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**GRADUATE SCHOOL OF LAW**

Doctoral Dissertation

**LEGAL PROBLEMS OF LOCAL ADMINISTRATION SYSTEM IN CAMBODIA:  
SEEKING FOR A LOCAL AUTONOMY SYSTEM BY DECENTRALIZATION REFORM**

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## Table of Contents

<b>Table of Contents .....</b>	<b>i</b>
<b>Acknowledgements .....</b>	<b>iii</b>
<b>Abbreviations .....</b>	<b>iv</b>
<b>Introduction.....</b>	<b>1</b>
Background of the Dissertation .....	1
Universality of local autonomy and decentralization .....	1
Why has decentralization been promoted in Cambodia?.....	4
Purpose and Main Topic of the Dissertation.....	6
Research Statement .....	6
Research Problems .....	7
Purpose of the study .....	9
Reasons of Referring to Japanese experiences .....	9
Literature Review .....	10
Research questions and Research Structure .....	12
<b>Chapter I: Historical Development of Local Administration System in Cambodia .....</b>	<b>15</b>
1.1 Prehistory of Local Administration System.....	15
1.1.1. Before the French Arrival .....	16
1.1.2. After the French Arrival and Before 1908 .....	18
1.2 The History of Local Administration System.....	21
1.2.1. Origin of Local Administration System (French Influence Era, 1908-1975).....	22
1.2.2. Socialist Legal System Era (1975-1993).....	41
1.2.3. Democratization Era (1993-Present).....	49
1.3 The changes in commune election from 1908 to 2008.....	62
1.4 Conclusion .....	69
<b>Chapter II: The Overview of Current Local Administration System in Cambodia .....</b>	<b>71</b>
2.1.Overview of Current Governmental Institutions in Cambodia .....	72
2.1.1. The King .....	72
2.1.2. The Government .....	74
2.1.3. The Hierarchical Structure of Law in Cambodia .....	79
2.1.4. Key concepts in Cambodian context.....	84
2.1.5. Public legal entity and institution.....	85
2.2.Overview of Current Sub-National Administration in Cambodia .....	87
2.2.1. The Constitution and the Current Territorial Division.....	87
2.2.2. The Current Administration Structure and Number of Tiers .....	89
2.2.3. The Council, the Governor and the Commune Chief of SNA .....	98
2.3.Vertical Involvements to Sub-National Administration .....	108
2.4.Horizontal Involvements to Sub-National Administration .....	112
2.4.1. The Democratic Participation of Residents.....	112
2.4.2. The Relationship between the Council and the Board of Governors .....	114
2.4.3. The Relationship between Capital and Provincial Administration and Line Departments .....	115
2.4.4. Personnel Management Involvements .....	116
2.5.Conclusion .....	121
<b>Chapter III: The Experiences of Local Autonomy and Decentralization Reform in Japan ....</b>	<b>123</b>
3.1 Historical Development of Local Autonomy Law (Legal System) in Japan .....	123
3.1.1. Local Administration System in Meiji era (1878-1945) .....	125
3.1.2. Constitutional Change and the Local Autonomy Law (1945-1990s).....	136
3.1.3. Era of Decentralization Reform (1990s-Present).....	141
3.2 Overview of Current Local Public Entity and Rights of Residents in Japan .....	145
3.2.1. Legal Framework Guarantee of Local Autonomy .....	145
3.2.2. Autonomy of Entity .....	147

3.2.3. Autonomy of Residents.....	156
3.2.4. Achievement of Decentralization Reform and Lessons .....	158
3.3 Conclusion.....	165
<b>Chapter IV: Legal Problems of Local Administration System in Cambodia.....</b>	<b>168</b>
4.1 Commonalities and Differences between Two Countries .....	168
4.1.1. Differences .....	169
4.1.2. Commonality.....	172
4.2 Legal Problems of Local Administration System in Cambodia .....	176
4.2.1. The Deficiency of a General Law on Local Administration System .....	176
4.2.2. The Distinguishing between Corporate (legal entity) and Organ of the State.....	179
4.2.3. The Nature of “Affairs” of Local Administration .....	180
4.2.4. The Rules of Central Involvements.....	182
4.3 Conclusion.....	183
<b>Conclusion .....</b>	<b>186</b>
<b>REFERENCES.....</b>	<b>189</b>
<b>APPENDIXES.....</b>	<b>222</b>

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### Abbreviations

BoGs	Board of Governors
CLAIR	Council of Local Authorities for International Relation
CLAS	Cambodian's Local Administration System
CP	Capital and Provinces
CPA	Capital and Provincial Administration
CPMDK	Capital City, Provinces, Municipalities, Districts and <i>Khans</i>
CPC	Capital and Provincial Council
CS	Commune/ <i>Sangkat</i>
CSC	Commune/ <i>Sangkat</i> Council
D&D	Decentralization and Deconcentration
LAMCPMDK	Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and <i>Khans</i>
LECPMDK	Law on Elections of Capital Council, Provincial Council, Municipal Council, District Council and <i>Khan</i> Council
LAMC	Law on the Administrative Management of Commune/ <i>Sangkat</i>
LECSC	Law on the Election of Commune/ <i>Sangkat</i> Council
MDKC	Municipalities, Districts and <i>Khans</i> Council
MoEF	Ministry of Economy and Finance
MoI	Ministry of Interior
MoIAC	Ministry of Internal Affairs and Communication
NCDD	National Committee for Democratic Development at subnational level
NCDDs	National Committee for Democratic Development at subnational level secretariat
NEC	National Election Committee
NGO	Non-Governmental Organization
RGC	Royal Government of Cambodia
Seila	Social Economic Improvement Local Agency (in Khmer: Foundation stone)
SNA	Sub-National Administration
TFC	Technical Facilitation Committee
UNTAC	United Nation Transitional Authority in Cambodia
WCAC	Women's and Children's Affairs Committee
WCCC	Women and Children Consultation Committee

## **Introduction**

This thesis is the first attempt to analyze the legal issues of local administration system through decentralization reform in Cambodia. At the starting point, this part will describe why this thesis is necessary. Then, it will explain the originality not found in previous research by providing background, purpose, a literature review, research questions, and the research methods for the main topic of the thesis.

## **Background of the Dissertation**

### **Universality of local autonomy and decentralization**

In general, in many countries, the proper check and balance of the structure of the government has been considered as an important institution in the modern government system. Local autonomy and decentralization, which are the issues of this thesis, can be positioned as one of these modern institutions. For classical instances in Western societies, this concept was discussed by James Madison during the era of foundation for the United States, which was a modern bourgeois society. In order to construct an ideal new government, Madison seemed to believe that by giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of the others could greatly secure against a gradual concentration of several powers in the same department. It was considered as an important progress that the ambition must be made to counteract ambition in order to balance power. The author understands that Madison also believed that if “angels” were to govern men, it would not be necessary to control the government both internally and externally. However, the government was administered by men over men. The greatest challenge for Madison were to enable the government to control the people and to be controlled by the people. This challenge is the opposite and rival interest which should be strengthened with the constant aim to divide and arrange several offices that each may be a check on the other.<sup>1</sup>

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<sup>1</sup> James Madison, *The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*, Independent Journal, the Federalist No. 51, (Wednesday, February 6, 1788), 1-2.

Madison concluded that the rights of the people would be double secured by the separation of powers into different branches of government, and then subdivided among different and separate departments. As a result, the different government branches or departments will control each other, and at the same time each will be controlled by itself. Moreover, the separation of powers was not only thought as protection for the society against the oppression of rulers, but also as protection for one part of the society against the injustice of the other parts.

The concept of checks and balances, the separation of power, the double protection of the rights of citizens, and especially the protection of minority groups may be insightful to the discussion on the necessity of local autonomy and decentralization today.

Local autonomy is becoming more and more important as one of the international trends in modern European countries.<sup>2</sup> The local autonomy system also moved toward unification as a result of making Europe a market (a kind of internationalization of market).<sup>3</sup>

As relatively recent movement in Europe, the European Charter of Local Self-Government mentioned the necessity of the agreement in the administrative field the importance of local self-government in the preamble which was considered as the foundation of the democratic regime.

The Charter clearly stated the importance of the existence of local authority, and the democratic right of people to participate directly in public affairs. The Charter values both the local authority and local people's participation and consultation in decision-making process in a democratic way.<sup>4</sup> The existence of local authorities with real responsibilities is to provide public services which are affective and close to the citizens. The Charter recognized the specialty or the different characteristics of each member State in safeguarding and reinforcing local self-government based on the principle of democracy and the decentralization of power. The charter asserted the existence of

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<sup>2</sup> Council of Europe, *European Charter of Local Self-Government*, European Treaty Series No. 122, (Strasbourg October 15, 1985), accessed March 29, 2021 in: <https://rm.coe.int/168007a088>

<sup>3</sup> The European Union, *What it is and what it does*, Luxembourg, Publication Office of the European Union, (2020), 19, accessed August 4, 2021 in: <https://op.europa.eu/en/publication-detail/-/publication/ac0a88a6-4369-11ea-b81b-01aa75ed71a1/language-en>

<sup>4</sup> Council of Europe, *European Charter of Local Self-Government*, 1985, art 2, 3, and 4.

local authority with democratic decision-making bodies which possessed a wide degree of autonomy, responsibilities, means and resources required.<sup>5</sup>

Local authority exercises its rights and power through the democratically elected councils or assemblies which manage and regulate public affairs under their own responsibility and in the interests of the local population within the limits of laws. Local authority has full discretion to exercise its initiatives and to be responsible for the public matters at the local level with a full and exclusive power. Local authority is allowed discretion in adopting their exercises of power to local condition. In the planning and decision-making process, local authority including local people must be consulted in due time and appropriate manner.<sup>6</sup>

Local government staff must be recruited based on merit, competence, and high-quality. In order to retain high-quality staff, they should be provided with the adequate training opportunities, remuneration and career prospects. Moreover, within the national economic policy, the adequate own financial resources must be given to local authorities to freely use within the framework of their powers.<sup>7</sup>

In theory, decentralization models have been discussed widely in order to make better changes in management organization of countries which may improve development for the people and the country. For instances, Tuner and Hulme observed that there were others factors in conjunction with the changes of organization improvement in order to achieve the expected country's development goals.<sup>8</sup> Hence, the country context based factors must be realized while attempting to introduce decentralization and organization improvement.

In Asia, related to the decentralization reform, the relationship between central government and local administration<sup>9</sup> were among the popular topics discussed based on different context of

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<sup>5</sup> Council of Europe, *European Charter of Local Self-Government*, 1985, preamble.

<sup>6</sup> *Ibid.* arts 2, 3, and 4.

<sup>7</sup> *Ibid.* arts 6 (2) and 9 (1).

<sup>8</sup> Turner M. & Hulme D., *Governance, Administration and Development: Making the state work*, Macmillan Press LTD, Printed in Hong Kong, (1997), 3-4.

<sup>9</sup> In this paper, the word "local administration" is used interchangeably with the word "Sub-National Administration" (SNA).



countries. Generally, central governments assign affairs<sup>10</sup> to local administrations with inadequate budgets to carry them out which undermines the local administrations to provide better public services; meanwhile power is still in the hands of the central government. The assignment of affairs is a common feature among Asian countries including Cambodia and Japan. Therefore, in Asian countries, decentralization reform should have started their own legal strategy or form.

Generally, the concept of decentralization referred to the transfer of authority, affairs, and responsibilities from central government to SNA or local administrations, civil societies, and private sectors. There are three types of decentralization: political, administrative, and fiscal.<sup>11</sup>

The concept of decentralization varies from country to country based on historical, social, cultural, political, and economic development conditions. Decentralization is unique or different in each country although the common purpose of decentralization is to promote democratic development and local autonomy. Therefore, the study about local autonomy and decentralization reform in the context of the society or country, in which it was implemented, is vital.<sup>12</sup>

### **Why has decentralization been promoted in Cambodia?**

Over the last decade, Cambodia has experienced steady economic growth and reached lower middle-income status in 2015 with an aspiration of attaining an upper middle-income status by 2030. From 1998 to 2018, Cambodia's gross domestic product (GDP) had an average growth rate of 8%, which made it one of the fastest-growing economies in the world.<sup>13</sup> Cambodia's GDP growth rate was 7% in 2019, and was expected to be around 6.8% in 2020.<sup>14</sup> Along with the rapid economic development, there is potentially a high demand from the people for better, faster, easier, locally accessible and more reliable public services and sustainable local development in a democratic manner through decentralization.

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<sup>10</sup> The word "functions" and "affairs" are used interchangeably in this paper.

<sup>11</sup> World Bank, *Decentralization*, (June 16, 2013), accessed February 29, 2020, <https://www.worldbank.org/en/topic/communitydrivendevelopment/brief/Decentralization>

<sup>12</sup> Gerry Stoker. *Politics of Local Government*, (Macmillan, Second Edition, London, 1991), 3.

<sup>13</sup> World Bank, *The World Bank in Cambodia: Overview*, accessed February 29, 2020, <https://www.worldbank.org/en/country/cambodia/overview>

<sup>14</sup> Asian Development Bank (ADB), *Asian Development Outlook 2019 updated: Fostering Growth and Inclusion in Asia's Cities*, (September 2019), 214.

Another reason for the decentralization promotion was the lesson learnt from the achievements of the CARERE/SEILA's initiative program, which was an emergency relief for people returning from the refugee camps in Thailand, and then the program was changed to a pilot program introducing a decentralization approach to local development and good governance. The achievements of the CARERE/SEILA program were the people participation at local administration level and the central government trust on the people participation, the predictable fund for commune administration,<sup>15</sup> the local participation on project that benefit their lives, and the attitude change among local officials to focus on bottom-up process and good governance.<sup>16</sup>

The next reason for the decentralization promotion was the peaceful condition of the country since 1998, including the political agreement of the coalition government. A win-win policy had integrated all Cambodian factions and the *Khmer Rouge*'s militaries into the Royal Government of Cambodia. The civil war ended. Peace was found. Then, there was an agreement for a coalition government which introduced election and decentralization reforms at the lowest administration level, known as the commune administration, in 1999.<sup>17</sup>

The last reason for decentralization promotion was the strong support from development partners and the strong commitment of the central government to introduce decentralization reforms. Until 2005, SEILA, a government program, focused on the design and implementation of the decentralization policy. The CARERE/SEILA partnership was focused on providing intensive capacity building and investment resources.<sup>18</sup>

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<sup>15</sup> Currently, commune administrations are the lowest official administration level in Cambodia. Capital city and province administrations are the highest level. Municipality, district and *Khan* administrations are in the middle level.

<sup>16</sup> CARERE, *CARERE/Seila-Foundation Stone for a New Cambodia*, accessed May 15, 2020, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/return-reintegration/fmreditors-carere.pdf>.

<sup>17</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, (Phnom Penh, 2019), 14-15.

<sup>18</sup> CARERE, *CARERE/Seila-Foundation Stone for a New Cambodia*, 1.

## Purpose and Main Topic of the Dissertation

### Research Statement

Much of the decentralization reform has been motivated by political concern where in some countries decentralization was to discredit autocratic central regime with elected governments. Decentralization has been an essential part of the democratization process with a strong rationale in terms of economic efficiency, public accountability, and empowerment.<sup>19</sup>

Moreover, the characteristic of decentralization reform and the challenges faced by each country were hardly be the same. Specifically, the characteristic of Cambodian decentralization reform was initiated by central government under the favorable economics, peace, and political agreement, internally, and by the donor's support driven, externally.

In addition, Cambodia faced many challenges while introducing decentralization reform. Decentralization was promoted by the central government under the Ministry of Interior. The Minister of Interior has been playing a role of supervision to unify the disparities of each ministry and to implement decentralization at SNA, but sectoral ministries were not totally in agreement with the implementation of decentralization policy, especially on the matter of giving autonomy, affairs, resources and responsibility in providing public service to citizens, and developing the SNA's economy.<sup>20</sup> Since the start of decentralization reform, many laws and regulations have been passed and put into practice. However, most of them were made without proper discussion, and without referring to or conforming with the decentralization management system and the Organic Laws on decentralization reform.<sup>21</sup>

The political commitment on decentralization reform was at the different weight in different country. Originally, the top political leaders of the Royal Government of Cambodia were sincerely

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<sup>19</sup> World Bank, *Decentralization*, (June 16, 2013), accessed February 29, 2020, <https://www.worldbank.org/en/topic/communitydrivendevelopment/brief/Decentralization>

<sup>20</sup> The National Committee for Sub-National Democratic Development (NCDD), *National Conference on Decentralization and Deconcentration: lesson learnt, challenges, and future vision. Report on progress, challenges, and way forwards of decentralization and deconcentration reform*. NCDD, (21-22 February 2018), 15.

<sup>21</sup> *Ibid.* at 17.

committed to decentralization reform. Prime Minister Hun Sen said in 2008, while talking about the importance of decentralization that, “reforms represent survival, death comes without reform.”<sup>22</sup>

### Research Problems

According to Article 145-new (one) and 146-new (one) of the Cambodian constitution, the territory of the Kingdom of Cambodia was divided into a capital city, provinces, municipalities, districts, *Khans*, communes and *Sangkats*,<sup>23</sup> and all these levels of administration are governed in accordance with the requirements stipulated in the Organic Law.<sup>24</sup> Legally, Tariq pointed out that the Constitution of Cambodia mentions nothing on how SNA will be administered, leaving all such matters to the Organic Law which holds higher status than normal law in Cambodia.<sup>25</sup> Two Organic Laws on the administrative management of commune and *Sangkat* and on the administrative management of capital city, provinces, municipalities, districts and *Khans* were the core foundation of decentralization reform. However, there are some unusual features of the Organic Law including indirect election of the councils, provisions for appointed governors and boards of governors, and quite limited definitions of roles, authorities, and affairs of different tiers of administrations at capital, provinces, municipalities, districts, and *Khans*,<sup>26</sup> as well as and provisions of limited authorities, affairs, or funds at commune and *Sangkat* (CS).

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<sup>22</sup> Kato et al., *Cambodia: Enhancing Governance for Sustainable Development*, (CDRI, Working paper 14, May 2000), 5.

- Hun Sen, Samdech Akka Moha Sena Padei Techo, Prime Minister of the Kingdom of Cambodia, “*Rectangular Strategy*” for growth, Employment, Equity and Efficiency Phase II, (at the first Cabinet meeting of the Fourth legislature of the National Assembly, Phnom Penh, September 26, 2008), para 4.

<sup>23</sup> In Cambodia, capital city and province is the same administration level. Municipality, district and *Khan* is the same administration level. Commune and *Sangkat* is the same administration level. The word *Khan* and *Sangkat* is Cambodian language.

<sup>24</sup> Constitution of Cambodia, Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, art. 145-new (one) and 146-new (one).

<sup>25</sup> Tariq H. Niazi, *Deconcentration and Decentralization reforms in Cambodia: recommendations for an institutional framework*, (Asian Development Bank, 2011), 7.

- Constitution of Cambodia, Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, art 145-new (one) and 146-new (one).

<sup>26</sup> *Khans* is an administration level that is higher than commune level and below Capital and provincial administration level. *Khan* is Cambodian word. *Khan* is the same level as municipality and district administration.

Besides, there are the survival of important elements of previous legal framework of the 1998 Law on Management of Provinces and Municipalities that provinces and municipalities, which was at the same administration level, must obey or wait for the national orders as the vertical deconcentrated framework.<sup>27</sup> In addition, there is a survival of the notion of a unitary state and the importance of centralized government control on security issues in capital, provincial, municipal, district, and *Khan* administration.<sup>28</sup>

Legally, Cambodia introduced its local administration system through decentralization reform in 2001 at the commune and *Sangkat* (CS), and in 2008 at capital, province, municipality, district and *Khan* level, all these levels are known as Sub-National Administration (SNA). Now, Cambodia is in a critical period of decentralization reform trying to transfer affairs to SNA from the national level. However, at the same time, Cambodia has a centralized governing system for various reasons. Promoting a centralized and decentralized policy simultaneously is contradictory.

In Cambodia, decentralization has the potential of both control of the local residents in each area and the strengthening of central or national<sup>29</sup> supervision. Of these, the former may lead to the search for “local autonomy” triggered by decentralization. The latter poses the challenge of developing central “involvements” legislation. In any case, although it is not conscious in Cambodia, by referring to Japan, it can be summarized that the former is a problem of “autonomy of residents” and the latter is a related legislation on the central “involvements”.

This study demonstrates four legal issues: (1) the deficiency of a general law on local administration systems, (2) the distinguishing between corporates (legal entities) and organs of the state or central government,<sup>30</sup> (3) the nature of “affairs” of local administration, and (4) the rules of central and local involvements.

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<sup>27</sup> Tariq H. Niazi, *Deconcentration and Decentralization reforms in Cambodia: recommendations for an institutional framework*, 2011, 10.

<sup>28</sup> *Ibid.* at 4.

<sup>29</sup> The word “central” and “national” is used interchangeably in this paper.

<sup>30</sup> The word “central government” and “the State” is used interchangeably in this paper.

### **Purpose of the study**

This paper attempts to analyze the current situation of local administration system in Cambodia and sort out legal issues with the intention of connecting the reality of decentralization reform now with the medium to long-term issues of exploring a local autonomy in the future. Japanese experiences of success and failures with local autonomy and decentralization reform are selected as a comparison. Moreover, this dissertation seeks to establish a model of local autonomy systems by decentralization out of the Cambodia's challenges and lessons learned from Japan.

In order to prove the hypothesis above noted, the following issues will be discussed. The first issue is the historical development of local administration in Cambodia. Cambodia has gone through the absolute monarchy system, the French legal system, the socialist legal system, and the current democratization legal system. The second issue is the commonalities and differences on legal issues of decentralization in Cambodia. In order to be able to analyze these commonalities and differences, the Japanese legal system of local autonomy will be investigated as a different experience for Cambodia in a comparative study. The third issue is to explore a model of local autonomy in Cambodia. This exploration of a model should be developed from the issues and lesson learnt from both Cambodia's challenges and Japan's successful experience in this study.

### **Reasons of Referring to Japanese experiences**

The meaning of referring to Japanese law is that, in the modern era, in 19<sup>th</sup> century, the Asian country that have established a legal system with reference to Western Europe was Japan. By referring to Japan, this study will be able to find commonalities and differences between Japan and Cambodia local administration and decentralization. Despite the fact that Japan and Cambodia have different historical legal development backgrounds and contexts of local administration, there are three common points which justify the importance of learning from the Japanese experiences: (1) the existence of a centralized government and rapid economic development, (2) a strong centralized government that introduced local government systems through decentralization reforms, and (3) the effort of the central government in developing relevant rules of law for its supervision over the local organizations.

In Japan, its powerful and centralized government was the starting point. Over time, affairs (Jimu) have been allocated to the local public entities. Legislative, administrative and quasi-judicial or judicial involvements (Kan-yo) have been defined as legal definitions, basic principles on the administrative involvements have been made sure, legal grounds for administrative involvements have been codified, and various dispute solutions have been challenged. This history of Japanese Local Autonomy Law challenges might be a worth to the future Cambodia's local administration system.<sup>31</sup>

### **Literature Review**

There were many studies about Cambodia's decentralization reform, with the focused on accountabilities, responsibilities, gender, participation, local development, fiscal decentralization, and the three dimensions of decentralization such as political, fiscal, and administrative decentralization, but none of them study on legal issues of decentralization by referring to Japan.

Ly Yasak studied the decentralization progress in Cambodia against the three dimensions of decentralization.<sup>32</sup> Netra Eng wrote about decentralization in Cambodia with the focus on design and implementation. Her study found that decentralization strengthens the ruling political party power over the local administration, but not for improving accountability and democracy. However, decentralization reforms provided the opportunity for increasing central government capacity and improved development outcomes.<sup>33</sup> Moreover, local administration, such as district and commune administration including the council, is less likely to be transformed by decentralization and become the foundation of local governance in Cambodia, but reinforcing the hierarchical system of control of

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<sup>31</sup>It is not a literature of legal studies, but Kato Shuichi "*Translation in the Early Meiji Era: Why, What, How to Translate*", in Kato Shuichi & Maruyama Masao eds, *Thought of Translation*, page 353 (Iwanami Shoten, 1991) states that there is no meaning in referring to other countries without major differences, and that it is impossible to understand other countries without having anything in common. This is considered in this research. The translation from Japanese to English is a tentative translation with helps. I would like to thank my academic advisor Prof. Inaba Kazumasa and Mr. Chinket Metta, at Nagoya University at the time of writing this thesis, for their great cooperation.

<sup>32</sup> Ly Yasak, PhD., "Research Note on Decentralization and Deconcentration Reform in Cambodia," *Forum of International Development Studies*, Graduate School of International Development (GSID), Nagoya University, (November 2016), 2.

<sup>33</sup> Eng Netra, *Decentralization in Cambodia: New Wine in Old Bottles*, Cambodia Development Resource Institute (CDRI), Cambodia, (in Wiley Online Library, Published online September 20, 2016), 1.

the ruling political party at sub-national level.<sup>34</sup> Prum also found that the local governments in Cambodia did not achieve the anticipated expectation at least in terms of service delivery.<sup>35</sup> These studies are not the legal studies.

There have been legal studies on local government in Cambodia by some researchers. Hout studied and asserted that the local government in Cambodia is not a genuine local self-government after implementing the policy of decentralization. Local government is not free from central government involvements.<sup>36</sup> Moreover, Chea concluded that, in Cambodia, the decentralization process is at a very young age and not an ideal one because there is the central government's involvement. The CSs lack independent financial and administrative management, and CC cannot respond to local needs.<sup>37</sup>

In addition, Tariq pointed out in his study about the legal issue on the inconsistency between the Organic Law (OL) 2008 and the Law on Public Financial Systems (LPFS) 2008 in which a centralized approach to the SNA budget was implemented. Also, Tariq pointed out an unusual feature of the Organic Law related to indirect elections of the councils, an appointed governor, unclear roles, affairs, resources, and responsibilities provided. Tariq suggested that the Organic Law should be reviewed for clearer roles and assignment of affairs, but not for lower-level legal instrument.<sup>38</sup>

However, the previous studies did not touch on the legal problem of decentralization reform in Cambodia with the focus on the necessity of general laws, affairs, and involvements by referring

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<sup>34</sup> Eng Netra, *The Politics of Decentralization in Cambodia: The District Level*, Thesis Submitted in Fulfilment of the Requirements for the Degree of Doctor of Philosophy, School of Politics and Social Inquiry, Monash University (January 30, 2014), 239.

<sup>35</sup> Prum Virak, "Decentralization within the Centripetal Expression of State Power: Re-guiding Cambodian Statutory Devolution," *Forum of International Development Studies*, Graduate School of International Development (GSID), Nagoya University, (March 2005), 139, accessed October 22, 2019, <https://www.gsid.nagoya-u.ac.jp/bpub/research/public/forum/28/index.html>

<sup>36</sup> Hout Hay, *Is Local Government in Cambodia a Genuine Local Self-Government after Implementing the Policy of Decentralization?* (Master's Thesis, Nagoya University, Graduate School of Law, 2005), 110.

<sup>37</sup> Chea Samrach, *The Transfer Power from Central to Local Administration: A Comparative Study on Legal System of Cambodia and Japan*, (Master's Thesis, Nagoya University, Graduate School of Law, 2008), 53.

<sup>38</sup> Tariq H. Niazi, *Deconcentration and Decentralization reforms in Cambodia: recommendations for an institutional framework*, 2011, 19.



to Japanese experiences on the legal development of the local autonomy and decentralization in which this paper will do.

### **Research questions and Research Structure**

By referring to the Japanese legal system of local administration in order to identify the relevant legal issues in Cambodia, this dissertation tries to answer the following research questions: First, Historical Process; how the local administration system of Cambodia has been originally formed in the era of the French influence, experienced changes, and institutionally turned during 20th Century? Second, Synchronic Issues in globalization era; what are the legal problems of decentralization in Cambodia? What are the possible lessons from Japan's decentralization reform? Finally, Composition of Historical Process and Synchronic Issues; what model of local autonomy could be developed in Cambodia?

In response to the above research questions and research problems, this dissertation is divided into four chapters.

Chapter I intends to answer the first research question which focuses on the historical development of local administration systems in Cambodia. The purpose of this chapter is to find out how the current three-tiered local system was formed and changed, and to figure out the characteristics of the legal system of local administrations. This chapter is divided into the historical development of local administration system in the monarchy, the French era, the Socialist era, and the democratization era. In the monarchy era, the cultural characteristic of local administration was formed under the de facto authority of the kings, the authoritarian regime. After the French arrival, the French administration was trying to introduce the national and local administration reform. During the French influent era, in 1908, the legislation of local administration system was originally established by creating the “commune” administration and commune election by tax payers. Under the French influence era, the election at commune level was developed and postponed in the last period. Then, in the Socialist era, from 1975 to 1979, the commune administration was once abolished, because previous system was totally rejected. Then, it was brought back in the Constitution in 1980s under the socialist legal system where there was a system of democratic

centralism under the influence of Vietnam backed by Soviet Union. Moreover, the three-tiered local system was brought back in the Constitution of the Socialist era with the formation as province, district, and commune until the present time. Village still existed but was not considered as the administration level. Finally, this chapter will present about the turning point during the decentralization era or globalization era when Cambodia was conducted national democratic election, and then moving on decentralization reform. The following chapter (chapter II) will present the current local administration and its current development during the democratization or globalization era (1993-Present).

Chapter II will provide the answer to the second research question on synchronic issues in era of globalization focusing on the characteristics of local administration system in Cambodia. The purpose of this chapter is to analyze the centralized characteristics out of the current legal system of local administration in Cambodia in the democratization era (1993-present). This chapter firstly explains an overview of how the local administration system is positioned within the Cambodian governmental organization. As mentioned in chapter I, local systems have been changed and continued in some parts of the history. This chapter is to clarify the current legal system in changing history. Historically, turning from the socialist economy to capitalist economy in 1993, Cambodia established the second Constitutional monarchy. The local administrations, such as provincial and district governors, and commune chiefs, were appointed by the central government. But the commune councils are directly elected by the residents since 2002, and then the province and district council members are indirectly elected, in which the election was made by the commune council members since 2009. This chapter will mainly focus on the discussion of the affairs of local administration, the relationship between the council and governor or chief, the relationship between the transfer of affairs and the supervision of the central organs, the inconsistency in administrative practices at central ministries, and the elections system. In order to analysis the legal issues and the current stage of decentralization reform in Cambodia, it is necessary to refer to other countries. This paper refers to Japan's experience of local autonomy as the other countries (chapter III).

Chapter III will also shed light on the common issues in a globalization era by presenting the experiences of decentralization reform in Japan. However, the main purpose of this chapter is to analyze the characteristics of local autonomy system and to present Japan's experience of success and failure in the local autonomy and decentralization reform through the historical development in the Meiji era, the Constitutional change era, and the decentralization reform era by focusing on the legal systems, theories, and cases. In this chapter, two main contents are discussed. First, it is continuity and disconnection before and after the war. Second, it is the characteristic of decentralization reform in the 1990s including the 1999 amendment of the Local Autonomy Law. The issues of the local autonomy (consisting of autonomy of entity and autonomy of residents), and the issues of legal personality of "local public entity", the affairs allocation, the rules of central involvements will be raised for further discussion in the following chapter (chapter IV).

Chapter IV will provide answer to the research question on the composition of historical processes and synchronic issues in order to recommend a model of local autonomy systems in Cambodia. The purpose of this chapter is to discuss and analyze the legal issues of local administration systems in Cambodia by referring to the lessons learned from Japan. Then this thesis attempts to forge a model of local autonomy by decentralization reform for Cambodia out of Japan's experiences. The main contents of this chapter are the discussion on commonalities and differences between the two countries, and the analysis of the main legal issues such as the deficiency of a general law on local administration and the inconsistency of sectoral laws, the distinguishing between corporates (legal entities) and organs of the central government, the nature of "affairs" of local administration, and the rules of central involvements. Differences can be found easily but a commonality is also found; the legal system of direct vote on commune has been implemented after 2002. This change itself might be a minor change for the commune part only but the change can be thought as a trigger for reconsideration of the whole local administration in future.

## **Chapter I: Historical Development of Local Administration System in Cambodia**

This chapter reviews the historical development of local administration system in Cambodia from legal points of views. This chapter will help readers better understand what the unique characteristics of local administration in Cambodia are. The purpose of this chapter is to find out how the current three-tiered local system has been formed, developed and turned. Also, this chapter aims to figure out the characteristics of the local legal system. This chapter is divided into the historical development of local administration system in the monarchy, the French era, the Socialist era, and the democratization era. The reason of this division is based on the turning point of legal system development in Cambodia.

The prehistory of local administration presents the brief historical development of monarchy administration system in Cambodia before the modern local administration system. Also, this part attempts to show the authoritarian system under the monarchy administration system. A reason that the author will try to consider the ancient era is to provide better understanding of the administrative management and development in the prehistory of local administration in Cambodia.

Next, the history of local administration system provides historical development of local administration system in Cambodia. The first part of historical development is the origin of local administration system under the French administration. During this era, the legality of local administration at the commune level was formed originally in 1908 and developed during the French era until the socialist era started. Next part of historical division is the socialist legal system era. Final part is the democratization era.

This chapter will answer the research question of how the local government system of Cambodia was originally formed under the French influence, and experienced changes in the socialist era and institutionally turned during 20<sup>th</sup> Century in the democratization era.

### **1.1 Prehistory of Local Administration System**

This part briefly reviews the prehistory of local administration system before 1908. The prehistory of local administration system is divided into two parts. First, this part will present the

local administration system of Cambodia before the French arrival. Then, next part will present the local administration system after the arrival of the French administration until the establishment of local administration in 1908.

### 1.1.1. Before the French Arrival

In the monarchy era, a cultural nature of local administration was formed under the de facto authority of the kings, the authoritarian regime. Culturally, Cambodia underwent a hierarchical system where the king, the *Deva-raja* king or the *God king*, represented the sole power in the context of religious power (theocratic power), executive power, legislative power, and judicial power.<sup>39</sup> The country, including the people, belonged to the king. The relation between the government and the society over the centuries had been an authoritarian system.<sup>40</sup>

Generally, ancient Cambodian territorial administration, before the arrival of the French administration as protectionist for Cambodia, was in the manner of an absolute monarchy system.<sup>41</sup> The emperor controlled all other war lords or *Sdach Tranh* (known as the king for the field or land) by making war. War lords or *Sdach Tranh* were allowed to control their land under their own authority. However, they had to annually give the support, in goods and in kind, to the emperor. Each war lord was independent from each other, but under the control of the emperor. They sometimes were at war with each other.<sup>42</sup>

War lords ruled over *Dei* (land in ancient time which was understood as regions) which consisted of several *Moearngs* (known as provinces today) and several *Sroks* (known as villages in ancient times but today *sroks* are districts). The person who had controlled a province was generally

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<sup>39</sup> Prum Virak, "Reforming Cambodian Local Administration: Is Institutional History Unreceptive for Decentralization?" *Forum of International Development Studies*, (September 2005), 104-106, accessed October 22, 2019, <https://www.gsid.nagoya-u.ac.jp/bpub/research/public/forum/30/06.pdf>

<sup>40</sup> Turner M., "Public Administration and Development: Whatever Happened to Deconcentration?" *Recent Initiatives in Cambodia*, (Canberra, Australia: Published online in Wiley Inter Science, University of Canberra, 2002), 363, accessed May 18, 2009, <http://www3.interscience.wiley.com/journal/99016710/abstract?CRETRY=1&SRETRY=0>

<sup>41</sup> Say Bory [ប៊ុនហ៊ុន សាយ ប៊ុរី], *General Administrative Law* [នីតិវិធីប្រតិបត្តិការ], (2006), 423, Para 382.

<sup>42</sup> Adhémar Leclère, *History of Cambodia*, (Paris: 1914). (Translated into Khmer Language by TEP Mengkheang, Printed in Cambodia, first addition, ed. Chhang Youk, Trans Series No.4, Documentation Center of Cambodia, DC-Cam), (2005), 32.

known as *Oknha* (a title given by the king based on one's property, knowledge and capacity) and whose position was called *Chaovay* (master or governor of province).<sup>43</sup> This paper will use the word “governor” for the translation of *Chaovay*.

*Chaovay Srok* or *May Srok* (known as village's master or mayor = *May* in Cambodian) received their official titles generally from *Sdach Tranh*. *Srok* varied in size and importance.<sup>44</sup> *Sroks* were usually led by elder men chosen by villagers based on their knowledge, agricultural skills, good manner and conduct, and common sense. Conflicts in villages were solved by conciliation, but not by law. By living among the people under his control, village head was able to respond to local issues better than other authorities at farther distances. People and lower authorities normally offered homage to their leader or higher authorities or to the king in exchange of protection.<sup>45</sup> The most active and visible administrator were village head. Sometimes, they were authorized to collect taxes, mobilized manpower for warfare or public work, and even were able to create small private armies and bodyguards.<sup>46</sup>

Until early nineteen centuries, there is no evidence that any villages were governed by law which regulated the councils of elders. Some French writers asserted that Cambodia had no government at all.<sup>47</sup> The king ruled according to customary law which was unwritten. The king was indispensable because, as generally believed and long embedded in Cambodian culture, the king existed to protect people, to provide true justice, to influence weather, to be a messenger between God in heaven and people on the earth, and the only hope of peasants.<sup>48</sup> With absolute power, the king was very strong. Certainly, the king was able to turn a person into superior or leader and/or into subordinate immediately when he gives an order. It is like the order from heaven.<sup>49</sup>

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<sup>43</sup> Say Bory [ប៊ុនហ៊ុន សាយ ប៊ុរី], *General Administrative Law* [នីតិវិធីបាលទូទៅ], (2006), 423, Para 382.

<sup>44</sup> Chandler P. David, *A history of Cambodia* (New York, London: Routledge, fourth edition, Monash University, 2008), 119 and 125.

<sup>45</sup> *Ibid.* at 126 and 128.

<sup>46</sup> *Ibid.* at 133.

<sup>47</sup> *Ibid.* at 125.

<sup>48</sup> *Ibid.* at 129 and 135.

<sup>49</sup> *Ibid.* at 132.

In sum, the nature of Cambodian administration system was not centralized governmental system, but with the strong monarchy. Although, there was no written administrative procedure, the village's head was under the authority of the provincial governor and war lord. Therefore, the central-local involvement was not clear. The village, as the lowest local administration level, had no legal entity or property. The type of local affairs or works was unclear or too broad. The village level was responsible for all public works directly connected with villagers. There was no modern governmental system for the administrative management or protection of villagers' benefit.<sup>50</sup>

On the other hand, there were three-tiered local systems. This characteristic is familiar with people in Cambodia today, but the three-tiered local systems were region (*Dei*), province (*Moeurmg*), and village (*Srok*) not commune.

#### **1.1.2. After the French Arrival and Before 1908**

The Cambodia administration system was influenced by the French protectorate starting from August 1863 after king Norodom concluded a treaty with the French naval officers that offered the protection to Cambodia.<sup>51</sup>

In 1863, the French administration had unpleasant feeling with monarchy administration system. The French did not support the King's idea of centralized control, absolute monarchy, and slavery, and suggested making reforms. Initiated by the French, these reforms aimed to eliminate the royal's involvements in land ownership, to reduce the number of *Oknha* (high ranking titles given by the king), to rationalize tax collection, and to abolish slavery.<sup>52</sup> Moreover, village heads, under an article of the treaty, were supposed to be chosen by the people.

In 1877, the King Norodom agreed to make reforms which were never carried out. Then, the French concluded the convention dated June 24, 1884,<sup>53</sup> to legalize the above agreement by forcing the King to sign it at 10 p.m. with the unannounced arrival of Charles Thomson, the French Resident

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<sup>50</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 5-6.

<sup>51</sup> Chandler P. David, *A history of Cambodia*, 172.

<sup>52</sup> *Ibid.* at 174.

<sup>53</sup> Adhémar Leclère, *History of Cambodia*, 408.

General (in French called M. Le Résident Supérieur) or the governor-general of Cochin China, hereinafter called the French Resident General.<sup>54</sup> Article 2 of the treaty stated that “His Majesty the king of Cambodia accept all the administrative, judicial, financial, and commercial reforms which the French government shall judge, in future, useful to make their protectorate successful.” Among the main reforms of this treaty were to place the French *Residents* in provincial cities (hereinafter called the French Resident Provincial), abolish slavery, institutionalize the ownership of land by dismantling royal’s involvements in landownership, reduce the number of *Okha*, and rationalize tax collection. As stressed by Chandler, it was the time of turning from protecting Cambodia to controlling it.<sup>55</sup>

This reform was viewed differently by France and Cambodia, where Cambodian elites viewed it as revolution, and the French viewed it as crucial to their program of reform. Soon after this reform started, there was an outbreak of rebellion and suppression in the country.<sup>56</sup> In 1885-1886, facing rebellion, resistance, and the possibility of war, Norodom, the King, agreed to ask the rebels to lay down their arms while the French administration agreed to respect Cambodian customs. The French stepped back and delayed the implementation of reforms for nearly twenty years.<sup>57</sup>

During the 1880s, another reason of the administrative reform was that the French colonized administration aimed to introduce the French administration system at the village level.<sup>58</sup> For this reason, SAY Bory concluded that this was a gradual administrative reform because the French administration assumed that the head of a village which was known as *May Srok* in Cambodian language was similar to mayor in France, and the *May Srok* was the right person to help collect taxes for the central government (the French colony). Say Bory noted that the biggest administrative reform took place in Cambodia by the French colony in 1889.<sup>59</sup>

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<sup>54</sup> Chandler P. David, *A history of Cambodia*, 175.

<sup>55</sup> *Ibid.* at 175-176.

<sup>56</sup> *Ibid.* at 167 and 174.

<sup>57</sup> *Ibid.* at 176.

<sup>58</sup> Say Bory, *General Administrative Law*, 427, Para 384.

<sup>59</sup> *Ibid.* at 427, Para 384.



Gradually, in 1892, the French controlled direct tax collection. Then, in 1897, the Paris administration agreed to provide the French Residents (the French colonial representatives in Cambodia at the national level) with executive authority to issue royal decrees, and to appoint officials and high ranking officials. The new French Resident General (colonial representative in Indo-china controlling Cambodia, Vietnam, and Laos) was granted power to command and to be responsible in making decision. However, there was still resistance to the change from monks, royalties, officials, and people.<sup>60</sup>

More specifically, Royal *Kram* (proclamation) dated 11 July 1897 marked the turning point when the French successfully took control of all power and eliminated the King's power. A new council of five ministers was created and included a first minister (*Akka Moha Sena*) who led all ministers, a minister of justice (*Yumreach*), a minister of navy and foreign trade (*Krolahom*), a minister of the army (*Chakrei*), and a minister of palace (*Veang*). This council of ministers was under the supervision of the French Resident General but not under king Norodom. According to Article One of the Royal *Prakas* 1897, the council of ministers made decisions under the supervision of the French Resident General and then reported to the King about necessary political and administrative measures that would benefit the kingdom. Article Two, related to the appointment and dismissal of officials, and provided the King with ceremonial power to appoint and dismiss officials based on requests of the council of ministers. Moreover, every decision and circulation issued by the King with the King's seal had to be accompanied by signature of the French Resident General. Article Three allowed the assistance of each minister, when minister was in absent or with obstacle, to work as substitute role.<sup>61</sup>

In sum, after the French arrival, the French administration attempted to initiate reform of the administrative system in Cambodia, but there was resistance to change from the elites, leaders, and the King as well as monks and the common people. Therefore, local administration system was slowly changed. The author concludes that this change was forced, and not voluntary. The nature of

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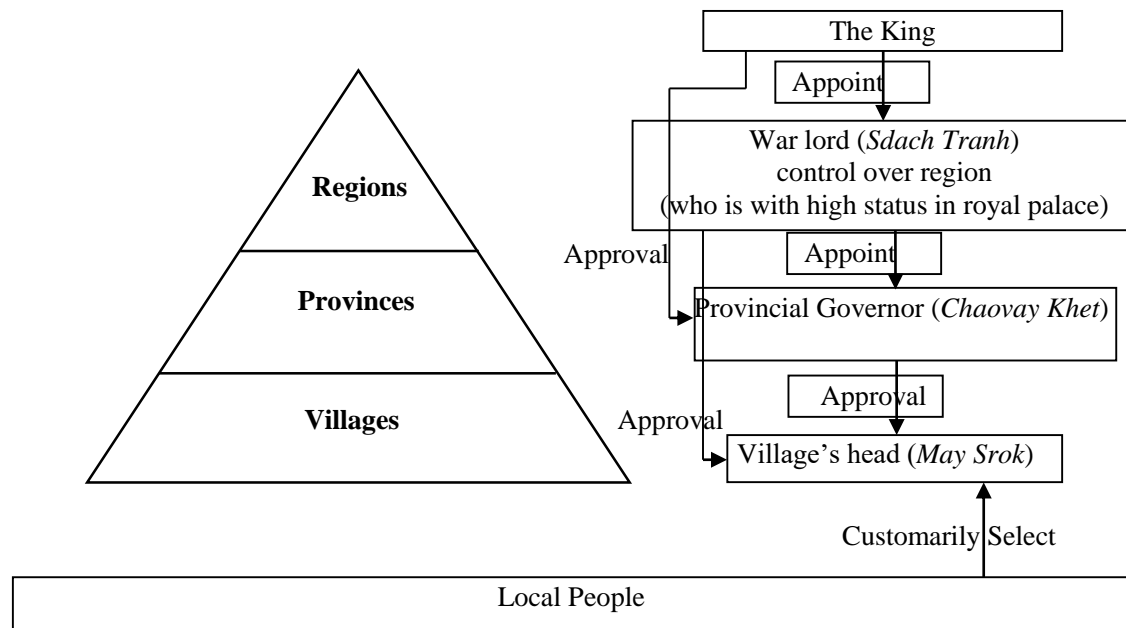
<sup>60</sup> Chandler P. David, *A history of Cambodia*, 179 and 181.

<sup>61</sup> Sorn Samnang, et al., *History of Cambodia: French Protectorate Era – the Second Kingdom of Cambodia*, (Phnom Penh: Ministry of Education Youth and Sport, November 01, 2017), 10-11.

the administration system was mixed of authoritarian and centralization. The authoritarian was the king, and the central government was the French government. Under the centralized administration system, the French was trying to introduce the legal reform for Cambodia including the legal reform of local administration system, at the lowest administration level. The type of affairs of local administration was to collect tax and general management. The central-local relation was strong and without legal basis because the local organs were the central agents working on behalf of the central government based on traditional administration that coexisted with the French administration system.

The next part will present the origin of local administration system and its development in Cambodia in the French influence era from 1908.

Structure of the administrative division of Cambodia before 1908.



Sources: summarized by author based on historical review

## 1.2 The History of Local Administration System

The previous part presented the historical development of local administration system under the authoritarian monarchy that coexisted with the French administration system where there was strong central-local involvement, and a local organs working as a central agent. The long existing three-tiered local system was the region, province, and village levels.

This next section will present the historical legal development of local administration system in Cambodia from 1908 starting from the origin of local administration system under the French influence era, the changes experienced under the socialist legal system, and the turning under the democratization era.

### **1.2.1. Origin of Local Administration System (French Influence Era, 1908-1975)**

This part will present the starting point and the development of local administration system from the legal point of view while Cambodia was under the French colony (since 1908) and under the French influence after receiving the independence from French from 1953 until 1975.

#### **a) Changes of Royal *Kram* on commune**

There was a legislation on the management of local organ which was known as “commune” originally established in Cambodia. This legislation was amended several times. This part will mainly present about the formation of the three-tiered local system and its development, the nature of administration system, the type of local affairs, and the involvements of central-local organs, including the election system.

#### **❖ 1908 Royal *Kram* on commune**

1908 was the beginning of local administration system in Cambodia. The legislation known as the Royal *Kram* No. 42 on the administrative management of communes was promulgated on June 5, 1908, hereinafter called the Royal *Kram* (1908).<sup>62</sup> This Royal *Kram* was the fundamental legal evidence of the origin of local administration system at the lowest level known as “commune” administration in Cambodia. Cambodia had no “commune” tradition at local administration level.<sup>63</sup>

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<sup>62</sup> The author of this paper is the translator from Cambodian language into English most of the legislations since the 1908 to present, because those legislations are available only in Cambodian language. Most of the old legislations related to commune system is only available in the National Archive of Cambodia [បណ្ណាសាររដ្ឋាភិបាល], but no on the internet. Some legislations such as Royal *Kram* 1908 and 1943 on commune administration are in French language. Miss Chan Sokkheng (Master student) and Mr. Nan Chanroern (PhD candidate), currently studying in France, translate from French to Cambodian language. Then the author translates from Cambodian language to English.

<sup>63</sup> Chandler P. David, *A history of Cambodia*, 176.

Commune administration was the French product and consisted of 500 to 23,000 people.<sup>64</sup> As a result for the establishment of the commune administration, Cambodian local administration structure was divided into provinces, communes, and villages. For this reason, *Sar Kheng*<sup>65</sup> stressed that there was a new administrative management structure at commune level originally started in 1908 according to this Royal *Kram*.<sup>66</sup>

The originality of the commune administration legislation brought to Cambodia by the French colony that consisted of a few important characteristic of local administration as follow.

First, a commune was a public legal entity as stated in Article 15 that “A Commune can be considered as a person who can possess, acquire, and transfer property; and to appear in the court.”<sup>67</sup> Although a commune had its own properties,<sup>68</sup> these properties could be changed and transferred based on the proposal from the commune council and *Chaovay khet* [ចៅហ្វាយខេត្ត]<sup>69</sup> (hereinafter called “provincial governor”) to the council of the French Resident for approval. As stated in Article 16, “A Commune has its own real estate property... The commune property can be changed or transferred, if there is the approval from the council of French Resident based on the proposal of the commune council and the provincial governor....”<sup>70</sup>

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<sup>64</sup> Say Bory, *General Administrative Law*, 2006, 425, Para 382.

<sup>65</sup> Sar Kheng, Samdach Krolahom, Deputy Prime Minister, Minister of Interior, and the president of National Committee for Sub-National Democratic Development (NCDD), the decentralization reform committee.

<sup>66</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 6.

<sup>67</sup> Royal Decree No. 42 on the organization of the Commune of Cambodia, (June 05, 1908), art. 15.

<sup>68</sup> *Ibid.* art. 16.

<sup>69</sup> The word “provincial master= *Chaovay* of the province=[ចៅហ្វាយខេត្ត]” is similar to “provincial governor=[អភិបាលខេត្ត]” which referred to a person who is appointed to preside over provincial administration. Province is known in Cambodian language as *Khet* [ខេត្ត]. Master or boss is known as *chaovay* [ចៅហ្វាយ]. Governor is known as *Aphibal* [អភិបាល]. The different is that “provincial master= *Chaovay* of the province=[ចៅហ្វាយខេត្ត]” is previously used as legal term referred to the head of provincial administration with strong commanding power over district and commune, like a master. Now, the legal term was change to “provincial governor=[អភិបាលខេត្ត]” which referred to the head of provincial administration is not equipped with strong commanding power as before, but with the ability to manage and coordinate over district and commune. Legally, these two words are different in power.

<sup>70</sup> Royal Decree No. 42 on the organization of the Commune of Cambodia, (June 05, 1908), art. 16.

In addition, in case there is any offenses made by the commune, the decision to find must be made by the provincial governor after the approval of the French Resident as stated in Article 20 that “The fines of the commune offenses must be pronounced by the provincial governor, after the approval of the French Resident, in accordance with this royal *Kram*, and are not subject to appeal.”<sup>71</sup>

Revocation of a council member was under the central government approval as stated in Article 9 that “...The revocation is reserved for the council of ministers after the investigation and notice from provincial governor transmitted by the French Resident<sup>72</sup> of the constituency.”<sup>73</sup>

Moreover, decisions and approvals on the creation and dissolution of communes, and the changing of a commune’s name were made by the central government, which was the French Resident General.<sup>74</sup>

Second, commune chief’s affairs were in charge of providing all service in the commune as stated in Article 12 that “Commune chief, with the support from commune council and the chief of group which are under his order, is in charge of directing and providing all services in the commune...”<sup>75</sup>

Third, the Royal *Kram* (1908) provided the legal rights to people whose name in the tax paying list to elect commune councils in each village and then the village’s councils in each village elected the commune chief. The Royal *Kram* (1908) stated in Article 8 that “Every people who registered in the tax paid list is the voter in the commune and is the participant in the election of commune council members. ...”<sup>76</sup>

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<sup>71</sup> Royal Decree No. 42 on the organization of the Commune of Cambodia, (June 05, 1908), art. 20.

<sup>72</sup> The French resident of the constituency in French is called Le Résident de la circonscription, in Khmer [ឡឺរេស៊ីដង់រួមខេត្ត ឬទេសាភិបាលរួមខេត្ត]។

<sup>73</sup> Royal Decree No. 42 on the organization of the Commune of Cambodia, (June 05, 1908), art. 9.

<sup>74</sup> *Ibid.* art. 2.

<sup>75</sup> *Ibid.* art. 12.

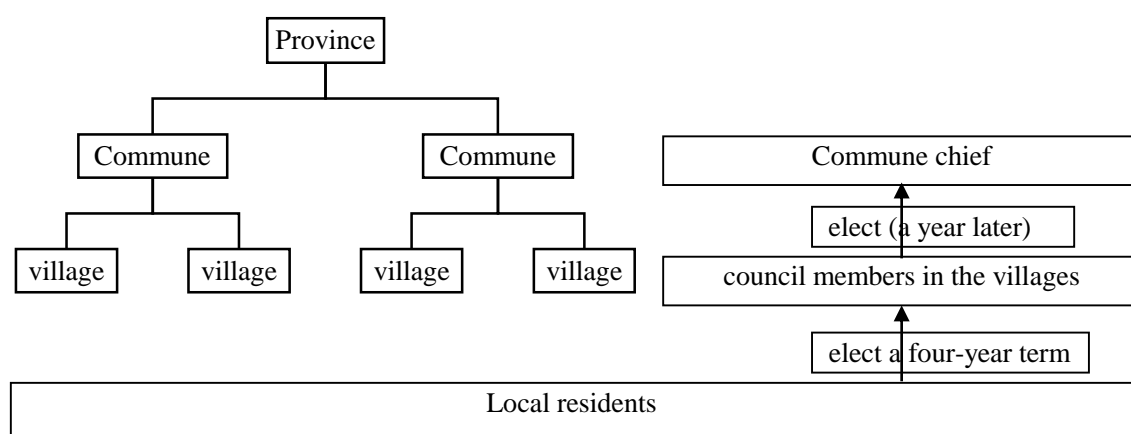
<sup>76</sup> *Ibid.* art. 8.

Moreover, there were conditions to become the candidate for being elected as commune chief such as Cambodian citizen from birth, and living in the commune as stated in Article 9 that “... Commune chief must be Cambodian citizen. Commune chief must live in the commune...”<sup>77</sup>

The election process was proceeded in the way that the people elected the council in village, and then, the council in the villages, located within the commune, elected the commune chief. The council had a four-year term. Commune chief and deputy chief elected a year after the council election. This process was stated in Article 9 that “...The council members of each village elects a chief who is the commune chief and deputy chief according to the size of the commune. ... The commune and village council members must be elected in a four-year term. Commune chief and deputies must be re-elected in the following year after the council election.”<sup>78</sup>

Finally, the formation of the three-tiered local system was changed from the previous form to a new form of three-tiered local system that consisted of province, commune and village.

Structure of the administrative division of Cambodia from 1908.



Sources: summarized by author based on historical legal review

#### ❖ *1919 Royal Kram on commune*

By the 1920s, Cambodia had achieved a better economic condition and had become a rice-making machine where good yields of rice were produced so that it also produced revenue for the French government by extracting part of the peasant’s revenue. As pointed out by Chandler, there

<sup>77</sup> *Ibid.* art. 9.

<sup>78</sup> *Ibid.* art. 9.

was an economic boom.<sup>79</sup> Along with the economic growth, the Royal *Kram* 1908 was amended in September 24, 1919 by Royal *Kram* No. 70 (hereinafter called the Royal *Kram* 1919) which come into practice on January 01, 1920. There were some characteristics of commune administration.

First, communes were public legal entities as stated in Article 45 that “Commune was considered as a person who had the right to possess, to sell, and to buy properties, and the rights to suit and to be suited in the court.” As public legal entity, commune owned property as in Article 46 stated that “Commune property can be movable and none movable property.” This Article was stated clearly in detail about this property.<sup>80</sup> Commune property can be transferred or sold based on a proposal from the commune council through the provincial administration for the final decision and approval from the central government.<sup>81</sup>

The commune council was given the authority to make decision for appointing and dismissing commune agents or officials. However, this decision had to be approved by the provincial administration, by the French Resident of the constituency. As stated in Article 33, “... Officials appointment and dismissal must be made by the decision in the council meeting. The council decision must be seen by provincial governor and agreed by French Resident of the constituency.” As stated in Article 32, “Officials whose salary received from the commune budget are clerks, teachers, and police. etc. The official appointment must be made by the commune council in the council meeting. This appointed letter must be seen by provincial governor, and then was agreed by French Resident of the constituency.”

In case of the creation, dissolution, and alteration of the commune boundary, and the changing of a commune’s name, the commune council made proposals with the attached evidence of request from the people with common interest. This proposal had to go through the hierarchical administration for being seen and agreed, and then this proposal had to be approved by both the *Kongsei Sena Padei* (First Minister) and the French Resident General, at the central level.

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<sup>79</sup> Chandler P. David, *A history of Cambodia*, 170.

<sup>80</sup> Royal Decree No. 70 on Commune Administration, (September 24, 1919), art. 45-46.

<sup>81</sup> *Ibid.* arts. 45-46.

Second, The roles and responsibilities of commune chief was stated in Article 24 that “Commune chief, including deputies chief, council members, and village’s head, was responsible for administrative control, giving order and monitoring, and making sure of successfully implementing the commune affairs and tax collection.” Moreover, the commune affairs were stated in Article 27 that “According to the current implementation of this regulations, there were several commune affairs as the following; Administrative affairs..., judiciary affairs..., army selection affairs ..., education affairs..., wire protected affairs..., health sector affairs..., animal health protected affairs..., crop monitoring affairs..., forest protected affairs..., custom support affairs..., land registration affairs..., and tax collection affairs...”

Finally, the commune council election was made clearer, including the numbers of council members and the process of the election. The age of voter was defined along with the obligation in paying tax as stated in Article 9 that “Everybody, who is the local resident, reaches the age of twenty-one-year-old, registers in the tax paying list, regardless nationality, shall have the power as a voter in commune. During the commune council elections, he/she shall have the power to stand for being elected. The election will be conducted every four-year term. ...”<sup>82</sup>

It was a bit clearer in criteria to become the candidate standing for the election as stated in the same Article 9 that “... for those who will be elected as commune chief and deputies must be Cambodian (*Khmer*) nationality that holding no authority, position or power, which was the same condition as the candidate of commune council standing for commune election...”<sup>83</sup> There were clearly stated a limited number of commune council at least 8 and at most 16 in case there were at least a village in a commune and there were more than 35 villages in a commune.<sup>84</sup>

The process of commune chief election was a bit changed by choosing from among council members, but still, commune chief and commune councils must be responsible to provincial governor and French Resident of the constituency as stated in Article 11 that “The councils shall choose among themselves a member to become a commune chief. The decision of the council to

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<sup>82</sup> *Ibid.* art. 9.

<sup>83</sup> *Ibid.* art. 9.

