

# Why General Research Department and How GRD and the Whole Research Unit Work to Produce the Legislative Note

By Mr. KIM Sochatra  
Director of General Research Department  
Secretariat General of the Senate  
Kingdom of Cambodia

For the Biennial Conference of APLAP in Korea  
27<sup>th</sup> April 2019

- Outline of the talk:

1. Brief Background of the General Research Department (GRD)
2. Location, importance, and types of support services provided by GRD
3. How GRD and the whole research unit (General Directorate of Legislative Services and Collective Territory) work to produce legislative note for the Senate.

## 2. Location, importance, and types of services

- One of the five research departments of the General Directorate of Legislative Services and Collective Territory of the Senate Secretariat General.
- *GRD* reviewing the Draft or Proposed Law (DPL) from economic and social perspective; it does cost and benefit analysis;
- Types of Support Services:
  - Legislative note
  - By-request note/research (research paper, referencing note, aide memoir paper, speech, discourse, keynote, remark, ... ,ect.)
  - Reference note (Proactive research work on any currently hot topics, or on any topic that may interest or benefit the Senate's work)

# How GRD and the Whole Research Unit Work to Produce Legislative Note for the Senate

## *1. Work separately to produce their own legislative note:*

- GRD reviewing the legislation from economic and social perspective; LRD studying legislation's conformity with Constitution, national and international laws; WAGD focusing their study on gender perspective of legislation; and RCTD looking at legislation in reflection against sub-national policies (PSD not involved).

## *2. Work in group to produce joint legislative note*

- All the four departments work in group to put together all the legislative note in a joint legislative note for the Senate.
- During the meeting, each department representative(s) give explanation on how and why his or her department picks and includes any particular data or information; how data or information is interpreted; what will be costed and benefited by the legislation; and how/what gender and local governments are impacted. (last part of Annexed Template)

**Annexed Template**  
**Aide Memoir Paper**  
**on**  
**Draft or Proposed Law (DPL) on ...**

**1. Background of DPL Preparation**

- Source of DPL (Who is the author of DPL?)
- When is Draft Law passed by the Council of Ministers
- When is Draft or Proposed Law adopted by the National Assembly?
- When did DPL arrive Senate?
- When will DPL be endorsed by Senate?

**2. Rationales for Preparing a DPL**

- Why is this law needed? And is it nationally, regionally, and internationally required?
  - Does the DPL raise any implications for Cambodia's obligations under regional treaties or conventions?
  - What about obligations to multilateral treaties, conventions, or organizations such as the WTO, or ASEAN ..., ect.?
- Context of the nation, regional and international arena
- Theory and practice
- Scope of DPL (What challenges is DPL intended to solve)

### **3.Features of DPL**

- Main contents of DPL
  - Type of law (whether it is private or public law)
  - Legislative format of DPL
  - Legislative substance of DPL
- Legitimate principles of DPL (Is DPL in conformity with the Constitution and existing laws?)
- Principles of rule of law
  - Does the DPL provide for yearly reports to Parliament on its administration and operation?
  - May the law be retroactively applied?
  - What compliance costs are likely to be borne by citizens or businesses that are governed by the new law?
  - What is the probable impact of DPL on different parts of community—in particular, women, families, the poor, small businesses?

### **4.Process of law implementation**

- Public information and education issues
  - How will the public and affected people learn about the terms and impact of DPL?
  - Have funds been set aside for public information and education programs?
  - Do officials, judges, and other authorities need to be better acquainted with (made aware of) the terms of DPL and questions of both administration and interpretation?
- Law enforcement
  - Who will administer this new legislation when it becomes law?
  - Does the DPL provide for the creation of regulations to enforce law implementation?

### **5.Impact analysis**

- Cost, benefit, social and environmental analysis
- Employ Key Steps of Gender Analysis
- CBA for local/sub-national governments

**THANK YOU!**

# LEGISLATIVE PROCESS IN CAMBODIA

# 1. Introduction

- A law initiated by a Ministry of the Council of Ministers is called a **Draft Law**. The Council of Ministers examines and may approve the draft law. It then submits the draft law with a **Statement Clause** to the National Assembly.
- In addition, any member of parliament (the National Assembly and the Senate) may initiate legislation which is called a **Proposed Law**.  
The proposed law initiated by member of the National Assembly or the Senate shall be introduced into the National Assembly.

## 2. Executive Stage

- In general, Minister's officials address a matter through a draft law.
- At this stage, there are several options that the government wishes to implement legislation shall be studied, reviewed, and decided.
- The appropriate ministries study the policy and review its sources to determine whether or not the legislation is needed. If legislation is required to implement a policy, the minister shall allow ministerial officials to proceed with law drafting, beginning with policy consultations to obtain input from stakeholders, other ministries concerned, and sub-national administration officials.

