. For instance, the former personnel of the Prey Veng provincial administration are now the personnel of the new Prey Veng administration. (Organic Law, Article 281; Sub-decree Roles – Province, Article 206)
- ✓ In the event that these re-deployed personnel cannot meet the needs of the council, the council and board of governors may recruit personnel under the civil servant body of other ministries. (Sub-decree Roles – Province, Article 206)
- ✓ Until there is a statute on sub-national personnel, the council must approve and personnel **appointment**, change, **promotion**, change in **salary** or other benefits, and the council must approve the recruitment of any contract staff and other workers, including technical advisors. Upon the approval of the council, the governor must request the Ministry of Interior to take

the necessary steps to implement the council's decision. (Sub-decree Roles – Province, Article 206)

Re-deployment of personnel implementing sectoral functions

- ✓ A central aspect of the Organic Law is the requirement that sectoral functions be transferred to councils for councils to implement instead of ministries. Councils will only be able to effectively implement a sectoral function if the skilled personnel who have been implementing that function are also transferred to the council. (Organic Law, Articles 200, 217)

See Module 13 for more information on transfer of functions to councils
- ✓ The Organic Law, therefore, provides that the **transfer of functions must proceed together with** the transfer of necessary resources – revenue, finances, **personnel**, property and capacity. (Organic Law, Articles 200, 217, 262)
- ✓ Ministry personnel who are re-deployed to a council become personnel of the council and they are **no longer ministry personnel**. (Organic Law, Article 173)
- ✓ The National Committee for Sub-National Democratic Development (NCDD) must develop **policies and strategies** to ensure that the review and re-deployment of personnel are properly carried out. (Organic Law, Article 263)
- ✓ Civil servants are currently national-level employees and they are governed by statutes for national-level civil servants. The Organic Law requires that a new statute be prepared to govern council personnel. Council personnel are sub-national personnel. (Organic Law, Articles 176, 264)
- ✓ The NCDD must ensure that the reform does not result in an increase in the **number of civil servants**. (Organic Law, Article 264)
- ✓ The review and re-deployment of personnel to councils must be carried out based on the following principles:
 - together with the review of functions
 - in a manner that is **consultative, well-planned and programmed, rational, transparent** and in accordance with the Organic Law
 - in a manner that takes into consideration the interests of both the councils and the personnel concerned. (Organic Law, Article 265)
- ✓ In the event that a function is transferred to a council, but there are no personnel, or inadequate personnel, to implement the function, the council must be provided with financial resources to recruit personnel to perform that function. (Organic Law, Article 268)

- ✓ The Ministry of Economy and Finance must transfer to the concerned council the **salary, any incentives and other benefits of a civil servant** who has been re-deployed to that council. (Organic Law, Article 271)

EXAMPLE - Redeployed Personnel

Imagine that the function to provide agricultural extension services is transferred to district councils. District councilors cannot implement this function personally. They will require skilled personnel to provide the agricultural extension services. For this reason, when the function is transferred to district councils, those civil servants currently providing agricultural extension services must be re-deployed to the council. Those civil servants will become personnel of the council, and will no longer be attached to a line ministry or line unit. The Ministry of Economy and Finance will transfer the salary, any incentives and other benefits to district councils.

- ✓ The re-deployment of personnel takes effect when the NCDD and the involved ministry or government institution issue a decision notifying:
 - which civil servant is to be re-deployed
 - the category of council to which the civil servant will be re-deployed
 - the date on which the civil servant must commence in the new position.(Organic Law, Article 270)
- ✓ The council must report immediately to the NCDD in the event that a re-deployed civil servant does not commence work as required. (Organic Law, Article 272)

Issues to Address

The Organic Law is clear that every council has its own personnel, including an administration director, a chief of finance and re-deployed personnel. Many details about council personnel, however, must still be defined. Some issues require clarification and further definition include:

- It is not clear whether the sub-national civil service statute will govern both re-deployed council personnel and personnel the council hires itself.
- The Organic Law does not specify the extent of freedom councils have in hiring additional personnel. For instance, can the council itself decide on salaries and other benefits, or will the sub-national civil service statute govern these matters?
- Can the councils transfer re-deployed personnel or request their transfer?

Arrangements should be defined for any case of conflict between a council and its chief of finance. The arrangements should specify who decides on the termination of a chief of finance – the Ministry of Finance, the Ministry of Interior or the council?

Options for Current Civil Servants

- ✓ The re-deployment of personnel will not be without challenges. This is particularly true where re-deployment requires that a **current civil servant** relocate his/her residence in order to take up a new position. In these special circumstances – where a current civil servant must relocate his/her residence – the Organic Law offers the civil servant the option to **decline the re-deployment**.
- ✓ If a current civil servant is asked to re-deploy to a council and that re-deployment requires the civil servant to change his/her place of residence, the civil servant may disagree with the re-deployment by providing **written notification within one month** after receiving the decision about the re-deployment. (Organic Law, Article 269)
- ✓ A current civil servant who has declined to be re-deployed to a council may continue as a civil servant within his/her ministry or other government institution, but s/he must be assigned different functions. The civil servant cannot continue to perform his/her old function because that function has been transferred to a council and, therefore, the function is no longer performed by the ministry of other government institution. (Organic Law, Article 269)

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PART 2:

Summary of Module

- The Capital, provinces, municipalities, districts and khans shall be governed in accordance with the principles of unified administration.
- Every council has its own personnel.
- Council personnel come from 3 sources: personnel who are hired by the council, personnel who are appointed to work with the council, and personnel who are re-deployed to the council.
- The council establishes its own personnel units as necessary
- Each council has an administration director who is appointed by the Ministry of Interior.
- Each council has a chief of finance who is appointed by the council after the approval of the Ministry of Economy and Finance.
- Personnel, personnel units, chiefs of personnel units, the chief of finance and the administration director are all accountable to the council through the board of governors.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Re-deployment of Personnel

Discuss in small groups:

- What do you think are possible problems that might arise when line ministry personnel are re-deployed to become the personnel of the new sub-national councils?
- What do you think councils can do in order to ensure that re-deployed personnel are well integrated into the council and its administration?

EXERCISE TWO: Personnel of the Council

Discuss in small groups:

- What can a council do in order to ensure that its selection process is fair and transparent when hiring personnel?
- What can a council do in order to ensure that women attain leadership positions in the council's administration (for example, as chiefs or deputy chiefs of personnel units)?

Modules for Understanding
and Training on the
Organic Law

Module 9:
Council Meetings and Internal Rules

PART 1:

- 1. Introduction to Council Meetings**
- 2. Council Internal Rules**
- 3. Ordinary and Extraordinary Meetings**
- 4. Roles of Chairperson, Councilors, Board of Governors**
- 5. Council Decisions and Bylaws**
- 6. Agendas, Quorum and Minutes of Meetings**
- 7. Absences and Discipline**

Section 1: Introduction to Council Meetings

- ✓ Council meetings are critical for **democratic accountability**. In order to make political choices and decisions on behalf of their citizens, councilors need the **deliberative space** that council meetings provide.
- ✓ **Political choices must be separate from technical matters**. This means that the political choices of elected councils must be clearly separated from the technical work of boards of governors and council personnel. Only councilors, therefore, may vote at council meetings.
- ✓ Deliberative space is also concerned with ensuring that councils are making **choices based on evidence** (such as data, studies, information about past successes and failures). It is the responsibility of the board of governors and council personnel to provide information and evidence to the council
- ✓ A council meeting should be a forum for the elected councilors to assess the merits of different issues, to discuss the issues and to **debate** the issues. A meeting that enables this kind of rigorous discussion should result in **decision-making** that is in the **best interests of citizens**.
- ✓ A **council's meetings are a critical forum** for councilors to -
 - raise, discuss and debate issues that are important to local citizens
 - make policies, take decisions and approve necessary bylaws
 - review council finances
 - review and address requests or complaints from citizens
 - take action to address local conflicts
 - receive an update from the board of governors about progress on implementation of council decisions, bylaws and activities
 - ask questions and seek clarifications from the board of governors
 - fulfill the council's responsibility to ensure that the board of governors and personnel are accountable to the council.
- ✓ Every meeting of a council must be **conducted in public**, except in necessary cases as provided for by law. Public meetings must have seating available for members of the public. (Organic Law, Article 68, Model Internal Rules, Articles 2, 13, 25)

Democratic accountability refers to –

Elected representatives who are democratically accountable make informed choices, allocate limited resources and perform their duties and functions in the public interest and in response to expressed local needs.

There is democratic accountability when people can impose consequences on their elected representatives for the choices those elected representatives make, for how the elected representatives allocate limited resources, and for the performance of their duties and functions.

Section 2: Council Internal Rules

- ✓ Every council must approve its own internal rules in the form of a bylaw. (Organic Law, Articles 69, 71; Model Internal Rules, Article 2)
- ✓ The National Committee for Sub-National Democratic Development (NCDD) has issued **model internal rules**. The model internal rules have served as an example and guide for councils to follow when developing their own internal rules.
- ✓ The model internal rules stipulate the **minimum requirements** that councils must follow in conducting their meetings. Those minimum requirements, therefore, must be contained in the internal rules of every council. Any council, however, **may enhance the model internal rules** issued by the NCDD, and otherwise modify the model internal rules as long as the minimum requirements are maintained. (Model Internal Rules, Article 1)
- ✓ When a council modifies the model internal rules issued by the NCDD, the Ministry of Interior must review the modifications. In the event that any of the modifications are contrary to any legal instrument, the Ministry of Interior must advise the council how to rectify its internal rules and the council must make the rectification at its next meeting. (Model Internal Rules, Article 2)
- ✓ Once a council approves the bylaw containing its internal rules, the council must provide copies of the internal rules to every councilor, the board of governors and to the Ministry of Interior. In addition, a copy of the **internal rules** must be filed at the council office and made **publicly available**. (Organic Law, Article 51; Model Internal Rules, Article 2)
- ✓ All council meetings must be conducted in accordance with the council's internal rules. Any decision that is not made in accordance with the council's internal rules is an invalid decision. (Organic Law, Article 69; Model Internal Rules, Articles 2, 6)

EXAMPLE

A council should be entitled to add to its internal rules provisions for citizens to speak out and ask questions at the beginning or end of council meetings.

Section 3: Ordinary and Extraordinary Meetings

- ✓ Councils have two types of meetings: **ordinary meetings** and **extraordinary meetings**. (Organic Law, Articles 74, 77; Model Internal Rules, Article 1)
- ✓ Every council has ordinary **meetings at least 12 times per year**. These ordinary meetings must be at least 25 days apart and no more than 35 days apart. (Organic Law, Article 74, Model Internal Rules, Article 2)
- ✓ Every council must approve and then **disseminate publicly the schedule for the council's ordinary meetings** for one year in advance. The schedule must indicate the date and place of each meeting. In addition, the date and place of each meeting must be displayed on the council's notice boards and must be publicly disseminating by other means. (Organic Law, Articles 51, 75; Model Internal Rules, Articles 2, 6)
- ✓ In addition, a council **may meet on an extraordinary basis** to deal with urgent or special issues. (Organic Law, Article 77; Model Internal Rules, Article 4)
- ✓ An extraordinary meeting may only be **called by the chairperson, or by at least one-third of the total number of councilors**. (Model Internal Rules, Article 4)
- ✓ The invitation and agenda for an extraordinary meeting must be delivered to every councilor at least two working days prior to the meeting. (Model Internal Rules, Article 4)
- ✓ At **every meeting**, the council makes necessary decisions or bylaws on issues relating to –
 - preparing for receiving **new functions**, duties and resources
 - implementing of obligatory and permissive functions of the council
 - the council's **development plan**, investment program and budget
 - financial issues
 - establishing structures, systems and resources for **council committees**, units and **personnel** of the council
 - dividing duties among councilors to **communicate with citizens** and monitor implementation of the council's work
 - managing and use of **assets**
 - consulting with and disseminating information to **citizens**
 - achievements and **challenges** in the council's work.(Organic Law, Article 36; Sub-decree Roles – Provinces, Article 14; Model Internal Rules, Article 15)
- ✓ In addition, the council may make decisions relating to –
 - inviting a governor or deputy governor, or the board of governors or another relevant person to discuss implementation of council decisions or any **urgent or special problems**

- conducting **research studies** or investigations on any case that the council considers is important for citizens
- instructing the board of governors to take action based on results of a research study or investigation
- reviewing, researching and reporting to the Ministry of Interior about any case of **abuse of power**
- reviewing and addressing any **illegal acts** committed by the council, any councilor, the board of governors or council personnel
- reviewing and taking action to address **local conflicts**
- reviewing and addressing requests or **complaints from citizens**
- reviewing and approving reports from the board of governors.

(Sub-decree Roles – Provinces, Article 15)

Section 4: Roles of Chairperson, Councilors, Board of Governors

Roles of Chairperson of Council Meetings

- ✓ The **chairperson of the council** is the chairperson for all council meetings. (Organic Law, Article 63; Model Internal Rules, Article 20)
- ✓ In the event that the **chairperson is absent**, the councilor who is listed next on the same election candidate list acts as chairperson. If that councilor is also absent, the chairperson of the meeting is the councilor who is at the top of the election candidate list of the party winning the second-most votes. If that person is also absent, the councilor who acts as chairperson is the councilor who is listed next on the election candidate list winning the second-most votes. (Organic Law, Article 65; Model Internal Rules, Article 20)
- ✓ The council chairperson is responsible for inviting councilors to all council meetings. For every ordinary meeting, an **invitation letter** must be delivered to every councilor at least three working days prior to the meeting. The **agenda** must be attached to the invitation letter, along with any **other relevant documents**. (Model Internal Rules, Article 3)
- ✓ During a council meeting, the chairperson must –
 - ensure that meetings proceed in a democratic manner, with neutrality, with order and without interruption
 - enable all councilors to express their opinions
 - apply the council's internal rules.
 - (Organic Law, Article 64; Model Internal Rules, Article 21)
- ✓ The chairperson may **invite relevant persons** to join a council meeting, such as officials of other government institutions or other relevant persons. A person invited to join a council meeting is entitled to express his/her opinion, but the person may not vote. (Model Internal Rules, Article 23)

Roles of Councilors

- ✓ **Every councilor is entitled to express her or his opinion.** No councilor may be arrested, detained or subjected to any action or measure on the basis that the councilor expressed ideas or voted in a particular way during a council meeting (Organic Law, Article 73; Model Internal Rules, Article 22)
- ✓ A councilor is entitled to **question the governor** about progress in implementing council decisions and bylaws and other activities implemented by the board of governors. (Organic Law, Articles 157, 159; Model Internal Rules, Article 24)
- ✓ In order to express her or his opinion, the councilor must **raise a hand** for approval from the chairperson in order to proceed. A councilor may speak for **15 minutes** regarding the issue being discussed. The chairperson may allow a councilor to speak for an additional 5 minutes, and for a second additional period of 5 minutes. (Model Internal Rules, Article 12)

- ✓ A councilor is not entitled to express opinions in the name of the whole council unless the councilor is authorized by the council to do so. (Model Internal Rules, Article 22)

Roles of Board of Governors

- ✓ The governor or board of governors may request the chairperson to include a matter in a council meeting **agenda**. The governor or board of governors may also request the chairperson to call an **extraordinary council meeting**. (Model Internal Rules, Article 30)

At every council meeting, the board of governors must **report to the council** on the results and progress in implementing council decisions, bylaws and activities since the last council meeting. The reporting must include results and progress achieved by the board of governors (through council personnel) and by committees of the council. (Organic Law, Article 159; Model Internal Rules, Article 31)

The board of governors must **conduct research studies** in order to **provide good advice** to the council that can help the council make informed decisions. (Sub-decree Roles – Province, Articles 29, 86, 147)

For example, the board of governors may arrange for a study to learn why fewer children are being taken for immunization.

- ✓ The board of governors may be asked to **clarify any issue** at a council meeting, and may be required to **answer questions about progress** in implementing council decisions and bylaws and other activities implemented by the board of governors. (Organic Law, Article 157; Model Internal Rules, Article 24)

Example

Imagine a council has decided to distribute rice during a food shortage after terrible flooding.

Councilor Beye has been approached by a number of citizens in his village. The citizens have complained that they have not received yet received any rice.

During the monthly council meeting, Councilor Beye questions the board of governors. Among other questions, Councilor Beye asks how the board of governors has selected the citizens who will receive rice, and she asks about the timing for delivery of the rice.

Others

- ✓ The **chairperson of every council committee** is entitled to attend and participate in council meetings. (Model Internal Rules, Article 14)
- ✓ Two members of the **women and children's consultative committee** are entitled to attend, participate and provide suggestions and recommendations in every council meeting. The members of this committee have the same right as councilors to receive the agenda and other relevant documents for a council meeting. (Organic Law, Articles 128 - 132 ; Model Internal Rules, Article 14)

On every issue, time must be set aside for the representatives of the women and children's consultative committee to offer their perspective, suggestions and recommendations.
- ✓ One or more **council committees** may be requested to **conduct research** and provide information to the council in order to address a new topic. The board of governors and administration director must provide legal and technical support to the committee(s). (Organic Law, Article 122; Model Internal Rules, Articles 28, 29)
- ✓ The **administration director** acts as secretary to the council and the chairperson of the council in preparing draft agendas, invitation letters, meeting minutes and other relevant meeting documents. (Model Internal Rules, Article 32; Sub-decree Roles – Province, Articles 45, 102, 163)
- ✓ The **administration director** is responsible for maintaining and safeguarding meeting documents, including agendas and minutes, and to make those documents **available to the public**. (Model Internal Rules, Article 33)
- ✓ The administration director may participate in and contribute ideas during council meetings. The administration director must provide technical comments to the council to enable the council to make better decisions. The administration director, however, has no right to vote. (Sub-decree Roles – Province, Articles 47, 104, 164)

Section 5: Council Decisions and Bylaws

- ✓ At every meeting, the council makes any necessary decisions and issues any necessary bylaws. (Organic Law, Article 36; Sub-decree Roles – Provinces, Article 14; Model Internal Rules, Article 15)
- ✓ A council may create a committee to prepare a draft bylaw for consideration by the council. The board of governors must direct the administration director and relevant administration units to provide legal and technical support that such a committee. (Sub-decree Roles – Province, Articles 12, 68, 130)
- ✓ A council decision or bylaw is only valid if the decision or bylaw is **approved by more than half the total number of councilors**. In the event that a vote is tied, the vote of the chairperson is decisive. (Organic Law, Articles 66, 67; Model Internal Rules, Article 16)
- ✓ The vote on a decision or bylaw is made by **raising of hands**. A councilor may 'agree', 'disagree' or 'abstain'. In certain specified circumstances, however, the vote is secret. (Model Internal Rules, Articles 17, 50)
- ✓ In order to **modify a council decision or bylaw**, one-third of the total number of councilors must make a request in writing. The request must outline the reasons why a modification is being sought. The council must study any request and must include the request in the agenda of the next meeting. (Model Internal Rules, Article 18)
- ✓ In order to modify the council's internal rules, more than half the total number of councilors must agree. (Model Internal Rules, Article 51)
- ✓ The chairperson and the board of governors must ensure that information about a council decision or bylaw is **publicly disseminated**. (Organic Law, Article 51; Model Internal Rules, Article 19)

Section 6: Agendas, Quorum and Minutes of Meetings

Agendas

- ✓ The **chairperson**, in consultation with the governor, prepares a draft agenda for each meeting. (Model Internal Rules, Article 5)
- ✓ The draft agenda must be provided to the council for **approval** during each meeting. (Model Internal Rules, Article 5)
- ✓ **The following person or persons may request to add an item to a meeting agenda**
 -
 - the council chairperson
 - one-third of the total number of councilors
 - the chairperson of a council committee
 - the governor
 - the board of governors.(Model Internal Rules, Article 5)

Quorum

- ✓ A council meeting is valid only if **at least half of the total number of councilors** is present. (Organic Law, Article 66; Model Internal Rules, Article 8)
- ✓ If one or more councilors leave during a meeting so that the meeting no longer has a quorum, the chairperson must end and postpone the meeting. (Model Internal Rules, Article 11)

Minutes of Meetings

- ✓ The minutes of a meeting must record –
 - the names of those attending the meeting
 - a list of any councilors who are absent
 - decisions approved by the council
 - all important comments made during the council meeting, and
 - other items specified in the council's internal rules.
 - (Model Internal Rules, Articles 34, 35)
- ✓ Minutes must be distributed to councilors at least five days before the next meeting. The draft minutes must be approved at the next meeting. (Model Internal Rules, Articles 34 - 37)

Section 7: Absences and Discipline

Absences

- ✓ Councilors are required to attend all council meetings. In the event that a councilor cannot attend a council meeting, however, the councilor must submit to the chairperson a **request to be absent** from the meeting. The request must be submitted at least **one day prior to the meeting**. (Model Internal Rules, Article 38)
- ✓ If a councilor leaves a council meeting before it has ended, the councilor is considered to be absent without permission. (Model Internal Rules, Article 38)
- ✓ A councilor loses his/her membership on the council if he/she **fails to attend two consecutive ordinary meetings** without prior authorization. (Organic Law, Article 22)
- ✓ A councilor who is absent from a council meeting without permission will be **fined**. (Model Internal Rules, Article 42)

Discipline

- ✓ A councilor may be punished for being **absent from a meeting without permission**, or for **inappropriate conduct** during a council meeting. (Model Internal Rules, Article 43)
- ✓ Punishment may include –
 - a reminder or warning that may or may not be recorded in the minutes of the meeting
 - deduction of a part of the councilor's allowance
 - loss of membership on the council.
 - (Model Internal Rules, Articles 44, 46)
- ✓ In addition, the chairperson may expel from a meeting a **member of the board of governors** or other invited person if that person continues to cause disruption after having received one warning. (Model Internal Rules, Articles 26, 47, 48)

PART 2:

Summary of Module

- ✓ Council meetings are critical for **democratic accountability**. In order to make political choices and decisions on behalf of their citizens, councilors need the **deliberative space** that council meetings provide.
- ✓ Every council must approve its own internal rules in the form of a bylaw. All council meetings must be conducted in accordance with the council's internal rules.
- ✓ Councils have two types of meetings: ordinary meetings and extraordinary meetings. Every council has ordinary meetings at least 12 times per year.
- ✓ Every council must approve and then disseminate publicly the schedule for the council's ordinary meetings for one year in advance.
- ✓ The chairperson of the council is the chairperson for all council meetings.
- ✓ Every councilor is entitled to express her or his opinion. No councilor may be arrested, detained or subjected to any action or measure on the basis that the councilor expressed ideas or voted in a particular way during a council meeting.
- ✓ At every council meeting, the board of governors must report to the council on the results and progress in implementing council decisions, bylaws and activities since the last council meeting. A councilor is entitled to question the governor.
- ✓ The chairperson of every council committee is entitled to attend and participate in council meetings. Two members of the women and children's affairs committee are also entitled to attend, participate and provide suggestions and recommendations.
- ✓ A councilor may be punished for being absent from a meeting without permission, or for inappropriate conduct during a council meeting.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE: What NOT to do when Conducting a Council Meeting

The councilors of Province of Pro-Cheum Ot-Laar have gathered for their monthly ordinary meeting.

Assign the following roles to the members of your group:

- ✓ Council chairperson
- ✓ One councilor
- ✓ One member of the women and children's affairs committee
- ✓ Governor
- ✓ One citizen
- ✓ One representative of a community-based organization
- ✓ Invited director of the department of agriculture.

Present a 5-minute role play that shows what NOT to do when conducting a council meeting. Include at least five violations of the Ministry of Interior model internal rules.

It is the role of the audience to note down the violations it observes. After the role play is finished, the audience is asked to share the violations they observed. It is then the role of the group that presented the role play to explain how to rectify the violations they showed in the role play.

Modules for Understanding
and Training on the
Organic Law

Module 10:
Inter-governmental Relations –
The Royal Government
and Sub-National Councils

PART 1:

- 1. Introduction**
- 2. NCDD and Key Reform Ministries**
- 3. Transfer of Sector Functions to Councils**
- 4. Ministries – Councils: Communication, Conflicts**
- 5. National-level Appointments**
- 6. Governors: Representative of Royal Government**
- 7. Council Committees**
- 8. Sub-National Administrations**

Section 1: Introduction

Prior to the adoption of the Organic Law, relations between the Royal Government and appointed sub-national administrations were vertical, with the appointed provincial, municipal, district and khan administrations under the direction and control of the Royal Government. The sub-national administrations were accountable upward to the national level. The Ministry of Interior appointed governors of the appointed sub-national administrations, and the personnel of the appointed administrations were primarily staff of the Ministry of Interior. In addition, many line ministries have their own line departments and offices at sub-national levels with personnel who answer to the respective Ministry.

Communes and sangkats, having elected councils since 2002, were more autonomous than the other sub-national levels. Commune/sangkat councils have been given functions and resources which, although modest so far, can be implemented and used as the councils see fit. Importantly, commune/sangkat councils must stand for election every five years and they are, therefore, democratically accountable downward to their citizens. Commune/sangkat councils are also accountable upward to the Royal Government.

Now, under the Organic Law, there are new governance actors on the scene, beginning with the elected councils of the Capital, provinces, municipalities, districts and khans. The new councils, like commune/sangkat councils, are responsible for governance and development in their area. The new councils, like commune/ sangkat councils, will have their own functions and resources, greater autonomy, and they will be democratically accountable downward to their citizens as well as to the Royal Government.

Now, with elected councils at every sub-national level, relations between the Royal Government and sub-national levels will change. The introduction of new councils will also fundamentally change relationships within each sub-national level – in particular, councils must develop strong links with line departments/offices in their areas.

Relationships will also change among the sub-national levels. For example, districts will no longer be subordinate to provinces; and commune/sangkat councils will have new relationships with the Capital, provinces, municipalities, districts and khans.

In this Module, an overview is provided of inter-governmental relations between the Royal Government and sub-national councils and their administrations. The next Module (Module 11) discusses inter-governmental relations among sub-national councils.

Section 2: NCDD and Key Reform Ministries

National Committee for Sub-National Democratic Development (NCDD)

Organic Law, Articles 192 - 273

✓ The National Committee for Sub-National Democratic Development (NCDD) has overall **responsibility for the implementation of the Organic Law**. (Organic Law, Article 202; Royal Decree to Establish the NCDD, Articles 1, 5)

✓ The NCDD has the following **members** –

- Minister of the Ministry of Interior (chairperson)
- Minister of the Ministry of Economy and Finance (deputy chairperson)
- Minister of Office of the Council of Ministers (deputy chairperson)
- Minister of the Ministry of Land Management, Urbanization and Construction (member)
- Minister of the Ministry of Planning (member)
- Minister of the Ministry of Rural Development (member)
- Minister of the Ministry of Women's Affairs (member)
- Minister of the Ministry of Health (member)
- Minister of the Ministry of Agriculture, Forestry and Fishery (member)
- Minister of the Ministry of Education, Youths and Sports (member)
- Minister of the Ministry of Industry, Mines and Energy (member)
- Secretary of State of the State Secretariat for Civil Service (member)
- One Secretary of State of the Ministry of Interior (member)
- One Secretary of State of the Ministry of Economy and Finance (member)
- One representative of the Council for Development of Cambodia (member)
- Chairman of NCDD Secretariat (permanent member)
- and any additional members, as necessary.

(Royal Decree to Establish the NCDD, Article 2)

The Royal Government has a **10-year National Program for Sub-National Democratic Development** (NP-SNDD) that translates the legal framework set out in the Organic Law into a framework for implementation.

The Royal Government has approved The First Three Years Implementation Plan of the NP-SNDD that explains in greater detail the Program for reform for the first three years.