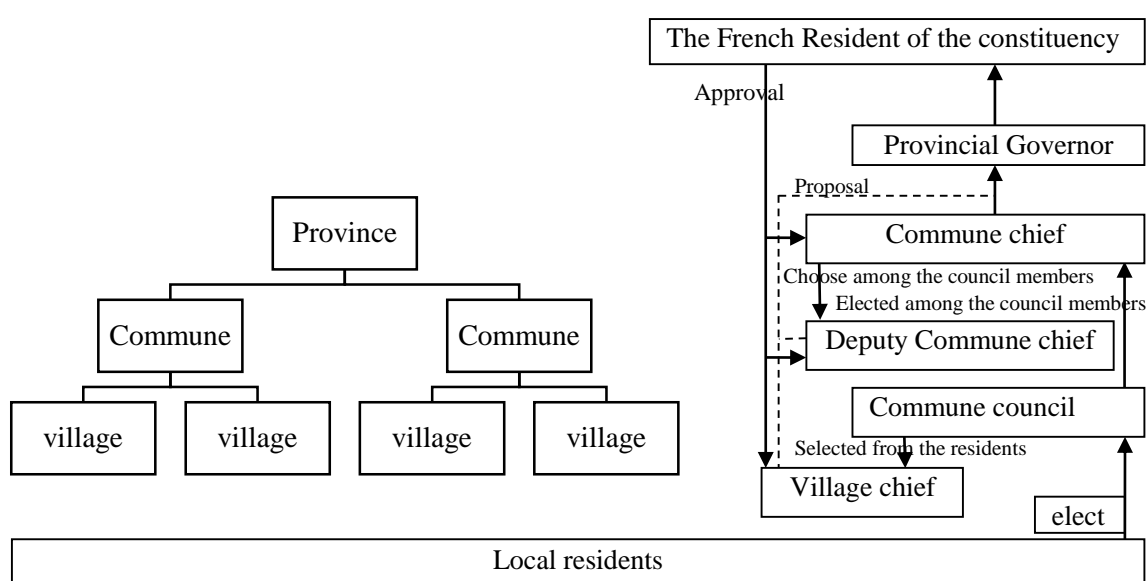
<sup>84</sup> *Ibid.* art. 10.



choose the commune chief must be signed as seen by provincial governor and then must be seen and approved by the French Resident of the constituency. The French Resident of the constituency issued a letter of appointment. After receiving letter of appointment, commune chief must swear in pagoda following religious practices for officially become commune chief.”<sup>85</sup>

The formation of the three-tiered local system was remained the same such as province, commune and village.

Structure of the administrative division of Cambodia from 1919.



Sources: summarized by author based on historical legal review

#### ❖ 1925 Royal Kram on Commune

There was an amendment of Royal Kram 1919. This amendment was made in November 15, 1925 by Royal Kram No. 59, hereinafter, called the Royal Kram (1925).

There was an establishment of an administration structure known as “*Khan*” in Cambodian language which was the same level as a district. Article 1, “A Commune is an administrative jurisdiction, which is under the authority of *Khan*<sup>86</sup> administration, which consisted of a village or villages....”<sup>87</sup> The formation of the local system was a four-tiered local system.

<sup>85</sup> *Ibid.* art. 11.

<sup>86</sup> *Khan* refers to district in which the term was used currently in the organization structure in Capital city.

<sup>87</sup> Royal Decree No. 59 on Commune Administration, (November 15, 1925), art. 1.

The Royal *Kram* (1925) consisted of some important characteristics.

First, Commune was a public legal entity with clearer definition. As defined in Article 7, “Commune is considered as a person who has the power to possess and to sell movable and none movable properties according to the current existing procedure. Commune, with commune chief or representative, has the power to suit or be suited to all level of the courts according to the decision made by the French Resident General and first minister (*Kong Sei Sena Padei*) for approval...”<sup>88</sup>

As a public legal entity, communes had two kinds of properties such as commune public properties and private properties.<sup>89</sup> Commune public property were road, port, public garden, reserved land for public use and houses on public land, water pipe, and electric wire.<sup>90</sup> Besides, there were the commune private property.<sup>91</sup> However, the decision on the management of both public and private property of communes belonged to the higher level of administration and the central government.<sup>92</sup>

The creation, dissolution, and alteration of the commune boundary, and the changing of a commune’s name must be proposed by the commune council for approval from the central government, where both *Kongsei* (minister) of the French Resident and the *Kongsei Sena Padei* (first minister) agree.<sup>93</sup> The new important characteristics in the Royal *Kram* 1925 was that there was a provision providing the rights to people for requesting the creation of the commune. As stated in Article 3, “In order to create a new commune, there must be a request from the public administration or request from a group of people who had the same interest for commune creation...” However, the final decision was made by the central government, both the French Resident and the First Minister.<sup>94</sup>

Second, the commune chief had two affairs. the commune chief was considered as the representative of commune benefit protection, and as the central government agent as stated in

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<sup>88</sup> *Ibid.* art. 7.

<sup>89</sup> *Ibid.* art. 59.

<sup>90</sup> *Ibid.* art. 60.

<sup>91</sup> *Ibid.* art. 62.

<sup>92</sup> *Ibid.* arts. 61 and 68.

<sup>93</sup> *Ibid.* art. 2.

<sup>94</sup> *Ibid.* art. 3.

Article 40 that “Commune chief represents commune councils in managing commune affairs, represented protection of commune benefits, and implement the commune council’s decision. Also, commune chief is the central government agent in implementing the laws, keeping the security, and collecting tax. ...”<sup>95</sup>

Commune chief’s work was under the direct management and authority of *Khan* (district) governor.<sup>96</sup> Commune chief was responsible for the general administrative affairs as stated in Article 43 that “Basically, commune chief shall responsible of the affairs such as general administrative management..., security control..., judicial affairs..., other taxations...,”<sup>97</sup>

Finally, the commune council and commune chief were elected by the people who pay tax, and then the commune chief was elected from among the council members. As stated in Article 1, “... Commune councils were elected in which commune chief is the head and has the authority to directly control and order over deputies that were chosen from among the council members.”<sup>98</sup>

A criteria of commune council candidates standing for being elected were stated in Article 18 that “In order to become a commune council candidate standing for being elected, only for those who were in the commune resident registration name list, and tax payment list, and who were registered in the candidate list. Any candidate who wishes to stand for being elected as a member of commune council must write a letter of request with supporting evidences of correctly respected all kinds of taxes payment. The letter of request must be sent to *Khan* governor in at least 45 days before the election day for strictly checked by *Khan* governor to verify the correct information before approving or rejecting the request, and to decide the final candidate name list in every commune under his/her jurisdiction. ...”<sup>99</sup>

For those who wishes to stand for election must be in the candidate list, without name registered in the candidate list, he/she cannot stand for the election. The result of the election must be accepted by *Khan* governor. As stated in Article 25, “Anyone, who has no name in the candidate

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<sup>95</sup> *Ibid.* art. 40.

<sup>96</sup> *Ibid.* art. 40.

<sup>97</sup> *Ibid.* art. 43.

<sup>98</sup> *Ibid.* art. 1.

<sup>99</sup> *Ibid.* art. 18.

list which was made by Khan's governor, shall not be qualified to stand for being elected. The election was considered as valid when there is acceptant decision from *Khan's* governor, and then, with agreement of provincial governor by singing as seen, and with the approval from the French Resident of the constituency.”<sup>100</sup>

Commune council was directly elected by the residents in the commune who reached the age of 21 years old, and had their name in the tax paid list in the commune or who were hold a tax exemption such as elderly and disabled people. As stated in Article 11, “Commune council was elected by the people who was under support and who lived under the French flag. Those people shall reach the age of 21 years old or order, and registered in the personal tax paid list within the commune or holding permission letter of tax exemption of elderly or disability.”<sup>101</sup> The rights to be elected was stated in Article 12 that “Any voters, who was under supported and who lived under the French flag, shall have rights to be elected except the conditions ...”<sup>102</sup>

The number of the commune councils were defined from at least 9 and at most 19.<sup>103</sup> The commune chief was elected from among the commune council members. The deputy chief of the commune had to be selected by the commune chief from among the commune council members based on Article 29 for the approval from the *Khan* governor. As stated in Article 28, “After declaration of the election result of the elected names, all the elected council members shall convene the meeting, which is presided over by the oldest council member, and supported by the two youngest council members, in order to elect a commune chief from among the council members. The council decision on commune chief election result shall be sent through *Khan's* governor to provincial governor for signing as seen, and then send to the French Resident of the constituency for approval. Commune chief shall get another approval letter.”<sup>104</sup>

The village's head was elected by the commune council from the residents living in the village for at least six months and who could read and write. Village chief worked under the

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<sup>100</sup> *Ibid.* art. 25.

<sup>101</sup> *Ibid.* art. 11.

<sup>102</sup> *Ibid.* art. 12.

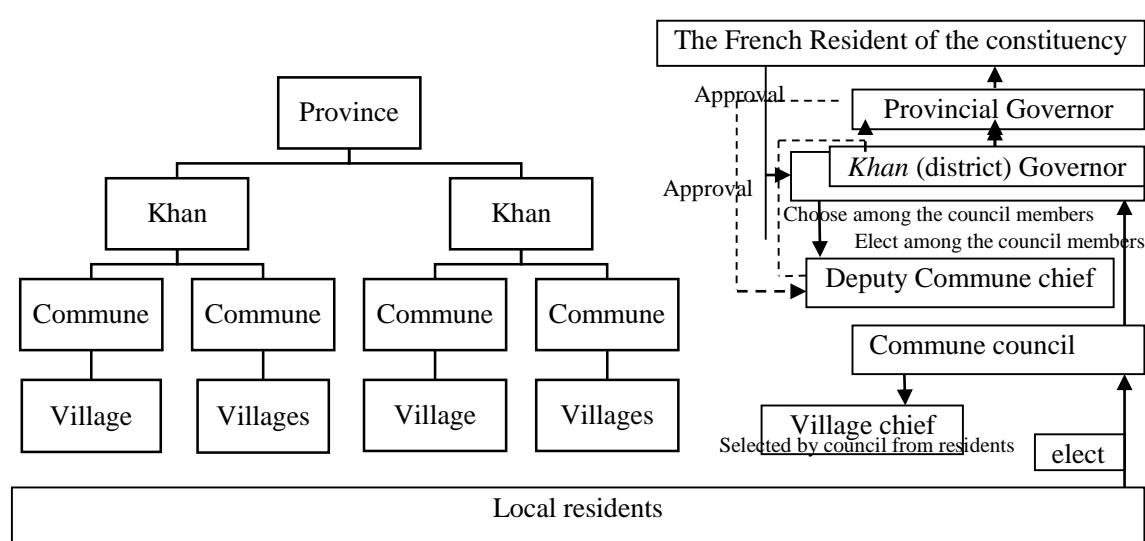
<sup>103</sup> *Ibid.* art. 27.

<sup>104</sup> *Ibid.* art. 28.

authority of commune chief. Village chief issued the letter of evaluation the resident's manner and sent to commune chief for signature and seal. Village chief provided any information required to make the tax list.<sup>105</sup>

Based on Royal *Kram* 1925, There were a new tier found created in between province and commune. In total, there was a four-tiered local system which were province, *Khan*, commune and village level.

Structure of the administrative division of Cambodia from 1925.



Sources: Summarized by author based on historical legal review

#### ❖ 1943 Royal *Kram* on Commune

Commune elections were postponed in 1943, and totally abolished in 1948 because of war.<sup>106</sup> The Royal *Kram* No.40 on commune was enacted on July 1<sup>st</sup>, 1943, and is hereinafter called the Royal *Kram* No.40 (1943). Based on the Royal *Kram* No.40 (1943), the organization structure was unchanged. There was the establishment of an administration which was known as a district (the same level as *Khan*) and consisted of communes. Communes consisted of villages.<sup>107</sup> The formation

<sup>105</sup> *Ibid.* arts. 34 and 52.

<sup>106</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 8.

<sup>107</sup> Royal decree No. 40 on Commune, (July 01, 1943), art. 1.

of the four-tiered local system was the same, but the new name “district” was used instead of using the word “*Khan*” administration.

The characteristics of local administration in this Royal *Kram* No.40 (1943) are as follow.

First, Commune was considered as the public legal entity which characterized as a person who possesses property, is able to buy, to sell, and to transfer the property in accordance with law and procedure. Commune, with commune chief or its representative, was able to sue and be sued as plaintiff and defendant in the court. However, there must be prior permission and approval from the central government, including both the French Resident General and the council of ministers.<sup>108</sup> Moreover, the commune council managed the commune property, but this management must go through the process mentioned above in order to get the approval from the French Resident General.<sup>109</sup> The commune chief was the national agent for implementing laws or orders especially related to police affairs and tax collection. The chief was directly under the district governor’s authority or supervision.<sup>110</sup>

The creation, dissolution, and alteration of the commune boundary, and the changing of commune’s name had to be proposed by the commune council for the approval from the central government, and approval from the council of ministers.<sup>111</sup> This Royal *Kram* 1943 also provided the rights to the public administration agency and the local people to request for the creation of a new commune.<sup>112</sup>

The communes had to report the meeting’s decision to the district governor and the provincial governor. The provincial governor had the authority to automatically dissolve the decision of the commune council if it was against the provision of the Constitution or other laws.<sup>113</sup>

Second, commune chief affairs were related to general administrative management, police, judicial, and tax collection affairs.<sup>114</sup> The village’s head represents people in the village. He

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<sup>108</sup> *Ibid.* art. 7.

<sup>109</sup> *Ibid.* arts. 7 and 8.

<sup>110</sup> *Ibid.* art. 31.

<sup>111</sup> *Ibid.* art. 2.

<sup>112</sup> *Ibid.* art. 3.

<sup>113</sup> *Ibid.* arts. 28 and 29.

<sup>114</sup> *Ibid.* art. 34.

disseminates the information and the orders of the commune chief to people, collected tax, and provided comments of the personal characteristic of a person to the commune chief.<sup>115</sup> Moreover, there were two new Royal *Krams* promulgated in the same year that concerned communes. Firstly, Royal *Kram* No.41 promulgated on July 01, 1943 and put into practice on July 03, 1943. The Royal *Kram* provided monthly support on implementing commune duties, other benefits and tax exemption to the commune chiefs, the deputy of commune chiefs and the heads of village based on the tax income. The tax income was divided into three types. The first type was the total tax collection above 12,000 Riel (name of Cambodian currency). If so, the commune chiefs could get at least 30 Riel to 50 Riel. The second type was the total tax collection from 6,000 Riel to 12,000 Riel. The commune chiefs could get at least 25 Riel to 45 Riel. The third type was the total tax collection below 6,000 Riel. The commune chief could get at least 20 Riel to 40 Riel. The actual amount of money was decided by the French Resident based on a proposal from the provincial governor.<sup>116</sup> Secondly, Royal *Kram* No. 69 promulgated on September 24, 1943 and put into practice on September 29, 1943 stated about the procedure and management of commune property. Communes were considered as a person having a civil personality which consisted of the rights to own, to buy and to sell the commune property based on the procedure. This Royal *Kram* also divided commune property into the commune public property and private property. However, the procedure in the property management was proceeded through the commune council decision, the district governor, the provincial governor, the French Resident, and the French Resident General for final approval.<sup>117</sup>

Finally, there was no election of the commune chief and village's head as in previous Royal *Kram* (1908, 1919, and 1925). Based on the Royal *Kram* No. 40 (1943), the village's head was appointed by the district governor from among a list of notable people with the requirement of knowing how to read, to write, and to calculate.<sup>118</sup> The commune chief was appointed by the district governor. Then, the provincial governor and the French Resident had to make decision to give

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<sup>115</sup> *Ibid.* art. 39.

<sup>116</sup> Royal *Kram* No.41 on Commune tax exemption, (July 01, 1943), arts. 1, 2 and 3.

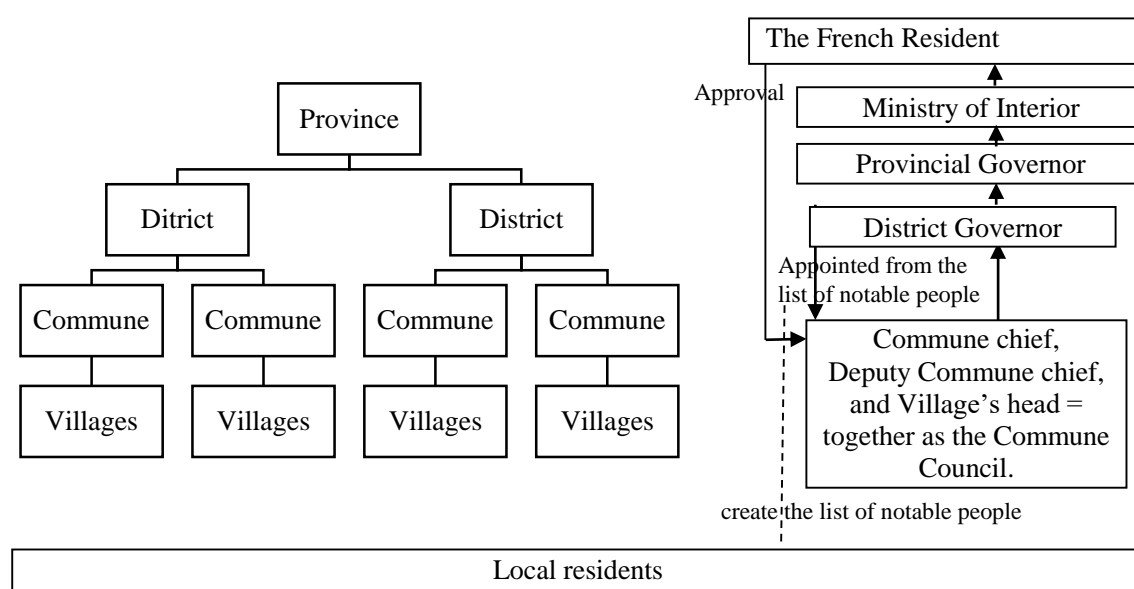
<sup>117</sup> Royal *Kram* No.69 on procedure and management of commune property, (September 24, 1943), arts. 1, 2, 3, 7 and 8.

<sup>118</sup> Royal decree No. 40 on Commune, (July 01, 1943), art. 18.

approval or not on the request of the appointment. The Ministry of Interior's legislation known as *Prakas* was issued for this appointment.<sup>119</sup> The deputy commune chiefs were proposed by the commune chief from a name list of notable people for the approval from the district governor.<sup>120</sup> The commune council consisted of the chief and deputy chief of the commune and village's heads.<sup>121</sup> This council could be dissolved by the central government through the Ministry of Interior's *Prakas*, based on a proposal from the provincial governor, and approval from the French Resident of the constituency, and the French Resident General.<sup>122</sup>

The formation of the local system consisted of province, district, commune and village.

Structure of the administrative division of Cambodia from 1943.



Sources: summarized by author based on historical legal review

❖ *1959 Royal Kram on Commune*

In 1953, Cambodia received an independence from the French colony. In 1959, there was a failed attempt to reintroduce the commune elections, by establishing Royal *Kram* No.340 on Commune Unified Affair and Legal Entity, promulgated on February 03, 1959, hereinafter called

<sup>119</sup> *Ibid.* art. 19.

<sup>120</sup> *Ibid.*, arts. 19 and 20.

<sup>121</sup> *Ibid.*, arts. 1 and 26.

<sup>122</sup> *Ibid.* art. 25.



Royal *Kram* 1959. The reason the failed attempt was, in the same year, on November 29, this Royal *Kram* was postponed according to the result of a national referendum.<sup>123</sup>

Although, there was no implementation, there were some characteristic of the commune administrations. First, commune was still considered as the legal entity as stated in Royal *Kram* 1959 in Article 7 that “Commune is considered as legal entity. Commune has the power to earn, to keep, to rent, and to sell commune’s furniture and non-furniture based on the existed procedure. Commune can be a plaintiff and defendant in the court. ...and must had prior approval from provincial governor after the commune council decision over the litigation case.”<sup>124</sup> Moreover, the creation of the new commune could be proposed by public authority or by the people with common benefit.<sup>125</sup> The creation, dissolution, and alteration of the commune boundary, and the changing of the commune’s name had to be made by issuing the Royal *Kram* after the agreement of the provincial council.<sup>126</sup> In addition, the provincial governor and the district governor had the authority to control all over the commune matters.

The provincial governor had the power to declared the decision made by the commune councils as void and invalid. As stated in Article 34, “The decision made by commune councils shall be considered as void and invalid if against the Constitution, laws, and orders. The letter of void and invalid shall be made and disseminate by provincial governor....”<sup>127</sup> The provincial people council had the approval power over the commune border demarcation.<sup>128</sup> Similarly, the district governor had the power to work instead of the commune chief when the commune chief did not implement the work as the central agent.<sup>129</sup> As stated in Article 36, “... As central agency, commune chef is directly under the authority of district governor that can work instead of commune, if there is not enough action to be taken or negligence in implementing the affairs as central agency....”<sup>130</sup>

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<sup>123</sup> Sar Kheng, Samdach Krolahom, *Cambodian’s Sub-National Administration Management System: Decentralization and Deconcentration reform*, 8.

<sup>124</sup> Royal decree No. 340 on Commune Unified Functions and Legal Entity, (February 03, 1959), art. 7.

<sup>125</sup> *Ibid.* art. 3.

<sup>126</sup> *Ibid.* art. 2.

<sup>127</sup> *Ibid.* art. 34.

<sup>128</sup> *Ibid.* art. 2.

<sup>129</sup> *Ibid.* art. 36.

<sup>130</sup> *Ibid.* art. 36.

The Ministry of Interior had the power to dissolve the commune council (CC) by issuing the ministry's *Prakas* (regulation).<sup>131</sup> The reasons for dissolving commune councils were based on a referendum, bad impact on public order, or for public benefit. These reasons had to be pointed out by the provincial governor. Specifically, half of the voters that registered in the commune may wrote a written request for dissolution of CC. In urgent cases, the provincial governor dissolved CC by its bylaw, and then brought the case immediately to the Minister of the Interior. After dissolution, based on a request from the district governor, the provincial governor issued a bylaw within 8 days for the creation of temporary delegates consisting of 3 to 6 members (based on the number of villages within the commune) in order to manage that commune.

Second, The commune chief implemented the priority affairs such as the general administration affair, the work with police, the judicial affair, and financial affair.<sup>132</sup> As stated in Article 39, "Commune chief had to be responsible for priority affairs as follow: general administration..., working with police..., judiciary affairs..., financial affairs..."<sup>133</sup> Moreover, the village's heads work for the commune council and under the commune chief. All of the information in the villages must be sent to the commune especially for the important list for tax collection as stated in Article 45 that "... Village head shall collect and send to all information in the village to commune chief that necessary for preparing the tax list for the benefit of budget collection." <sup>134</sup>

Finally, this Royal *Kram* 1959 mentioned a provision of the commune council election. The commune chief and the commune council were directly elected by the voters, reached 20 years old, and registered in the voting list.<sup>135</sup> These voters were able to be the commune council candidate standing for the commune election when fully reaching 25 years old.<sup>136</sup> There were at least 9 and at most 20 commune council members.<sup>137</sup> The commune election day was different among different provinces. The provincial governor decided the election day which was at any Sunday. The election

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<sup>131</sup> *Ibid.* art. 29.

<sup>132</sup> *Ibid.* art. 39.

<sup>133</sup> *Ibid.* art. 39.

<sup>134</sup> *Ibid.* art. 45.

<sup>135</sup> *Ibid.* arts. 10 and 11.

<sup>136</sup> *Ibid.* art. 12.

<sup>137</sup> *Ibid.* art. 23.

campaign was made in a period of fifteen days and ended before the election day.<sup>138</sup> There were at most 500 voters in a polling office.<sup>139</sup>

The brief election process started with a group of people created a team and form a candidate list for the commune election based on the required number of commune council members. The voter had to elect the candidate lists they supported, without making any changes of any names on the list.<sup>140</sup> Any list of candidates received the majority votes was the winning list. Any top candidate in the name list became the commune chief. The rest in the list became the commune council members.<sup>141</sup> As stated in Article 20, “Any name at the top of the candidate list who receives most votes in the commune shall be declared as the commune chief, and the rest in the list shall become the commune council members.”<sup>142</sup> Then, the provincial governor had the final decision to accept or not to accept the election result. As stated in Article 21, “In this election, the provincial governor shall declare the election result as acceptable or not acceptable. The provincial governor shall issue bylaw to appoint the commune chief and the commune councils.”<sup>143</sup>

Due to the national referendum held in November 29<sup>th</sup>, 1959, the Royal *Kram* 1959 was postponed and was never implemented. The commune chief and deputy commune chief were appointed by provincial bylaw based on a proposal from the district governor.<sup>144</sup>

#### ❖ *1965 changes of Administration Structure and Name of Governor*

As a result of the December 20th, 1965 national referendum, there were changes to the administration structure and the creation of the name of *Reach Theany* (Capital City) and *Sangkat*,<sup>145</sup>

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<sup>138</sup> *Ibid.* art. 15.

<sup>139</sup> *Ibid.* art. 17.

<sup>140</sup> *Ibid.* art. 18.

<sup>141</sup> *Ibid.* arts. 19 and 20.

<sup>142</sup> *Ibid.* art. 20.

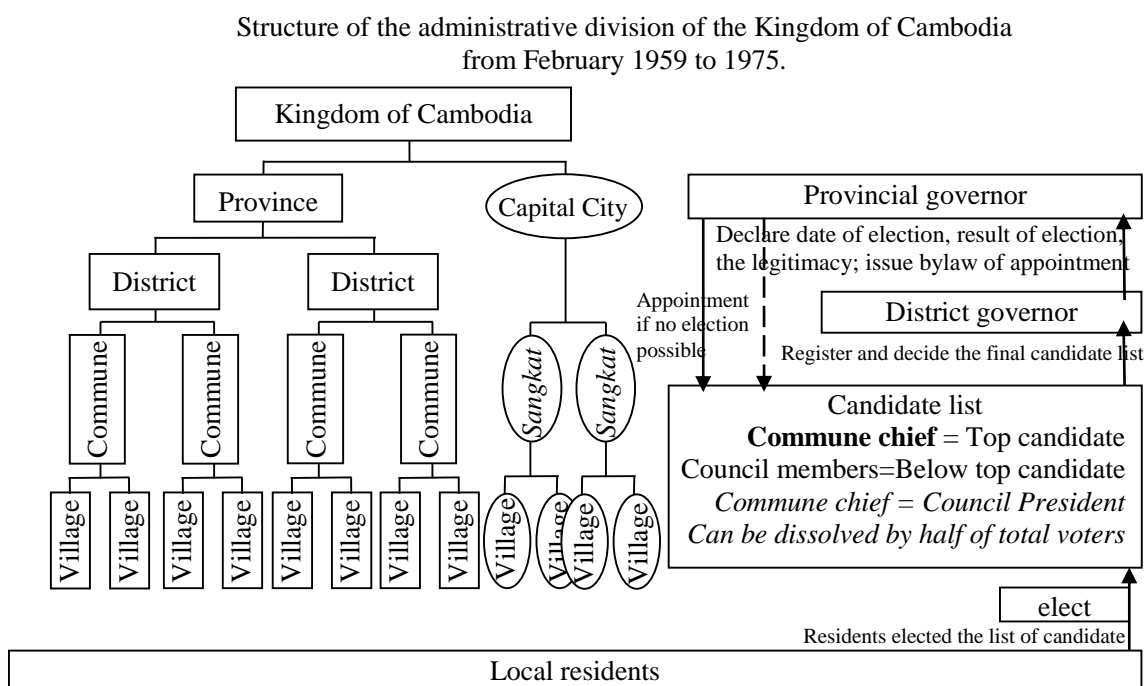
<sup>143</sup> *Ibid.* art 21.

<sup>144</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 8.

<sup>145</sup> *Sangkat* is the same as commune but it is an urban area under the capital city and municipality.

and the name of the governor of provinces, the capital city, or district administrations from *Chaovay* (ចៅហ្វាយ =master) to *Aphibal* (អភិបាល = governor).<sup>146</sup>

Therefore, there was a four-tiered local system which consisted of province and capital city at the same level, and district, commune, and *Sangkat* at the same level, and village.



Note:  is for Rural administration  
 is for Urban or Town administration  
 Sources: summarized by author based on historical legal review

## b) Changes of Constitution

### ❖ 1947 Constitution

According to the first Constitution of Cambodia promulgated in May 06, 1947, there was no Article that stated the new structure and the system of local administration. Therefore, the structure and system of local administration was the same as the previous one. The people who had the right to vote were only male Cambodian citizens, 21 years old or older.<sup>147</sup> Cambodian residents had the

<sup>146</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 8.

<sup>147</sup> Constitution of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1947, art. 48, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=563](https://ccc.gov.kh/detail_info_kh.php?_txtID=563)

rights to file a complaint to a public authority on matters that related to the individual or public interest.<sup>148</sup> Since 1953, Cambodia received independent from France. However, the French legal influence still existed in Cambodia.

### ❖ *1964 Constitution*

In 1964, the Constitution of Cambodia, amended by Royal *Kram* No.181, in March 31, 1964, temporarily postponed the implementation of chapter seven on the functioning of people council or the provincial council (*Sakphea pror chea chun Khet* in *Khmer* language) in provinces and the capital city. Article 84 in chapter seven also stated the word *Sangkat*.

According to chapter VII, the members of capital and provincial council (CPC), which was known as the people council, were directly elected by Cambodian residents from both sexes (male and female) who reached the age of 20 and lived in that local area. The CPC was elected in their jurisdiction for a two-year term.

Roles and responsibilities of the CPC were the following. First, the CPC had to give comments on the national budget especially the comments on the list of revenue, expenditure, and the draft of agreement on national loan. Second, the CPC had to give comments on the national treaty. Third, the CPC had to pass the provincial and capital budget, and the CS budget under the jurisdiction. Fourth, the CPC had to pass the annual revenue and expenditure in their jurisdiction and had to make decision over tax collection in accordant with law. Fifth, the CPC had to make petition to the National Assembly or the central government over the management of public administration in guaranteeing the conformity with the national plan, monitoring the public staff in provincial and capital administration. Sixth, the CPC had to question the public staff and to vote of no confident on provincial and capital governors, or head of provincial court with three quarter (3/4) of the CPC members and then had to send the decision to the national council of the Kingdom for the final check. The national council had to vote of no confident with three quarter (3/4). As a result, the

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<sup>148</sup> *Ibid.* art. 14.

central government had to dismiss or remove the provincial and capital governors or the head of provincial court from the position.<sup>149</sup>

### ❖ 1972 Constitution

In 1972, the Constitution of Cambodia was promulgated in May 10, 1972, after the previous government was toppled down by military force. The Constitution was known as the Constitution of the Republic of Cambodia.

From 1970 to 1975, even though the Constitution of the Republic of Cambodia stated in Article three that all the powers were from the people, the election did not happen because of civil war. Given this fact, the commune chief was appointed by the provincial governor.<sup>150</sup> The provincial governor was appointed by the president.<sup>151</sup> The territorial division of the Republic of Cambodia were *Sangkats*, provinces and municipalities. All of these administration levels had to be governed in accordance with the Organic Law.<sup>152</sup> The people who had the rights to vote were people of both sexes who had reached the age of 18.<sup>153</sup>

The end of the French era of influent and the beginning of the Socialist era was when the communist party took over the country from April 1975.

#### 1.2.2. Socialist Legal System Era (1975-1993)

Communism or socialism was considered as the total distraction of country system in Cambodia context which was totally different from the real concept communism and socialism.<sup>154</sup>

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<sup>149</sup> Constitution of Cambodia, Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1947, amended by Royal *Kram* 181, (March 31, 1964), chapter 7.

<sup>150</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 9.

<sup>151</sup> Constitution of Cambodia, Republic Khmer [រដ្ឋធម្មនុញ្ញ សាធារណរដ្ឋកម្ពុជា], (May 10, 1972), art. 36, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=564](https://ccc.gov.kh/detail_info_kh.php?_txtID=564)

<sup>152</sup> *Ibid.* art. 114.

<sup>153</sup> *Ibid.* art. 10.

<sup>154</sup> Of course, socialism is also an idea and a social system for realizing democracy. It is wrong to use democracy and socialism as opposed to each other. However, in Cambodia, there is a tendency to use the word democracy as the opposite concept of socialism. It describes such a situation, and my understanding is clearly different.

#### a) 1975 Constitution

The Constitution of Cambodia was promulgated on December 14, 1975, after the previous government was toppled down by military force. The Constitution was named the Constitution of Democratic *Kampuchea* (Cambodia). In reality, Cambodia was following socialist system. Article One of the Constitution stating that Cambodia was a democratic country was totally different in reality. In the Constitution, Article one stated that “Cambodia is an independent, unified, peaceful, neutral, none alliance, sovereign and democratic State in her own territorial integrity. The State of Cambodia belongs to people, workers and farmers. The State of Cambodia has an official name as the Democratic Cambodia.” It followed the collective regime in leading the country.<sup>155</sup>

From 1975 to 1979, the previous administrative structure and system of the country were abolished. There was no article in the Constitution mentioning territorial division, local entity, or a local autonomy system. In the constitution 1975, Article 15 mentioned about the capital city of Cambodia that the “The Capital city of Democratic *Kampuchea* (Cambodia) is Phnom Penh.”<sup>156</sup> However, in practice, the territorial division consisted of six geographical zones<sup>157</sup> which were subdivided into 32 regions. The zones were the combination of two or more old provinces or parts of the old provinces. Both zones and regions were named by cardinal numbers. Below the regions were districts, sub-districts, and the cooperatives.<sup>158</sup> There was no administrative structure known as province, commune, *Sangkat*, or village.

The Constitution mentioned the National Assembly which was called “the People’s Representative Assembly” consisting of 250 representatives of which 150 representative were

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<sup>155</sup> Constitution of Cambodia, Democratic Kampuchea (Cambodia) [រដ្ឋធម្មនុញ្ញ កម្ពុជាប្រជាធិបតេយ្យ], (January 5, 1976), arts. 1 and 4, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=565](https://ccc.gov.kh/detail_info_kh.php?_txtID=565)

<sup>156</sup> *Ibid.* art. 15.

<sup>157</sup> Dy Kamboly, *A history of Democratic Kampuchea (1975-1979)* (Phnom Penh: Documentation Center of Cambodia, 2007), 23-25.

Note: The six geographical zones were: East Zone (Zone 203) was divided into five regions; Southwest Zone (Zone 405) consists of four regions; North Zone (Zone 303) was divided into three regions; Northwest Zone (Zone 560) had seven regions; West Zone (Zone 401) was divided into five regions; Northeast Zone (Zone 108) consists of six regions.

And also: Ben Kiernan and Chanthou Boua, “Peasants and Politics in Kampuchea 1942-1981” (1982), (Zed Press, London, United Kingdom, 1982) 321.

<sup>158</sup> *Ibid.* at 23.

farmers, 50 were workers, and 50 were from the military.<sup>159</sup> The People's Representative Assembly election was held every 5 years. As stated in Article 6, "Members of the National Assembly, which represented Cambodian, shall be elected in the national election directly and secretly every five-year term." The members of the National Assembly elected the members of the committee of the head of state (known as *Kanak prothean rodth*) which consisted of three members: the head, the first deputy, and the second deputy.<sup>160</sup> All levels of the Court were selected and appointed by the People's Representative Assembly.<sup>161</sup>

#### **b) 1981 Constitution**

The new regime was created with the establishment of the new Constitution. The Constitution of Cambodia (1981) was promulgated in June 27, 1981 and was known as the Constitution of the People's Republic of *Kampuchea* (Cambodia). This Constitution was promulgated in 1981 after the previous government was toppled down by military force.

The Constitution 1981,<sup>162</sup> in Article 71, Cambodia territory was divided into provinces and cities. Province was divided into districts. District was divided into communes. City was divided into *Sangkats*.

Each level of the local administration was managed by a people revolution committee. The commune and *Sangkat's* people revolution committee was elected directly by the people. District committees were elected by the commune people revolution committee including the representative of the revolution army front and the representation of mass organization at district level. Provincial committee was elected by the district committee including the representative of revolution army front and the representation of mass organization at provincial level. City committee was elected by

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<sup>159</sup> Constitution of Cambodia, Democratic Kampuchea, art. 5.

<sup>160</sup> *Ibid.* art. 6 and 11.

<sup>161</sup> *Ibid.* art. 9.

<sup>162</sup> Constitution of Cambodia, People Republic of Kampuchea [រដ្ឋធម្មនុញ្ញ នៃសាធារណរដ្ឋកម្ពុជា], (June 27, 1981), art. 71, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=566](https://ccc.gov.kh/detail_info_kh.php?_txtID=566)



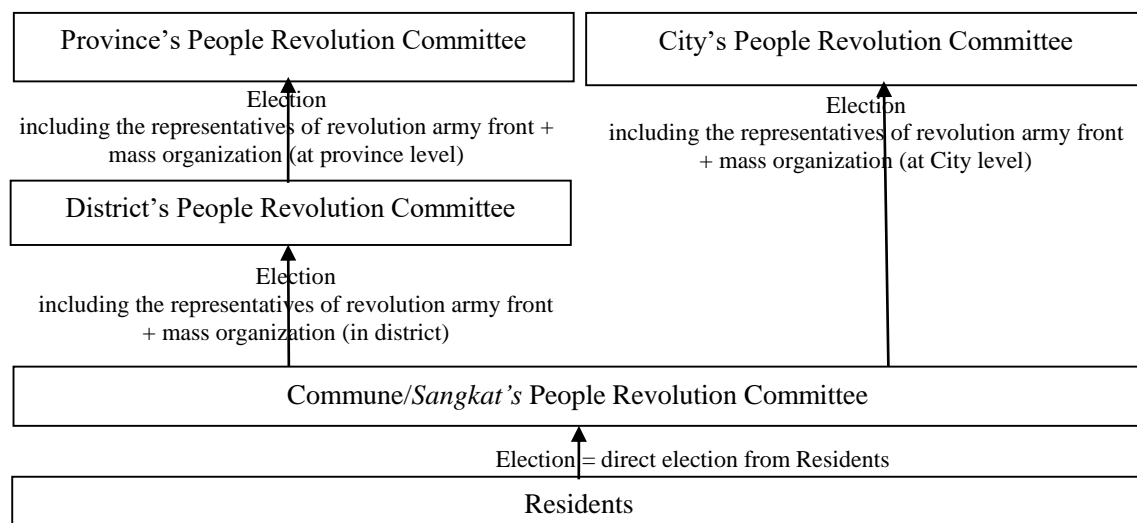
the *Sangkat* committee including the representative of revolution army front and the representation of mass organization at city level.<sup>163</sup>

Provincial and city committee had a five-year term. The district and CS committee had a three-year term.<sup>164</sup> All levels of committees had the responsibility toward the local people and toward the higher authority organizations.<sup>165</sup>

In 1981, there were election of 85% of the communes and *Sangkats* in the whole country in order to strengthen and enhance the responsibilities of communes and *Sangkats* which were the last, lowest administration level which is close to the people.<sup>166</sup>

Therefore, there was a three-tiered local system which consisted of province and city; district; commune and *Sangkat*. Villages still existed but were not considered as the official administration level.

#### People revolution committee election process from 1981



Sources: summarized by author based on historical legal review

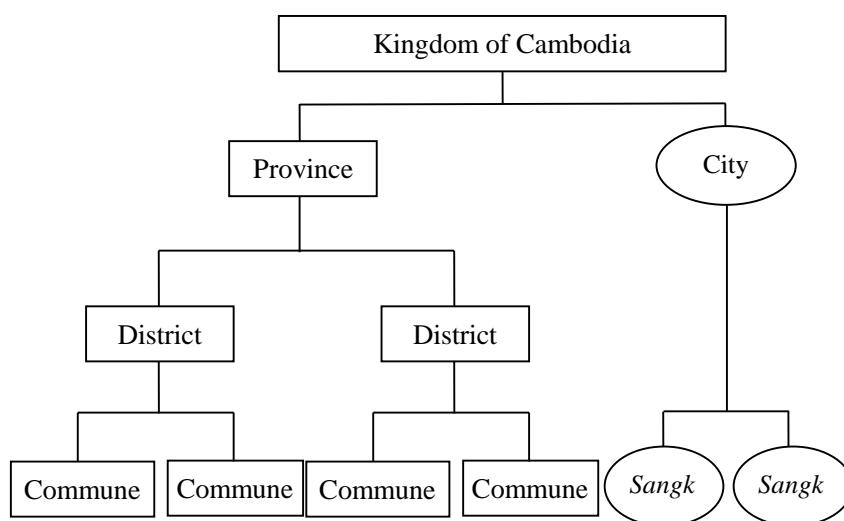
<sup>163</sup> *Ibid.* art. 72.

<sup>164</sup> *Ibid.* art. 73.

<sup>165</sup> *Ibid.* art. 74.

<sup>166</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 10.

Structure of the administrative division of the Cambodia from 1981.



Sources: summarized by author based on historical legal review

### c) 1989 Constitution

The Constitution of Cambodia (1989) was promulgated in April 30, 1989. This Constitution was called the Constitution of the State of *Kampuchea* (Cambodia). This Constitution was an amendment of the previous Constitution (1981).

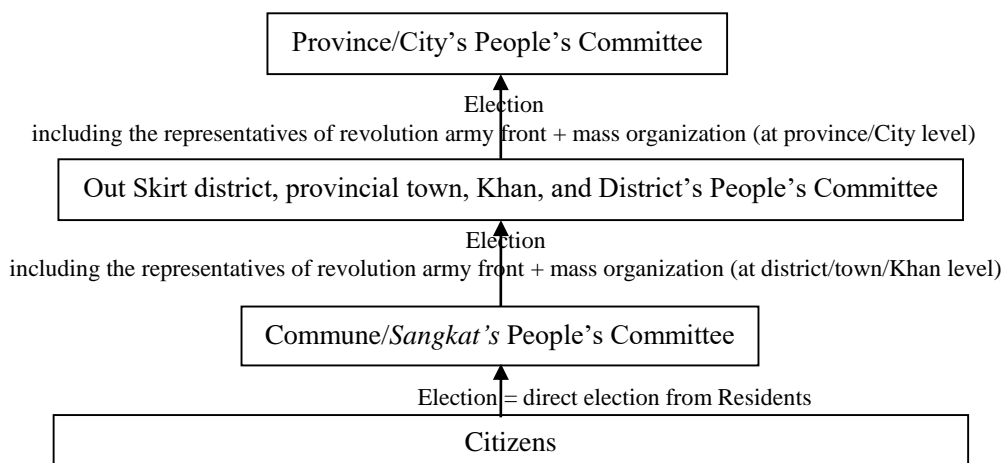
In 1989, according to Article 71 of the new amended Constitution, Cambodia was divided into provinces and cities. Provinces were divided into provincial towns and districts. Provincial towns were divided into *Sangkats*. Districts were divided into communes. Cities were divided into *Khans* and the out skirt districts. *Khans* were divided into *Sangkats*. The Out skirt districts were divided into communes.<sup>167</sup> Based on this division, the three-tiered local system consisted of province and city, district, *Khan* and out skirt district, and Commune and *Sangkat*. Also, there were villages, but villages were not considered as the official administration levels.

<sup>167</sup> Constitution of Cambodia, State of Cambodia [រដ្ឋធម្មនុញ្ញ នៃរដ្ឋកម្ពុជា], (April 30, 1989), art. 71, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=567](https://ccc.gov.kh/detail_info_kh.php?_txtID=567)

The people revolution committee was changed to the people's committee.<sup>168</sup> However, the structure and roles and responsibilities were similar to that of the previous constitution. In the Constitution 1989, the election process of the people's committee was similar to the previous election process in that the citizens voted to directly elect the representatives of the people's committee at commune level, and in turn these representatives elected the higher representatives of the people's committee at district level, and in turn district representative elected the representatives of the people's committee at provincial level.

Provincial and city committees had a five-year term. The district and CS committee had a three-year term.<sup>169</sup> All levels of committees had the responsibility toward local people and toward the higher authority organizations.<sup>170</sup>

#### Local People's Committee election process from 1989



Sources: summarized by author based on historical legal review

This way of election stated in the Constitution (1981 and 1989) was practice in China, Laos, and Vietnam following the principle of democratic centralism. The democratic centralism principle is a hierarchical system that a single party as a central government hold the all the three branches of power including legislative, executive, and judiciary.<sup>171</sup> Cambodia was a single political party

<sup>168</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 11.

<sup>169</sup> Constitution of Cambodia, State of Cambodia [រដ្ឋធម្មនុញ្ញ នៃកម្ពុជា], (April 30, 1989), art. 73.

<sup>170</sup> *Ibid.* art. 74.

<sup>171</sup> Phan Thi Lan Huong, PhD., *Reforming Local Government in Vietnam: Lesson Learned from Japan*, (Nagoya: Nagoya University, Graduate School of Law, 2012), 18.

system. During 1980s, Cambodia was under the strong influence of Vietnam and backed by the Union of Soviet Socialist Republics (USSR).

As a result of this influence, Cambodia's national and local organization structure and election system closely resembled the Vietnamese model. Vietnam is a single party regime, so all government institutions and all levels of subnational administrations are subordinated to Communist Party of Vietnam. Horizontally, the management system is divided into three branches, the executive, legislative and judiciary. Vertically, the system consists of the central, provincial, district and commune level. Along with the subnational administration structure, there are ministerial organs such as provincial line department, a district line office and a commune line office. These administration levels consist of the replicated three branches with different names such as the executive branch (People's Committee), legislature (People's Council), and judiciary (People's Court/Prosecutor). In a combination of its French and Marxist-Leninist legacies, Vietnam follows a parliamentary system. Citizens voted to directly elect the members of the legislative branch (the National Assembly) at the national level, and (People's Council) at provincial, district and commune elections. Then, in turn, the legislative branch (the National Assembly and People's Council) elected the leaders of the executive branch and appointed the heads of judiciary branch.<sup>172</sup>

The difference between the Cambodia and Vietnam was the election system where the citizens voted to directly elect the representatives of the People's Council in Vietnam, but in Cambodia, the citizens voted to directly elect the representative of the People's Committee at commune level. Then, the higher level representatives were elected by the lower representatives.

In Russia, the 1918 Soviet Constitution only allowed the workers to directly elect city and village representatives, and at the higher levels representatives were elected by the city and village representatives. The 1936 Constitution abolished this system, but it continued in other countries, such as China. The way of the 1918 Soviet election system was found in the 1980s Cambodia

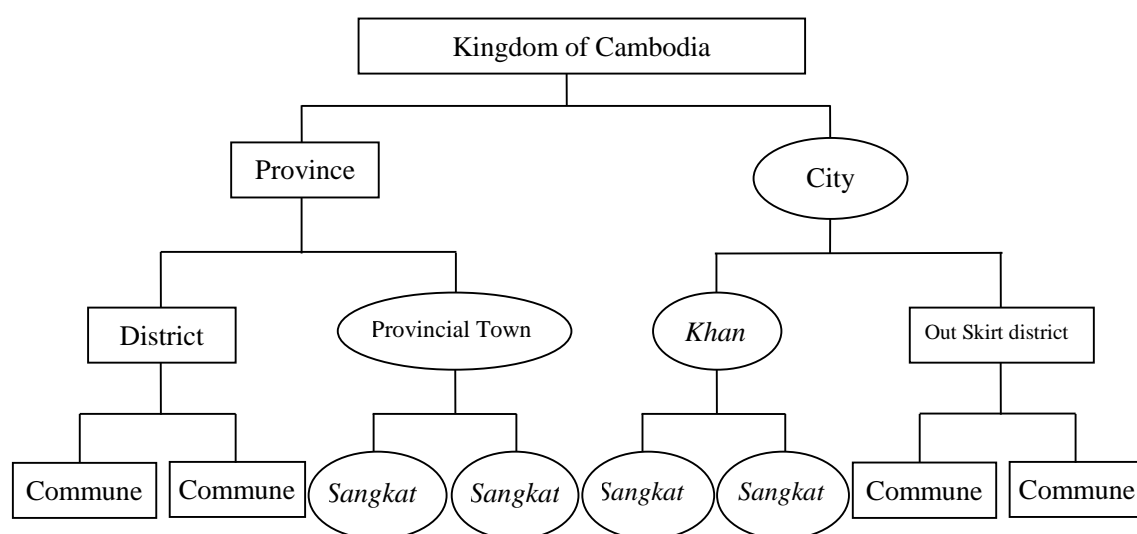
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<sup>172</sup> Edmund J. Malesky, Cuong Viet Nguyen, and Anh Tran, *The Impact of Recentralization on Public Services: A Difference-in-Differences Analysis of the Abolition of Elected Councils in Vietnam*, (American Political Science Review, American Political Science Association 2014, Vol. 108, No.1, February 2014),148-149.

election system as the lowest representatives were directly elected, and in turn the lowest representatives elected the higher representatives. However, the voters in the USSR were the workers, but in 1980s Cambodia the voters were citizens.

During the 1980s, the roles of the elected local committees were to make decisions and to implement the development policies of all sectors, to implement the higher organization decisions and circulations, to manage administrative works, to give orders to units at all levels under their direct supervision in order to implement duties, to keep public security and social order, and to develop the economy, strengthen culture, and improve the health and living standard of local people.<sup>173</sup> Again, there was a three-tiered local system, with province and city as the same level, district, provincial town, *Khan*, and out skirt district as the same level, and commune and *Sangkat* as the same level.

Structure of the administrative division of Cambodia from 1989.



Note:   is for Rural administration

  is for Urban or Town administration

Sources: summarized by author based on historical legal review

<sup>173</sup> Constitution of Cambodia. People Republic of Kampuchea [រដ្ឋធម្មនុញ្ញ នៃសាធារណរដ្ឋកម្ពុជា], 1981, and Constitution of Cambodia, State of Cambodia [រដ្ឋធម្មនុញ្ញ នៃរដ្ឋកម្ពុជា], 1989, art. 75.

### 1.2.3. Democratization Era (1993-Present)

Previous part showed the existence of local administration under the socialist legal system. This part will discuss about a turn when Cambodia conducted the national democratic election at the national level. Then, decentralization reform had been introduced at the local level, when commune council was directly elected by residents.

#### a) The Reason of Decentralization Reform

Decentralization reform was promoted in Cambodia for the following reasons.

First, Cambodia was at the turning point of changing its political system. After the first national election in 1993, with the support of the United Nations Transitional Authority in Cambodia (UNTAC), Cambodia became a constitutional monarchy whereby the king became a symbol for the country while he reigned as the head of state but did not rule.<sup>174</sup> This election represented the beginning of new steps towards democratization and the movement away from socialism.<sup>175</sup> However, there was no election at the commune level.<sup>176</sup>

Second, Cambodia was under the circumstance of balancing power inside the country. After the national election in 1993, Cambodia used to have two prime ministers (PM) at a time; the first PM was from one political party and the second PM was from another political party. As a result, there was a power division among the two leading political parties to hold quota for provincial governor and deputy governor appointments, up until the end of the second term of the government (in 2003). There was no consensus on the power division at district, *Khan*, commune and *Sangkat*

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<sup>174</sup> Constitution of Cambodia, Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], (September 24, 1993, amended in 2008), chapter II, art. 7 and 8, accessed August 27, 2021 in: [https://ccc.gov.kh/detail\\_info\\_kh.php?\\_txtID=568](https://ccc.gov.kh/detail_info_kh.php?_txtID=568)

<sup>175</sup> Of course, socialism is also an idea and a social system for realizing democracy. It is wrong to use democracy and socialism as opposed to each other. However, in Cambodia, there is a tendency to use the word democracy as the opposite concept of socialism. It describes such a situation, and my understanding is clearly different.

<sup>176</sup> Sar Kheng, Samdach Krolahom, Deputy Prime Minister, Minister of Interior, *Decentralization and Deconcentration reform: Cambodian's Sub-National Administration management system*, Phnom Penh, Cambodia, (January 2018), 10.

level.<sup>177</sup> In order to divide the power at the commune level, the coalition of political parties in the government initiated a political framework on sharing power at commune level in a democratic way.

Finally, Cambodia's government wanted to share power at the commune level and at the same time introduce democratic development at the grass roots level. In 1996, the first reason that the government decided to make reform was based on the result of the achievements<sup>178</sup> of the CARERE/SEILA's initiative on decentralization approach for local development. The second reason was the government intension to share the power among different political parties at commune level in a democratic way. As a result, in 1999, the government initiated a political framework on the election and the decentralization reform at the commune level. Then, the government started the first step to draft the Organic Law on Administrative Management of Commune and *Sangkat* and promulgated by Royal *Kram* No. 0301/05 on 19 March 2001, along with the Law on the Election of Commune and *Sangkat* Councils which was promulgated by Royal *Kram* No.0301/04 on 19 March 2001. Therefore, the government combined the successful experience of the pilot project on local development, which was supported by development partners, with the initiated political framework to share power in a democratic way at the commune level during a period of peace based on the government's "win-win policy" in 1998.

The achievement of introducing decentralization reform and local development at commune level had encouraged the government to make reforms at the district and provincial levels. The government established the Strategic Framework of Decentralization and Deconcentration Reform in 2005 in order to create SNA by introducing the democratic participation principle and unified administration. The government aimed to strengthen local development and to provided public service in according to the people's needs that may contribute to the poverty alleviation at the locality.<sup>179</sup> The reform endeavored to create a unified administrative organizational structure at SNA,

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<sup>177</sup> *Ibid.* at 13-14.

<sup>178</sup> The achievement refers to the way that people participated at local administration level and the government trust on this people participation, the predicable fund for commune, the local participation on project that benefit their lives, and the attitude change among local officials to focus on bottom-up process and good governance.

<sup>179</sup> Royal government of Cambodia, *Strategic framework on decentralization and deconcentration reform*, (17 June 2005), 6.

to introduce the democratic development, the local autonomy, and to equip SNA with the legal entities and autonomy in order to establish, promote and sustain democratic development.<sup>180</sup> These concepts were integrated into the Organic Law that managing the district and provincial level.

As a result of the strategic framework of decentralization reform, the Organic Law called LAMCPMDK was enacted in 2008.<sup>181</sup> Along with the Organic Law, the government designed a Ten-Year National Program for Sub-National Democratic Development (NP-SNDD; 2010-2019) which was extended until 2020, because the implementation was started in 2011. NP-SNDD was divided into three implementation plans (IPs) which were called IP3-I, II, and III. IP3-I (from 2011 to 2014) focused on districts and municipalities' operational systems and the foundations of autonomous administration. IP3-II (from 2015 to 2017) focused on service delivery policies and functional transferal from central to local government. IP3-III (from 2018 to 2020) aimed to improve the quality and efficiency of service delivery and local development in the capital city, provinces, municipalities, districts, *Khans*, and communes and *Sangkats* through the general mandate, the transferred affairs, and other service delivery innovations.<sup>182</sup>

From 2002 to 2017, the decentralization reform had gone through two main phases. These phases were defined by the government. Phase three ended in 2020.

#### **b) The Three Phases of the Decentralization Reform in Cambodia**

In Phase one, Cambodia's government confirmed that there are three phases of decentralization reform in the Cambodia context. In phase one, the government created a political framework, a legal framework for decentralization reform at Commune and *Sangkat* (CS) and introduced the first Commune and *Sangkat* council (CC) election in 2002. In this phase, the government of Cambodia changed the CS structure and governance system, accountability line, and

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<sup>180</sup> LAMCPMDK, 2008, arts. 2, 8, 9, 11, and 12; and LAMCS, 2001, arts. 1, 2 and 3.

<sup>181</sup> Sar Kheng, *Decentralization and Deconcentration reform: Cambodian's Sub-National Administration management system*, Phnom Penh, Cambodia, 20-21.

<sup>182</sup> National Committee for Sub-National Democratic Development (NCDD), Three-Year Implementation Plan Phase III (IP3-III) 2018-2020 of the National Program for Sub-National Democratic Development (NP-SNDD), Phnom Penh, Cambodia, (November 2017), 3.



provided training and capacity development to the CS administration and relevant stakeholders in order for them to fully participate and support the CS administration.<sup>183</sup>

In Phase Two, based on the successful of introduction of direct elections and local development through decentralization reform at the CS level, the government of Cambodia decided to create reforms at the higher structures of local administration at the capital city, province, municipality, district, and *Khan* administrations. The government created a strategic policy framework, a legal framework for the decentralization and deconcentration reform at capital city, province, municipality, district, and *Khan* level and introduced the first capital city, province, municipality, district, and *Khan* council elections in 2009. In this phase, the government made a change on the structure and governance systems, and the accountability line at the capital city, province, municipality, district, and *Khan* level, including provided training and capacity development to these administrations and relevant stakeholders.<sup>184</sup>

For around 15 years, since 2002, as stated in 2017 at the national conference on decentralization reform, the government, along with ministries, SNAs, development partners, and stakeholders had a strong political commitment to decentralization reform and successfully went through two main phases (phase one and phase two) achieving the creation of the SNA governance system. These two phases of decentralization reform mostly have impacted the SNA more, and had a little impact on national level.

Phase Three had more impact on the central level. This phase mainly focused on the affairs and resources transfer. Based on the experience of other countries, the affairs and resources transfer from central government to the local government is a more controversial, complicated, and sensitive phase, because it has more impact on ministries and other institutions at the central level. Pilot tests on affairs and resources transfer were introduced in several sectors. Article 218 of the Organic Law 2008 (LAMCPMDK) stated that “the transfer of affairs and resources shall be carried out with planning, phasing, rationale, coordination, consultation, transparency and with minimal disruption to

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<sup>183</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 63.

<sup>184</sup> *Ibid.* at 63.

the ongoing operations of the Royal Government and the support of relevant stakeholders.” The National Committee for Sub-National Democratic Development secretariat (NCDDs) is working closely with other relevant ministries to transfer the affairs and resources.

Affairs and resources transfer to SNA, which refers to capital, province, municipality, district, *Khan*, commune, and *Sangkat* administration, is conducted through the subsidiarity principle. This principle simply means the transfer of affairs to SNA who has enough capacity and easy to implement, but not to transfers the affairs that is complicated, difficult to implement or transfers affairs that has no exact resources or transfers affairs that central government cannot do to SNA.<sup>185</sup>

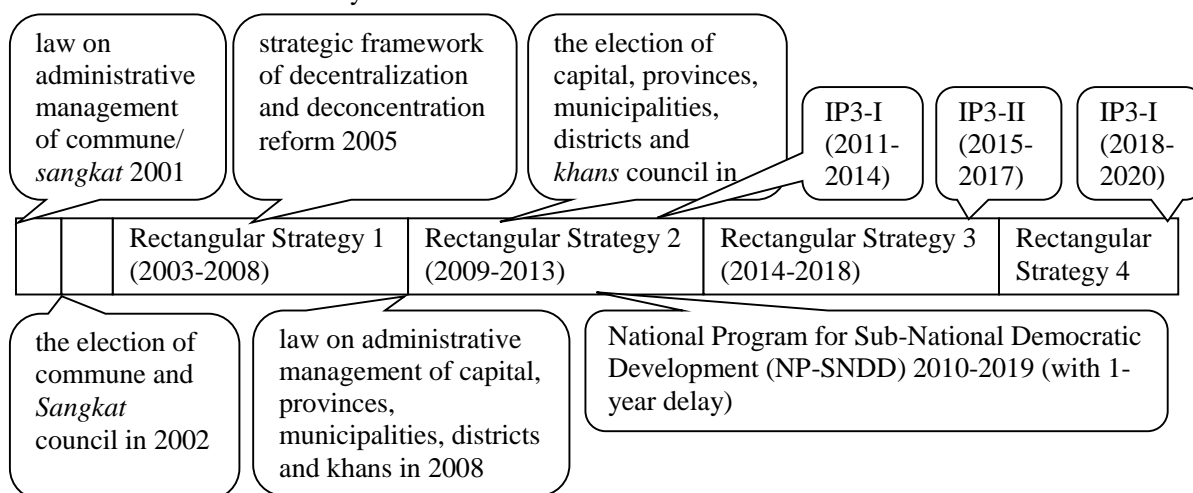
Moreover, the principle of subsidiarity is considered as a guiding principle in order to re-structure SNAs in a spirit of decentralization and subnational democratic development from 2021 to 2030 in the National Program on Sub-National Democratic Development (SNDD), Phase 2 (NP2) (2021-2030). Based on the NP2, the principle of subsidiarity consists of three simple postulates. First, the lower level of local administration always has the priority being assigned with responsibilities, starting with the most priority given to family and neighborhood, followed by village, commune, district, province, and lastly the central government. Second, if the respective lower level of local administrations cannot fulfil their responsibilities, the higher level of local administration and the central government have to assist them. Third, only if there is no satisfying solution, the higher level of local administration and the central government have to take back the responsibilities.<sup>186</sup>

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<sup>185</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 17.

