

LAW ON THE ORGANIZATION AND THE
FUNCTIONING OF THE CONSTITUTIONAL COUNCIL

AND

LAW ON THE AMENDMENT OF THE LAW ON THE
ORGANIZATION AND THE FUNCTIONING OF THE
CONSTITUTIONAL COUNCIL

Promulgated by :

- Preah Reach Kram N° CS/ RKM/ 0498/ 06 of April 08, 1998
- Preah Reach Kram N° NS/ RKM/ 0107/ 005 of January 31, 2007

CHAPTER I

THE ORGANIZATION OF THE CONSTITUTIONAL COUNCIL

Article 1 *new*

This law aims at creating and determining the Organization and the Functioning of the Constitutional Council in order to ensure the respect of the Constitution, to interpret the Constitution and the laws, to examine and to rule on the litigations related to the elections of the Members of the National Assembly and to the elections of the Senators.

Article 2.

The Constitutional Council is a neutral and independent institution while exercising its functions.

The Constitutional Council is composed of nine members appointed by Preah Reach Kret.

The mandate of the Constitutional Council's Members is limited to nine years.

Article 3 *new*

All the nine Members of the Constitutional Council shall be chosen among the high-ranking personalities of Khmer nationality by birth, aged at least 45 years old, holding high diplomas in law, administration, diplomacy or economics and having professional experiences of at least 15 years.

Three Members of the Constitutional Council shall be appointed by the King, three elected by the Supreme Council of Magistracy, and three others elected by the National Assembly at the absolute majority of all its Members.

Their elections by the National Assembly can be done in two rounds of ballot.

For the first mandate, if the election did not provide an absolute majority for the first round of ballot, the National Assembly shall proceed by selecting no more than five persons who obtain the highest result to be presented for the second round of ballot. The relative majority rule shall be applied for this second round of ballot. The candidate who obtains the highest number of votes shall be appointed for 9 years, the second highest for 6 years and the third one for 3 years.

For the consecutive mandates, if the first round of ballot can not provide an absolute majority, the second round shall be held by selecting two candidates obtaining the highest result to be presented for the election. The relative majority rule shall be applied for this second round of ballot.

In case the votes result in a tie, the eldest candidate shall prevail.

The candidates for the election by the National Assembly must receive, beforehand, endorsement signed by one tenth of all the Members of the National Assembly. Each member of the National Assembly can endorse only one candidate at a time.

Article 4 *new*

Every three years, three members shall be renewed: one appointed by the King, one elected by the Supreme Council of Magistracy and the other one elected by the National Assembly.

The President of the Constitutional Council shall be elected every 3 years at the absolute majority of all its Members, after the three new members have assumed their function.

The outgoing President of the Constitutional Council can be re-elected.

The President of the Constitutional Council shall be appointed by Preah Reach Kret.

The President of the Constitutional Council has rank and prerogatives of those of the President of the National Assembly.

Members of the Constitutional Council have rank and prerogatives of those of Vice-Presidents of the National Assembly.

The former Members of the Constitutional Council are entitled to the monthly retirement pension under the same conditions and calculation formulas of the retirement pension applied to the former Members of the National Assembly.

Article 5 *new*

The function as Member of the Constitutional Council is incompatible with the functions as Member of the Government, Senator, Member of the National Assembly, President or Vice-President of a political party, President or Vice-President of a trade union and incumbent magistrate.

The Members of the Constitutional Council shall not exercise any other official position or professional activities during their mandate.

The appointed Members of the Constitutional Council shall, before assuming their function, provisionally leave all their official positions or professional activities as stipulated in the aforementioned paragraph.

The President of the Constitutional Council shall inform in writing the Members exercising any official position and professional activities as stipulated above, to immediately leave these official position or professional activities.

The Members of the Constitutional Council shall request a leave from all activities involving their personal interest. The request to leave or the obligation to leave shall be decided by the Constitutional Council at an absolute majority of all its Members.

Article 6.

The Member of the Constitutional Council shall be appointed within 30 days at the latest to replace the outgoing Member before the latter's mandate comes to an end.

In case of resignation, dismissal or demise of a Member, a new Member shall be appointed to replace in accordance with the conditions stipulated in Article 4 within 30 days at the latest.

Article 7.