✓ The NCDD has 4 sub-committees –

- **Sub-Committee on Functions and Resources:** assists and advises the NCDD about matters related to identifying and transferring functions and resources to sub-national councils
- **Sub-Committee on Fiscal and Financial Affairs:** assists and advises the NCDD about matters related to financial and fiscal affairs of sub-national councils
- **Sub-Committee on Sub-National Administration Personnel:** assists and advises the NCDD about matters related to identification, re-deployment and establishment of a personnel framework for sub-national administrations, and matters related to management and development of human resources for sub-national administration
- **Sub-Committee on Sub-National Development Planning:** assists and advises the NCDD about matters related to development plans and investment programs of sub-national councils.

(Sub-Decree on the Establishment of NCDD Sub-Committees, Articles 2, 9 - 12)

Every **sub-committee of the NCDD** must have as a member a **representative of each level of council**. This means that each NCDD sub-committee – including the sub-committee on functions and resources that deals with functional review – has the following persons as members:

- a representative of the Capital
 - one person to represent all provinces
 - one person to represent all municipalities
 - one person to represent all districts
 - one person to represent all khans
 - one person to represent all communes
 - one person to represent all sangkats.
- (Sub-decree on NCDD Sub-Committees, Article 3)

In addition, each provincial council communicates with the NCDD and ministries about functional review in the province.

National Program for Sub-National Democratic Development 2010 – 2019 (NP-SNDD)

- ✓ The Royal Government's ten-year National Program for Sub-National Democratic Development (NP-SNDD) was approved on May 28, 2010 to guide **implementation of D&D reform**. The National Program is based on the policy framework (the D&D Strategic Framework) and the legal framework (the Organic Law).
- ✓ The NCDD, through its Secretariat, is responsible for executing the NP-SNDD.
- ✓ The National Program is meant to achieve three key results:
 - further development of the policy and legal framework, completing regulations under the Organic Law and legal instruments required for fiscal and sector decentralization;
 - development of the institutions and capacities of sub-national administrations; and

- channeling of resources to sub-national administrations for local economic development, natural resource management and infrastructure investment.
- ✓ The National Program sets out five Program Areas that, together, will support the realization of D&D reform goals and the three key results. The five Program Areas are:
 - **Program Area 1: Sub-National Administration Organization Development**, that ensures that sub-national administrations are in place and operating appropriately.
 - **Program Area 2: Human Resource Management and Development Systems**, that ensures that there is a strong sub-national civil service system in place.
 - **Program Area 3: Transfer of Functions**, that ensures that functions and their corresponding resources are appropriately transferred to councils.
 - **Program Area 4: Budget, Financial and Asset Management Systems**, that ensures there is a framework in place for council finances/revenue, as well as mechanisms for financial and asset management.
 - **Program Area 5: Support Institutions for D&D**, that ensures the necessary institutional arrangements that will advance D&D reform and enable sub-national administrations to govern and manage effectively and sustainably.
- ✓ In addition, there are three themes that cross-cut each of the five Program Areas. These are **gender mainstreaming**; **climate change**; and **accountability**.
- ✓ The **initial focus** of the Program will be on **districts, municipalities, communes and sangkats**.

Three-Year Implementation Plan (2011 – 2013) of the NP-SNDD (IP3)

- ✓ In order to have a **concrete guide for the crucial first three years**, the Royal Government has prepared the IP3. The IP3 is based on the NP-SNDD.
- ✓ The NCDD, through its Secretariat, is responsible for executing the IP3.
- ✓ The following agencies are responsible for implementing parts of the IP3:
 - NCDD Secretariat;
 - Ministry of Interior (MoI);
 - Ministry of Economy and Finance (MoEF);
 - Ministry of Planning (MoP);
 - State Secretariat for Civil Service (SSCS); and
 - National League of Commune/Sangkat Councils (NLC/S).
- ✓ The **IP3 goal** is:

to enable [sub-national administrations] to promote the welfare (voice, rights, livelihood), of citizens, improve equality between citizens and communities, especially women and vulnerable groups, and ensure fairness in access to services. (IP3, page 31)

- ✓ The IP3 focuses in particular on **districts and municipalities**. The IP3 pays attention also to the support relationship between districts and communes, as well as the support relationship between municipalities and sangkats.
- ✓ The IP3 is made up of six Sub-programs, each executed by one of the key agencies mentioned above. The Sub-programs are:

The IP3 emphasizes the importance of **councils as institutions of political representation**:

The councils, as policy-making bodies, require autonomous powers, discretionary resources and effective control over executive and administrative structures that are accountable to them and can implement their policies. But they also, and critically, need operating procedures that facilitate civic engagement and evidence-based deliberations. In other words, they must function as structures of effective political representation. (IP3, page 2)

- **Sub-program 1** is *policy development and program coordination and development of council deliberation and policy-making capacity*, implemented by the NCDD Secretariat. This sub-program involves:
 - developing the regulatory framework for the reform;
 - moving forward with functional assignment and sector decentralization;
 - strengthening capacity for program management and monitoring; and
 - developing and providing a council mentoring and support system.
- **Sub-program 2** is *institutional and human resources development*, implemented by MoI. This sub-program involves:
 - setting up and staffing sub-national administrations;
 - developing institutional and staff capacity;
 - oversight and legality controls; and
 - improving facilities.
- **Sub-program 3** is *management of sub-national human resources*, implemented by SSCS. This sub-program deals with a transitional arrangement for sub-national human resource management as well as developing a legal framework for human resource management in the future.
- **Sub-program 4** is *sub-national financial resources*, implemented by MoEF. This sub-program involves:
 - developing a policy and legal framework for financing mechanisms;
 - financial management and accountability systems;
 - developing capacity for financial management and accountability; and

- national capacity development to support and oversee sub-national administrations with regard to financial matters.
 - **Sub-program 5** is *planning and investment programming systems*, implemented by MoP. It involves developing planning systems and sub-national capacity for planning.
 - **Sub-program 6** is *development of capacity of council associations*, implemented by the National League. This sub-program involves development of one or more associations for the new councils so that the new councils have a strong collective voice.
- ✓ In addition to the Sub-programs, the IP3 includes:
- a monitoring and evaluation strategy;
 - a gender strategy; and
 - a national capacity development framework.

Specific Legal Duties of the NCDD

- ✓ The NCDD **works with ministries to identify which functions and resources will be transferred** to councils at each sub-national level through its Sub-Committee on Functions and Resources. The NCDD is responsible for ensuring that when a function is transferred to councils, the councils receive the necessary resources (including revenue, finances, personnel, assets and capacity) to implement the function. (Organic Law, Articles 200 and 217; Royal Decree to Establish the NCDD, Article 3(4))
- See Module 13 for more information on transferring functions
- ✓ **Provincial councils** must communicate and cooperate with the NCDD and ministries in the allocation and transfer of functions and resources (financial, assets and personnel) from national level to sub-national councils. In performing this role, provincial councils **must consult with all sub-national administrations** in the province. (Sub-decree Roles – Province, Article 195)
- ✓ Once decisions are made by the NCDD and ministries, the provincial council must coordinate with sub-national administrations as the council receives and absorbs the new functions and resources. (Sub-decree Roles – Province, Article 195)
- ✓ The **Capital administration** must also coordinate and cooperate when **reviewing functions and resources** to be transferred to the Capital and khan councils. (Sub-decree Roles – Capital, Article 58)
- ✓ For functions retained by ministries, the NCDD ensures that those ministries **integrate their plans and budgets** into the development plans and budgets of councils. This is accomplished through the **technical facilitation committee** of each council. (Organic Law, Article 201; Royal Decree to Establish the NCDD, Article 3(5); Sub-decree Roles – Province, Article 204; Sub-decree Roles – Capital, Article 142; Sub-decree TFC – Province, Articles 4, 13, 22; Sub-decree TFC – Capital, Articles 4, 13)
- See Module 7 for more information on the integration of Ministry plans and budgets

- ✓ The NCDD must research how to integrate the **Provincial Executive Committee of the Provincial Rural Development Committee** into the provincial administration, and how to integrate the **Capital Development Committee** into the Capital administration. In the process of researching these matters, the NCDD must consult and coordinate with ministries, development partners and other stakeholders. (Sub-decree Roles – Province, Article 210; Sub-decree Roles – Capital, Article 147)
- ✓ The NCDD is responsible to issue guidelines as well as to provide support as councils develop their **monitoring and evaluation systems**. It is critical that councils assess their performance and the results of their work, and to make improvements as necessary, in order to ensure that they are **responsive** to citizens. (Sub-decree Roles – Province, Articles 17, 73, 135; Sub-decree Roles – Capital, Articles 17, 74)
- ✓ If a council is **unclear about an applicable legal framework** or if the council believes that the legal framework **does not reflect local realities**, the council must request input from the Ministry of Interior. The Ministry of Interior, through the NCDD, must coordinate with the concerned ministries to provide clarification. (Sub-decree Roles – Province, Articles 16, 72, 134; Sub-decree Roles – Capital, Article 16)
- ✓ The NCDD **facilitates the resolution of any disagreement** that arises between a ministry and a council. If the disagreement cannot be resolved, the NCDD must report to the head of the Royal Government. (Sub-decree Roles – Province, Article 200; Sub-decree Roles – Capital, Article 137)
- ✓ The NCDD must **ensure that ministries and councils comply** with NCDD decisions. In the event that a council does not comply with a NCDD decision, the NCDD may propose that the Ministry of Interior follow appropriate legal procedures to require council compliance. (Organic Law, Articles 202, 206 - 208)

EXAMPLE

A council feels that when it was transferred the new function to repair schools in its area that insufficient resources were transferred to implement that function. If the concerned ministry and council cannot resolve the matter on their own, the NCDD must facilitate the resolution of the disagreement.

Specific Legal Duties of the Ministry of Interior: Supervisor and Advisor of Councils

Organic Law, Articles 81 – 88

Supervisory Role

- ✓ The Ministry of Interior has a **duty to supervise** all the new councils as well as commune/sangkat councils. The Ministry of Interior must ensure that councils comply with the Constitution, laws, royal decrees, sub-decrees, prakas and other legal instruments, including a council's own internal rules. (Organic Law, Articles 24, 35, 81 – 88; Law on the Administration and Management of Communes/Sangkats, Articles 53 – 58; Sub-decree Roles – Province, Articles 11, 67, 129; Sub-decree Roles – Capital, Articles 11, 69)

EXAMPLE

If a governor implements a council budget before the council has approved the budget, the governor's action exceeds his/her authority. It is the council's role to approve the budget. The governor's action is illegal and, therefore, is invalid.

- ✓ This is no different from the national level – the Royal Government and its ministries must also comply with the Constitution, laws, royal decrees, sub-decrees, prakas and other applicable legal instruments.
 - The Organic Law sets out a process for addressing any **illegal actions or illegal decisions by a council, council committee, governor, board of governors or council personnel**. An illegal action or illegal decision is an action or decision that exceeds the authority of a position and/or violates the Constitution, a law or other legal instrument. An illegal action or illegal decision is invalid. (Organic Law, Articles 78, 79)
 - The Ministry of Interior must address any **illegal action or illegal decision** by a council, council committee, governor, board of governors or council personnel. (Organic Law, Articles 81-88)
 - First, the Minister of the Ministry of Interior must **notify in writing** the council and the governor that there has been an illegal action or illegal decision. The council or board of governors has one month to provide a clarification to the Ministry of Interior. Within one month, the Minister of the Ministry of Interior must reply in the event that the Ministry still considers the action or decision to be illegal. (Organic Law, Article 81)
 - The Ministry of Interior has the duty to inform the council and board of governors about **what measures are necessary to rectify** the illegal action or illegal decision. (Organic Law, Articles 83, 84)
 - In these matters, councils are **accountable to the Ministry of Interior**.
- ✓ In provinces, **provincial councils** have been **delegated the duty to ensure legal compliance**. Provincial councils, therefore, must ensure that municipal and district council decisions and actions are in compliance with the Constitution, laws, royal decrees, sub-decrees, prakas and other legal instruments. Provincial councils support municipal and district councils to ensure legal compliance by commune/sangkat councils. In the Capital, the duty to ensure legal compliance by khan and sangkat councils has been **delegated to the Capital council**. (Sub-decree Roles – Province, Articles 195, 196; Sub-decree Roles – Capital, Articles 58, 75, 122)
- ✓ It is the important role of a council to review, investigate and report to the Ministry of Interior any cases in its area related to **abuse of power**. The board of governors assists the council. (Sub-decree Roles – Province, Articles 15, 30, 71, 87, 133, 148; Sub-decree Roles – Capital, Articles 15, 30, 73)
- ✓ A council that wishes to **create, dissolve or re-organize divisions or offices** in its administration, must make a request to the Ministry of Interior through the governor. (Sub-decree Roles – Province, Article 60; Prakas Offices – Province, Articles 9, 20, 29; Sub-decree Roles – Capital, Article 60; Prakas Offices – Capital, Articles 12, 22)
- ✓ Until there is a Statute on Sub-National Administration Personnel, a provincial council approves **proposed officials for the positions of directors/deputy directors of divisions and chiefs/vice chiefs** in the provincial administration. A municipal or district council approves proposed officials for the positions of municipal or district chiefs/vice chiefs of offices. The provincial governor requests that the Ministry of Interior approve the proposal of the provincial council, municipal or district council. Similar arrangements

are in place for the Capital and khan councils. (Prakas Offices – Province, Article 35; Prakas Offices – Capital, Article 28)

- ✓ In the event there is **disagreement between administrations** in a province or in the Capital, the Ministry of Interior must resolve the disagreement in accordance with the legal framework. (Sub-decree Roles - Province, Article 199; Sub-decree Roles – Capital, Article 135)

Advisory Role

- ✓ The Ministry of Interior also plays an **advisory role**. Prior to the issuance of a council **bylaw**, a council **decision** or a council **contract**, the council or the board of governors may send a written request for the Ministry of Interior to comment on the bylaw or decision. The Ministry of Interior must reply within one month after receiving that request. (Organic Law, Article 82)
- ✓ With a view to **supporting the technical facilitation committee** (TFC), the Ministry of Interior must provide **capacity development** to councilors, boards of governors, administration directors, TFCs and personnel of the council administrations as well as any other relevant persons. (Sub-decree TFC – Province, Article 31; Sub-decree TFC – Capital, Article 22)
- ✓ If there is **no legal framework** for a council to take **measures to meet local needs**, the governor must research options about measures that can be taken. The options must be in accordance with principles of transparency, accountability and effectiveness. The council then considers and decides what measures it wishes to take. The council must submit its proposal to the Ministry of Interior or other concerned ministry for comment. (Sub-decree Roles – Province, Articles 16, 72, 134; Sub-decree Roles – Capital, Article 16)

EXAMPLE

A district council has been trying to deal with gambling in its area. The council would like to pass a bylaw prohibiting any gambling establishments to operate in the district. The council is uncertain whether such a bylaw is within its authority to pass. The council may send its draft bylaw to the Ministry of Interior for advice.

See Module 7 for more information on the technical facilitation committee

Specific Legal Duties of the Ministry of Economy and Finance and Councils

Organic Law, Articles 44 - 46, 241 - 261

- ✓ Councils must manage their budgets in an effective and **transparent manner**. In managing its budget, the council is **democratically accountable** to its citizens. The council is also accountable to the Royal Government to comply with the applicable legal framework. (Organic Law, Article 243)
- ✓ Formalities and procedures for financial and budget management will be determined by a separate law: *Law*

See Module 15 for more information on fiscal decentralization and financial management

- on Sub-National Administration Financial Regime and Management of Assets. (Organic Law, Articles 44 - 46, 137, 244, 245, 248, 253, 255)
- ✓ The new councils have the **right to receive revenue** from local, national and other sources of revenue. (Organic Law, Article 244)
- ✓ Councils may also receive **state assets**. A council is obliged to maintain and protect any state assets transferred to the council. A council may not sell or transfer ownership and the use of the asset unless the council has agreement from the Ministry of Interior and the approval from the Ministry of Economy and Finance. (Organic Law, Article 255)
- ✓ When a civil servant is re-deployed to a council, the Ministry of Economy and Finance must transfer the **salary**, incentives and other benefits of the civil servant to the council. (Organic Law, Article 271)

Specific Legal Duties of the Ministry of Planning

- ✓ The Ministry of Interior and Ministry of Planning are responsible for issuing **guidelines** for the preparation and implementation of development plans and three-year rolling investment programs. (Planning Prakas, Article 28)

See Module 14 for more information on planning

Section 3: Transfer of Functions to Councils

- ✓ Every ministry must establish a Decentralization and Deconcentration (**D&D**) **working group**. The D&D working group is responsible to formulate policies, strategies and workplans for its ministry in order to implement the Organic Law. (Royal Decree to Establish the NCDD, Article 17; Sub-decree on NCDD Sub-Committees, Article 8)
- ✓ Each ministry must identify and **transfer (assign or delegate) appropriate ministry functions** to councils. At the same time as the function is transferred, the ministry must transfer the corresponding financial resources, personnel and ensure that the council and the sub-national administration have the necessary capacity. (Organic Law, Articles 200, 217; Sub-decree Roles – Provinces, Article 189; Sub-Decree Roles – Capital, Article 128; Sub-decree Roles – Capital, Article 129)

See Module 13 for more information on transferring functions
- ✓ Ministries must also **review** their **laws, legal frameworks and programs** in order to make any necessary amendments to these documents and programs so that they are consistent with the Organic Law and **take into account** that there are now **new sub-national councils**. (Organic Law, Article 203; Sub-decree Roles – Provinces, Article 190; Sub-decree Roles – Capital, Article 129)
- ✓ In addition, ministries must develop **sector policies, legal frameworks and standards to guide the new councils** in implementing functions that the ministry transfers to them. Standards might include setting out **national standards for safety and quality**. (Sub-decree Roles - Provinces, Article 191; Sub-decree Roles – Capital, Article 130)

EXAMPLE

The Ministry of Land Management, Urbanization and Construction will have national standards regarding safety in constructing buildings. Those standards will apply nation-wide because the safety of building construction is not based on local circumstances.

As another example, the Ministry of Health may have national standards regarding how immunization serum is stored. These standards will also be nation-wide because the correct storage of immunization serum is not based on local circumstances.

Section 4: Ministries and Councils - Communications and Conflicts

Communications between Sector Ministries and Councils

- ✓ A **ministry may communicate directly and cooperate with any sub-national administration**, as necessary. The ministry must, however, inform the provincial administration or the Capital administration when it communicates with a council within the province or within the Capital. (Sub-decree Roles – Provinces, Article 198; Sub-decree Roles – Capital, Articles 134 and 136)
- ✓ The Capital council must communicate with ministries to consult and cooperate in order to **address the needs of citizens** that the Capital, khan and sangkat councils cannot meet. (Sub-decree Roles – Capital, Article 136)

Resolution of Conflicts between Sector Ministries and Councils

- ✓ If there is any **disagreement between a ministry and a council**, the NCDD must facilitate the resolution of the disagreement in accordance with the applicable legal framework. If the NCDD cannot resolve the disagreement, the NCDD must report to the Royal Government. (Sub-decree Roles – Provinces, Article 200; Sub-decree Roles – Capital, Article 137)

Section 5: National-level: Appointment of Board of Governors and Administration Director

Board of Governors

- ✓ The Royal Government appoints a board of governors to each new council – one governor and a number of deputy governors. The board of governors has **advisory, management and reporting roles**. The board of governors is **accountable to the council**. (Organic Law, Article 155; Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ In addition to the governor's role as chairperson of the board of governors, the **governor has the responsibility to represent the Royal Government and ministries** in the area. The role to represent ministries in the area includes supervising, coordinating and directing all ministry line departments/offices that operate within the area of the council. In the governor's role as representative of the Royal Government and ministries, the governor is **accountable to the Royal Government and ministries**. (Organic Law, Article 154)

See Module 6 for more information about the governor and board of governors

Administration Director

- ✓ The Ministry of Interior appoints an **administration director** to each council based on the request of the governor and approval of the council. The administration director is **accountable to the board of governors and the council**. The Ministry of Interior also appoints deputy administration directors to each council. (Organic Law, Articles 183, 184; Sub-decree Roles – Province, Articles 42, 44, 99, 101, 160; Sub-decree Roles – Capital, Articles 42, 101)
- ✓ The **administration director is an assistant to the council, the board of governors and governor**. The administration director ensures that council personnel work in accordance with applicable legal frameworks, the council's procedures and decisions of the council and board of governors. (Organic Law, Article 184; Sub-decree Roles – Province, Articles 44, 48, 101, 105, 162, 166; Sub-decree Roles – Capital, Articles 44, 48, 103, 107)

Section 6: Governors: Representative of the Royal Government

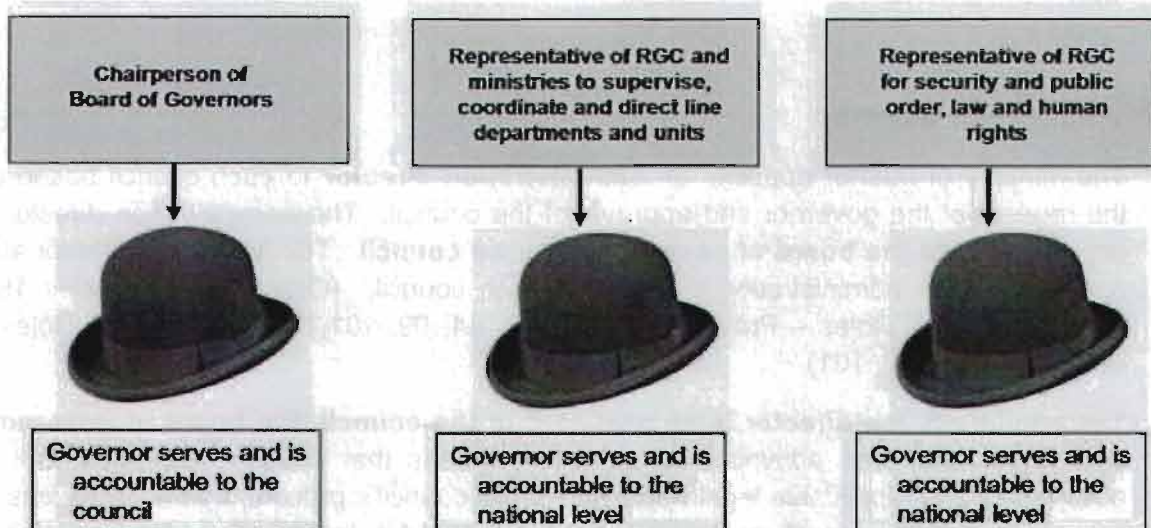
✓ The governor has three different roles (three 'hats') –

- **chairperson of the board of governors**
- **representative of the Royal Government and ministries** to supervise, coordinate and direct line departments/offices
- **representative of the Royal Government** for security and public order, law and human rights.

(Organic Law, Articles 139, 154)

See Module 6 for more information about the governor and board of governors

Three Hats of the Governor



✓ In his/her capacity as **representative of the Royal Government and ministries** to supervise, coordinate and direct line departments/offices (hat #2), a governor has the following duties to –

- **coordinate and direct** line departments/offices in the area in responding to **priority local needs**
- through the technical facilitation committee, the council and governor must coordinate and direct line departments/offices in the area to **integrate their plans and budgets into the plan and budget of the council**

Do you think that line departments/offices will have sufficient discretion to be able to respond to local needs?

- **guide** line departments/offices in the area to implement their roles in accordance with law, national policies and applicable legal frameworks
- **monitor and evaluate** directors/chiefs of line departments/offices
- consult with the council and then provide suggestions for **new appointments of directors/chiefs** of line departments/offices
- a provincial governor and the Capital governor must instruct a director of a line department to **correct any irregularity** or wrongdoing found. If no correction is made and the irregularity or wrongdoing is serious, the governor must report the matter directly to the concerned Ministry
 - a municipal, district or khan governor must report any irregularity or wrongdoing to its provincial or Capital governor. The provincial or Capital governor must instruct the line office chief to correct the irregularity or wrongdoing found. If no correction is made and the irregularity or wrongdoing is serious, the provincial or Capital governor must report the matter to the concerned ministry
- a provincial governor and the Capital governor may request in writing to a Minister that a director of a line department be **demoted in the event of an irregularity or wrongdoing** that cannot be justified
 - a municipal, district or khan governor must ask the provincial or Capital governor to make this request of the concerned Minister regarding the chief of a line office
- receive, comment on in advance, and sign the **reports** of line departments/offices to their ministries.

(Sub-decree Roles – Province, Articles 35, 92, 153; Sub-decree Roles – Capital, Articles 35, 94)

- ✓ A **governor must report regularly to the council** about the governor's activities and results in his/her work as representative of the Royal Government. The council may require the governor to report at a council meeting in the event that there is a problem related to the governor's work as representative of the Royal Government where the **problem impacts on legal interests of citizens or citizens have complained**. (Sub-decree Roles – Province, Articles 39, 96, 157)
- ✓ The council is entitled to provide recommendations and instructions to the governor in his/her role as representative of the Royal Government so that local priority needs and local challenges can be met. The **governor must accept** those **recommendations and instructions from the council** and apply them when coordinating and directing line units, and the governor must then report back to the council. (Sub-decree Roles – Province, Articles 39, 96, 157)
- ✓ The governor is also the **chairperson of the council's technical facilitation committee**. The technical facilitation committee is a critical meeting place for the council and line departments/offices and the forum for the council and line departments/offices to **coordinate their work**.

- ✓ In his/her capacity as representative for **security, public order, law and human rights** (wearing hat #3), the governor promotes awareness about laws, ensures that laws are implemented and that human rights are respected (Sub-decree roles – Province, Articles 36, 93, 154; Sub-decree Roles – Capital, Articles 36, 95)
- ✓ The governor is the **chief of the steering committee in charge of the military** in his/her area. In that capacity, the governor leads and coordinates relevant line departments/offices and administrations to maintain security and public order. (Sub-decree Roles – Province, Articles 36, 93, 154; Sub-decree Roles – Capital, Articles 36, 95)
- ✓ The governor may divide these duties among **deputy governors**. (Sub-decree Roles – Province, Articles 37, 94, 155; Sub-decree Roles – Capital, Articles 37, 96)

Section 7: Council Committees

Technical Facilitation Committee

- ✓ The Capital council and every provincial, municipal, district and khan council is obliged to establish a technical facilitation committee (**TFC**). Two or more councils, however, may share a TFC. (Organic Law, Articles 114, 125)
- ✓ The role of the TFC is to **study and provide advice** to the council and board of governors **about coordination of council work with the work of line departments/offices**. (Organic Law, Article 124; Sub-decree TFC – Province, Article 2; Sub-decree – TFC Capital, Article 2)
- ✓ The **composition** of the TFC for each council is very similar. Below is the composition of the **provincial TFC** (Sub-decree TFC – Province, Article 3).

COMPOSITION OF PROVINCIAL TECHNICAL FACILITATION COMMITTEE	
Provincial governor	Chair
One Provincial deputy governor	Deputy chair
Administration director of the provincial administration	Permanent member
<i>At least two</i> provincial councilors	Members
Directors of line departments and units in the province	Members
All directors of provincial administration divisions	Members
Two representatives of the province's Commune/Sangkat Association (at least one must be a woman)	Members
One representative of the provincial Women and Children's Affairs Committee (WCCC)	Member

- ✓ The composition of TFCs for other councils is very similar. The composition of other TFCs can be found in the Sub-decree TFC - Province and in the Sub-decree TFC – Capital.
- ✓ Every **ministry active in the area of a council**, therefore, has representatives who sit on the council's TFC.
- ✓ The key tasks of a TFC are to **provide advice to the council and board of governors** in these key areas –
 - formulation of the **council development plan**, investment program, expenditure framework and **budget**

- **integration of plans and budgets of line departments/offices** into the council development plan, investment program, expenditure framework and budget
- **coordination** between council work and the work of line departments/ offices
- development of participatory mechanisms, systems and procedures within the **unified administration**

The technical facilitation committee serves as an important **link between national line ministries and the sub-national councils**.