<sup>186</sup> National Committee for Sub-National Democratic Development (NCDD), *National Program on Sub-National Democratic Development, Phase 2 (NP2) (2021-2030)*, Phnom Penh, Cambodia, (2021), 3 and 32.

Below is the summary chart of decentralization and deconcentration reform in Cambodia.<sup>187</sup>



### c) The Transfer of Affairs

Until 2019, in SNA, the transfer of affairs from central government was in the form of delegation and assignment on a small limited number of affairs and resources. There were five ministries that transferred thirteen affairs to SNA from 2015 to 2019. The table below shows the list of affairs transferred to SNA with different types of relevant regulations.

The relationship between the transfer of affairs, which has been incrementally developed in the last 20 years, and the supervision of the central organs was still strong. SNA was basically a local office of the central government, and it handled central affairs. The central government including ministries had the power to directly check on local organs' affairs, and issue standards and to endorse the local organs' affairs. Moreover, there were differences and inconsistency in administrative practices at central ministries, so the local organs were confused. To be mentioned in chapter 4, that is why general rules (general law) are desired.

**Table of functional transfer, the form of transfer, and responsible administration**

No.	Function	the form of transfer	SNA	Legal document
1	Civil registration	Delegation	CS	MoI
2	Voter registration	Delegation	CS	NEC
3	Provide rural sanitation service: to stop Open Defecation Free (ODF)	Delegation	Target DM	Prakas MRD No.094/19

<sup>187</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 20.

4	Maintenance and repair all kinds of rural water supply: well, pond, community water supply, and these inventory control.			March 12, 2019
5	Maintenance rural road regularly: rural road connect between villages, and within the village, except concrete, and rubber road (AC or DBST)			
6	Providing driving license of vehicle type “A” and “B” for Cambodian citizen: Management on driving test, and changing driving license.	Delegation	CP	Prakas MPWT No.090 March 06, 2018
7	Registration of personal vehicle	Delegation	CPMDK	Prakas MPWT No.089 March 06, 2018
8	Small children education management, elementary education, and none-formal education (MoEYS)	Assignment	DM	Sub-decree No.191 September 16, 2016
9	Management of the government’s child care center (MoEYS)	Assignment	CP	Sub-decree No.34 March 07, 2017
10	Monitor the NGO’s child care center (MoEYS)	Assignment	CMD	
11	Management of the child victim and venerable child care service in community (MoEYS)	Assignment	CMC	
12	Management of waste and solid waste in urban area (MoE)	Assignment	CMD	Sub-decree No.113 August 27, 2015
13	Management of waste and solid waste in urban area (in Phnom Penh Capital City) (MoE)	Delegation	K	
14	Management of tourism entertainment center for adult: licensing, monitoring, and collecting revenue.	Delegation	CP	Prakas MoT No.069 March 18, 2016
15	Providing administration service related to issuing mining license for small handy mining operation	Delegation	CP	Prakas MoME No.321 September 01, 2017

In order to speed up the progress of affairs transfer, the Royal Government of Cambodia (RGC) issued a decision letter on the preparation of actual affair transfer to SNA in which 28 affairs from priority ministries had to be transferred to SNA. Those affairs were from health sector, public works and transportation sector, environment and agriculture sector, rural development sector, social sector, tourism sector, and water resource sector.<sup>188</sup>

Almost all of the affairs were under the responsibility of the central government. The central government had to transfer affairs to SNA through assignment or delegation. Moreover, the central

<sup>188</sup> Decision of RGC, No. 39, on the preparation of actual functional transfer to sub-national administration, (May 22, 2017) art. 1 and appendix.

government may transfer affairs to SNA by the integration of line departments or line offices into the SNA's organization structure. For example, in early 2020, the central government integrated line offices into the organization of municipalities, districts, and Khans (MDK) which was a historical event. Legally, the integration of line offices into a new MDK's organization structures was made with the transfer of affairs belonging to line offices at MDK level. These affairs were mixed and merged into new offices of MDK administration with the list of the affairs transferred attached in the sub-decrees No. 182, No. 183, No. 184 and No. 193, enacted on December 2<sup>nd</sup>, 2019, as references and clarity in implementation. There are challenges in behavior changes of the line office's civil servants, in the changing of working procedures and the accountability line, and in transferring resources to implement the transferred affairs.

CS administration has two responsibilities, to implement the local affairs and to be the central agent for implementing the central affairs. In implementing the local affairs, CS has to serve benefit the local residents and the CS. Based on the Organic Law 2001, Article 43, CS's local affairs are as the following. First, CS has to guarantee security and public order. Second, CS has to manage the necessary public service and to be responsible for the better operation. Third, CS has to give the encouragement for the enhancement of comfort and welfare of people. Fourth, CS has to support the socio-economic development and to bring about the living standard of people. Fifth, CS has to protect the environment, natural resources, culture, national heritage. Sixth, CS has to coordinate people views within its jurisdiction in order to bring out the mutual understanding and tolerance. Finally, CS has to implement general affairs in order to respond to the people needs.<sup>189</sup>

As the central agent, CS has the responsibility to implement the Laws, Royal *Krams*, sub-decrees, *Praksas* and other relevant regulations. In this case, the central government may delegate the affairs to CS and provide the capacity building, the supporting material, and the budget for implementation.<sup>190</sup> For example, the voter registration and civil registration affairs are central affairs that are obligatory delegated to CS for the implementation as the central agent.

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<sup>189</sup> Law on the Administrative Management of Commune and *Sangkat* (LAMC), promulgated by Royal *Kram* No. NS/RKM/0301/05 on March 19, 2001, arts. 42 and 43.

<sup>190</sup> *Ibid.* art. 44.

Besides, CS has no authority to make decision on the following affairs such as forestry, post and telecommunication, national defense, national security, monetary, foreign affairs, tax policy, and other sectors stipulated in the laws or regulations.<sup>191</sup>

As can be seen in chapter III of this thesis, there were two affairs (Koukyou-Jimu [=public affairs] and Inin-Jimu [=delegated affairs]) in Meiji and a new affair (Gyousei-Jimu [=Administrative affairs]) was added under new Constitution in Japan. In Meiji era, the central government only could exercise powers without voluntariness of peoples such as affairs of police administration. When the theory of the nature of affairs was found in Meiji Japan, any theory regarding the nature of affairs of SNA can't be found in Cambodia, it is unlikely that it has legal personality in the sense of being independent of the central government.

#### **d) The Human Resources Transferred**

On February 14<sup>th</sup>, 2019, in the closing ceremony of the annual conference of the Ministry of Interior, the Prime Minister of Cambodia provided a comment focusing on the transfer of human resources to SNA. As a result, the Ministry of Interior (MoI) had transferred the human resources to CPMDK administration. The total number transferred MoI personnel was 6,193 persons, including 2,155 females. More specifically, MoI had transferred 2,800 persons in total, including 883 females to CPA. MoI had transferred 3,393 persons, including 1,272 females to MDK. The focus of the human resource transferred was on the personnel whose hold the positions as a deputy chief of administration and below. MoI kept the decision on positions of SNA's management personnel such as the administration chief and the board of governors (BoG) of CPMDK, and the CS clerk.<sup>192</sup>

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<sup>191</sup> Law on the Administrative Management of Commune/*Sangkat* (LAMC), 2001, art. 45.

<sup>192</sup> -Ministry of Interior, Prakas (25 Prakas, No. 541 to 560, 567, 568, and 570 to 572) on the transferring of civil servant of ministry of interior to CPMDK administration, (February 21 and 22, 2019).

-Hong Muyheng, department of personnel's report 2019 (General Department of Administration, Ministry of Interior) on the transferring of civil servant of MoI to SNA 2019, (2019), 3.

**e) Concept note for Establishing the National Program for Sub-National Democratic Development, Second phase (2021-2030)**

By the end of 2020, on behalf of the Royal Government of Cambodia, the National Committee for Sub-National Democratic Development (NCDD) established the concept note for establishing the National Program for Sub-National Democratic Development, second phase (2021-2030), hereinafter called NP2. This concept note is the guiding concept for the establishment of NP2 with the defining vision, goals, objectives, and strategic plans, and program areas.<sup>193</sup> NP2 consists of two multi-year implementation plan in which each plan has a period of five years, hereinafter referred to as IP5. NCDDs creates an Annual work Plan and Budget (AWPB) based on IP5.<sup>194</sup>

Looking back on the result of NP-SNDD1 (2010-2020), there are achievements as the following. First, Cambodia created the foundation for a democratic management system and structure in SNA. By the end of 2019, the management structure at municipality, district, and *Khan* administrations were restructured based on the principle of unified administration through the integration of line offices of 20 sectoral ministries into the new management structure. Second, Cambodia had introduced the SNA's personnel management system. The central government assigned the power to SNA in managing the over 40,000 personnel transferred to SNA. In order to provide capacity building, the National School of Local Administration (NASLA) was created. Third, there were 55 affairs in 20 sectors that were transferred to municipality, district, and *Khan* administrations. Affairs in the social and health sector were transferred to capital and provincial administration based on decentralization policy. There were the establishment of the One Window Service Mechanism (OWSM) at capital, provincial, municipal, district, and *Khan* administrations for providing better and closer administrative services to people. Fourth, the central government created a SNA financial system through financial decentralization policy. Fifth, the central government created the policy on SNA planning system. Sixth, the democratic accountability mechanism was

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<sup>193</sup> National Committee for Sub-National Democratic Development (NCDD), *Concept note for establishing the National Program for Sub-National Democratic Development, Second phase (2021-2030) (NP-SNDD2)*, Phnom Penh, Cambodia, (December 2020), 2.

<sup>194</sup> *Ibid.* at 15.

created through establishing the Ombudsman Office and the social accountability framework. This framework was created for sharing important information such as the usage of local budget and the activities of local administration, and for getting feedback from residents in order for the improvement of the activities of local administration. Social projects were promoted at SNA. Seventh, there were over 600 types of administrative service provided by SNA. Eighth, the central government created NCDD for the management, facilitation, and support to the preparation and the implementation of decentralization and deconcentration program. Finally, the central government enacted the legislation for gender mainstreaming and promoting leadership for women at SNA.<sup>195</sup>

Along with these achievements, there are challenges as the following. First, there is no consensus understanding on the vision and goals of decentralization policy from among relevant stakeholders. Second, the structure and system of SNA is not conforming to the specific characteristics of each SNA in which there was a big city (Phnom Penh capital city), the urban areas (municipalities and *Sangkats*), and the rural areas (district and communes). In addition, each individual SNA had a different characteristic of geographic, demographic, and socio-economic potential. Third, there is no study of establishing provincial administrations to become regional administrations yet. In principle, the regional administration had to support, to monitor and evaluation, to provide capacity building to local administration such as municipalities, districts, communes, and *Sangkats* administrations within its jurisdiction, and had to provide public service and to construct a big public investment that local administration cannot afford. Fourth, an SNA council has only a limited role and authority in making decision on their own planning and budgets, and in representing the local residents for addressing their needs. Fifth, local residents have limited knowledge over the rights for asking the council to be accountable to them. Sixth, residents are facing difficulty in receiving necessary public services because there was unclear defining responsibility between the central government and SNA, and within SNA themselves. Seventh, municipality and district administrations are provided with only limited autonomy in making

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<sup>195</sup> NCDD, *Concept note for establishing the National Program for Sub-National Democratic Development, Second phase (2021-2030) (NP-SNDD2)*, 2020, 2-4.



decision in managing and using resources. Moreover, there is an inadequate amount of staff, financial resources, and property for properly implementing the affairs transferred. Some affairs are not able to be implemented yet such as urban waste management. There is limited capacity of local staff. Finally, SNA has a limited capacity in using information communication technology in managing its daily works such as in information sharing and communicating publicly.<sup>196</sup>

According to the concept note, the vision of NP2 (2021-2030) is defined as “the vision of the Royal Government of Cambodia in SNA reform within 10 years is that people receive public service and benefit from local development implemented by SNA with the manner of inclusiveness, and social equity, in order to contribute to the success of social and economic development goal, and contribute to bring Cambodia to become a high Middle Income Country in 2030.”<sup>197</sup>

NP2 consists of five program components and inter-sectoral works. The five components are the leading and managing decentralization reform, the SNA’s structure and management system, the personnel management and capacity building, the SNA’s financial decentralization and planning system, and the public service delivery and local development.<sup>198</sup> The inter-sectoral works consisted of three main components such as the gender mainstreaming, inclusiveness, and social equity, the climate change and disaster, and the governance through electronic systems.<sup>199</sup>

The five programs components are as following. First, the component of leading and managing decentralization reform will focus on revising and strengthening role and responsibilities of NCDD, the NCDD sub-committees, the decentralization mechanism of ministries and institution, and strengthening cooperation with other reform and relevant stakeholders. SNA and ministries and institutions will have ownership and responsibilities in formulating and implementing the decentralization reform effectively and efficiency. Second, the component of SNA’s structure and management system will clarify, define, and differentiate the SNA’s structure, system, power and affairs according to the level and type of SNAs as metropolitan, urban and rural characteristics. SNA

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<sup>196</sup> *Ibid.* at 4-6.

<sup>197</sup> *Ibid.* at 7.

<sup>198</sup> *Ibid.* at 16.

<sup>199</sup> *Ibid.* at 23.

will utilize the information technology systems for the management and communication internally and externally. Third, the component of the personnel management and capacity building will allow SNA to recruit, manage, deploy and utilize their own staff that equipped with proper willingness, responsibility, capacity, and skills, and based on their position and responsibility, including receiving skills and capacity building often. Fourth, the component of the SNA's financial decentralization and planning system will focus on providing SNA a predictable, adequate budget resources aligned with the priority of the national policy. SNA's budget has to be transferred for a flexible usage in order to respond to the priority needs defined in SNA's five-year development plan, three year rolling investment program, and budget strategic plan. Finally, the component of the public service delivery and local development will strengthen SNA's mechanisms, procedures, and standards for providing public service, local development, and public communication in the effective, transparent, accountable, inclusive, and socially equitable manner. This component will support SNA to implement the general mandate affairs or permissive affairs, and obligated affairs in order to respond to the needs and to solve the problems of the residents within the jurisdiction.<sup>200</sup>

The inter-sectoral works of NP2 is inter connected with the five program components mentioned above. This inter-sectoral works is divided into three components. First, the gender mainstreaming, inclusiveness, and social equity will allow SNA to recruit and manages staff, and to provide public services and to develop locality without discrimination based on nationality, religion, sex, people with disability, ethnicity, and venerable groups or other social characteristics. SNA will be able to proactively support women and disadvantage groups to participate in public service delivery and local development, and in the economy and society. Second, the climate change and disaster will equip SNA to be able to evaluate, manage, and respond effectively to vulnerability of the climate change and disaster in order to protect and strengthen the welfare of the people and to promote the sustainable development in their jurisdiction. Third, the governance through electronic system or E-governance will strengthen SNA to be able to use information communication

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<sup>200</sup> NCDD, *Concept note for establishing the National Program for Sub-National Democratic Development, Second phase (2021-2030) (NP-SNDD2)*, 2020, 16-22.

technology while implementing their work by using the technology for the internal administrative communication and for the external public service delivery and communication. SNA will be able to use two-way communication with citizens for strengthening the effectiveness, transparency, and accountability.<sup>201</sup>

In sum, there will be a possibility to amend some laws specifically on the SNA's structure and management system, but there is no sign of general law on local autonomy to be created. Based on program area two of NP2, there will be a focus on changing and strengthening the structure and the management systems, and adjusting the affairs of provincial, municipal, district, commune, and *Sangkat* administrations. Capital city will be clearly defined and changed to the Metropolitan administration. Provincial administration will be turned to the regional administrations. CPA will follow the principle of unified administration. Municipal administration and *Sangkats* within its jurisdiction, and *Khan* administration and *Sangkat* within its jurisdiction will be considered as the urban administrations. District administration and commune within its jurisdiction will be considered as the rural administrations. MDKs were the unified administrations after integration all line offices into MDK administrations since early 2020. SNAs will have affairs and responsibilities differently and clearly in the public service delivery, and in the communication and cooperation among different level of administration.<sup>202</sup>

### **1.3 The changes in commune election from 1908 to 2008**

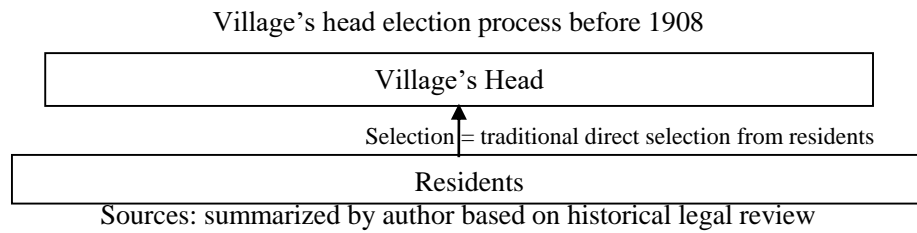
Before 1908, historically and culturally, Cambodia experienced a tradition of a village's head being chosen by villagers under the monarchy system. The elder men were chosen based on their knowledge, agricultural skills, good manner and conduct, and common sense.<sup>203</sup>

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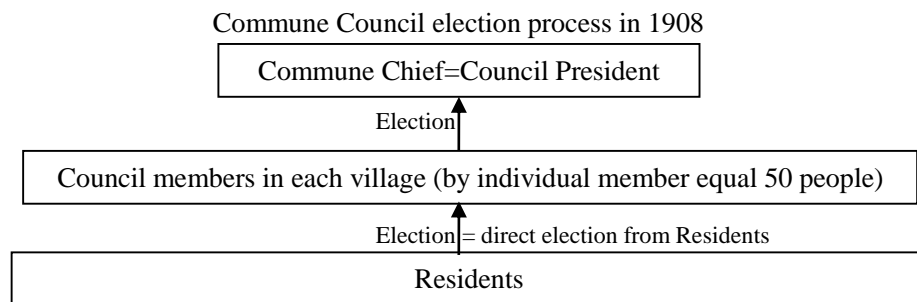
<sup>201</sup> NCDD, *Concept note for establishing the National Program for Sub-National Democratic Development, Second phase (2021-2030) (NP-SNDD2)*, 2020, 23-25.

<sup>202</sup> *Ibid.* at 18.

<sup>203</sup> Chandler P. David, *A history of Cambodia*, 126 and 128.



In 1908, the French administration brought an administration named “commune” and introduced elections.<sup>204</sup> The Royal *Kram* No. 42, on the administrative management of communes was enacted on June 5, 1908. The council candidates and voters were those who paid tax and registered in the tax paid list.<sup>205</sup> The process of election was that, firstly, voters elected council members in the village. Then, council members of each village within the commune elected a chief who was the commune chief and the president of the commune council.<sup>206</sup>



In September 24, 1919, the Royal *Kram* 1908 was amended by Royal *Kram* No. 70 which came into practice on January 01, 1920. The commune election process was changed as stated in Article 11 that “*The councils shall choose among themselves a member to become a commune chief...*” The age of the voter and the number of the council was defined. The age of voter as stated in Article 9 that “Everybody, who is the local resident, reached the age of twenty-one-year-old, registered in the tax paying list, regardless nationality, shall have the power as a voter in commune. During the commune council elections, he/she shall have the power to stand for being elected...”<sup>207</sup> Moreover, the number of commune councils were clearly limited from 8 to 16 as stated in Article 10

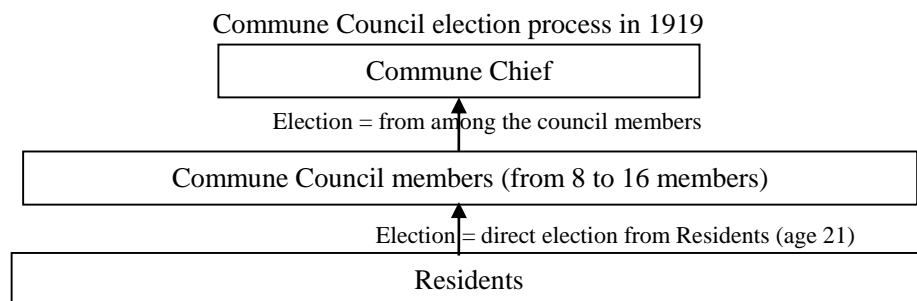
<sup>204</sup> Say Bory, *General Administrative Law*, 2006, 425, Para 382.

<sup>205</sup> Royal *Kram* No. 42 on the organization of the Commune of Cambodia, (June 05, 1908), article 8.

<sup>206</sup> *Ibid.* art. 9.

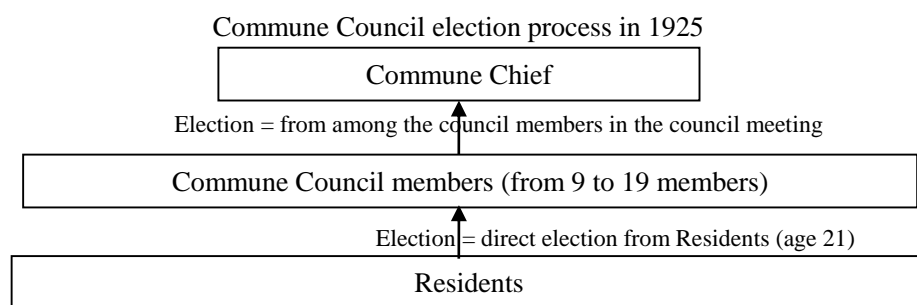
<sup>207</sup> Royal *Kram* No. 70 on Commune Administration, (September 24, 1919), art. 9.

that “Each commune shall consists of at least 8 commune council members and at most 16 commune council members...”<sup>208</sup>



Sources: summarized by author based on historical legal review

In 1925, the Royal *Kram* 1919 was amended by Royal *Kram* No. 59, promulgated in November 15, 1925. This amendment included citizens who held an exemption permission letter such as elderly persons and people with disability in the commune council election. The number of commune council members was limited from 9 to 19.<sup>209</sup> Moreover, for those who were eligible to vote, they could stand as the commune council candidate for being elected. However, he/she had to make request to the *Khan*’s governor to register his/her name in the candidate list for commune council election.<sup>210</sup> After declaring result of commune council election, CC members had to convene a council meeting in order to elect from among the council members the commune chief.<sup>211</sup>



Sources: summarized by author based on historical legal review

<sup>208</sup> Royal *Kram* No. 70 on Commune Administration, (September 24, 1919), art. 10.

<sup>209</sup> *Ibid.* art. 11 and 29.

<sup>210</sup> Royal *Kram* No. 59 on Commune Administration, (November 15, 1925), art. 25.

<sup>211</sup> *Ibid.* art. 28.

In 1943, there was no commune election based on the Royal *Kram* No.40 on commune enacted on July 1<sup>st</sup>, 1943.<sup>212</sup> Based on the Royal *Kram* No. 40 (1943), the district governor appointed the commune chief from among the notable people. Then, the provincial governor and French Resident had to make decision on the approval of the request. Finally, the Ministry of Interior issued a Ministerial *Prakas* of appointment.<sup>213</sup> CC was not elected. However, CC consisted of the commune chief, the deputy chiefs of commune, and the heads of villages.<sup>214</sup>

In 1959, there was Royal *Kram* No.340 on Commune Unified Affair and Legal Entity, enacted on February 03, 1959. CC candidates were those who had the election rights and fully reached the age of 25 and already registered in the voting list, except for those who was banned by Article 13 of this law.<sup>215</sup> There was the election campaign hold in a period of 15 days before the election day, which was made at any Sunday. Each province had different election day based on the decision of provincial governor.<sup>216</sup> The polling office was created for at most 500 voters.<sup>217</sup>

The people elected commune council and commune chief directly.<sup>218</sup> A group of candidates created a candidate name list based on the number of commune council members required in the commune. Voters elected the list of candidate that they support.<sup>219</sup> The winner was the candidate list that got the majority votes, based on the valid votes and regardless of the level of voter participation.<sup>220</sup> The commune chief was a person whose name was listed on the top of the candidate list that received the majority votes as the winning list. The rest of the members in the list were automatically the commune council members.<sup>221</sup> Then, the provincial governor issued a bylaw to appoint the commune chief and commune council after the governor declared the election result was acceptable.<sup>222</sup>

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<sup>212</sup> Royal *Kram* No. 40 on Commune, (July 01, 1943), art. 18.

<sup>213</sup> *Ibid.* art. 19.

<sup>214</sup> *Ibid.* art. 1 and 26.

<sup>215</sup> Royal *Kram* No. 340 on Commune Unified Functions and Legal Entity, (February 03, 1959), art. 12.

<sup>216</sup> *Ibid.* art. 15.

<sup>217</sup> *Ibid.* art. 17.

<sup>218</sup> *Ibid.* art. 10.

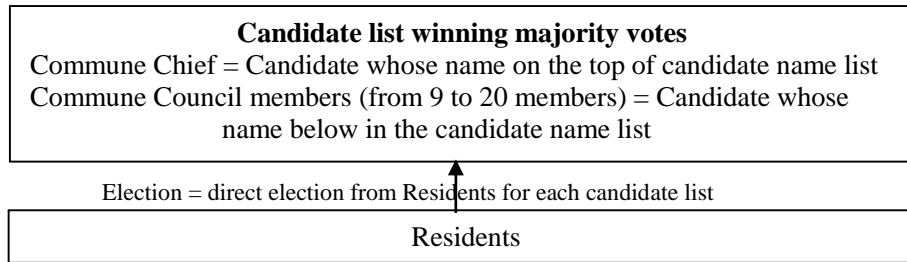
<sup>219</sup> *Ibid.* art. 18.

<sup>220</sup> *Ibid.* art. 19.

<sup>221</sup> *Ibid.* art. 20.

<sup>222</sup> *Ibid.* art. 21.

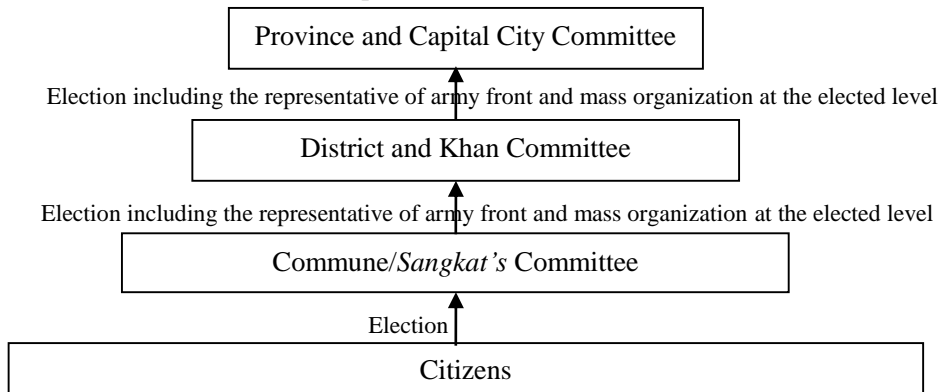
#### Commune Council election process in 1959



Sources: summarized by author based on historical legal review

During the socialist era, the provinces, districts, and CS administration were managed by an elected committee, which was known as the People Revolution Committee (PRC) in 1981 and as the People Committee (PC) in 1989, following the procedure as stated in Article 72 in the Constitution 1981 and Article 72 in the Constitution 1989. Local residents elected a committee at CS level directly. Then, CS committee members, including the representative of the Army Front, and Mass Organization at district level, elected the district committee. The district committee members, including the representative of the Army Front, and Mass Organization at district level, elected the provincial committee. There was a single political party. The way of this election system was found and practiced in China, Laos, and Vietnam following the principle of democratic centralism.

#### Socialist Era election process in 1981 and 1989 Constitution



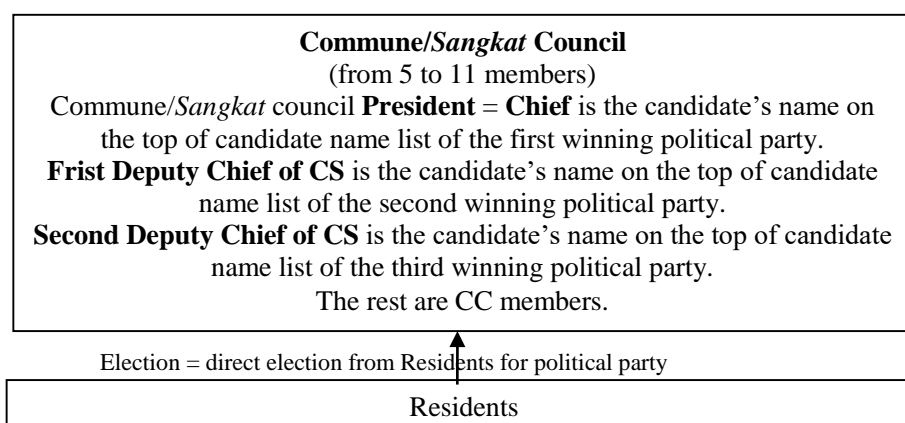
Sources: summarized by author based on historical legal review

In 2002, there was a commune election in the whole country, based on the Organic Law on the Administrative Management of Commune and *Sangkat* (LAMC), promulgated by Royal *Kram* No. NS/RKM/0301/05 on March 19, 2001;<sup>223</sup> and the Organic Law on the Election of Commune

<sup>223</sup> Law on the Administrative Management of Commune and *Sangkat*, (2001), accessed August 27, 2021 in: [ncdd.gov.kh/wp-content/uploads/2017/12/2001-CommuneSangkat-Administration-Management-kh.pdf](http://ncdd.gov.kh/wp-content/uploads/2017/12/2001-CommuneSangkat-Administration-Management-kh.pdf)

and *Sangkat* Councils, promulgated by Royal *Kram* No. NS/RKM/0301/04 on March 19, 2001.<sup>224</sup> Commune and *Sangkat* council (CC) was elected directly by people, who reached the age of 18 years old and registered in voting list, in its jurisdiction.<sup>225</sup> CC members consist of at least 5 and at most 11 members.<sup>226</sup> To be able to stand as a candidate for CC election, one had to be a Cambodian of both sexes, reached 25 years old and registered in voting list.<sup>227</sup> CC election is a proportion election system.<sup>228</sup> The winning political parties had to share the seats of CC. The top candidate in the list winning the most votes is the president of CC and the CS chief.<sup>229</sup> There were two CS deputy chiefs. The first and the second deputy of CS chiefs were selected from the name of the top candidate list winning the second and third place respectively in the election.<sup>230</sup> The remaining number of seats were for the CC members. These seats had to share to each political party based on the election method of calculation.

#### Commune/*Sangkat* administration election process in 2002



Sources: summarized by author based on historical legal review

In 2009, there was the election of capital, provincial, municipal, district, and *Khan* administration, based on the Organic Law on Administrative Management of the Capital, Provinces,

<sup>224</sup> Law on the Election of Commune and *Sangkat* Council (LECS), (2001), accessed August 27, 2021 in: <http://www.nac.org.kh/ViewLawFile.aspx?LawDID=302>

<sup>225</sup> LAMC, 2001, art. 10. and

Law on the Election of Commune and *Sangkat* Council (LECS), (2001, amended 2015), art. 12.

<sup>226</sup> LAMC, 2001, art. 12.

<sup>227</sup> *Ibid.* art. 14.

<sup>228</sup> *Ibid.* art. 15.

<sup>229</sup> *Ibid.* art. 32.

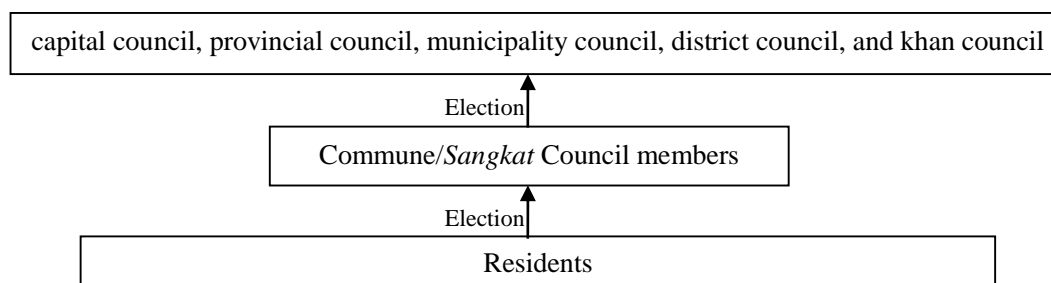
<sup>230</sup> *Ibid.* art. 33.



Municipalities, Districts and Khans (LAMCPMDK), and promulgated by Royal *Kram* No. NS/RKM/0508/017 on May 24, 2008;<sup>231</sup> and the Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and Khan Council, which was enacted by Royal *Kram* No. NS/RKM/0508/018 on May 24, 2008.<sup>232</sup>

The first election of the capital, provincial, municipal, district, and *Khan* councils was conducted in 2009. The election of these councils use a proportion system, based on the name list of candidates represented by political parties.<sup>233</sup> Based the Organic Law (2008) Article 18, which was amended in 2019, the number of council members increased and consisted of at least 11 members (previous number was 9) and at most 27 members (previous maximum was 21).<sup>234</sup> Anyone of both sexes who wishes to stand for the council election must be Cambodian from birth, reached 25 years old, entitled to vote, and met the requirements of the council election.<sup>235</sup> Cambodian who wish to stand for the council election must register their names in the council candidate list of a political party.<sup>236</sup> CC members are the voters voting during the council election, if they had registered in the voting list that prepared by the National Election Committee.<sup>237</sup>

#### Subnational administration election process in 2002 and 2008



Sources: summarized by author based on historical legal review

<sup>231</sup> Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans (2008), accessed August 27, 2021 in: [ncdd.gov.kh/wp-content/uploads/2017/12/2008-Organic-Law-kh.pdf](http://ncdd.gov.kh/wp-content/uploads/2017/12/2008-Organic-Law-kh.pdf)

<sup>232</sup> Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and Khan Council (LECPMDK), was promulgated by Royal *Kram* No. NS/RKM/0508/018, (May 24, 2008), accessed August 27, 2021 in: <http://www.nac.org.kh/ViewLawFile.aspx?LawDID=166>

<sup>233</sup> *Ibid.* art. 13.

<sup>234</sup> LAMCPMDK, (2008 amended on January 24, 2019), art. 18.

<sup>235</sup> LAMCPMDK, (2008), art. 21.

<sup>236</sup> LECPMDK, 2008, art. 16.

<sup>237</sup> *Ibid.* arts. 27, 28 and 47.

## 1.4 Conclusion

This chapter conducted a legal review of the historical development of local administration systems in Cambodia in the monarchy era, the French influent era, the Socialist era, and the democratization era.

From 1908 until present, the local system was created with mostly a three-tiered local system. Originally, the tier of local system was formed and consisted of province, commune and village level, and developed further to include district/*Khan* in between province and commune level. As a result, since 1925, the tier of local system was a four-tiered local system consisted of province, district/*Khan*, commune, and village. This local system was totally abolished from 1975 to 1979. However, since the 1980s to present, the formation of the local system was a three-tiered local system which generally consisted of province, district and commune. Villages also existed but were not considered as official administrations until the present time.

The hypothesis obtained from the above is that, firstly, the formation of local administration in modern Cambodia began in earnest desire during the French occupation period after 1908, and secondly, the lowest unit of local administrations, the “commune”, has been established in Cambodian society for around 113 years. It is a “modern” local administration system.

Besides, in Cambodia with a long history of monarchy, the commune system overlaps with the village community regarding its role of residential arbitration. Therefore, it is necessary to distinguish between form and reality or system and culture. Even though the modern local administration system was derived from France or close to the socialist system, it can be said that the village community which was derived from the royal authority still plays an important role in village community.

As described in following chapter II, the current local administration system in Cambodia was developed from this strong centralized characteristic. Under the democratization era, the direct election system has been put in place at the commune level since 2002, and an idea of local autonomy has come from abroad. However, as mentioned in this chapter, Cambodia has a strong centralized characteristic on the supervision over local affairs, so the support from overseas does not

dramatically change this centralized characteristic. Therefore, let's move to chapter II and analyze the current situation of legal system of the current local administration in Cambodia.

## **Chapter II: The Overview of Current Local Administration System in Cambodia**

In previous chapter of this study, it is specifically considered the historical development of local administration in Cambodia which had been through the experience of the main eras such as the monarchy era, the French influence era, the socialist legal system era, and the democratization era or globalization era. With regard to communes, the supervision was given to higher level of administration and the central government.

Next, Cambodia introduced decentralization reform during the democratization era at the local administration since around 2002. Decentralization reform was introduced by the centralized government with strong support from overseas and development partners. Promoting decentralization reform from a centralized administration may seem contradictory. The centralized characteristics do not change dramatically. Therefore, the purpose of this chapter is to analyze the current legal system of local administration in Cambodia.

This chapter explains an overview of how the local administration system is positioned within the Cambodian governmental organization as a whole. As mentioned in chapter I, local systems have been changed and continued in some parts of the history. This chapter aims to clarify the current legal system of local administration in Cambodia's changing history. Historically, turning from a socialist economy to a capitalist economy in 1993, Cambodia established the second Constitutional monarchy. The heads of local administrations, such as provincial and district governors, and commune chiefs, were appointed by the central government. However, the commune councils have been directly elected by the residents since 2002, and then the province and district council members are indirectly elected by the commune council members since 2009. This chapter will provide the ground floor for answering (in Chapter IV) the research question concerning synchronic issues in the globalization era, specifically, analyzing what the legal problems of decentralization reform in Cambodia are?

## 2.1. Overview of Current Governmental Institutions in Cambodia

The local system has not been understood fully unless the overall institutions of the government is clearly understood. So, it is important to describe the institution of the government as a premise. The current government institution of Cambodia is briefly presented below.

The second Constitutional monarchy was introduced in Cambodia in 1993 (the first one was in 1947) as a result of the Paris Peace Agreement signed on October 23<sup>rd</sup>, 1991 and as a result of the important role that *Samdech Preah* Norodom Sihanouk played in Cambodia politics. On November 14, 1991, *Samdech Preah* Norodom Sihanouk returned to Cambodia on behalf of the head of the Supreme National Council (SNC).<sup>238</sup> On March 16, 1992, Yasushi Akashi and General John Sanderson, the special representative of the United Nations Transitional Authority in Cambodia (UNTAC), arrived at Phnom Penh, and started the peace keeping mission.<sup>239</sup> As a result, a universal, free, and fair election was held in June 1993. There were 120 elected representatives. The new constitution of Cambodia was made by a constituent assembly and the Constitution was declared on September 24, 1993.<sup>240</sup> The Cambodian coalition government was established with two Prime Ministers, the first Prime Minister Norodom Ranariddh and the second Prime Minister Hun Sen, at the same time.<sup>241</sup> *Samdech Preah* Norodom Sihanouk was elected by the council of the throne to be the King of Cambodia.

### 2.1.1. The King

Since 1993, Cambodia follows the constitutional monarchy system where the king respects the Constitution and the principles of liberal multi-party democracy. Cambodia is practicing the principles of liberal multi-party democracy. The king is the head of state for his whole life. He

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<sup>238</sup> Chandler P. David, *A history of Cambodia*, 261.

<sup>239</sup> Mang Kinal, *The Roles of United Nation in Cambodia*, (In Khmer language) (Master thesis, Royal Academy of Cambodia, 2002), 29-30.

-The United Nations Blue Books Series, *The United Nations and Cambodia, 1991-1995*, (Department of Public Information, United Nations, New York, 1995), Volume II, 184.

<sup>240</sup> Pen Dareth, *Peace, National Reconciliation and Democracy Building: Ten Years After the Paris Peace Agreements*, (Phnom Penh: National Conference, Chaktommouk Conference Center, Organized by CICP, October 21-23, 2001), 5.

<sup>241</sup> Hun Sen, *Samdech Akka Moha Sena Padei Techo*, Prime Minister of Kingdom of Cambodia, Council of Ministers, "biography", accessed May 10, 2020, accessed on May 10, 2020, <http://www.samdechhunsen.gov.kh/index.php/2015-12-28-08-49-58>

reigns, but does not rule. He is the symbol of the unity and sustainability of the nation. He convenes the initial session of the National Assembly no later than sixty days after the election.<sup>242</sup>

He has no rights or power to choose his heir to reign the throne. His heir will be elected seven days after his death by the council of the throne which consists of nine members including the president, the first and the second vice president of the National Assembly, the president and first and second vice president of the Senate, the prime minister, and the two chiefs of the monks of Mahayana Buddhism and Theravada Buddhism (*Samdach Prah Sangkhareach Moha Nikay and Thammayutkak Nikay* in Cambodian).<sup>243</sup>

In case of the king's absence from his normal duty as the head of state due to his illness, there are the king's regents to perform as the head of state consecutively as follows: the president of the Senate, the president of the National Assembly, the first vice-president of the Senate, the first vice-president of the National Assembly, the second vice-president of the Senate, or the second vice-president of the National Assembly.<sup>244</sup>

The king has the supreme role as an arbitrator to guarantee the normal functioning of the public powers.<sup>245</sup> He communicates with the Senate and the National Assembly by royal message. He has the power to appoint the prime minister and the council of ministers based on the existing procedure stated in the Article 119 new (previously Article 100). With a request from the Council of Ministers, he will sign Royal decree (*Reach Kret* in Cambodia) appointing, transferring, or removing from office senior civil servants, senior military officials, ambassadors and envoys, extraordinary and plenipotentiary. Moreover, with a request from the Supreme Council of Magistracy, he will sign Royal decree appointing, transferring, or terminating the appointment of judges.<sup>246</sup>

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<sup>242</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, arts. 1, 7, 8, 51 new and 82 new.

<sup>243</sup> *Ibid.* arts. 10 and 13 new.

<sup>244</sup> *Ibid.* art. 11 new.

<sup>245</sup> *Ibid.* arts. 9 and 13 new.

<sup>246</sup> *Ibid.* arts. 18 new, 19 new and 21.

### 2.1.2. The Government

According to the Constitution 1993 as amended in 2008, the separation of power is divided into three branches such as legislative, executive, and judicial branch.

#### a) Legislative Branch

The Legislative branch consists of the National Assembly and the Senate.

The National Assembly is the organ which has the legislative power.<sup>247</sup> The National Assembly has to cast a majority votes of confidence to create the Royal Government (RG). The National Assembly has an autonomous budget.<sup>248</sup> Members of the National Assembly have the rights to question RG and answers can be provided by ministers or the prime minister orally or in a written letter.<sup>249</sup> The National Assembly can dismiss members of the council of minister or the royal government.<sup>250</sup>

The Senate is the organ which has the legislative power.<sup>251</sup> The Senate also has the autonomous budget.<sup>252</sup> The Senate checks and comments on draft laws approved by the National Assembly for the first time normally in a period of one month, or in five days if in an urgent situation. When the time limit passes, the law is approved by the National Assembly and is considered valid and can be put into practice. In case of rejection from the Senate, the National Assembly has to approve the draft law for a second time. In this case, the draft law must put into practice according to the result of an open majority votes in the National Assembly.<sup>253</sup> Moreover, the Senate has the role to facilitate the works between the National Assembly and the Royal Government (the executive branch).<sup>254</sup>

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<sup>247</sup> *Ibid.* art 90 new (two).

<sup>248</sup> *Ibid.* art. 81.

<sup>249</sup> *Ibid.* art. 96.

<sup>250</sup> *Ibid.* art. 98 new.

<sup>251</sup> *Ibid.* art. 99 new.

<sup>252</sup> *Ibid.* art. 105 new.

<sup>253</sup> *Ibid.* art. 113 new.

<sup>254</sup> *Ibid.* art. 112 new.

## **b) The Executive Branch**

The Executive branch, which is known as the council of ministers, is the Royal Government of Cambodia (RGC). The Prime Minister is the head of the government and is the one who presides over the council of ministers.<sup>255</sup> The National Assembly's president and both vice presidents agree to propose appointments to the king of prominent representatives of the National Assembly members from the winning political party to create the royal government. If the National Assembly votes by providing confidence to the council of ministers, the king will issue the Royal Decree to appoint all the members of the council of ministers.<sup>256</sup> Every member of the royal government must be accountable to the National Assembly for the royal government's overall politics.<sup>257</sup>

The royal government consists of the central government and the sub-national administration (SNA). There are ministries and institutions at the national level. Most of the ministry consists of line departments at the capital and provincial levels, and line offices at the district, municipality, and *Khan* levels. Besides, before 2008, the Ministry of Interior (MoI) had a direct supervision and management over the administration of cities, provinces, districts, *Khans*, communes and *Sangkats*.<sup>258</sup> As stated in MoI's *Prakas* No. 031 (dated 1994) provision 1, "Provincial and city administration of the Kingdom of Cambodia are institution directly under the Ministry of Interior and are the government representative in the management of province and city's territory, with the scope of work and duty in managing the administration and political matter in order to guarantee the public security and order, protect the people's rights and freedom, bring about the people's living standard, and focus on development all sectors at provincial and city level." These level administrations were known as sub-national administrations (SNA) after 2008.

After 2008, the capital city, provinces, municipalities, districts, *Khans*, communes, and *Sangkats* administrations were under the central government, ministries and institutions including the Ministry of Interior. As stated in the Organic Law 2008 in Article 154, "The governor shall

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<sup>255</sup> *Ibid.* art. 118 new (previously art. 99 old).

<sup>256</sup> *Ibid.* art. 119 new (previously art. 100 old).

<sup>257</sup> *Ibid.* art. 121 new (previously art. 102 old).

<sup>258</sup> Ministry of Interior, *Prakas* (ministerial regulation) No. 031, on the roles, functions, and structure of province and city, (February 15, 1994), provision 1.



represent ministries and institutions of the Royal Government in supervising, coordinating, and directing all line departments and units of the government ministries and institutions that operate within the jurisdiction of the council. The governor shall represent the Royal Government, relevant ministries and institutions on issues related to security, social and public order, law, and human rights within its jurisdiction. As the representative of the Royal Government, and ministries and institutions, the governor shall be accountable to the Royal Government, the Ministry of Interior and other ministries and institutions. ....”<sup>259</sup> In early 2020, the line offices were integrated into the district, municipality, and *Khan* administrations as a unified administration at this level.<sup>260</sup>

In 2019, the SNA and line departments were put under the central government, and ministries and institutions. At the equal level of capital city and provincial administration, there are line departments. Line offices are on the same level as municipalities, districts, and *Khans* administrations. These line departments and line offices are under the direct supervision of sectoral ministries and institutions. These line departments and line offices’ work as the national agents of the respective sectoral ministries’ for implementing national roles and affairs. Line departments and line offices are responsible for achieving their respective sectoral ministry’s roles and affairs, but not that of the SNA’s role and affairs. In practice, the separation of roles and functions between line departments, line offices, and the SNA causes the shirking of responsibility due to unclear and sometimes overlapping of affairs and roles. The weak coordination and poor responsiveness to people’s needs often happen when decisions are made at the national level but the responsibility is unclear at the SNA level. Therefore, in 2020, line offices were integrated into municipality, district, and *Khan* administrations in order to answer, as expected, to the local people’s needs in a responsive and unified manner.

### **c) The Judicial Branch**

The Judicial branch has an independent judicial power. The Constitution guarantees the judicial decision made without interference in order to protect the people’s rights and freedom. The

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<sup>259</sup> LAMCPMDK [ច្បាប់ស្តីពីការគ្រប់គ្រងរដ្ឋបាលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ], 2008, art. 154.

<sup>260</sup> Sub-decree 182, 183, and 184 (December 2<sup>nd</sup>, 2019). Sub-decree 182 on functions and structure of municipality administration; sub-decree 183 on functions and structure of Khan administration in Capital city of Phnom Penh; sub-decree 184 on functions and structure of district administration.

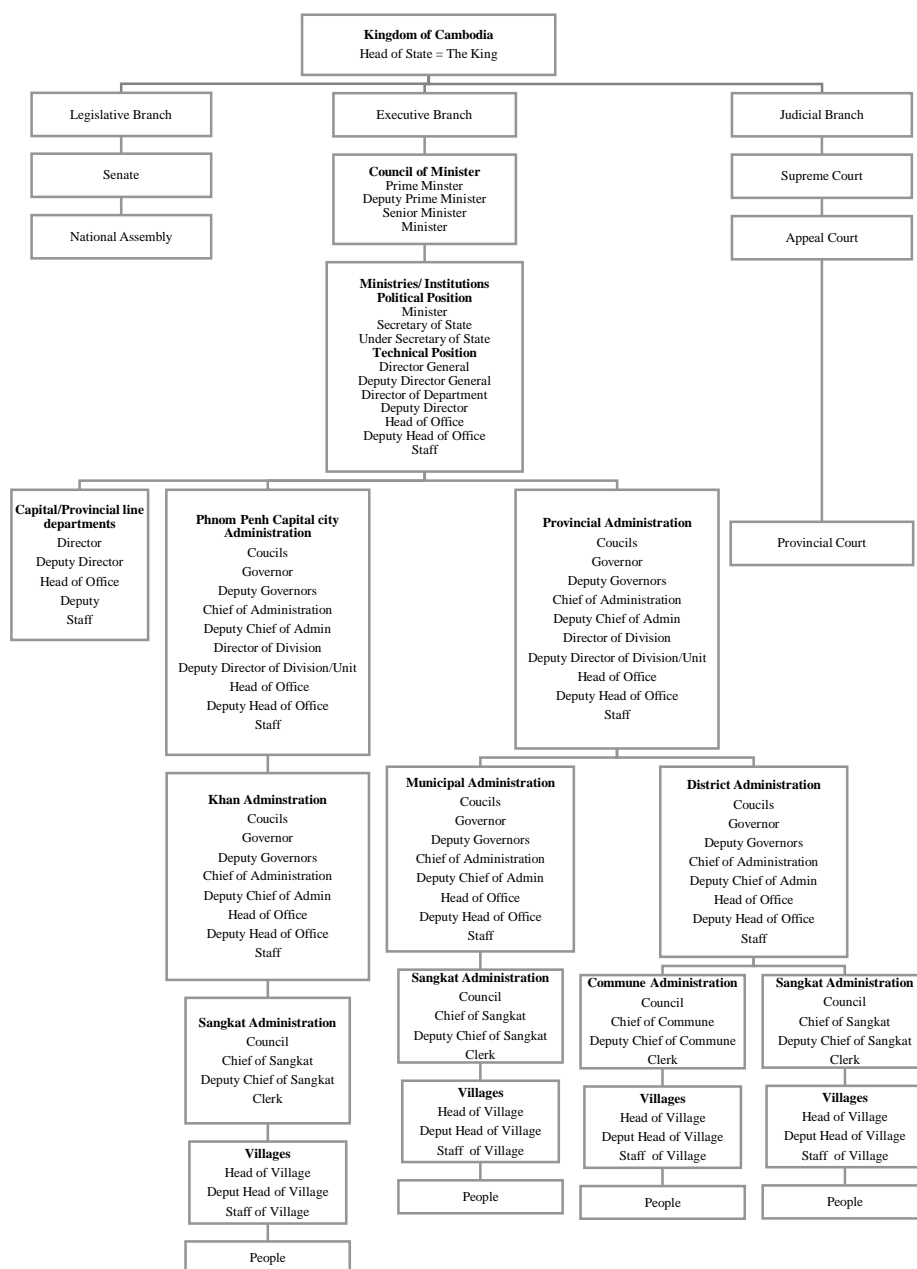
Supreme Court including all kinds and all levels of court has the power to adjudicate all kinds of cases or conflicts that brought to the court, including the administrative conflicts.<sup>261</sup> There is no any organs of legislative power or executive power that had any judicial power.<sup>262</sup>

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<sup>261</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, art. 128 new (art. 109 old).

<sup>262</sup> *Ibid.* art. 130 new (art. 111 old).

## Structure of Central Government Organs in Cambodia from 2020-Present <sup>263</sup>



<sup>263</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, Chapter VII about National Assembly, Chapter VIII new: about the Senate, Chapter X new: about the Royal Government, Chapter XI new: about the Judicial Power, and Chapter XIII new: about the administrative management.

- LAMC, 2001, arts. 25 and 30. and LAMCPMDK, 2008, arts. 4 and 5.
- Royal decree N°. NS/RKT/0618/12 on Functioning and Managing Office of Council of Ministers, (May 28, 2018).
- Sub-decree 116 on the Managing and Functioning of Office of Council of Ministers, (September 6<sup>th</sup>, 2018).

### 2.1.3. The Hierarchical Structure of Law in Cambodia

The understanding of hierarchical structure of law in Cambodia is important for clearly understanding the legal system. The hierarchical structure of law in Cambodia is basically the Constitution, Royal Proclamations (*Prah Reach Kram*), Royal Decrees (*Prah Reach Kret*), Sub-Decrees (*Annu Kret*), *Prakas* (Ministerial bylaw), and SNA's *Deikas* (Sub-National Administration bylaw or ordinance). The Constitution is the fundamental law of the country. The Constitution states about the establishment of laws such as the Organic Laws and the ordinary laws. Laws mentions about the establishment of royal decree or sub-decrees by the executive branch which is signed by the king or Prime Minister respectively. Other relevant regulation such as decisions, orders, and guidance are also signed by Prime Minister. Sub-decree states about the establishment of *Prakas* (ministerial bylaw) which is signed by minister. Other relevant regulation such as decisions, orders, and guidance of Ministry are also signed by minister. The Organic Laws (2001 and 2008) states about the establishment of SNA's bylaw to be approved and signed by the respected SNA's council.

According to Dr. Say Bory, the hierarchical structure of Cambodian law, explained in his book, is based on the pyramid hierarchical order of law founded by Professor Hans Kelsen. Based on Kelsen's pyramid, Dr. Say Bory wrote the hierarchical structure of law in Cambodia's context as follow:

First, the Constitution is at the highest level of the internal legal system of Cambodia, because the Constitution is the original source of power created by the people.<sup>264</sup>

Second, international treaties are at the next level below the Constitution because they cannot violate the Constitution.<sup>265</sup>

Third, Royal *Kram* (*Prah Reach Kram*) and Royal Proclamations are below international treaties. The Royal *Kram* is used by the Cambodian administration, traditionally, when there is the king, and the word *Kram* is used when there is no king. The Royal *Kram* is used to declare or to proclaim the promulgation of the Constitution and the law made by the legislative branch. The Royal

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<sup>264</sup> Say Bory, *General Administrative Law*, 2006, 158, Para 105.

<sup>265</sup> *Ibid.* at 158-159, Para 106.

*Kram* is written in the same text of law for providing the date that the law will be put into practice officially, and is written in different text attached to the Constitution for providing the date of promulgation. According to the Constitution of Cambodia (as amended in 1994 and 1999), Article 28 (new) stated that “The king shall sign Royal proclamation (*Prah Reach Kram*) promulgating the Constitution and laws passed by the National Assembly and completely reviewed by the Senate, and shall sign any Royal Decrees (*Prah Reach Kret*) proposed by the Council of Ministers...”<sup>266</sup> Based on this Article, Royal *Kram* or Proclamations are the royal duty of the king to proclaim the promulgation of the Constitution and laws passed by the legislative branch. Royal *Kram* are written in the same text of laws, both organic laws and ordinary laws.

Fourth, organic law and ordinary law is below the Royal *Kram*. However, organic law is higher than ordinary law, because organic law has been checked for the constitutionality by the Constitutional Council before being put into practice officially. Moreover, organic law, which is the master of laws, creates the structure of organs and ordinary laws. Any law that is against organic law is also against the Constitution, because organic law had been checked the Constitutionality before the enactment. Unlike organic law, ordinary law is not required for prior review on the conformity of the Constitutionality by the Constitutional Council before promulgation. According to the Constitution of Cambodia (as amended 1999), Article 140 new, paragraph 2 stated that “...Organic Laws shall be sent to the Constitutional Council for review before promulgation. ...”<sup>267</sup>

Fifth, Royal Decrees (*Prah Reach Kret*) are drafted by the Executive Branch and proposed by the Council of Ministers to the head of State, the king, for approval and signature. Royal Decrees are approved and signed by the king as general orders and personnel orders.<sup>268</sup> According to the Constitution of Cambodia (as amended in 1994 and 1999), Article 28 new stated that “The king ... shall sign any Royal Decrees (*Prah Reach Kret*) proposed by the Council of Ministers...”

According to Dr. Say Bory, the Royal Decrees as general order are used for giving detail on

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<sup>266</sup> *Ibid.* at 75, Para 50; and at 160 – 161, para 108.

<sup>267</sup> *Ibid.* at 161 – 162, para 109.

<sup>268</sup> *Ibid.* at 88, para 54; at 91-95, para 56-59.

implementing laws that effected all people in general. The Royal Decree as personnel order is used for the personnel appointment and task assignment by the Royal Government.<sup>269</sup> The Royal Decree does not need to go through the legislative branch, but must get approval from the king's and get the king's signature. For example, the capital and provincial governors, the general directors or other positions in an equal or higher status are appointed by Royal Decrees that is signed by the king. Generally, for those who are appointed through Royal Decree will hold the title "His Excellency."

Sixth, Sub-Decrees (*Annu Kret*) are the government orders for implementing the laws.<sup>270</sup> According to the law on the procedure and functioning of council of ministers, promulgated by Royal *Khram* No. NS/RK/0618.012, dated June 28, 2018, Article 4 stated that "Royal government of Cambodia is the executive branch with the authority to define and implement the central government policies based on the principles written in the Constitution. Royal Government guarantees the implementation of law and manages general affairs of the central government, except the affairs under the authority of legislative and judicial branch." and as stated in Article 18, "Prime Minister signs on sub-decrees, decisions, orders, and guidance of the Government...."<sup>271</sup> According to Dr. Say Bory, sub-decrees have two types as a general order and a personnel order.<sup>272</sup> Sub-decrees as the general orders are used for implementing the laws effected over people in general, as mentioned in Article 4 and 18 above.<sup>273</sup> Sub-decrees as the personnel orders are used for the personnel appointments and task assignment. In similar purpose as Royal Decree of personnel order, sub-decrees as the personnel orders are signed by Prime Minister for appointing or giving task to the higher ranking position other than that of the Royal Decrees.<sup>274</sup> For example, the position ranking from deputy governors of capital city and province to the district governor, and from deputy general

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<sup>269</sup> *Ibid.* at 85-86, para 52-53.

<sup>270</sup> *Ibid.* at 109, para 71.

<sup>271</sup> Royal *Khram* No. NS/RK/0618.012 promulgated the law on the procedure and functioning of council of ministers, (June 28, 2018), art. 4 and 18.

<sup>272</sup> Say Bory, *General Administrative Law*, 2006, 109, para 71.

<sup>273</sup> *Ibid.* at 110, para 72.

<sup>274</sup> *Ibid.* at 115-116, para 76-77; at 163, para 112.

director to the director of department or other equal position are appointed by sub-decrees that is signed by Prime Minister. There is no title as His Excellency attached to this appointment.

Seventh, Ministerial *Prakas* are issued by the respected Ministers of the Ministries for the managing and functioning of Ministry, and for the appointment the position below department level such as deputy direction down until staff, as mentioned in Royal *Kram* No. NS/RK/0618.012, dated June 28, 2018 as stated in Article 39 that "... the managing and functioning of ministry for the position below department level shall be defined by *Prakas*..." And as stated in Article 47 that "Minister shall have the rights to issue *Prakas*, decisions, orders, and guidance. Ministerial *Prakas*, decisions, orders, or guidance shall not state about the affairs that are not under authority of ministry, and shall not state against the government regulations." <sup>275</sup> According to Dr. Say Bory, *Prakas* is translated in English as "bylaw." The Minister issues *Prakas* for managing and functioning of the Ministry and conformed with Royal *krams*, royal decrees, or sub-decrees. There are two types of *Prakas*, general orders and personnel orders. Similar to that of royal decrees and sub-decrees, *Prakas* as general orders are used to implement laws under the jurisdiction and affairs of the respected Ministries. *Prakas* as personnel orders are used for the personnel appointment and task assignment for official within ministry with the position below department level. <sup>276</sup> For example, deputy governor of district and position below until staff, and deputy director of department and position below until staff are appointed by the Ministerial *Prakas* that is signed by the Minister. However, there are the possibilities for establishing the inter-ministerial *Prakas* when two or more ministries agreed to issue together.