## **2.1. Drafting and Formatting Legislations**

### **2.1.1. Preparing first draft**

**-The First Stage of the Zero Draft** -The responsible ministry or institution , if required, shall consult with stakeholders, concerned ministries, national and sub-national government bodies, civil society , non-governmental organizations and private sectors, about the aspects related to society, economy, and budgeting.

**-The Second Stage of the Zero Draft** - Upon concluding the first consultation, the responsible ministry or institution shall take into account the input from stakeholders in the first stage and amend the draft where necessary. Subsequent to the amendment, the responsible ministry shall schedule new consultations with stakeholders.

## **2.1.2. Conforming to Rules and Format**

The responsible ministry shall ensure that the draft conforms to the required format including the introduction, statement clause, letter head, preamble, and content.

## **2.2. Submitting the Draft Law and Documents to the Office of the Council of Ministers**

The ministry in charge shall submit a set of documents regarding the draft law to the Office of the Council of Ministers. After the set of documents is properly prepared, the Secretary General will forward it to a **technical meeting, inter-ministerial meeting, and plenary session of the Council of Ministers**.

**2.2.1. Technical meeting**-Social, cultural, economic, legal, and political issues and overall improvement of the format of the draft law is discussed in the technical meeting. The technical meeting is presided over by representatives of the Council of Jurists and the Economics, Social and Cultural Council and attended by the ministry in charge as well as relevant state and private institutions.

**2.2.2. Inter-ministerial meeting**-The discussion focuses on the coordination of duties, inspection, and other inter-ministerial responsibilities. The Ministry of Justice reassess the articles and chapters regarding punishment. If no revision is required, the draft will go to a final review meeting.

**2.2.3. Plenary session of the Council of Ministers**-The Prime Minister or Acting Prime Minister shall be the chair of the session to decide on the draft law. If the plenary session gives consent, the draft shall be submitted to the National Assembly if not , the draft will be revised or dropped at the request of the plenary session of the Council Ministers.

### 3. Parliamentary Stage

In Cambodia, a draft or proposed law must be introduced in the National Assembly. The draft or proposed law must be passed through both the National Assembly and the Senate.

#### 3.1. The National Assembly (NA)

**3.1.1. Legislative Rights of the NA** - The main rights of the National Assembly in legislation are to initiate legislation, propose amendments to laws or the Constitution, and enact laws.

① Initiate legislation – A member of the National Assembly has the right to initiate legislation. A parliamentary group can also initiate legislation Article 91 (New) of Cambodia Constitution.

② Propose amendment(s) to a law or the Constitution - One quarter of the members of the National Assembly has the right to propose amendments to laws or the Constitution.

③ Enact Laws - Adopt laws, endorse the law on national budget and approve and repeal international laws (agreements, treaties and conventions).

**3.1.2. The Legislative Process** - The process of enacting a law in the NA consists of four stages: Drafting, Standing Committee, Commission, and Plenary.

## ① Drafting Stage

Generally, the process of preparing a legal draft is conducted by the Royal Government Institutions.

In special circumstances, the National Assembly can propose and prepare a draft law as follows :

- Single of Member of Parliament (the NA/the Senate) can draft the proposed law by themselves or by asking help from legal expert groups and parliamentary groups- special commissions of Parliament can also draft laws.

- ☛ Before the proposed law becomes the final proposed law (final drafted-text), it shall be sent to relevant groups (legal experts, interested groups...) for discussion and review.
  - ☛ The proposed law must be in written format, clearly titled, and divided into chapters and articles, and attached with the statement clause.
  - ☛ Basically, legislative proves in the National Assembly starts when the drafted law or proposed law officially is submitted to the NA.
  - ☛ The President of the NA hands over the draft law or proposed law attached with statement clause to the Standing Committee for reading.

## **② Standing Committee (First Reading)**

When the Standing Committee receives the proposed or draft law begins its legislative procedure by calling for a meeting. The Standing Committee then refers draft or proposed law to one or more appropriate commissions to review and make a report. Then , copies of the draft or proposed law and attached documents are sent to all members of the National Assembly.

## **③ Commission Stage (Second Reading)**

This is the most important part of the legislative process in the National Assembly. The draft or proposed law is examined by the responsible commission(s), and the author of draft or proposed law is allowed to further explain the law to the commission in a meeting(s).

Every member of the National Assembly can apply for revision or amendment to draft and propose laws during this stage. The application shall be made in written form and sent to the commission in charge or the Plenary Session of the NA. The content and the format of the draft or proposed law are examined and discussed in detail with the assumption that to request (1) the NA not to consider (2) the NA to express first opinions whether consider or not and (3) the NA to consider as urgent purpose. Having finished the examination of the draft or proposed law, the chair of the commission will report the commission's comments to the NA's plenary session.