The technical facilitation committee:

- provides a mechanism for councils to **negotiate for line ministry priorities, activities** and budgeting in the area
- enables **integrated planning and budgeting** within the area of the council
- enables the council to **coordinate development across sectors** in its area (sector integration).

- **cooperation and coordination among councils**, including consultation mechanisms, responses to requests of other councils to meet local needs, and mechanisms to resolve disagreements among councils
- prepare councils to receive **functions and resources**, assess and promote effectiveness in implementing council functions and utilizing resources
- (Sub-Decree TFC – Province, Articles 4, 13, 22; Sub-decree TFC – Capital, Articles 4, 13)

See Module 7 for more information on the technical facilitation committee

Women and Children’s Consultative Committee

- ✓ The Capital council and every provincial, municipal, district and khan council is obliged to establish a women and children’s consultative committee (**WCCC**). (Organic Law, Article 114)
- ✓ The WCCC has the role to **provide advice and recommendations** to the council, council committees, the board of governors and governor about issues related to gender equality, women, youth and children. The WCCC assists the council, council committees, the board of governors and governor to make decisions that are **inclusive** of all citizens. (WCCC Prakas, Article 2)
- ✓ A council **cooperates with a number of line departments/offices** through its WCCC.
- ✓ The **composition** of the WCCC for provinces and the Capital is shown in the chart below. (WCCC Prakas, Article 3)

See Module 7 for more information on the women and children’s consultative committee

COMPOSITION OF CAPITAL AND PROVINCIAL COUNCIL WCCC		–
A female councilor selected by the council		Chairperson
A second councilor selected by the council		Vice chairperson
A female deputy governor		Vice chairperson
Director (or deputy) of the Department of Social Affairs, Veterans and Youth Rehabilitation		Vice chairperson
Director (or deputy) of the Department of Women's Affairs		Permanent member
A deputy administration director		Member
Director (or deputy) of the Department of Planning		Member
Director (or deputy) of the Department of Health		Member
Director (or deputy) of the Department of Rural Development		Member
Director (or deputy) of the Department of Education, Youth and Sports		Member
Director (or deputy) of the Department of Labour and Vocational Training		Member
Director (or deputy) of the Department of Agriculture		Member
Commissioner or a representative of the Police Commissariat		Member
Director or deputy director of Inter-Sectoral Division		Member
Chairperson (or deputy) of the Association of Commune/Sangkat Councils		Member
Representatives from other institutions or units as needed		Members

- ✓ The WCCCs of **municipal, district and khan councils** have a similar composition but they draw their members from line offices instead of line departments. The WCCC of municipal, district and khan councils also have as members the **focal persons responsible for women and children affairs for commune/sangkat councils** in their area. (WCCC Prakas, Article 3)
- ✓ Two WCCC members are entitled to **participate in any meeting** of the council, council committees and the board of governors, except for confidential meetings. The two WCCC members have the right to **fully contribute** during the meeting. (Organic Law, Articles 128 - 132; WCCC Prakas, Article 9)
- ✓ The council, committees and board of governors must **take into account recommendations** received from the WCCC and its members and must give due consideration to whether the recommendations can be implemented. (WCCC Prakas, Article 8)

Section 8: Sub-National Administrations

- ✓ When implementing council functions, the Capital administration and provincial, municipal, district and khan administrations must **communicate and cooperate with line departments/offices** in their area.

In the education sector, some functions will likely be transferred to commune councils, some functions will likely be transferred to district councils with other functions transferred to provincial councils. Some functions, however, will be retained by the Ministry of Education, Youth and Sports (Ministry of Education). The Ministry will likely delegate to departments of education and offices of education some of the functions it retains.

EXAMPLE

The **Ministry of Education** has the functions to set national standards for primary education, such as the hours for school and the mandatory subjects that must be taught, and also the function to monitor that those national standards are met. The Ministry of Education delegates to its district offices the function to monitor that national standards for education are met.

Provincial councils have the functions to hire primary school teachers, and the function to provide those teachers with on-going education to upgrade their skills and knowledge.

District councils have the functions to provide primary school education, including administering schools, construction of schools and procurement of school materials.

Commune/sangkat councils have the functions to collect data to assess needs for schools; to promote school attendance; to direct the district where schools should be built; to provide for the upkeep of schools; and to notify the district of extended school absences.

In order to effectively provide primary school education to children, the Ministry of Education, all councils and offices of education will need to be in communication, will need to cooperate and may need to collaborate. Each of these governmental actors has its own role to play in achieving the goal of providing primary school education.

The same applies to achieving goals in other sectors, such as health, natural resource and management, agriculture and others.

- ✓ The Capital council and provincial council **Planning and Investment Division** must –
 - communicate and cooperate with line departments/offices regarding the priority needs of the Capital or province, and the priority needs of municipalities, districts, communes and sangkats

- cooperate with line departments/offices in reviewing and providing comments to encourage investments in the Capital or province
 - cooperate with line departments/offices in monitoring and implementation of mechanisms to encourage investments in the Capital or province.
 - (Prakas Offices – Province, Article 4; Prakas Offices – Capital, Article 4)
- ✓ The **Inter-Sectoral Division** of provincial councils and the Capital council must –
- cooperate and coordinate to promote service delivery related to education, health and hygiene in the province
 - cooperate in education and dissemination of information related to disease prevention and public health services
 - cooperate and coordinate to solve problems related to assistance relief work for the poor, retirees, the disabled, orphans and other vulnerable persons
 - coordinate inter-sectoral activities in order to promote an enabling environment for local economic activities, investment and private sector development.
- (Prakas Offices – Province, Article 7; Prakas Offices – Capital, Article 8)
- ✓ The municipal council **Municipal Development Office** must cooperate with relevant offices in conducting research and providing comments on development in the municipality. (Prakas Offices – Province, Article 17)
- ✓ The **district council** Planning and Commune/Sangkat Support Office must communicate and cooperate with institutions and units regarding the priority needs of the district and of communes/sangkats in the district. (Prakas Offices – Province, Article 26)
- ✓ These are just some examples of how sub-national administrations must work together with line departments/offices in their area.

PART 2:

Summary of Module

- ✓ Relations at all levels of government, and within each level of government, will change as a result of the adoption of the Organic Law.
- ✓ The National Committee for Sub-National Democratic Development (NCDD) has overall responsibility for the implementation of the Organic Law. The Royal Government has a 10-year National Program and a 3-Year Implementation Plan to guide implementation of D&D reform.
- ✓ The NCDD works with ministries to identify which functions and resources will be transferred to councils at each sub-national level.
- ✓ The Ministry of Interior has a duty to supervise all the new councils as well as commune/sangkat councils. The Ministry of Interior also plays an advisory role.
- ✓ Each Ministry must identify and transfer (assign or delegate) appropriate Ministry functions to councils together with financial resources, personnel and capacity.
- ✓ The governors has three different roles – 1. chairperson of the board of governors; 2. representative of the Royal Government and ministries to supervise, coordinate and direct line departments/offices; and 3. Representative of the Royal Government for security and public order, law and human rights.
- ✓ Every council is obliged to establish a technical facilitation committee (TFC) to study and provide advice to the council and board of governors about coordination of council work with the work of line departments/offices.
- ✓ Every ministry active in the area of a council has representatives who sit on the council's TFC.
- ✓ Every council must establish a women and children's consultative committee to provide advice and recommendations to the council, council committees, board of governors and governor about issues related to gender equality, women, youth and children.
- ✓ A number of directors/chiefs or deputy directors/chiefs of line departments/offices sit as members of the WCCC in their area.
- ✓ When implementing council functions, every sub-national administration must communicate and cooperate with line departments/offices.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Technical Facilitation Committee

Discuss in small groups:

- How can the TFC change the previous relationship between the administration and line departments/offices?
- What do you think will be the challenges of the TFC?

EXERCISE TWO: Women and Children's Consultative Committee

The Council of Koma District in Kompong Speu province is meeting to discuss how to spend a recent charitable donation given to build and operate a sports facility.

Imagine that you are members of the District Koma WCCC. Identify what issues you will raise during the Council meeting so that the Council takes into account the needs of women, youth and children when making its decisions about the sports facility.

Modules for Understanding
and Training on the
Organic Law

Module 11:
Inter-Governmental Relations –
Provincial, Municipal, District,
Commune and Sangkat Councils

PART 1:

- 1. Introduction**
- 2. Critical Role of Commune/Sangkat Councils**
- 3. Provincial Council Relations**
- 4. District Council Relations**
- 5. Municipal Council Relations**

Section 1: Introduction

Governmental relationships of the past have been fundamentally re-defined by the Organic Law. In this new era of sub-national governance, the Capital, provincial, municipal, district and commune councils are autonomous in their respective areas. A council has no right to interfere with the deliberative space or the discretionary space of another council. A council, therefore, has no right to interfere with the political choices, policies, decisions or deikas of another council provided, of course, that the choices, policies, decisions and deikas comply with the Constitution, laws and other legal instruments.

Even though these councils are autonomous in their areas, however, they will have strong links with other councils. Councils will need to consult, to cooperate and to collaborate. Some councils, such as provincial councils, perform a support role for other councils. District councils, for instance, provide capacity development and other kinds of support to commune/sangkat councils in the district.

Each provincial, municipal, district, commune and sangkat council has **its own separate power** to make decisions, implement functions and use resources.

(Sub-decree Roles – Province, Article 174)

Think of sub-national government as a machine with different parts that must work together in order to perform optimally. In order for the machine to operate well, each of its parts must be strong and well-maintained. Each part must work in cooperation with all other parts. In the same way, successful sub-national governance in Cambodia requires that the different levels of council work productively together while respecting each other's autonomy. This means that it must be recognized that each council is democratically accountable downward to citizens and, therefore, must have the space to make political choices on behalf of their citizens. By working together cooperatively and respectfully, sub-national governance issues are more likely to be appropriately addressed and sector goals, such as the Cambodian Millenium Goals, are more likely to be achieved. The performance of each council should be strengthened by its relationships with other councils.

This Module examines the relations among sub-national councils within provinces.

Who are the actors involved in 'inter-governmental relations'?

Inter-governmental relations refer to relations –

- among ministries and between ministries and the NCDD
- among councils (at the same level, and at different levels)
- among the administrations of different councils
- between ministry line units and councils
- between the governor as representative of the Royal Government and ministry line units
- between the governor as representative of the Royal Government and councils.

Inter-governmental relations do not refer to the internal relationships within a council and its administration. For instance, inter-governmental relations do not include the relations

- between the council and the governor as chairperson of the board of governors
- between the council and the board of governors
- between the board of governors and the administration director
- between the administration director and council personnel.

What are the 'relations' in inter-governmental relations?

Examples of what inter-governmental relations might involve include –

- information-sharing and communicating
- coordinating
- cooperating
- collaborating
- supporting
- assisting technically
- legal compliance checking
- monitoring and evaluating.

Section 2: Critical Role of Commune/Sangkat Councils

- ✓ Commune/sangkat councils have **relations with all other levels of council** in the province. A commune council, therefore, has relations with its district council, with its provincial council, with other neighbouring commune and district councils, and probably with nearby municipal and sangkat councils. Similarly, a sangkat council will have relations with its municipal or district council, with its provincial council and also with other neighbouring councils.
- ✓ Commune/sangkat councilors play a critical role in sub-national governance. All sub-national councils in the province are **accountable to commune/ sangkat councils** because commune/sangkat councilors elect the new councils.
- ✓ Commune/sangkat councils must –
 - provide comments to and monitor its district/municipal and provincial council in order to ensure that those councils are **responding to the real needs** of local people
 - provide recommendations to other councils about **local needs** that commune/sangkat councils **cannot address on their own**
 - cooperate with other councils in promoting and facilitating **service delivery** and local development. (Sub-Decree Roles – Province, Article 185)
- ✓ Even though commune/sangkat councils are the 'lowest' level council, commune/sangkat councils have the **specific role** to hold the 'higher' councils accountable and to ensure that their **citizens' needs are being met**. This is the particular role of commune/sangkat councils because they are **closest to citizens** and, therefore, can best see local needs and priorities. This is the particular roles of commune/sangkat councils since they are directly elected to citizens – there is a **strong tie of democratic accountability** between commune/sangkat councils and their citizens.

When thinking about commune/sangkat councilors and the district council, **accountability** refers to commune/sangkat councils having some authority over the district council. This means commune/sangkat councils have

- the right to ask for and **receive information** from their district council
- the right to have their **voice heard**, understood and considered
- the right to **evaluate the activities** of the district council and demand actions be taken when the district council's performance is not satisfactory
- the right to vote differently in the next **election** of the district council.

Section 3: Provincial Council Relations

- ✓ Like all councils, provincial councils have the purpose to establish, promote and sustain **democratic development** in their areas. Provincial councils are **democratically accountable** downward to citizens and also to the commune/sangkat councilors who elected them. Provincial councils are also accountable to the Royal Government for complying with the Constitution, laws and other applicable legal instruments.
- ✓ In addition to performing its own work, a provincial council has **duties to support and empower all other councils** in the province. This section examines the provincial council's relations with all other councils in the province – district councils, municipal councils and commune/sangkat councils.

Support to other Councils

- ✓ The provincial council is responsible to provide **support to all councils** within the province. This support is provided by the provincial administration. (Sub-decree Roles – Province, Article 58; Prakas Offices – Province, Articles 3 - 7)
- ✓ The provincial administration's Planning and Investment Division –
 - cooperates with and supports all councils in the formulation and implementation of **development plans and investment programs**
 - provides technical support for **feasibility studies**, cost estimations and **project proposals**
 - **monitors, evaluates and supports** the capacity and work performance of other councils. (Sub-decree Roles – Province, Article 58; Prakas Offices – Province, Article 4)
- ✓ The provincial council's Finance Division supports municipal and district councils to **prepare and implement** their **budgets**. The Finance Division also supports municipal and district councils to assist commune/sangkat councils to prepare commune/sangkat budgets. (Sub-decree Roles – Province, Article 58; Prakas Offices – Province, Article 5)
- ✓ More generally, the provincial council must work together with municipal and district councils in order to **respond to the needs of commune/sangkat councils**. (Sub-decree Roles – Province, Article 185)

EXAMPLE

Commune/sangkat councils in a district may be facing a problem with youth violence. They may have already tried different strategies to deal with the problem, but with no success. The following are examples of the support that commune/sangkat councils may seek from their district council and provincial council

- request support to raise the issue in their communities so that citizens' voice is heard about how to deal with the problem (civic engagement)
- request that a provincial forum be organized so that experience can be shared about how the problem of youth violence has been dealt with
- request support from the district and provincial councils so that commune/sangkat councils can open recreation centres that offer programs for troubled youth
- request that the district open a recreation centre in the district that offers programs for troubled youth.

The legal framework requires that the district council and provincial council work together in order to meet the needs of commune/sangkat councils in dealing with the problem of youth violence. (Sub-decree Roles – Province, Article 185)

- ✓ Provincial councilors do not *personally* provide support to other councils. The provincial council delegates these tasks to the **provincial board of governors**. (Sub-decree Roles – Province, Article 196)
- ✓ In providing support, the provincial council and provincial board of governors must **respect the autonomy of all councils**. (Sub-decree Roles – Province, Article 174) In other words, the provincial council and board of governors cannot instruct another council on what to do or how to do it.
- ✓ Provincial councils have the additional responsibility to communicate and cooperate with the NCDD and Ministries regarding the **allocation and transfer of functions and resources** (financial, assets and personnel) from national level to sub-national councils. In performing this role, the provincial council must **consult with all other sub-national administrations** in their province. The provincial council, therefore, must gather the ideas and opinions of councils in the province about what functions and resources should (and should not) be transferred to them. The provincial council must represent those ideas and opinions at the national level. (Sub-decree Roles - Province, Articles 58, 195; Prakas Offices - Province, Article 7)
- ✓ Once decisions are made by the NCDD and Ministries, the provincial council must ensure that the transfer of functions and resources to councils in the province is **well coordinated**. (Sub-decree Roles – Province, Article 195)

See Module 13 for more information on transferring functions

Legal Compliance Checking

- ✓ Provincial councils have been delegated the function to ensure that other councils comply with the **Constitution, laws, legal frameworks and national policies**. (Sub-decree Roles – Province, Articles 195, 196)

- ✓ The provincial council is responsible to conduct legal compliance checking of bylaws and decisions of **municipal and district councils**. (Prakas Offices – Province, Article 4)
- ✓ The provincial council does not itself conduct legal compliance checking of bylaws and decisions of **commune/sangkat councils**. Instead, the provincial council supports municipal and district councils to conduct legal compliance checking of bylaws and decisions of commune/sangkat councils. (Sub-decree Roles – Province, Articles 74, 196; Prakas Offices – Province, Article 4)

EXAMPLE

A district council issues a bylaw that prohibits citizens from migrating. Such a bylaw violates Article 40 of the Constitution that provides –

- Khmer citizens shall have the right to travel and settle abroad and return to the country.

Remember that the provincial council and board of governors must **respect the autonomy, the deliberative and political space, and the discretionary space of all councils**.

Legal compliance checking is about ensuring that bylaws and decisions technically comply with the Constitution, laws, legal frameworks and national policies.

As long as a council legally complies, the provincial council and board of governors have **no right to instruct the council** on what to do or how to do it. (Sub-decree Roles – Province, Article 174)

- ✓ As part of its duty to ensure that all councils comply with the Constitution, laws, legal frameworks and national policies, the provincial council must –
 - develop strategies to **build the capacity** of sub-national councils in the province and their personnel so that councils and their personnel understand how to work in accordance with the Constitution, laws, legal frameworks and national policies
 - **direct, coordinate and support** sub-national councils in the province to implement their functions and utilize their resources in accordance with the Constitution, laws, legal frameworks and national policies
 - ensure that commune/sangkat councils receive appropriate **support from municipal and district councils** to work in accordance with the Constitution, laws, legal frameworks and national policies. (Sub-decree Roles – Province, Article 196)

Dissemination and Consultative Forums

- ✓ In the fourth quarter of every year, the provincial council must conduct dissemination and consultative forums in every municipality and district in the province. These forums can be important mechanisms for –
 - **transparency**
 - **civic engagement** –
 - **consultation**
 - **participation**
 - **citizen voice**
 - **dialogue between government and citizens about development, choices, rights and services**
 - **inclusiveness - involving marginalized citizens**
 - **democratic accountability.**

(Sub-decree Roles – Province, Article 9)
- ✓ The forums are attended by provincial councilors and by the provincial board of governors, and –
 - when the forum is held in a municipality, the municipal councilors and municipal board of governors must also be present
 - when the forum is held in a district, district councilors and the district board of governors must also be present. (Sub-decree Roles – Province, Article 9)
- ✓ In addition, at every forum, **commune and sangkat councilors** in the area attend as well as representatives of **people's communities** and other relevant people. (Sub-decree Roles – Province, Article 9)
- ✓ The purpose of the forums is for the provincial council to –
 - **report** on the provincial council's activities over the previous year
 - **respond to requests and proposals** of participants: municipal councils, district councils, commune councils, sangkat councils, representatives of people's communities and other relevant people
 - **discuss and clarify issues** that are raised by participants
 - **collect ideas and comments** from participants in order to improve the performance of the provincial council and its responsiveness to local needs. (Sub-decree Roles – Province, Article 9)
- ✓ The provincial board of governors, on the council's behalf, consolidates and evaluates the results of the forum within 15 days. The **report** of the board of governors must

EXAMPLE

At a forum, participants might –

- propose that the council build a specialized children's hospital in the province
- seek clarification about why the council did not spend all of the budget it had allocated for food security.

include ways that the council can respond to the needs raised during the forums. (Sub-decree Roles – Province, Article 9)

- ✓ Where an issue is raised that is **outside the scope of duties of the provincial council**
 - the provincial administration must consult the responsible councils so that they can address the issues
 - or the provincial administration must report to the Ministry of Interior where issues relate to national level responsibilities.(Sub-decree Roles – Province, Article 9)
- ✓ Like other council reports, the report on the forum is **available to the public**. (Organic Law, Article 51)

Relations with Line Departments

- ✓ All of the new councils will have close relations with line departments/offices in their areas. This relationship is central to the concept of **unified administration**.
- ✓ Councils and line departments/offices cannot work in isolation from each other. They must **communicate, cooperate and collaborate** in order to improve governance and improve development outcomes in their areas.

See Module 4 for more information on unified administration
- ✓ Like every new council, the provincial council has a **technical facilitation committee** (TFC). The TFC includes the following members: governor (chair), councilors, council personnel, as well as directors of line departments that are providing services in the area of the council. The director of the department of health, for instance, is a member of the provincial council's TFC. (Sub-decree TFC – Province, Article 3)

See Module 7 for more information about the technical facilitation committee and about the women and children's consultative committee
- ✓ The overall role of the TFC is to provide advice to the provincial council and provincial board of governors about **coordination** of the council's work with the work of line departments. (Sub-decree TFC – Province, Article 2).
- ✓ The provincial council, therefore, interacts with line departments through the council's TFC.
- ✓ Like every new council, the provincial council has a **women and children's consultative committee** (WCCC). The role of the WCCC is to ensure that the council promotes gender equality and takes into account the needs of **women, youth and children** when making policies and decisions, when issuing bylaws, and in its activities. The provincial council WCCC includes the following members: councilors, a deputy governor, council personnel, as well as **directors or deputy directors** of a number of **line departments**. (Organic Law, Article 128; WCCC Prakas, Article 7)
- ✓ Another way that the provincial council interacts with line departments, therefore, is through the council's WCCC.

Provincial Council Committees

- ✓ The provincial council may appoint **representatives of other councils** (as well as citizens/community members) to sit as members of a provincial council committee, sub-committee or working group. (Sub-decree Roles – Province, Article 20)
- ✓ As discussed above, the provincial council TFC and WCCC both include members who are **directors or deputy directors of line departments/offices**.
- ✓ In addition, both the TFC and WCCC have members who are representatives of the **Provincial Association of Communes/Sangkats**. (Sub-decree TFC – Province, Article 3; WCCC Prakas, Article 3)
- ✓ Council committees, therefore, provide an opportunity for the council to interact with citizens, other councils and line departments/offices.

See Module 7 for more information about council committees

Development Planning

- ✓ The Organic Law provides that every council must **consult** with all the other councils in its area about the formulation and implementation of its **development plan**. The provincial council, therefore, must consult with all municipal, district and commune/sangkat councils in the province regarding the provincial development plan. (Organic Law, Article 38; Planning Sub-decree, Article 13)
- ✓ The provincial council must hold a **special consultative meeting** while formulating its development plan and investment program. This special consultative meeting is attended by: chairpersons of municipal and district councils, and chiefs of municipal and district WCCCs. (Planning Sub-decree, Articles 14, 15)
- ✓ **Commune/sangkat councils** do not attend these special consultative meetings. The provincial council, therefore, must develop other mechanisms to consult with commune/sangkat councils about development planning.
- ✓ As discussed above, the provincial council must also **support municipal, district and commune/sangkat councils** in formulating and implementing their respective development plans and budgets. (Sub-decree Roles – Province, Article 58)
- ✓ The **provincial council TFC** is very involved in the development planning process, including members who are directors of line departments. (Planning Sub-decree, Articles 7, 9, 11)

See Module 14 for more information about planning

See Module 10 for more information about the technical facilitation committee and planning

Communications

- ✓ Until municipal and district councils have appropriate communication systems in place, the provincial governor represents the Royal Government in linking communication from the national level to those councils. (Prakas 1249 on Office-Taking Meeting, Article 14)

- ✓ A ministry may communicate directly and cooperate with any sub-national administration, as necessary. The ministry must, however, **inform the provincial administration** when it communicates with a council within the province. (Sub-decree Roles – Provinces, Article 198)

Boards of Governors

- ✓ The boards of governors of all councils and commune/sangkat chiefs must maintain good communication in their daily work. (Sub-decree Roles – Province, Article 186)

Development Planning

See Article 198 of the Sub-decree on Roles of the Ministry of the Interior

The Ministry of the Interior is responsible for coordinating and supervising the development planning process at the provincial level. It ensures that the provincial development plan is consistent with the national development plan and the provincial budget. The Ministry also monitors and evaluates the implementation of the provincial development plan.

See Article 186 of the Sub-decree on Roles of the Ministry of the Interior

At the provincial level, the Provincial Board of Governors is responsible for coordinating and supervising the development planning process. It ensures that the provincial development plan is consistent with the national development plan and the provincial budget. The Provincial Board of Governors also monitors and evaluates the implementation of the provincial development plan.

The Provincial Board of Governors is composed of representatives from the provincial government, the provincial council, and the provincial people's representatives committee.

The Provincial Board of Governors is responsible for coordinating and supervising the development planning process at the provincial level. It ensures that the provincial development plan is consistent with the national development plan and the provincial budget.

Section 4: District Council Relations

- ✓ There is a particularly **close relationship between a district council and commune/sangkat councils** in the district.
- ✓ Some commune/sangkat councils are quite small and are likely to find it difficult to efficiently meet some of the needs of their citizens. District councils, therefore, have the role to **work together** with commune/sangkat councils to meet those needs. In every meeting, therefore, the district council must take decisions about how to **consult** with commune/sangkat councils in the district (Organic Law, Articles 97 – 104; Sub-decree Roles – Province, Articles 132, 184)
- ✓ The relationship with district councils is designed to **strengthen and empower commune/sangkat councils** and to ensure that local needs are met. The district council and district board of governors, therefore, must **respect the autonomy of commune/sangkat councils**. (Sub-decree Roles – Province, Article 174) In other words, the role of the district is to maximize – not interfere with – the **deliberative space** of commune/sangkat councils.
- ✓ District councils, like all the new councils, are accountable not only to citizens, but also to the commune/sangkat councilors who elected them. It is important, therefore, that district councils understand and respond to the needs and priorities of commune/sangkat councils. (Organic Law, Article 98)
- ✓ For this reason, a district council must establish mechanisms for consultation and discussion with commune/sangkat councils in order to ensure that district council decisions and activities are responsive to the priority needs of commune/sangkat councils and citizens in the district. (Sub-decree Roles – Province, Article 116) It is then the responsibility of districts to raise needs and priorities of commune/sangkat councils with the provincial council.

Support to Commune/Sangkat Councils

- ✓ District councils are responsible to assist commune/sangkat councils to establish, promote and sustain **democratic development**. (Organic Law, Article 97; Sub-decree Roles – Province, Article 115)
- ✓ The district council must **develop the capacity** of commune/sangkat councils to **receive functions and resources**, and to implement functions and use resources in ways that establish, promote and sustain democratic development. This means that commune/sangkat councils must have the capacity to make good **political choices** when implementing their functions and using their resources so that their decisions are **responsive** to real local needs.
 - The district council must **evaluate** commune/sangkat council capacity at least once every year.
 - The district council must then arrange for capacity building **training** for commune/sangkat councils and their personnel based on the results of the evaluation. (Organic Law, Article 99; Sub-decree Roles – Province, Article 122)

- Every district council has an office to support commune/sangkat councils in the district – the **Planning and Commune/Sangkat Support Office**. (Organic Law, Article 181; Prakas Offices – Province, Article 26)

EXAMPLE

Commune/sangkat councils may have the function to hire state pre-school teachers. Their personnel, however, do not have experience in interviewing teachers. As a result, many of the teachers they have hired are not performing well.

The district council may decide to arrange for personnel of commune/sangkat councils to receive training on interviewing skills.

- ✓ Responsibilities of the Planning and Commune/Sangkat Support Office include to –

- support commune/sangkat councils to **analyze and evaluate development** in their areas
- support commune/sangkat councils to prepare and implement their **development plans and budgets**
- communicate and cooperate with relevant **institutions and line offices** regarding priority needs of communes and sangkats
- **mobilize resources** for development of the district and communes/sangkats
- **monitor and evaluate** the use of commune/sangkat investment funds.