Eighth, Sub-National Administration's *Deika* or bylaw is ranking below *Prakas* and other regulations below sub-decree, royal decree, and royal proclamation (Royal *Kram*). <sup>277</sup> According to the Organic Laws (2001 and 2008), SNA has the rights to enact ordinance or bylaw, which is the exercise of the self-legislative rights of a public legal entity. The council applies its legislative power

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<sup>275</sup> Royal *Khram* No. NS/RK/0618.012 promulgated the law on the procedure and functioning of council of ministers, (June 28, 2018), art. 39.

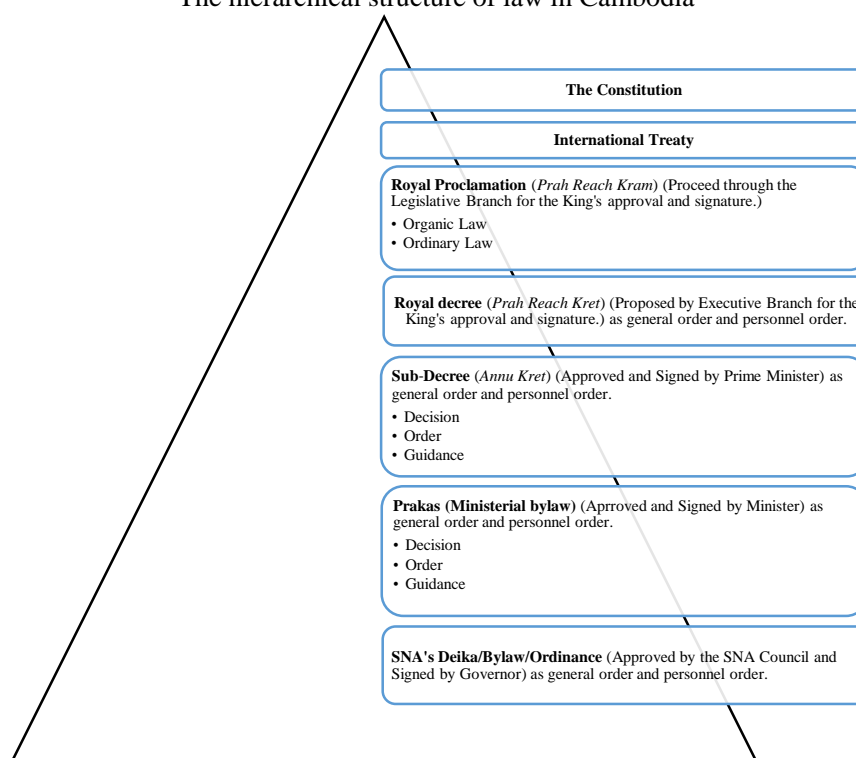
<sup>276</sup> Say Bory, *General Administrative Law*, 2006, 117-120, para 78-81.

<sup>277</sup> *Ibid.* at 125, para 86.

by issuing a bylaw or local ordinance (*Deika*). Bylaws or local ordinances (*Deika*) are legal rules approved by the council and signed by the president of the council to be executed and enforced within its jurisdiction.<sup>278</sup> However, SNA's bylaws used as personnel orders are approved by the council, but are signed by the governor.<sup>279</sup>

In practice, lower norms or legislations that conflict with higher ones are invalid. Generally, there is an article in legislations clearly stating that any provisions that are against the provisions of the current legislation are invalid. The higher administration level supervises over this matter.

The hierarchical structure of law in Cambodia



Source: The hierarchical structure of law in Cambodia is created by author based on the above explanation.

<sup>278</sup> LAMCPMDK, 2008, arts. 32, and 53 to 55. And LAMC, 2001, arts. 48 and 49.

<sup>279</sup> Sub-decree, No.286 on the procedure for preparation, amendment to and appeal for a bylaw or local ordinance (*Deika*) of the capital council, provincial council, municipality council, district council, and *Khan* council, (November 18, 2014), art. 4 and 5.

-NCDD, technical document on Bylaw or local ordinance (*Deika*) of capital, provincial, municipality, district, and *Khan* council. NCDDs, (November 2015), 9.



#### 2.1.4. Key concepts in Cambodian context

There are many conceptions that could confuse the readers. Therefore, the author writes key concepts in following for better understandings about the usage in the context of Cambodian legal system of local administration and decentralization reform. The following five terms are related to the level administration and decentralization reform. First, Centralization: Centralization refers to all power, political and administrative power, concentrated in the hand of the central government. In this system, only the central government will hold decision making power and the power to give orders.<sup>280</sup> Second, Decentralization: Decentralization refers to how the Royal Government (RG) assigns the ownership of affairs, authority, and resources to the SNA's council in order to respond to local needs. The council must be accountable to the local people on these matters.<sup>281</sup> Third, Deconcentration: Deconcentration refers to how the RG or ministries and institutions delegates affairs, authority, and resources to their subordinate line units or to any category of council to implement it on behalf of the RG or ministries and institutions. The subordinate line units or the council must be accountable to the RG or ministries and institutions according to the requirement of delegation of affairs.<sup>282</sup> Fourth, Sub-National Administration: Sub-National Administrations, generally, refers to the capital city, provinces, municipalities, districts and *Khans*, communes and *Sangkats*. Several articles of the LAMCPMDK, SNA refers only to capital city, provinces, municipalities, districts and *Khans*.<sup>283</sup> Fifth, Unified Administration: Unified Administration is the arrangement at the SNA level for having councils that are able to independently control and manage over affairs and resources, including finance, staff, and the council's property. Each council has the capacity to effectively facilitate the activities of providing services and other developments under their jurisdiction. The council facilitates and provides services and community development, made by ministries and institutions, in order to respond to the needs of the local people.<sup>284</sup>

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<sup>280</sup> Say Bory, *General Administrative Law*, (3<sup>rd</sup> ed. Editions Angkor, 2006), 386, Para 326.

<sup>281</sup> LAMCPMDK, 2008, VII.

<sup>282</sup> *Ibid.* at Lexicon, page VII.

<sup>283</sup> *Ibid.* at Lexicon, page VI.

<sup>284</sup> *Ibid.* at Lexicon, page VI.

The following five concepts are related to the local administration affairs. First, Responsiveness and Accountability: As a representative of local residents, the council must respond to their people's needs in the process of making policies, decisions, actions, and in performing its roles and duties in an accountable manner. The council must also be accountable to the royal government in performing its roles and duties in accordance with the Constitution and laws.<sup>285</sup> Second, Local autonomy: In Cambodia. The word of "Local Autonomy" is used for the situation in which the council independently manages and controls the assigned functions or delegated functions in accordance to the law.<sup>286</sup> Third, Transfer of function: Transfer of function is the way of the assignment of function or delegation of function.<sup>287</sup> Fourth, Assignment of Function: Assignment of Function is the transfer of the ownership of functions, responsibilities, powers, and of all discretions needed to control and implement the function.<sup>288</sup> Finally, Delegation of Function: Delegation of Function is the transfer of function, responsibilities, powers, and discretions from the central government (or higher authority) to a lower government administration level in order for them to control and implement the transferred functions on behalf of the central government. The local administration or lower level have obligation to respect the requirement of the central government in the case of delegated function.<sup>289</sup>

#### **2.1.5. Public legal entity and institution**

The Organic Laws 2001 and 2008 stated about "legal entity". As stated in the Organic Law (2001), "*Communes and Sangkats are legal entities.*"<sup>290</sup> In the Organic Law (2008), the capital city, provinces, municipalities, districts, and *Khans* (CPMDK) are legal entities of public laws or public legal entities. As stated in Article 9, "The Capital, Provinces, Municipalities, Districts and Khans are legal entities of public laws." The representatives of these legal entities is the councils of each

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<sup>285</sup> *Ibid.* at Lexicon, page II.

<sup>286</sup> *Ibid.* at Lexicon, page II.

<sup>287</sup> *Ibid.* at Lexicon, page VI.

<sup>288</sup> *Ibid.* at Lexicon, page V.

<sup>289</sup> *Ibid.* at Lexicon, page VI.

<sup>290</sup> LAMC, 2001, art. 2.

administration. The councils have responsibility to establish, promote and sustain democratic development.<sup>291</sup>

The phrase “public legal entity” is defined in the Organic Law 2008, in lexicon, that “Public legal entity is a group of people that legally allowed to act as a person for the public benefit. The Organic Law on administrative management of Capital, provinces, municipalities, districts, and Khans provides the legal entities to Capital, provinces, municipalities, districts, and Khans.”<sup>292</sup>

Those words are basically similar definitions in the western society. For instances, as a general understanding, according to Dictionary of Law (fourth edition), legal person is “A company or corporation considered as a legal body.” and Legal personality is “Existence as a body and so ability to be affected by the law.”<sup>293</sup>

A public legal entity is always created by a public authority, unlike a private legal entity which is created by private people. Public legal entities have a control over both the people and private legal entities located under its jurisdiction.<sup>294</sup> Both public and private legal entities consist of name, nationality, resources, property, debt, the rights to sue and to be sued to the court the same as a person. Public legal entities have an autonomous budget and discretion in the managing and the functioning of its affairs.<sup>295</sup>

The history of legal entities of local administration in Cambodia was found in the Royal *Kram* of local administration. A commune was considered a person, a legal entity or a public legal entity. These words were found in Royal *Kram* 1908 Article 9, Royal *Kram* 1919 Article 45, Royal *Kram* 1925 Article 7, Royal *Kram* 1959 Article 7 and 36, Royal *Kram* 2001 Article 2, and Royal *Kram* 2008 Article 9.

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<sup>291</sup> LAMCPMDK, 2008, arts. 9, 10, and 11.

<sup>292</sup> *Ibid.* at Lexicon, page V.

<sup>293</sup> Collin P.H.. Dictionary of Law, Fourth Edition, (London: Bloomsbury Publishing Pls, 2004), 176-177, accessed August 5, 2021, in <https://ebookcentral.proquest.com/lib/qut/reader.action?docID=4636361>

<sup>294</sup> Say Bory, General Administrative Law, 2006, 32, Para 12.

<sup>295</sup> *Ibid.* at 35, Para 13.

By the way, the word “institution” is defined as a large establishment or organization that has a particular type of work or purpose, such as scientific, educational, or medical work in general. For example, we use the word of university as the one of educational institutions.

In Cambodia, ministries, as the central government institutions, consist of branches at provinces and districts level. Ministry’s branches are known as line departments (at provincial level) and line offices (at district level). They work for and ask for permission or approval from their respective ministry.<sup>296</sup> Moreover, according to the Organic Laws, SNA is an agent of the central government. SNAs work on behalf of the central government in order to implement the national laws and policies.

## **2.2. Overview of Current Sub-National Administration in Cambodia**

### **2.2.1. The Constitution and the Current Territorial Division**

According to the Cambodian Constitution 1993, Cambodia follows the principles of liberal multi-party democracy.<sup>297</sup> In Chapter 13, Cambodia territory is divided into Capital city, provinces, municipalities, districts, *Khans*, communes, and *Sangkats*. Capital city, province, municipality, district, *khan*, commune, and *Sangkat* management has to be stipulated in the Organic Law.<sup>298</sup> As stated in Article 145-new (one), “The territory of the Kingdom of Cambodia is divided into the capital city, provinces, municipalities, districts, *Khans*, communes, and *Sangkats*.” And Article 146-new (one) stated that “The Capital city, provinces, municipalities, districts, *Khans*, communes, and *Sangkats* shall be governed in accordance with the conditions stated in the Organic Law.”

More specifically, in the Organic Law 2008, the capital city is divided into *Khans*. *Khan* is divided into *Sangkats*. Province is divided into districts and municipalities. District is divided into communes and *Sangkats*. Municipality is divided into *Sangkats*.<sup>299</sup> CS is divided into villages which

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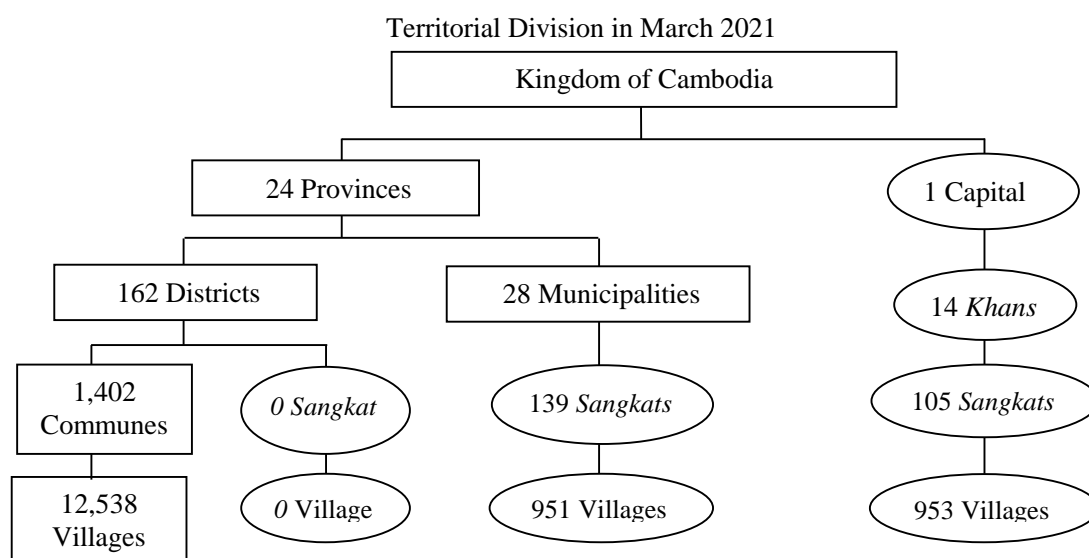
<sup>296</sup> *Ibid.* at 392, Para 337.

<sup>297</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended in 2008, art. 1.

<sup>298</sup> *Ibid.* art. 145 new (one) and 146 new (one).

<sup>299</sup> LAMCPMDK, 2008, arts. 4 and 5.

are not stipulated in the Organic Law, but existed as the lowest unofficial administration level. In 2014, there was a newly created province, divided from *Kompong Cham* province, called *Tbong Khmum* province.<sup>300</sup> In 2019, the government created three districts, one municipality, and two khans.<sup>301</sup> Therefore, there are 24 provinces and a capital city. There are 203 municipalities, districts, and *Khans*. There are 1646 communes and *Sangkats*. There are 14,383 villages. In 2021, there are 204 MDKs, 1646 CSs, and 14,442 villages.



Note:  is for Rural administration  
 is for Urban or Town administration

Figure: structure of administrative division in March 2021

Source: Department of Capital, Khan and Provincial Administrative Affairs, General Department of Administration, Ministry of Interior, March 2021.

Officially, there is a three-tiered local system in Cambodia which consists of province and capital city at the same level, municipality, district and Khan at the same level, commune and *Sangkat* at the same level.

<sup>300</sup> Royal decree No NS/RKT/1213/1445 on creation of Tbong Khmum Province, (December 31, 2013).

<sup>301</sup> Sub-decree No. 02 ANK/BK on creation of *Koh Rong* municipality of Prah Sihanu Province, (January 08, 2019); Sub-decree No. 03 on creation of *Khan Boeung Keng Kong* of Phnom Penh Capital city, (January 08, 2019); and Sub-decree No. 04 on creation of *Khan Kombol* of Phnom Penh Capital city, (January 08, 2019); Sub-decree No. 05 on creation of *Tang Kouk* district of Kompong Thom Province, (January 08, 2019); Sub-decree No. 06 on creation of *Borei Ousvay Senchey* district of Stung Treng Province, (January 08, 2019); Sub-decree No. 07 on creation of *Ta Lor Senchey* district of Pursat Province, (January 08, 2019).

Based on the Constitution, there were two main organic laws on administrative management, and two organic laws on election system. First, the Organic Law on the Administrative Management of Commune and *Sangkat* (LAMC), 2001, hereinafter called the Organic Law 2001; and the Organic Law on the Election of Commune and *Sangkat* Councils, promulgated by Royal *Kram*, 2001. Second, the Organic Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and *Khans* (LAMCPMDK), 2008, hereinafter called the Organic Law 2008; and Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and *Khan* Council, 2008.

This part presents the Constitution provisions on administrative management, the three-tiered local system and the existence of the two main organic laws on administrative management of SNA. Next part will present the current characteristics of SNA.

## **2.2.2. The Current Administration Structure and Number of Tiers**

Based on the Constitution, Cambodian administrative management had to be managed by the conditions mandated in the Organic Laws. There are two organic laws on administrative management. Based on these two organic laws, this part will present the characteristic of SNA structure and the number of its tiers in Cambodia.

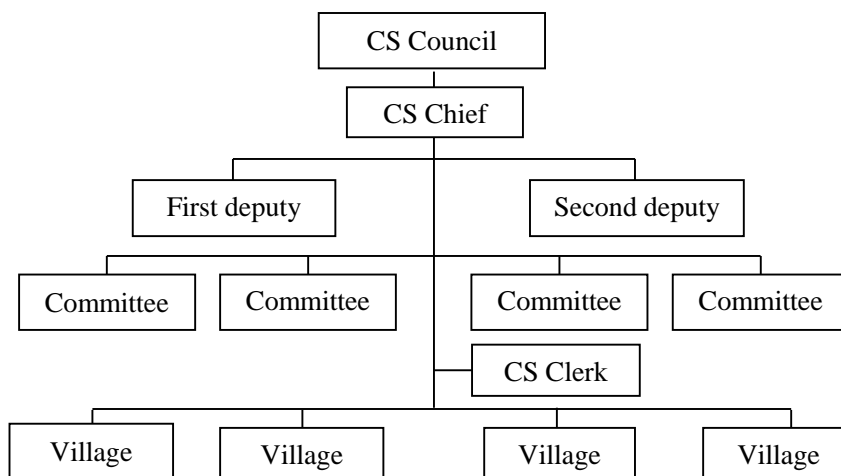
### **a) The Structure of Commune and *Sangkat* Administration**

The structure and management system of Commune and *Sangkat* (CS) is led and managed by a commune and *Sangkat* council (CC) at the top of the structure. A CC must have a president. Below CC, there is a CS chief. The CC president and the CS chief is the same person. Under the CS chief, there are two deputy chiefs and a few committees. Below them, there is a CS's clerk who is the Ministry of Interior (MoI)'s staff to help with the administrative work and to guarantee the continuity of the administrative work at CS. Directly below the commune administration are villages.<sup>302</sup>

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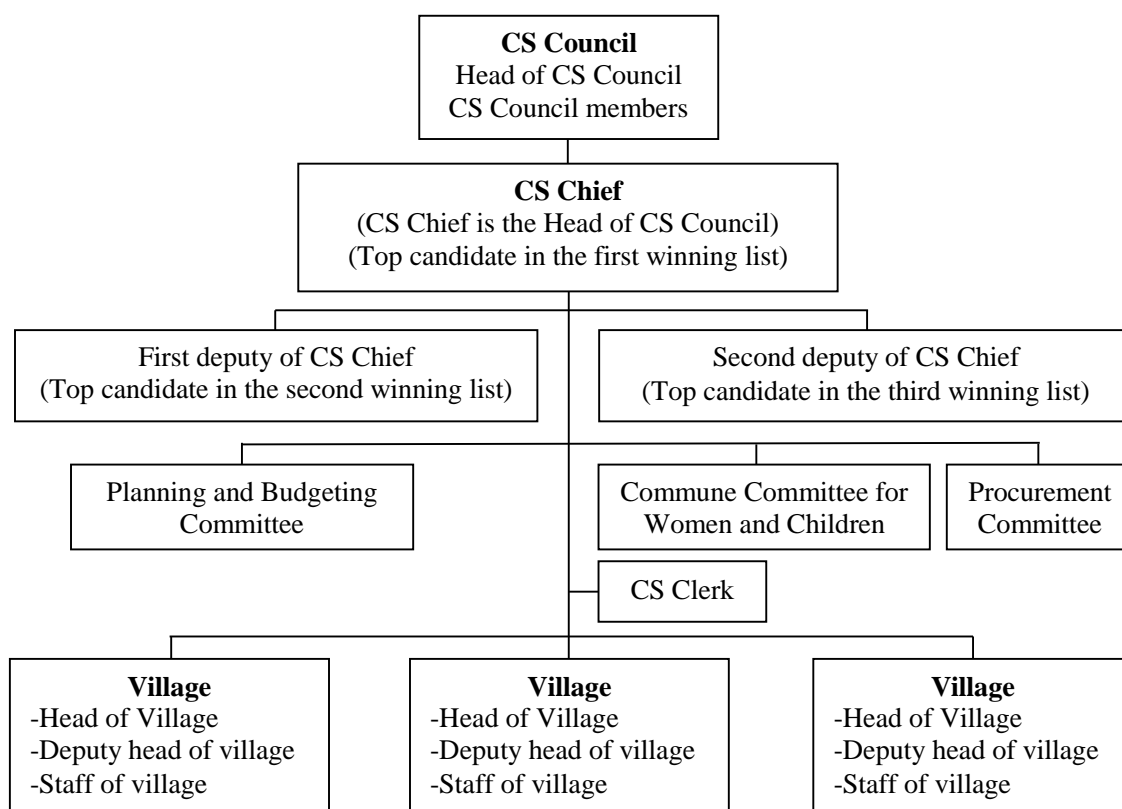
<sup>302</sup> LAMC, 2001, arts. 25 to art. 30.

### Structure of Commune/*Sangkat* Administration of the Kingdom of Cambodia



Source: General Department of Administration, Ministry of Interior (2018).

### Structure of Commune/*Sangkat* Administration of the Kingdom of Cambodia



Source: General Department of Administration, Ministry of Interior (2018).

### b) The Structure of capital, province, municipality, district, and *Khan* Administration

The capital, provincial, municipal, district, and *Khan* structures consist of council, committee, board of governors, administration director, division or unit, offices, including line

departments that also consist of offices. At the top of the structure of administrative management is the capital council, provincial council, municipal council, district council, and khan council, which is just called the council.<sup>303</sup> Below the council, there are committees. According to the Organic Law 2008, there are at least three committees such as the technical facilitation committee, the women and children consultation committee, and the procurement committee.<sup>304</sup>

Directly below the council is a board of governors (BoG), appointed by the central government. The BoG is a group of governors and deputy governors who are working for and under the council.<sup>305</sup> Directly below the BoG, there is an administration director. At capital and provincial administration (CPA), there are divisions or units. Under divisions, there are several offices. The offices at the CPA are the lowest level. However, at municipality, district and *Khan* (MDK) administration, there are offices which are the lowest level.<sup>306</sup>

Moreover, at CPA, there are line departments which consist of offices. Line departments are the sectoral Ministry's local branches at capital and provincial level. For the same purpose, there are line offices at the MDK level. Line departments at CPA level and Line offices at MDK administration are not in the structure of the council of CPMDK. However, these line departments and line offices work and cooperate with the BoG of CPMDK administration in order to achieve their own sectoral ministry's mandate and ministry's affairs. After 2020, line offices were integrated into the MDK administration structure.

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<sup>303</sup> LAMCPMDK, 2008, arts. 14 and 15.

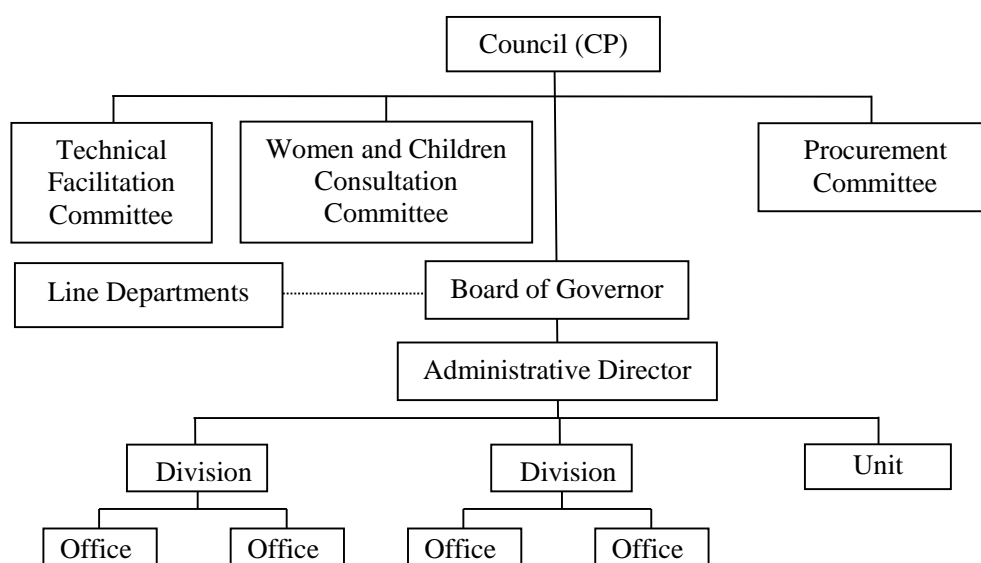
<sup>304</sup> *Ibid.* art. 114.

<sup>305</sup> *Ibid.* arts. 138, 139, 154, 155, 159.

<sup>306</sup> *Ibid.* arts. 183, 184, and 189-191.

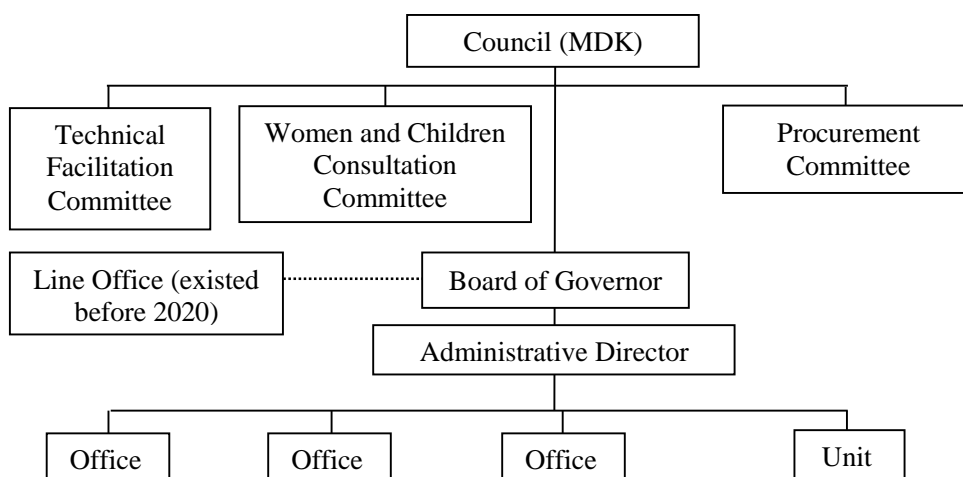


## Structure of Capital city, and Province Administration of the Kingdom of Cambodia



Source: General Department of Administration, Ministry of Interior (2018)

## Structure of Municipality, District, and *Khan* Administration of the Kingdom of Cambodia



Source: General Department of Administration, Ministry of Interior (2018).

In 2019, there was the establishment of the One Window Service Units (OWSU) at CPA, the One Window Service Offices or mechanisms (OWSO) at MDK, and the mechanism of OWSO at CS.<sup>307</sup> There was the establishment of the Ombudsman Offices at capital and provincial

<sup>307</sup> Sub-degree No.18 on the establishment of one window service mechanism for providing administrative service at sub-national administration, (February 08, 2019), arts. 4, 13, and 20.

administration (CPA), and the Ombudsman Offices at municipal, district, and *Khan* (MDK).<sup>308</sup>

Based on the report in 2019, there were twenty-five units of one window service, and twenty-five Ombudsman Offices at capital and provincial administration. There are in total 115 one window service offices and Ombudsman Offices at MDK administration which include all 27 municipalities and all 14 *Khans*, in 74 districts (out of 162 districts in total). OWSO mechanism at CS is in the process of establishment.<sup>309</sup>

Ombudsman Offices of CP and MDK administration were established throughout the whole country. These offices work outside the court system to receive and handle the complaint related to the functioning of the SNAs.<sup>310</sup> The establishment of Ombudsman Offices of CP and MDK Administration is based on the experiences with similar institutions in many countries and on piloting result at the urban district of *Battambang* and *Siem Reap* since 2005 that the head and deputy head of these offices are elected by special committee of the respective local councils with participation of Civil Society Organization (CSO), and private sector representatives. After election, they responsible for solving the citizen's complaints in all fields of local administrative work and performance. They also accountable to the Councils, but not to the Board of Governors. They got salaries and budgets based on law. In performing their work, they are completely independent in their investigations and judgements.<sup>311</sup>

Under NP-2 (2021-2030), in each Province, the group of DM Ombudsmen will meet monthly with their respective Provincial Ombudsman in order to exchange information on current issues and ensure close cooperation on all citizen complaints which are related to both levels of administration.<sup>312</sup>

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<sup>308</sup> Sub-degree No.19 on the establishment of Ombudsman Office at sub-national administration, (February 08, 2019), art. 5, and 31.

<sup>309</sup> Report of department of functions and resources, 2019.

<sup>310</sup> National Committee for Sub-National Democratic Development (NCDD), *National Program on Sub-National Democratic Development, Phase 2 (NP2) (2021-2030)*, Phnom Penh, Cambodia, (2021), 5.

<sup>311</sup> *Ibid.* at 44.

<sup>312</sup> *Ibid.* at 45.

One of the important cases of decentralization happened in Cambodia in December 2019 when the Royal Government of Cambodia issued sub-decree 193 to decentralize provincial health affairs to be under capital and provincial administration (CPA). To this end, the government transferred the provincial department of health and all structures below it, including human resources, financial resources and property to CPA.<sup>313</sup> The main purpose of decentralizing line department of health to CPA was to improve health services that decision making power and responsibility closer to local people.<sup>314</sup>

In early 2020, Covid 19 disease infected people all over the world, Cambodia was not an exception. For preventing and combating Covid 19, the Royal Government Cambodia established laws and sub-decrees. the capital and provincial committees for combating Covid 19 were created as mechanisms below the national committee for combating Covid 19.<sup>315</sup> The BoG of CPAs were given authority to issue administrative measures in its jurisdiction, as partly or as a whole. The BoG were given authority to guarantee the implementation of administrative measure issued by the central government and by itself.<sup>316</sup>

Moreover, Capital and Provincial committees for combating against Covid 19 consisted of the governor as the head of committee, a deputy governor as a permanent deputy head of the committee, a head of Capital and provincial health department, provincial police, and other provincial line departments as members. This committee implements its work by using the budget of the capital city and province, and using the CPA seal for implementing its affairs.<sup>317</sup>

This is a real case of decentralizing the line departments of health to CPA which is helpful for combating against Covid 19. For this reason, combating against Covid 19 at CPA is effective and

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<sup>313</sup> Sub-decree No 193. Sub-decree on the Assignment Functions on Management and Health Service Provision to Capital and Provincial Administration (CPA). Dated December 4, 2019. art. 2.

<sup>314</sup> *Ibid.* art. 1.

<sup>315</sup> Sub-decree No. 85. Sub-decree on Establishment and Functioning of National Committee for Combating against COVID 19, (June 13, 2021), art. 2 and 5.

<sup>316</sup> Sub-decree No. 57. Sub-decree on Administrative Measure in order to Prevent the Infected Disease of COVID 19 and Severe Communicable Disease and Causing Other Serious Danger, (March 31, 2021), arts. 11 and 13.

<sup>317</sup> Sub-decree No. 85. Sub-decree on Establishment and Functioning of National Committee for Combating against COVID 19, (June 13, 2021), art. 11.

closer to the local people. The BoGs lead and monitor the implementation of combating activities. Capital and Provincial health department affairs are equipped with the specialized skills of curing, preventing, testing and vaccinating local people. For example, when there is a suspected case of Covid 19 in one location, capital and provincial health department's affairs must test people. If there is a positive case found, that person is brought to the Covid 19 health center for treatment. Local authority takes action quickly to find other direct contacts people of the person with the positive case to quarantine for 14 days. Moreover, capital and provincial authorities can lockdown a house, factory, village, commune, district, partly or as a whole, by issuing a decision, including decision on using colors such as yellow, orange, and red, in order to effectively control the infected area. In this case, if there is without decentralization of line department of health to CPA, CP health department may not be able to work effectively because these issues are not only related to technical skills of health service, but also to the administrative measure.

For better understanding about the actual picture of the organizational structure of SNA in Cambodia, there are organization charts providing better images of the whole picture of the SNA's organization structure. Please see the appendix.

The following part will present the tiers of SNA. How does Cambodia define the tiers of SNA?

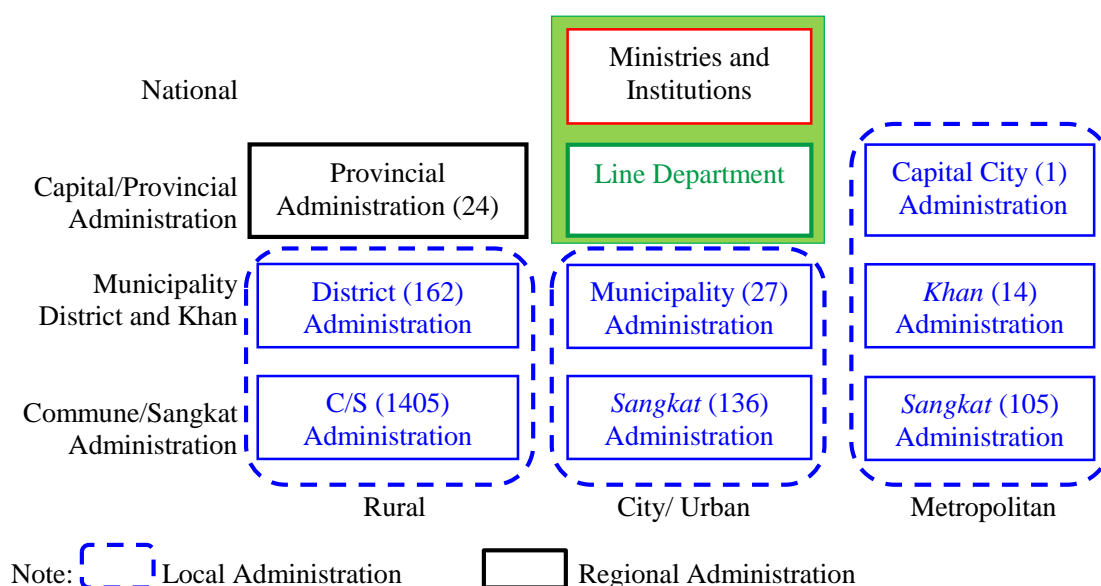
### **c) Number of tiers of current and future SNA system**

The SNA organization management system was restructured in accordance with the Organic Law 2001 and 2008 by changing from a hierarchy organization structure (the centralization system) to its current organizational structure through both deconcentration and decentralization.

Based on the current structure of SNA provided in the Organic Laws and the Constitution, the SNA is a three-tiered local system which consists of province and capital city, municipality, district and *Khan*, and commune and *Sangkat*. Villages are not considered as an official administration level.

However, according to MoI's presentation on vision of SNA management system (2018), the future SNA system will be divided into regional and local administrations<sup>318</sup> First, the provincial administration is the regional administration. Second, capital, municipal, district, *Khan*, commune and *Sangkat* administrations are the local administrations, with a two-tiers and a three-tiers system. Two tiers system refers to district and CS (as the rural local administration). Another two tiers system refers to municipality and *Sangkat* (as the city or urban local administration). Moreover, three tiers system refers to the capital city, *Khan*, and *Sangkat* (as the metropolitan local administration).

The Structure of a two tiers and a three tiers system of SNA in 2020 <sup>319</sup>



#### d) The influence of previous legal system

There are a few debatable points of the previous legal system's influence on the current legal system. In the centralization system, local officials including the governor and chief were appointed. All decisions, including decision on management of the budget, were made at the national

<sup>318</sup> Prak Samoeun, General Director of Administration, presentation of ministry of interior, "on vision of sub-national administration management system," in the national conference hosted by Ministry of Interior, *Decentralization and Deconcentration reform: lesson learnt, challenges, and way forward*, national conference, Phnom Penh, Cambodia, at diamond island, (February 21-22, 2018), slide 8-9.

<sup>319</sup> *Ibid.* at slide 9.

level. After the establishment of the two organic laws (2002 and 2008) following decentralization reform, there were still the existence of centralized laws and systems practicing without amendment including the practice of appointed officials by centralized government.

Recent reform was a sign of moving toward decentralization. There are commitments in decentralization reform evidenced by the transfer of staff and the power to appoint staff to local administrations. Moreover, there was the transferring of affairs while line offices were integrated into district administrations. There were the transferring health line departments and the related organizational structures to the provincial administrations. However, the central government still holds the power to appoint the governor, the deputy governor, the chief administration, and the commune clerk, including the power to appoint line department directors by sectoral ministries based on a request from CPA.

Another issue is the centralized budget system. Local budgets are approved, corrected and checked by the central government, specifically the Ministry of Economy and Finance. Local autonomy system through decentralization reform will not exist with a complete meaning when the management of staff, affairs and resources belongs to the decision of the centralized government.

Local administrations are considered as public legal entity and national agent. However, the central government may remove the elected councils if they are found acting against the Constitution, laws, and national policies. The council members are elected as political party representatives. The political party may remove their membership from the political party if found acting against political party policy. However, the council is elected by local residents, and there is no recall system for residents to remove the elected council stated in the law. Although the council is elected by local residents, the council may not respect the residents' needs. Moreover, the council will be, more or less, a national agent rather than a public legal entity.

### 2.2.3. The Council, the Governor and the Commune Chief of SNA

There are two kinds of council at the sub-national administration based on the level of administration and the method of election such as the CC (elected directly by the people) and the Capital, Provincial, Municipal, District, and *Khan* Council (elected by CC members).

The next part will present the important characteristics of the council of SNA.

#### a) The Council and the Chief of CS

Based on the Organic Law 2001, there are few important characteristics. First, CS is a legal entity as stated in the Organic Law 2001.<sup>320</sup> CC is the local organs representing CS and its people. CC has a president.<sup>321</sup> The president of CC is the chief of CS.<sup>322</sup> CC is responsible for serving the general benefit within their CS.<sup>323</sup>

As in the Organic Law of Administrative Management of Commune and *Sangkat* (2001) Article 9 provides that “Each commune and *Sangkat* shall consist of a council which is called the Commune and *Sangkat* council. The Commune and *Sangkat* council is the organs representing the people in their commune and *Sangkat*, and has the mission to serve the general benefit within their commune and *Sangkat*.”<sup>324</sup> And as stated in Article 25, “Commune and *Sangkat* administration shall be presided over by Commune and *Sangkat* council. Commune and *Sangkat* council shall have a head of commune and *Sangkat* council. The head of commune and *Sangkat* council is a chief of commune and *Sangkat*.”<sup>325</sup>

The chiefs of CS have the roles and affairs such as the implementation of the CC’s decision, CC’s bylaws and orders, and have to report the result of action plan to CC monthly. CS’s chief have to give input to formulate the budget plan. Moreover, CS’s chief have to give comments on the

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<sup>320</sup> LAMC, 2001, art. 2.

<sup>321</sup> *Ibid.* art. 13.

<sup>322</sup> *Ibid.* arts. 13 and 32.

<sup>323</sup> *Ibid.* art. 9.

<sup>324</sup> *Ibid.* art. 9.

<sup>325</sup> *Ibid.* art. 25.

implementation of CC's roles, affairs, and authority, and have to implement other works given by CC.<sup>326</sup>

As stated in Article 39, "Commune and *Sangkat* chief has roles and duties as follow: commune and *Sangkat* council; report about the activities to the commune and *Sangkat* council at least once a month; give other comments and support commune and *Sangkat* in preparing budget plan and in implementing roles, duties, and authorities belong to commune and *Sangkat* including other affairs that commune and *Sangkat* council delivers to the commune and *Sangkat* chief."<sup>327</sup>

Second, there are two main roles of CS administration as stated in Article 42 that "Commune and *Sangkat* administration has two roles: the role to implement local affairs for the benefit of commune and *Sangkat* and that of people in commune and *Sangkat*; the role as national agent under the management or delegation of national authority."<sup>328</sup>

There are seven important roles of CS administration in implementing local affairs. As stated in the Organic Law (2001) Article 43, "In the role of implementing local affairs, commune and *Sangkat* has some affairs: guarantee security and public order; management necessary public service and responsible for the better operation; encouragement for the enhancement of comfort and welfare of people; support the socio-economic development and bring about the living standard of people; protect and take care of the environment, natural resources, culture, national heritage; coordinate people views in order to bring out the mutual understanding and tolerance; implement general affairs in order to respond to the people needs."<sup>329</sup>

As the central agent, CS has to implement the laws. As stated in the Organic Law (2001) Article 44, "In the role as the national agent, commune and *Sangkat* has the roles to implement the activities in accordance with laws, royal decrees, sub-decrees, ministerial regulations, and other regulations relevance. In this case, national authority can delegate its power to commune and *Sangkat* along with capacity development and providing support, equipment, and budget for the

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<sup>326</sup> *Ibid.* art. 39.

<sup>327</sup> *Ibid.* art. 39.

<sup>328</sup> *Ibid.* art. 42.

<sup>329</sup> *Ibid.* art. 43.



implementation. The delegation of power mentioned above shall be made for the collective of Commune and *Sangkat* only.”<sup>330</sup>

Finally, CC had to be elected by the people in their CS for a five-year term through a proportional system. CC members consisted of five to eleven persons based on the number of people living in and geographical area. This election system requires the candidate to be a member in a political party. People votes for the political party they support. CC has a president which is the same person as the commune chief.<sup>331</sup>

As stated in Article 10, “Commune and *Sangkat* council shall be selected through election by people within its commune and *Sangkat* in according with procedure defined by the law of commune and *Sangkat* council election.”<sup>332</sup> And as stated in Article 15, “Commune and *Sangkat* council shall be selected through election based on the proportional election system.”<sup>333</sup> And as stated in Article 11, “Commune and *Sangkat* council has a five-year term of mandate, and this mandate shall be due when there is a new commune and *Sangkat* council started holding its position. In the temporary period, the commune and *Sangkat* council, that is out of its term, has only daily facilitation works.”<sup>334</sup> The number of CC is stated in Article 12 that “Commune and *Sangkat* council shall consist of five to eleven members based on the number of people and its geographical area. The actual number of commune and *Sangkat* council shall be decided by sub-decree based on the request of the Minister of Interior...”<sup>335</sup> The head of the CC is stated in Article 13 that “Commune and *Sangkat* council shall have a president which is also called the chief of commune and *Sangkat*...”<sup>336</sup> The CC’s president is the CS chief, selected from the name of the top candidate list winning the most votes. As stated in Article 32, “The president of commune and *Sangkat* council is commune

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<sup>330</sup> *Ibid.* art. 44.

<sup>331</sup> *Ibid.* arts. 9 to art. 13.

<sup>332</sup> *Ibid.* art. 10.

<sup>333</sup> *Ibid.* art. 15.

<sup>334</sup> *Ibid.* art. 11.

<sup>335</sup> *Ibid.* art. 12.

<sup>336</sup> *Ibid.* art. 13.

and *Sangkat* chief who was selected from the candidate who is at the top on the candidate list that winning the most votes....”<sup>337</sup>

Moreover, there are some qualifications as a candidate to be elected as the council members. Cambodian citizen of both sexes who reaches 25 years old, who is Cambodian citizen from birth, who can read and write, who has registered in the voting list, who has enough qualification required by CS election law, has the rights to stand for election.<sup>338</sup>

As stated in Article 14, “Cambodian citizen of both sexes who have the rights and willingness to stand as a candidate for commune and *Sangkat* council election shall fulfill some important requirement as follow: holding Khmer (Cambodian) nationality from birth; know how to read and write Khmer (Cambodian) language; having been registered in the commune and *Sangkat* voting list in which one want to stand as a candidate; having at least 25 years of age until the date of commune and *Sangkat* election day; having qualification required by the law of commune and *Sangkat* election.”<sup>339</sup>

#### **b) The Council and Governor of Capital, Provincial, Municipal, District, and *Khan***

Based on the Organic Law 2008, there are a few important characteristics.

First, the councils are legal entities of public laws.<sup>340</sup> As stated in Article 9, “The Capital, Provinces, Municipalities, Districts and Khans are legal entities of public laws.” The council represents and acts on behalf of all citizens in its jurisdiction as stated in the Organic Law (2008) Article 19 that “Each council shall represent and act on behalf of all citizen living within its jurisdiction.”<sup>341</sup>

The capital council, provincial council, municipal council, district council and *Khan* council is called “the council”.<sup>342</sup> The council is indirectly elected (directly elected by the commune council

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<sup>337</sup> *Ibid.* art. 32.

<sup>338</sup> *Ibid.* arts. 14 and art. 15.

<sup>339</sup> *Ibid.* art. 14.

<sup>340</sup> LAMCPMDK, (2008), art. 9.

<sup>341</sup> *Ibid.* art. 19.

<sup>342</sup> *Ibid.* art. 14.

members in position) for the mandate of a five-year term<sup>343</sup> for the purpose of establishing, promoting and sustaining democratic development.<sup>344</sup> Each council must have a chairperson.<sup>345</sup>

As stated in the Organic Law (2008) Article 17, “Each council shall have a chairperson. The chairperson of the council shall be the candidate on the top of the candidate list which occupies the most seats of the council. In the event that the candidate lists occupy an equal number of seats of the council, the candidate on the top of the candidate list which receives the highest number of valid votes shall be selected as the chairperson of the council.”<sup>346</sup>

Board of governors (BoGs) implements the council decision and bylaws. The BoGs consists of the governor and deputy governors.<sup>347</sup> Also, the BoGs appears as representative of ministries and institutions of the RG in supervising, coordinating, and directing all line departments and line offices. It also appears as the RG representative in the issue related to security, social and public order, law, and human rights.<sup>348</sup> The BoGs are not council members.<sup>349</sup> But the BoGs works for the council.

Moreover, any decision or activity of the BoGs made without prior consent of the council is invalid.<sup>350</sup> The BoGs must report to the council the result and progress in implementation of the council decision.<sup>351</sup> The BoGs assists the council’s works. The BoGs provides the comments and advices to the council to make decision and to fulfil its affairs, authorities, and duties.<sup>352</sup> The BoGs prepares the development plan, the budget plan, the annual report, the process of consultation with citizens and stakeholders, and the management of daily affairs and staff for the council’s approval. The BoGs ensures the availability of information boards and information dissemination, and the full access to the information by public.<sup>353</sup> The BoGs represents the council in taking action to ensure

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<sup>343</sup> *Ibid.* art. 15.

<sup>344</sup> *Ibid.* art. 20.

<sup>345</sup> *Ibid.* art. 17.

<sup>346</sup> *Ibid.* art. 17.

<sup>347</sup> *Ibid.* art. 153.

<sup>348</sup> *Ibid.* arts. 154, 155, 157, 158 and 161.

<sup>349</sup> *Ibid.* art. 148.

<sup>350</sup> *Ibid.* art. 158.

<sup>351</sup> *Ibid.* art. 159.

<sup>352</sup> *Ibid.* art. 155.

<sup>353</sup> *Ibid.* arts. 162, 163, and 169.

that officials, units and staff effectively fulfil the council's decisions and their roles and duties in the daily affairs.<sup>354</sup>

Second, based on the Organic Law 2008, there are two types of affairs, the obligatory affairs and the permissive affairs. The obligatory affairs are the affairs defined by law, or royal decree, or sub-decree, or legal instruments that must indicate clearly the obligatory requirements to manage and to perform the affairs including the framework and timeframe for implementing standards and procedures. Obligatory affairs must be assigned or delegated to the appropriate council.<sup>355</sup>

Permissive affairs are not obligatory affairs that can be assigned to the appropriate council.<sup>356</sup> The council can choose to implement or not to implement the permissive affairs based on the actual local needs or/and the available resource. There are two types of permissive affairs, the permissive affairs assigned by ministries to the council through laws and legislations, and the permissive affairs which is called the general mandate. Firstly, the permissive affairs assigned by ministries through laws and legislations. Secondly, the permissive affairs as the general mandate are the affairs that the ministries or central government does not assign to the council, but the council found out that those affairs are necessary in their locality and choose to implement those affairs. The ministries or central government does not implement and does not object to the council to choose those affairs for the implementation in their locality.<sup>357</sup>

The transfer of affairs to appropriate council can be made by assignment or by delegation. The affairs transferred must be based on the principle of permanent assignment or delegation, but not temporary assignment or delegation.<sup>358</sup>

According to the Organic Law (2008), lexicon page V, "assignment of function" is explained as the transfer of the ownership of functions/affairs, responsibilities, powers, and

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<sup>354</sup> *Ibid.* art. 161.

<sup>355</sup> *Ibid.* arts. 222-226.

<sup>356</sup> *Ibid.* arts. 227 and 228.

<sup>357</sup> NCDDs, *Guideline on the selection management and implementation of permissive functions by SNA's council*, Phnom Penh: published by NCDDs, 2015.

<sup>358</sup> LAMCPMDK, 2008, art. 233.

discretions required to administer and implement the affairs.<sup>359</sup> For example, the Ministry of Health (MoH) had transferred the management and provision of health service to capital city and provincial administration through assignment of affairs, in which MoH's line department and other relevant health structures below including personnel, property and financial management are transferred to be under the discretion of the capital and provincial administration (CPA). CPA must use their own resources to implement the assigned affairs.<sup>360</sup>

According to the Organic Law (2008), lexicon page VI, "Delegation of function" is explained as the transfer of functions/affairs, responsibilities, powers, and discretions in order to administer and implement that affairs on behalf of the authority that has delegated the affairs and based on the requirement of delegation. The authority that has delegated the affairs still has the ownership of the delegated affairs.<sup>361</sup> For example, Election Committee (NEC) had delegated "voter registration affairs" to CS administration in order to register voters on behalf of NEC annually. Commune and *Sangkat* get paid by NEC for the implementation of this affairs.

Finally, the council is elected by the CC member in position. The law on the council election Article 27 stated that "Members of Commune and *Sangkat* council, who are holding position, are voters for the indirect election of the council."<sup>362</sup>

The council election must be held for only one day on any Sunday, determined by the Prime Minister which is based on the request of Minister of Interior.<sup>363</sup> The management of the council election is under the authority of the National Election Committee (NEC).<sup>364</sup> The council's electoral system is a proportion election system.<sup>365</sup>

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<sup>359</sup> *Ibid.* at lexicon, page v.

<sup>360</sup> Sub-decree 193 on the assignment functions on management and health service provision to capital and provincial administration (CPA), (December 4<sup>th</sup>, 2019), art. 4.

<sup>361</sup> LAMCPMDK, 2008, lexicon, page vi.

<sup>362</sup> Law on Elections of the Capital council, Provincial council, Municipal council, District council and Khan council (LECPMDK), (May 24, 2008), art. 27.

<sup>363</sup> *Ibid.* art. 5.

<sup>364</sup> *Ibid.* art. 9.

<sup>365</sup> *Ibid.* art. 13.

There are some criteria for becoming a candidate and being elected as the council members. The council members must be *Khmer* citizen from birth, both sexes, reached 25 years old.<sup>366</sup> The council has no salary, but receives remuneration from the council's budget annually.<sup>367</sup>

As stated in Article 21, "Cambodia citizens of both sexes who wish to stand for the elections of the Capital council, Provincial council, Municipal council, District council and Khan council shall fulfill the following conditions and qualifications: Having *Khmer* citizenship from birth; having reached at least 25 years old on the day of the elections; being entitled to vote and having sufficient qualifications as per conditions set by the law on elections of the councils."

### **c) The Accountability of the Council**

In the implementation of all affairs, the council must be accountable to both the citizen and the Royal Government. As stated in the Organic Law 2008 Article 34, "The council shall be accountable directly to all citizens for making decisions on priorities and for ensuring democratic development within its jurisdiction..."<sup>368</sup> And Article 35 stated that "The council shall be accountable to the Royal Government for following the Constitution, laws, royal decrees, sub-decrees and legal instruments."<sup>369</sup>

What does this difference mean? How is the difference explained?

The word "accountability" is used in both the Organic Laws (2001 and 2008), and in the NP-SNDD (2010-2019). Cambodia has not yet provided a clear, short, and precise meaning of the concept of "accountability".

In Cambodia context, according to the Organic Law (2008), lexicon page II, the word "responsiveness and accountability" is combined together and is explained as "As a representative of local residents, the council must respond to their people needs in the process of making policies, decisions, actions, and in performing its roles and duties with accountable manner on what has been

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<sup>366</sup> LAMCPMDK, (2008), art. 21.

<sup>367</sup> *Ibid.* art. 28.

<sup>368</sup> *Ibid.* art. 34.

<sup>369</sup> *Ibid.* art. 35.

implemented. The council must also be accountable to the royal government in performing its roles and duties in accordance with the Constitution and laws.”<sup>370</sup>

According to the social accountability implementation plan (2019-2023), the word “social accountability” is explained as “the process of connecting the relationship between the citizen and SNA. Also, it is a way to promote the consistency among the elements of governance, in which all decisions made and the implementation of SNA’s activities for the public purpose must follow this process. The cooperation between SNA (supply side) and citizen (demand side) is aiming to support the public service provider in order to provide better public service than before.”<sup>371</sup>

According to National Program for Sub-National Democratic Development (NP-SNDD) 2010-2019, “accountability” can be “upward accountability” and downward accountability”.

“Upward Accountability (or legal control)” is explained as “The Ministry of Interior (MoI) is authorized by the Organic Laws to check the legality of bylaws and decisions of the council to ensure the conformity with the Constitution, laws and other national regulations. For instance, MoI may void and/or order the council to revise the bylaw and decision. In addition, MoI is authorized to monitor the implementation of SNA’s roles and duties from any abuse of power taken place. MoI may dissolve the council and remove the governor or deputy governor from position.”<sup>372</sup>

“Downward Accountability” is explained as “the council represent and act on behalf of all citizen living within its jurisdiction, and make decisions in response to the priorities of citizen’s needs, and ensure democratic development within its jurisdiction.”<sup>373</sup> It is necessary to have some provisions, mechanism, and measures needed to guarantee downward accountability such as “provisions requiring action by the council on a specific issue, if supported by a specified percentage of the local community; a requirement that certain key decisions of the council be ratified by referendum; provisions providing citizen’s rights to request for the recall of elected council members

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<sup>370</sup> *Ibid.* at Lexicon, page II.

<sup>371</sup> Royal Government of Cambodia, *National Program for Sub-National Democratic Development (NP-SNDD2) 2021-2030*, Phnom Penh, Cambodia, (January 2019), 2.

<sup>372</sup> Royal Government of Cambodia, *National Program for Sub-National Democratic Development (NP-SNDD) 2010-2019*, Phnom Penh, Cambodia, (28 May 2010), 93.

<sup>373</sup> *Ibid.* at 94.

before their term in office by citizen under certain specific circumstances; and provisions of rights of SNA councils to appoint their SNA staff; provisions requiring public access to information.”<sup>374</sup>

According to the Ministry of Interior’s book of good governance, “accountability” is explained as “the implementation of roles and duties in the process of making decisions and executing decisions, with responsibility over its own actions by presenting the report including reasons of making and implementing the decisions.”<sup>375</sup>

Therefore, the “accountability to the citizen and to the royal government” in the Organic Law (2008), Article 34 and 35, can be divided into two form. Firstly, the accountability to citizen is downward accountability. Secondly, the accountability to the royal government is upward accountability.

Based on these Articles and meaning provided in the Organic Law 2008, SNA must be accountable to the citizen by responding to the citizen’s needs as downward accountability. For example, the citizen’s priority need is the construction of elementary school in their locality. SNA has the duty to respond to the citizen’s need. There are two ways of respond. First, SNA constructs the elementary school. Second, SNA explains to the citizen the reason why the elementary school cannot be constructed. On the other hand, SNA must make decision based on the Constitution, laws and national regulations as upward accountability. For example, national law provides SNA a duty to combat against Covid 19. SNA has to take any measure, based on law, to control the infected people, lockdown some area that severely infected, and report regularly to the central government. There are two ways of respond. First, SNA has to implement the law and regulations related to Covid 19. Second, SNA has to report the result of implementation or challenges to the central government. Based on these examples mentioned above, accountability focus on both the process and the outcome.

Moreover, the meaning of the word “accountability”, according to the Organic Law (2008) and the discussion above, could be explained as “the duty to respond.” The council has duty to

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<sup>374</sup> *Ibid.* at 94.

<sup>375</sup> Ministry of Interior, *Good Governance*, (Phnom Penh: December 3, 2011, Edition), 17.



respond to the citizen's needs (downward accountability) in the way of giving what was requested by the citizens or explaining them why the request was rejected, and to respond to the royal government's regulations (upward accountability) in the way of implementing the law and reporting what has been done to the central government. The council can be dissolved by the central government, or by the people, if there are any wrong activities found.

This part presents the overview of current SNA in Cambodia. Next, the vertical and horizontal involvements to SNA will be presented.

### **2.3. Vertical Involvements to Sub-National Administration**

There is an involvements of central government to local administration. The Organic Law on LAMCS in 2001 and LAMCPMDK in 2008, stated some central government's involvements.

First, the creation, deletion, and change of boundary and designation of name of a capital city, province, municipality, district, *Khan*, commune, and *Sangkat* is decided by the central government. As mentioned above, in case related to CS, municipality, district and *Khan*, based on a request of the Minister of the Ministry of Interior, the government will make decision by issuing a sub-decree. In case, the creation, deletion, and change of boundary and designation of name of a municipality, district, *Khan*, commune, and *Sangkat* that effects the Capital and provincial boundary, the central government will make decision by issuing the Royal Decree, based on the request of the Prime Minister as proposed by the Minister of the Ministry of Interior. The creation, deletion, and change of boundary and designation of name of a capital city and province, the government will make decision by issuing the Royal Decree, based on the request of the Prime Minister as proposed by the Minister of the Ministry of Interior.<sup>376</sup>

Second, the Ministry of Interior will decide and announce the losing of membership of the council, and replacement in which the candidate next in order to him/her on the same candidate list

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<sup>376</sup> LAMCPMDK, 2008, arts. 6 and 7; and LAMC, 2001. art. 6.

will be selected for replacement not later than fourteen days by a *Prakas* of the Minister of the Ministry of Interior.<sup>377</sup>

Third, MoI sends its representative to preside over the council's inauguration meeting. In practice, the inauguration meeting to officially recognize appointed officials or election council is more important than the official letter of appointment and the election result. Legally, in fourteen days, after the official announcement of the election result, the first meeting of the council must be made and presided over by the representative assigned by the Ministry of Interior (MoI) in order to validate and announce the CS council's members. In practice, MoI delegated this work to capital and provincial administration. However, for the capital, province, municipality, district and *Khan* (CPMDK) level, MoI will assign an official to preside over the inauguration meeting for the council to take office.<sup>378</sup> In practice, in this third term of CPMKD's council (2019-2023), central government's representative who are ministers or high ranking official supporting capital or province to presides over ceremony of the validation of the council's member at CP level. Without the validation ceremony, the council can officially work in their office or not is a question.

Fourth, central government has power on the legality control, instruction, and dissolution the council although they are directly or indirectly elected. If any council acts against provisions of the constitution, laws, and sub-decrees, MoI will issue a written instruction for the council to respect and to follow provisions of the Constitution, laws, and sub-decrees within a specific and a reasonable period of time. If the council fails to respect the instruction, the central government will dissolve the CPMDK council by a sub-decree based on a request of the Minister of MoI, and will dissolve the CS council by the decision of Minister of MoI.<sup>379</sup>

Fifth, central government has the power to appoint board of governors (BoG), which is established for CPMDK, and to determine the number of board of governors. The government appoints the governor of capital and province by issuing the Royal Decree based on request of Prime

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<sup>377</sup> *Ibid.* arts. 22 and 23; and LAMC, 2001, art. 16.

<sup>378</sup> LAMCPMDK, 2008, art. 62; and LAMC, 2001, art 19.

<sup>379</sup> *Ibid.* art. 24; and LAMC, 2001, art. 58.