#### **④ Plenary Stage (Third Reading)**

The NA makes a decision whether to agree or disagree to the application for the revision or amendment to the drafted or proposed law for discussion in the plenary session. Those applications are not adopted on the day they are received unless the law is considered urgent.

The author of the draft or proposed law can withdraw the draft or proposed law even though the NA has started a discussion on it. The withdrawn draft or proposed law can be re-introduced by another member.

The process of discussion on the draft or proposed law is as follows:

- The session shall discuss and approve the contents of the draft or proposed law and provide an opinion on whether or not it should be considered .
- The session shall discuss and approve the draft or proposed law by examining each article or chapter.
- Through other discussions , during the NA's session can use a brief procedure to discuss only proposed amendments to specific articles or chapter requested in written form by a member of the National Assembly as provided for by Articles 26, 27 and 28 of the Internal Rule of the National Assembly. The Standing Committee shall inform the members of the NA in advance if the brief procedure is to be used.

→ The session then adopts the draft or proposed law.

When the draft or proposed law is approved by the National Assembly, the President of the NA shall pass the draft or proposed law to the Senate to continue the procedure.

### **3.2. The Senate's Legislative Rights**

- The right to initiate laws, but must be introduced in the National Assembly and be made in a proper written format, clearly titled, divided into chapters, and article, and attached with a statement clause
- The right to propose amendments to laws
- Not to the constitution

Additionally, the Senate's legislative power also includes the right to request that the Constitutional Council checks

- (1) the constitutionality of the draft or proposed law
- (2) the constitutionality of existing laws

By power of the Constitution, the Senate's legislative power to review and give recommendations on draft or proposed laws is as follow:

## **1. The Introduction of a Draft or Proposed Law at the Standing Committee Stage**

- ☛ Examine the format of the draft or proposed law and make a decision whether or not it agrees with it;

- ☛ Refer the draft or proposed law to one or more commissions for detailed study and review. In cases, where the draft or proposed law is referred to more than one commission, the Standing Committee shall assign one of them to be a Reporting-Commission ; and
- ☛ Distribute to every Senator one copy of the draft or proposed law , though by practice Senators have received a copy of the draft legislation when it was sent to the National Assembly by the Council of Ministers.

## **2. The Commission stage**

- **Internal meeting of the commission-in-charge, where members of the commission**
  - a. Study and review the draft or proposed law
  - b. At the mean time, the commission requests the all senators to review the draft or proposed law. In performing this task:
    - \*Each Senator focuses their review of the draft or proposed law on an in-depth study of the entire contents and the relationship of the law with regard to decentralization and de-concentration in their individual region

\*Each Senator express their opinion regarding approval, request for amendments, or rejection of the law in a written format within three days prior to the internal meeting

c. The Commission prepares a report based on their study along with the help of the Senate Secretariat General expert staff and comments made by each Senator and gives it to the Commission for consideration

- **Inter-commission meeting with government agency of concern:** Once approved internally, the Commission calls for a meeting of all of the Senate's Commissions, the Ministry in charge and, the Ministries concerned and/or sponsors of the draft or proposed law to debate in full its contents and principles

- **Consultation with CSOs and NGOs:** Some cases, the draft or proposed law will be discussed with Civil Society Organizations, Non-Governmental Organizations and/or interest groups
- The commission-in-charge will **prepare a report on the review and study** of the draft or proposed law after taking into account the request for amendments or rejection of the law. The report should include the answers to these issues along with explanations on the opinions expressed by Senators
- Once the report is completed, the commission chairperson request the President of the Standing Committee that the draft or proposed law **be put on the agenda of the Senate's plenary session** and that the Commission's report be brought before the Standing Committee and the full Senate for consideration.

### **3.2.3. Plenary Stage**

- Once approved by the Standing Committee, **the draft or proposed law is brought before the Senate's plenary session by the Commission-in-charge.**
  - a. The Chairperson of the Commission reports the result of their study of the draft or proposed law to the Senate followed by testimony or additional explanations by representatives of the Royal Government and/or the sponsors of the draft or proposed law
  - b. Senators attending the plenary session have an opportunity to put questions related to the report, and/or the draft or proposed law and/or any other concerns they may have to the plenary session. Their statements shall be made heard in order, meaning that those who are for and those who are against the legislation shall speak after one another in compliance with the order arranged by the session's secretaries, who are also Senators, and approved by the Chairperson of the Session

C. Senators can speak only after registering with their Senator Groups and each Group has 20 minutes of speaking time for a draft or proposed law and they shall make statements as to the approval, disapproval, or rejection of a law

d. After hearing clarifications given by the representatives of the Royal Government, and/or the sponsors of the draft or proposed law, and/or the Commission-in-charge, the Chairperson of the Session shall call for an expression of opinions by a vote.

e. Usually, the number of votes depends upon number of attending Senators required for each particular session.