(Prakas Offices – Province, Article 26)

In monitoring and evaluating the use of commune/sangkat investment funds, the district council and district board of governors must **respect the autonomy of commune/sangkat councils**. (Sub-decree Roles – Province, Article 174)

- ✓ The district council must also determine and **respond to requests from commune/sangkat councils** in the district. The district council and commune/ sangkat councils must integrate into their respective development plans, investment programs and budgets specific strategies and activities that respond to the needs and requests of commune/sangkat councils. (Organic Law, Articles 97, 100; Sub-decree Roles – Province, Article 115)

- ✓ The district council must support, cooperate and coordinate with commune and sangkat councils in the district in order to **promote quality service delivery and development**. The district council must also promote **inter-commune/ sangkat cooperation**. (Sub-decree Roles – Province, Articles 117, 173)

The district board of governors is required to conduct **studies** in order to inform the district council how it can cooperate with and support commune/sangkat councils, and how the district council can respond to commune/sangkat council requests, suggestions and challenges. (Sub-decree Roles – Province, Article 147)

- ✓ District councils also work together with commune and sangkat councils to promote **civic engagement** (public participation) in the district. (Organic Law, Article 97; Sub-decree Roles – Province, Articles 115, 122)

- ✓ Where the administrative capacity or resources of a commune/sangkat are inadequate, the district council can coordinate among two or more commune/sangkat councils to **share personnel or assets**. (Sub-decree Roles – Province, Article 124)

- ✓ The district council may also arrange for a commune/sangkat council to **use district personnel** in order to boost the administrative capacity or resources of that commune/sangkat administration. In this case, the involved district personnel would be accountable to the commune/sangkat council for their activities. The district personnel would also be accountable to the district council for complying with applicable laws and other legal instruments. (Sub-decree Roles – Province, Article 124)
- ✓ In providing support, the district council must **respect the autonomy of commune/sangkat councils**. The district council must not take over the work of a commune/sangkat council. (Sub-decree Roles – Province, Article 125)
- ✓ In the event that a commune/sangkat council requires more support to perform its duties and main functions than the district council can provide, the district council and the commune/sangkat council must report in writing to the Ministry of Interior. (Sub-decree Roles – Province, Articles 126, 127)

Legal Compliance Checking

- ✓ The provincial council conducts legal compliance checking of **bylaws and decisions of district councils**. (Sub-decree Roles – Province, Article 196; Prakas Offices – Province, Article 4)
- ✓ District councils conduct legal compliance checking of **bylaws and decisions of commune/sangkat councils**. (Sub-decree Roles – Province, Articles 74, 196; Prakas Offices – Province, Article 4)

Rights of Commune/Sangkat Councils

- ✓ Commune/sangkat chiefs have the **right to attend and participate in district council meetings**. A commune/sangkat chief may discuss, comment on and make a request related to his/her commune/sangkat for the district council to consider.
 - A commune/sangkat chief who participates in a district council meeting must respect the district council's internal rules and the commune/sangkat chief does not have the right to vote on any matter.
 - After the meeting, the commune/sangkat chief must **report back** to his/her council and disseminate information about the district council meeting to citizens. (Sub-decree Roles – Province, Article 119)
- ✓ In addition, one or more **district councilors** must be assigned to **attend commune/sangkat council meetings**. The district councilors must –
 - **report** to the commune/sangkat council about district council activities and decisions
 - **clarify issues** raised by commune/sangkat councilors
 - collect **requests** and **suggestions** of commune/sangkat councils and also **challenges** that commune/sangkat councils cannot resolve on their own. (Sub-decree Roles – Province, Article 120)

- ✓ The district councilors who participate in a commune/sangkat council meeting must respect the commune/sangkat council's internal rules. The district councilors have **no right to vote** on any matter. (Sub-decree Roles – Province, Article 120)
- ✓ The district councilors who participate in the commune/sangkat council meeting must prepare a **written report** and submit it to the district board of governors. The district board of governors must **address immediately** those commune/sangkat requests, suggestions and challenges that are within the authority of the board of governors. (Sub-decree Roles – Province, Article 120)
- ✓ For those requests, suggestions and challenges that are within the authority of the district council, the district board of governors must conduct **studies** and **consultations** and submit information to the district council for consideration and decision. (Sub-decree Roles – Province, Article 120)

Dissemination and Consultative Forums

- ✓ In June of every year, the district council must conduct dissemination and consultative forums in the communes and sangkats in the district. These forums are important mechanisms for –
 - **transparency**
 - **civic engagement** –
 - **consultation**
 - **participation**
 - **citizen voice**
 - **dialogue between government and citizens about development, choices, rights and services**
 - **inclusiveness - involving marginalized citizens**
 - **democratic accountability.**
 (Sub-decree Role – Province, Article 121)

- ✓ The forums are attended by district councilors and by the district board of governors, and –
 - **commune/sangkat councilors in the district**
 - representatives of people's communities
 - other relevant people as decided by the district council. (Sub-decree Role – Province, Article 121)

- ✓ The purpose of the forums is for the district council to –
 - **inform** about the district council's activities over the previous year
 - **respond to requests** of participants: commune/sangkat councils, representatives of people's communities and other relevant people
 - **discuss and clarify issues** that are raised by participants

- **collect ideas and comments** from participants in order to improve the performance of the district council and its responsiveness to local needs. (Sub-decree Role – Province, Article 121)
- ✓ The district board of governors, on the council's behalf, consolidates and evaluates the results of the forum within 15 days. The **report** of the board of governors must include ways to respond to the needs raised in the forums. A copy of the report must be provided to the provincial administration for any necessary action. (Sub-decree Role – Province, Article 121)
- ✓ Where an issue is raised that is **outside the scope of duties of the district council**, the district administration must consult the responsible councils so that they can address the issues. Where an issue is raised that relates to a national level responsibility, the provincial board of governors must report to the Ministry of Interior. (Sub-decree Roles – Province, Article 121)
- ✓ Like other council reports, the report on the forum is **available to the public**. (Organic Law, Article 51)

District Council Relations with Line Offices

- ✓ A district council will have close relations with the line offices in the district. This close relationship is central to the concept of **unified administration**.
- ✓ The district council and line offices cannot work in isolation from each other. They must **communicate, cooperate and collaborate** in order to improve governance and improve development outcomes in the district.

See Module 4 for more information on unified administration
- ✓ The district council's **technical facilitation committee** (TFC) includes the following members: governor (chair), councilors, council personnel, as well as chiefs of line offices that are providing services in the area of the council. All commune/sangkat chiefs in the district are also members of the district TFC. (Sub-decree TFC – Province, Article 21)
- ✓ The overall role of the TFC is to provide advice to the district council and district board of governors about **coordination** of the council's work with the work of line offices. (Sub-decree TFC – Province, Article 2).
- ✓ The district council's **women and children's consultative committee** (WCCC) has the role to ensure that the council promotes gender equality and takes into account the needs of **women, youth and children** when making policies and decisions, when issuing bylaws, and in its activities. The district council WCCC includes the following members: councilors, a deputy governor, council personnel, as well as chiefs or deputy chiefs of a number of line offices. (Organic Law, Article 128; WCCC Prakas, Articles 3, 7)

See Module 7 for more information about the technical facilitation committee and about the women and children's consultative committee

- ✓ Another way that the district council interacts with line offices, therefore, is through the council's WCCC.

District Council Committees

- ✓ The district council may appoint **representatives of commune/sangkat councils** to a district council committee, sub-committee or working group (also district personnel, citizens, representatives of people's communities and other relevant stakeholders). (Sub-decree Roles – Province, Article 138)

See Module 7 for more information about council committees
- ✓ As discussed above, the district council TFC and WCCC both include members who are **chiefs or deputy chiefs of line offices**. (Sub-decree TFC – Province, Article 21; WCCC Prakas, Article 3)
- ✓ In addition, **all commune/sangkat chiefs** in the district are members of the district council TFC. **Commune/sangkat focal persons** for women and children's affairs each sit as members of the district council WCCC. (Sub-decree TFC – Province, Article 21; WCCC Prakas, Article 3)
- ✓ Council committees, therefore, provide an opportunity for the council to interact with citizens, other councils and line offices.

Development Planning

- ✓ The Organic Law provides that every council must **consult** with all the other councils in its area about the formulation and implementation of its **development plan**. The district council, therefore, must consult with all commune/sangkat councils in the district regarding the district development plan. (Organic Law, Article 38; Planning Sub-decree, Article 13)

See Module 14 for more information about planning
- ✓ The district council must hold a **special consultative meeting** while formulating its development plan and investment program. This special consultative meeting is attended by: chiefs of all commune/sangkats and commune/sangkat focal persons for women and children's affairs in the district. (Planning Sub-decree, Articles 14, 16)
- ✓ The district council must consult and discuss with commune/sangkat councils what **strategies, programs and activities** to include in the district development plan and investment program in order to respond to commune/sangkat council needs and requests. The district council and commune/sangkat councils must also discuss the district and commune/sangkat **budgets** and expenditure frameworks. (Sub-decree Roles – Province, Article 118)
- ✓ The **provincial council must support** the district council in formulating and implementing the district development plan and budget. (Sub-decree Roles – Province, Article 58)
- ✓ In addition, as discussed above, the district council participates in the provincial council's development planning process. (Planning Prakas, Articles 13 – 15)

Revenue Sharing

- ✓ The district council must **share** certain **revenue** with communes and sangkats in the district. The district council shares revenues it receives from licensing, service fees and charges, and non-tax revenue. The allocation of this revenue will be determined by the *Law on Sub-National Administration Financial Regime and Management of Assets*. (Organic Law, Article 248)

See Module 15 for more information about revenue sharing and fiscal decentralization

Communications

- ✓ Until district councils have appropriate communication systems in place, the provincial governor will represent the Royal Government in **linking communication from the national level** to district councils. (Prakas 1249 on Office-Taking Meeting, Article 14)

Boards of Governors

- ✓ The district board of governors and commune/sangkat chiefs must keep in contact and **maintain good communication** in order to effectively and efficiently implement their daily work. (Sub-decree Roles – Province, Article 186)

Section 5: Municipal Council Relations

- ✓ Like communes/sangkats and districts, there is a **close relationship** between the municipal council and sangkat councils in the municipality. Unlike communes/sangkats in districts, however, **sangkat councils are under the supervision and management of the municipal council.**

Why are sangkats in municipalities treated different?

An **urban area** is a **geographic, social and economic unit** with a high population density and high levels of interaction and inter-dependence. Urban areas rely economically on non-agricultural activities that may include manufacturing, industry and services. Rural areas are different, with social capital and interaction associated more with villages, and with economic reliance primarily agriculture-based.

Since urban areas are a single geographic, social and economic unit, there is a need for **coherent and unified urban governance and development.** In order to ensure that there is coherent and unified urban governance and development, sangkat councils are under the supervision and management of the municipal council.

Overview of Relations between Municipal Councils and Sangkat Councils

- ✓ Municipal councils are **democratically accountable** to citizens and also accountable to the sangkat councilors in the municipality.
- ✓ Despite this accountability arrangement, sangkats in a municipality are under the **supervision and management of the municipal council.** (Organic Law, Article 111)
 - Sangkat councils (and also khan councils) do not receive their functions directly from the national level, as do other councils. Instead, the municipal council **delegates** some of its **functions** to sangkat councils. The municipal council delegates functions with the purpose to establish, promote and sustain democratic development in its area. (Organic Law, Article 112)
 - Sangkat councils in municipalities have a **budget** in order to implement their functions and legal duties. The budgets of sangkat councils are included in the budget of the municipal council, unlike other councils that have their own separate budgets. (Organic Law, Article 244)
- ✓ Importantly, at every municipal council meeting, the council must consider how to **consult with sangkat councils.** (Sub-decree Roles – Province, Article 70)
- ✓ Also importantly, the municipal council **consults, coordinates and cooperates closely** with sangkat councils in order to identify and address local needs. The municipal

administration has an office that is responsible for relations with sangkat councils. (Sub-decree Roles – Province, Articles 64, 112, 180)

Delegation of Functions to Sangkat Councils

✓ As mentioned above, sangkat councils do not receive their functions directly from the national level, as do other councils. Instead, the municipal council **delegates** some of its own **functions** to sangkat councils. (Organic Law, Article 112)

✓ The municipal council decides what functions to delegate to sangkat councils through **consultations with sangkat councils** in the municipality. The consultations include discussions about which councils can appropriately and effectively implement the functions, which functions should be retained by the municipal council and which should be delegated to sangkat councils. (Sub-decree Roles – Province, Article 181)

Strategic Framework for D&D Reform & the NSDP – Principle of Subsidiarity

The Royal Government's Strategic Framework for D&D Reform adopts the principle of subsidiarity (page 12), as does the National Strategic Development Plan (page 37). Internationally, the principle of subsidiarity is that:

- **a function should be transferred to the lowest level (council closest to the people) that can efficiently and effectively implement the function.**

It should be expected over the coming years, therefore, that significant functions will be transferred to sub-national councils.

See Module 13 for more information on transferring functions

Support to Sangkat Councils

✓ The municipal council must actively provide capacity development support to sangkat councils so that sangkat councils have the **capacity to receive new delegated functions** from the municipal council. (Sub-decree Roles – Province, Article 180)

✓ In addition, the municipal council must **provide the resources** (finances and personnel) and capacity development required for sangkat councils and their personnel to implement delegated functions effectively and in accordance with the Constitution, laws, legal frameworks and national policies. (Sub-decree Roles – Province, Articles 182, 183)

EXAMPLE

The municipal council is transferred the function to dispose of solid waste in the municipality. The municipal council delegates to sangkats in the municipality the functions to –

- monitor the quality of residential waste pick-up in the sangkat
- put in place garbage bins in public places in the sangkat and arrange for them to be emptied
- recommend locations within the sangkat to place large solid waste containers for commercial use.

When the municipal council delegates these functions to sangkat councils, the municipal council must also transfer to sangkats the finances and personnel necessary to implement the functions, as well as any necessary capacity development.

In order to place empty garbage bins in public places, for instance, a sangkat council will need financial resources to hire personnel to perform the function or to contract with the private sector to perform the function.

In order to be able to make good recommendations about locations to place large solid waste containers, sangkats may need some training to learn about technical criteria they can apply when developing their recommendations.

✓ Every municipal council has an office to support sangkats in the municipality - the **Planning and Sangkat Support Office**. (Prakas Offices – Province, Article 17)

✓ Responsibilities of the Planning and Sangkat Support Office include to –

- facilitate development **cooperation and service delivery among sangkats**
- evaluate and provide advice about the **capacity needs** of sangkat councilors
- respond to **requests, suggestions and challenges** of sangkat councils
- support sangkat councils in preparing and implementing their **development plans**
- communicate and cooperate with relevant **institutions and line offices** regarding priority needs of sangkats
- **mobilize resources** for development of sangkats
- review conditions for sangkats to receive **functions and resources**
- monitor and evaluate the use of sangkat **investment funds**.

(Prakas Offices – Province, Article 17)

The municipal board of governors must conduct studies so that it can provide good advice to the municipal council about –

- how to address sangkat council requests and challenges
- how to support sangkat councils
- delegating functions to sangkat councils.

(Sub-decree Roles – Province, Article 86)

✓ The municipal council must also organize consultations with sangkat councils in order to **coordinate cooperation among sangkat councils** in responding to local needs. (Sub-decree Roles – Province, Article 180)

Legal Compliance Checking

- ✓ The municipal council is responsible for checking that the **bylaws and decisions** of **sangkat councils** comply with the Constitution, laws and applicable legal frameworks. The municipal board of governors performs this task on behalf of the council. (Sub-decree Roles – Province, Article 74)
- ✓ In the event that a sangkat council has not complied or has acted beyond the scope of authority delegated to it by the municipal council, the municipal board of governors will instruct the sangkat council in writing to rectify the matter. If the sangkat council does not rectify the matter within 15 days, the municipal council must **report the matter to the provincial council**. (Sub-decree Roles – Province, Article 74)
- ✓ The provincial council conducts legal compliance checking of **bylaws and decisions of municipal councils**. (Sub-decree Roles – Province, Article 196; Prakas Offices – Province, Article 4)
- ✓ The **provincial council** also supports municipal councils to review the legality of bylaws and decisions of the sangkat councils. (Sub-decree Roles – Province, Article 74; Prakas Offices – Province, Article 4)

Rights and Duties of Sangkat Councils

- ✓ Sangkat councils are responsible for –
 - advising and consulting with the municipal council to ensure that the municipal council is **accountable and responding to the real needs** of local people and sangkat councils
 - providing recommendations to the municipal council about **local needs** that the sangkat councils **cannot address on their own**
 - implementing functions that the municipal council has delegated to sangkat councils. (Sub-Decree Roles – Province, Articles 179, 180, 185)
- ✓ Within the scope of their authority, sangkat councils have the power to make their **own decisions**. (Sub-decree Roles – Province, Article 174)
- ✓ There are no provisions giving sangkat chiefs the right to **attend municipal council meetings** (remember that commune/sangkat chiefs in districts do have the right to attend district council meetings). Municipal council meetings, however, are public and, therefore, municipal councilors should be entitled to attend.

What mechanisms do you think would be effective to ensure that sangkat councils have meaningful opportunities to advise and consult with the municipal council and to ensure that the municipal council is accountable?

Dissemination and Consultative Forums

- ✓ In June of every year, the municipal council must conduct dissemination and consultative forums in every sangkat in the municipality. These forums are important mechanisms for –
 - **transparency**
 - **civic engagement** –

- **consultation**
- **participation**
- **citizen voice**
- **dialogue between government and citizens about development, choices, rights and services**
- **inclusiveness - involving marginalized citizens**
- **democratic accountability.**

(Sub-decree Roles – Province, Article 65)

- ✓ The forums are attended by municipal councilors, the municipal board of governors, **all sangkat councilors in the municipality**, as well as representatives of people's communities and other relevant people. (Sub-decree Roles – Province, Article 65)
- ✓ The purpose of the forums is for the municipal council to –
 - **inform** about the municipal council's activities since the last forum
 - **respond to requests** of participants: sangkat councils, representatives of people's communities and other relevant people
 - **discuss and clarify issues** that are raised by participants
 - **collect ideas and comments** from participants in order to improve the performance of the municipal council and its responsiveness to local needs. (Sub-decree Roles – Province, Article 65)
- ✓ The municipal board of governors, on the council's behalf, consolidates and evaluates the results of the forum within 15 days. The **report** of the board of governors must include ways that the council can respond to the needs raised during the forums. (Sub-decree Roles – Province, Article 65)
- ✓ Where an issue is raised that is **outside the scope of duties of the municipal council**, the municipal administration must consult the responsible councils so that they can address the issues. Where an issue is raised that relates to a national level responsibility, the provincial board of governors must report to the Ministry of Interior. (Sub-decree Roles – Province, Article 65)
- ✓ Like other council reports, the report on the forum is **available to the public**. (Organic Law, Article 51)

Municipal Council Relations with Line Offices

- ✓ A municipal council will have close relations with the line offices in the municipality. This close relationship is central to the concept of **unified administration**.
- ✓ The municipal council and line offices cannot work in isolation from each other. They must **communicate, cooperate and collaborate** in order to improve governance and improve development outcomes in the municipality.

See Module 4 for more information on unified administration

- ✓ The municipal council's **technical facilitation committee** (TFC) includes the following members: governor (chair), councilors, council personnel, as well as chiefs of line offices that are providing services in the area of the council. All sangkat chiefs in the municipality are also members of the district TFC. (Sub-decree TFC – Province, Article 12)
- ✓ The overall role of the TFC is to provide advice to the municipal council and municipal board of governors about **coordination** of the council's work with the work of line offices. (Sub-decree TFC – Province, Article 2).
- ✓ The municipal council, therefore, interacts with line offices through the council's TFC.
- ✓ The municipal council's **women and children's consultative committee** (WCCC) has the role to ensure that the council promotes gender equality and takes into account the needs of **women, youth and children** when making policies and decisions, when issuing bylaws, and in its activities. The municipal council WCCC includes the following members: councilors, a deputy governor, council personnel, as well as chiefs or deputy chiefs of a number of line offices. (Organic Law, Article 128; WCCC Prakas, Articles 3, 7)
- ✓ Another way that the municipal council interacts with line offices, therefore, is through the council's WCCC.

See Module 7 for more information about the technical facilitation committee and about the women and children's consultative committee

Municipal Council Committees

- ✓ The municipal council may appoint **representatives of sangkat councils** to a municipal council committee, sub-committee or working group. (Sub-decree Roles – Province, Article 77)
- ✓ As discussed above, the municipal council TFC and WCCC both include members who are **chiefs or deputy chiefs of line offices**. (Sub-decree TFC – Province, Article 12; WCCC Prakas, Article 3)
- ✓ In addition, **all sangkat chiefs** in the municipality are members of the municipal council TFC. **Sangkat focal persons** for women and children's affairs each sit as members of the municipal council WCCC. (Sub-decree TFC – Province, Article 12; WCCC Prakas, Article 3)
- ✓ Municipal council committees, therefore, provide an opportunity for the council to interact with citizens, other councils and line offices.

See Module 7 for more information about council committees

Development Planning

- ✓ The Organic Law provides that every council must **consult** with all the other councils in its area about the formulation and implementation of its **development plan**. The municipal council, therefore, must consult with all sangkat councils in the municipality regarding the municipal development plan. (Organic Law, Article 38; Planning Sub-

See Module 14 for more information about planning

decrees, Article 13)

- ✓ The municipal council must hold a **special consultative meeting** while formulating its development plan and investment program. This special consultative meeting is attended by: chiefs of all sangkats and sangkat focal persons for women and children's affairs in the municipality. (Planning Sub-decrees, Articles 14, 16)
- ✓ The **provincial council must support** the municipal council in formulating and implementing its development plan and budget. (Sub-decrees Roles – Province, Article 58)
- ✓ In addition, as discussed in above, the municipal council participates in the **provincial council's development planning process**. (Planning Prakas, Articles 13 – 15)

Communication

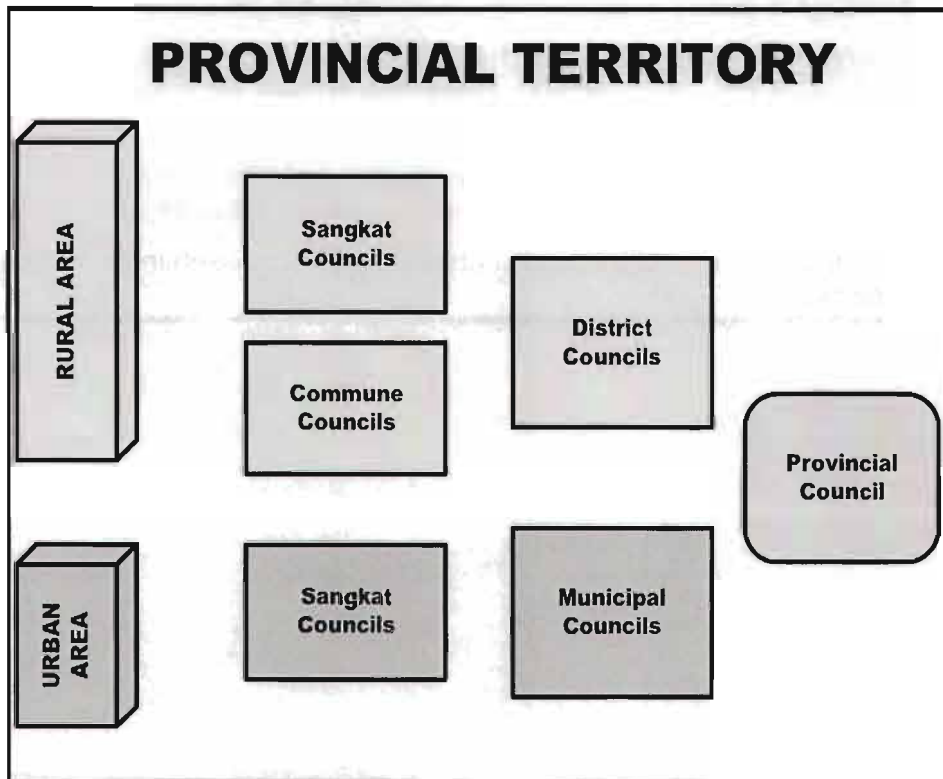
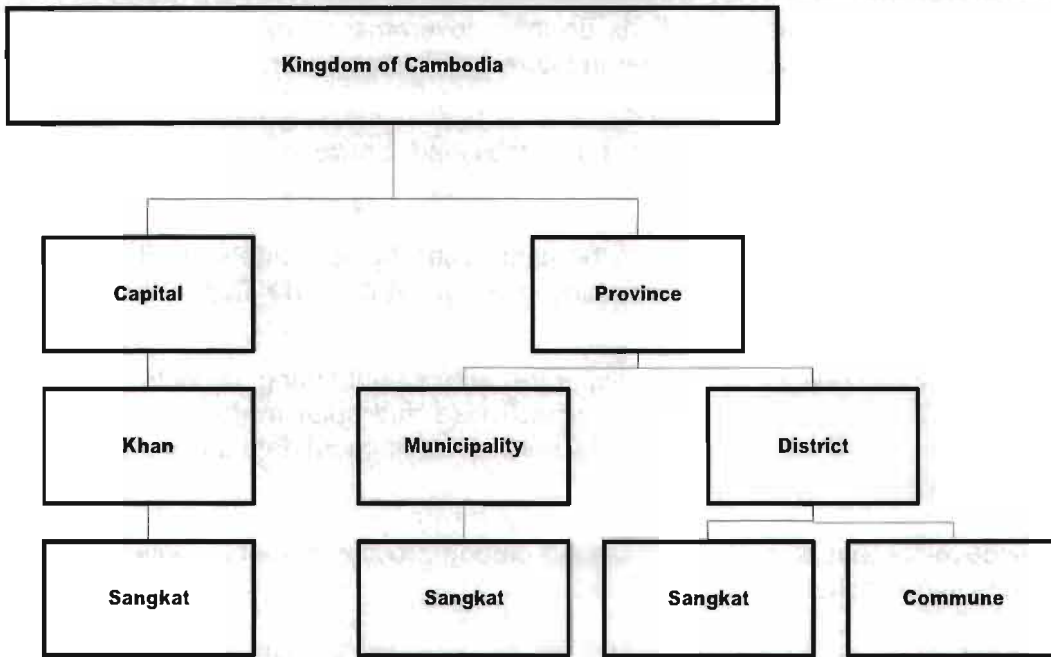
- ✓ Until municipal councils have appropriate communication systems in place, the provincial governor will represent the Royal Government in **linking communication from the national level** to municipal councils. (Prakas 1249 on Office-Taking Meeting, Article 14)

Municipal Board of Governors

- ✓ The municipal board of governors and sangkat chiefs must keep in contact and **maintain good communication** in order to effectively and efficiently implement their daily work. (Sub-decrees Roles – Province, Article 186)

See Module 6 for more information about boards of governors

Administrative Divisions under Organic Law



Issues to Address

Even with the Organic Law and regulations on inter-governmental relations, there are still issues that will need to be worked out either in future regulations or through practice. Those issues include:

- How will an urban – rural linkage be established between district councils and municipal councils within the province?
- In practice, how can sangkat councils be democratically accountable to their citizens when they are under the supervision and management of the Capital council or a municipal council?
- How will districts coordinate and cooperate with neighbouring districts (horizontal coordination), for example for services or activities that span more than one district (such as around the Tonle Bassac)? How will provinces coordinate and cooperate with neighbouring provinces?
- How will development plans be harmonized among provinces, municipalities, districts, communes and sangkats?
- What will happen if a district council disagrees with activities in the provincial development plan and the activities directly impact on the district? What will happen if a commune or sangkat council disagrees with the development plan of another council?
- What recourse will a commune/sangkat council or municipal/district council have if the council disagrees with the results of legal compliance checking?
- What recourse will sangkat councils have if they disagree with municipal council decisions about what functions and resources should be delegated to sangkat councils?
- What recourse will participants in consultative and dissemination forums have if the council fails to take into account their requests, proposals, ideas and comments?
- Can any member of the public attend a consultative and dissemination forum, or will invitations be required?