Minister as proposed by Minister of MoI. The government appoints the capital and provincial deputy governor, and the governor of municipality, district, and *Khan* by issuing a sub-decree based on request of Minister of MoI. Minister of MoI appoints the deputy governor of municipality, district, and *Khan* by issuing the ministerial regulation or *Prakas*.<sup>380</sup> The mandate of the governor and deputy governor is a four-year term which can be reappointed for the second mandate at the same jurisdiction. However, the governor and deputy governor can be terminated before the end of the mandate because he/she submits a written letter of resignation to Minister of MoI, or is dismissed from the position. Moreover, Minister of MoI appoints administration director for each council (CPMDK council).<sup>381</sup> CS's clerk is also appointed by MoI. Besides, Sectoral Minister will appoint the director of line department or sectoral unit at CP level based on the request made by the provincial governor with prior approval from the BoG.<sup>382</sup>

Sixth, the establishment of units under the council is the central government's decision. The Ministry of Interior has to propose the issuance of a sub-decree to allow the council to establish units and determine affairs and positions of officials in its units.<sup>383</sup>

Finally, the review of affairs is started at the national level. The facilitator in the review of affairs and affair transfer is the National Committee for Democratic Development at Sub-National level secretariat, NCDDs. The review of affairs should be focused on the basic necessary affairs which directly impact on poverty reduction and livelihood improvement of the people. The central government affairs review is to identify the affairs and responsibility that is appropriate to which level of administration, CPMDK or CS, or to retain those affairs at the national level. Moreover, the transfer of affairs and resources will be made with planning, phasing, rationale, coordination,

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<sup>380</sup> LAMCPMDK, 2008, arts. 140 and 141.

<sup>381</sup> *Ibid.* arts. 140, 147, 150, 151 and 183.

<sup>382</sup> Sub-decree N0. 240 on delegation of power to the board of governors of capital, province, municipality, and district for the personnel management who are working at sub-national administration, (December 27, 2017), art. 8, 9, 12, and 13.

<sup>383</sup> LAMCPMDK, 2008, art. 189.

consultation, transparency, and with minimal disruption to the ongoing operation of the government and relevant stakeholders.<sup>384</sup>

The council members may lose his or her membership as stated in Article 22 that “A councilor shall lose his/her membership of the council if any of the following cases occur: his/her loses qualifications and conditions to stand for the election of the council; his/her resigns from the council by submitting a written letter of resignation to the chairperson of the council; his/her passes away; his/her fails to attend the ordinary meeting of the council more than two (02) times consecutively without prior authorization; his/her is dismissed from being a council member in accordance with a law, procedure, internal rule or code of ethics of the council; his/her is convicted by a court for a criminal or misdemeanor offence; his/her loses membership of his/her political party. The Minister of the Ministry of Interior shall decide and announce the losing of membership in the council in the above cases.” The replacement of the council member in this case is made in fourteen days by the Ministry of Interior as stated in Article 23 that “When a councilor loses his/her membership in the council, the candidate next in order to him/her on the same candidate list shall be selected for replacement not later than fourteen (14) days by a *Prakas* of the Minister of the Ministry of Interior.”

Commune Council (CC) member will lose his or her position based on the conditions such as death, not able to work with confirmation by competent authority, written letter of resignation, sentence to be in prison of criminal case, not respect the internal rule of the council, dissolution of the whole council, and losing the membership from his or her political party.<sup>385</sup> As stated in Article 16, “Commune and *Sangkat* council members shall lost one’s membership according to one of the cases such as the commune and *Sangkat* council member, himself or herself, is death; he or she lost the capacity to work based on the written letter of confirmation from competent authority; he or she resigns from the commune and *Sangkat* council member by writing a letter of resignation; he or she is sentenced in criminal or misdemeanor case to put in jail by the court; he or she is dismissed from

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<sup>384</sup> *Ibid.* arts. 215 to 218.

<sup>385</sup> LAMC, 2001, art. 16.

the commune and *Sangkat* council member because of having been committed against the internal rule of the commune and *Sangkat* council based on the requirement stated in Article 84 of this law; the whole commune and *Sangkat* council members were dissolved; he or she has lost a membership from his or her political party. In case, there is a member of commune and *Sangkat* council lost his or her membership, the next candidate in the candidate list shall be selected to replace him or her without conducting reelection.”<sup>386</sup>

The declaration of losing and receiving the position as a member or as a head of CC or CS chief is made in fourteen days by *Prakas* of the Ministry of Interior as stated in Article 37 that “... Based on the above mentioned conditions, the losing and receiving position as the head of commune and *Sangkat* council which is a position of commune and *Sangkat* chief shall be declared by *Prakas* of Minister of the Ministry of Interior in fourteen (14) days.”<sup>387</sup>

This part presents the vertical involvements. Next part will present horizontal involvements to SNA.

## **2.4. Horizontal Involvements to Sub-National Administration**

### **2.4.1. The Democratic Participation of Residents**

The residents participated in any decision related to them in the democratic participation. Therefore, the residents have to directly vote for the CC and to be consulted and informed. Residents must elect the council that will serve the commune and local residents better. As stated in the Law on Administrative Management of Commune and *Sangkat* (2001) Article 10, “Commune and *Sangkat* councils shall be elected by people in their commune and *Sangkat* based on the procedure defined by law on commune and *Sangkat* election.”<sup>388</sup>

Moreover, the residents have to be consulted and informed. In the matter related to the residents’ life, the council have to must consult with the local resident before making decision that affects their lives. As stated in Article 63, “In the preparation process of development plan of the

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<sup>386</sup> *Ibid.* art. 16.

<sup>387</sup> *Ibid.* art. 37.

<sup>388</sup> *Ibid.* art. 10.

commune and *Sangkat*, commune and *Sangkat* council shall take some measure such as: ... report about the result of the implementation of commune and *Sangkat*'s development plan to their people....” And as stated in Article 70, “The annual report as stated in Article 69 of this law, after approving by commune and *Sangkat* council shall: copy to Minister of the Ministry of Interior; keep as public achieve; and copy and share to none governmental organization, the association, and the public with the basic cost.”<sup>389</sup>

On the other hands, the residents can request for or initiate of issuing of bylaw, based on the local needs, to the council. As stated in sub-decree 286 Article 15, “The initiation of the needs for issuing bylaw based on the needs of the locality can be proposed by: ... One-tenth of representative of family of the whole family within the council’s jurisdiction.”<sup>390</sup>

Moreover, the residents can request for amendment and cancelation of the council’s bylaw if that bylaw is against the local needs and laws. As stated in sub-decree 286 Article 29, “The council can make decision to amend or cancel any bylaw that already approved based on the situation, problem, needs, or request from locality, and/or based on law, Royal *Kram*, sub-decree, ministerial regulation (*Prakas*), or other relevant regulations that still valid, or based on the guideline of ministries and institution of the royal government.”<sup>391</sup>

According to the law on administrative management of the capital, provinces, municipalities, districts and Khans (2008), the democratic development concept consists of the consultation and participation from the people. As stated in Article 12, “Democratic development includes: ... consultation and participation....”<sup>392</sup> The consultation with people can be found in the process of formulation and implementation of development plan. As stated in Article 38, “In the

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<sup>389</sup> *Ibid.* arts. 63 and 70.

<sup>390</sup> Sub-decree, No.286 on the procedure for preparation, amendment to and appeal for a bylaw or local ordinance (*Deika*) of the capital council, provincial council, municipality council, district council, and *Khan* council, (November 18, 2014), art. 15.

<sup>391</sup> *Ibid.* art. 29.

<sup>392</sup> LAMCPMDK, 2008. art. 12.

formulation and implementation of its development plan, the council shall consult with: the citizen within its jurisdiction...”<sup>393</sup>

The residents can make the request or complaint to the council to solve local conflict which is a private conflict between citizens in the jurisdiction. As stated in Article 93, “When there is a request or a complaint raised by citizens under its jurisdiction, the council shall appropriately consider and address the request or complaint. ...”<sup>394</sup>

#### **2.4.2. The Relationship between the Council and the Board of Governors**

The relationship between the council and the governor or chief is the decision maker and implementer.

Board of Governors (BoG) must be accountable to the council.<sup>395</sup> The BoG must provide comments and advice to the council, report to the council, and implement the decision of the council. The BoG supports the council in order to implement its affairs, authorities, and duties in according the provisions of this Law.<sup>396</sup> The BoG must make a decision or perform any activity approved by the council. Any activity or decision of the BoG implemented without authorization or prior approval by the council is invalid.<sup>397</sup>

The council can submit a written letter of request to Minister of the Ministry of Interior to terminate a position of governor or deputy governor prior to the end of his/her mandate in the following cases such as loss of any of the required qualifications to be governor or deputy governor; Incapability; Poor performance; Loss of health or loss of professional competence with certification from a competent institution; Abandonment of his/her job; and Abuse of the code of professional ethics.<sup>398</sup>

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<sup>393</sup> *Ibid.* art. 38.

<sup>394</sup> *Ibid.* art. 93.

<sup>395</sup> -Sub-decree No. 216. Sub-decree on Role, Function, and Work Relation between Provincial Council and Board of Governors, between Municipality Council and Board of Governor, and between District Council and Board of Governor, (December 14, 2009), art. 27.

-Sub-decree No. 215. Sub-decree on Role, Function, and Work Relation between Phnom Penh Council and Board of Governors and between Khan’s Council and Board of Governor in Phnom Penh, (December 14, 2009), art. 27.

<sup>396</sup> LAMCPMDK, 2008, art. 155 and 159.

<sup>397</sup> *Ibid.* art. 158.

<sup>398</sup> *Ibid.* art. 151 and 152.

The council must monitor the activities and performance of governor and the BoG. For this reason, the council may invite governor or the BoG and concerned person to clarify issues at the council meeting.<sup>399</sup> In case, there is important issue having impact on citizen, the council decides in the meeting to do research, and gives order to the BoG to solve that case based on the research's result. The council monitors and takes action to solve illegal activities of the BoG based on legal procedure. The Council also checks and approves the report made by the BoG in the council meeting.<sup>400</sup> The council meeting can be convened by the BoG, by one third of the council members, and by the president of the council.

Moreover, the BoG must support the council to monitor all affairs, duties and resources allocated to the council, and provide recommendation to the council on measures to implement the affairs, duties and the management of the resources.<sup>401</sup>

#### **2.4.3. The Relationship between Capital and Provincial Administration and Line Departments**

The Capital and Provincial Administration (CPA) have no authority over the line department when line departments are the local organs of the central government, under the management of the authority of the sectoral ministries. In practice, before 2014, each line department was responsible for the sectoral affairs of its respective ministry in CP level, and it reported directly to its respective ministry without inform to CPA. For this reason, there were problems of shirking responsibility and unclear roles, responsibilities, and responsibilities between SNA and line departments and line offices. For example, when there was an act of illegal logging found in the jurisdiction of a province, provincial administration had no authority, but the Forestry

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<sup>399</sup> *Ibid.* art. 157.

<sup>400</sup> -Sub-decree No. 216. Sub-decree on Role, Function, and Work Relation between Provincial Council and Board of Governors, between Municipality Council and Board of Governor, and between District Council and Board of Governor, (December 14, 2009), art. 15.

-Sub-decree No. 215. Sub-decree on Role, Function, and Work Relation between Phnom Penh Council and Board of Governors and between Khan's Council and Board of Governor in Phnom Penh, (December 14, 2009), art. 15.

<sup>401</sup> LAMCPMDK, 2008, art. 156.



Administration of the Ministry of Agriculture, Forestry and Fishery, and its local organs had the authority on this matter. But, the illegal logging is not successfully reduced.

The government understood the importance of coordination and cooperation horizontally among relevant stakeholders in order to successfully solve the problems at SNA level. That is the reason why the horizontal involvements between SNA and line departments and relevant stakeholders was established by sub-decree No. 156 on the establishment and functioning of the unified commander of capital, provincial, municipal, district and khan administration which was issued on March 31, 2014.<sup>402</sup> This sub-decree was established to replace sub-decree 22 on the establishment of the unified commander of provincial, city, district and Khan issued on May 09, 1994 which does not fit with the new organization structure and system.

Based on this sub-decree No. 156, the governor of CP and MDK is the president of the unified commander. At CP level, the member of this unified commander consisted of provincial military, police, line departments, ..., relevant stakeholders, including the governor of MDK. At MDK level, the member consisted of district military, police, line offices, ..., relevant stakeholders, including CS chief. The president has the power to lead all the members.<sup>403</sup>

#### **2.4.4. Personnel Management Involvements**

##### **a) Management Power of Human Resources**

In 2017, the royal government of Cambodia issued a sub-decree N0. 240 on delegation of power to the board of governors of capital, province, municipality, and district for the personnel management working at sub-national administration. This sub-decree clearly delegates the power of management, appointment, and dismissal of SNA's personnel to the BoG of CPMD, except the personnel or civil servants of General Department of Custom and Excise, General Department of

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<sup>402</sup> Sub-decree No. 156 on Establishment and Functioning of Unified Commanding Committee at Capital, Provincial, Municipal, District and Khan Administration [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈបញ្ជាការឯកភាពរដ្ឋបាលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ], (March 31, 2014), art. 1.

<sup>403</sup> *Ibid.* arts. 4, 5, and 6.

National Treasury, General Department of Tax, Public Enterprise, Public Institution, and other civil servants under the control of other legal statutes.<sup>404</sup>

#### **b) Management of Human Resource at CPMDK**

The management of personnel of Capital, Province, Municipality, District, and Khan administration (CPMDK administration) must get approval from the council of CPMD on the personnel planning; the appointment and dismissal of personnel whose position are deputy chief of administration, head of division, or head of unit in equal rank of CPA level; the appointment and dismissal of personnel whose position are deputy chief of administration, head of office, head of unit in equal rank of MD administration level; and make decision on the personnel allowance. The bylaw of personnel matter for the personnel management must be signed by the respective governor of CPMD after getting the approval from CPMD's council.<sup>405</sup>

Besides the position mentioned above, the BoGs of CPMD have to make decision to manage, appoint, and dismiss the personnel of CPMDK without approval from the council of CPMD. At CPA, the BoGs have to make decision on the appointment and dismissal of the personnel whose position are deputy chief of division or deputy chief of unit in equal rank of CPA or the position ranking below at CPA level. In addition, for Capital administration's BoG has to make decision on the management, appointment, and dismissal the personnel of *Khan* administration whose position are deputy chief of administration or the position ranking below at *Khan* administration. Moreover, at municipality and district administration (MD)'s BoGs have to make decision on the management, appointment, and dismissal the personnel of MD administration whose position are deputy head of office or deputy head of unit in equal rank of MD administration or the position ranking below at MD administration level.<sup>406</sup> CS administration has no personnel who is the civil servant beside the CS's clerk who is the Ministry of Interior's personnel. Therefore, the CS

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<sup>404</sup> Sub-decree N0. 240 on delegation of power to the board of governors of capital, province, municipality, and district for the personnel management working at sub-national administration, (December 27, 2017), arts. 1 to 3.

<sup>405</sup> *Ibid.* arts. 5, 11, and 13.

<sup>406</sup> *Ibid.* arts. 6, and 12.

administration power to manage, to appoint, and to dismiss CS's clerk is not mentioned or transferred yet.<sup>407</sup> However, in 2021, the Ministry of Interior (MoI) issued the decision on the procedure for allowing commune administration to hire contract staff, officially called commune and *Sangkat* administrative assistant which referred to none civil servant staff. Commune and *Sangkat* administrations decide on hiring and on using commune budget for paying this staff.<sup>408</sup>

### c) Management of Human resource at line department

The CP governor, with the approval from the BoG, must make request to the line department's minister on the appointment and dismissal of the director of line department or head of sectoral unit in equal rank for those who are working at CP level. The delegation of the power to the BoG of CPA on the appointment and dismissal the personnel of line department, unit, and office of sectoral ministries working at CPMDK level whose position are deputy director of line department or deputy head of line unit in equal rank and the position below based on the request from director of line department or line unit. The bylaw of personnel management, appointment, and dismissal of deputy director of line department or deputy head of line unit in equal rank and the position below has to be signed by the respective governor of CPMD after getting the approval from the respective the BoG of CPMD.<sup>409</sup>

**Table of Personnel Ranking, the appointment, and Dismissal at CP, MDK and CS.**

No.	Personnel Ranking at Capital and Provincial level	The appointment, and dismissal.
1	Governor	By Royal Decree (the king) (LAMCPMDK, art 141)
2	Deputy Governor	By Sub-decree (Prime Minister)
3	Chief of Administration	By Prakas MoI (Minister, MoI)
4	Deputy Chief of Administration	By Bylaw or local ordinance (Deika of CP Council)
5	Director of Division/Head of Unit	
6	Deputy Director of Division/ Deputy Head of Unit	By Bylaw or local ordinance (Deika of CP Governor)
7	Head of Office	
8	Deputy Head of Office	

<sup>407</sup> Ministry of Civil Service, guideline No. 789 on the principle and procedure of personnel management of sub-national administration, (February 22, 2018), 2.

<sup>408</sup> Ministry of Interior, circulation (*Sarachor Nenom*) No. 055 on procedure of recruiting staff as none civil servant of commune and *Sangkat*, (December 24, 2020).

<sup>409</sup> Sub-decree N0. 240 on delegation of power to the board of governors of capital, province, municipality, and district for the personnel management who are working at sub-national administration, (December 27, 2017), arts. 8, 9, 12, and 13.

9	Staff of Office	
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No.	Personnel Ranking at Municipality and District level	The appointment, and dismissal.
1	Governor	By Sub-decree (Prime Minister) (LAMCPMDK, art 141)
2	Deputy Governor	By Prakas MoI (Minister of MoI)
3	Chief of Administration	
4	Deputy Chief of Administration	By Bylaw or local ordinance (Deika) (MD Council)
5	Head of Office/Head of Unit	
6	Deputy Head of Office/ Deputy Head of Unit	By Bylaw or local ordinance (Deika) (MD Governor)
7	Staff of Office	

No.	Personnel Ranking at Khan level	The appointment, and dismissal.
1	Governor	By Sub-decree (Prime Minister) (LAMCPMDK, art 141)
2	Deputy Governor	By Prakas MoI (Minister of MoI)
3	Chief of Administration	
4	Deputy Chief of Administration	By Bylaw or local ordinance (Deika) (Capital Governor)
5	Head of Office/Head of Unit	
6	Deputy Head of Office/ Deputy Head of Unit	
7	Staff of Office	

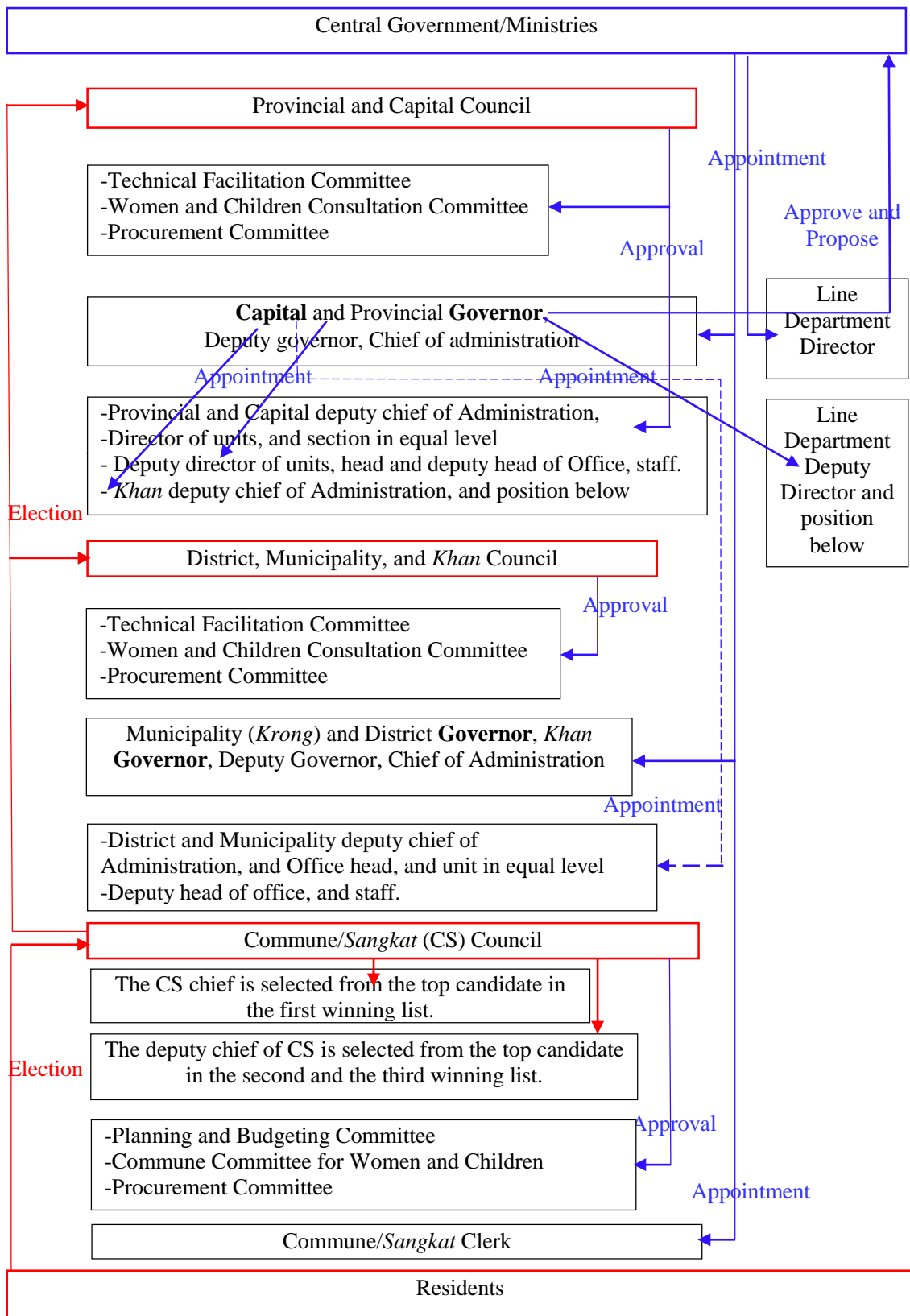
No.	Personnel Ranking at Line Department, Line Office or Unit at CPMDK level	The appointment, and dismissal.
1	Director/Head at CPA	By Prakas Sectoral Minister with CP Governor's request
2	Deputy Director/Head of Unit at CPA	By Bylaw (Deika of CP Governor) with line department's request
3	Head of Office at CPA	
4	Deputy Head of Office at CPA	
5	Staff of Office at CPA	
6	Head of Office at MDK level	
7	Deputy Head of Office at MDK level	
8	Staff of Office at MDK level	

Note: There were no more head, deputy head and staff of line office at MDK since 2020 because the line office were changed by integrated into MDK administration structure.

No.	Personnel Ranking at CS level	The appointment, and dismissal.
1	Clerk	By Prakas MoI (Minister of MoI)

These tables do not include contract staff and advisor.

# Outline of SNA Management in Cambodia (2020)



## **2.5. Conclusion**

This chapter analyzed the centralized character the current legal system of local administration in Cambodia. Based on the examination, the research's finding are as follows.

This chapter found that there is a strong centralized government system. The structure of SNA is not a unified administration as stated in the Organic Law 2008 yet. Moreover, almost all of the affairs belong to the central government, especially the sectoral ministries and MoI itself. The central government's affairs can be transferred by assignment and delegation. However, the affair transferred is slow and in little progress. The central government supervises over SNA.

In practice, there is inconsistency of the sectoral law with the Organic Laws (2001 and 2008) and decentralization reform. Ministries have no willingness to transfer their affairs and resources to SNA, but provide the arbitrary and inconsistent orders for local administration. Local administration has been confused by these orders. Besides, as a centralization government before decentralization reform, almost all of the local affairs are originally belong to the central government. Although, SNA is considered as both the public legal entities and the national agents, SNA tends to be more central agents rather than that of the public legal entities. Moreover, Cambodia's centralized laws provide strong power to central government through SNA's personnel appointment, dissolution of the elected council, correction and giving approval over local matters.

This study found that there is the existence of a strong centralized government trying to introduce decentralization reform in order to keep up with the social and economic growth, and to respond to the local needs. One of the elements that reflected strong centralized government supervision was the power to appoint governors and local staff.

In Cambodia, an election system by residents was established at the commune level in 2002. Therefore, the relationship between horizontal public involvements in the commune and vertical involvements by the Minister of Interior is questionable. How can Cambodia move from its current condition towards local autonomy system in the future? What are the legal issues and the current stage of Cambodia local system? In order to find the theoretical issues, it would be useful to discuss the legal concepts or theories and legal systems in other countries. Therefore, referring to a long time

experience of Japan's local autonomy system, chapter III will analyze the historical development and the current situation of local autonomy system in Japan in order to consider what are the legal issues in Cambodia and what are the possible lessons learned from Japan's decentralization reform.

### **Chapter III: The Experiences of Local Autonomy and Decentralization Reform in Japan**

The previous chapter of this study specifically presented the current characteristic of local administration system in Cambodia including the central and local administration organs. This chapter presents the Japanese experiences of local autonomy and decentralization reform.

The purpose of this chapter is to analyze the characteristics of local autonomy system and to present Japan's experience of success and failure in the local autonomy and decentralization reform through the historical development in the Meiji era, the Constitutional change era, and the decentralization reform era by focusing on the legal systems, theories, and cases.

The issues of the local autonomy (consisting of autonomy of entity and autonomy of residents), and the issues of legal personality or legal entity of "local public entity", the affairs allocation, the rules of central-local involvements, and the conflict resolution system will be raised for further discussion in the following chapter (chapter IV).

In this chapter, two main contents are discussed. First, it is continuity and disconnection before and after the war. Second, it is the characteristic of decentralization reform in the 1990s including the 1999 amendment of the Local Autonomy Law.

This chapter will help to provide the ground floor to answer the research question of synchronic issues in globalization era; what are the possible lessons from Japan's decentralization reform in the following chapter.

#### **3.1 Historical Development of Local Autonomy Law (Legal System) in Japan**

It is important to understand the past history in order to better understand the present. Of course, there is no society ending the links with its own past history. There is no exception for Japan. The process and the links between past and present must be studied to fully understand the present as well as to predict more accurately the future. When change was introduced in the past, like all other social orders, Japan also reflects the elements of continuity with change.<sup>410</sup>

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<sup>410</sup> John Owen Haley, *Authority Without Power: Law and the Japanese Paradox*, (Oxford: Oxford University Press, 1991), 17-18.



### ***Before the Meiji Restoration***

The beginning of the Meiji era (1868) is the end of the Tokugawa shogunate (1615-1868).<sup>411</sup> For about 250 years, the Tokugawa Shogunate era of not open up the country to the outside world resulted in a positive and a negative point. A positive point was the enjoyment of a peaceful period and a huge development of culture, education, commerce and industry. A negative point was that Japan was in a slow progress in terms of global development of economy and technology.<sup>412</sup>

### ***The Meiji Restoration 1868***

In 1868, the Meiji Restoration started the reform by transferring the Tokugawa's political authority to the Emperor to guarantee a centralized government power and a continuance of national independence under the new government priority. Tokugawa's territory was divided into prefectures (Fu and Ken) as administrative district of the central government with appointed governors. In 1871, the new government abolished the fiefs (Han) and established prefectures (Ken) which were governed by the central government's appointed officials for implementing the affairs of local administrations. The central government requested the former warlords or as the governors to stay in Tokyo, leaving their power and their former territory. This reform was not a peaceful one and was in a military conflicts which were instigated by rebellions by former ruling class. In 1877, the last and largest of the rebellions had come to an end in the *Seiman War*.<sup>413</sup> However, in Japan, the civil war was small during the transition from Edo era to Meiji era, because Yoshinobu Tokugawa surrendered immediately. So, there was stability in Japan.

The village system in the feudal period continued to survive. The villagers collectively owned an asset such as forest. The village community became the owner. Village head (Nanushi), some of the officials were elected by villagers while some inherited their position, represented the village

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<sup>411</sup> Takii Kazuhiro, *Ito Hirobumi, Japan's First Prime Minister and Father of the Meiji Constitution*, translated by Takechi Manabu and Edited by Patricia Murray, International Research Center for Japanese Studies, Kyoto, (Routledge, 2010), 6.

<sup>412</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: The Start of Modern Local Government (1868-1880), Volume 1*, Council of Local Authorities for International Relations (CLAIR), Institute for Comparative Studies in Local Governance (COSLOG), and National Graduate Institute for Policy Studies (GRIPS), 2010, 1.

<sup>413</sup> *Ibid.* at 1 and 2.

formally after approval of the fief (Han) government. There were three kinds of village officials which varied by area, such as Nanushi (or Shoya), Kumigashira (or Toshiyori or Wakibyakushou), and Hyakushodai. Nanushi (as village head) was the top executive post and represented the village to outsider, working at the lowest administrative level, thus creating the connection to the ruling establishment. Kumigashira was a deputy of Nanushi, represented people in the village. Hyakushoudai had no official duties but representing the villager and oversee other village officials. Kumigashira (deputy head of village) and Hyakushoudai were usually elected by the villagers.<sup>414</sup>

In the Meiji period, Japan copied the law and culture of Western or European country, and also adapted with the previous legal system. The “reception” of foreign laws in the Meiji era was brought voluntarily by the Japan government, but in the Occupation era, the “reception” of foreign laws was brought by force after Japan was defeated in war.<sup>415</sup>

This part presents the historical development of Local Autonomy Law (legal system) of local system in Japan since Meiji era to present.

### **3.1.1. Local Administration System in Meiji era (1878-1945)**

In 1878, there was the establishment of the Counties, Cities, Towns and Villages Organization Law (Gunku Chouson Henseihou). The same time, the Prefecture Assembly Law (Fukenkai Kisoku) was enacted. Also, the Local Tax Law (Chihouzei Kisoku) was a passed. These were called the three new laws (San-Shin-Pou) enacted which related to local administration system in Meiji era. There was also the establishment of the Ministry of Interior. In 1880, Municipal Assembly Law (Kuchouson-kai Hou) was also introduced and was considered as the same generation as the three new laws. As a result, municipal assemblies were created.<sup>416</sup> At this time, there was no Diet and no Constitution yet. These “Laws” were called such but with different character from laws enacted later and received the Diet’s approval.

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<sup>414</sup> *Ibid.* at 2.

<sup>415</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 13.

<sup>416</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: The Start of Modern Local Government (1868-1880)*, Volume 1, 2010, 7, 9 and 11.

The Counties, Cities, Towns and Villages Organization Law (Gunku Chouson Henseihou) was introduced instead of the system of district (Ku), which was stated in the Family Registration Law, because the districts had different boundaries from the traditional counties, towns and villages as local administration units.<sup>417</sup>

The Counties, Cities, Towns and Villages Organization Law (Gun-Ku-Chou-Son Henseihou) was established under the prefecture (Fu and Ken). County (Gun) had a chief executive and a local assembly or council<sup>418</sup> after introducing the Counties Law (Gunsei) in 1880. So, county was assumed to have affairs as autonomous body. City (Ku) was similar to city (Shi) in the latter period, but the different of the city (Ku) was that there were towns and villages within its boundaries. City (Ku) had a chief of executive (Kuchou) publicly elected and then appointed by the prefecture governor. The City (Ku) decided on how to elect according to the government order of 1874. Towns (Chou) and villages (Son) consisted of a chief executive (Kochou) without stipulated procedure of selection. The chief executive of towns and villages were stipulated by given dual roles as the head of an autonomous body and as the head of a local office of the central government to implement the delegated affairs.<sup>419</sup>

In 1878, based on the Prefectural Assembly Law (Fukenkai Kisoku), prefectural council were given the authority to make decision on budget through local taxes and on method of collecting local taxes. But the drafts for decision were made and proposed by the governor, then the council made decisions, and these decisions needed the governor's approval before actual implementation.<sup>420</sup>

Member of a prefectural council was eligible to a male person aged 25 years old or more, who had lived in the prefecture for three years or more, whose family register had been recorded in the prefecture, and who had paid more than a certain amount of tax. Voters were those who had at least 20 years old whose family was recorded in the county or the city, and who had paid more tax.

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<sup>417</sup> *Ibid.* at 9.

<sup>418</sup> The word local assembly and local council is used interchangeably.

<sup>419</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: The Start of Modern Local Government (1868-1880)*, Volume 1, 2010, at 10.

<sup>420</sup> *Ibid.* at 10.

A county or a city was a constituency. The council members in each constituency were based on the population size and should not be more than 5 members. They had a four-year term, and half of them were elected every two years. The council plenary session was conducted once a year in March. There were the possibilities of extraordinary sessions. The chairman and vice chairman of the council were elected from among the council members. The governor approved on the election result and then reported to the Minister of Interior. The council members had no salary, but had travel and per diem allowances. Governor had the power to suspend the discussion of the council that harm to the national security and the laws and orders, and then report to the Ministry of Interior. If so, the council could be dissolved by Minister of Interior.<sup>421</sup>

In 1880, the Municipal Assembly Law (Kuchouson-kai Hou) was given the authority to make decision on public affairs in municipalities, on expenditures and the collection of money. The municipal assemblies formulated and decided their own affairs. But, these decisions had to get approval from the prefectural governor. The chief of a city (Kuchou), and chief of a town or village (Kochou) implemented their council's decision respectively. But, the chief (Kuchou and Kochou) could suspend implementation of inappropriate decisions and asked for instruction from the governor. The chief of a county (Gunchou) or chief of a city (Kuchou) could halt or suspend the municipal council proceeding and asked for instruction from the governor, if any illegality were found. The prefectural governor could halt the municipal council proceeding or dissolve it. Then, the governor conducted the reelection of the council if the council was dissolved.<sup>422</sup>

In 1884, the central government modified the law for giving itself more supervisory authority over local assemblies. A municipal council were responsible for tackling its affairs by its own revenue. The election of the municipal council was conducted by voting from a man who had at least 20 years old whose family was recorded in the municipality, and who had paid tax. There were three requirements to be a candidate of municipal council such as a man had at least 25 years old with a family recorded in the municipality, and a man had paid tax (Land Ownership Tax). The chief

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<sup>421</sup> *Ibid.* at 10.

<sup>422</sup> *Ibid.* at 11, 12 and 15.

of cities and municipalities (towns and villages) chaired their assemblies respectively, drafted resolution and should convene their council respectively. The prefectural governor decided on matters that used to decide by the municipal council such as the term of the plenary session, the term of the council, the re-election, and the number of councilors. The chief of municipality and city had the power to suspend the council proceeding when illegality or harm to public order were found.<sup>423</sup> The prefectural governor appointed the chiefs of municipality and city. However, the residents elected a number of candidates for being picked up as chief by the governor.<sup>424</sup>

Japan's local system was a two-tiered system that there were prefectures and counties, and municipalities (City, Town and Village).

#### **a) The Constitution**

The Constitution of the Empire of Japan (Dai Nippon Teikoku Kenpo), the so-called Meiji Constitution, was promulgated on February 11, 1889.<sup>425</sup> The Meiji Constitution came into effect on November 29, 1890 when the first session of the Imperial Diet session was opened.<sup>426</sup>

The root of the Meiji Constitution was the 1850 Prussian Constitution, which was derived from the 1831 Belgian constitution that this constitution, for the first time, combined the monarchical principles with the Declaration of Rights of Man and the French idea of the 1789 declaration of Human Rights. This root made the Meiji Constitution consist of the fundamental human and civil rights, the principle of the separation of powers, and along with the administrative litigation court.<sup>427</sup>

There were at least two main issues for Japanese government to westernize the Japanese laws and to create the Meiji's Constitution such as incompetent Japanese court system which was not recognized by European countries, and the so-called "unequal treaties". With the purpose that Japanese court system had to be competent and recognized with the necessary standard of European

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<sup>423</sup> *Ibid.* at 12, 15 and 16.

<sup>424</sup> *Ibid.* at 16.

<sup>425</sup> Takii Kazuhiro, *Ito Hirobumi, Japan's First Prime Minister and Father of the Meiji Constitution*, 61.

<sup>426</sup> *Ibid.* at 81.

<sup>427</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 31.

countries, and that for revising the so-called “unequal treaties”, the Foreign Affairs Ministry sponsored the drafting of the Meiji’s Constitution for which Prince Hirobumi Ito was responsible. Also, Professors of government universities were sent abroad to study and absorb the European science. Prince Ito spent the long period of his stay in Germany with the interest in choosing the Prussian constitution as a model for drafting the Meiji constitution. The Meiji Constitution was promulgated in 1889. Some years later, Japan had fulfilled the expected mission.<sup>428</sup>

As stressed by Takii Kazuhiro, there were three core principles that guided Ito Hirobumi (the grand design in building a constitutional State) : civilization, the Constitutional State, and the popular government.<sup>429</sup>

Moreover, Ito Hirobumi and his colleagues had been convinced that their country’s modernization should be a gradual process (the principle of gradualism), adapted to its own conditions, culture, and history.<sup>430</sup> Ito Hinobumi explained the difference of the Meiji Constitution from other countries was the monarchical sovereignty stated in chapter I that suited with Japan national polity.<sup>431</sup> The Meiji Constitution chapter I, Article 10 stated about the organization of the administration that “The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. ...”<sup>432</sup>

The German method of setting up administrative agencies by government ordinances was found and applied in the Meiji Constitution. This theory was that the organizational laws were to create solely the organization of the government, but not to state about the relationship between the government and the people.<sup>433</sup>

The Emperor was the highest organ of central government who had the law-making power, who made the imperial ordinances for the organization of the administrative agencies and civil service, and who made the imperial ordinances for maintaining public safety and order, and for the

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<sup>428</sup> *Ibid.* at 14.

<sup>429</sup> Takii Kazuhiro, *Ito Hirobumi, Japan’s First Prime Minister and Father of the Meiji Constitution*, 5.

<sup>430</sup> *Ibid.* at 37.

<sup>431</sup> *Ibid.* at 62.

<sup>432</sup> The Meiji Constitution of Japan, 1889, Chapter 1, art. 10.

<sup>433</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 19-20.

happiness of the subjects or people. Unless stated in the statutes, Japanese subjects could not be arrested, confined, investigated or punished.<sup>434</sup> The Meiji Constitution provided in Article 23 that “Unless provided in a statute, a Japanese subject shall not be arrested, confined, investigated or punished.”<sup>435</sup>

Moreover, Japan was familiar with the theory of Otto Mayer which was in three folds. First, the legal norm creating force of the statute that the highest form of State’s will expressed by statutes or *Gesetz*. Second, the statutes or *Gesetz* is the strongest State’s will. The statutes or *Gesetz* can be abolished by another statutes or *Gesetz*. Finally, the statutes or *Gesetz* is the important foundation for the Judiciary activity.<sup>436</sup>

#### ***b) The Local System***

Japan’s local system was stated in the Constitution of Meiji’s Era that the local system was formed and ruled by central government officials under the Emperor System.<sup>437</sup> There were two laws, the City System and Prefectural System, passed based on the research made in several Western countries on local system. In 1888, the City Law and the Town and Village Law were promulgated. The prefectural and county system were under the government consideration and delayed until after the promulgation of the Constitution (1889) that the laws were promulgated in 1890. The process of introducing the prefectural system was made prefecture by prefecture gradually spending a long time.<sup>438</sup> The county system was abolished in 1923 because of the weak financial basis resulted from not giving county the power to impose taxes, but allotments to towns and villages within a county.<sup>439</sup>

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<sup>434</sup> *Ibid.* at 55.

<sup>435</sup> *Ibid.* at 18.

<sup>436</sup> *Ibid.* at 45-46.

<sup>437</sup> This suggestion was from the lecture by Prof. INABA Kazumasa. I studied some Japanese books such as 『市制町村制並理由書』、辻清明『日本の地方自治』（岩波書店、1976年）、大石嘉一郎『近代日本の地方自治』（東京大学出版会、1990年）with his help when I participated in his schooling, (March 2019).

<sup>438</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: Implementation of the City Law and Town and Village Law (1881-1908)*, Volume 2, Council of Local Authorities for International Relations (CLAIR), Institute for Comparative Studies in Local Governance (COSLOG), and National Graduate Institute for Policy Studies (GRIPS), 2011, 1.

<sup>439</sup> *Ibid.* at 30.

There were two-tiered local system consisted of prefecture and country, and city and municipality (town and village). After 1923, after abolishment of the county system, there were only prefecture, and city and municipality (town and village).

In Meiji era, chapter 6 (Article 115 and below) of the City System (Shi-sei) in 1888 stipulated “supervision of city administration”, with the prefectural governor first and the Minister of Interior second. With regard to towns and villages, the supervision was given to the county governor of the region first, the prefectural governor second, and the Minister of Interior third.<sup>440</sup> Minister of Interior was also given the power to dissolve the municipal council. The Minister of Interior and the Minister of Finance had the power of giving approval on matters such as the disposal of valuable asset, the new borrowings, the introduction of a special tax and the imposition of additional taxes by more than a set percentage onto national taxes.<sup>441</sup>

The local public entity’s bylaw needed permission from their higher authorities such as permission or approval from the respective prefectural governor or the central government.<sup>442</sup> The governor of the prefecture had been the officials of central ministry in Meiji era, because the governors were appointed by central government. This is a so-called “administrative tutelage” system.<sup>443</sup> Prefectural governors could reprimand city mayors, deputy city mayors, council members, committee members, the head of ward and city employees. Prefectural and county governors could reprimand town and village mayors, deputy mayors, the head of ward, and town and village employees. Mayors had a dual status as the head of the municipality and the agent of the central government organ dealing with the affairs called “agency delegated affairs”.<sup>444</sup>

In Meiji era, the delegated affairs system was established based on the German model where a part of the central government administrative affairs was delegated to local public entity especially

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<sup>440</sup> City System and Town and Village System Law, 1888, (Shisei Chosonsei) (1888 No. 1), Chapter 7, art. 119 and below.

<sup>441</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: Implementation of the City Law and Town and Village Law (1881-1908)*, Volume 2, 2011, 13.

<sup>442</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 69.

<sup>443</sup> *Ibid.* at 69-70.

<sup>444</sup> Akio Kamiko, *Historical Development of Japanese Local Governance: Implementation of the City Law and Town and Village Law (1881-1908)*, Volume 2, 2011, 13 and 14.



to the executive agency (governor of a prefecture, mayor of a municipality, etc.) to handle duties of central government, with the instruction and supervision of relevant ministers, by utilizing the local public entity resources.<sup>445</sup>

During 1909 to 1929, as a result of economic change and the urbanization advancement, there was an increase in the duties of local public entities. Those duties were the provision of the water supply and sewerage system, elementary schools and junior high schools, afforestation and flood control work, and public health work. As a result of the development of party politics, when the cabinet changed, the prefectural governors were changed at a significant number of cases. In 1926, there was the introducing of a Popular Election System (universal adult male suffrage) and the expansion of local autonomy rights in the amendment of the Laws for the prefectural system and for the city, town and village system.<sup>446</sup> As a result, the appointment of the mayor of a city, town or village was made based on the election by the council of the municipality concerned. There was no longer required official approval from the prefectural governor or the Minister of Interior. Also, there was no longer required permission to change the location of the city hall, and to establish a city, town or village association.<sup>447</sup>

In 1911, the City, Town and Village System was under the full- scale revision. Two Laws were enacted, the city system and the towns and villages system. The main changes were that the members of the assemblies were all to be elected for a four-year term instead of half of the members being elected every 3 years out of the six-year term. The number of council members were increased based on the size of the population.<sup>448</sup> The city council, previously acted as the executive organ of the city, was revived as the organ to make resolution, and all executive power was vested only in the chief of the city (=mayor).<sup>449</sup>

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<sup>445</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 53.

<sup>446</sup> Hiroshi Ikawa, *Historical Development of Japanese Local Governance: The Development of the Prewar Local Autonomy System (1909-1929), Volume 3*, Council of Local Authorities for International Relations (CLAIR), Institute for Comparative Studies in Local Governance (COSLOG), and National Graduate Institute for Policy Studies (GRIPS), 2010, 2 and 20.

<sup>447</sup> *Ibid.* at 20.

<sup>448</sup> *Ibid.* at 16.

<sup>449</sup> *Ibid.* at 19.

These two systems were revised in 1921, 1926, and 1929 with an aim of strengthening the right of local autonomy and reducing the items needed for getting approval or permission from the prefectural governor. The prefectural system was revived in 1914, 1922, 1926, and 1929 with an aim of strengthening the power of local assemblies and conferring on prefecture the right to enact bylaws. In 1923, the county system (*Gun*) was abolished. The Chief of the counties and the county offices status were reduced to a local organs of the central government. In 1926, the county offices were abolished marking as a complete reform based on the Imperial edict of June 1926.<sup>450</sup> The reasons were that the county had no visible affairs. It had a short history, and people had a weak awareness of their autonomy and independence. The abolition of the counties contributed to the development of the towns and villages.<sup>451</sup>

In 1926, the Kenseikai Cabinet carried out the reform of the implementation of Popular Elections. In 1929, the Seiyukai Cabinet carried out the decentralization reform with the expansion of the local autonomy. There were some main points of the reform such as the authority to enact bylaws and ordinances were given in the same way to both prefecture and municipality; there was the abolishment the right of the Minister of Interior to reduce prefectural budgets; there was a reduction of the items that required the permission from the Minister of Interior. Moreover, the rights of local council were strengthened such as the local council members had the right to submit bills (with the exception of bills on budgetary matters); there was the expansion on the scope of the submission of written opinion on matters of public interest; the restrictions were put on the rights of prefectural governors and municipal mayors to execute draft bills; and there was the abolishment of the right of prefectural governor to discontinue prefectural council.<sup>452</sup>

From 1930 to 1945, there was the rise of militarism. There were a few assassinations including two attempts of coup d' Etats. In November 1930, Prime Minister Hamaguchi, from the Minseito Party, who won a sweeping victory in the general election of February 1930, was

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<sup>450</sup> *Ibid.* at 3.

<sup>451</sup> *Ibid.* at 21.

<sup>452</sup> *Ibid.* at 22 and 23.

assassinated. In 1931, the Japanese army planned the two attempts of coup d' Etats which were ended in failure. In February 1932, the former Minister of Finance, Inoue Junnosuke, was assassinated. In May 15, 1932, the Prime Minister, Inukai, was assassinated by both the officers from the Imperial Japanese Navy and aided by army cadets. The party politics in Japan was signaled coming to an end. As a result, the Prime Ministers, who headed the two following cabinets, were from the naval backgrounds. In February 26, 1936, there was an assassination by a group of 1400 young Army officers, killing Minister of the Imperial Household, Saito Makoto, who was the former Prime Minister, and killing Minister of Finance, Takahashi Korekiyo. The reason of the assassination was because of his rejection of the military budget demands and he was being hated by the army. From that moment on, the reform was made that the army and navy serving officers were nominated as the Minister of Army and Minister of Navy. Therefore, there was a stronger influences of military on cabinet and national decision-making.<sup>453</sup>

World War II began in 1939. Japan army invaded the French Indochina's Northern part. After the nomination of Prime Minister Tojo Hideki in October 1941, the relationship with America became worse and war broke out in December 8 of the same year, making the start of the Pacific War. In May 1945, Japan accepted the Potsdam Declaration. The Pacific War came to an end. Local autonomy system under the wartime were performed in the context of giving absolute priority to the pursuit of the war. Prefectures and municipalities were considered as organs of the central government, with the great duties to implement the great amount of the imperial ordinances enacted during war time.<sup>454</sup>

Local public entity in Japan were already regarded as a type of public corporation in the Meiji era, but the nature of their affairs was limited. Local public entity was able to handle with affairs such as water supply and facility management, but police were only handled by central

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<sup>453</sup> Hiroshi Ikawa, *Historical Development of Japanese Local Governance: Local Autonomy in the Period of Economic Depression and in Wartime (1930-1945)*, Volume 4, Council of Local Authorities for International Relations (CLAIR), Institute for Comparative Studies in Local Governance (COSLOG), and National Graduate Institute for Policy Studies (GRIPS), 2011, 5 and 6.

<sup>454</sup> *Ibid.* at 5 and 6.

administration. As a case of police, in the case of affairs belonging to the exercising public authority type of affairs, those type of affairs could not be placed to the affairs of local public entity.

The Ministry of Interior had controlled both police and local public entities, and other matters. The local public entity's relationship needed the care and the approval or permission of central government.<sup>455</sup> During the Meiji era, the central government had power over the local public entities by appointing governors and mayors. Local public entities were the agents of the central government for executing administrative duties.<sup>456</sup>

Since the introduction of the modern local autonomy system in 1888, the number of prefecture are 47 which has remained the same, but there was the merger of 70,000 cities, towns, and villages into 15,000 entities in 1889 during the Great Meiji Consolidation. Next, from 1953 to 1961, there is the second wave of merger based on the Law for Promoting Municipal Merger. There were around two-thirds of 10,000 entities had been decreased during the Great Showa Consolidation. From 1999 to 2016, during the Great Heisei Consolidation, the number of municipalities had decreased from 3229 to 1718. The reasons of the municipalities merger in Japan were to adjust to the expended administrative authority and the progress of decentralization, and to receive the administrative and financial capacities necessary to deal with the updated problems that were brought about by the social and economic development.<sup>457</sup>

The end of the Meiji era was the beginning of the of the Occupation force or the Constitutional change era. Meiji era legal system was influenced by German legal system, so that Japan was in the group of “written” law countries. But, American legal system was a common law countries or “precedent” which legal culture was in a group of “unwritten” law countries. The following part will discuss the changes of local system under the Constitutional change era.

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<sup>455</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 19-21.

<sup>456</sup> Satoshi Shimizutani, *Local Government in Japan: New Directions in Governance toward Citizen's Autonomy*, (Asia Pacific Review, Vol. 17, No.2, 2010), 99.

<sup>457</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 3-4.

### 3.1.2. Constitutional Change and the Local Autonomy Law (1945-1990s)

On the 14 August, 1945, the imperial message of ending the war was broadcast nationwide with last message urging Japanese people “to bear the unbearable” implying as “just weathering the typhoon that will blow over sooner or later”.<sup>458</sup> After this moment, there were several changes of the national and local systems.

In 1946, there was the establishment of the new Japan’s Constitution by the Occupation force’s influence. The new Constitution took effect in 1947. The Constitution gives Local Autonomy a very import value to bring about democracy. Also, it places local public entities within the central government structure. Japan’s local autonomy was stated in the Constitution in chapter 8 in which there were 4 Articles guaranteeing local autonomy and stating about its basic nature.<sup>459</sup> Articles 92 to 95 stated about the basic principle of local autonomy, the establishment of the local legislative council including the direct election of the legislators, the executors and the head of agencies.

In 1947, the Local Autonomy Law was adopted along with various laws relating to local autonomy and in accordance with the principle of local autonomy stated in Article 92 of the Constitution. Local Autonomy Law stated about the basic matters of the local public entities’ operation and organization such as their agencies, residents, types, powers, legislations, financial affairs, the relationship between the central and local public entities and between the local public entities themselves. Other laws concerning with the local autonomy were passed such as the Local Finance Law, the Local Tax Law, the Local Public Service Law, and the Public Offices Election Law.<sup>460</sup>

The Ministry of Interior, which had controlled both police and local entities, was dissolved. The Ministry of Justice was abolished, which was the end the central government control of the

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<sup>458</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 14.

<sup>459</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 1.

<sup>460</sup> *Ibid.* at 2.

Judiciary. Labor Ministry was created along with internal or domestic agencies to take over the works devolved.<sup>461</sup>

#### **a) The Principle of Local Autonomy and Changes of the Constitution**

##### **The Principle of Local Autonomy**

There is a principle of local autonomy codified in the Constitution 1947. The Constitution of Japan, Article 92 codified that “Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.” The principle of local autonomy consists of two autonomies, both the autonomy of residents and the autonomy of entity.

The principle of local autonomy, stated in the Constitution in Article 92, is a general statement that can be interpreted in term of two established ideas such as the residential autonomy (or autonomy of residents) and organizational autonomy (or autonomy of entities). The former, which is the concept originated in the UK, refers to the notion of local resident participation in local public entities decision that affect their lives which is the democratic elements of local autonomy. The latter, which is the concept developed in continental Europe, refers to the notion of local public entity possessing an independence of central government which is the liberal elements of local autonomy.<sup>462</sup>

The concept of autonomy of residents and entity has been discussed and consisted in the principle of local autonomy stated in the Constitution. The autonomy of entity is the norm that the local public entity has independent legal personality. Local public entity is guaranteed as a corporate entity independence from the central government. As a result of an independence from each other, the disputes or conflicts between the central government and the local public entity inevitably arise. Then, the conflict resolution systems are needed in different form depend on social conditions in each society. It is a significant problem of theory and practice of Local Autonomy Law.

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<sup>461</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 19.

<sup>462</sup> Satoshi Shimizutani, *Local Government in Japan: New Directions in Governance toward Citizen's Autonomy*, 103-104.

The autonomy of residents refers to the rights of the residents to directly elect the chief executive officers of all local public entities, and the members of their assemblies. This right is protected by the Constitution. The national Diet (legislative branch) cannot amend the Local Autonomy Law so that the Governor will be appointed by the central government. This amendment is unconstitutional.

### **The Reverse Course**

During the Occupation period, the Occupation force established the independent regulatory bodies of the central government called the commission. After the end of the Occupation, there was a reverse course. The commissions introduced during the Occupation period were disappeared one by one. The reason was that those commissions were seen rivals or resented by bureaucrats.<sup>463</sup>

Given this reverse course, although, General MacArthur decentralized the Japanese police system from central control into city, town, and village police units, the police system was half-way recentralized up to the prefecture level with the reason of economy and efficiency. The Value Added Tax Law belonging to the Shoup Tax System, which was the recommendation of Columbia University Professor Dr. Shoup, was first delayed with no time limit and finally deleted.<sup>464</sup>

### **b) The Changes and the Continuity of Local Public Entity System**

#### **The Changes of Local Public Entity System**

Compared to the previous administrative system, the Americanized post-war local autonomy system was a different one. There were changes as the following. First, the bylaw made by local public entities needed only report to for filling at the Local Government Board (upgraded to the Local Government Ministry). It is not required to get permission from the higher authorities and the central government. The Board can possibly give advice and recommendations.<sup>465</sup>

Second, local public entity's relationship, which were previously needed the care and approval of central government on almost all important decisions, were changed entirely by a new

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<sup>463</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 89 and 94.

<sup>464</sup> *Ibid.* at 14-15.

<sup>465</sup> *Ibid.* at 70.

Law of Local Autonomy. The previous relationship of centralized supervision was imitated the Napoleonic system “administrative tutelage” practiced in France and in the European continent where the local entities were required the central government’s permission or approval on almost all important decisions.<sup>466</sup> It takes time for local public entity to realize “local autonomy” as stated in chapter VIII of the new Constitution. Moreover, the central vs local public entity relationship was provided for the first time in the new Constitution.<sup>467</sup>

Third, the governor of the prefecture had been the officials of central ministry in Meiji era. However, the governor of the prefecture has been elected by residents after 1947 Act. This means that the prefecture became a prefect of local public entity after constitutional change. This is a big difference from before the War. Before the War, there were two laws, the City System and Prefectural System, but these laws were unified into a comprehensive law called the Local Autonomy Law.

### **The Continuity of Local Public Entity System**

Two types of affairs that existed in the Meiji era remained after the war. For example, the Local Autonomy Act of 1947 inherited the prewar concept of affair (Article 2). Even after the War, there was the delegated affair (Kikan-inin-jimu [=Local agency delegated affairs] [Kikan (local agency)-inin (delegated)-jimu (affairs)]) in which “executive department” of local public entities performed central affairs. There was also "supervision" (chapter 10 of the 1947 Act) on local public entities. This is an example of the continuous legal system of the old Meiji era even after the Constitution changed.

In the post-War legal system, local public entities are independent of the central government. In each local public entity, the residents have the rights to directly elect their mayors, governors, and local assemblies.<sup>468</sup> In reality, local autonomy has not strongly developed, because the local public entities have been ranked as the central government’s auxiliary organization executing the

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<sup>466</sup> *Ibid.* at 20-21.

<sup>467</sup> *Ibid.* at 21.

<sup>468</sup> Satoshi Shimizutani, “Local Government in Japan: New Directions in Governance toward Citizen’s Autonomy”, (Asia Pacific Review, Vol. 17, No.2, 2020), 99.



administrative affairs imposed by the central government with narrow scope of discretion resulted from fiscal limitation. Local public entities, including the local council, are not powerful in voice.<sup>469</sup>

**c) The Court Case for the Gradual Development of Local Autonomy System**

Japan's local autonomy was gradually developed. According to Hiroshi Itoh and Lawrence Ward Beer, the Supreme Court placed a vital role based on their discussion on selected Supreme Court decision by referring to the Constitution<sup>470</sup>.

For instance, they introduced a Supreme Court decision of 27 March 1963. This is a well-known case in Japan as the Tokyo Ward (Shibuya-Ku) case. The defendant received money in connection with the election of the ward mayor by the Shibuya Ward Council. At that time, ward mayor was not elected by residents but by the council. Defendant insisted that the legal system was unconstitutional one because ward mayor was appointed by the council not residents.

The Supreme Court decided as follows. Article 93-2 of the Constitution mentions the local public entities. The Constitution guarantees a local self-government in order to assure a type of political structure under which residents of a community would have their own entities to manage public matters that are closely connected to their daily lives. First, it should have basic powers of local self-government as a considerable degree of autonomous power to legislate, to administer, and to finance. Second, it takes more than treatment by law as a local public entity in name to be a local public entity in the above sense; there must exist a social foundation with the sense of being a communal body.

The second judgment above seems to be particularly important. Not only does the central government transfers affairs to local public entities, but in fact, if there is no sense of being a communal body, it is not understood as local public entities based on the Constitution. This judicial reasoning should be noted in the decentralization reform legislation after 1990's.

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<sup>469</sup> *Ibid.* at 100.

<sup>470</sup> Hiroshi Itoh and Lawrence Ward Beer, *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961-70*, (Seattle and London: University of Washington Press, 1978), 45-49. Translation written on page 46 is cited in following text.

### 3.1.3. Era of Decentralization Reform (1990s-Present)

Gradually, there was the Diet Resolution on the Promotion of Decentralization as the formal debate in 1993, which was developed into the Decentralization Reform Promotion Law, in 1995. Then, the Decentralization Promotion Committee was created for considering the reform. As a result, the Comprehensive Decentralization Law was promulgated in 1999, and came into effect in 2000. The decentralization reform was the turning point to the new era of local autonomy consisting of some important aspects including the clarification of the relationship between local public entity and central government as equal and cooperative bodies; the abolishment of delegated affairs; and establishment of the dispute settlement procedures between central and local public entities.<sup>471</sup>

This part will analyze the characteristic of decentralization reform in the 1990s consisted of three main points including the 1999 amendment of the Local Autonomy Law, the abolition of delegated affairs, and establishment of a new rules of involvements.

Based on the 1999 amendment of the Local Autonomy Law, there were around three hundreds of laws amended along with this amendment. Significantly, local agency delegated affairs was abolished. There are two types of affairs of local public entity, “local autonomy affairs” [= Jichi Jimu] and “statutory entrusted affairs” [= Hotei Jutaku Jimu]. The revised Local Autonomy Law Article 2-8 states that “In this Law, “Local government affairs” shall be affairs performed by local public entities with the exception of statutory entrusted affairs.”<sup>472</sup> Moreover, as stated in Article 2-9, “In this law, “statutory entrusted affairs” shall refer to the following; 1. Of the affairs performed by the To, Do, Fu, Ken, city, town, village or special ward in compliance with the law or by cabinet order founded in law, those affairs concerning matters that are particularly designated by law or by cabinet order founded in law as being properly the task of the central government, for which the central government must ensure appropriate handling. (hereinafter referred to as “Type 1 statutory entrusted affairs”). 2. Of the affairs performed by the city, town, village or special ward in compliance with the law or by cabinet order

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<sup>471</sup> Satoshi Shimizutani, *Local Government in Japan: New Directions in Governance toward Citizen's Autonomy*, 100.