Before taking office, the members of the Constitutional Council shall take an oath.

The Members of the Constitutional Council shall keep confidential their deliberations and votes, and shall not make any comment outside the meeting.

Article 8.

The new Member of the Constitutional Council, appointed in replacement of the one who leaves his/her function before the end of the normal term, will have to complete the remaining period of that mandate.

However, if this duration period equal to or less than three years comes to an end, this member can be reappointed or re-elected for a new mandate.

Article 9.

Any Member of the Constitutional Council can resign by merely informing the Constitutional Council in writing.

Article 10.

The Constitutional Council can dismiss any member who has infringed the dispositions of Articles 5 and 7 of this law or who has not attended more than 3 consecutive meetings without prior notification, or unable to normally perform his/her function due to permanent physical or mental disabilities.

The decision for dismissal of any Member of the Constitutional Council must be approved by a two third majority of all its Members.

Any Member of the Constitutional Council who has been sentenced by the court to imprisonment for misdemeanor or felony shall be automatically dismissed.

Article 11.

The Members of the Constitutional Council shall not be liable to any penal or civil sanction for decisions taken while fulfilling their function as Members of the Constitutional Council.

CHAPTER II

THE FUNCTIONING OF THE CONSTITUTIONAL COUNCIL

Section 1

Common Provisions

Article 12 *new*

The Constitutional Council shall draft its own Rules of Procedure.

The Rules of Procedure of the Constitutional Council shall be adopted at the absolute majority by all its Members.

The Constitutional Council is assisted by a Secretariat General.

The organization and the functioning of the Secretariat General shall be determined by Anukret.

Article 13.

The Constitutional Council shall have its own budget allocated by the national budget.

The President of the Constitutional Council shall be the prime authority responsible for the expenditure.

Article 14 *new*

The meeting of the Constitutional Council shall be convened by the President or by the eldest Member, in case the President being prevented.

The meeting of the Constitutional Council is valid, when over half of its Members attend.

Section 2

The competence of the Constitutional Council regarding the constitutionality of the laws

Article 15 *new*

The Constitutional Council shall have the competence to guarantee the respect of the Constitution, to interpret the Constitution and the Laws adopted by the National Assembly and definitely reviewed by the Senate, in the framework of the control of the constitutionality of the Laws.

Article 16 *new*

The organic laws and their amendments, once adopted by the National Assembly and definitively reviewed by the Senate, must be sent by the President of the National Assembly to the Constitutional Council for the control of their constitutionality, before their promulgation.

The Senate's Rules of Procedure and their amendments, after their adoption by the Senate, must be sent by the President of the Senate to the Constitutional Council for the control of their constitutionality, before their enforcement.

The National Assembly's Rules of Procedure and their amendments, once adopted by the National Assembly, must be sent by the President of the National Assembly to the Constitutional Council for the control of their constitutionality, before their enforcement.

Article 17 *new*

The King, the President of the Senate, the President of the National Assembly, the Prime Minister, one-fourth of the Senators or one-tenth of the National Assembly's Members may send the laws adopted by the National Assembly and definitively reviewed by the Senate to the Constitutional Council for examination before their promulgation.

Article 18 *new*

After a law has been promulgated, the King, the President of the Senate, the President of the National Assembly, the Prime Minister, one-fourth of the Senators, one-tenth of the National

Assembly's Members or the Courts can request the Constitutional Council to examine the constitutionality of that law.

Any citizen has the right to raise the unconstitutionality of the law or to ask the Constitutional Council to interpret it through the intermediary of the President of the National Assembly, of the National Assembly's Members or of the President of the Senate or of the Senators, as provided in the aforementioned paragraph.

Article 19.

Any individual engaged in a legal proceeding, who considers that a provision of a law or a decision of any institution violates any of his/her fundamental rights and liberties may raise the unconstitutionality of this law with the court.

The court, when finding the question raised grounded, shall submit the case to the Supreme Court within 10 days at the latest.

The Supreme Court shall examine and refer that case to the Constitutional Council within 15 days at the latest, except when it deems the case inadmissible.

Article 20.

The Constitutional Council decides any provision of the law inconsistent with the Constitution in the following cases:

- a. if that provision cannot be separated from the remaining text, the law in its totality can neither be promulgated nor applied.
- b. if that provision can be separated from that remaining text, only the provision which is inconsistent with the Constitution can neither be applied nor promulgated.