PART 2:

Summary of Module

- ✓ Sub-national councils are autonomous in their areas, but they still have strong links with other councils. Councils must consult, cooperate and collaborate.
- ✓ Even though commune/sangkat councils are the 'lowest' level council, commune/sangkat councils have the specific role to hold the 'higher' councils accountable and to ensure that their citizens' needs are being met.
- ✓ In addition to performing its own work, a provincial council has duties to support and empower all other councils in the province. The provincial council must work together with municipal and district councils in order to respond to the needs of commune/sangkat councils.
- ✓ Provincial councils have been delegated the function to ensure that other councils comply with the Constitution, laws, legal frameworks and national policies. District and municipal councils, however, are responsible for legal compliance checking of commune/sangkat council bylaws and decisions.
- ✓ Once every year, each provincial, municipal and district council conducts dissemination and consultative forums in their area. These forums are mechanisms for transparency, civil engagement, inclusiveness and democratic accountability.
- ✓ In addition, during development planning formulation and implementation, a council must consult with other councils in the area.
- ✓ All of the new councils will have close relations with line departments/offices in their area. This relationship is central to the concept of unified administration.
- ✓ There is a particularly close relationship between a district council and commune/sangkat councils in the district. For instance, commune/sangkat chiefs have the right to attend and participate in district council meetings.
- ✓ Like communes/sangkats and districts, there is a close relationship between the municipal council and sangkat councils in the municipality. Unlike communes/sangkats in districts, however, sangkat councils are under the supervision and management of the municipal council.

PART 3:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Relations between district councils and commune/sangkat councils

Discuss in small groups:

- What kind of support might commune/sangkat councils want from the district council unit that supports commune and sangkat councils?
- What are some ways that commune and sangkat councils can hold the district council accountable? (Review the definition of accountability in this Module.)

EXERCISE TWO: Relations between sangkat councils and municipal councils

Discuss in small groups:

- Considering that sangkat councils are directly elected and that they are closest to citizens, what should be the role of sangkat councils in the municipality?
- What are some ways that sangkat councils could hold their municipal council accountable for meeting local needs?
- What functions should be delegated by municipal councils to sangkat councils?

Modules for Understanding
and Training on the
Organic Law

Module 12:
Roles and Structures of
Sub-National Administrations

PART 1:

- 1. Introduction**
- 2. Provinces**
- 3. Municipalities**
- 4. Districts**
- 5. Transitional Arrangements**

Section 1: Introduction

The Organic Law requires that council personnel be organized into units and that each unit have a defined role. Having such a clear organizational structure for every sub-national administration is critical in order that personnel are clear about their roles and their responsibilities. In this way, council personnel can work efficiently and effectively to assist the council and implement council decisions.

The organizational structure of the administration at each sub-national level is very similar. Since the roles of each level differ in some key respects, however, there are some differences in the structure of the administration at each level.

This Module explores the structure of administrations at each sub-national level and the roles and responsibilities of each unit. This Module also examines how the board of governors, governor and administration director interact with the units of the administration.

On the following page, an overview of the structure of the administration at each sub-national level is provided. (Sub-decree Roles – Province; Prakas Offices – Province)

Provincial – Administration	Municipal Administration	District Administration
<p>Administration Division</p> <ul style="list-style-type: none"> • Protocol and Documentation Office • Public Relation and International Cooperation Office • Report Consolidation and Information Office • Statistic and Civil Registration Office • Council Secretary Office 	<p>Administration and Finance Office</p>	<p>Administration and Finance Office</p>
<p>Planning & Investment Division</p> <ul style="list-style-type: none"> • Planning Office • Local Support Office • Investment Office 	<p>Planning and Sangkat Support Office</p>	<p>Planning & Commune/Sangkat Support Office</p>
<p>Finance Division</p> <ul style="list-style-type: none"> • Finance Office • Accounting Office • Property Management Office • Procurement Office 	<p>Municipality Development Office</p>	<p>Inter-Sectoral Support Office</p>
<p>Human Resource Management Division</p> <ul style="list-style-type: none"> • Personnel Management Office • Capacity Development Office 		

Inter-Sectoral Division

- Economic and Social
Affair Office
- Development
Management and
Construction Office
- Legal Affair and Public
Safety Office

Section 2: Provinces

Citizens have the right to go to the provincial administration offices in order to

- **communicate and work with the council and board of governors**
- **receive information requested from the administration**
- **provide comments or suggestions on any matter.**
(Sub-decree Roles – Provinces, Article 50)

✓ The provincial administration has the following **five divisions** –

- Administration Division
- Planning and Investment Division
- Finance Division
- Human Resource Management Division
- Inter-Sectoral Division

(Sub-decree Roles – Province, Article 55)

- ✓ Each division has a **director** and a maximum of two **deputy directors** who assist the director of the division. (Sub-decree Roles – Province, Article 57)
- ✓ Each division is **divided into** a number of **offices**. Each office has a **chief** and a maximum of two **deputy chiefs** who assist the chief.
- ✓ Each chief of an office is **accountable** to the director of the division. The director of the division is accountable to the administration director. The administration director is accountable to the council and the board of governors. (Organic Law, Articles 174, 190; Prakas Offices – Province, Articles 10, 11)
- ✓ If the provincial council wishes to create **new divisions** or offices or re-organize or dissolve existing ones, the provincial governor must make a request to the Ministry of Interior for a decision. (Prakas Offices – Province, Article 9)

Offices of the Administration Division and their Main Responsibilities

Protocol and Documentation Office

- Receives and distributes letters and other communications
- Receives requests for official documents
- Manages the stamp
- Responsible for the library
- Prepares weekly schedule of the board of governors
- Maintains security and public order in the administration offices

Public Relations and International Cooperation Office

- Receives and provides information to the public
- Responsible for protocol and ceremonies
- Cooperates with other provinces, municipalities, national and international organizations

Report Consolidation and Information Office

- Collects information from the public to provide to the council and board of governors
- Collects information from administration divisions, from all sectors, municipalities, districts, communes and sangkats as a basis for preparing reports
- Prepares and displays information on public information boards
- Cooperates in preparing information for the public for broadcasting, newsletters, internet and other media
- Prepares meetings and take minutes of meetings of the board of governors

Statistic and Civil Registration Office

- Responsible for census and population statistics
- Analyzes income situation and migration in the province
- Supports, monitors and conducts research regarding civil registration
- Issues identification cards

Council Secretary Office

- Prepares agendas, invitation letters, other documents and minutes of meetings for the council and council committees, and organize venues for their meetings, and maintains those documents
- Cooperates with other offices to disseminate information about council decisions and other council information
- Cooperates in organizing and reporting on dissemination forums in municipalities and districts

Prakas Offices - Province, Article 3

Offices of the Planning and Investment Division and their Main Responsibilities

Planning Office

- Cooperates and coordinates to prepare the annual workplan and budget, drafts of the development plan and rolling investment program
- Cooperates in implementing of the development plan and rolling investment program, and prepares progress reports on their implementation
- Review reports on the implementation of development plans by all councils in the province
- Compiles data related to development projects at all levels in the province
- Communicates and cooperates with departments about priority needs of the province, municipalities, districts, communes and sangkats
- Makes recommendations to the governor regarding endorsing development plans of municipal, district, commune and sangkat councils
- Manages and monitors contracts related to provincial investment programs
- Cooperates in conducting feasibility studies for projects, prepare designs, cost estimates and project proposals

Local Support Office

- Coordinates and supports municipalities, districts, communes and sangkats in formulating and implementing their development plans and rolling investment programs
- Supports municipalities, districts, communes and sangkats in conducting feasibility studies, designing and estimating costs of projects, and preparation of project proposals
- Prepares, manages and monitors implementation of all contracts signed by the provincial administration and implementing agencies
- Monitors, evaluates and supports capacity development and performance of municipal, district, commune and sangkat councils
- Evaluates the response of the provincial, municipal and district councils to needs of commune and sangkat councils
- Responds to the needs of municipal and district councils
- Reviews the legality of bylaws and decisions of municipal and district councils
- Supports municipalities and districts to review the legality of bylaws and decisions of commune and sangkat councils
- Studies the necessity of establishing, dissolving, dividing or integrating villages, communes, sangkats, districts and municipalities

Investment Office

- Cooperates with departments to study and comment on how to encourage investment in the province
- Cooperates with departments to monitor and implement mechanisms to encourage investment in the province
- Prepares investment-related programs and documents
- Reviews and provides comments on investments and development proposals from the private sector in the province

(Prakas Offices - Province, Article 4)

Offices of the Finance Division and their Main Responsibilities**Finance Office**

- Prepares the annual budget and expenditure framework
- Prepares financial procedures on usage of the budget, and evaluates implementation
- Prepares financial reports
- Prepares legal instruments for revenue collection and promotes revenue collection
- Reviews mandates for cash withdrawal and requests for expenses
- Supports municipalities and districts to prepare and implement their budgets
- Supports municipalities and districts to support communes and sangkats to prepare and implement commune and sangkat budgets
- Makes recommendations to the governor about endorsing budgets of municipal, district, commune and sangkat councils

Accounting Office

- Manages petty cash and accounts
- Registers and manage all revenue
- Prepares reports on income, expenditures and the budget
- Makes salary payments to staff
- Reviews and makes payment for expenses
- Reports on provincial budget payments

Property Management Office

- Manages movable and immovable property of the provincial administration
- Prepares and manages an inventory list of all property
- Develops principles to administer the properties and procedures for sale, lease and investment of the properties

Procurement Office

- Manages and reports on procurement for the provincial administration

(Prakas Offices - Province, Article 5)

Offices of the Human Resource Management Division and their Main Responsibilities

Personnel Management Office

- Prepares a plan for how to organize council personnel
- Develops roles, duties and procedures for administration divisions and offices, and monitors and evaluates implementation of the roles, duties and procedures
- Recruits personnel and prepares and maintains personnel files
- Prepares terms of reference for personnel, and monitors and evaluates their implementation
- Prepares a plan for how to use and recruit technical advisors and contractual staff
- Comments on suggested appointments, promotions, sanctions, dismissals, change of duties and leave requests
- Supports municipalities and districts on personnel management for municipalities, districts, communes and sangkats
- Requests to establish, rearrange or dissolve divisions or offices of the administration
- Comments on requests to establish, rearrange or dissolve offices of municipal and district administrations
- Provides ideas about the composition of council committees and sub-committees

Capacity Development Office

- Defines strategies and programs for capacity development for personnel
- Conducts training needs assessments and prepares training programs for personnel
- Disseminates the Organic Law and other legal instruments and administrative procedures, as well as information about the duties of administration divisions and offices, including terms of reference of personnel
- Supports capacity development for personnel of municipal, district, commune and sangkat administrations

(Prakas Offices - Province, Article 6)

Offices of the Inter-Sectoral Division and their Main Responsibilities

Economic and Social Affair Office

- Manages statistics on businesses in the province, and cooperates with departments to monitor and evaluate the businesses
- Comments on local economic development and business activities in the province
- Develops principles to manage markets and slaughterhouses
- Cooperates and coordinates to review functions and resources to be transferred to the provincial council and to municipal, district, commune and sangkat councils
- Promotes service delivery related to education, health and hygiene in the province
- Cooperates in education and information dissemination about public health services
- Promotes healthcare for women and children
- Protects public property, maintains cultural property, national heritage and environmental and natural resources
- Solves problems related to the poor, retirees, disabled persons, orphans
- Prevents damage from natural disasters, social incidents and other emergencies
- Solves problems related to labour, employment and vocational training
- Promotes gender mainstreaming in all social activities
- Creates a conducive environment for maintaining culture, religion and traditions
- Coordinates inter-sectoral activities, especially to promote private sector development

Development Management and Construction Office

- Cooperates in developing a provincial land management plan
- Comments on development projects so they are consistent with the provincial land management plan
- Implements tasks related to land ownership rights
- Monitors, evaluates and reports on implementation of the provincial land management plan and construction plan
- Develops principles for management of older buildings and heritage sites
- Comments on any construction work that violates applicable legal frameworks
- Cooperates in developing principles to develop, maintain and repair transportation infrastructure within the province
- Implements tasks related to new settlements, maintaining order, urbanization and conflict resolution outside the court system

Legal Affair and Public Safety Office

- Develops principles regarding means of transportation and traffic safety
- Manages traffic systems and means of transportation within the province
- Determines measures to prevent crime and maintain safety in the province
- Prepares policies to prevent drug abuse, and manage drug addiction centers
- Deals with abuse of power issues in the provincial jurisdiction
- Receives, reviews and comments on requests for local conflict resolution
- Receives, reviews and comments on complaints from the public about any administration in the province
- Disseminates laws and legal instruments, and monitors and evaluates understanding and implementation of the laws and legal instruments
- Disseminates information and educates about respect for human rights
- Participates in meetings of the Provincial Security Steering Committee and monitors implementation of decisions made in those meetings

(Prakas Offices - Province, Article 7)

Section 3: Municipalities

Citizens have the right to go to the municipal administration offices in order to

- **communicate and work with the council and board of governors**
- **receive information requested from the administration**
- **provide comments or suggestions on any matter.**
(Sub-decree Roles – Provinces, Article 107)

- ✓ The municipal administration has the following **three offices** –
 - Administration and Finance Office
 - Planning and Sangkat Support Office
 - Municipality Development Office(Sub-decree Roles – Province, Article 17)
- ✓ Each office has a **chief** and one **vice chief**. (Sub-decree Roles – Province, Article 17)
- ✓ Each chief is **accountable** to the administration director. The administration director is accountable to the council and the board of governors. (Organic Law, Articles 174, 190; Prakas Offices – Province, Article 21)
- ✓ If the municipal council wishes to create **new divisions** or offices or re-organize or dissolve existing ones, the governor must make a request to the Ministry of Interior for a decision. (Prakas Offices – Province, Article 20)
- ✓ Municipalities that are already operating a **one-window office** and **ombudsman** office continue to operate those offices. (Prakas Offices – Province, Article 18)

Administration and Finance Office

- Has administrative tasks, manages letters, public relations and protocols
- Manages and maintains the official municipal stamp
- Manages population statistics and civil registration
- Manages personnel, and salaries and benefits of council personnel
- Cooperates in preparing administrative and financial procedures and terms of reference for personnel
- Provides training and capacity development to personnel
- Studies and provides comments on creating, rearranging and dissolving any offices
- Prepares draft agendas and documents for council meetings and council committees
- Prepares and distributes invitation letters, organizes venues and takes minutes of all meetings of the council and its committees, as well as meetings of the board of governors
- Maintains in good order all documents and legal instruments of the council, board of governors and administration
- Prepares monthly, quarterly, semester, and annual reports
- Prepares and displays information on the information boards and finds other means to disseminate information to the public
- Cooperates in preparing dissemination and consultative forums
- Studies and provides comments on the legality of sangkat council decisions
- Is responsible for financial tasks, budget and property management
- Manages petty cash of the municipality
- Cooperates in payment and monitoring of all expenses
- Is responsible for procurement, audits and financial reporting

(Prakas Offices - Province, Article 17)

Planning and Sangkat Support Office

- Studies and prepares the development plan and investment program
- Implements projects and development programs
- Facilitates development cooperation and service delivery among sangkats
- Studies, evaluates and provides comments on the capacity and support needs of sangkat councilors
- Responds to requests, suggestions and challenges of sangkats
- Supports sangkat councils to prepare and implement sangkat development plans
- Communicates and cooperates with line units to meet the priority needs of sangkats and the municipality
- Enters and updates data related to municipalities and sangkats
- Reviews reports on the implementation of municipal and sangkat development plans
- Mobilizes resources for development of the municipality and sangkats
- Reviews the circumstances of sangkats with a view to transferring functions and resources to sangkat councils
- Monitors and evaluates the use of municipal and sangkat investment funds

(Prakas Offices - Province, Article 17)

Municipal Development Office

- Cooperates with line units to conduct research and comments on municipal development
- Cooperates to prepare a land-use master plan and land-use plan
- Is responsible for tasks related to land ownership, construction of buildings and renovation of buildings, including cooperation in solving construction violations
- Studies and assesses the situation of temporary settlements, development of new settlement areas and construction of these settlements
- Studies and analyzes population growth, local economic growth, poverty in the municipality and their impact on development of the municipality
- Implements transferred and delegated functions
- Cooperates and coordinates delegation of functions and resources to sangkat councils
- Is responsible for public order, legal and human rights affairs
- Is responsible for conflict resolution in the municipality
- Is responsible for tasks related to economic development, social affairs, culture, religion, protection of environment, natural resources, heritage, resorts and historic sites

(Prakas Offices - Province, Article 17)

Section 4: Districts

Citizens have the right to go to the district administration offices in order to

- **communicate and work with the council and board of governors**
- **receive information requested from the administration**
- **provide comments or suggestions on any matter.**
(Sub-decree Roles – Provinces, Article 168)

- ✓ The district administration has the following **three offices** –
 - Administration and Finance Office
 - Planning and Commune/Sangkat Support Office
 - Inter-Sectoral Support Office(Prakas Offices – Province, Article 26)
- ✓ Each office has a **chief** and one **vice chief**. (Prakas Offices – Province, Article 57)
- ✓ Each chief is **accountable** to the administration director. The administration director is accountable to the council and the board of governors. (Organic Law, Articles 174, 190; Prakas Offices – Province, Articles 30)
- ✓ If the district council wishes to create **new divisions** or offices or to re-organize or dissolve existing ones, the governor must make a request to the Ministry of Interior for a decision. (Prakas Offices – Province, Article 29)
- ✓ Districts that are already operating a one-window office and ombudsman office continue to operate those offices. (Prakas Offices – Province, Article 27)

Administration and Finance Office

- Conducts administrative tasks, issues letters, conducts public relations and protocols
- Manages the official municipal stamp
- Manages population statistics and civil registration
- Manages personnel, and salaries and benefits of personnel
- Cooperates to prepare administrative and financial procedures and terms of reference for personnel
- Provides training and capacity development to personnel
- Studies and provides comments on creating, reorganizing and dissolving administration offices
- Prepares draft agendas and documents for council and council committee meetings
- Prepares and distributes invitation letters, organizes venues and takes minutes at meetings of the council and council committees and meetings of the board of governors
- Maintains all documents and legal instruments of the council, board of governors and administration
- Prepares monthly, quarterly, semester, and annually reports
- Prepares and displays information on the information boards and finds other means to disseminate information to the public
- Cooperates to prepare dissemination and consultative forums
- Studies and provides comments on the legality of decisions made by commune and sangkat councils
- Is responsible for financial tasks, budget and property management
- Manages petty cash of the district
- Cooperates in payment and monitoring of all expenses
- Is responsible for procurement, audits and financial reports

(Prakas Offices - Province, Article 26)

Planning and Commune/Sangkat Support Office

- Studies and prepares the development plan and investment program
- Implements projects and development programs
- Facilitates development cooperation and service delivery among communes and sangkats
- Supports communes and sangkats to analyze and evaluate their development progress
- Supports communes and sangkats to prepare their budgets
- Cooperates in reviewing and providing recommendations to the governor on endorsement of commune and sangkat budgets
- Studies, evaluates and provides comments on capacity and support needs of commune

and sangkat councils

- Responds to requests, suggestions and challenges of communes and sangkats
- Supports commune and sangkat councils to prepare and implement their development plans
- Communicates and cooperates with line units to respond to priority needs of the district, communes and sangkats
- Reviews reports on implementation of municipal, commune and sangkat development plans
- Mobilizes resources for development of the district, communes and sangkats
- Supports communes and sangkats so that they can receive more functions and resources
- Monitors and evaluates the use of district, commune and sangkat investment funds

(Prakas Offices - Province, Article 26)

Inter-Sectoral Office

- Studies and provides comments on strategies and the establishment of structures, systems and resources in order to receive new functions and resources
- Is responsible for land and construction tasks, including applications for land tenure, construction, reparation, dismantling and renovation of buildings
- Implements transferred or delegated functions
- Cooperates regarding delegation of functions and resources to sangkat councils
- Is responsible for public order, legal and human rights affairs
- Is responsible for conflict resolution in the district
- Is responsible for tasks related to local economy, social affairs, culture, religion, protection of environment, natural resources, heritage, resorts and historic sites

(Prakas Offices - Province, Article 26)

Section 6: Transitional Arrangements

- ✓ After the elections in May 2009, the new councils replaced the former administrations of the Capital and every province, municipality, district and khan. For instance, the new Svay Rieng Provincial Council replaced the former appointed administration of Svay Rieng. (Organic Law, Article 277; Prakas 1249 on Office-Taking Meeting, Article 7)
- ✓ The Ministry of Interior was responsible to **integrate existing Ministry of Interior sub-national personnel** into the new sub-national administration (re-deployment). Personnel of every former appointed administration, therefore, were re-deployed to become personnel of the corresponding new council and its administration. These personnel were responsible mainly for administrative functions that were implemented by the former provincial and district administrations. The personnel of the former appointed provincial administration of Svay Rieng, for instance, are now personnel of the new Svay Rieng Provincial Council. (Organic Law, Article 281; Sub-decree Roles – Province, Article 206)
- ✓ Re-deployed Ministry of Interior personnel are **supervised and managed by the council and board of governors**. Until there is a statute on sub-national personnel, the council must approve and personnel **appointment**, change, **promotion**, change in **salary** or other benefits, and the council must approve the recruitment of any contract staff and other workers, including technical advisors. Upon the approval of the council, the governor must request the Ministry of Interior to take the necessary steps to implement the council's decision. (Sub-decree Roles – Province, Article 206)
- ✓ In the event that these re-deployed personnel cannot meet the needs of the council, the council and board of governors may recruit personnel under the civil servant body of other ministries. (Sub-decree Roles – Province, Article 206)

Issues to Address

There are a number of questions that arise from the Prakas Offices – Province that, in due course, will need to be addressed. Those questions include –

- The Prakas states that provincial governors endorse development plans and budgets of all other councils in the province, and that the district governor endorses budgets of commune/sangkat councils (Articles 4(1), 5(1), 26(2)). Does this mean that governors conduct a legality check, or does this mean that governors may interfere with *political choices* made by another council?
- The district administration has the task to study and coordinate the '*delegation*' of functions and resources to sangkats (Article 26(3)). Does this mean that sangkats in districts will only receive delegated functions?
- What position does the chief of finance occupy? Is s/he the Finance Division director in provinces and the Administration and Finance Office chief in districts?
- There appear to be overlapping responsibilities among offices in an administration. For instance, there seem to be overlapping roles regarding the support responsibilities of the province, the municipality and the district (Articles 4(2), 17(2), 26(2)). How will these overlaps be resolved?
- The Prakas gives functions to the various units. In this regard –
 - functions are transferred to administration units rather than to the council
 - some functions are likely functions of sector ministries, for instance 'responsible for construction of buildings' and 'social affairs, culture, religion'; it is not clear whether there was consultation with sector ministries in giving these functions to administrations (Articles 17(3), 26(3))
 - the Prakas does not state whether the functions are assigned or delegated, obligatory or permissive, or what corresponding resources the council will receive in order to implement the functions
 - some functions are vaguely expressed and, therefore, may lead to uncertainty about what can and cannot be done, for instance 'solve problems related to labor' (Article 7(1)).
- The Prakas seems to provide that a council must obtain permission from Mol in order to create, dissolve or modify its administration units (Article 9). Under the Organic Law, however, the council has autonomy to establish and disestablish its own units (Article 189). Are these provisions inconsistent? If so, how will the inconsistency be resolved, considering that a Law prevails over a Prakas?
- In the transitional provisions of the Prakas (Article 35), it is not clear whether personnel appointed prior to the adoption of a sub-national civil service statute must be approved by Mol. If so, that would significantly interfere with the autonomy of councils and would be inconsistent with the Organic Law (Article 177). Are these provisions inconsistent? If so, how will the inconsistency be resolved, considering that a Law prevails over a Prakas?

PART 2: –

Summary of Module

- ✓ The organizational structure of the administration at each sub-national level is very similar. Since the roles of each level differ in some key respects, however, there are some differences in the structure of the administration at each level.
- ✓ The provincial administration has divisions that are divided into offices. Each division has a director and a maximum of two deputies. Each office has a chief and a maximum of two deputies.
- ✓ Chiefs in the provincial administration are accountable to the director of their division. The director is accountable to the administration director. The administration director is accountable to the council and the board of governors.
- ✓ Municipal and district administrations have offices. Each office has a chief and a maximum of two deputies.
- ✓ Chiefs in a municipal or district administration are accountable to the administration director. The administration director is accountable to the council and the board of governors.
- ✓ If a council wishes to create new divisions or offices or re-organize or dissolve existing ones, the governor must make a request to the Ministry of Interior for a decision.
- ✓ A municipality or district that is already operating a one-window office and ombudsman office continues to operate those offices.
- ✓ The Ministry of Interior was responsible to integrate existing Ministry of Interior sub-national personnel into the new sub-national administration (re-deployment). Personnel of every former appointed administration, therefore, were re-deployed to become personnel of the corresponding new council and its administration.

Modules for Understanding
and Training on the
Organic Law

Module 13:
Transfer of Functions to Councils

PART 1:

- 1. Introduction**
- 2. National Process for Reviewing Functions**
- 3. Preparing Commune and Sangkat Councils to Receive New Functions**
- 4. Implementing Council Functions**

Section 1: Introduction

- ✓ After the first elections of the new councils, the new councils replaced the appointed administrations in their area. The new council and the new board of governors **took over the functions of the governor**. Also, the personnel who were working in units of the former appointed Phnom Penh, provincial, municipal, district and khan administrations were re-deployed to the new elected councils. (Organic Law, Articles 277, 278, 281; Prakas 1249 on Office-Taking Meeting, Articles 6, 7)

- ✓ In addition, over the coming years, Cambodia will undergo a **process of reviewing government functions in all sectors**. The purpose of this process is to determine which functions should be transferred to and implemented by sub-national councils (**including commune councils**), and which functions should remain with and be implemented by line ministries and their sub-national units. This process of reviewing government functions for possible transfer to councils **may take as long as, or even longer than, ten years**. (Organic Law, Articles 200, 213 – 240; Royal Decree on the Establishment of the NCDD, Article 3(4))

EXAMPLES OF POSSIBLE FUNCTIONS

- To provide primary education
- To make potable water accessible
- To accredit pharmacies
- To enforce illegal fishing regulations
- To build and repair irrigation systems
- To provide civil registration documents

- ✓ **Why give councils government functions in different sectors?** Providing sub-national councils with substantial government functions to implement is meant to serve the **two key objectives of D&D reform**:

- to strengthen and expand local democracy
- to promote local development and contribute to poverty reduction.

(Strategic Framework, page 5)

- ✓ **Sub-national councils** with substantial government functions can **strengthen and expand local democracy** because:

- when functions are transferred to councils, responsibilities for decision-making about those functions are also transferred
- citizens are closer to sub-national councils than to the national level and, as a result, citizens have **more opportunities at sub-national levels to have a voice and to influence decision-making**
- In order for citizens to be able to influence local decision-making and in order for councils to be able to respond to local needs, councils must have adequate **authority and discretion** to implement their functions and utilize their resources.

EXAMPLE

If the function to operate health clinics is transferred to district councils, citizens in the district will have opportunities to participate in decision-making about how health clinics are run, for instance by attending council meetings.

In all its decisions about how to operate health clinics, the district council will be accountable to its citizens. Citizens can take advantage of mechanisms for accountability to complain about any deficiencies, including voting the district council out of office at the next election.

Without authority and discretion, councils will not have the **space** to make **political choices and decisions** that respond to the real needs of their citizens.