<sup>472</sup> Revised Local Autonomy Law, 1999, art. 2-8, accessed August 5, 2021, <https://nippon.zaidan.info/seikabutsu/1999/00168/contents/003.htm>

founded in law, those affairs concerning matters that are particularly designated by law or by cabinet order founded in law as being properly the task of the To, Do, Fu or Ken, for which the To, Do, Fu, or Ken must ensure appropriate handling. (hereinafter referred to as “Type 2 statutory entrusted affairs”).”<sup>473</sup>

In short, statutory entrusted affairs were originally the central government affairs and the central government is still responsible for guaranteeing the proper implementation. Importantly, on this type of affairs, relatively strong central government involvements are permitted under the Local Autonomy Law.<sup>474</sup> In this way, the issue of continuity and disconnection before and after the War has changed its stage from [affairs] to [involvements] after decentralization reform. There are also multiple cases that were reviewed by the Supreme Court which will be discussed later in this chapter.

The central government and local public entity affairs are clearly distinguished and codified. Under the amended Local Autonomy Law 1999, local public entities have broad responsibilities for implementing administrative affairs in within their jurisdictions, independently and comprehensively. Moreover, the relationship between national and local public entity is equal, in principle. Local public entity is no longer the national agents or units.

Principles of allocation of affairs are considered as the “principle of municipal priority”, because the affairs are transferred to municipalities firstly, then to the prefectures, and finally to the central government. This principle is similar to the “principle of subsidiarity”.<sup>475</sup>

#### **a) The Necessity of Local Public Entity**

The local public entities have played an important role as the public administration level closest to the people in order to provide the public service and to respond quickly to the people needs. There is the fast development of information technology, the diverse values of people, the diversity of problems in the society that may cause the variety of the people’s needs. The monolithic, standardized central governments, in most countries, face difficulty to address the diversity of issues resulted from

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<sup>473</sup> *Ibid.* art. 2-9.

<sup>474</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 15.

<sup>475</sup> *Ibid.* at 15.

the rapid development and social changes. That is why the nimble and innovative local public entity system is becoming widely recognized and praised.<sup>476</sup>

The significance of local autonomy after the enactment of the Constitution is ambiguous, but according to a Japanese scholar, the meanings of local autonomy “In purely ideal terms, if sovereignty or general will of the public is truly realized in a central government, it may not be necessary to emphasize local autonomy under the principle of democratic centralized governance. But local autonomy is not only guaranteed for technical work in the local level but rather it is guaranteed as a contradictory opposition to the arbitrary exercise of power by the central government and this is the reason of existence of local public entities based on the will of local residents as a wisdom of democracy. Thus, the local public entities require central government to realize the daily interests of the residents and it has potential of pressing central government to change its policy and improve it.”<sup>477</sup>

#### **b) The existence of the centralized government and rapid economic development**

After the end of the Cold War era, the chance of the institutional change has come in the 1990s. Japanese legal system and the Local Autonomy Law has changed as the cause of so called globalization. Given this change, the decentralization reform as one of the administrative (governmental) reforms in Japan started after the 1990s.<sup>478</sup>

The main reason and the main goal to promote administrative decentralization is relatively clear for the central government of Japan. The main reason is that there are diverse needs of the people and the socioeconomic changes such as globalization, advancement of the information communication technology revolution, population decline, reduce birthrate, and aging of society. The main goal is to respond to the people needs in this situation. That is why it is important to

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<sup>476</sup> *Ibid.* at Foreword.

<sup>477</sup> Murio Tsutomu, *Development of the Modern Administrative Law*, (Yuhikaku, 1978), 145. This is not translated into English, I would like to thank for the effort of tentative translation by Prof. Inaba Kazumasa’s lecture and help of Mr. Chinket Metta, at Nagoya University at the time of writing this thesis.

<sup>478</sup> I received an explanation about the situation of Japanese law and some suggestions from academic supervisors in Nagoya University, Graduate School of Law.

promote administrative decentralization with a strong belief that local public entities should be responsible for providing services close to people's daily lives. Moreover, local public entities should have more increasing roles as comprehensive administrative entities in each region in order for developing "unique and dynamic local societies full of vitality" so that a comfortable and prosperous sense of citizen life is able to realize.<sup>479</sup>

### **c) The Local Autonomy System Being Introduced by a Strong Central Government**

In May 1995, with the initiation of the central government of Japan, the "Decentralization Promotion Law" was enacted to promote decentralization in a comprehensive and systematic way. In July 1995, based on this law, the Decentralization Promotion Committee was created in order to consider the specific measures for advancing decentralization. The committee submitted five recommendations to the Prime Minister including the abolition of the delegated affairs system. After accepting the recommendations proposed by the committee, the Cabinet of central government approved the "Decentralization Promotion Plan" and then the "*Comprehensive Decentralization Law*" was passed in July 1999 and effective from April 2000. This law marked the history of changing from the system created since the Meiji era to a decentralized administrative system with a remarkable change in promoting the transfer of power to local public entities.<sup>480</sup>

In July 1999, Japan amended the Local Autonomy Law by the "Law for the Improvement of Relevant Laws for the Promotion of Decentralization" which is the Omnibus Local Autonomy Law. This amended law clearly divides the responsibility between the national and local public entities. Local public entities have broad responsibility for implementing administrative affairs in their regions, independently and comprehensively. Therefore, broader roles and responsibilities are transferred, as much as possible, to local public entities for solving matters closest to the lives of residents.<sup>481</sup>

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<sup>479</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 52.

<sup>480</sup> *Ibid.* at 52.

<sup>481</sup> *Ibid.* at 14.

The Omnibus Local Autonomy Law abolishes the system of delegated affairs. Local public entities became autonomous administrative entities principally, after the abolishment of the system of delegated affairs. The central government intervention in local administration was changed and limited to a number of basic category of affairs prescribed by laws. In order to guarantee the autonomous local entity free from central government involvements, the system was developed to allow a third-party to review, with request by local public entity, on corrective directions and instructions made by the relevant minister to local public entity, and to take an additional step of appealing to the High Court for filing a complaint.<sup>482</sup>

### **3.2 Overview of Current Local Public Entity and Rights of Residents in Japan**

#### **3.2.1. Legal Framework Guarantee of Local Autonomy**

##### **a) The Constitution**

The Constitution of Japan chapter VIII on Local Self-Government<sup>483</sup> pointed out the importance of the basic principle of local autonomy as stated in Article 92 that “Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.” The principle of local autonomy consisted of the autonomy of residents and the autonomy of entities.<sup>484</sup> That is why Article 93 required for the creation of the local legislative council organs and the chief executive of local public entities with direct election by the residents in their jurisdiction in order to ensure the autonomy of residents. As stated in Article 93, “The local public entities shall establish assemblies as their deliberative organs, in accordance with law. The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.”

To ensure the autonomy of entities, Article 94 officially gives administrative power and the rights of autonomous legislative power to local public entities to perform these affairs within the

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<sup>482</sup> *Ibid.* at 53.

<sup>483</sup> The Constitution of Japan, (1947), art. 92-95, accessed July 25, 2020 in: [https://japan.kantei.go.jp/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

<sup>484</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 1.

scope of law.<sup>485</sup> As stated in Article 94, “Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.” Article 95 stated about the special law (Local Autonomy Special Law) which is applicable only to specific local public entities with the consent of the local public entity which required a referendum for the enactment.<sup>486</sup> Article 95 stated that “A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.”

The Constitution is the fundamental law which clarified the local autonomy in the four Articles (Article 92-95) in chapter VIII. This Constitutional status of local autonomy guaranteed the existence of local public entities from arbitrarily abolishing, and ensuring the autonomy of residents and the autonomy of entities. Also, the Constitution ensured the separation between the legislative council from the chief of executive and chief of any agency, because both of the local council and executive are directly elected by the residents.<sup>487</sup>

#### **b) The Local Autonomy Law**

The Constitution of Japan, Article 92 stated that “Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.” As a result, the “Local Autonomy Law” was enacted. The Local Autonomy Law consisted of the organization and operation of the local public entities, the relationship between the national and local public entities, and the relationship among local public entities. The local public entities organization and operation includes the types, powers, residents, legislative assemblies and executive or agencies, and financial affairs.<sup>488</sup>

Previously, based on the Local Autonomy Law, there is the system of delegated affairs. This system was abolished by the amended Local Autonomy Law in July 1999 which is known as the

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<sup>485</sup> *Ibid.* at 1.

<sup>486</sup> *Ibid.* at 1.

<sup>487</sup> *Ibid.* at 1.

<sup>488</sup> *Ibid.* at 2.

Omnibus Local Autonomy Law. Local public entities were responsible for the affairs that are implemented by themselves.<sup>489</sup>

### **3.2.2. Autonomy of Entity**

Constitutionally, autonomy of entities is guaranteed in Article 94. As stated in article 94, “Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.” According to this article, local public entities have the rights to manage four main duties: their property, affairs, administration, and their own regulation. Importantly, two duties of local public entities will be presented such as local public entity’s affairs and regulation.

#### **a) The Allocation of Affairs between Prefectures and Municipalities**

Based on the Local Autonomy Law, prefectures are considered as regional governments consisted of affairs such as the wide-scale and regional affairs, the communication and coordination affairs, and the supplementary affairs for municipalities. Municipalities are the local public entities which implement the affairs other than those which belong to the prefectures. However, the actual allocation of affairs is more “fusion type” rather than “separation type”.<sup>490</sup>

The prefectures have three main affairs. Firstly, the wide-area affairs are included the affairs of prefecture roads, river conservancy and forest, harbors, public health centers, police and vocational training. Second, it is the communication and coordination affairs that are relating to municipalities which included advice, guidance and recommendation concerning rationalization of the operation and organization of the municipality. Finally, it is the supplementary affairs for municipalities which included the affairs of museums, hospitals and high school.<sup>491</sup>

Moreover, the municipalities have different affairs such as the affairs related to family registers, resident registration, street address (affairs relating to the fundamental of residents’ live), the fire service, garbage disposal, water supply, sewage affairs (affairs relating to ensuring the safety

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<sup>489</sup> *Ibid.* at 14-15.

<sup>490</sup> *Ibid.* at 15.

<sup>491</sup> *Ibid.* at 16.



and health of resident), the public assistance, nursing insurance and national health insurance affairs (affairs relating to the welfare of resident), the management of public and citizen hall, daycare facilities, elementary and junior high schools, libraries affairs (affairs relating to the establishment and management of various facilities). and the urban design, municipal road and park affairs (affairs relating to urban development plans).<sup>492</sup>

Prefectures and municipalities dealt with many other affairs which cover all administrative areas excluding the diplomacy, defense, currency, and justice affairs which dealt with by the central government.<sup>493</sup>

#### **b) Local Legislation**

The Constitution of Japan provides the autonomous rights of legislation to local public entities. As stated in article 94, “local public entities shall have the right to... enact their own regulation within law”. Based on the Local Autonomy Law, there are two types of local public entity legislation such as the local ordinances and the local regulations.<sup>494</sup>

First, local ordinances are passed by the local council through the resolutions relating to their local affairs within the scope of affairs that are handled by them. Local ordinances are valid when that ordinances do not violate national laws and regulations, including the Constitution. Local ordinances, as well as national laws, are internal legal order. But, local ordinances are laws of the regional society within a specific local public entity’s jurisdiction or regions without any implementation power outside of that region. Local public entities rely on the local ordinances to impose obligations on residents or restrict their rights, and may introduce penalties to secure their effectiveness.<sup>495</sup>

Second, the local regulations are enacted by the chief executive relating to affairs within the scope of authority and consistence with national laws and regulations. In principle, local public entity’s regulation can be implemented only within a local public entity’s region or jurisdiction.

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<sup>492</sup> *Ibid.* at 16.

<sup>493</sup> *Ibid.* at 16.

<sup>494</sup> *Ibid.* at 17.

<sup>495</sup> *Ibid.* at 17.

Local ordinances will prevail in the case of a conflict between local ordinances (enacted by local council) and local regulations (enacted by chief executive of local public entity). Moreover, regulations can be enacted by administrative committees relating to affairs under their scope of authority as provided for by law.<sup>496</sup>

### **c) Personnel Management**

#### **❖ *Local public service personnel system***

All employees of local public entities are called local public employees which are classified as special service personnel and regular public service personnel. The former consists of the chief executive and council members, and members of committees, part-time or full-time advisors and researchers. They are not under the Local Public Service Law provisions. The latter refers to public employees other than the former type. Regular public service personnel are subject to the Local Public Service Law.<sup>497</sup>

#### **❖ *Local public employee numbers***

In 1994, at the peaking point, there were 3,280,000 local public employees. The number of local public employees has been continuously decreased to 2,740,000 as of April 2015. Prefectures consists of 1,500,000 employees and municipalities consists of 1,240,000 employees. At the prefecture level, the two large groups of employees are teachers with 890,000, and the police with 290,000. At the municipalities level, the two large groups of employees are the general administrators with 370,000, and the welfare staff with 310,000.<sup>498</sup>

#### **❖ *Authority for appointing local public employees***

The appointment authority of the local public employees depends on the different institution of the local public entity that the employees work for. This authority may belong to the chairperson

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<sup>496</sup> *Ibid.* at 17.

<sup>497</sup> *Ibid.* at 27.

<sup>498</sup> *Ibid.* at 27.

of the council, the governor or the mayor, and committee members of the board of education, etc. The appointment authority of the local public employees is based on laws, regulations, and ordinances that allowed the institutions the power to appoint, suspend, dismiss, and discipline employees. Independent agencies are created to deal with the issues of the personnel (known as the personnel commissions in prefectures and city with population over 150,000, and as the equity commission in smaller municipalities) such as the working conditions improvement and the complaints. The personnel commission makes recommendations to officials to be appointed, and the annual recommendation relating to employee salaries. The council decides to adjust the employee salaries based on the local civil service law and the recommendation.<sup>499</sup>

❖ *Appointment (recruiting, promotion, etc.) of local public employees*

In principle, the competitive examination is used to select all local public employee in local public entity by personnel commissions. In certain cases, there is a possibility of selection without competitive examination with the approval of the personnel commission or of the equity commissions. Normally, local public employees are employed and enjoy lifetime employment until reaching the mandatory retirement age (60 years-old). Based on the principle of equal opportunity provided by law in hiring and promoting, there is the prohibition against race, gender, religion, or social status discrimination. However, non-Japanese nationality employee cannot be appointed to exercise of public power or implement the local public entity's wills.<sup>500</sup>

❖ *Rights and obligations of local public employees*

The main rights of local public employees are that they are not being dismissed or suspended from work without their agreement, except the cases that stipulated in the Local Public Service Law or ordinances. Depend on the type of works, they are restricted to associate, to bargain, and to have dispute.<sup>501</sup> Moreover, the local public employees have to comply with the laws and

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<sup>499</sup> *Ibid.* at 28.

<sup>500</sup> *Ibid.* at 28-29.

<sup>501</sup> *Ibid.* at 29.

regulations, to obey the work-related orders of their superior, to work hard, and to keep the secrets of their work.<sup>502</sup> In addition, certain rights of political activities are prohibited. They cannot involve in the formation of political associations or in election campaigns in their local public entity, or hold elected office as the National Diet, the head of local public entity, or the local council member.<sup>503</sup>

The system of mutual aid associations was established for the local public employees and their family members for the short-term and long-term benefit. The short-term benefits consist of the payment for the expenses of medical care to the employee and his or her family members, and long-term benefit consist of the payments of pensions to the employee or to surviving family members. In the cause of their public duties, if local public employees are dead or injured, their family are compensated for the loss, based on the Local Public Service Accident Compensation Fund, and a cooperative organization of local public entities.<sup>504</sup>

#### **d) Relationship between Central and Local Public Entity**

The central government and the local public entity relationship is changed that the prefectures and municipalities are not the administrative units or the agents of the central government. Prefectures and municipalities are public legal entity which are independent incorporated entities, located in their respective localities and regions in order to provide local public administration service to their residents within their jurisdictions. Moreover, the representative of the governing bodies (both the legislative and executive organs) of prefecture and municipalities are directly elected by the local residents in a democratic manner.<sup>505</sup>

However, there are two types of involvements under the statutory entrusted affairs which were designated by law or by cabinet order founded in law. The first type of involvement is the involvement of the central government to To, Do, Fu, Ken, city, town, village or special ward for which the central government ensures appropriate handling. The second type of involvement is the

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<sup>502</sup> *Ibid.* at 29.

<sup>503</sup> *Ibid.* at 29.

<sup>504</sup> *Ibid.* at 29.

<sup>505</sup> *Ibid.* at 2.

involvement of the To, Do, Fu or Ken for which the To, Do, Fu, or Ken ensures appropriate handling.<sup>506</sup>

The legal basis of central government involvements to local public entity is reduced to the minimum with the most consideration to the local public entity's autonomy and independence. As in the revised Local Autonomy Law, article 245-2 stated that "An ordinary local public entity shall not be subject to nor need to be subject to involvement by the central government or To, Do, Fu or Ken in the handling of its affairs except in accordance with the law or a cabinet order founded in law".<sup>507</sup> And as in article 245-3 stated about the basic principle of involvements that "In the event that an ordinary local public entity receives or requires involvement by the central government or To, Do, Fu or Ken with regard to the handling of its affairs, the central government shall keep the involvement to the minimum necessary to achieve the purpose in hand, and shall take into consideration the autonomy and independence of the ordinary local public entity."<sup>508</sup>

Moreover, the central government ensures no requirement of the involvement of central government or To, Do, Fu, Ken when local public entities perform their local autonomy affairs and statutory entrusted affairs.<sup>509</sup> Unless there is the agreement in project implementation that consisted of the involvement between central government or To, Do, Fu, or Ken and local public entities, the central government ensures no involvement in the affairs performance of local public entities.<sup>510</sup> In an exceptional case, the central government or To, Do, Fu, Ken can involve in affairs of local public bodies if there is the failure to ensure coordination between the policy of central government or To, Do, Fu, Ken and the policy of local public bodies;<sup>511</sup> if there is difficulty to ensure appropriate handling of the affairs of local public entities without the permission, authorization or approval of the central government agency or organ such as the establishing a corporation according to special

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<sup>506</sup> Revised Local Autonomy Law, 1999, art. 2-9.

<sup>507</sup> *Ibid.* art. 254-2.

<sup>508</sup> *Ibid.* art. 245-3

<sup>509</sup> *Ibid.* art. 245-3 (2).

<sup>510</sup> *Ibid.* art. 245-3 (3).

<sup>511</sup> *Ibid.* art. 245-3 (4).

law;<sup>512</sup> if there is necessity to ensure urgently the protection of lives, physical safety or property of the people.<sup>513</sup>

The relationship can be made through advice, recommendation, and requests for the submission of data. The relationship can be made in both ways, from central to local level and from local to central level. The former relationship occurs when a Minister provides necessary directions, advice, recommendations, or requests for data from local public entities. The latter relationship occurs when local public entities request to the Minister or the governor for technical advice or recommendations or necessary information. As stated in article 245-4 (2), “A Minister may, in respect of matters under his or her charge, give necessary directions to the governor and other executive organs of the To, Do, Fu, or Ken relating to advice or recommendations to, or a request for the submission of data form, a city, town or village as prescribed in the preceding paragraph.” and article 245-4 (3) that “The chief executive or other executive organs of an ordinary local public entity may make a request to the Minister or the governor or other executive organs of the To, Do, Fu or Ken for technical advice or recommendation or for necessary information in relation to the management and execution of matters coming under their charge.”<sup>514</sup>

Based on the revived Local Autonomy Law 1999, there are specific involvements as follow. First, as a central government representative, the Minister will request for rectification to local public entities when they are deemed to violate legal stipulations and impair public interest. After receiving the request for rectification, local public entities rectify the violation and improve the condition.<sup>515</sup>

Second, the executive organs of the To, Do, Fu or Ken make recommendation to rectify the violation of legal stipulations and the impairment of the public interest made be a city, town or village in handling the local public entities’ affairs.<sup>516</sup>

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<sup>512</sup> *Ibid.* art. 245-3 (5).

<sup>513</sup> *Ibid.* art. 245-3 (6).

<sup>514</sup> *Ibid.* art. 245-4 (2)(3)

<sup>515</sup> *Ibid.* art. 245-5.

<sup>516</sup> *Ibid.* art. 245-6.

Third, the direction to rectify is made by the central government (Minister) to To, Do, Fu or Ken, or by To, Do, Fu or Ken to city, town or village when statutory entrusted affairs' legal stipulations are violated or the public interests are impaired.<sup>517</sup>

Fourth, the execution by proxy is used when the governor of To, Do, Fu or Ken violates, neglects to handle or implement a type 1 Statutory entrusted affairs, or fails to rectify the problem so that it impairs the public interest, the Minister writes a letter to direct the governor to solve the matters in a fixed time scale. If the governor fails, the Minister may bring a suit before the high court within the jurisdiction of To, Do, Fu or Ken to seek for court's instruction to the said governor to deal with matter requested. The Minister will immediately notify the governor and the high court of the date, time, place and method of the notification to the governor. The high court will decide promptly the date of oral proceeding, within fifteen days, and summon the persons concerned. The court decision may give order to the governor to deal with the matter requested within a time scale set by the court. If the governor fails to comply with the court decision, the Minister may handle the matter on behalf of the governor, after the Minister notifies the governor in advance about the date, time, place and method of dealing with the matter requested. Any appeal to the Supreme Court must be made within one week of the decision. The appeal will not suspend the implementation of the decision of the high court. In the case that the request of the Minister has no good reason, the court will turn down the decision.<sup>518</sup>

Fifth, the standards of performance will be made by the Minister in order for To, Do, Fu or Ken to perform the statutory entrusted affairs in a specific standard. In the same reason, the executive organs of the To, Do, Fu or Ken can give specific standard, in consistent with the standards of the Minister, to the city, town or village for handing the said statutory entrusted affairs.<sup>519</sup>

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<sup>517</sup> *Ibid.* art. 245-7.

<sup>518</sup> *Ibid.* art. 245-8.

<sup>519</sup> *Ibid.* art. 245-9.

In the central-local involvement, there is procedures for the involvement of the central government (Ministry) or To, Do, Fu or Ken to local public entities. First, the advice or recommendations of the central government or To, Do, Fu or ken must be made in written form if it was requested by the local public entity. Advice or recommendation can be followed or not followed by local public entity. In case of not following advice or recommendation, the To, Do, Fu or Ken must not unfavorably treat local public entity.<sup>520</sup>

Second, the central government agency or the organ of the To, Do, Fu or Ken can request for submission of Data. This request is made in written form by mentioning the purport and content of the Data requested upon the request of local public entity.<sup>521</sup> The request of central government to an ordinary local public entity for rectification, issues directions must be made in written form in a proper period of time, except the urgent necessity for the request for rectification.<sup>522</sup>

Third, local public entity can request to central government agency or an organ of To, Do, Fu or Ken for consultation for which the settlement of the consultation must be strived and acted sincerely in providing consultation within a proper period of time. With requested from an ordinary local public entity, the purport and content of the opinion of consultation must be delivered in written form.<sup>523</sup>

Fourth, related to standard of permission and approval, the central government agencies and the organs of To, Do, Fu or Ken can make decision on giving approval and on the necessary standards, as specific as possible, such as when to make application or to request for consultation, permission, authorization, approval, consent (or called permission and approval) in accordance with laws and ordinances. These standards must be made known to the public. The annulment of permission or approval is also made known to the public.<sup>524</sup>

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<sup>520</sup> *Ibid.* art. 247.

<sup>521</sup> *Ibid.* art. 248.

<sup>522</sup> *Ibid.* art. 249.

<sup>523</sup> *Ibid.* art. 250.

<sup>524</sup> *Ibid.* art. 250-2.



There is a standard period for handling of permission or approval. The standard period of time normally needed for an application and after the application received must be decided by the central government agencies and organs of To, Do, Fu or Ken. This standard must also be strived to make known to the public. The application must be reviewed without delay.<sup>525</sup> In case the application is rejected or decided to annul, the annulment or rejection must be delivered in written form which clearly stated the content and reasons.<sup>526</sup>

Fifth, ordinary local public entity can make notification to a central government agency or organ of To, Do, Fu or Ken. The notification must attach with all necessary items filled in and necessary documents attached based on the formal requirement prescribed by law and ordinance.<sup>527</sup>

Finally, the written notice must be made in advance within a proper period of time, except in urgent case, to the ordinary local public body mentioning the content and reason, when the central government agency performs its own affairs that identical to those that performed by an ordinary local public entity as local autonomy affairs.<sup>528</sup>

In Japan, the relationship between central and local public entities is in a “fusion type” system where there is a mutually dependent and mutually complementary relationship. In Japan’s local autonomy system, there is a strong element of centralized power still remains.<sup>529</sup>

### **3.2.3. Autonomy of Residents**

Constitutionally, residents directly elect members of the local council and chief executive. The creation of the organs of local council and the chief executive of local public entities, with direct election by the residents in their jurisdiction, is to ensure the autonomy of residents.

Moreover, Japan’s local autonomy system has introduced both indirect democracy and direct participation system in politics by residents. Indirect democracy system refers to the residents have the rights to elect and the rights to be elected as representative council members and chief

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<sup>525</sup> *Ibid.* art. 250-3.

<sup>526</sup> *Ibid.* art. 250-4.

<sup>527</sup> *Ibid.* art. 250-5.

<sup>528</sup> *Ibid.* art. 250-6.

<sup>529</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 19.

executive. Direct participation system in politics by residents refers to the establishment of a system that residents can directly involve in the political matter in locality through direct petition and direct participation other than direct petition.<sup>530</sup>

First, direct petition is a system that if there is a minimum number of signatures of eligible voters required, citizens can demand for the council or chief executive to enact, revise or abolish local ordinances; to perform audits of government activities, dissolve the council, or remove council members or the chief executive.<sup>531</sup>

A revised Local Autonomy Law article 124 provides the right for “any person” to file a petition as stated that “Any person who wishes to file a petition with the council shall do so in writing through the introduction of its member.”<sup>532</sup>

The petition to enact, revise, or abolish local ordinances can be brought by residents to the chief executive with, at least, the signature of one-fiftieth of eligible voters. After receiving petition, the local council meeting must be convened in twenty days by the chief executive with the attached opinion and a draft ordinance. The final decision remains with the local council. However, petitions related to local taxes and usage charges are not allowed because of avoiding the abuse of the system.

The petition to audit the performance of local public entity activities can be brought by residents, at least the signature of one-fiftieth of eligible voters, to the audit committee member of local public entity in order to audit the specified activities and publicly announce the results whether or not the activities are being carried out properly.

The petition for dissolution of the council can be brought by residents, at least the signature of one-third of eligible voters, to the board of elections of that local public entity. After the petition is made, a vote by electors is conducted, and with majority votes support the dissolution, the council is dissolved. Similarly, petition for removal of council members or the chief executive is brought to

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<sup>530</sup> *Ibid.* at 19.

<sup>531</sup> *Ibid.* at 19.

<sup>532</sup> Revised Local Autonomy Law, 1999, art. 124, accessed September 18, 2020, <https://nippon.zaidan.info/seikabutsu/1999/00168/contents/037.htm>

board of elections, and if the majority vote of electors supports the removal, the council member or the chief executive is removed.

The petition for the removal of lieutenant governors, deputy mayors, ward mayors in designated cities, members of the board of elections, members of the audit committee, and members of the public safety committee can be brought to the chief executive. Chief executive brings the petition for the council to make decision. With at least two-third of members of council presented in the meeting, if three-fourths of council members support the removal, that official is removed.

Second, direct participation other than direct petition is a system of direct participation in politics other than direct petition. Direct participation refers to the way that residents directly participate in referenda concerning local autonomy special laws, and residents' petition for audit and lawsuit. As provided by the Constitution, in order to enact a local autonomy special law for a specific local public entity, that special law must be approved by majority vote from the residents in the jurisdiction. Moreover, residents have the rights to petition for audit from audit committee and to suit to the court. Residents have the rights to petition for the audit to the audit committee for seeking information relating to suspected illegal or improper acts of local public entity on disbursement of official funds, acquisition, management or disposition of properties, and execution of contract by local staff, and for seeking measure for preventing or correcting of such occurrences. In some cases, if not satisfied with the result of an audit, residents have the rights to bring suit to the court regarding illegal or improper acts. A single person can carry out this action.<sup>533</sup>

#### **3.2.4. Achievement of Decentralization Reform and Lessons**

The Local Autonomy Law and other relevant laws were amended in July 1999 by the Comprehensive Local Autonomy Law in order to change a previous relationship between the national and local public entities from a relationship of superior and inferior or master and servant to a relationship of equality and cooperation.<sup>534</sup>

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<sup>533</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 19.

<sup>534</sup> *Ibid.* at 20.

Moreover, the national and local public entities' roles have been clarified as specified in principle that local public entities are responsible, as much as possible, for all affairs closest to residents' lives. Whereas, the role of the central government is relating to the national's existence in the international community, the affairs required unified and nation-wide manner, and the executing policies from a nationwide viewpoint or on an nationwide scale.<sup>535</sup>

In July 1999, the relationship between the national and local public entities was changed noticeably when there is the abolition of the delegated affairs system and restrictions on the national administrative agencies' involvements. The chief executive is no longer a lower or subordinate administrative agency of the central government. The involvements of the central to local public entities are not allowed except allow by the laws. This is the statutory involvements principle. For example, there are non-power-related involvements such as advice, recommendation, notification, etc. and power-related involvements such as license, and permission, and instruction, etc. However, those involvements have to be at the absolute minimum necessary that provide more space to the local public entities to have the independence and self-autonomy.<sup>536</sup>

There is the establishment of the National-Local Dispute Resolution Committee in the Ministry of Internal Affairs and Communication. This committee help giving recommendation and resolve a dispute, fairly and neutrally, when a local public entity is not agreed with involvements of a national administrative agency.<sup>537</sup>

Moreover, there is a Commission for Resolving Conflicts Between the central government and the Regions which is created in the Office of Prime Minister dealing with the application of the local public entities for investigation on the involvement by the central government or by To, Do, Fu or Ken.<sup>538</sup> Local public entities chief of executives or other executive organ may write an application for an investigation to the Commission, within thirty days, when the chief of executives dissatisfied with the rectification, refusal of permission, other treatment or exercise of civil rights by the central

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<sup>535</sup> *Ibid.* at 20.

<sup>536</sup> *Ibid.* at 20.

<sup>537</sup> *Ibid.* at 20.

<sup>538</sup> Revised Local Autonomy Law, 1999, art. 250-7.

government into their affairs, or when chief of executives found the negligence, or not taking action in providing consultation by organs of the central government. At the same time, the chief of executive also gives advance notice to that organs of the central government.<sup>539</sup> The Commission conducts the investigation and makes recommendation within 90 days.<sup>540</sup> The chief of executive may bring a suit before the High Court when they are dissatisfied with the decision that the Commission made on the result of the investigation or the recommendation, on the measure taken by the central government, or did not make any investigation or recommendation.<sup>541</sup>

Besides, there is the discussion about the concept of “accountability”. For instances, according to professor Kadomatsu Narufumi, the concept of “accountability” was translated as “duty to explain” since 1990s. There are three perspectives such as how and what do the administrative organs have to explain; to whom the administrative organs are accountable; and whether accountability focuses on the process or the outcome.<sup>542</sup>

In the author’s understanding of professor Kadomatsu, after decentralization, local public entity should be “accountable” to residents horizontally. The logical relation between vertical involvements by the central government and horizontal accountability to residents has been discussed after 1990’s in Japan.

The achievement of decentralization reform and lessons of Japanese experience on local autonomy system does not happen without the contribution from the judicial involvements. The reason is that when the relationship between the central government and local public entity is equal and no longer superior and inferior relationship, the conflict between central government and local public body will be inevitably happened. In the equal relationship, when conflict occurred, the central government should not in the position of giving the judgement or final decision over the conflicting issues. The third party, who is neutral, should involve in giving the judgement based on

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<sup>539</sup> *Ibid.* art. 250-13.

<sup>540</sup> *Ibid.* art. 250-14 (5).

<sup>541</sup> *Ibid.* art. 251-5.

<sup>542</sup> Narufumi KADOMATSU, Professor, *Accountability of Administration in Japan after the mid-1990s*, (Kobe: Kobe University, Graduate School of Law), 1.

laws and legislations. Therefore, the judicial involvement is necessary. This is the Japanese experience. The following part will discuss a few cases of judicial involvements.

First case is the judgement of the Supreme Court on the case name “the case seeking the revocation of non-designation”. Osaka high court was the prior instance. This is the case between Izumisano City and the Ministry of Internal Affairs and Communication (hereinafter called the Ministry) over the revocation of non-designation and the interpretation of the laws, Local Autonomy Law (article 245-2, article 247 (3)), the Public Notice of the Ministry No. 179 of 2019 related to the hometown tax donation system (article 1 and 2, item (iii)), and the Local Tax Act (article 37-2 (2) and article 314-7 (2)). This case was decided by the Supreme Court in June 30, 2020. The core issue is that the Izumisano City competed for the designation at its best effort in disregard of the standard and advice given by the Ministry’s Public Notice. As a result, the Ministry gave a non-designation on the ground of not conforming with set standard made by the Ministry.<sup>543</sup>

Dissatisfied with the non-designation by the Ministry, Izumisano City wrote application for investigation to the Commission for Resolving Conflicts Between the Central Government and the Regions (hereinafter called the Commission). The Commission upheld the non-designation. Dissatisfied with the Commission decision, the Izumisano City brought the suit before the High Court of Osaka, which gave the judgement on January 30, 2020. The Court dismissed the claim of Izumisano City because there was a well-grounded reason for the non-designation and the Public Notice of the Ministry was lawful.<sup>544</sup>

Dissatisfied with the Osaka High Court, the Izumisano City brought the suit before the Supreme Court. The Supreme Court accepted the claim of Izumisano City as well-grounded and should be upheld. The Supreme Court quashed the judgement of Osaka High Court because its judgement was based on the Public Notice of the Ministry as an independent reason without considering other laws and regulations that causes obvious effects to the judgement. The Supreme

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<sup>543</sup> Judgements of the Supreme Court, case name: “case seeking the revocation of non-designation”, case number: 2020 (Gyo-Hi) 68, date of the judgement (decision): June 30, 2020, accessed August 1, 2021 [https://www.courts.go.jp/app/hanrei\\_en/detail?id=1770](https://www.courts.go.jp/app/hanrei_en/detail?id=1770)

<sup>544</sup> *Ibid.*

Court defined this issue as the relationship between the central government and local public entities. Therefore, the principle of statutory involvement must be considered.<sup>545</sup>

The Supreme Court evaluated that Izumisano City acted within the framework of law, although this action was considered inappropriate in the Ministry's eyes. So, it is not naturally justified to make an adverse disposition against the Izumisano City. Moreover, there is no legal provision delegating for issuing standard to the Ministry in article 37-2, paragraph (2) of the Local Tax Act. In this sense, it is important to consider based on the provisions of other related laws, the Local Autonomy Law and the principle of statutory involvement, and the prohibition of unfavorable treatment when technical advice or standards were disregarded by local public entities. The Supreme Court concluded that the Ministry's Public Notice, article 2, item (iii) No. 179 of 2019, in giving standard for the solicitation and receipt of donation is invalid as illegal.<sup>546</sup>

This case was between the local public entity, the city of Izumisano and the Ministry of Internal Affairs and Communication. The following case was between Okinawa Prefecture and the Ministry of Land, Infrastructure, Transport and Tourism (hereinafter called the Ministry).

Second case is the judgement of the Supreme Court case on case name: "Case seeking a declaration of an illegal omission under Article 251-7, paragraph (1) of the Local Autonomy Law."<sup>547</sup> This case was decided by the prior instance of Fukuoka High Court on September 16, 2016. This case simply relevant to the prefectural governor's decision of the reclamation of a publicly-owned water surface that the former governor of Okinawa Prefecture had approved (2013) for Okinawa Defense Bureau to construct the Futenma Air station facilities on the coast of Henoko in Nago City. Because the prefectural governor failed to comply with the Ministry's instruction for correcting the decision, the Ministry wrote a request of investigation to the Commission for

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<sup>545</sup> Judgements of the Supreme Court, case name: "case seeking the revocation of non-designation", case number: 2020 (Gyo-Hi) 68, (2020).

<sup>546</sup> *Ibid.*

<sup>547</sup> Judgements of the Supreme Court, case name: "case seeking a declaration of an illegal omission under Article 251-7, paragraph (1) of the Local Autonomy Act", case number: 2016 (Gyo-Hi) 394, date of the judgement (decision): December 20, 2016, accessed August 1, 2021  
[https://www.courts.go.jp/app/hanrei\\_en/detail?id=1506](https://www.courts.go.jp/app/hanrei_en/detail?id=1506)

Resolving Conflicts Between the Central Government and the Regions (hereinafter called the Commission) based on article 250-13 (1), and then brought a suit to the court based on article 245-7 (1), article 245-8, and article 251-7 (1) of Local Autonomy Law.<sup>548</sup>

The Supreme Court considered that the Ministry's instruction is legal because the prefectural governor implemented the statutory entrusted affairs under the Act on Reclamation of Publicly-owned Water Surface, and based on Article 245-7 (1) of the Local Autonomy Law. The Court concluded that the prefectural governor's failure to revoke the Reclamation Approval Revocation is illegal. This conclusion was in the support of the court of prior instance.<sup>549</sup>

Third case is the judgement of the Supreme Court, case name: "Case seeking of revocation of the illegal involvement of the central government (administrative determination) under Article 251-5 of the Local Autonomy Law." This case was decided by the court of the prior instance, the Fukuoka High Court, in October 23, 2019. The case was brought by Okinawa prefecture to the Commission for Resolving Conflicts Between the Central Government and the Regions and got unsatisfied result because it was considered as out of the scope of the Commission and as unlawful. The case was brought before the High Court and the Supreme Court. The Supreme Court decided that the Revocation of the Reclamation Approval is not regarded as a disposition and not falling in the scope of the "involvement of the central government."<sup>550</sup>

Final case is the judicial involvement related to the local council on penalty of suspension against a city council member. The judgement of the Supreme Court was made on November 25, 2020. The case name is "Case seeking rescission of a punishment of suspension." The court of the prior instance was Sendai High Court decided on August 29, 2018. The judgement of the Supreme

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<sup>548</sup> Judgements of the Supreme Court, case name: "case seeking a declaration of an illegal omission under Article 251-7, paragraph (1) of the Local Autonomy Act", case number: 2016 (Gyo-Hi) 394, (2016).

<sup>549</sup> *Ibid.*

<sup>550</sup> Judgements of the Supreme Court, case name: "Case seeking of revocation of the illegal involvement of the central government (administrative determination) under Article 251-5 of the Local Autonomy Law", case number: 2019 (Gyo-Hi) 367, date of the judgement (decision): March 26, 2020, accessed August 1, 2021 [https://www.courts.go.jp/app/hanrei\\_en/detail?id=1749](https://www.courts.go.jp/app/hanrei_en/detail?id=1749)



Court dismissed the claim that a penalty of suspension against a city council member should be subject to a judicial review.<sup>551</sup>

The issue is that a council member was suspended by the City Council for the penalty of 23 days and paid back the portion of the salary based on the number of the days suspended, because he went abroad and failed to attend the council meeting. The council member considered this penalty as unconstitutional and unlawful. The court of prior instance considered that penalty was unlawful and that this case was the judicial review. But the City council argued that the court of prior instance has no judicial review power over this issue.<sup>552</sup>

The court gave the reason that the independence of a council is justified based on the Constitution. The Constitution article 92 stipulates “the principle of local autonomy” which consisted of the autonomy of independent entities and the autonomy of citizens. In order to achieve the autonomy of residents, the autonomy of entities is used as a tool. The council member is elected by the citizens for representing their wills in the council meeting by voting, expressing opinion and making decision. Participating in the council meeting and doing such activities are indispensable for the guaranteeing the autonomy of residents. This principle has no restriction on judicial review to evaluate the reasonableness of penalty of suspension against the council member and to prevent an abusive penalty. It is not to damage the independence of the local council.<sup>553</sup>

These are cases of judicial involvement to local public entities. Those judicial involvements are discussed by law professors and the author does not have viewpoints for the evaluation, but cases of judicial involvements (as a kind of central involvement) to the local public entities provide useful information for future developments of a “local autonomy” in Cambodia. Especially, the concepts of two kinds of administrative and judicial involvement are considered as a useful tool to prevent the abuse of power and guarantee the principle of local autonomy.

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<sup>551</sup> Judgements of the Supreme Court, case name: “Case seeking rescission of a punishment of suspension”, case number: 2018 (Gyo-Hi) 417, date of the judgement (decision): November 25, 2020, accessed August 1, 2021 [https://www.courts.go.jp/app/hanrei\\_en/detail?id=1804](https://www.courts.go.jp/app/hanrei_en/detail?id=1804)

<sup>552</sup> Judgements of the Supreme Court, case name: “Case seeking rescission of a punishment of suspension”, (2020).

<sup>553</sup> *Ibid.*

### 3.3 Conclusion

This chapter presented the historical developments of local autonomy and decentralization reform in Japan. Based on the historical legal review of local autonomy and decentralization reform in Japan, the research's findings are as follows.

During the Meiji era, local public entities in Japan were already regarded as a type of public corporation. But the nature of their affairs was limited to handle with affairs such as water supply and facility management. There were delegated affairs in which the “executive department” of local public entities performed central affairs, and the national supervision on local public entities, in which “supervision of the city administration” belongs to the prefectural governor first, and the Minister of Interior second as stipulated in chapter 6 (Article 115 and below) of the City System in 1888. Also, there were two separate laws on the prefectural system and the city system. Moreover, the governor of prefecture and the mayor of municipality were the officials of the central government as the central staff appointed to work at the local public entities. The prefecture council and the city council were elected by the residents. Besides, local public entity was established by the centralized government under the Japanese initiative.

During the Occupation era, there were changes such as, first, with the new established Constitution of Japan 1947, which was established under the influence of the Occupation force, the principal of local autonomy was codified in chapter VIII (articles 92 to 95) article 92. The principle of local autonomy consists of two autonomies, the autonomy of resident (article 93) and the autonomy of entities (article 94). Second, based on the Constitution, both the executive (the governor and mayor) and legislative (local council) of local public entities must be directly elected by the local residents. Third, before the war, there were two laws, the City System and Prefectural System, but these laws were unified into a comprehensive law called the Local Autonomy Law. Fourth, there is a petition and recall system for the residents to complain and to remove elected official from position. Finally, both the legislative and executive bodies have the power to check and balance through dissolution and vote of no confidence.

However, there were two types of affairs that existed in the Meiji era remained after the Constitutional change in 1947. The pre-war concept of affairs (Local Autonomy Act 1947, article 2) was carried on after the war was the delegated affairs and the national “supervision” (chapter 10, 1947 Act) on local public entities.

During the globalization era, there are changes of the characteristic of local public entities in the 1999 amendment of the Local Autonomy Law. Based on this amendment, there were around three hundreds of laws amended along with this amendment. Significantly, local agency delegated affairs was abolished. There are two types of affairs of local public entity, “local autonomy affairs” and “statutory entrusted affairs”. In this way, the issue of continuity and disconnection before and after the War has changed its stage from [affairs] to [involvements] after decentralization reform.

After the 1999 amendment of the Act, there was no anomalous legal system in which local public entities, which are different organization from the central government, handle central government’s affairs. Local public entities are now responsible for handling all of their affairs. In this sense, it can be evaluated that the concept of autonomy of entity, which was one of the local autonomy guarantees, has finally materialized since 1999. However, the personnel and financial conditions for the autonomy of entity to fulfill their responsibilities have not fully been met. The fact that many municipalities have been merged after 1999 amendment of the Act proves this evaluation. This kind of reality of decentralization in Japan cannot be discussed in this thesis. Moreover, the relationship between the central government and local public entities is equal, in principle. In this case, the third party is needed for providing resolution between the central government and local public entities. As a result, there are also multiple cases that were reviewed by the Supreme Court.

Local residents can participate through direct participation system in politics in which the local resident can involve directly in the local political matter through direct petition, and direct participation other than direct petition. The former is a system that local resident can complain to enact, to revise, to abolish local ordinances, to perform audits, to dissolve, to remove the council members, chief executive, and staff. The latter is a system of direct participation in politics other than direct petition such as participated in referenda, petition of audit, and lawsuit.

In Japan, powerful and centralized government was the starting point. Over times, affairs have been allocated to the local public entity. Legislative, administrative and quasi-judicial or judicial involvements have been defined as legal definitions. Basic principles on the administrative involvements have been made sure. Legal grounds for administrative involvements have been codified, and various dispute solutions have been challenged.

This history of Japanese Local Autonomy Law challenges and successes might be a worth to the future Cambodia. So, chapter IV will analyze the Cambodian legal issues by referring to the Japanese experiences of local autonomy and decentralization reform.

## **Chapter IV: Legal Problems of Local Administration System in Cambodia**

Chapter I of this paper attempted to present the historical legal development of local administration in Cambodia. Chapter II provides deeper understanding of local and national organs in the present including the analysis of challenges of decentralization reform in Cambodia. Chapter III presents the experience of decentralization reform in Japan as the comparative study of legal perspective for Cambodia.

The purpose of Chapter IV is to discuss and analyze the legal issues of local administration system in Cambodia by referring to the Japan's lessons learned. Then, this thesis tries to seek a model of local autonomy by decentralization reform for Cambodia out of Japan's experiences. This chapter answers the questions: What are the possible lessons from Japan's decentralization reform? What model of local autonomy could be developed in Cambodia?

In order to find the possible lesson in the experience of the other countries, it is necessary to make clear the differences, and the common features between the two countries described in chapter I, chapter II and chapter III. This is the indispensable analysis and difficult task for the research of decentralization reform in Cambodia in the future.

### **4.1 Commonalities and Differences between Two Countries**

Commonality and difference in comparative study was thought as a very important point during early Meiji era. However, in Japanese language, it might be a significant insight for this thesis that "there is no meaning in referring to other countries without major differences, and that it is impossible to understand other countries without having anything in common."<sup>554</sup>

For me, Shuichi Kato's article discussed why Japanese translation of Western concepts became possible in the early Meiji era. It is stated that there are three conditions. The third condition is commonality and difference between Japan and western countries at that time. In Cambodia and Japan today, the differences are large and there is little commonality. But, it does not mean without

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<sup>554</sup> As I referred to the article of Kato Shuichi at supra note 31, the meaning of comparative study seems a hard question.

commonality. It is important to translate Japanese conceptions and systems into meaningful conceptions and systems of Cambodia, by referring to the concept of Japan and connecting it to the concept of Cambodia.

Local autonomy is a universal and common legal issue over any different society. For this reason, towards the universal challenges of local autonomy and decentralization, there are unique ways in different societies such as Japan and Cambodia. When describing universality or commonality, it is easy to note that democratic centralism and local autonomy are problems even in socialist countries such as China and Vietnam, although they are different from Japan and Cambodia.

The objective of this part is to find the commonalities and differences between Japan and Cambodia. Based on commonalities and differences, there are beneficial values for the legal reform in Cambodia.

#### **4.1.1. Differences**

The historical development of local administration system in Cambodia is described in chapter I of this paper, and the overview of current local administration system in chapter II. Chapter III presented the experiences of local autonomy and decentralization reform in Japan consisting of the historical legal system development of local public entity, and the overview of current local public entity, legal framework guarantees of local autonomy, autonomy of entity, and autonomy of residents, and achievement of decentralization reform in Japan. Based on the historical development and the current local systems presented, these two countries have different paths of the legal system development.

The Japanese modern legal system started when the Meiji Constitution was promulgated (on February 11, 1889) based on the Prusso-German model from Western European country and also adapted and mixed with the previous legal system. Japan began transplanting modern Western European local systems in the 1880s, that a two-tier system had been established since this time. The “reception” of Western legal system in Meiji era was brought voluntarily by Japan government. Japan followed the integrationist model of local public entity system. The local system was formed

and ruled by central government officials under the Emperor System. There were two laws of prefectural system and city system along with the Meiji Constitution. Local public entities were already regarded as a type of public corporation, but with limited affairs given such as water supply and facility management affairs. However, police were handled by central administration. There was the system of delegated affairs and central government supervision on local public entity.

Cambodia's legal tradition and development was different from Japan. The characteristic of local administration during the monarchy era, before the French arrival, was not centralized government, but the strong monarchy, under the de facto authority of the king. Because Cambodia underwent an authoritarian regime where the king was the *Deva-raja* or the God king from the early history to 1863.

Unlike Japan, Cambodia was under the French influence which was known as the French Protectorate since the French arrival in 1863, then turned to the French control or the French colony since 1884 until 1953. The French administration made the reform at the national and local administration level by introducing the French legal system that gradually implemented and coexisted in Cambodia. Originally, in 1908, the French administration introduced the reform of local system on “commune” administration, the lowest administration level. Law on the administrative management of commune was promulgated on June 5, 1908. There were several amendment of commune law in 1919, 1925, 1943 and 1953. However, the development of local system was only at the commune level.

In Japan, after the World War II, Japan was under the Occupation Force. During the Occupation era, the “reception” of foreign legal system was brought by force after defeated in the War.<sup>555</sup> As a result, after war, the Western legal system model in Meiji era was replaced with the Anglo-American model of the occupation force. The new Japan Constitution was written by the occupation force (adopted and took effect in 1947) which is similar to the American legal system.<sup>556</sup> And under the new constitution, the conception of local autonomy was born as a general law in

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<sup>555</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 13.

<sup>556</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 1.

1947. The Local Autonomy Law was enacted. The existence of the idea of local autonomy and the existence of general law are not found in Cambodia.

The American separationist model of local autonomy was introduced, along with the Local Autonomy Act which replaced the laws on the prefectural system and the city system. The Constitution of Japan 1947, articles 92 to 95 stipulated to promote the principle of local autonomy system in Japan. Although there was a reverse course to the previous legal practice, the local system was gradually developed until the new turn in the globalization era in 1990s.

Unlike Japan, after the World War II, Cambodia established a Constitution in 1947. However, there was no article about the structure and the local administration system. Cambodian got the independence from the French in 1953. However, the influence of the French legal system continued until the beginning of the socialist era in 1975. The beginning of socialist era was the end of the French influence era when all of the previous legal system was totally abolished in order to make the new beginning. As a result, Cambodia lacks legal regulations and leads to the arbitrary use of authority at local level. From 1981 to 1993, Cambodia was under the influence of Vietnamese administration backed by the Soviet Union, in which the administrative management structure and legal system was brought by Vietnamese expert. At this point, the local administration system in Cambodia experienced the Socialist legal system under the principle of democratic centralism. However, Japan had no experience of the Socialist legal system.

With the international support and the United Nation Transitional Authority in Cambodia (UNTAC), Cambodia was brought on a democratic legal system in the democratization era. There was the free and fair national election in 1993. After the national election in 1993, Cambodia had a new constitution until the present time. However, the Constitution mentions only the administrative management structure of Cambodia and the detail will be stated in the Organic Law. Local administration follows the influence of the socialist legal system and the centralization system where there was a strong central government.

Until 2001, there was an introduction of the Law on Administrative Management of Commune and *Sangkat* with principle of democracy and good governance under the decentralization



policy. CS election was conducted in 2002 with a five-year term. In 2008, there was an introduction of the law on administrative management of capital city, province, municipality, district and *Khan*, which were the higher level of commune and *Sangkat* administration.

Unlike Japan, Cambodia has no experience of local autonomy that was codified in the Constitution and no experience of the Local Autonomy Law. There is no concept of local autonomy which consists of two autonomies, the autonomy of residents and the autonomy of entity in Cambodia. Cambodia experienced a socialism legal system. This experience is completely different element to Japan's experience.

In the present situation, in Cambodia, the central government has a strong supervision power on local administration. Currently, the management of important officials at local administration such as governors, deputy governors, administrative chiefs were appointed by the central government, meaning that the decision were made by and through proposal of the Ministry of Interior. The Minister of the Ministry of Interior and head of NCDD, Sar Kheng, plays a very important role in supervising local administration affairs, guiding other ministries and moving the decentralization reform forwards. But in Japan, both the executive (governor and mayor) and council members are directly elected by residents. There is no longer the delegated affairs system. The national supervision changes its form to the national involvements system based on the statutes. Broader and clearer defined affairs of the local public entities are codified.

Japan has a two-tiered local system based on Local Autonomy Law. Unlike Japan, Cambodia has a three-tiered local system based on the two organic laws.

#### **4.1.2. Commonality**

Regardless the large difference, Japan and Cambodia have a few common points (1) existence of the centralized government and rapid economic development (2) a strong centralized government introduces local public entity system through decentralization (3) seeking for the rule of law of the governmental supervision to local organizations.

First, the powerful and centralized government was the starting point of both Japan and Cambodia decentralization reform. Japan's centralized government was legally found since the

beginning of Meiji era in which the Constitution applied the German method of setting up administrative agencies by the central government ordinances.<sup>557</sup> The Emperor was the highest organ of the central government who had the law-making power.<sup>558</sup> Japan was among the “written” law countries.<sup>559</sup> The French and German model was strongly built in Japanese bureaucrat’s knowledge. Japan’s administrative litigation and concept followed the famous French legal proverb “judging administration is itself a part of administration.”<sup>560</sup> Local system in Japan was formed by strong central government in the Meiji era.

Similarly, Cambodia’s centralized government was found since the French influent era. During the French influence, Cambodia centralized system was under the French protectorate and colony. The French had been introducing the French legal system and local system soon after the French arrival (in 1863) in Cambodia.<sup>561</sup> Under the French legal system and colony, every decision and circulation issued by the king must be accompanied by signature of the French Resident General.<sup>562</sup> Moreover, local affairs needed to be seen by appointed officials as district governor and provincial governor, then approved by the French Resident or the French Resident General. In 1947, the creation of the first Constitution, Cambodian central government was strong. Although Cambodia had gone through civil war and had experienced the Socialism era under the principle of democratic centralism, Cambodia’s local administration system was still under the strong centralized government system with the appointed provincial and district governor, and appointed commune chief, and a single party system managing the central government.

The French influence of legal system still existed in Cambodia that Cambodia is among the “written” law countries. Cambodia’s administrative litigation and concept also follows the French

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<sup>557</sup> Shuichi Sugai and Itsuo Sonobe, *Administrative Law in Japan*, (Gyosei [ぎょうせい], 1999), 19-20.

<sup>558</sup> *Ibid.* at 55.

<sup>559</sup> *Ibid.* at 25.

<sup>560</sup> *Ibid.* at 23.

<sup>561</sup> Adhémar Leclère, *History of Cambodia*, 408.

<sup>562</sup> Sorn Samnang, et al., *History of Cambodia: French Protectorate Era – the Second Kingdom of Cambodia*, 10-11.

legal system. Cambodia has no administrative court for administrative conflict. Moreover, the central government establishes the administrative agencies by ordinances.

Japan's centralized system and Cambodia's centralized system is very different in substances. However, the circumstances under which the local system was formed under the powerful central government supervision and involvements are common between the two countries.

Not to mention about Japan rapid economic growth, Cambodia has experienced rapid economic growth in which growth domestic product (GDP) had an average growth rate of 8%, which is one of the fastest-growing economies in the world.<sup>563</sup> Cambodia's GDP growth rate is 7% in 2019, and is expected around 6.8% in 2020, if not badly affected by COVID 19.<sup>564</sup>

Second, both of Japan and Cambodia's strong centralized government are on the way of introducing local public entity system through decentralization. During the globalization era, in May 1995, Japan's central government initiated the decentralization promotion in a comprehensive and systematic way with the creation of decentralization promotion law. With the central government approval of decentralization promotion plan, the comprehensive decentralization law was passed in July 1999 and came into effect in April 2000. This law promoted the transfer of power to local public entities by abolishing delegated affairs system.<sup>565</sup> On the abolition of delegated affairs system, necessity of reformation has been insisted from the local side for a long time, but it was abolished around 20 years ago in reality.

During the globalization era, Cambodia's strong centralized government had introduced local government system through decentralization reform. The centralized government started to establish the Organic Law 2001 on CS<sup>566</sup> based on the principle of liberal multi-party democracy where the structure and system of administration was changed including the election council

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<sup>563</sup> World Bank, *The World Bank in Cambodia: Overview*, accessed June 2, 2020, <https://www.worldbank.org/en/country/cambodia/overview>

<sup>564</sup> Asian Development Bank (ADB). *Asian Development Outlook 2019 updated: Fostering Growth and Inclusion in Asia's Cities*, 214.

<sup>565</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 52.

<sup>566</sup> Sar Kheng, Samdach Krolahom, *Cambodian's Sub-National Administration Management System: Decentralization and Deconcentration reform*, 14-15.

members and chief of commune. The central government of Cambodia had been moving on decentralization reform at district and province administration level. In 2005, the strategic framework on decentralization reform was approved by the central government and a national committee was created for the decentralization reform, led by the Minister of the Ministry Interior. The establishment of the Organic Law 2008 on province and district administration was the similar changes made by the central government over the structure and system of administration including the election of council. However, the governor and board of governors were appointed by the central government. Similarly, in the Meiji era of Japan, the local autonomy and centralization are mixed in which the representative of council were elected by residents only when looking at the city, but on the whole of local system was under the strong supervision by the central government and prefectural government.

In 2010, the central government created in the National Program for Sub-National Democratic Development (NP-SNDD) 2010-2019 with the vision to “develop management systems of provincial/municipal, district/khan and commune and *Sangkat* levels based on the principles of “democratic participation”. These systems will operate with transparency and accountability in order to promote local development and delivery of public services to meet the needs of citizens and contribute to poverty reduction within the respective territories.”<sup>567</sup>

In 2020, Centralized government decided to reform the district, municipality, and Khan structural by integrating line offices into district, municipality, and *Khan* administration.<sup>568</sup> In 2020, the new National Program for Sub-National Democratic Development, phase 2 (2021-2030) is in the process of development.

Finally, both Japan and Cambodia are still seeking for the rule of law of the governmental supervision to local organizations. In order to transfer roles, authorities, affairs and resources to local

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<sup>567</sup> Royal Government of Cambodia, *National Program for Sub-National Democratic Development (NP-SNDD) 2010-2019*, Phnom Penh, Cambodia, (28 May 2010), 11.

<sup>568</sup> Sub-decree 182, 183, and 184 Dated December 2<sup>nd</sup>, 2019. Sub-decree 182 on functions and structure of municipality administration; sub-decree 183 on functions and structure of Khan administration in Capital city of Phnom Penh; sub-decree 184 on functions and structure of district administration.

public entities, Japan has been introducing the Local Autonomy Law, the amendment of Local Autonomy Law in 1999.<sup>569</sup> The decentralization in Japan is still in progress.

Cambodia's central government is seeking for creating legal statutes for the local government in order to achieve the goal of decentralization reform by focusing on transferring roles, affairs, authorities, responsibilities, and resources to local governments with an aim of local development and poverty reduction as stated in the vision of the 10 years national program of decentralization reform.<sup>570</sup> Cambodia central government stated the strong commitment to decentralization reform as Prime Minister Hun Sen said in 2008, while talking about the importance of decentralization that, "reforms represent survival, death comes without reform."<sup>571</sup>

## **4.2 Legal Problems of Local Administration System in Cambodia**

Cambodia is in the critical period of decentralization reform for trying to transfer the central affairs to SNA. But at the same time, Cambodia has a centralized governing system for various reasons. Promoting a centralized and decentralized policy is contradictory. This study is intended to indicate the structure of this contradiction. And it tries to demonstrate that four legal issues arise in the contradiction between centralization and decentralization. The four issues are: (1) the deficiency of a general law on local administration system, (2) the distinguishing between corporates (legal entities) and organs of the central government (3) the nature of "affairs" of local administration, and (4) the rules of central involvements.

### **4.2.1. The Deficiency of a General Law on Local Administration System**

The logical reasons of the issue of inconsistency of sectoral laws with the Organic Laws and decentralization reform are as follow. First, the Constitution of Cambodia does not mention the principle of local autonomy or the Local Autonomy Law or decentralization reform. Hence, the

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<sup>569</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 52.