- \* If the approval of draft legislation needs a vote of a relative or absolute majority, the number of attending Senators required would simply be more than half of the entire number
- \* If the approval of draft legislation needs a vote of two third majority, the number of attending Senators required would be at least two third of the entire number

The Senate shall review and give full approval without changes, if there is no request for amendments and no request for a total rejection of the draft or proposed law.

If the Senate approves request for amendments or for rejection, the draft or proposed law is referred back to the National Assembly for re-consideration

### **3.3. Shuttle**

The process of submitting draft or proposed law forth and back between the National Assembly and the Senate is reflected in the Cambodia Constitution as follows:

**☞The duration of submission of the draft and proposed laws between the National Assembly and the Senate:**

- +One month for examining ordinary law
- +Ten days for examining budget law
- +Two days for examining any law, in case of an emergency
- +The period for examination by the National Assembly and the Senate shall be extended equally in cases when the National Assembly does not return the draft laws to the Senate within the above specified period or extends the specified period for its examination.

## → Single Round

- +The Senate shall, within a period of not more than one month after laws or other matters is submitted to it, examine and make recommendations on draft or proposed laws that have been adopted by the National Assembly and other matters that the National Assembly submits to the Senate:
  - In an emergency, this period shall be reduced to five days; and
  - If the Senate makes recommendations and approves the laws, or doesn't make any recommendation within the time limit stipulated above, the law adopted by the National Assembly is promulgated.

## ☛ **The Second Round:**

+ **Case One:** If the Senate requests a modification by either rejecting the entire proposed modification or adopting some part of the draft law/ proposed law:

- 1-The Senate returns the draft or proposed law to the National Assembly for consideration;
- 2-The National Assembly immediately considers the draft or proposed law for a second round; and
- 3- The National Assembly examines and decides on only the provisions that have been proposed for modification by the Senate.

**+Case Two:** When the Senate requests an outright rejection of the draft or proposed law:

- 1-The National Assembly may not examine the draft or proposed law for a second round within a period of thirty days;
- 2- The National Assembly is able to reconsider the draft or proposed law for a second round after a period of thirty days as mentioned above. This period can be reduced to fifteen days when the draft law is on the national budget and to four days when the law is considered urgent;
- 3-The National Assembly shall decide by an open vote and by an absolute majority of its members to examine a draft or proposed law in a second round ; and
- 4- The draft or the proposed laws adopted by the above method shall then be promulgated.

### **3.4. The Constitutional Council**

**The processes of the Constitutional Council in examining laws is divided into **three** parts:**

**① Examining before promulgation as requested:**

+Draft and proposed law adopted by the National Assembly and the Senate are sent to the Constitutional Council to examine their constitutionality before promulgation as requested by the King, the Prime Minister, the President of the National Assembly, the President of the Senate, or one tenth of the members of the National Assembly, or one quarter of Senators.

## **② Examining before promulgation without a request:**

- + Laws related to organic laws, Internal Regulation of the Senate and National Assembly must be sent to the Constitutional Council for review before promulgation.
- +The Constitutional Council will decide by a vote of an absolute majority within thirty days whether or not the laws (organic law) and the Internal Rules of the Senate and National Assembly are constitutional and then communicate its decision to the sender and those concerned.

### ③ Examining after promulgation:

- + Existing laws can be sent to the Constitutional Council for a constitutionality review at the request of the King, the President of Senate, the President of National Assembly, or one quarter of the Senators, one tenth of the members of the National Assembly, or the Courts.
- + Individuals cannot directly appeal against the constitutionality or unconstitutionality of any laws to the Council, but he/she can use this right through a Member of the National Assembly, Senators, President of the National Assembly, or President of the Senate.

A private citizen whose case is involved in a legal proceeding before a court can request an interpretation of the constitutionality of any law which has an impact on his/her case to the Supreme Court to examine the law(s) within 10 days at the latest. In cases where the Supreme Court is not able to interpret or examine the constitutionality of a law(s) as requested, the Court can forward the request to the Constitutional Council within 15 days for consideration.

## 4. Coming into Force

The Senate, after approving a draft or proposed law, shall officially inform the National Assembly via an administrative letter of notification.

The National Assembly, then, shall officially notify the Royal Government that the draft or proposed law has already been adopted and given approval by the National Assembly and the Senate respectively. The text of the passed draft or proposed law shall be sent to the Royal Government.

Even if there is no response from the Senate and the National Assembly, as stipulated in article 113-New, the procedure continues by officially notifying the Royal Government, in the form of an administrative letter of notification, that the draft or proposed law has been passed by parliament.

Upon receiving the approved draft or proposed law, the Royal Government shall forward it to the King for royal assent and promulgation in the Royal Gazette to become a law within ten days in Phnom Penh capital city and twenty days nationwide. However, if the draft or proposed law is deemed urgent it shall be entered into effect immediately .

Thank You