✓ **Sub-national councils** with substantial government functions can also **promote local development and contribute to poverty reduction** because:

- Sub-national councils are required to **consult with their citizens** and to give citizens opportunities **to raise their needs**. Local needs, therefore, can be identified.
- When local needs are known, councils can develop strategies to meet those needs in ways that are tailored to the particular **local conditions, realities and preferences**. Having functions in different sectors means a council can **prioritize across sectors**. If it is clear, for instance, that citizens want a health clinic more than a new school building, the council can focus its attention and its discretionary financial resources to establish the health clinic.
- Having decision-makers at the local level may also mean that governance is more **transparent**. Citizens should be in a better position to see what their sub-national council is doing, or is not doing, and how the council is performing. This puts citizens in a better position to hold their council **accountable**, so that the council can improve its performance to better meet the needs of its citizens.

Local Solutions to Local Needs

Three different districts all face the same issue: **children in the district are not attending school.**

In the first district, students are not attending school because the main route to school for many children is along a road that is unpaved and dangerous during the wet season. The district council has decided to pave the road in order to solve the issue of children not attending school.

In the second district, it is mostly girls who are not attending school because there are no latrines at the schools in the district. The district council has decided to build latrines at the schools in order to solve the issue of girls not attending school.

The third district is very large and some children must travel very far to their school. The district council is deciding whether it will buy one or more school buses to transport children to school, or whether it

✓ **How does the transfer of government functions impact on ministries?**

- It will be critical that each sector, particularly when designing its reform strategies, **takes into account** that there are **new sub-national councils**.
- National ministries should recognize that the local councils are well-situated to **see, understand and respond** to the real needs of citizens.
- National ministries are **bound by the Organic Law** that requires that government functions across sectors be considered for transfer to councils.
- It is to be expected that transferring functions to the new councils will involve a **significant shift in how ministries think** about their sectors.

The following 'recipe' explains further how **government functions relate to development**. The 'recipe' shows that there are 4 key ingredients for improving public service delivery and the quality of life for citizens and, therefore, for contributing to development.

**KEY 'INGREDIENTS' TO IMPROVE SERVICES
& QUALITY OF LIFE FOR CITIZENS**

Local councils

- + Clear council functions to deliver services**
- + Corresponding resources (finances, personnel, assets)**
- + Opportunities for citizens to influence decisions**
- + Mechanisms for transparency and accountability to citizens**
- = improved services and improved quality of life for citizens**

- ✓ This Module focuses on the first two ingredients: clear council functions to deliver services, and corresponding resources.

Section 2: National Process for Reviewing Functions

Organic Law, Articles 192 to 200, 213 to 240

The National Committee for Sub-National Democratic Development

- ✓ A National Committee for Sub-National Democratic Development (NCDD) will be established by Royal Decree. The NCDD is **responsible for implementation of the Organic Law**. The NCDD replaces the current National Committee for the Management of Decentralization and Deconcentration Reform, which is also known in English as NCDD. (Organic Law, Article 192; Royal Decree on the Establishment of the NCDD, Article 1)
- ✓ The **members** of the NCDD are:
 - Minister of the Ministry of Interior, chairperson
 - Minister of the Ministry of Economy and Finance, deputy chairperson
 - Minister of the Office of the Council of Ministers, deputy chairperson
 - Minister of the Ministry of Land Management, Urbanization and Construction
 - Minister of the Ministry of Planning
 - Minister of the Ministry of Rural Development
 - Minister of the Ministry of Women's Affairs
 - Minister of the Ministry of Health
 - Minister of the Ministry of Agriculture, Forestry and Fisheries
 - Minister of the Ministry of Education, Youth and Sports
 - Minister of the Ministry of Industry, Mines and Energy
 - Secretary of State of the Secretariat for Civil Service
 - Secretary of State of the Ministry of Interior
 - Secretary of State of the Ministry of Economy and Finance
 - Representative of the Council for Development of Cambodia
 - Chairperson of the NCDD Secretariat

(Royal Decree on the Establishment of the NCDD, Article 193)
- ✓ The NCDD may request that additional members be added as necessary. The NCDD may also invite ministers of other ministries or other authorities to attend a meeting of the NCDD or otherwise to cooperate with the NCDD. (Royal Decree on the Establishment of the NCDD, Article 2)
- ✓ The NCDD has 4 sub-committees:
 - **Sub-Committee on Functions and Resources:** assists and advises the NCDD about matters related to identifying and transferring functions and resources to sub-national councils
 - **Sub-Committee on Fiscal and Financial Affairs:** assists and advises the NCDD about matters related to financial and fiscal affairs of sub-national councils
 - **Sub-Committee on Sub-National Administration Personnel:** assists and advises the NCDD about matters related to re-deployment and a personnel framework for sub-national councils, and related to management and development of human resources for sub-national councils

- **Sub-Committee on Sub-National Development Planning:** assists and advises the NCDD about matters related to development plans and investment programs of sub-national councils.

(Sub-Decree on the Establishment of NCDD Sub-Committees, Articles 2, 9 - 12)

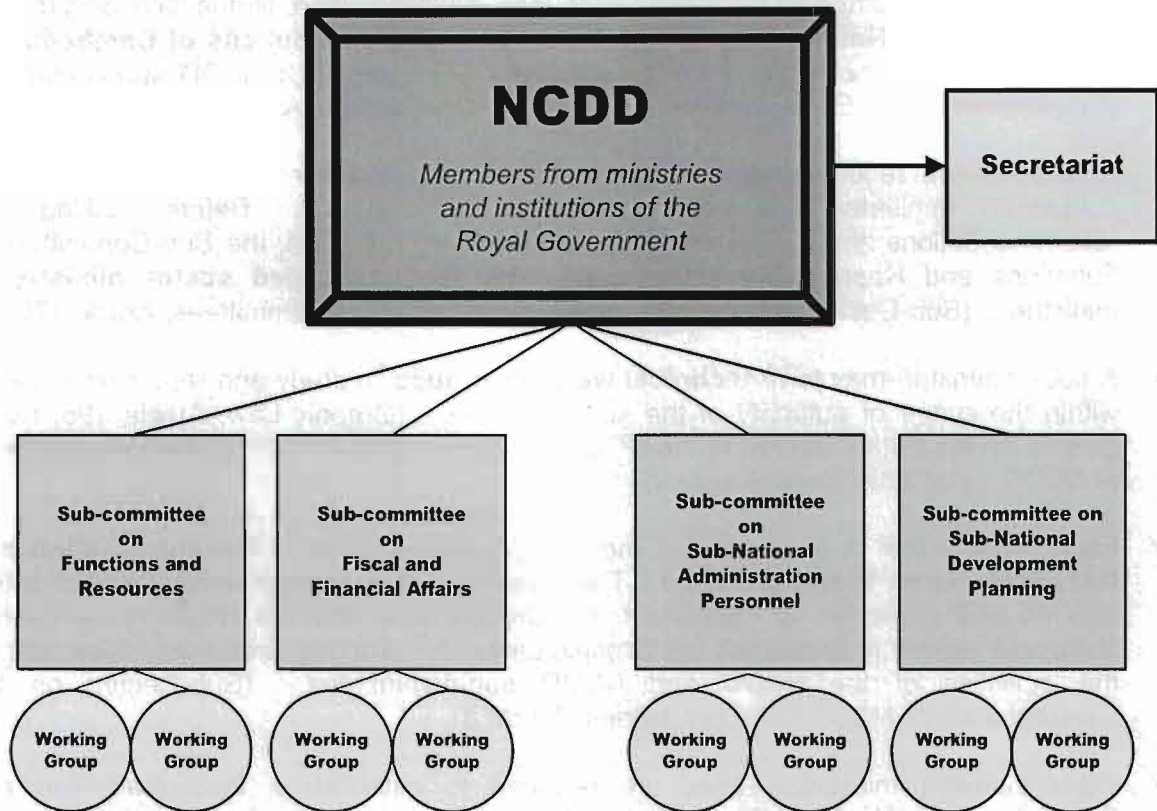
- ✓ The members of each of the 4 NCDD sub-committees are set out in a sub-decree. Every sub-committee has as members representatives from the local government association established for each level of council. Currently there is one local government association - the **National League of Commune/Sangkat Councils of Cambodia**. A representative of the National League, therefore, sits on each NCDD sub-committee. (Sub-Decree on the Establishment of NCDD Sub-Committees, Articles 3, 5)
- ✓ Before making recommendations to the NCDD, a sub-committee must consult with concerned ministries and other government institutions. Before making any recommendations about transferring sector functions, therefore, the Sub-Committee on Functions and Resources must **consult with the concerned sector ministry** or ministries. (Sub-Decree on the Establishment of NCDD Sub-Committees, Article 17)
- ✓ A sub-committee may form **technical working groups** to study and report on a matter within the scope of authority of the sub-committee. (Organic Law, Article 196; Royal Decree on the Establishment of the NCCD, Article 16; Sub-Decree on the Establishment of NCDD Sub-Committees, Article 7)
- ✓ Each ministry that is a member of the NCDD must establish a **Decentralization and Deconcentration Working Group**. The Working Group is responsible for formulating policies and strategies to implement the Organic Law and the Royal Government's National Program to implement the Organic Law. The Working Group must also support the activities of the NCDD and NCDD sub-committees. (Sub-Decree on the Establishment of NCDD Sub-Committees, Article 8)
- ✓ Other relevant ministries, also, are required to establish a Decentralization and Deconcentration Working Group to coordinate and support the implementation of the Organic Law in the ministry. (Royal Decree on the Establishment of the NCDD, Article 17)
- ✓ A key responsibility of the NCDD is to guide and oversee the process of **reviewing government functions** for possible transfer to councils. (Organic Law, Article 200; Royal Decree on the Establishment of the NCDD, Article 3(4))

Process for Reviewing Functions

- ✓ It is clear that the NCDD Sub-committee on Functions and Resources will be involved in the process of reviewing functions. The NCDD must also decide if the other Sub-Committees will play a role, and how sub-committee technical working groups will be involved.
- ✓ The Organic Law specifies that **sector ministries** must be **involved** in the process of reviewing functions for possible transfer to councils. (Organic Law, Article 195; Royal Decree on the Establishment of the NCDD, Article 3(4); Sub-Decree on the Establishment of NCDD Sub-Committees, Article 17) Involving sector ministries is critical since it is the functions currently implemented by sector ministries that will be

reviewed for possible transfer to councils. It must be determined what role ministry Decentralization and Deconcentration Working Groups will play in the process.

NATIONAL COMMITTEE FOR SUB-NATIONAL DEMOCRATIC DEVELOPMENT (NCDD)



Eligibility to Receive Functions

- ✓ The **Phnom Penh council and all provincial, municipal, district and commune councils** receive functions directly from the national level. (Organic Law, Article 217)
- ✓ **Khans**, as well as **sangkats** in Phnom Penh and in municipalities, receive functions indirectly (through delegation) from the Phnom Penh or municipal council. (Organic Law, Articles 108, 112) In this way, the Phnom Penh council and municipal councils can better ensure coherent and unified urban development.
- ✓ **Sangkats in districts** will be treated the same as communes and will be eligible to receive functions directly from the national level.

Steps to Review Functions for Possible Transfer to Councils

Step 1 is to **select a sector** to review. The Organic Law identifies a number of priority sectors for review. The priority sectors identified in the Organic Law correspond to priorities set out in the National Strategic Development Plan, 2006 - 2010:

- ✓ agriculture
- ✓ forestry, natural resources and environment
- ✓ industry, support to economic development
- ✓ electricity production and distribution
- ✓ infrastructure and facilities necessary to support and facilitate these responsibilities
- ✓ particular needs of Phnom Penh, a province, municipality, district, khan, commune or sangkat, including those related to tourism, historical sites and cultural heritage
- ✓ education
- ✓ health, nutrition and services for citizens
- ✓ land use
- ✓ water management

(Organic Law, Article 215)

Step 2 is to **identify who will be involved in the process**, including national and sub-national government actors and non-governmental stakeholders.

Step 3 is first to **identify the functions** in the sector. Second, it must be decided to **which level of council each function should be transferred**. For each function, it must be decided at what level of council the function can be effectively implemented. The function must then be transferred to that level of council. If no council can effectively implement the function, then the function is retained as a national level function. (Organic Law, Articles 200, 217, 220)

Step 4 is to **determine whether** the function should be obligatory or permissive. An **obligatory function** is a function that is defined by a legal instrument that indicates clearly an obligatory requirement for a council to implement the function. It is expected that most functions related to basic and essential services will be designated as obligatory functions that a council must implement. A **permissive function** is a function that a council may choose to implement, or may choose not to implement. (Organic Law, Articles 221, 222, 227)

Strategic Framework for D&D Reform & the NSDP – Principle of Subsidiarity

The Royal Government's Strategic Framework for D&D Reform adopts the principle of subsidiarity (page 12), as does the National Strategic Development Plan (page 37).

Internationally, the principle of subsidiarity is that:

- ✓ **a function should be transferred to the lowest level (council closest to the people) that can efficiently and effectively implement the function.**

It should be expected over the coming years, therefore, that significant functions will be transferred to sub-national councils.

Examples

Providing primary school education is a function that is typically **obligatory**.

Building a museum is a function that would likely be **permissive**.

Step 5 is to **determine whether** the function should be assigned (decentralized) to the council or delegated to the council (deconcentrated to council). When an **assigned (decentralized) function** is transferred, 'ownership' of the function is transferred to the council. The council has maximum (but not total) discretion in implementing the assigned function. A **delegated function** is transferred to a council by a delegating ministry. The delegating ministry retains ownership of the function. A delegated function, therefore, is implemented by the council on behalf of the delegating ministry. Typically, a delegating ministry requires the council to implement the function in accordance with *terms of delegation* that limit the council's discretion in implementing the function. An **obligatory function** must be assigned to a council, if the council will not require permanent contribution from the concerned ministry. Otherwise, the obligatory function is delegated. All **permissive functions** are assigned to councils. A function, therefore, is transferred to a council either by assignment (decentralization) or by delegation. (Organic Law, Articles 223 to 228)

	Obligatory Function	Permissive Function
Function is transferred by assignment (decentralized)	Requires no permanent contribution from the relevant ministry	All permissive functions are assigned
Function is transferred by delegation (deconcentrated to councils)	Requires a permanent contribution from the relevant ministry	∅
	Articles 223 to 226	Articles 227 to 232

Step 6 is to **identify the resources** that correspond to the function. The resources that correspond to the finances must 'follow' and be transferred to the council at the same time the function is transferred. Resources include the **finances** required to implement the function. The finances that are transferred become finances of the council. (Organic Law, Articles 200, 235, 250, 251) Resources include **personnel**. A council will require skilled personnel to implement functions that are transferred. Existing skilled personnel working with ministries will be transferred to the council. Those skilled personnel will become personnel of the council. (Organic Law, Articles 200, 235, 262, 266) Resources also include **assets**. In order to implement some functions, specific assets are required. Those assets must 'follow' and be transferred to the council at the same time the function is transferred. (Organic Law, Articles 200, 235, 254) In addition, at the time a function is transferred, a council may require some **capacity development** so that it can make good and informed decisions about the functions that have been transferred to the council. (Organic Law, Articles 200, 235)

EXAMPLE - AGRICULTURE SECTOR

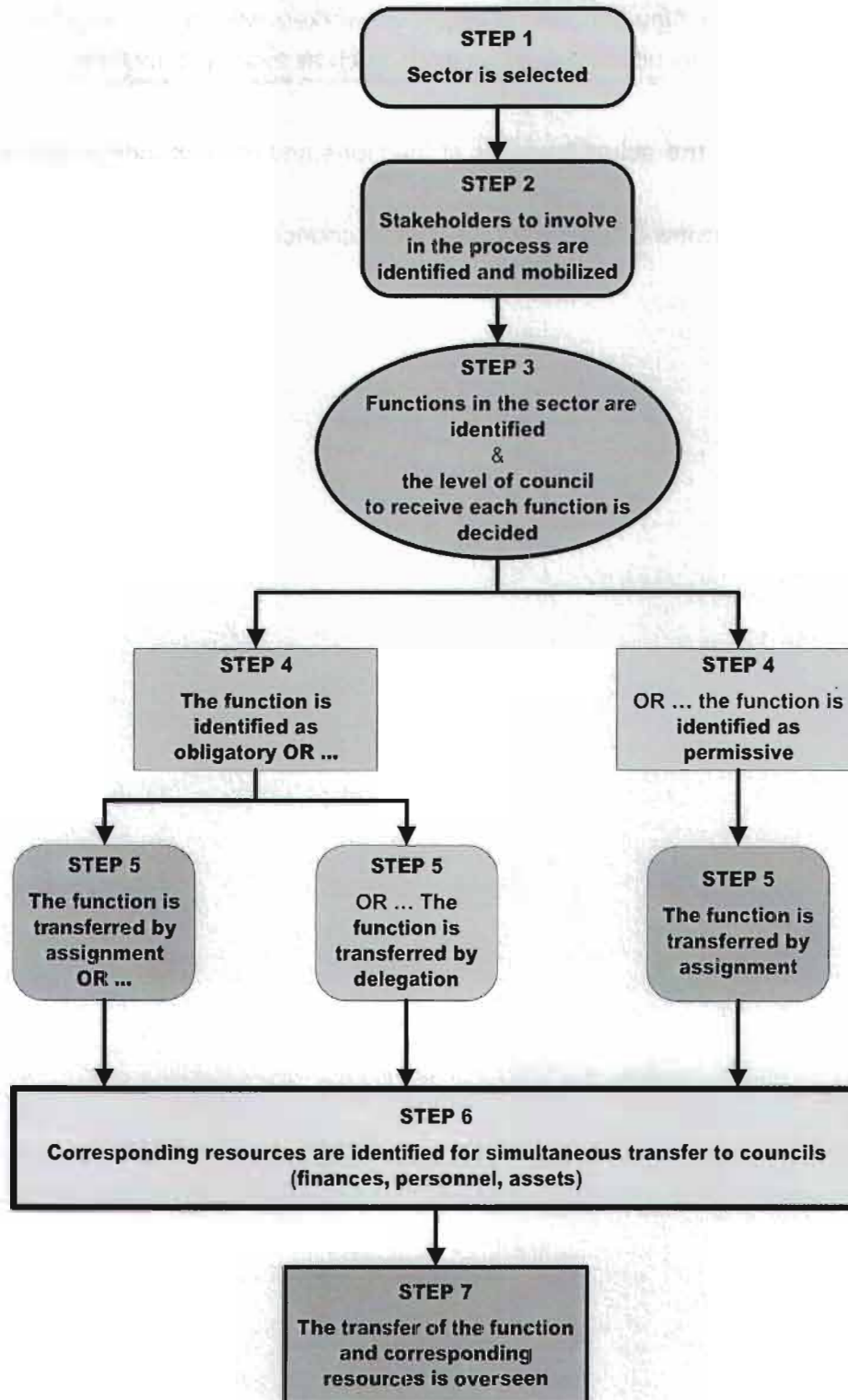
Imagine that district councils receive the function to provide agricultural extension services. When that function is transferred to district councils, district councils must also receive:

- **finances** to provide the service, including for administrative costs, operating costs (including salaries), capital costs, any on-going maintenance and other costs
- **personnel**, such as existing agricultural extension workers who are working for a ministry
- **assets** that relate to agricultural extension work, such as tools and implements.

Step 7 is to **implement the actual transfer** of functions and corresponding resources from ministries to councils.

The 7-step process to review functions for transfer to council is summarized in the following diagram.

Transferring Functions to Councils



Other Responsibilities of Sector Ministries

- ✓ Ministries must develop **sector policies, legal frameworks and standards to guide the new councils** in implementing functions that the ministry transfers to them. Standards might include setting out **national standards for safety and quality**. (Sub-decree Roles - Provinces, Article 191)

EXAMPLE

The Ministry of Land Management, Urbanization and Construction will have national standards regarding safety in constructing buildings. Those standards will apply nation-wide because the safety of building construction is not based on local circumstances.

As another example, the Ministry of Health may have national standards regarding how immunization serum is stored. These standards will also be nation-wide because the correct storage of immunization serum is not based on local circumstances.

Issues to Address

The Organic Law provides that sector ministries must be involved in the process of reviewing and transferring functions. International experience illustrates the **critical importance of involving sector ministries** since it is functions that are currently implemented by sector ministries that will be reviewed for possible transfer to councils. It is also critical that sector ministries be involved because those sector ministries will be providing future capacity development and support to councils receiving functions in the sector.

In guidelines for the process of reviewing and transferring functions, the roles for sector ministries and **other stakeholders** should be outlined, including:

- representatives of sub-national councils
- representatives of sub-national line ministry units
- local government associations
- academia related to the particular sector being reviewed
- civil society organizations related to the particular sector being reviewed
- civil society organizations that can raise the voice of women, and the voice of vulnerable groups, including the poor.

Additional key considerations include:

- embedding the process of reviewing functions in a **long-term vision for sub-national governance**, including regarding:
 - the relationship among decentralization, delegation (deconcentration to councils) and deconcentration to line ministry units
 - whether each level of council should have a predominant role, such as districts or communes as the predominant councils for service delivery
- ensuring that **democratic accountability** is promoted by transferring functions and resources along with adequate authority and **discretion** to implement the functions and utilize the resources
- taking care that **equity** is not negatively affected and that the principles of **democratic development** guide the transfer decisions
- ensuring that there is **continuity of existing services** as functions are reviewed and transferred
- determining whether, at the outset, any matters should be **excluded from review**, such as national defence or international relations
- adopting a strategic approach to **phase** the review and transfer of functions
- creating **in-country capacity** to review functions.

Section 3: Preparing Commune and Sangkat Councils to Receive New Functions

- ✓ In order to ensure that **commune and sangkat councils receive their own functions** and resources, a district council must consult with commune and sangkat councils in the district in order to –
 - evaluate the capacity of each commune and sangkat council, at least once every year
 - conduct capacity development and training to commune and sangkat councils and their personnel based on the results of the evaluation.

(Sub-decree Roles – Province, Article 122)

- ✓ Similarly, the **municipal council must consult with sangkat councils** in the municipality so that sangkat councils receive the support they need in order to receive more delegated functions from the municipal council. (Sub-decree Roles – Province, Article 180)
- ✓ In deciding what functions to delegate to sangkat councils, the municipal council must consult with sangkat councils to discuss **which functions are appropriate** for delegation and which functions can effectively be implemented by sangkat councils. (Sub-decree Roles – Province, Article 181)
- ✓ The municipal council must provide the **means, materials and resources** (including financial and human resources, training and capacity building) to sangkat councils and sangkat personnel so they can implement the functions and duties delegated by the municipal council. (Sub-decree Roles – Province, Article 182)
- ✓ The municipal council supports sangkat councils to ensure that they are implementing sangkat council functions within the **framework of the delegation** as well as in accordance with laws and legal instruments. The municipal council must also ensure that sangkat councils are responsive to the needs of citizens. (Sub-decree Roles – Province, Article 183)

Since sangkat councils are directly elected by citizens, and the municipal council is indirectly elected, it is important that sangkat councils have adequate **authority and discretion** to implement their functions and utilize their resources in ways that respond to the real needs of their citizens. **Delegated functions can incorporate that kind of authority and discretion.**

It will also be important that sangkat councils, on behalf of their citizens, have input regarding how the municipal council implements municipal functions and utilizes municipal resources.

Section 4: Implementing Council Functions

- ✓ Over time, it is expected that councils will receive many functions across a number of sectors.
- ✓ Councilors have neither the time nor the expertise to implement those functions on their own. It is the council's **personnel** who are responsible to **implement** the council's functions. The council's **personnel are accountable** to the council through the council's administration director and the board of governors. (Organic Law, Articles 174, 178, 182, 190)
- ✓ At every council meeting, the **council** is required to consider its functions and to make any necessary or desirable **decisions**, including financial decisions. The council must also monitor and evaluate the implementation of its functions, and report to citizens on progress in the council's **annual report**. (Organic Law, Articles 36, 40, 42, 50, 156)
- ✓ Each administration has one or more units that are devoted to attending to council functions (Sub-decree Roles - Province, Articles 58, 112, 173; Prakas Offices – Province, Articles 3 – 7, 17, 26)

See Module 12 for more information on roles and structures of the council administration

PART 2:

Summary of Module

- ✓ Cambodia will undergo a process of reviewing government functions, in all sectors, in order to identify which functions will be transferred to sub-national councils.
- ✓ A National Committee for Sub-National Democratic Development (NCDD) has been established by Royal Decree. A key responsibility of the NCDD is to guide and oversee the process of reviewing functions for possible transfer to councils.
- ✓ Sector ministries must be involved in the process of reviewing functions for possible transfer.
- ✓ The Phnom Penh council and all provincial, municipal, district and commune councils receive functions directly from the national level. Khans, and sangkats in Phnom Penh and in municipalities, receive functions indirectly by delegation from the Phnom Penh or municipal council.
- ✓ Steps in the process of reviewing functions for possible transfer to councils:
 - Select a sector for review
 - Identify who will be involved in the process
 - Identify the functions in the sector, and decide to which level of council each function will be transferred (or identify the function as a function to be retained as a national level function).
 - Determine whether the function to be transferred should be obligatory or permissive
 - Determine whether the function should be assigned (decentralized) or delegated to the council (deconcentrated to councils)
 - Identify the resources that correspond to the function
 - Implement the transfer of functions and corresponding resources from ministries to councils.
- ✓ It is planned that council will also have a general mandate in addition to receiving specific sectoral functions, for instance to promote local economic development.
- ✓ At every council meeting, the council is required to consider its functions and to make any necessary or desirable decisions, including financial decisions.
- ✓ It is the council's personnel who are responsible to implement the council's functions.

PART 3:

Resource Documents

1. Functional Review in Cambodia: A Proposed Process for Discussion, GTZ, Shelley Flam, June 2008

PART 4:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Debate on Function Review

Each group has 20 minutes to prepare a debate presentation to last a maximum of 10 minutes. The debate presentation will be made to the plenary by 1 representative from each group. Each group must select its 1 representative.

The subject of the debate is:

Why we are the most appropriate councils to receive the functions and resources to –

1. administer and operate health posts
 2. hire, manage and supervise school teachers and principals
- Group 1 are commune councilors who must argue why commune councils can most effectively and efficiently implement the functions
 - Group 2 are district councilors who must argue why district councils can most effectively and efficiently implement the functions
 - Group 3 are provincial councilors who must argue why provincial councils can most effectively and efficiently implement the functions.

(As *part* of the considerations, also review the components of democratic development.)

EXERCISE TWO: Phasing Functions

Arrange 5 chairs in a tight circle. Ask for 4 volunteers to sit in 4 of the chairs. Leave one chair empty.

The 4 volunteers will discuss one or more of the questions below.

If a volunteer wishes to leave the discussion, she/he must first invite a replacement to join the discussion.

The empty chair is available to anyone who wants to join the discussion (even if not invited).

RULE: at least 4 chairs must be occupied at all times (no more than 1 chair empty)

Discussion questions:

- Which sectors do you think should be reviewed first for priority transfer to councils? Why?
- What are some advantages and disadvantages to phase the transfer of functions by focusing first on a particular geographic area? (For instance, functions are transferred at first only in northwest provinces.)
- What are some advantages and disadvantages to phase the transfer of functions by focusing first on a particular sub-national level? (For instance, functions are transferred at first only to district councils.)
- Do you think that significant differences in the size of provinces or districts should affect the transfer of functions? (For instance, if the function to provide primary education is transferred to districts, should the function be transferred only to districts of a certain size?)

EXERCISE THREE: Obligatory Functions

Discuss the following questions:

- Which basic and essential services do you think should be obligatory functions?
- Do you think these services should be obligatory? Why or why not?
 - Fire-fighting?
 - Hospital emergency room services?
 - Providing potable water?
 - Providing breakfast program to primary school children?