<sup>570</sup> Royal Government of Cambodia, *National Program for Sub-National Democratic Development (NP-SNDD) 2010-2019*, Phnom Penh, Cambodia, (28 May 2010), 11.

<sup>571</sup> Kato et al., *Cambodia: Enhancing Governance for Sustainable Development*, 5,  
- Hun Sen, Samdech Akka Moha Sena Padei Techo, Prime Minister of the Kingdom of Cambodia, "Rectangular Strategy" for growth, Employment, Equity and Efficiency Phase II, para 4.

sectoral laws are still valid constitutionally, although these laws were passed before and after the Organic Laws (2001 and 2008). Second, the Organic Laws of administrative management (2001 and 2008) stated in the Constitution is not the Local Autonomy Law. So that, sectoral laws that were passed before and after the promulgation of the Organic Laws are still valid and implemented with the centralization characteristic. This manner makes the sectoral law inconsistent with the Organic Laws and decentralization reform. Finally, ministerial *Prakas* and sub-decree of the government are used to transfer affairs, authority and resources to SNA. For this reason, it clearly depends on the intention of the sectoral ministers, who are holding the affairs, and the Minister of the Ministry of Economics and Finance, who is holding budget and resources, and with the facilitation of NCDDs, who is spending time to discuss and facilitate, in order to transfer specific affairs and resources to SNA. That is the contradiction of legal system without a general law on local autonomy.

As stated in article 218 of the Organic Law 2008, “The transfer of affairs and resources shall be carried out with planning, phasing, rationale, coordination, consultation, transparency and with minimal disruption to the ongoing operations of the Royal Government and the support of relevant stakeholders.”<sup>572</sup> And as stated in article 13, “The legal entity shall receive its authority through the Constitution, laws, Royal Decrees, sub-decrees and other legal instruments that are consistent with this law.”<sup>573</sup> In practice, the affairs and resources were slowly transferred to SNA. Based on sectoral laws, the sectoral affairs still belong to the ministries. In order to transfer affairs and resources to SNA, ministerial or inter-ministerial *Prakas* and sub-decree are used based on the facilitation of NCDDs. Based on the Organic Law (2008) Article 218 mentioned above, the transferring of affairs depended on the willingness of the relevant sectoral ministries, but not based on the general law or the Constitution.

Of course, there is no article about the norm of local autonomy including both autonomy of residents and entity in the Constitution of Cambodia. There are two Articles of the Constitution about the territorial division and administrative management that must be governed in accordance

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<sup>572</sup> LAMCPMDK, (2008), art. 218.

<sup>573</sup> *Ibid.* art. 13.

with the Organic Law.<sup>574</sup> There is also no legal requirement to amend all the sectoral laws based on the principle of decentralization reform including the principle of local autonomy which was not written in the Constitution.

The Organic Laws on administrative management (2001 and 2008) were considered as the Local Autonomy Law for implementing decentralization reform. In theory, these organic laws are at the higher status compared to sectoral laws which must be amended for the consistency reason. There is no general law for providing the consistency with the Organic Laws. For example, there are several attempts for several years made by NCDDs to amend three laws which belong to the Ministry of Environment and the Ministry of Agriculture, Forestry, and Fishery since 2014. The recent attempt was made in 2019, but still has not got the successful outcome.

For this reason, it is necessary to have a general law on local autonomy in Cambodia. All sectoral laws must be amended accordingly for the legal consistency reason. Japan's experience of legal reform with Local Autonomy Law in July 1999 along with around 300 laws amended can be the important lesson for Cambodia decentralization reform in the issue of legal inconsistency. Moreover, Cambodia also needs to clarify which affairs belong to the central government and which affairs belong to the local administration.

Moreover, the head of the National Committee for Democratic Development at Sub-National level (NCDD) is Deputy Prime Minister and Minister of Interior. For this reason, decentralization reform led by the Minister of the Minister of Interior is viewed as the power concentration by the Ministry of Interior. For the effectiveness of decentralization reform, the head of NCDD should be under the Prime Minister.

Due to inconsistency between sectoral laws and decentralization reform in Cambodia and the experience of decentralization reform in Japan, there is the necessity of a general law on local autonomy system. All sectoral laws must be amended accordingly for the legal consistency reason as required in the Local Autonomy Law. However, the characteristics of commune and other SNAs are

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<sup>574</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, art. 145-new (Previously Article 126) and art.146-new (Previously Article 127).

different in Cambodia. It is difficult to enact a general law for all SNA level. Even in Japan, in the Meiji era, there were two legal systems in cities and prefectures, and there was no general law.

#### **4.2.2. The Distinguishing between Corporate (legal entity) and Organ of the State**

In Cambodia, based on the Organic Laws, SNAs are the public legal entity (corporate) and the agent of the State or central government (organ of the central government). These dual characteristics lead to the issues of shirking responsibility and weak public legal entity and less autonomy of the SNA. The main problem is the strong supervision of central government.

Japan had been through the experience of dual characteristics of local public entity since the Meiji era. The supervision on the local public entity was stipulated in 1888 in the city system law that the supervision of city administration with the prefectural governor first and the minister of interior second. However, in 1999, the revived Local Autonomy Law provided a clear distinction between corporation (legal entity) and the organ of the central government by codified the national and local affairs, and most importantly abolished the delegated affairs.

When we refer to the conception of “autonomy of entity” in Japan, we can find a potential of commune system. As stated in the Law on Administrative Management of Commune and *Sangkat* (2001) Article 10, “Commune and *Sangkat* councils shall be elected by people in their commune and *Sangkat*.” If residents can exercise multiple voting rights in the sense of exercising the right to vote at the national election and at the same time exercising the right to vote at the commune council election, the local system of commune will be either a local “entity” or a local “organ” of the central government. The distinction theory of entity and organ of the central government is worth to discuss when referring to the legal concepts in Japan.

If commune councils have democratic legitimacy based on the direct election by people in each commune, nature of “legal entity” of commune could be clear. Therefore, legal nature of the commune would be a legal issue in Cambodia with reference to Japanese law. Besides, if the nature of commune is considered as the “entity” independent from the central government not a local “organ” of central governments, mutual relevant issues of “affairs” and “involvement” could be found in Cambodia.



#### **4.2.3. The Nature of “Affairs” of Local Administration**

In Cambodia, the legal nature of Capital city, provinces, municipalities, districts, *Khans*, Commune and *Sangkat* (known as sub-national administration, SNA) are the public legal entity, and the agent of the central government.

Commune affairs stipulated in the Organic Law 2001 was broad and unclear. As stated in the Organic Law (2001) Article 43, “In the role of implementing local affairs, commune and *Sangkat* has some affairs: guarantee security and public order; management necessary public service and responsible for the better operation; encouragement for the enhancement of comfort and welfare of people; support the socio-economic development and bring about the living standard of people; protect and take care of the environment, natural resources, culture, national heritage; coordinate people views in order to bring out the mutual understanding and tolerance; implement general affairs in order to respond to the people needs.”

Provincial and district affairs were also broad. There are two types of affairs, the obligatory affairs and the permissive affairs. Moreover, in the implementation of all affairs, the council must be accountable to both the citizen and the Royal Government. As stated in the Organic Law 2008 Article 34, “The council shall be accountable directly to all citizens for making decisions on priorities and for ensuring democratic development within its jurisdiction....” And Article 35 stated that “The council shall be accountable to the Royal Government for following the Constitution, laws, royal decrees, sub-decrees and legal instruments.”

As can be seen above noted, there is no distinction between the nature of the affairs. In contrast, in Japan (chapter III), there were two affairs (public affairs and delegated affairs) in Meiji and a new affair (administrative affairs) was added under new Constitution. When the theory of the nature of affairs was found in Meiji Japan, any theory regarding the nature of affairs of SNA can’t be found in Cambodia. It is unlikely that it has legal personality in the sense of being independent of the central government.

SNA is basically a local office of the central government, and it handles central government affairs. The central government including ministries has the power to directly check local organs’

affairs, and issue standards and to endorse the local affairs. Moreover, there are difference and inconsistency in administrative practices at central ministries, so the local organs have been confused.

In 1999, Japan abolished the delegated affairs and defined the local and national affairs. The Local Autonomy Law abolished the delegated affairs and provided broad responsibility to local public entities to be responsible as much as possible for all affairs closest to the life of residents.

This law provided a clear responsibility between local public entity and central government. The central government is responsible for affairs related to (1) Affairs relating to Japan as a nation in the international community (2) Affairs relating to various activities of the people that should be handled in a uniform, nation-wide manner; (3) Executing policies and projects that must be performed from a nationwide viewpoint or on a nationwide scale.<sup>575</sup> Japan is still moving on decentralization reform after the abolishment of delegated affairs and clarified the national and local affairs. This may possibly be a good lesson for Cambodia.

Cambodia is also moving toward decentralization reform. Based on Japan's experiences, Cambodia should define the national and local affairs and resources in the laws or in the would be "Local Autonomy Law" if there is any.

In Cambodia, because the local administration consisted of dual characteristic of the public legal entity (corporate) and an agent of the central government, the characteristic of SNA are hardly be considered as the local public entity. Based on the Japanese experiences, the amendment of the Local Autonomy Law must include the amendment of hundreds of sectoral laws for its conformity. Moreover, in order to turn the SNA to local public entity that is independent from the central government, the delegated affairs must be abolished. Then, the affairs of central government and SNA must be clearly distinguished and codified in the general law or Local Autonomy Law. When the law recognized the equal status between the SNA and the central government, the conflict resolution system must be established. The principle of subsidiarity must be stated in the law.

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<sup>575</sup> CLAIR, *Local Government in Japan 2016*, (CLAIR, August 2017), 14.

#### **4.2.4. The Rules of Central Involvements**

There is a strong central supervision especially from the Minister of the Ministry of Interior and Head of NCDD. This supervision is very important to help moving decentralization reform at the national level and supporting the implementation of decentralization reform at SNA.

Also, it is very important to have the mechanism to prevent central government from interfering into the affairs of local administration, as well as to prevent local administration from abusing the transferred powers. Therefore, the legal system of involvements (Kan-yo in Japan) has significance.

Cambodia has a very strong control over the local government over some important issues including the appointment of local personnel, the dissolution of elected council, the national approval or endorsement. The power to appoint local personnel of the central government was very strong under the centralization system. Previously, all personnel of local administration were appointed by the central government including ministries and institutions based on their level of position. Since 2019, only the management personnel, such as governor, board of governors, chief of administration, and CS clerk are appointed by the central government. In this reason, the council and the appointed governor and staff will be, more or less, accountable to the central government than to the residents.

Moreover, the power to dissolve the elected councils by the central government is written in both organic laws (2001 and 2008). The residents have no power to recall the elected council, based on these organic laws. When referring to Japan, it is considered that legal grounds are required for the involvements by the central government. However, there is no administrative law in Cambodia at this time that requires a legal basis for administrative activities when they violate the freedom of the people.

Therefore, even if we succeed in positioning the commune, district and province administration as a kind of local public “entity” independent from the central government, the theory that the involvements of central government that violates the freedom of the commune requires a legal basis is still difficult to be understood in Cambodia. It depends on conditions of developments

of administrative law in Cambodia that can control the administrative activities under the law. This is not just a matter of the Local Autonomy Law.

In short, the general law on local autonomy is necessary to codify the affairs of national and local public entity. Delegated affairs should be abolished. The national supervision and involvements should be codified. The national and local conflict resolution mechanism should be established. Moreover, along with the establishment of the general law, there should be the amendment of hundreds of current relevant laws for the conformity with the general law and the Constitution. Along with the general law, it is necessary to have administrative law that provides the legal basis for administrative activities whether or not they violate the freedom of the people that activities must be based on law.

#### **4.3 Conclusion**

This chapter presented one of legal challenges of the local administration system in Cambodia. This chapter also tried to learn the possible lessons to apply in Cambodia from the legal perspective of Japan. As a result, the main findings in this chapter are as follows.

There are large differences between the two countries, but there are a few common points. The main different points in both countries are as follows. The differences are that Japan began translating modern Western European local system in the 1880s, that a two-tier system had been established since that time. And under the new Constitution, the concept of local autonomy was born as a general law in 1947. The Local Autonomy Law was enacted. Whereas, in Cambodia, the French type administration was originally introduced as a modern local system in 1908. A three-tier local system was established. Moreover, the existence of the idea of local autonomy and the existence of general law are not found in Cambodia. Cambodia experienced the socialist legal system, but Japan had no this experience. Japan has introduced the administrative law, but Cambodia has no administrative law. There was the abolishment of delegated affairs in Japan local autonomy system, but not in Cambodia.

Apart from the different points, there are a few common points as follows. First, the powerful and centralized government was the starting point of decentralization reform for both Japan

and Cambodia. The central government of both countries had the approval and final decision. Second, both of Japan and Cambodia's strong centralized government are on the way of introducing local government system through decentralization. Finally, both Japan and Cambodia are still seeking for the rule of law of the governmental supervision to local public entities.

Moreover, this paper tries to demonstrate four legal issues arise under the condition of turning from centralization to decentralization system in Cambodia by referring to Japanese experience of local system. (1) the deficiency of a general law on local administration system, (2) the distinguishing between corporates (legal entities) and organs of the central government (3) the nature of "affairs" of local administration, and (4) the rules of central and local involvements.

First, there is a deficiency of the general law on local autonomy in Cambodia. There is the issue of inconsistency between sectoral laws and the Organic Laws and the policy of decentralization reform. Because the practice towards decentralization depends on each ministry, but effective supervision is an issue in Cambodia. Especially Ombudsperson organs might be considered as significant system in future. Based on the Japanese experiences, it is necessary for Cambodia to establish a general law on local autonomy. All laws must be amended according to the principle stated in the general law. However, considering that the characteristics of commune and other SNAs are different in Cambodia, it is difficult to enact a general law to all SNAs. Even in Japan, in the Meiji era, there were two legal systems in cities and prefectures, and there was no general law.

Second, there is not clear distinction between corporates (legal entities) and organs of the central government in Cambodian legal system. SNA has dual characteristics as public legal entity and as agent or organ of central government. These dual characteristics may lead to the issues of shirking responsibility and weak public legal entity under the strong centralized government. Based on Japanese experience, in order to turn the SNA to local public entity that independent from the central government, the nature of commune would be the significant issue. Because commune councils have been directly elected after 2002, this election system could be thought as giving democratic legitimacy to the commune.

Third, the nature of “affairs” of Cambodian local administration has not been discussed. SNA is basically a local office of the central government and handles central government affairs. The central government including ministries has the power to directly check local organs’ affairs, and issue standards and to endorse the local organs’ affairs. Moreover, there are difference and inconsistency in administrative practices at central ministries, so the local organs have been confused. Therefore, the affairs of central government and SNA should be clearly distinguished and codified in the general law or Local Autonomy Law.

Finally, related to the rules of central involvements and supervision, Cambodia has a strong supervision over the SNA because most of the appointment, approval, endorsement and decisions are made at the central government. This strong supervision characteristic is considered as an opposition to the principle of local autonomy when we refer to Japan. It would be important to have the mechanism to prevent central government from interfering into the SNA’s affairs, as well as to prevent local public entities from abusing the transferred powers. Therefore, the legal system of involvements has significance.

However, there is no administrative law in Cambodia at this time. Therefore, even if Cambodia succeed in positioning the commune as a kind of local public entity independent of the central government, the theory that the involvements of central government violate the freedom of the commune is still difficult to be understood in Cambodia. This is not just a matter of the Local Autonomy Law.

To sum up, this chapter illustrated when Cambodia applies the Japanese concepts, Cambodian local administration of commune can be turned, to some extent, to autonomous local public entity. Logical problem of the legal nature of commune would be the starting point for seeking a local autonomy in Cambodia.

## **Conclusion**

From centralization to decentralization, the important role of supervision of the Minister of the Ministry of Interior and the Head of NCDD is to unify the disparities of each ministry and to guide the decentralization reform of each ministry and support the implementation of decentralization reform at SNA level.

Recently, Cambodia has been trying to introduce decentralization reform, firstly, at commune level with direct election of the commune council from the resident in 2002, and lastly, at provincial and district level with indirect election of the provincial and district council in 2009. As a result, the new organization structure and the new administration system at SNA levels were established. In early 2020, there was an integration of the line offices at district level into the district administration making this administration as a unified administration system.

Generally, introducing decentralization reform from the strong centralization is a contradiction. Cambodia is in this contradiction issue. As a result, there are issues faced such as inconsistency of sectoral laws with both of the decentralization policy and the Organic Laws, unclearly distinguished between corporates (legal entities) and organs of the central government, unclearly defined the nature of affairs of national and local administration, and the lack of rules of central and local involvements or supervision.

It is important to understand the historical legal development of local administration system and the current situation of local administration system in Cambodia (see Chapters I and II). In order to understand the current legal issues and stage of decentralization in Cambodia, this study needed a comparison to other countries (Japan). Therefore, this study referred to the historical legal development of local autonomy and decentralization reform in Japan (see chapter III) to objectively analyze the current situation in Cambodia and to find out the legal issues (see chapter IV).

In Cambodia, the two Organic Laws were enacted in 2001 (for commune administration level) and in 2008 (for province and district administration level) respectively. The implementation of these two laws has been facing with the inconsistency for 20 years. Moreover, the Organic Laws itself are not Local Autonomy Law or consisting with any provision stating about or guaranteeing

the principle of local autonomy. In Japan, the principle of local autonomy was guaranteed in the Constitution and the general law (Local Autonomy Law). The principle of local autonomy consists of the autonomy of residents and autonomy of entity. These principles are not understood in Cambodia.

In Cambodia, the current situation is that the transfer of affairs has been incrementally developed in the last 20 years. SNA is basically a local office of the central government, and it handles central government's affairs. The central government including ministries has the power to directly check local affairs and issue standards, and to endorse the local organs' affairs. Moreover, there are the different and inconsistent administrative practices at central ministries, so the local organs have been confused. Therefore, it is important and necessary to have a unified rule or common rules for involvements under each ministry.

Given the examination of the development of legal system of local administration in Cambodia and Japan's experiences of local autonomy and decentralization reform, this paper will propose four legal issues that would be solved in the future as follows.

First, this study raises an issue of inconsistency of sectoral laws with both of the decentralization policy and the Organic Laws. As a result of this study, it is necessary to establish a general law on local autonomy in order to solve the issue of the inconsistency issue. All sectoral laws have to be amended for the consistency with the decentralization reform. However, considering that the characteristics of commune and other SNAs are different in Cambodia, it is difficult to enact a general law to all SNAs. Even in Japan, in the Meiji era, there were two legal systems in cities and prefectures, and there was no general law.

Second, the Organic Laws were unclearly distinguished between corporates (legal entities) and organs of the central government. As a result, Cambodia local administration has dual characteristics, as the public legal entity (corporation) and as the central agents (organ of the central government). Similarly, Japan had been through this experience since the Meiji era, but during the democratization era (in 1999), delegated affairs were abolished and local and national affairs were clearly distinguished and national and local involvements were codified providing a clear distinction between corporates and organs of the central government.



Third, Cambodia has unclearly defined the nature of affairs of national and local administration. Based on this study, the nature of the affairs in Cambodia could be an important issue in future. In contrast, in Japan, two affairs such as the public affairs and delegated affairs have been discussed. Administrative affairs were added under the new Constitution.

Finally, Cambodia is lacking rules of central involvements or supervision. Basically, the residents cannot decide the organization of the local administration and the local boundary or name. If the residents cannot decide for themselves, this will be decided by the central organs. Arbitrary change of local administration organization and the local boundary or name by the central organ is in opposition to local autonomy. Therefore, the idea is born that a unified rule is set by the law so that the central organ cannot freely change the local administration organization and the local boundary and name. Having the mechanism to prevent central governments such as ministries departments from interfering into the local affairs, as well as to prevent local administration from abusing the transferred powers is very important. Therefore, the legal system of involvements has significance.

However, in Cambodia, there is no Administrative Law at this time which requires a legal basis for administrative activities when they violate the freedom of the people. We can't argue the necessity of protection of the autonomy of commune as an analogy of people's freedom. The existence of Administrative Law is very important for regulating the arbitrary activities of administrator, for both the central government and SNA. Therefore, potential of Local Autonomy Law depends on conditions of Administrative Law in Cambodia.

For the time being, efforts to increase the legality of the supervision by the Ministry of Interior would be organizational and procedural problems in Cambodia. If the supervision of the Ministry of Interior changes from one that aims at supervision itself to one that also includes local autonomy guarantee, the specialized civil servants, special organization to supervise and the procedure of supervision will become an issue. From here, a local autonomy law seems to be born. The author expects that this work can contribute to the legal development of local autonomy in future.

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Royal *Kram* No. NS/RD/1208/1429, Law on the Establishment of National Committee for Sub-National Democratic Development (NCDD). Promulgated in (December 31, 2008).

Royal *Kram* No. 1215/015, Organic Law on the Election of Commune/Sangkat Councils [ច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាឃុំ សង្កាត់]. Amendment in (December 11, 2015).

Royal *Kram* NS/RKM/1296/36, Law on Environment Protection and Natural Resources Management [ច្បាប់ស្តីពីកិច្ចការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ]. Promulgated in (December 24, 1996).

Royal *Kram* No. 1297/273, Law on General Principle in Arranging Public Position. Promulgated in (December 1, 1997).

**c. Royal Decree**

Royal Decree No. NS/RKT/0416/373, on the Term and other Conditions of Sub-National Staff [ព្រះរាជក្រឹត្យស្តីពីលក្ខន្តិកៈដោយឡែកសម្រាប់បុគ្គលិករដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated in (April 04, 2016).

Royal Decree No. NS/RKT/0501/175, on the establishment of National Committee Supporting Commune and *Sangkat* (NCSC) [ព្រះរាជក្រឹត្យស្តីពីការបង្កើត “គណៈកម្មាធិការជាតិគាំទ្រឃុំសង្កាត់”]. Dated in (May 21, 2001).

Royal Decree No. NS/RKT/0520/505, on the Changing and Adding Members of National Committee for Sub-National Democratic Development [ព្រះរាជក្រឹត្យស្តីពីការកែសម្រួល និងបន្ថែមសមាសភាព នៃគណៈកម្មាធិការជាតិសម្រាប់ការអភិវឌ្ឍតាមបែបប្រជាធិបតេយ្យនៅថ្នាក់ក្រោមជាតិ (គ.ជ.អ.ប)]. Dated in (May 07, 2020).

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Royal Decree No. NS/RKT/0806/355, on the establishment of the National Committee for the Management of Decentralization and Deconcentration Reform (NCDD) [ព្រះរាជក្រឹត្យស្តីពីការបង្កើត “គណៈកម្មាធិការជាតិដឹកនាំការងារកំណែទម្រង់វិមជ្ឈការ និងវិសហមជ្ឈការ”]. Dated in (August 18, 2006).

Royal Decree No. NS/RKT/1213/1445, on Creation of Tbong Khmum Province [ព្រះរាជក្រឹត្យស្តីពីការបង្កើត “ខេត្តត្បូងឃ្មុំ”]. Dated in (December 31, 2013).

**d. Sub-decrees**

Sub-decree No. 02. Sub-decree on creation of *Koh Rong* municipality of *Prah Sihanu* Province [អនុក្រឹត្យស្តីពីការបង្កើតក្រុងកោះរុង នៃខេត្តព្រះសីហនុ]. Dated January 08, 2019.

Sub-decree No. 03 Sub-decree on creation of *Khan Boeung Keng Kong* of Phnom Penh Capital city [អនុក្រឹត្យស្តីពីការបង្កើតខណ្ឌបឹងកេងកង នៃរាជធានីភ្នំពេញ]. Dated on January 08, 2019.

Sub-decree No 03. Sub-decree on determining function and rank of position of provincial and municipal Governor and deputy Governor. Dated January 19, 2006.

Sub-decree No. 04. Sub-decree on creation of *Khan Kombol* of Phnom Penh Capital city [អនុក្រឹត្យស្តីពីការបង្កើតខណ្ឌកំបូល នៃរាជធានីភ្នំពេញ]. Dated on January 08, 2019.

- Sub-decree No. 05. Sub-decree on creation of *Tang Kouk* district of Kompong Thom Province [អនុក្រឹត្យស្តីពីការបង្កើតស្រុកតាំងគោក នៃខេត្តកំពង់ធំ]. Dated on January 08, 2019.
- Sub-decree No. 06. Sub-decree on creation of *Borei Ousvay Senchey* district of Stung Treng Province [អនុក្រឹត្យស្តីពីការបង្កើតស្រុកបុរីអូរស្វាយសែនជ័យ នៃខេត្តស្ទឹងត្រែង]. Dated on January 08, 2019.
- Sub-decree No. 06. Sub-decree on the Transfer of Conditional Budget to Sub-National Administration [អនុក្រឹត្យស្តីពីការផ្ទេរធនធានហិរញ្ញវត្ថុមានភ្ជាប់លក្ខខណ្ឌទៅឱ្យរដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated January 5, 2017.
- Sub-decree No. 07. Sub-decree on creation of *Ta Lor Senchey* district of Pursat Province [អនុក្រឹត្យស្តីពីការបង្កើតស្រុកតាលោសែនជ័យ នៃខេត្តពោធិ៍សាត់]. Dated on January 08, 2019.
- Sub-decree No. 08. Sub-decree on Changing of Administrative Boundary between Prey Veng Municipality and Po Rieng District of Prey Veng Province [អនុក្រឹត្យស្តីពីការសម្រួលព្រំប្រទល់រដ្ឋបាលរវាងក្រុងព្រៃវែង និងស្រុកពោធិ៍រៀង នៃខេត្តព្រៃវែង]. Dated on January 08, 2019.
- Sub-decree No. 09. Sub-decree on Changing of Administrative Boundary between Ta Khmao Municipality and Sa Ang District and Kandal Stung District of Kandal Province [អនុក្រឹត្យស្តីពីការសម្រួលព្រំប្រទល់រដ្ឋបាលរវាងក្រុងតាខ្មៅ ជាមួយស្រុកស្អាង និងស្រុកកណ្តាលស្ទឹង នៃខេត្តកណ្តាល]. Dated on January 08, 2019.
- Sub-decree No. 13. Sub-decree on Procedure of Creation, Preparation, and Functioning of Procurement Committee and Procurement Unit [អនុក្រឹត្យស្តីពីនីតិវិធី នៃការបង្កើត ការរៀបចំ និងការប្រព្រឹត្តទៅ នៃគណៈកម្មាធិការលទ្ធកម្ម និងអង្គភាពលទ្ធកម្ម]. Dated on February 23, 2015.
- Sub-decree No. 16. Sub-decree on Commune/*Sangkat* Fund [អនុក្រឹត្យស្តីពីមូលនិធិឃុំ សង្កាត់]. Dated February 25, 2002.
- Sub-decree No 16. Sub-decree on the Organization and the Functioning of Ministry of Interior [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃក្រសួងមហាផ្ទៃ]. Dated December 20, 1993.
- Sub-decree No 18. Sub-decree on Number of Councilors of Phnom Penh municipality, Provinces, Municipalities, Districts and Khans for the 1st Mandate. Dated January 12, 2009.
- Sub-decree No.18. Sub-decree on the establishment of one window service mechanism for providing administrative service at sub-national administration [អនុក្រឹត្យស្តីពីការបង្កើតយន្តការច្រកចេញចូលតែមួយសម្រាប់ការផ្តល់សេវារដ្ឋបាលនៅរដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated February 08, 2019.

Sub-decree No.19. Sub-decree on the establishment of Ombudsman office at sub-national administration [អនុក្រឹត្យស្តីពីការបង្កើតការិយាល័យប្រជាពលរដ្ឋ នៅរដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated February 08, 2019.

Sub-decree No 20. Sub-decree on Management and Implementation of Ministry and Secretariat of State. Dated April 30, 1996.

Sub-decree No 20. Sub-decree on the amendment of sub-decree 78 dated August 23, 1999 on the Establishment the Committee to Manage Seila Working Group. Dated April 24, 2000.

Sub-decree No.22. Sub-decree on Decentralization of Authority, Role and Duty to Commune and Sangkat Council [អនុក្រឹត្យស្តីពីការធ្វើវិមជ្ឈការអំណាច តួនាទី និងភារកិច្ច ទៅឱ្យក្រុមប្រឹក្សាឃុំ សង្កាត់]. Dated March 25, 2002.

Sub-decree No.23. Sub-decree on Establishment and Functioning of the Secretariat of the National Committee for Democratic Development at Sub-National Level [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃលេខាធិការដ្ឋាន គណៈកម្មាធិការជាតិសម្រាប់ការអភិវឌ្ឍតាមបែបប្រជាធិបតេយ្យនៅថ្នាក់ក្រោមជាតិ]. Dated January 27, 2009.

Sub-decree No.24. Sub-decree on Establishment and Functioning of Sub-Committee of the National Committee for Democratic Development at Sub-National Level [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃអនុគណៈកម្មាធិការចំណុះ គណៈកម្មាធិការជាតិសម្រាប់ការអភិវឌ្ឍតាមបែបប្រជាធិបតេយ្យនៅថ្នាក់ក្រោមជាតិ]. Dated January 27, 2009.

Sub-decree No. 26. Sub-decree on Commune/Sangkat Financial Management System [អនុក្រឹត្យស្តីពីប្រព័ន្ធគ្រប់គ្រងហិរញ្ញវត្ថុឃុំ សង្កាត់]. Dated April 02, 2002.

Sub-decree No. 26. Sub-decree on Number of Board of Governors of Phnom Penh Municipality, Provinces, Municipalities, Districts and *Khans*. Dated January 29, 2009.

Sub-decree No. 29. Sub-decree on Determining the Provincial/City Authority. Dated April 12, 1999.

Sub-decree No. 30. Sub-decree on Governance on Finance and Implementation of Provincial and Municipal RORTHAKOR (independent public service). Dated April 12, 1999.

Sub-decree No. 36. Sub-decree on Managing and Functioning of Municipality and District Fund [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃមូលនិធិក្រុង ស្រុក]. Dated March 07, 2012.

Sub-decree No. 37. Sub-decree on Health Measure in order to Prevent the Infected Disease of COVID 19 and Severe Communicable Disease and Causing Other Serious Danger. [អនុក្រឹត្យស្តីពីវិធានការសុខាភិបាល ដើម្បីទប់ស្កាត់ការឆ្លងរាលដាលនៃជំងឺកូវីដ-១៩ និងជំងឺឆ្លងកាចសាហាវ និងប្រកបដោយគ្រោះថ្នាក់ធ្ងន់ធ្ងរផ្សេងទៀត]. Dated March 12, 2021.

- Sub-decree No. 51. Sub-decree on the transfer of national budget to CS's fund [អនុក្រឹត្យស្តីពីការផ្ទេរធនធានពីថវិការដ្ឋជូនមូលនិធិឃុំ សង្កាត់]. Dated April 1, 2018.
- Sub-decree No. 57. Sub-decree on Administrative Measure in order to Prevent the Infected Disease of COVID 19 and Severe Communicable Disease and Causing Other Serious Danger [អនុក្រឹត្យស្តីពីវិធានការរដ្ឋបាល ដើម្បីទប់ស្កាត់ការឆ្លងរាលដាលនៃជំងឺកូវីដ-១៩ និងជំងឺឆ្លងកាចសាហាវ និងប្រកបដោយគ្រោះថ្នាក់ធ្ងន់ធ្ងរផ្សេងៗទៀត]. Dated March 31, 2021.
- Sub-decree No. 59. Sub-decree on Exemption on Age Condition and Age Limitation for Candidate Applying for Competition Exam to be Selected to become Civil Servant [អនុក្រឹត្យស្តីពីការលើកលែងលក្ខខណ្ឌអាយុ និងការកំណត់អាយុបេក្ខជនចូលរួមប្រឡងប្រជែងជ្រើសរើសចូលក្នុងក្របខ័ណ្ឌមន្ត្រីរាជការស៊ីវិល]. Dated January 24, 2017.
- Sub-decree No. 66. Sub-decree on Obligation in Receiving COVID 19 Vaccine [អនុក្រឹត្យស្តីពីកាតព្វកិច្ចក្នុងការទទួលការចាក់វ៉ាក់សាំងការពារជំងឺកូវីដ-១៩]. Dated April 11, 2021.
- Sub-decree No. 68. Sub-decree on the Providing Administrative Service at Sub-National Administration [អនុក្រឹត្យស្តីពីការផ្តល់សេវារដ្ឋបាលនៅរដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated February 21, 2013.
- Sub-decree No. 68. Sub-decree on the General Process of Transferring Functions and Resources to Sub-National Administration [អនុក្រឹត្យស្តីពីដំណើរការទូទៅនៃការផ្ទេរមុខងារ និងធនធានឱ្យទៅដល់រដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated May 10, 2012.
- Sub-decree No 81. Sub-decree on Changing the Name of Department General of Administration of Ministry of Interior to Department General of Local Administration of Ministry of Interior. Dated August 17, 2006.
- Sub-decree No. 85. Sub-decree on Establishment and Functioning of National Committee for Combating against COVID 19 [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មការជាតិប្រយុទ្ធប្រឆាំងជំងឺកូវីដ-១៩]. Dated June 13, 2021.
- Sub-decree No 86. Sub-decree on Construction Permission Letter. Dated December 19, 1997.
- Sub-decree No. 93. Sub-decree on Transferring Resources from National Budget to Commune and Sangkat Budget [អនុក្រឹត្យស្តីពីការផ្ទេរធនធានពីថវិការដ្ឋជូនមូលនិធិឃុំ សង្កាត់]. Dated August 06, 2010.
- Sub-decree No. 109. Sub-decree on the Establishment and Functioning of Ministry of Interior [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃក្រសួងមហាផ្ទៃ]. Dated August 19, 2015.

Sub-decree No. 109. Sub-decree on Transferring Resources from National Budget to Commune and *Sangkat* Budget [អនុក្រឹត្យស្តីពីការផ្ទេរធនធានពីថវិការដ្ឋមូលនិធិឃុំ សង្កាត់]. Dated August 28, 2007.

Sub-decree No.111. Sub-decree on Establishment and Functioning of Sub-Committee of the National Committee for Democratic Development at Sub-National Level [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃអនុគណៈកម្មាធិការ របស់គណៈកម្មាធិការជាតិសម្រាប់ការអភិវឌ្ឍតាមបែបប្រជាធិបតេយ្យនៅថ្នាក់ក្រោមជាតិ]. Dated July 20, 2020.

Sub-decree No.113. Sub-decree on Garbage and Solid Waste Management in Urban Area [អនុក្រឹត្យស្តីពីការគ្រប់គ្រងសំរាម សំណល់រឹងទីប្រជុំជន]. Dated August 27, 2015.

Sub-decree No 116. Sub-decree on the Managing and Functioning of Office of Council of Ministers [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃទីស្តីការគណៈរដ្ឋមន្ត្រី]. Dated September 6, 2018.

Sub-decree No. 121. Sub-decree on Transferring Additional Budget from National Budget to Commune and *Sangkat* Administration for Local Development Expenditure [អនុក្រឹត្យស្តីពីការផ្ទេរធនធានបន្ថែមពីថវិការដ្ឋមូលនិធិឃុំ សង្កាត់ សម្រាប់ចំណាយអភិវឌ្ឍន៍មូលដ្ឋាន]. Dated August 21, 2019.

Sub-decree No. 152. Sub-decree on Amendment Article 12 of Sub-decree on Development Plan and Three-Year Rolling Investment Program of Capital City, Province, Municipality, District and Khan [អនុក្រឹត្យស្តីពីការកែសម្រួលមាត្រា១២ នៃអនុក្រឹត្យស្តីពីផែនការអភិវឌ្ឍន៍កម្មវិធីវិនិយោគបីឆ្នាំរំកិលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ]. Dated December 06, 2010.

Sub-decree No. 156. Sub-decree on Establishment and Functioning of Unified Commanding Committee at Capital, Provincial, Municipal, District and Khan Administration [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃគណៈបញ្ជាការឯកភាពរដ្ឋបាលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ]. Dated March 31, 2014.

Sub-decree No. 172. Sub-decree on District and Municipality Financial Management System [អនុក្រឹត្យស្តីពីប្រព័ន្ធគ្រប់គ្រងហិរញ្ញវត្ថុរបស់រដ្ឋបាលក្រុង ស្រុក]. Dated October 09, 2012.

Sub-decree No 182. Sub-decree on Functions and Structure of Municipality Administration [អនុក្រឹត្យស្តីពីមុខងារ និងរចនាសម្ព័ន្ធរដ្ឋបាលក្រុង]. Dated December 2, 2019.

Sub-decree No 183. Sub-decree on Functions and Structure of Khan Administration in Capital City of Phnom Penh [អនុក្រឹត្យស្តីពីមុខងារ និងរចនាសម្ព័ន្ធរដ្ឋបាលខណ្ឌ នៃរាជធានីភ្នំពេញ]. Dated December 2, 2019.

Sub-decree No 184. Sub-decree on Functions and Structure of District Administration [អនុក្រឹត្យស្តីពីមុខងារ និងរចនាសម្ព័ន្ធរដ្ឋបាលស្រុក]. Dated December 2, 2019.

Sub-decree No 191. Sub-decree on Transferring Functions Related to the Management of Small Children Education, Primary Education, and None-Formal Education to Municipality and District Administration [អនុក្រឹត្យស្តីពីការប្រគល់មុខងារនានាពាក់ព័ន្ធនឹងការគ្រប់គ្រងការអប់រំកុមារ តូច ការអប់រំបឋមសិក្សា និងការអប់រំក្រៅប្រព័ន្ធ ឱ្យទៅដល់រដ្ឋបាលក្រុង ស្រុក]. Dated September 14, 2016.

Sub-decree No 193. Sub-decree on the Assignment Functions on Management and Health Service Provision to Capital and Provincial Administration (CPA) [អនុក្រឹត្យស្តីពីការប្រគល់មុខងារការ គ្រប់គ្រង និងផ្តល់សេវាសុខាភិបាល ទៅឱ្យរដ្ឋបាលរាជធានី ខេត្ត]. Dated December 4, 2019.

Sub-decree No. 215. Sub-decree on Role, Function, and Work Relation between Phnom Penh Council and Board of Governors and between Khan's Council and Board of Governor in Phnom Penh [អនុក្រឹត្យស្តីពីតួនាទី ភារកិច្ច និងទំនាក់ទំនងការងាររបស់ក្រុមប្រឹក្សា គណៈអភិបាលរាជ ធានីភ្នំពេញ និងក្រុមប្រឹក្សា គណៈអភិបាលខណ្ឌ នៃរាជធានីភ្នំពេញ]. Dated December 14, 2009.

Sub-decree No. 216. Sub-decree on Role, Function, and Work Relation between Provincial Council and Board of Governors, between Municipality Council and Board of Governor, and between District Council and Board of Governor [អនុក្រឹត្យស្តីពីតួនាទី ភារកិច្ច និងទំនាក់ទំនង ការងាររបស់ក្រុមប្រឹក្សា គណៈអភិបាលខេត្ត ក្រុមប្រឹក្សា គណៈអភិបាលក្រុង និងក្រុមប្រឹក្សា គណៈ អភិបាលស្រុក]. Dated December 14, 2009.

Sub-decree No. 217. Sub-decree on Establishment and Functioning of Facilitation Committee of Capital Council, and Facilitation Committee of Khan Council of Phnom Penh Capital City [អនុក្រឹត្យស្តីពីការបង្កើត ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មាធិការសម្របសម្រួលបច្ចេកទេស ក្រុមប្រឹក្សារាជធានីភ្នំពេញ និងគណៈកម្មាធិការសម្របសម្រួលបច្ចេកទេសក្រុមប្រឹក្សាខណ្ឌ នៃរាជធានី ភ្នំពេញ]. Dated December 14, 2009.

Sub-decree No. 218. Sub-decree on Establishment and Functioning of Facilitation Committee of Provincial Council, Facilitation Committee of Municipal Council, and Facilitation Committee of District Council [អនុក្រឹត្យស្តីពីការបង្កើត ការរៀបចំ និងការប្រព្រឹត្តទៅនៃគណៈកម្មាធិ ការសម្របសម្រួលបច្ចេកទេស ក្រុមប្រឹក្សាខេត្ត គណៈកម្មាធិការសម្របសម្រួលបច្ចេកទេសក្រុមប្រឹក្សា ក្រុង និងគណៈកម្មាធិការសម្របសម្រួលបច្ចេកទេសក្រុមប្រឹក្សាស្រុក]. Dated December 14, 2009.

Sub-decree No. 219. Sub-decree on Development Plan and Three-Year Rolling Investment Program of Capital City, Province, Municipality, District and Khan [អនុក្រឹត្យស្តីពីផែនការអភិវឌ្ឍនិងកម្ម វិធីវិនិយោគបីឆ្នាំរំកិលរាជធានី ខេត្ត ក្រុង ស្រុក ខណ្ឌ]. Dated December 14, 2009.

Sub-decree No. 240. Sub-decree on Delegation of Power to the Board of Governors of Capital, Province, Municipality, and District for the Personnel Management Working at Sub-National Administration [អនុក្រឹត្យស្តីពីការធ្វើប្រតិភូកម្មសិទ្ធិអំណាចទៅឱ្យគណៈអភិបាលរាជធានី ខេត្ត ក្រុង ស្រុក ក្នុងការគ្រប់គ្រងបុគ្គលិកបំពេញការងារនៅថ្នាក់ក្រោមជាតិ]. Dated December 27, 2017.



Sub-decree No. 264. Sub-decree on the Establishment and Functioning of General Department of Administration, Ministry of Interior [អនុក្រឹត្យស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅ នៃអគ្គនាយកដ្ឋានរដ្ឋបាល ក្រសួងមហាផ្ទៃ]. Dated October 01, 2014.

Sub-decree, No. 285. Sub-decree on Recruiting, Managing and Implementing Permissive Functions by Sub-National Administration Council [អនុក្រឹត្យស្តីពីការជ្រើសរើស គ្រប់គ្រង ការចាត់ចែង និងការអនុវត្តមុខងារជាជម្រើសដោយក្រុមប្រឹក្សា នៃរដ្ឋបាលថ្នាក់ក្រោមជាតិ]. Dated November 18, 2014.

Sub-decree, No. 286. Sub-decree on the Procedure for Preparation, Amendment to and Appeal for a Bylaw (*Deika*) of the Capital Council, Provincial Council, Municipality Council, District Council, and *Khan* Council [អនុក្រឹត្យស្តីពីនីតិវិធីសម្រាប់ការរៀបចំ ការកែប្រែ និងការលុបចោលដីការបស់ក្រុមប្រឹក្សារាជធានី ក្រុមប្រឹក្សាខេត្ត ក្រុមប្រឹក្សាក្រុង ក្រុមប្រឹក្សាស្រុក និងក្រុមប្រឹក្សាខណ្ឌ]. Dated November 18, 2014.

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**e. Inter-Ministerial *Prakas***

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Inter-Ministerial *Prakas* No. 152 on Preparation and Functioning of Health Department of Provincial and Capital City. Dated April 24, 2020.

Inter-Ministerial *Prakas* No. 195 on Defining the Minimum Rate of Garbage Service Management and Solid Waste in Rural Area [ប្រកាសអន្តរក្រសួង ស្តីពីការកំណត់កម្រិតអតិបរមា នៃសេវាគ្រប់គ្រងសំណល់រឹង សំណល់រឹងទីប្រជុំជន]. Ministry of Environment, MEF and MoI, Dated May 6, 2018.

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និងការិយាល័យប្រជាពលរដ្ឋនៅថ្នាក់ស្រុក ខណ្ឌ]. RGC, Dated June 30, 2008.

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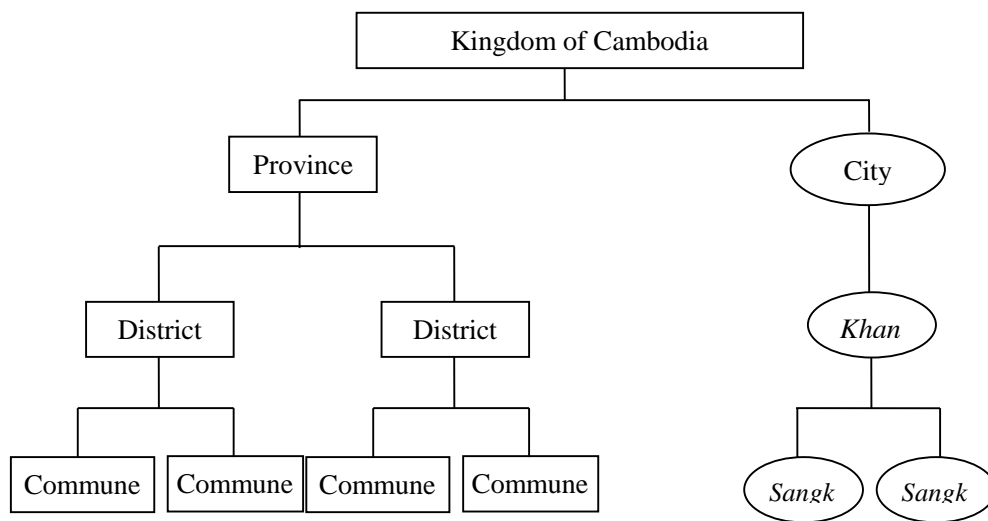
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[http://www.ciesin.org/decentralization/English/General/Different\\_forms.html](http://www.ciesin.org/decentralization/English/General/Different_forms.html) viewed on  
2009/06/28.

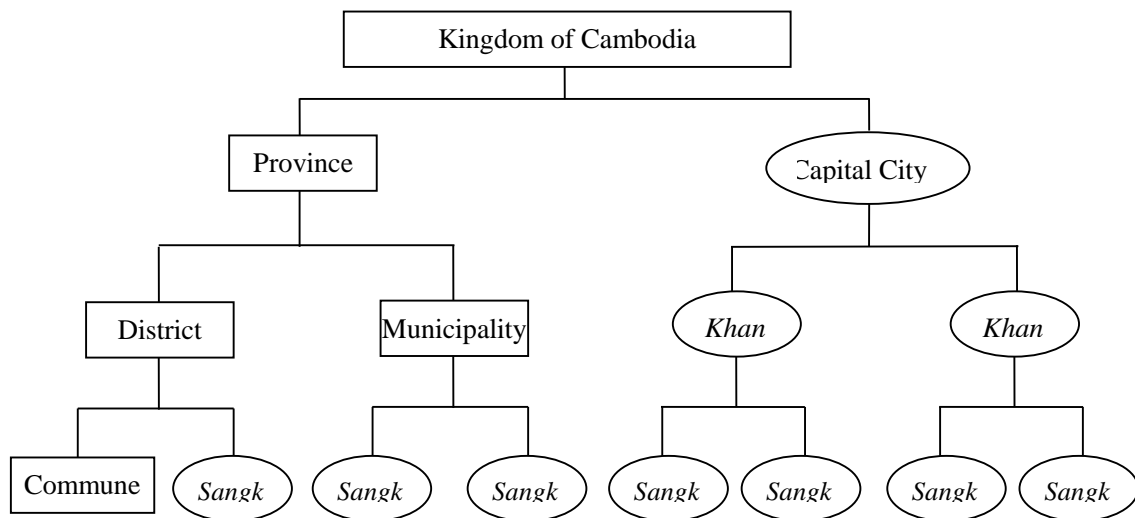
## **APPENDIXES**

# Structure of the administrative division of the Kingdom of Cambodia from 1993



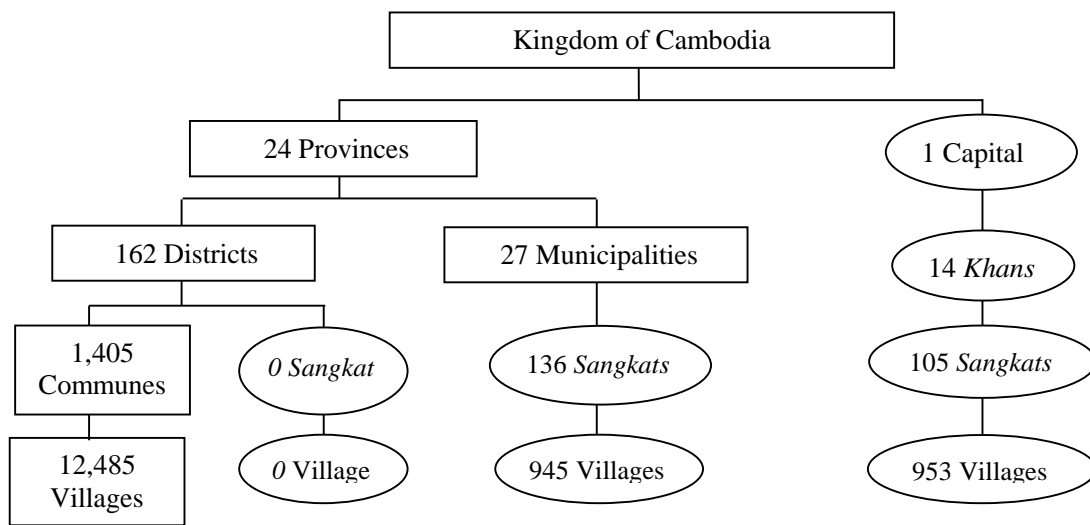
Note:  is for Rural administration  
 is for Urban or Town administration  
 Sources: summarized by author based on historical legal review

# Structure of the administrative division of the Kingdom of Cambodia from 2008



Note:  is for Rural administration  
 is for Urban or Town administration  
 Sources: summarized by author based on historical legal review

# Territorial Division in 2019

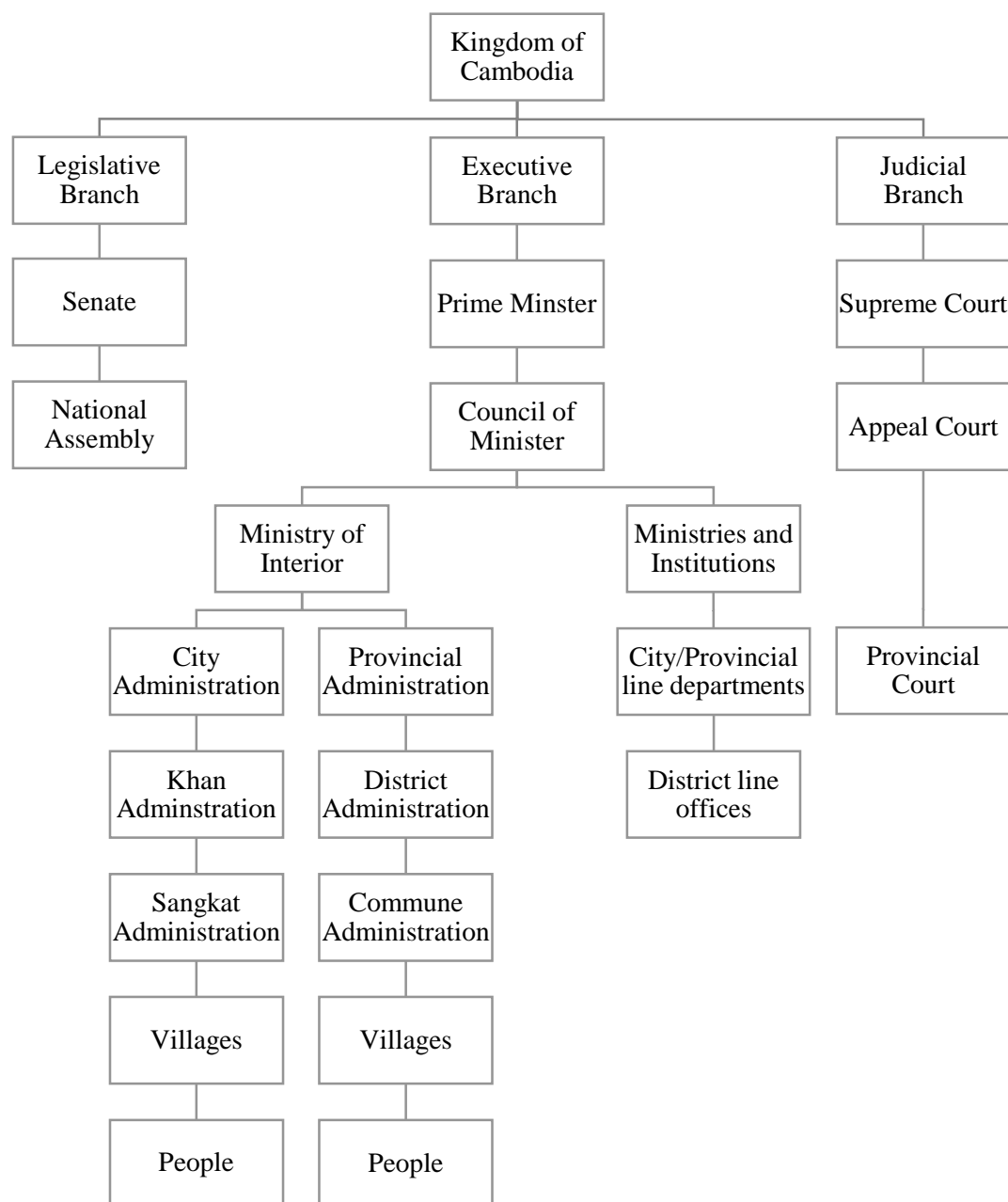


Note:  is for Rural administration  
 is for Urban or Town administration

Figure: structure of administrative division in 2019

Source: Department of Capital, Khan and Provincial Administrative Affairs, General Department of Administration, Ministry of Interior, April 2019.

Structure of State Organs in Cambodia from 1993 to 2008 <sup>576</sup>

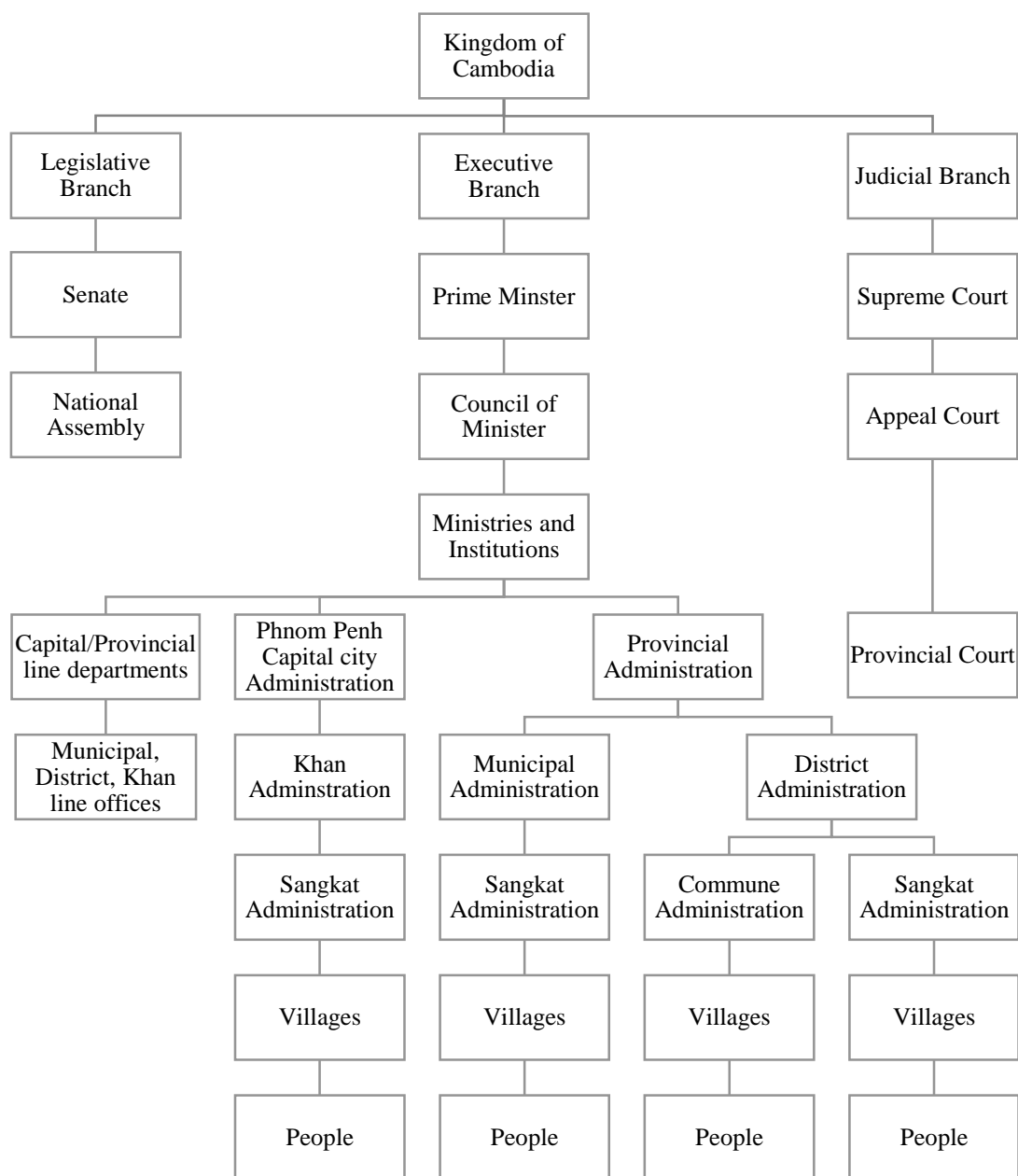


<sup>576</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, Chapter VII about National Assembly, Chapter VIII new: about the Senate, Chapter X new: about the Royal Government, Chapter XI new: about the Judicial Power, and Chapter XIII new: about the administrative management.

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Structure of State Organs and Territorial division in Cambodia from 2008 to 2019 <sup>577</sup>

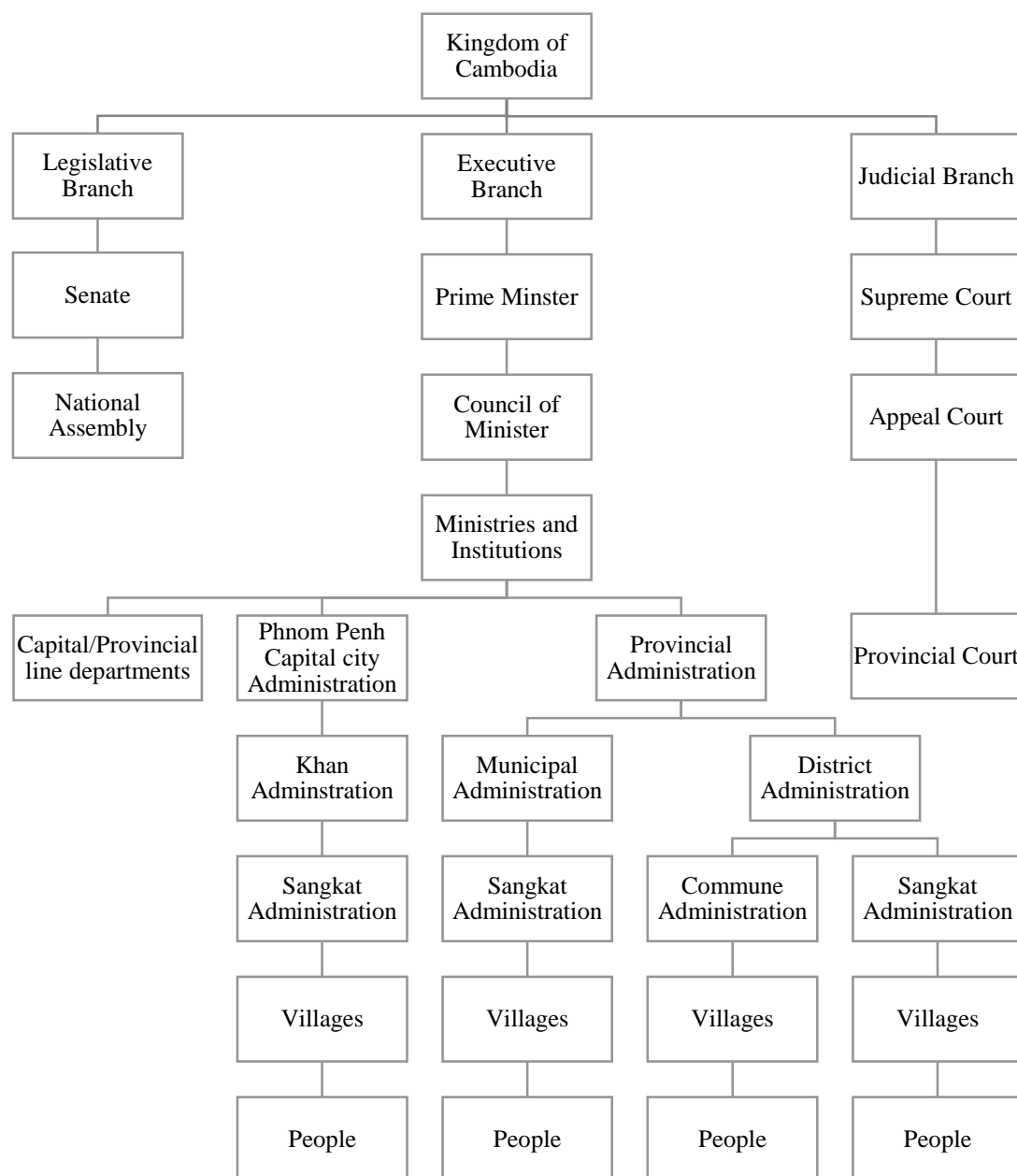


<sup>577</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, Chapter VII about National Assembly, Chapter VIII new: about the Senate, Chapter X new: about the Royal Government, Chapter XI new: about the Judicial Power, and Chapter XIII new: about the administrative management.

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Structure of State Organs and SNA in Cambodia from 2020-Present <sup>578</sup>

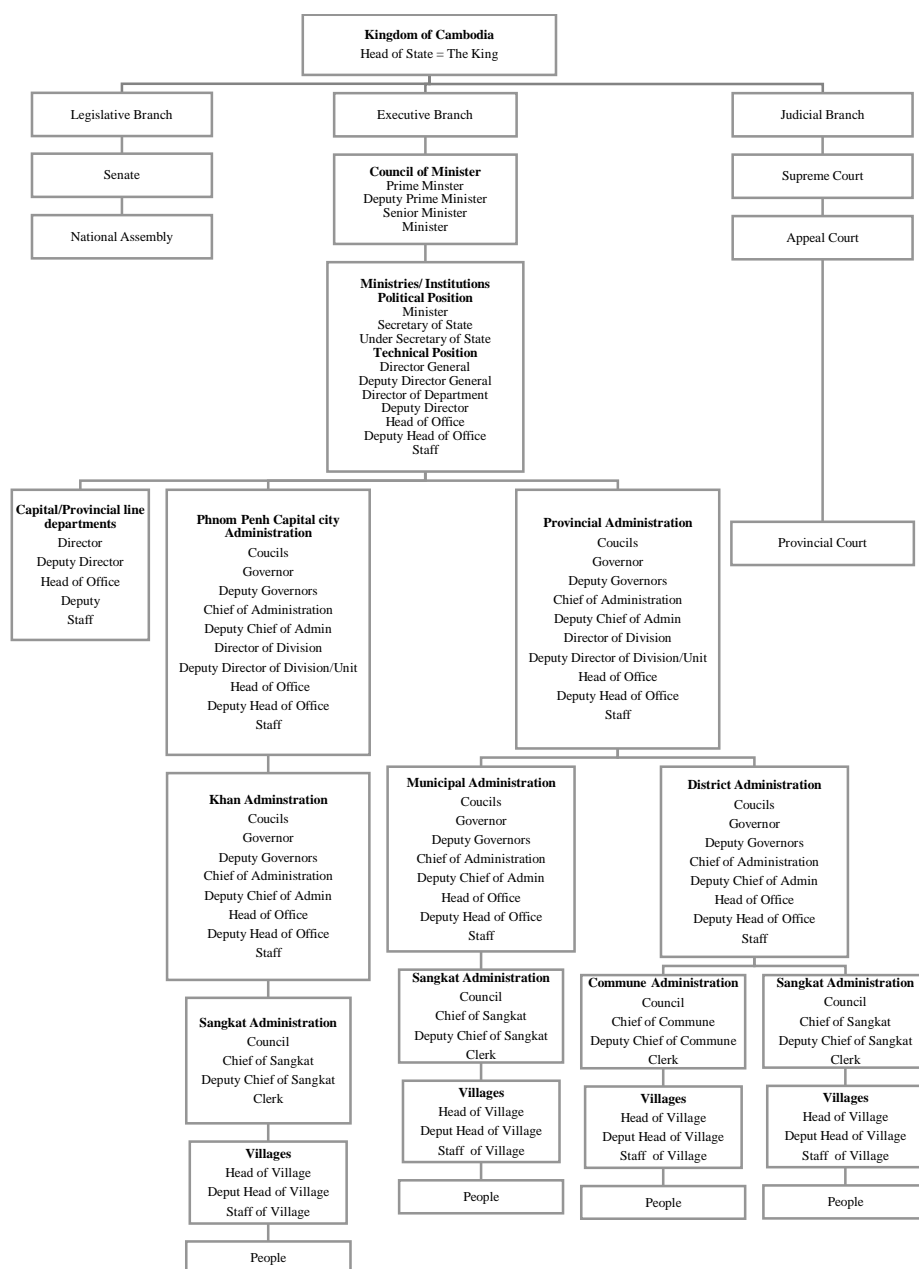


<sup>578</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008.

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- LAMCPMDK, 2008, art. 4 and 5.
- Royal decree N°. NS/RKT/0618/12 on Functioning and Managing Office of Council of Ministers, Dated May 28, 2018.
- Sub-decree 116 on the Managing and Functioning of Office of Council of Ministers, Dated on September 6<sup>th</sup>, 2018.
- Sub-decree 182, 183, and 184 Dated December 2<sup>nd</sup>, 2019. Sub-decree 182 on functions and structure of municipality administration; sub-decree 183 on functions and structure of Khan administration in Capital city of Phnom Penh; sub-decree 184 on functions and structure of district administration



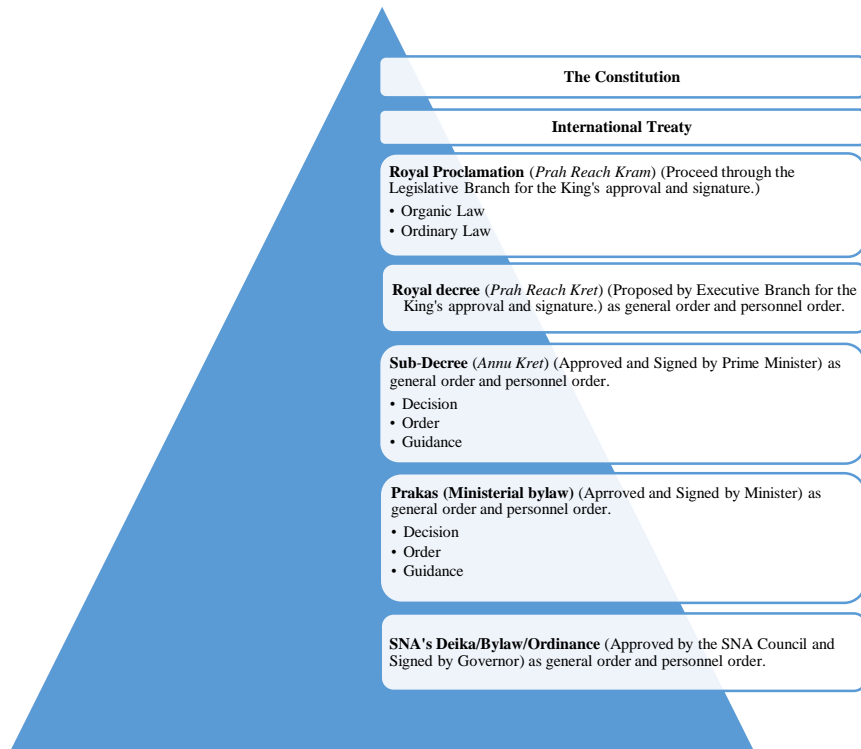
## Structure of State Organs and Position (in general) in Cambodia from 2020-Present <sup>579</sup>



<sup>579</sup> Constitution of Cambodia. Kingdom of Cambodia [រដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា], 1993, amended 2008, Chapter VII about National Assembly, Chapter VIII new: about the Senate, Chapter X new: about the Royal Government, Chapter XI new: about the Judicial Power, and Chapter XIII new: about the administrative management.

- LAMC, 2001, art. 25 and 30.
- LAMCPMDK, 2008, art. 4 and 5.
- Royal decree N°. NS/RKT/0618/12 on Functioning and Managing Office of Council of Ministers, Dated May 28, 2018.
- Sub-decree 116 on the Managing and Functioning of Office of Council of Ministers, Dated on September 6<sup>th</sup>, 2018.

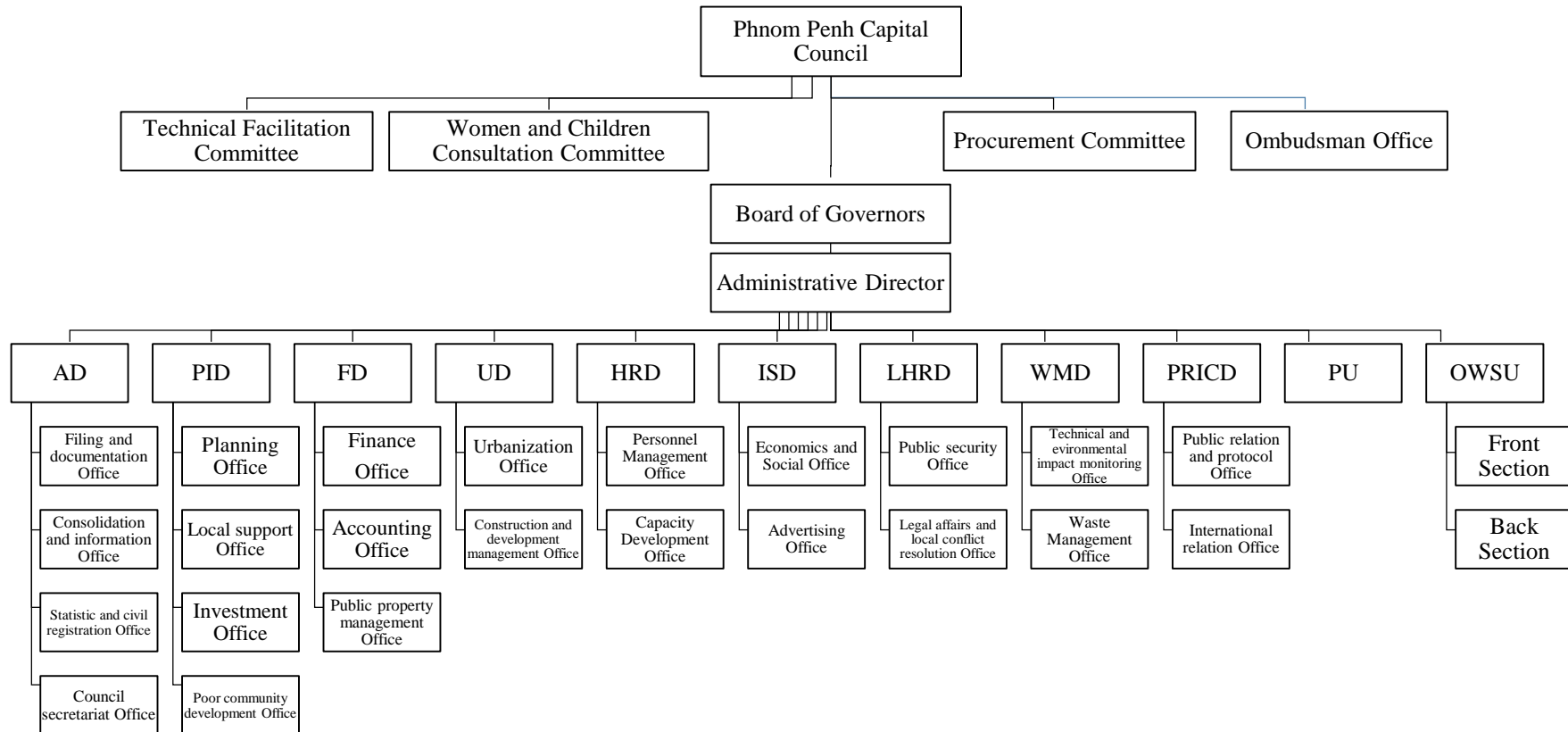
## The hierarchical structure of law in Cambodia



Source: The hierarchical structure of law in Cambodia is created by author based on the above explanation.

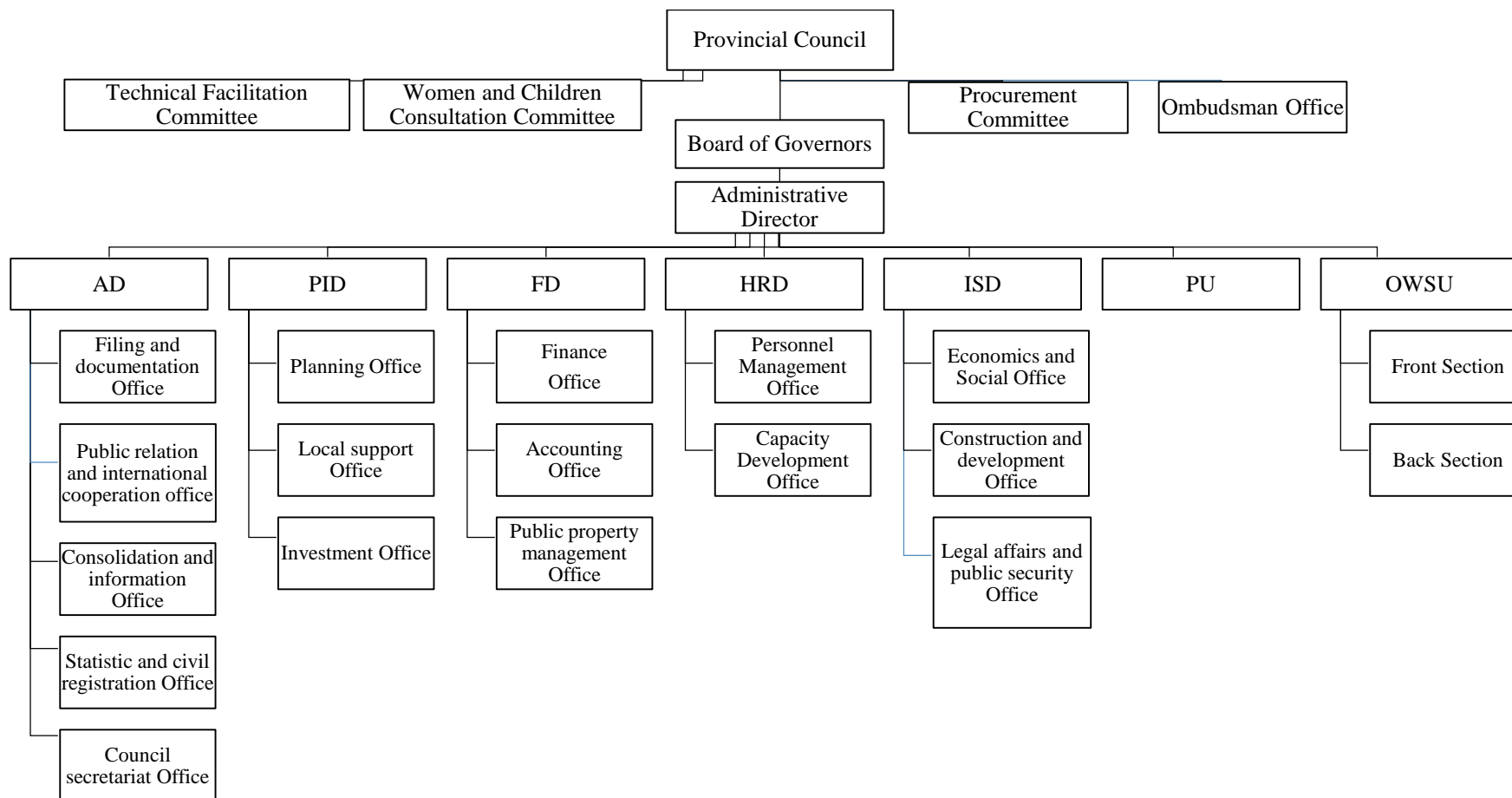
## **Structure of Sub-National Administration**

### The Structure of Phnom Penh Capital City Administration (2019)



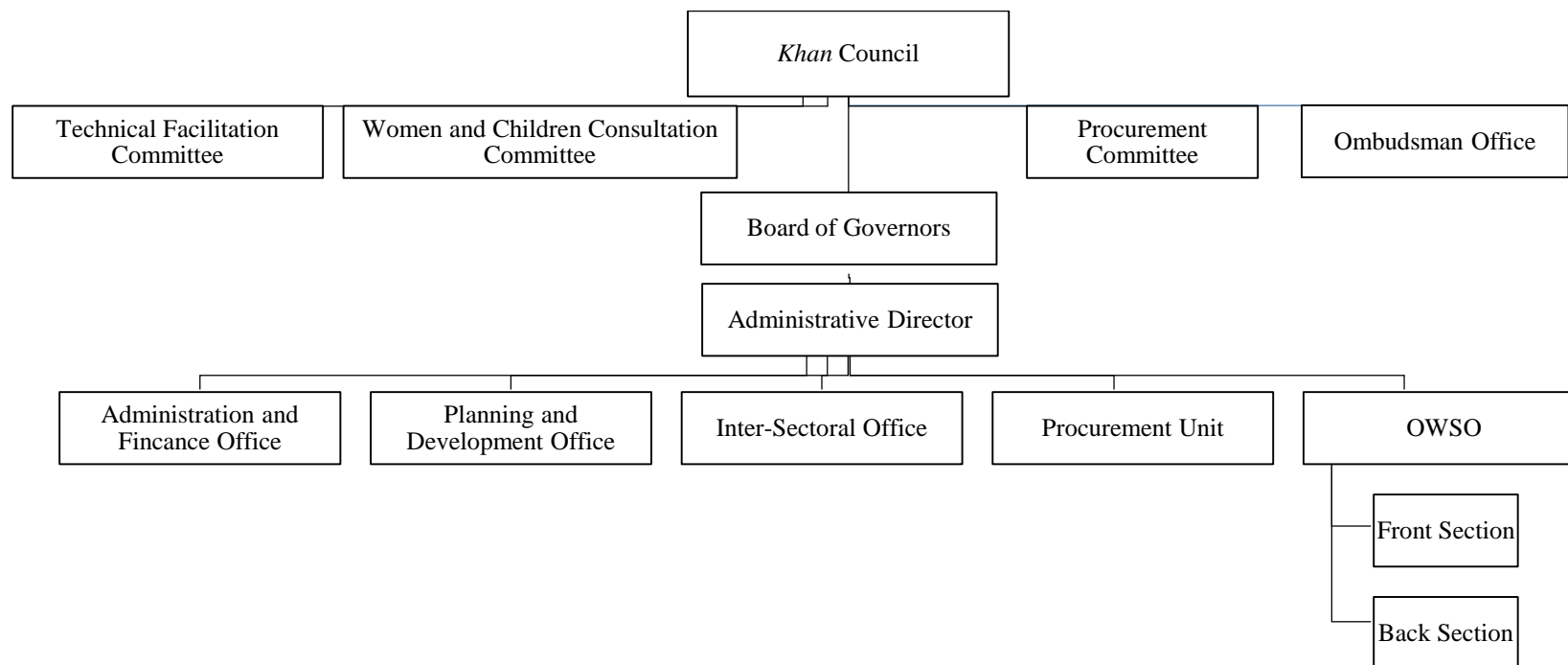
Source: MoI Prakas 4273 on the establishment of division under Phnom Penh Capital city, the establishment of office under Khan, and role, function and procedure of the offices. Dated December 30, 2009. article 2 to 10.

### The Structure of Provincial Administration (2019)



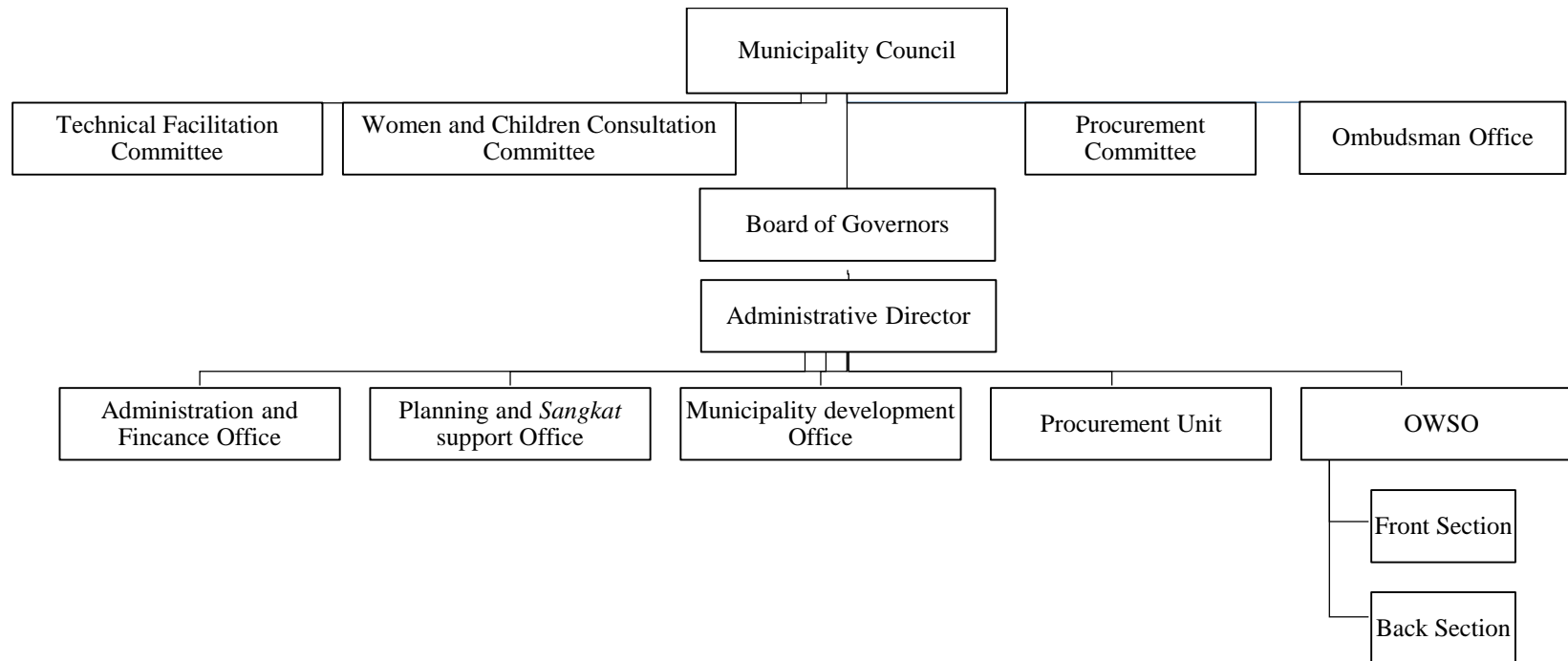
Source: MoI Prakas 4274 on the establishment of division under Phnom Penh Capital city, the establishment of office under Khan, and role, function and procedure of the offices. Dated December 30, 2009. article 2 to 7.

### The Structure of Khan Administration (2019)



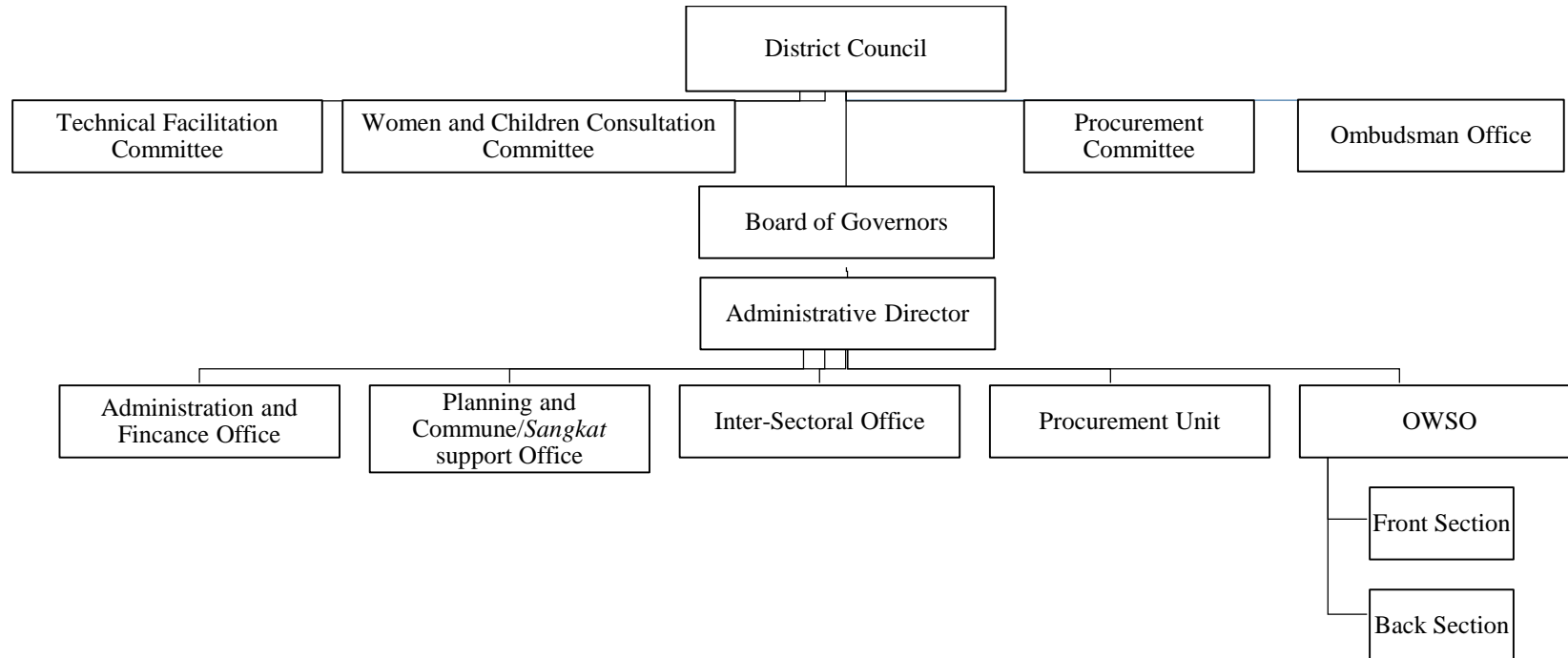
Source: MoI Prakas 4273 on the establishment of division under Phnom Penh Capital city, the establishment of office under Khan, and role, function and procedure of the offices. Dated December 30, 2009. article 20.

### The Structure of Municipality Administration (2019)



Source: MoI Prakas 4274 on the establishment of division under Phnom Penh Capital city, the establishment of office under Khan, and role, function and procedure of the offices. Dated December 30, 2009. article 17.

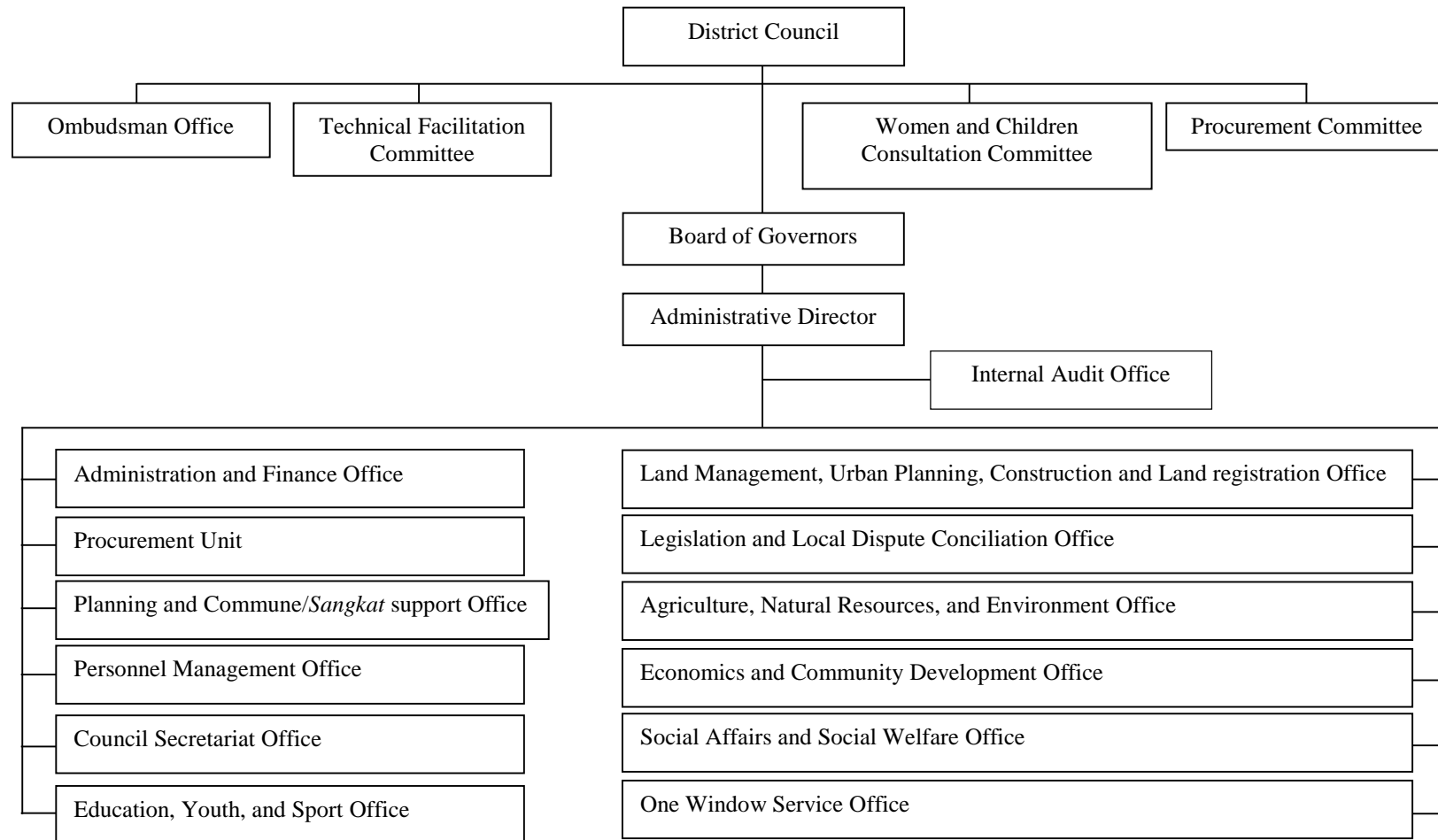
### The Structure of District Administration (2019)



Source: MoI Prakas 4274 on the establishment of division under Phnom Penh Capital city, the establishment of office under Khan, and role, function and procedure of the offices. Dated December 30, 2009. article 26.

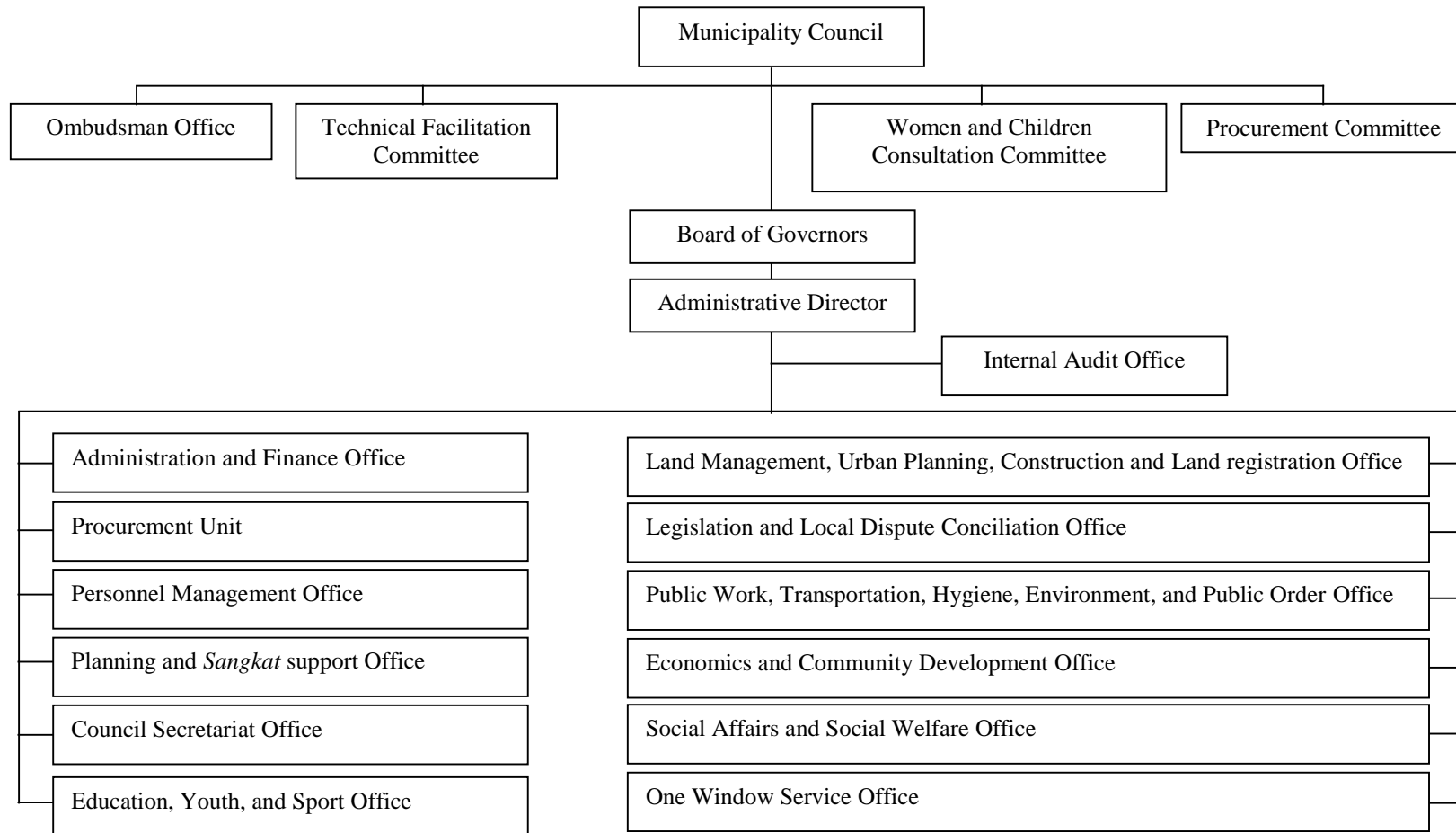


### The Structure of District Administration (2020)



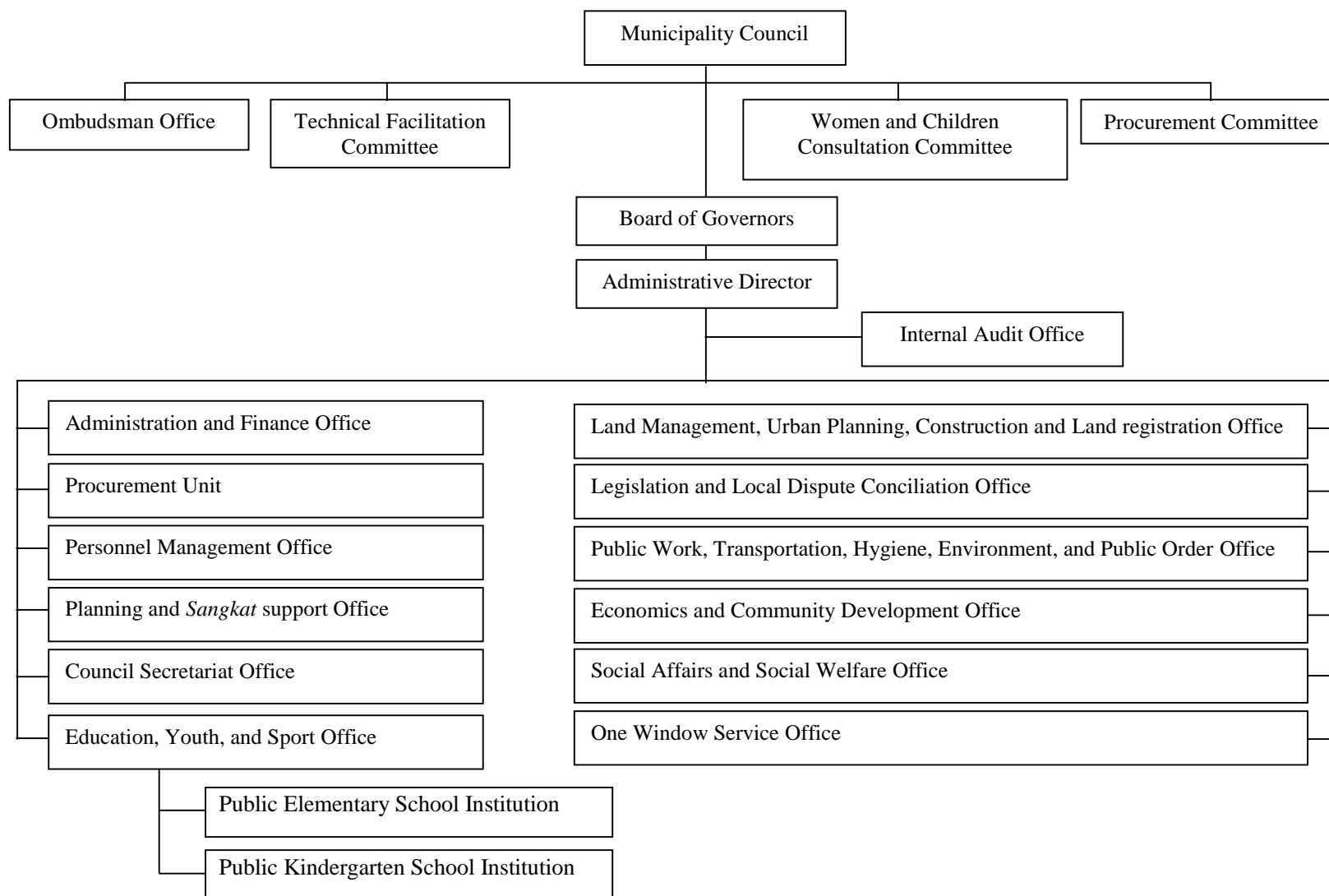
Source: Sub-decree 184 on functions and structure of district administration, Dated December 2<sup>nd</sup>, 2019.

### The Structure of Municipality Administration (2020)



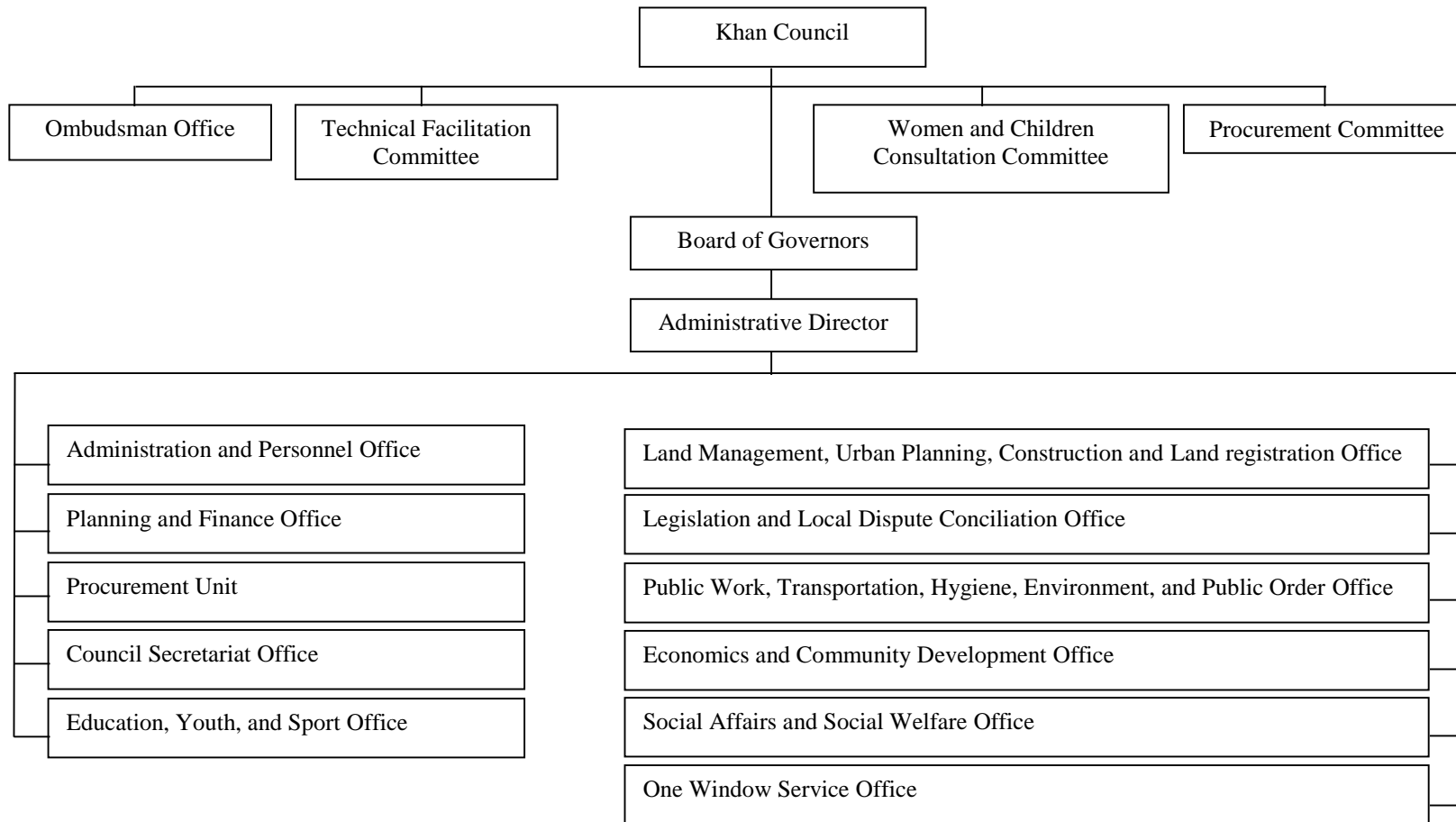
Source: Sub-decree 182 on functions and structure of municipality administration, Dated December 2<sup>nd</sup>, 2019.

### The Structure of Municipality Administration in Battambang Province (2020)



Source: Sub-decree 182 on functions and structure of municipality administration, Dated December 2<sup>nd</sup>, 2019, appendix 5.

### The Structure of Khan Administration (2020)



Source: Sub-decree 183 on functions and structure of Khan administration in Capital city of Phnom Penh, Dated December 2<sup>nd</sup>, 2019.

## 12-12-16



240

**រចនាសម្ព័ន្ធនៃអង្គការសហប្រតិបត្តិការអន្តរជាតិ**

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    President[ប្រធាន] --- ExecutiveDirector[នាយកប្រតិបត្តិ]
    President --- SecretaryGeneral[អគ្គនាយក]
    President --- OfficeOfPresident[ទីស្នាក់ការកណ្តាល]
    ExecutiveDirector --- OfficeOfExecutiveDirector[ទីស្នាក់ការកណ្តាល]
    SecretaryGeneral --- OfficeOfSecretaryGeneral[ទីស្នាក់ការកណ្តាល]
    OfficeOfPresident --- OfficeOfPresidentSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfExecutiveDirector --- OfficeOfExecutiveDirectorSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfSecretaryGeneral --- OfficeOfSecretaryGeneralSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfPresidentSub --- OfficeOfPresidentSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfExecutiveDirectorSub --- OfficeOfExecutiveDirectorSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfSecretaryGeneralSub --- OfficeOfSecretaryGeneralSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfPresidentSubSub --- OfficeOfPresidentSubSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfExecutiveDirectorSubSub --- OfficeOfExecutiveDirectorSubSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfSecretaryGeneralSubSub --- OfficeOfSecretaryGeneralSubSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfPresidentSubSubSub --- OfficeOfPresidentSubSubSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfExecutiveDirectorSubSubSub --- OfficeOfExecutiveDirectorSubSubSubSub[ទីស្នាក់ការកណ្តាល]
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    OfficeOfExecutiveDirectorSubSubSubSub --- OfficeOfExecutiveDirectorSubSubSubSubSub[ទីស្នាក់ការកណ្តាល]
    OfficeOfSecretaryGeneralSubSubSubSub --- OfficeOfSecretaryGeneralSubSubSubSubSub[ទីស្នាក់ការកណ្តាល]
  
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241

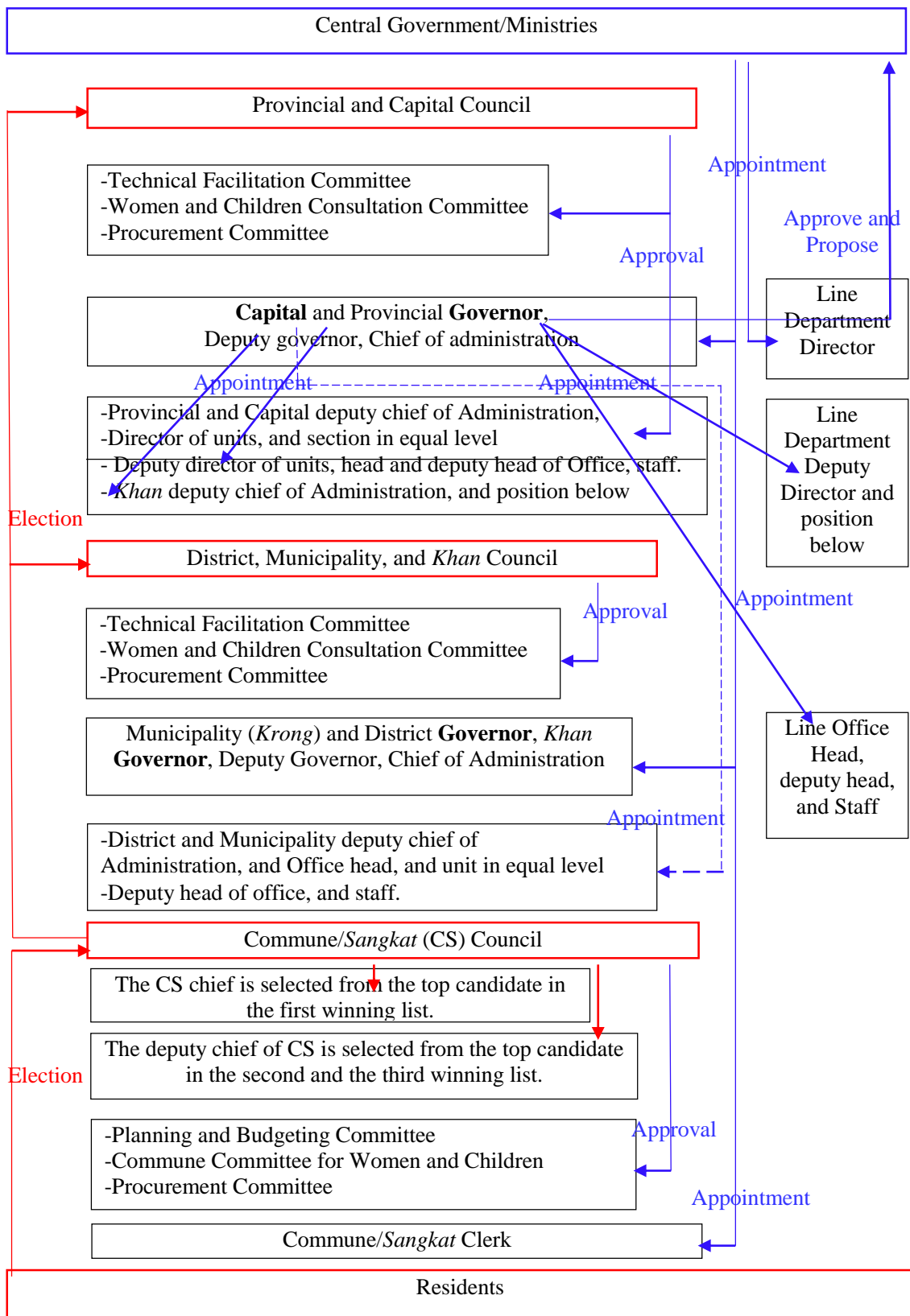
**បេតាសម្ព័ន្ធក្រប្រឹក្សាទីស្តីការគណៈរដ្ឋមន្ត្រី**

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<https://www.ocm.gov.kh/%E1%9E%9A%E1%9E%85%E1%9E%93%E1%9E%B6%E1%9E%9F%E1%9E%98%E1%9F%92%E1%9E%96%E1%9F%90%E1%9E%93%E1%9F%92%E1%9E%92/>

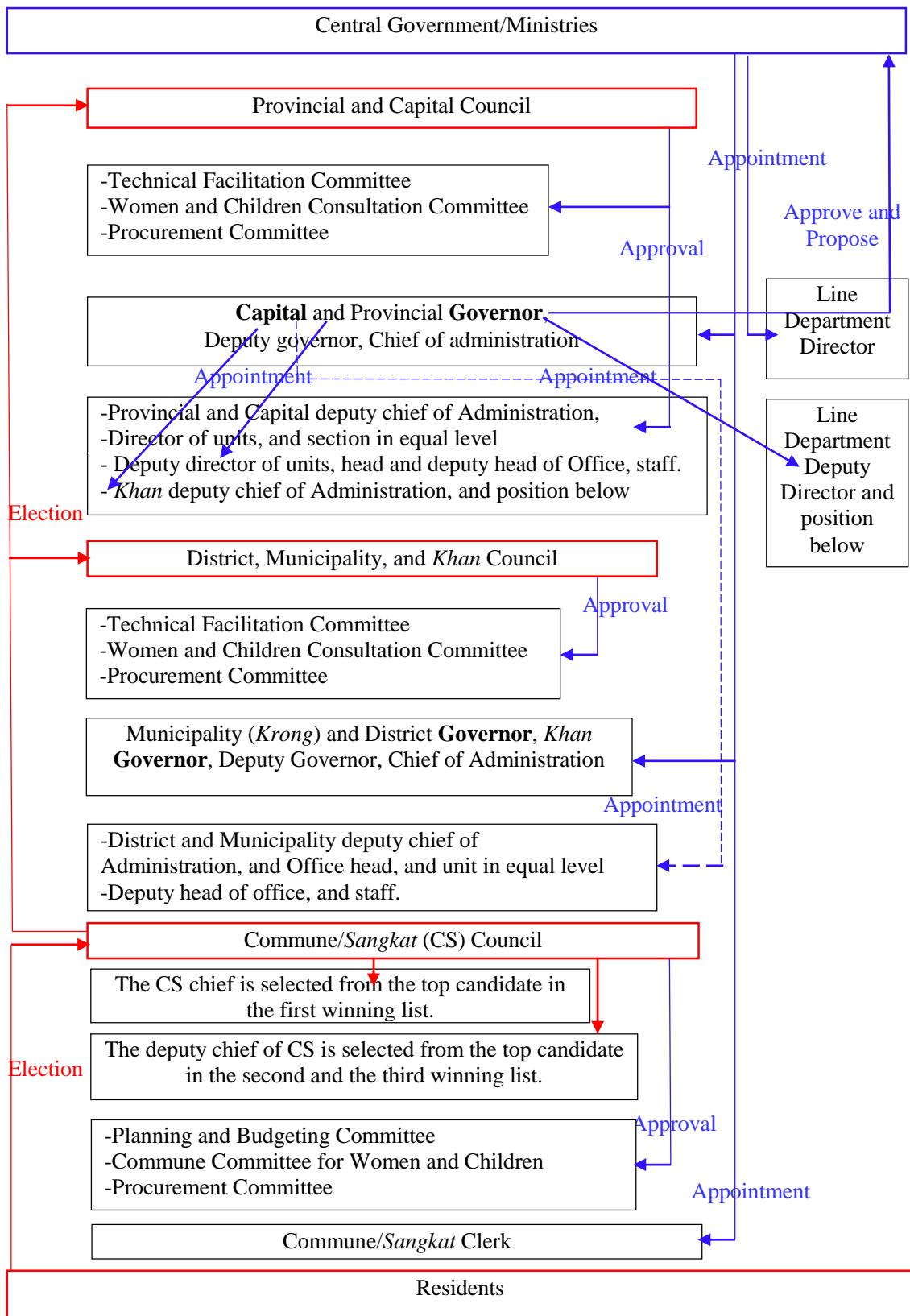
-Sub-decree 116 on the Managing and Functioning of Office of Council of Ministers, Dated on September 6<sup>th</sup>, 2018.

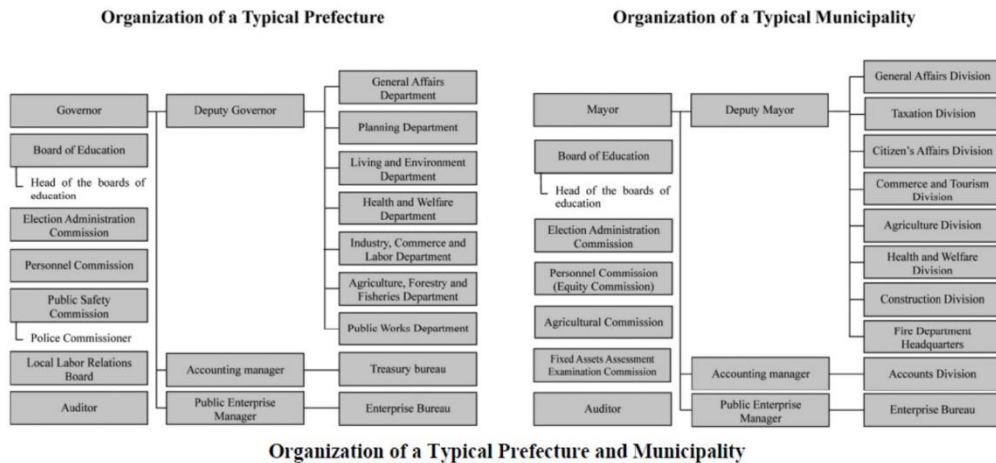
# Outline of SNA Management in Cambodia (2019)





# Outline of SNA Management in Cambodia (2020)





Organization of a Typical Prefecture and Municipality

Source: Council of Local Authorities for International Relation (CLAIR), *Local Government in Japan 2016*, (CLAIR, August 2017), 12.

Change of Village Election Since 1908 to Present

	before 1908	1908	1919	1925	1943	1959	1981/ 1989	2002
Village chief Election	yes	no	no	no	no	yes, but postponed	no	yes
Elect who? (candidate?)	Elder		From Residents (art.17)	From Residents (art.34)	From list of Notability (art.18)			Residents of both sex, at least 3 candidate of village chief. (MoI No.004 on village 2006)
Elect by who? (voter?)	People in village		Chosen by commune council, but approved by FRP. (art.17)	Chosen by commune council members (art.34)	Appointed by district governor. (art.18)			Elected by commune council members (art.30) Issued appointed decision based on the election result. (MoI No.004 on village 2006)
Criteria	Elder man with a knowledg e, agricultura l skills, good manner, conduct, and common sense.		Residents living in the village for at least six months. (art.17)	Residents living in the village for at least six months and who could read and write. (art.34)	Residents who was in the list of commune notability, knew how to read, write, and calculate. (art.18)			-25 years -Registered in voting list -know how to read and write -permanently living in village for at least 6 months (MoI No.004 on village 2006)
Roles and responsibility	-conciliation of conflict in village.		Must not overlap with	Must not overlap with commune roles. (art.34)	-disseminate orders and information	-collected and sent all		-maintain security and

	<ul style="list-style-type: none"> <li>- authorized to collect tax.</li> <li>- mobilized manpower for warfare or public work.</li> </ul>		<p>commune roles. (art.17) Report to commune chief (art.30)</p>	<p>-disseminate orders and information -Provided evaluation on people's life and good manner, for commune chief signature and seal. -provided any information required to make the tax list. (art. 52)</p>	<p>-implement police measure -provided evaluation on resident's manner and sent to commune chief for signature and seal. -provided any information required to make the tax list. (art. 39)</p>	<p>information in the village to commune chief for preparing the tax list. (art.45)</p>	<p>socio-economic development -report the need in village to commune -Request to commune for managing and facilitating village's affairs. (art.31)</p>
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Changes of Commune Election since 1908 to Present

	before 1908	1908	1919	1925	1943	1959	1981/1989	2002
Commune Election	no	yes	yes	yes	no	yes/ but postponed	yes/democratic centralism	yes
Election Result Approval by	no	N/A	French Resident Provincial (FRP) issued appointed letter. (art.11)	French Resident (art.25) and issued appointed letter. (art.29)	French Resident. (art.19) Appointed by Prakas of MoI. (art.19)	Provincial governor issued bylaw to appointed commune chief and commune council(art.21) Appointed (art.24)		MoI declares validity of commune council and declare names in the meeting in 14 days after official result. (art.19)
Commune administration	no	Considered as a person (art.15)	Considered as a person (art.45)	Considered as a person (art.7)	Considered as a person (art.7)	Considered as legal entity. (art.7)		Considered as legal entity (art.2)
Commune Chief	no	Elected by VCMs a year after the VC was elected. (art.9)	Elected from among the council member. (art.11)	Elected from among the council member. (art.28)	Appointed from the list of notability (art.19)	Any top candidate in the list that got most votes (art.20)		Top candidate of winning candidate list (art.32) Candidate list represented political party

								(art.14 Election law)
Council Presidents	no	= was a Commune Chief (art.9)	= was a Commune Chief (art.12)	= was a Commune Chief (art.1)	= was a Commune Chief (art.26)	= was a Commune Chief (art.1 and 31)		= was a Commune Chief (art.13, 25, 32)
Council Members	no	Were the Elected Village candidate Members (VCM) (art.9)	Were the Elected candidates (8 to 16 members) (art.10)	Were the Elected candidate (9 to 19 members) (art.18)	appointed deputy commune chiefs and village chiefs (art. 26, 20, and 18)	Who were listed Below the top candidate in the list that got most votes (art.20)	called the people's committee members were directly elected by the citizens. the Cont art 72	Candidate of winning list represent political parties. (art.17,18 Election law)
Elect by who? (voter?)	no	by who paid tax and registered in the tax paid list. (art.8)	by who paid tax and registered in the tax paid list. (art.9)	Tax payers & who hold exemption permission letter as elder or disability. (art.11)	No election but appointed by district governor (art.18)	by residents who reach the age of 20,registered in the voting list (art.11)	Citizens	by residents registered in commune election list, (art.12 Election Law)
Number of Commune Council	no	50 people= 1 candidate (art.9)	8 to 16 members (art.10)	9 to 19 members (art.27)		9 to 20 members (art.23)		5 to 11 members (art.12)
Eligibility age of voters	no		21 years (art.9)	21 years (art.11)		20 years (art.11)		18 years (art.12 Election Law)
Eligibility age of the commune council Candidate	no		21 years and Voters (art.9)	(21 years)		25 years (art.12)		25 years (art.14)

				Voters and registered in candidate list (art.11)				
Term of Election	no	4 years (art.9)	4 years (art.9)	4 years (art.17)		4 years (art.15)	3 years (art. 73)	5 years (art.11)
Date of Election	no	-Decided by Council of Ministers (art.8)		Any Day in April Decided by the FRP (art.17)		Any Sunday, Decided by Provincial Governor, different in each province. (art.15)		A Sunday, requested by MoI, Decided by Prime Minister (art.3 Election law)
Polling Station	no	Village (art.8)	Village or Villages (art.9)	Commune (art.19)		at most 500 voters for a polling office (art.17)		at most 750 voters for a polling office (art.22 Election law)
Election Campaign	no					15 days before the election day (art.15)		14 days, and finished 24 hours before election day. (art.70 Election law)