Modules for Understanding
and Training on the
Organic Law

Module 14:
Planning

PART 1:

- 1. Introduction**
- 2. Current Planning Instruments**
- 3. Planning in the Organic Law**

Section 1: Introduction

Planning

- ✓ **Planning is an activity we do all the time.** Sometimes we plan for just one day - *what meetings do I want to set up for today? what will I eat for lunch?* Sometimes we plan for much longer - *what vacations will I take this year? how can I build a new house?*
- ✓ We need to plan in order to choose among desirable activities when only some of those activities can be undertaken because of limited resources, such as money and time. Since planning is about choosing among alternatives, **planning is about prioritizing.**

Development Planning

- ✓ In the context of government, planning is undertaken because resources are limited yet there are many pressing public needs. Government, therefore, must plan in order to **use its limited resources to optimally respond** to citizen needs. Since planning deals with how resources are allocated, **planning is a political process.**

Participation in Planning

- ✓ Since the purpose of planning is to respond to citizen needs, it is **critical that citizens participate** in the process in order to identify and raise their needs.
- ✓ One of the challenges of the planning process is to ensure that the right **people are involved, at the right place, at the right time.** Getting the right people involved at the right place and at the right time (rather than everywhere, all the time) is a challenging task. Degrees of participation will vary according to context. Usually, for instance, direct participation of citizens will be stronger when it comes to commune/sangkat plans than national plans.

Planning and Financing

Usually, a plan can only be implemented if there are finances attached to it. Planning and budgeting, therefore, should be viewed as two sides of one coin. The process of planning and the process of budgeting are highly interrelated.

Section 2: Current Planning Instruments

National Strategic Development Plan 2006 – 2010 and Update 2009 – 2013 (NSDP)

- ✓ The National Strategic Development Plan (NSDP) is Cambodia's national strategic plan with the **aim to reduce poverty**. The current NSDP Update covers the time period from 2009 to 2013.
- ✓ The NSDP provides a framework to **guide policy decisions and budget allocations** with a view to reducing poverty. Many development partners align their activities to the NSDP in principle.
- ✓ The NSDP is reviewed annually. Implementation of the NSDP has been challenging due to limited funding and the need to increase sector ministry buy-in and ownership. In only a very few cases has the NSDP been disaggregated to enable implementation by line ministry departments.

The NSDP recognizes that **good governance** is key to sustainable and equitable socio-economic development. The NSDP also recognizes D&D reform as a means of improving and increasing public service delivery and strengthening local development.

Public Investment Program (PIP)

- ✓ The Public Investment Program (PIP) is an annual plan that is coordinated by the Ministry of Economy and Finance, the Ministry of Planning, the Supreme National Economic Council and the Council for the Development of Cambodia. More than two-thirds of funding for the PIP comes from external development partner aid.
- ✓ The planning process begins with an assessment of previous years' expenditures. The plan is then updated by line ministries and other government institutions. Each ministry updates its projects on the basis of achievements in the previous year.

Sector Plans

- ✓ Additional planning is conducted by **individual line ministries**, often with support from development partners. The Health Sector Strategic Plan is an example of a sector plan.

Provincial/Municipal Planning

- ✓ In the past, provincial/municipal **planning was very limited** because major funding sources were centrally managed and controlled.
- ✓ **Governor's Plan (*sala khet*)**: The *sala khet* prepared a 5-year provincial development plan (PDP) and a 3-year provincial development investment program (PDIP). The governor, with support from the provincial planning department, prepared the PDP by consolidating the plans of all provincial departments. Two key constraints were: often the PDP was not linked to any funding and, therefore, could never be implemented; and there was little coordination among the provincial departments in preparing their individual plans.

- ✓ The **provincial investment fund** (PIF) offers provinces/municipalities direct control over funding for certain projects that are implemented within the province. The PIF is funded by Government and development partners, and it is managed by a Provincial/Municipal Rural Development Committee.
- ✓ **Provincial Department Plans:** Usually, each provincial/municipal department must prepare and submit a 5-year plan to its ministry, and a 3-year rolling investment plan but their **priorities and budgets** are, for the most part, **determined by line ministries at national level**. There was very limited scope, therefore, for provincial or district governors to coordinate how funds were spent among these units, or for the units to coordinate among themselves. With funds and priorities coming from the national level, these sub-national units are **accountable upward** to their line ministry.

Commune Development Plan (CDP) / Commune Investment Program (CIP)

- ✓ Based on Chapter 6 of the Law on the Administration and Management of Communes/Sangkats (LAMC), every commune and sangkat must prepare, approve and implement a **commune/sangkat development plan** (CDP). The CDP is a 5-year plan that must be reviewed annually. The CDP must be compatible with national socio-economic development plans. (LAMC, Articles 60 to 72)
- ✓ A commune/sangkat chief must establish a **planning and budgeting committee** that is required to follow a **number of planning steps**:
 - analysis of information
 - identification and prioritization of needs
 - preparation of programs
 - provision of services
 - monitoring and evaluation.
- ✓ The commune investment program (CIP) is a 3-year investment program that is linked to the CDP
- ✓ One key element within the commune/sangkat planning process is the annual **district integration workshop** (DIW) held in every district/khan. The DIW provides commune/sangkat councils with the opportunity to present their priorities to line departments and other potential funders (such as NGOs) for funding and support. The DIW can also serve as an opportunity for line departments and other funders to coordinate their support to communes/sangkats. A **constraint** of the DIW has been the limited scope of line departments, and NGOs, to respond to commune and sangkat priorities.

There is a great need to coordinate the different current planning approaches and systems. There is an equally great need to appropriately link plans to budgets.

The Organic Law tries to address these challenges.

Development Partners Plans

- ✓ Most development partners have their own planning requirements, timeframes and processes. Development partners often have pre-identified sectors and activities they can support at national and sub-national levels.

Section 3: Planning under the Organic Law

Organic Law, Articles 36 to 41, 50, 100, 124, 163 to 166, 201, 245

Introduction

- ✓ The Phnom Penh council and every provincial, municipal, district and khan council must prepare and approve a **5-year development plan**. Every council must also prepare and approve a **3-year rolling investment program**. The development plan and investment program must be updated annually. (Organic Law, Article 37; Planning Sub-decree, Article 12)
- ✓ A council's development plan must include components that are under the management and control of the council, and components that are under the management and control of:
 - two or more councils jointly
 - other levels of council
 - ministries or other government institutions
 - other stakeholders within the area of the council.(Organic Law, Article 40)
- ✓ A council's development plan, therefore, integrates all development activities across all sectors within the area of the council (**sector integration**). (Organic Law, Articles 40, 124)
- ✓ The municipal development plan and investment program must include the development plans and investment programs of all sangkats in the municipality. (Planning Sub-decree, Article 4)
- ✓ The district council and commune and sangkat councils in the district must incorporate into their respective development plans, investment programs and budgets agreed strategies, programs and activities that respond to needs and requests of commune and sangkat councils. (Organic Law, Article 100)
- ✓ Every council must also prepare and approve an **annual budget plan** and a **medium-term expenditure plan**. (Organic Law, Article 44; Planning Sub-decree, Article 4)
- ✓ The Ministry of Interior and Ministry of Planning are responsible for issuing **guidelines** for the preparation and implementation of development plans and three-year rolling investment programs. The guidelines are expected to be issued soon. (Planning Prakas, Article 28)

See Module 15 for more information on finances

Contents of a Development Plan

✓ A development plan must include:

- the council's vision for development in its area
- the council's goals and objectives for development
- an assessment of the existing development status in the area
- an assessment of priority development needs regarding:
 - the council's need to prepare for new functions, duties and resources that will be transferred to the council
 - basic and necessary services, facilities, materials and public infrastructure
 - poverty reduction
 - other needs of women, men, youth, children and vulnerable groups, including the poor and indigenous peoples
- a development framework that includes basic principles for land use management and the management of natural resources
- a disaster management plan
- a financial plan, including a capital development plan, a 1-year budget plan and a 3-year budget plan
- a strategy for implementing the development plan so as to ensure transparency and accountability to citizens
- targets and performance indicators for implementation of the development plan.
(Organic Law, Article 39)

When formulating a development plan and investment program, the following principles must be followed –

- Information sharing
 - Transparency
 - Consistency and harmonization
 - Responsiveness to needs
 - Democratic accountability
 - Socio-economic effectiveness
 - Ensuring natural resource and environmental sustainability
 - Ensuring equity
- (Planning Sub-decree, Article 5)

Plan Formulation

- ✓ In formulating and implementing its development plan, **every council must consult** with:
 - all citizens in the council's jurisdiction
 - other councils in the council's jurisdiction
 - relevant ministries, institutions and units of the Royal Government of Cambodia
 - other relevant stakeholders.(Organic Law, Article 38)
- ✓ The board of governors must propose strategies to the council about how to accomplish the consultations. (Organic Law, Article 164)
- ✓ The consultation process may be undertaken by the council, or the council may decide that the board of governors will undertake consultations on behalf of the council. (Organic Law, Article 164)
- ✓ Every council must organize a **special consultative meeting** on the formulation of its development plan and investment program. At provincial level, chairpersons of all municipal and district council participate, as well as chiefs of municipal and district women and children's consultative committees. For the municipal and district special consultative meeting, chiefs of commune and sangkat councils attend, along with commune/sangkat focal persons for women and children's affairs. (Planning Sub-decree – Articles 14 -16)

Council Annual Report

The results of a council's monitoring and evaluation of the development plan and investment program must be included in the council's annual report.

Other matters that must be included in a council's annual report are:

- bylaws and decisions of the council during the year
- activities that have been implemented during the year
- a financial report
- a performance evaluation of the board of governors and council officials
- necessary measures to improve the council's performance in the future
- directions for implementation of the development plan and investment program for the next year.

(Organic Law, Article 50; Planning Sub-decree, Article 26)

Planning Responsibilities

- ✓ The planning **responsibilities of a council** include:
 - to issue general policy guidance to formulate the development plan and investment program (Planning Sub-decree, Article 6)
 - to approve a strategy for consultations during the formulation of the council's development plan (Organic Law, Article 164)
 - to undertake a consultation process while formulating its development plan, or request the board of governors to do so on behalf of the council (Organic Law, Articles 38, 164)
 - to formulate and approve its 5-year development plan and 3-year investment program (Organic Law, Article 37) to conduct annual monitoring and evaluation of the implementation of its development plan, and to validate the results of the monitoring and evaluation (Organic Law, Article 40; Planning Sub-decree, Article 6)
 - to update the development plan and investment program annually and to amend the development plan if necessary (Organic Law, Article 37; Planning Sub-decree, Article 6)
 - to post the development plan in public. (Organic Law, Article 41)
- ✓ The key planning **responsibility of the technical facilitation committee** is to ensure that there is sector integration within the area of the council. This means that the committee must ensure that the plans and budgets of ministries and their line units operating within the area of the council are integrated in the council's 5-year development plan and 3-year investment program, as well as in the council's medium-term expenditure framework and annual budget. The integration of these plans and budgets must be updated annually. (Organic Law, Article 124)
- ✓ In addition, the **technical facilitation committee** is responsible to –
 - coordinate stakeholder participation in the formulation process
 - provide comments to the council on the draft development plan and investment program
 - provide comments to the council on the progress of implementation of the development plan and investment program. (Planning Sub-decree, Article 7)
- ✓ The planning **responsibilities of the board of governors** include:
 - to propose strategies to the council for a consultation process during the formulation of the council's development plan (Organic Law, Article 164)
 - if requested by the council, to undertake the consultation process on behalf of the council (Organic Law, Article 164)
 - to lead workshops and consultative forums during the formulation process (Planning Sub-decree, Article 8)
 - to prepare drafts of the 5-year development plan and 3-year investment program, and annual updates, and to submit these to the council for consideration and approval (Organic Law, Article 163)

- in consultation with the technical facilitation committee, to ensure sector integration (Organic Law, Articles 124, 166)
 - to ensure that there is consistency between the council's development plan and investment program and principles of the national level or higher level councils (Planning Sub-decree, Article 8)
 - to monitor implementation of the development plan and investment program (Planning Sub-decree, Article 8)

See Module 6 for more information on the board of governors
 - to report at council meetings with recommendations to improve implementation of the council's 5-year development plan and 3-year investment program, including the components under the management and control of other stakeholders (Organic Law, Article 165)
 - to ensure rapid intervention in order to resolve unforeseen difficulties in the implementation of the development plan and investment program (Planning Sub-decree, Article 8)
- ✓ With agreement from the council, and with support from the technical facilitation committee, the board of governors establishes a **working group** that is responsible for formulating the draft development plan and draft investment program based on feedback during **consultative workshops, forums and meetings**. Directors/chiefs or other representatives of line units must be members. The composition of the planning working group is very similar to the composition of the technical facilitation committee. (Planning Sub-decree, Articles 9 - 11)
 - ✓ The working group is responsible for preparing a work plan for formulation of the development plan and investment program for submission to the board of governors. The working group also assists the board of governors to prepare consultative workshops and forums. (Planning Sub-decree, Article 11)
 - ✓ It is the **right of the women and children's consultative committee** to participate in all meetings regarding the planning process. The mandate of the women and children's affairs committee is to provide recommendations to the council, governor, board of governors and other council committees to ensure that the needs and interests of women and children are taken into account and prioritized. (Organic Law, Articles 128, 129)

See Module 7 for more information on the women and children's affairs committee
 - ✓ The council may establish committees to assist in the council's work. In the context of planning, for instance, a council may decide to establish a planning, or a planning and budgeting, committee. (Organic Law, Article 115)

Planning System

- ✓ The Organic Law establishes a **unified administration** with the aim to strengthen the unity of the state in order to facilitate all public administrative activities within its area. A development plan that integrates components under the management and control of ministries, institutions, departments and units contributes to **sector integration** and thereby facilitates public administration in the area.
- ✓ In the early years of D&D reform, before sector functions are transferred to councils, the need for councils to **coordinate with ministries**, institutions, departments and units will

be high. Once functions are being transferred together with their corresponding resources (finances, personnel and assets), councils will be better able to plan and budget on their own because the functions and resources will 'belong' to the council.

- ✓ The Organic Law also provides for the **integration of district council and commune/sangkat council planning**.

See Module 11 for more information on district - commune/sangkat relations

In its 5-year development plan, 3-year investment program, medium-term expenditure and annual budget, a district council must include and integrate needs and requests from commune/sangkat councils in the area of the district. The district council can raise those commune/sangkat council needs and requests to ministries, institutions, departments and units within the area of the district through the district council's technical facilitation committee.

- ✓ The **National Committee for Sub-National Democratic Development (NCDD)** plays a key role regarding sub-national planning:

See Module 10 for more information on the NCDD

- The NCDD has a **Sub-Committee on Sub-National Development Planning** whose role is to assist and advise the NCDD about all matters related to development plans and investment programs of sub-national councils
- The NCDD is responsible to ensure that national level ministries and institutions integrate their sub-national development plan and budget into the respective council development plans and budgets.
- (Organic Law, Article 201; Sub-Decree on the Establishment of NCDD Sub-Committees, Article 12)

Implementation and Monitoring

- ✓ The council is responsible for instructing the board of governors on how to implement the approved development plan and investment program with transparency, accountability, participation and effectiveness. (Planning Sub-decree, Article 22)
- ✓ The council must also arrange for monitoring of the progress of implementation of the development plan and investment program. (Planning Sub-decree, Article 25)
- ✓ The board of governors must submit to the council an annual report on the implementation of the investment program. (Planning Sub-decree, Article 26)

EXAMPLE OF

DISTRICT – COMMUNE/SANGKAT INTEGRATION

In District Tuk Tek there are 11 communes. In 8 of the 11 communes, drought is an annual problem because there is no close access to water for irrigation.

The District Council of Tuk Tek integrated the communes' need for an irrigation system in its development plan. Indeed, the District Council had been discussing the problem for quite some time and it had been tentatively agreed that the District Council would itself fund and build an irrigation system to serve the 8 communes. Due to limited resources, however, it was thought that work could be done in a maximum of 2 communes per year. The Council had estimated that the project would take approximately 5 years to complete.

During a meeting of the technical facilitation committee, the board of governors learned that the Ministry of Agriculture already had plans to construct irrigation systems in select areas of the province. The target areas of the province had not yet been decided.

After a number of meetings, the District Council succeeded in negotiating with the Ministry and Department of Agriculture to select District Tuk Tek as one of its target areas. Due to its own limited resources, however, the Ministry could not work in all 8 communes.

The District Council and Ministry agreed:

- the Ministry would work in 6 communes, and the District Council would work in the remaining 2 communes
- they would coordinate their work, and adopt the same technical approach and standards
- where appropriate, they would join the irrigation systems they build.

The Ministry has included the arrangement in its sector plan and budget. The Department of Agriculture has included the project in its department plan and budget. The District Council already has included the entire project (those parts to be implemented by the Council and those parts to be implemented by the Ministry and Department) in the District Council's updated development plan, rolling investment plan, expenditure plan and budget.

Both the District Council and Ministry have begun their work. Their technical experts meet regularly. It is estimated that the project will be completed in 2 years.

Some Key Considerations

Bottom-up or top-down planning

- Like any country, Cambodia has identified national priorities for development. These are reflected in the NSDP and sector-specific plans. At the same time, commune/sangkat councils and the new councils must undertake their own planning processes at sub-national levels.
- A strategy will be needed, therefore, to meaningfully integrate the planning processes among all levels.
- Considering that commune/sangkat councils are the only directly elected councils, and considering that they are the councils closest to citizens, it would make sense that sub-national planning begin from the needs and priorities raised by citizens during the commune/sangkat planning process.
- District council plans might then serve to amalgamate commune/sangkat needs that communes/sangkats cannot themselves meet. Provincial councils might then serve as the meeting place of national priorities and local needs. Urban areas, however, will need to be approached differently.

Planning and accountability

- It will be critical to design an inter-governmental planning system that encourages higher levels of council and the national level to respond to needs that are raised at the local level (downward accountability).
- It will be important also to encourage some upward accountability, so that the sub-national councils are contributing to the achievement of national priorities.

PART 2:

Summary of Module

- A council must prepare and approve a 5-year development plan. Every council must also prepare and approve a 3-year rolling investment program. The development plan and investment program must be monitored, evaluated and updated annually.
- In preparing its development plan, the council must determine the needs of women and men, youth, children and vulnerable groups, including the poor and indigenous peoples.
- In the formulation and implementation of the development plan, the council must consult widely, including with: all citizens in its area; other councils; relevant ministries; and other stakeholders.
- A council's development plan must reflect all activities within its area. The development plan, therefore, must integrate all sector activities in the area of the council, even where those activities are not under the management and control of the council.
- There is a great need to integrate the planning processes at national and sub-national levels, and as among sub-national levels.

PART 3:

Resource Documents

1. The National Strategic Development Plan, 2006 – 2010
2. The National Strategic Development Update, 2009 – 2013
3. Accountability and Planning in Decentralized Cambodia, Horng Vuthy and David Craig, CDRI, 2008
4. Law on the Administration and Management of Communes/Sangkats
5. Revised Guidelines for Commune Development Plans and Commune Investment Programs, Ministry of Planning and Ministry of Interior, 2006

PART 4:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.

EXERCISE: Case study and group discussion

- Cambodia has 4 levels of government: national, provincial/Phnom Penh, municipal/district/khan and commune/sangkat.
- A key element of the planning system is the commune development plan. This 5-year development plan must be formulated in consultation with citizens. The development plan is then updated annually based on an evaluation of the previous year's implementation.
- The commune development plan is presented and discussed at a meeting organized by the district council. The district council and other commune councils in the district attend the meeting.
- At the district meeting, planning personnel of the district council facilitate a process to identify needs that affect more than one commune. These are needs that may be addressed through inter-commune cooperation, or if almost all communes share the same needs, the needs may be addressed by the district council.
- The district council may also propose additional services or activities that it thinks are priorities. It is up to the commune councils whether they will accept the district council proposals, or not.
- Planning personnel will also facilitate the identification of sources of funding (from sectors and development partners) for the priorities that the commune councils have identified.
- Where no funding can be found for commune priorities, this will be documented and the information will be channelled to the provincial council. Where the provincial council cannot assist to find funding, the information will be channelled to the relevant line ministry. Line ministries, therefore, will be able to learn about local priorities that are unmet.
- Lastly, the district council will identify and discuss with commune councils what support requirements communes will need from the district council in order to implement their commune development plans.
- The district development plan will consist of:
 - all priorities identified by communes that have funding
 - a list of inter-commune projects that have funding
 - commune priorities that will be addressed by the district council

- unfunded priorities that are referred to the provincial council for consideration for funding
- overview of services that the district council will provide in order to support communes to implement their development plans.

Please discuss in groups:

- Do you think that the role of communes is appropriate?
- Do you think the role of districts is appropriate?
- Overall, what do you think are the advantages and disadvantages of this approach to planning?

Modules for Understanding
and Training on the
Organic Law

Module 15:
Fiscal Decentralization and
Financial Management

PART 1:

- 1. Introduction**
- 2. Fiscal Decentralization**
- 3. Financial and Asset Management**
- 4. Commune/Sangkat Financial Arrangements**

Section 1: Introduction

- ✓ **Fiscal decentralization** is an integral and **indivisible part of D&D reform**. Fiscal decentralization refers to the right of sub-national councils to raise their own revenue and to manage their finances with relative autonomy. Fiscal decentralization should ensure that each council has the financial resources and the discretion necessary to make choices that respond to the real needs of citizens.
- ✓ The **National Strategic Development Plan 2006 – 2010** highlights the importance of councils having **adequate finances** (including own-revenue from taxes and fees). (NSDP, pages 37, 38)
- ✓ Citizens have greater opportunities to engage with their elected councilors and, therefore, opportunities to influence how public funds are spent at sub-national level. In addition, citizens can more easily see how their local council is, or is not, spending public funds.
- ✓ With **enhanced transparency** and **greater opportunities to influence** decisions, citizens should then be in a good position to hold their **council accountable** for how the council spends its financial resources.

Pros and Cons of Financial Autonomy

With its commitment to eradicate corruption, the Royal Government is rightfully concerned about the integrity of funds transferred to sub-national level. It is important that mechanisms are in place to avoid corruption, and to detect and punish corruption when it does happen. No country in the world, however, is corruption-free.

Importantly, concerns about corruption should not override the need to provide councils with adequate financial autonomy. Councils need adequate financial autonomy in order to be able to respond to the real needs of citizens.

- ✓ The Organic Law provides the broad outlines for council finances and financial management. Much of the details regarding council finances and financial management, however, must still be elaborated in laws and regulations, including the *Law on Sub-National Administration Financial Regime and Management of Assets* (Organic Law, Articles 44 - 46, 137, 244, 245, 248, 253, 255).
- ✓ The National Committee for Sub-National Democratic Development (NCDD) has a Sub-Committee on Fiscal and Financial Affairs that assists and advises the NCDD about matters related to financial and fiscal affairs of sub-national councils. (Sub-Decree on the Establishment of NCDD Sub-Committees, Article 10)

Public Financial Management Reform (PFM)

Fiscal decentralization is closely linked to Public Financial Management Reform (PFM). One of the objectives of the PFM Program (Stage 2 - 2008 to 2010) is to *strengthen and develop fiscal decentralization policy and strategy*. This objective is to be achieved by ensuring that the Royal Government's decentralization policy and the Organic Law are implemented and that they incorporate **accountability**. The two reforms - D&D reform and PFM reform, therefore, must work together and in harmony.

At the commune/sangkat level, PFM aims to improve budget formulation and implementation, as well as council financial management systems. The hope is that non-tax revenue collection, to begin with, will increase. (See PFM Program, Stage 2: page 42, objective 27).

Section 2: Fiscal Decentralization

Organic Law, Articles 241 – 253, 280

Introduction

- ✓ A fundamental element of the Organic Law is that **government functions** are **transferred** to the Phnom Penh council and to provincial, municipal, district and commune councils. (Organic Law, Articles 214, 217, 277, 278, 281)
 - **For example**, municipal councils may be transferred functions to collect garbage; to build, repair and maintain sewage systems; and to provide housing to the homeless. District councils may be transferred functions to provide primary education; and to administer district hospitals. Commune councils may be transferred functions to provide agricultural extension services; to provide potable water; and to administer health posts.
- ✓ It would be meaningless to transfer functions (whether administrative or sectoral functions) without, at the same time, transferring to the councils the resources they require to implement those new functions. A second fundamental element of the Organic Law, therefore, is that **resources must follow functions**. This means that when a function is transferred to councils, the councils must also receive the corresponding resources (finances, personnel and assets) to enable the councils to implement the function. (Organic Law, Articles 217, 242, 280)
- ✓ A third fundamental element of the Organic Law is that a council must have **adequate revenue** to conduct its general affairs. (Organic Law, Article 242)
- ✓ Taking the second and third fundamental elements together: councils must have **adequate revenue** to enable them to:
 - implement their obligatory functions
 - implement a range of permissive functions
 - fulfill their legal duties
 - cover their reasonable administrative costs
 - implement their functions and duties in ways that promote democratic development. (Organic Law, Article 242)

See Module 13 for more information on transferring functions to councils

Obligatory Function

A function that is defined by a legal instrument as a function that a council is required to implement.

Permissive Function

A function that a council may choose to implement, or may choose not to implement.

– Budgets

- ✓ **Phnom Penh** and every **province, municipality** and **district** has its own annual budget. (Organic Law, Article 44)
- ✓ All **communes**, and **sangkats in districts**, have their own budget, as provided under the LAMC. (LAMC, Article 73)
- ✓ The budgets of **khans and sangkats** in Phnom Penh are part of the budget of Phnom Penh. The budgets of sangkats in municipalities are part of the budget of the municipality. (Organic Law, Articles 44, 244) This enables Phnom Penh and municipalities to ensure coherent and unified urban development.
- ✓ A council approves its budget in accordance with the annual process of state budgeting. A council must also approve a **medium-term expenditure plan** that is updated annually. (Organic Law, Article 44)
- ✓ A council budget must balance revenues and expenditures. (Organic Law, Article 44)
- ✓ A council's **technical facilitation committee** must ensure that the budgets of ministries providing services in the area of the council are integrated into the council's budget, investment program and medium-term expenditure framework.

See Module 7 for more information on the technical facilitation committee

Sources of Council Revenue

- ✓ The Phnom Penh council and every provincial, municipal and district council is entitled to **revenue from 3 sources**:
 - local own-revenue
 - revenue from the national level
 - other revenue. (Organic Law, Article 244)
- ✓ **Local own-revenue** may be raised through:
 - local taxes (to be identified in a future law)
 - fees and charges (to be identified in a future law)
 - district council revenue from taxes that is shared with commune and sangkat councils (to be identified in a future law)
 - voluntary donations
 - other sources that are set out by law or sub-decree in the future. (Organic Law, Article 246)

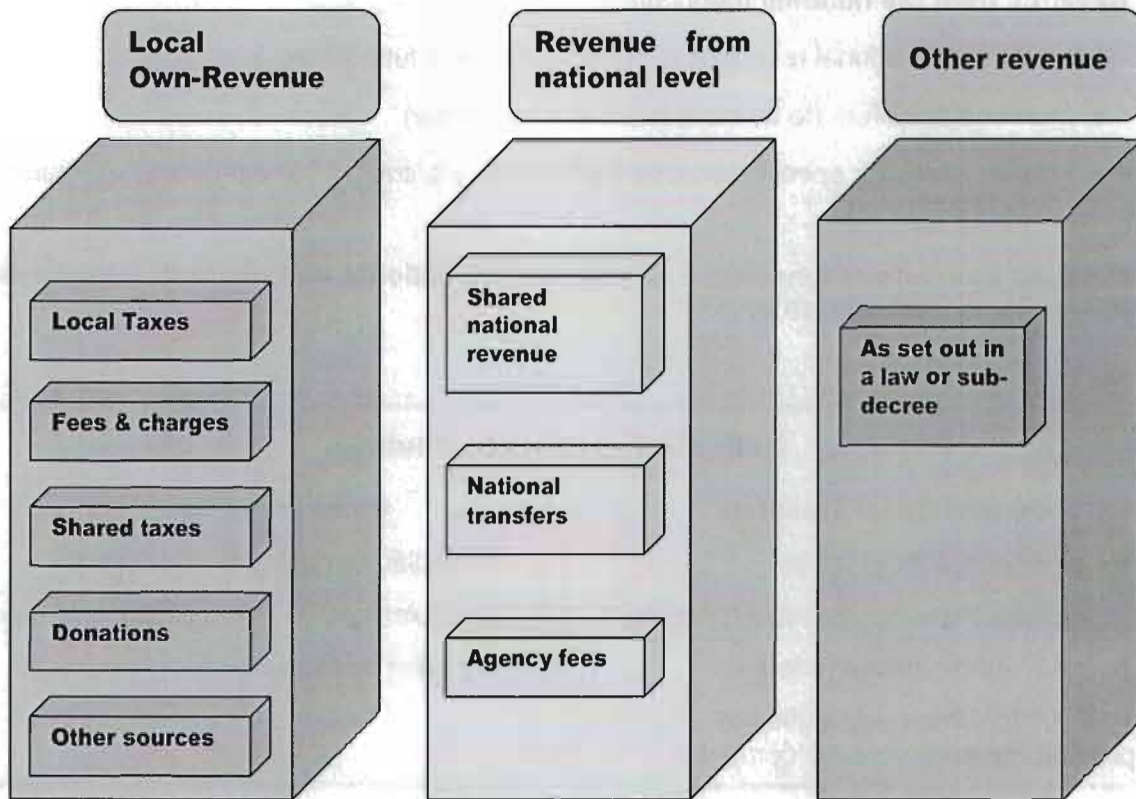
How can paying taxes or service fees increase accountability?

When you pay taxes or fees for a service out of your pocket, you are likely to have higher expectations of the services you receive in return. You are more likely, therefore, to require your elected councilors to answer for any services that do not meet those expectations. Also, when government collects taxes and fees directly from its citizens, the government may feel even more responsible to use those funds in ways that respond to the real needs of those citizens.

- ✓ A council must utilize its revenue in order to focus on the most important development needs, including: the **different needs of women, youth, children, and vulnerable groups**, including the poor and indigenous peoples. (Organic Law, Article 42)
- ✓ In addition, it will be important to ensure that taxes, fees and charges do not disproportionately or unfairly **impact on women, or on the poor or other vulnerable groups**.
- ✓ **Revenue from the national level** comes through:
 - a share of national revenues (to be specified in a future law)
 - national transfers (to be elaborated in a future law)
 - agency fees for special services performed by a council for a ministry. (Organic Law, Article 247)
- ✓ **National transfers** of funds are made through **conditional and unconditional transfers**. (Organic Law, Articles 249 to 251)

National Transfers to Councils	
Unconditional Transfers	Conditional Transfers
✓ To fulfill council legal duties	✓ To implement obligatory functions
✓ To implement new permissive functions	✓ To implement on-going permissive functions
✓ To cover administrative costs	✓ For other defined obligatory purposes
✓ To fulfill functions and duties in ways that promote democratic development	

SUMMARY OF THE 3 SOURCES OF COUNCIL REVENUE



Section 3: Financial and Asset Management

Financial Management

Organic Law, Articles 42 – 45, 241, 252

- ✓ A council must manage and use its finances in order to **promote democratic development**. The council must also focus on specific development needs, including **basic and necessary services** and the different needs of women, youth, children and vulnerable groups. (Organic Law, Articles 42, 241)
- ✓ A council's finances are finances of the state and, therefore, they are **finances that belong collectively to the citizens of Cambodia**.
- ✓ It follows, therefore, that a council must manage its financial affairs in a way that is **transparent and accountable** to its citizens. (Organic Law, Article 43)
- ✓ Councils are required to follow rules, systems and procedures in regard to financial management, including regarding: **accounting** and **reporting, procurement**, and internal and external **audits**. (Organic Law, Article 45)
- ✓ Councils are not entitled to raise **loans**. (Organic Law, Article 252)

Asset Management

Organic Law, Articles 46, 254 - 261

- ✓ A council is responsible for effectively utilizing and managing state assets that are transferred to the council, or which the council has acquired on its own. The council is **accountable to its citizens** for how it manages and utilizes its assets. (Organic Law, Articles 43, 46)
- ✓ Councils receive the assets that correspond to functions that are transferred to the council: **assets follow functions**. In the event that a function is transferred and the necessary assets are insufficient or do not exist, the council must receive the finances to acquire the necessary assets on its own. (Organic Law, Articles 217, 256, 258)
- ✓ A council may manage, utilize and **generate revenue** from state assets that are transferred to the council. (Organic Law, Article 255)
- ✓ A council is not entitled to sell a state asset, unless the council has agreement from the Ministry of Interior and Ministry of Economy and Finance. (Organic Law, Article 255)

Example - Education Sector Function

It may be decided that commune councils will be transferred the function to *establish and operate pre-schools*. If that function is transferred to commune councils, commune councils must also receive:

- *the necessary finances*
- *the necessary skilled personnel*
- **the assets** that relate to pre-schools, such as existing pre-school buildings and teaching tools.

Actors Involved

- ✓ The **council** has the sole authority to approve council budgets, investment programs and medium-term expenditure plans. (Organic Law, Articles 44, 245)
- ✓ The **governor** has financial signing authority on behalf of the council. (Organic Law, Article 245)
- ✓ The **board of governors** assists the council to meet its finance-related duties. It prepares and submits to the council for consideration a draft budget, investment program and medium-term expenditure plan. The board of governors reports and provides recommendations to the council at all meetings regarding the council's finances. It also works with the technical facilitation committee (*see below*). (Organic Law, Articles 156, 163, 165)
- ✓ A council has a **chief of finance** who is hired by the council, with the approval of the Ministry of Economy and Finance as requested by the Ministry of Interior. The chief of finance is responsible for financial management and procurement, and she/he must ensure proper auditing of finances. (Organic Law, Articles 179, 180)
- ✓ A council must have a **procurement committee**. The procurement committee ensures that all procurement is conducted with integrity, transparency and fairness, and in accordance with the Law on Public Procurement. (Organic Law, Articles 136, 137)
- ✓ The **technical facilitation committee** has a role in the preparation of the council's budget, investment program and medium-term expenditure plan. The technical facilitation committee works to ensure that the plans and budgets of ministries, institutions, departments and units of the Royal Government of Cambodia operating in the area of the council are integrated in the council's development plan, budget and investment program.
- ✓ Every administration has a unit dedicated to financial and asset management. (Sub-decree Roles – Province, Articles 58, 112, 173)

It is an **abuse of power** for a councilor, the governor, board of governors, chief of finance, or any council personnel to take or use any council funds or assets for his/her own benefit.

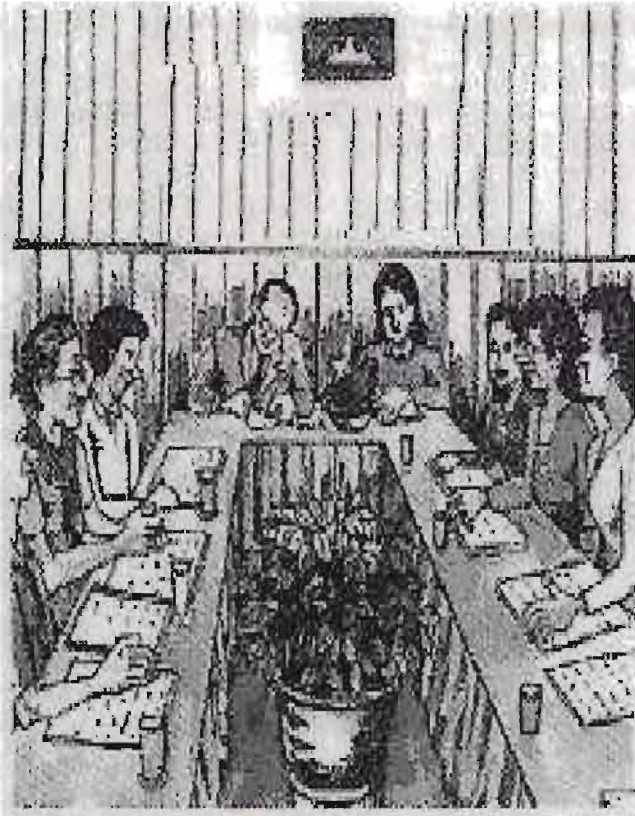
See Module 7 for more information on the technical facilitation committee

See Module 12 for more information on administration units

FINANCIAL ACTORS AT SUB-NATIONAL LEVELS



**Procurement
Committee**



Council



Governor



**Board of
Governors**



**Technical
Facilitation
Committee**



Chief of Finance

- ✓ As has been mentioned, many of the details regarding council finances and financial management must still be elaborated in laws and regulations, including the *Law on Sub-National Administration Financial Regime and Management of Assets* (Organic Law, Articles 44 - 46, 137, 244, 245, 248, 253, 255).

Section 4: Commune/Sangkat Financial Arrangements

✓ **The Law on the Administration and Management of Communes/Sangkats (LAMC)** provides that:

- each commune/sangkat council has its **own financial resources and assets**, and its own **budget** (LAMC, Article 73)
- commune/sangkat councils have the **right to collect own-revenue** from taxes, non-fiscal taxes and charges (collection of taxes must be in accordance with a law that has not yet been adopted) (LAMC, Articles 74)
- commune/sangkat councils are entitled to receive:
 - a **share of national revenue**
 - compensation for **agency functions** performed
 - additional funds from inside and outside the country (LAMC, Articles 75, 76 and 78), including funds from development partners and NGOs
- a national **Commune/Sangkat Fund (C/SF)** was established as a mechanism for fiscal transfers from national level to commune/sangkat councils, with contributions made by the Royal Government and development partners. (LAMC, Article 77)
- councils receive state **assets** that they may use, including to generate revenue. (LAMC, Article 81)

Agency Function

A function that is delegated by a line ministry or other national government institution to a commune/sangkat council. The function is implemented by the commune/sangkat council on behalf of the line ministry or national government institution.

✓ Commune/sangkat councils are entitled also to collect certain **local revenue**, such as fees for civil registration.

✓ The amount of funds commune/sangkat councils have received through fiscal transfers has been modest, but continues to increase each year. In 2002, councils received 1.2% of national revenues. For 2008, councils will receive **2.75% of national revenues**. In 2008, the **average** size of a commune/sangkat council's development budget is approximately **US \$10,000**.

For the most part, commune/sangkat councils have used their financial resources for **infrastructure** projects.

✓ The LAMC will continue to govern commune and sangkat councils in districts regarding finances. The budget of sangkat councils in Phnom Penh and in municipalities, however, will be included in the budget of the Phnom Penh and municipal budget. (Organic Law, Articles 244, 283)

✓ In addition, the Organic Law requires that when a commune receives a function from the national level, it must also receive the resources – finances, personnel and assets – that are required to implement the function. (Organic Law, Article 217)

✓ Similarly, when the Phnom Penh council or a municipal council delegates a function to a sangkat, any additional resources the sangkat needs in order to implement the function effectively should be transferred.

Issues to Address

Much of the details regarding council finances and financial management must still be elaborated in laws and regulations, including the *Law on Sub-National Administration Financial Regime and Management of Assets* (Organic Law, Articles 44 - 46, 137, 244, 245, 248, 253, 255).

It will be important to heed the message of the National Strategic Development Plan: in order to make a real difference in the lives of their residents, councils will need **adequate finances** and **own-revenue** and entitlement to raise own-revenue, as well as **adequate financial autonomy**. In order to meet local needs, councils will need to have **discretionary funds** that they can use as they see fit.

It is critical also that the laws and regulations include robust mechanisms for **transparency, citizen participation** and **mechanisms of accountability** to enable citizens to hold their councils accountable for how public funds are used.

In order for those mechanisms to be meaningful, **councils themselves must have robust mechanisms** to ensure transparency from and to hold accountable the **other actors** involved in council finances and financial management. Other actors include the governor, board of governors, chief of finance and procurement committee. For instance, it will be important that there be councilors on the **procurement committee**, because it is councilors who are directly accountable to citizens for how public funds are spent.

PART 2:

Summary of Module

- Phnom Penh, provinces, municipalities, districts, communes, and sangkats in districts have their own budget. Khans and sangkats in Phnom Penh receive their budget from the Phnom Penh council. Sangkats in municipalities receive their budget from the municipal council.
- A council must approve its annual budget, and it must approve a medium-term expenditure plan that is updated annually.
- In addition to councils, the following actors are involved in financial management: the governor, the board of governors, the chief of finance, the procurement committee. The technical facilitation committee also plays a role.
- Fiscal decentralization should ensure that councils have the finances and the financial autonomy necessary to respond to the real needs of their citizens.
- A fundamental element of the Organic Law is that councils are transferred sectoral functions to implement. A function must be transferred together with the corresponding finances, personnel and assets that are needed to implement the function effectively.
- Councils are entitled to adequate financial resources to implement their functions; to fulfill their legal duties; to cover their administrative costs; and to implement their duties and functions in ways that promote democratic development.
- Councils have 3 sources of revenue: local own-revenue (including local taxes, fees and charges); revenue from the national level (including a share of national revenue, and national transfers); and other revenue.
- Some council revenue is earmarked for specific purposes (such as to implement obligatory functions). Some council revenue, however, is discretionary revenue that the council can spend as it sees fit.
- With increased revenue, and with discretionary revenue, it is critical that councils be transparent and accountable to citizens.

PART 3:

Resource Documents

1. Fiscal Decentralization: Principles, Practices and Application to Cambodia, Training Course on D&D in Social Sectors, Prof. Roy Kelly, May 2007

PART 4:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.
2. Give each group one of the following exercises.

EXERCISE ONE: Sangkats and Khans

The budgets of khan and sangkat councils in Phnom Penh are part of the budget of the Phnom Penh council. Similarly, the budgets of sangkat councils in municipalities are part of the budget of the municipal council. Khans, and sangkats in Phnom Penh and municipalities, therefore, will receive their budget from the Phnom Penh or municipal council.

Discuss the following question:

- What do you think are the real implications for khans and sangkats that receive their budget from the Phnom Penh or municipal council?
- How much authority and discretion will khans and sangkats have over their budgets?

EXERCISE TWO: Finances and Democratic Development

Discuss the following questions:

- What are some concrete strategies to ensure that a council's revenues and expenditures are transparent to citizens (*other than posting information on a notice board*)?
- The Organic Law provides that a council must manage its finances so as to meet the needs of women, youth, children and vulnerable groups, including poor people and indigenous peoples. What are some concrete ways that a council can ensure that its finances will - in fact - address the needs of these groups?
- What do you think are obstacles to citizens holding their council accountable for how public funds are spent?
- Keeping those obstacles in mind, what mechanisms could be put in place to better enable citizens to hold their councils accountable for how public funds are spent?

EXERCISE THREE: Own-Revenue

Prepare a proposal for appropriate sources of own-revenue for each of the different councils.

Create a heading for each of the councils listed below. For each council, identify the particular sources of own-revenue you think are appropriate for that council. Be prepared to explain your choices.

- commune councils
- district councils
- municipal councils
- provincial councils
- Phnom Penh council

Some examples of possibilities:

fees/charges from services delivered

fees for business licensing

tax on used land

fees for registration of vehicles

parking fees

value added tax

charges for use of council property

market fees

tax on unused land

fees for transfer of ownership of land

fees for transfer of ownership of vehicles

income tax

charges for use of natural resources

fees for civil registration

Modules for Understanding
and Training on the
Organic Law

Module 16:
Council Elections

PART 1:

- 1. Commune/Sangkat Council Elections**
- 2. Elections of New Councils**

Section 1: Commune/Sangkat Council Elections

Commune and sangkat council elections are governed by the **Law on Elections of Commune/Sangkat Councils**, as amended (LECS).

- ✓ Commune and sangkat councils are **directly elected by their local citizens**. (LECS, Article 2)
- ✓ Commune and sangkat councils are **elected every 5 years**. (LECS, Article 3)
- ✓ Commune/sangkat councils are elected in accordance with a system of **proportional representation**. (LECS, Article 5)
- ✓ In order to be a candidate for election, a person must be on a registered **political party list of candidates**. (LECS, Article 49)
- ✓ When voting, citizens choose a political party, not individual candidates. (LECS, Article 21)

The elections of commune/sangkat councils are central to the election of the new councils for Phnom Penh, provinces, municipalities, districts and khans.

This is the case because commune/sangkat councilors will be the voters for the new councils.

Proportional representation is a type of election system in which, typically, more than one political party wins seats. The system awards seats to each political party based on the proportion of the total vote each party received in the election. As a simple example, if a party wins 45% of the vote, that party wins 45% of the seats. If a party wins 10% of the vote, that party wins 10% of the seats.

The proportional representation system generally provides: results for political parties that better reflect citizens' preferences; better representation for political minorities; higher levels of voter turnout; and increased opportunities for women to stand for office.

Among western democracies, the proportional representation system has become the predominant voting system. The system is used in countries around the world, such as Germany, Sweden, Australia, South Africa, Brazil and many others.

Some Facts about Commune/Sangkat Council Elections

2002 Elections

8 participating political parties
75,655 candidates
4.5 million voters
951 female councilors elected
10,310 male councilors elected
11,261 councilors elected in total

2007 Elections

12 participating political parties
102,266 candidates
5.3 million voters
1,661 female councilors elected
9,692 male councilors elected
11,353 councilors elected in total

H.E. Leng Vy, *Regulations under the LAMC, May 2008*

Section 2: Elections of New Councils

The elections for the new councils are governed by the **Law on Elections of the Capital Council and Provincial, Municipal, District and Khan Councils**, 2008 (LECC).

- ✓ Each of the new councils is **indirectly elected**. (LECC, Article 4)
- ✓ The new councils are **indirectly elected by commune/sangkat councilors** in their area. (LECC, Article 27)
 - **For example**, all commune/ sangkat councilors in Kandal province will vote for the Kandal provincial council. Only commune/ sangkat councilors within Lvea Em District will vote for the Lvea Em district council.
- ✓ The **first elections** of the new councils took place on **May 17, 2009**. (LECC, Article 89)
- ✓ Councils will be **elected every 5 years** thereafter. (LECC, Article 2)
- ✓ Like all elections in Cambodia, the councils are elected in accordance with a system of **proportional representation**. (LECC, Article 13)
- ✓ In order to be a candidate for election, a person must be on a registered **political party list of candidates**. (LECC, Article 16)
- ✓ **Commune/sangkat councilors** are **not eligible** to stand for election to the Phnom Penh council or to a provincial, municipal, district or khan council. (LECC, Article 17)
- ✓ Voters choose a political party, not individual candidates. (LECC, Article 53)
- ✓ The number of councilors for each council is determined by sub-decree, based on the demographic and geographic **features of the** area. The Organic Law does, however, specify a permissible range for the number of councilors for each council, as shown below. (Organic Law, Article 18)

Direct and Indirect Elections

In *direct* elections, citizens themselves vote for their representatives. National Assembly elections are *direct* elections. Commune/sangkat councils are also *directly* elected.

Unlike the National Assembly, the Senate is *indirectly* elected by commune/sangkat councilors. Directly-elected councilors, therefore, elect senators *on behalf of their citizens*. In indirect elections, therefore, citizen representatives elect additional citizen representatives.

There are *indirect* elections for the new sub-national councils. The voters for the new councils, therefore, are not be citizens. Instead, commune/sangkat councilors elect the new councils on behalf of their citizens.

Range of Number of Councilors for Each Council				
Phnom Penh	Province	District	Municipal	Khan
Maximum 21	9 to 21	7 to 19	7 to 15	7 to 19

- ✓ Once elected, the council is a public representative, **guardian and servant** for the interests of all citizens in its jurisdiction. (Sub-decree Roles – Province, Articles 6, 61, 113)

Why are elected councilors democratically accountable to citizens?

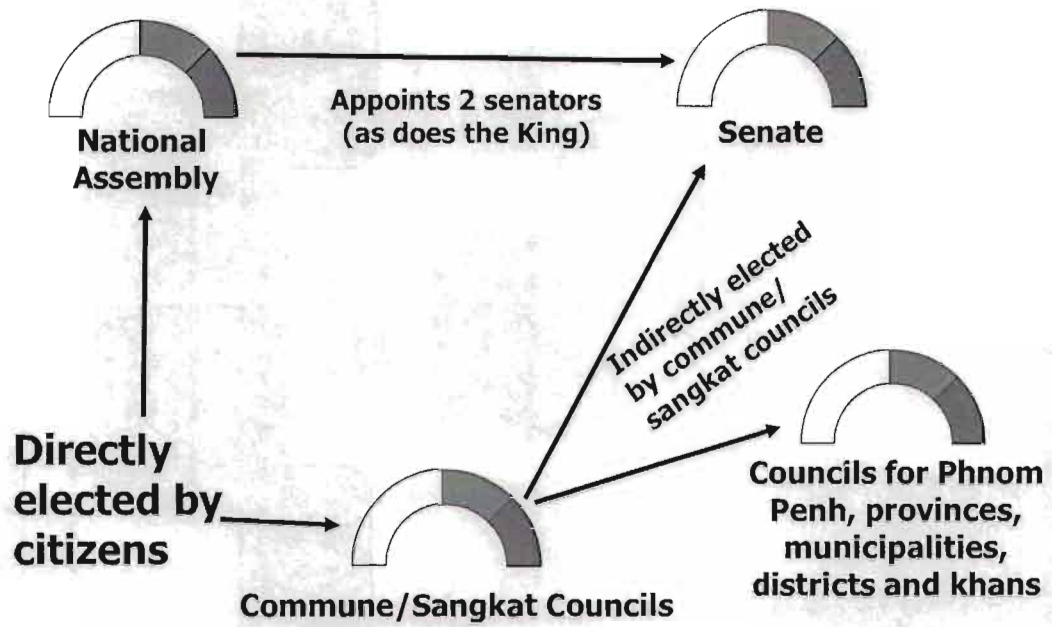
The Cambodian **Constitution** provides that all state **power belongs to the people**. It is not feasible, of course, for 14 million Cambodians to each be directly involved in the exercise of state power. Citizens, therefore, elect representatives. Those representatives exercise the people's power on the people's behalf.

Councilors of sub-national councils are the elected representatives of citizens. As representatives of the people, **councilors exercise power on behalf of the people, in the interests of the people and in order to benefit the people.**

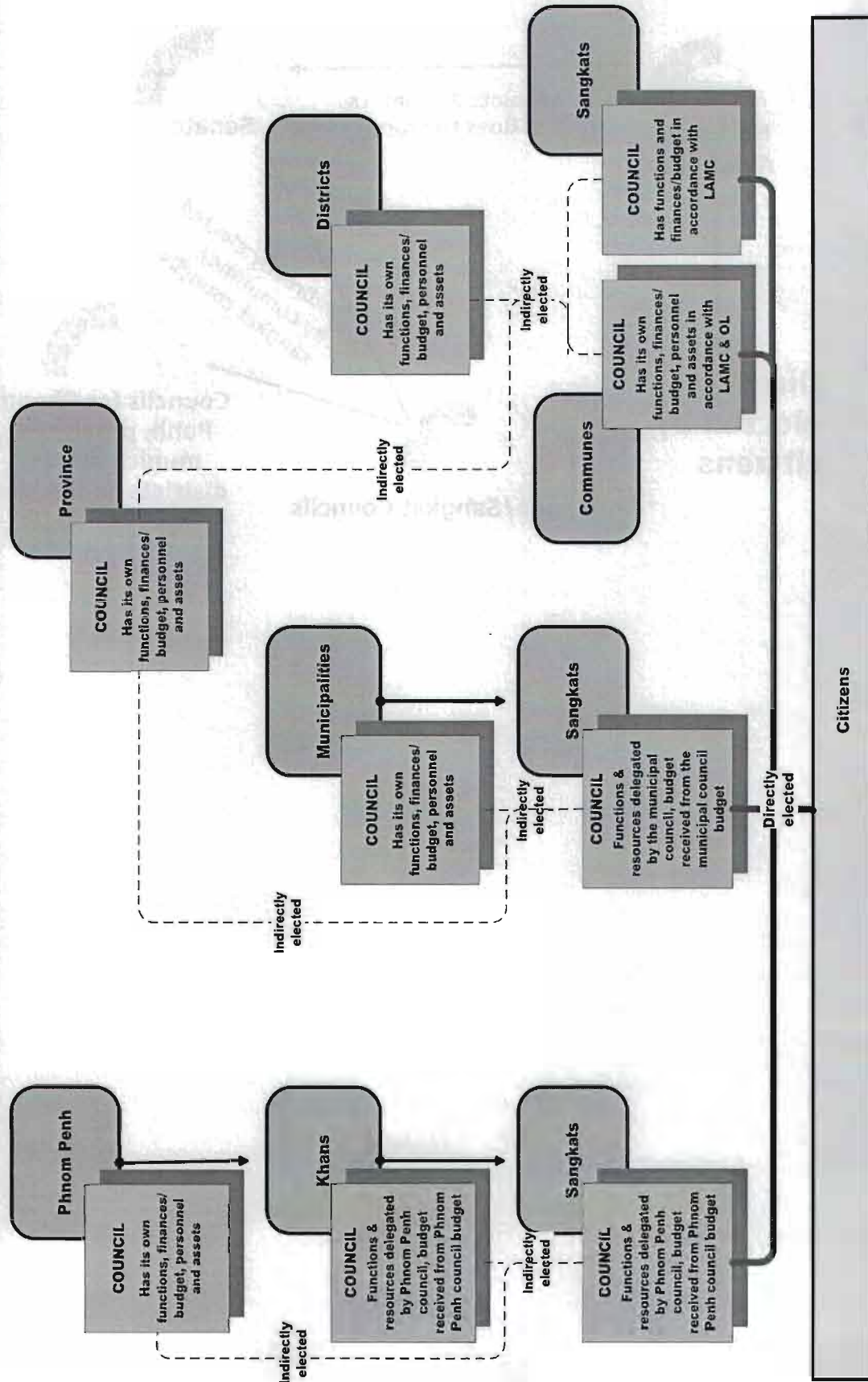
In the event that citizens are unhappy with how their councilors exercise the people's power, citizens may elect different representatives at the next election. This is one way to hold councilors accountable.

Other mechanisms are required to hold councilors accountable, however, so that citizens can express their satisfaction or impose sanctions in the event they are dissatisfied more often than at election time.

Current Electoral Arrangements



NEW ADMINISTRATIVE ARRANGEMENTS



PART 2:

Summary of Module

- Commune/sangkat councilors are directly elected by citizens.
- The Phnom Penh council and all provincial, municipal, district and khan councils are indirectly elected by commune/sangkat councilors.
- All sub-national councils, including commune/sangkat councils, have a 5-year mandate.
- Elections of sub-national councils, including commune/sangkat councils, are held in accordance with a system of proportional representation. Each political party wins seats in proportion to the votes it received in the election.
- Candidates for all sub-national councils, including commune/sangkat councils, must be on a registered political party list of candidates, and voters choose a political party rather than individual candidates.

PART 3:

Resource Documents

1. Constitution of the Kingdom of Cambodia, as amended
2. Law on the Election of Members of the National Assembly, as amended, 2007
3. Law on the Election of Commune/Sangkat Councils, as amended, 2006
4. Law on Elections of the Capital Council, and Provincial, Municipal, District and Khan Councils, 2008
5. H.E. Leng Vy, *Regulations under the LAMC*, May 2008

PART 4:

Group Work

THE GROUP WORK DESCRIBED BELOW MAY NOT BE APPROPRIATE FOR ALL TRAININGS. PLEASE TREAT THE GROUP WORK BELOW AS A SUGGESTION ONLY.

1. Divide participants into groups of no more than 8 people.

EXERCISE: Direct and Indirect Elections

Discuss the following question:

- What do you think are the advantages and disadvantages of having indirect elections for the new councils?