Article 21.

The Constitutional Council has the right to invite any or several persons for clarifications or for providing related documents.

Every person, State or private institutions shall respect and comply with the invitations and with the requests made by the Constitutional Council.

Article 22 *new*

The Constitutional Council shall rule in writing on all cases that have been submitted to it, within 30 days. In case of urgency, this period of time is reduced to 8 days.

The Constitutional Council shall examine the constitutionality of the law or interpret the law on the basis of the report by the Member assigned the task to do so by the President of the Constitutional Council. The reporting member shall be a Member of the Constitutional Council's Groups as provided in Article 30 *new* of this law.

The decision of the Constitutional Council shall be taken at an absolute majority of all its Members. In case of a tie in the voting, the vote of the President prevails.

The decision of the Constitutional Council shall state the motives.

Article 23.

The decisions of the Constitutional Council shall be final, without recourse and shall have authority over all the instituted powers, as stipulated in the Constitution.

Article 24 *new*

The decisions of the Constitutional Council shall be submitted to the King, forwarded to the President of the Senate, to the President of the National Assembly, to the Prime Minister, to the President of the Supreme Court, and shall be published in the Royal Gazette.

The President of the Senate shall inform all the Senators about these decisions.

The President of the National Assembly shall inform all National Assembly's Members about these decisions.

The Prime Minister shall inform all the Members of the Royal Government about these decisions.

The President of the Supreme Court shall inform the concerned courts about these decisions.

Section 3

The Competence of the Constitutional Council relating to the Elections of the Members of the National Assembly

Article 25 *new*

The Constitutional Council has the right to examine and to decide on litigations related to the elections of the Members of the National Assembly and to the elections of the Senators.

Article 26.

The Constitutional Council shall examine and decide on:

1. any petition from a political party or a candidate who contests the decision of the National Election Committee rejecting the complaint related to the candidacy or to the list of registered candidates. This petition shall be filed within 7 days at the latest after receiving the notification from the National Election Committee;

2. any petition of a person contesting the decision of the National Election Committee rejecting his/her request for registration on the voters' list. This petition shall be filed within 5 days at the latest after receiving the notification from the National Election Committee;

3. any petition by an individual or his/her representative against the decision of the National Election Committee rejecting the complaint about his/her missing name, or the objection to the registration of names or the upholding on the voters' list of the name of any individual whose conditions are considered inconsistent with the law on the elections. The petition shall be made within 5 days at the latest after receiving the notification from the National Election Committee.

The Constitutional Council shall decide on the aforementioned case within 10 days at the latest after receiving the petition;

4. any petition of political party contesting its registration on the list of political parties being refused. The petition shall be filed within 5 days at the latest after receiving the notification from the Ministry of Interior;

The Constitutional Council shall decide on the case within 30 days at the latest after receiving the petition.

Article 27 new

The Constitutional Council shall examine and decide on:

1. any direct petition against the results of the elections by an individual or a political party candidate to the elections. This petition shall be filed within 72 hours at the latest after the proclamation of the preliminary results.

2. any petition from an individual or a political party contesting the decision of the National Election Committee rejecting their petition against the results of the elections. This petition shall be filed within 72 hours at the latest after receiving the notification from the National Election Committee.

The Constitutional Council shall decide on the aforementioned case within 20 days at the latest after receiving the petition.

Article 28.

Any individual or political party contesting the decision of the National Election Committee or contesting the results of the elections shall write a recourse to the Constitutional Council. This recourse shall specify:

1. the name of the contesting individual or political party;
2. the legal status of the plaintiff (registered on voters' list as candidate or as representative of a political party);
3. the name of the contested constituency;
4. the name of the individual or the political party announced as elected, but contested;
5. all documents or evidences supporting the claim.

The Constitutional Council, due to its discretion, may extend the time limit of 5 days for the plaintiff or for the political party to provide evidences.

The Constitutional Council may decide not to make any investigation of the case, if after consideration it does not meet the conditions required in this article.

All petitions lodged with the Constitutional Council are free of charge.

Article 29 new

The petition shall have no effect in delaying the implementation. However, pending a final decision, the Constitutional Council, if it deems necessary, can issue a preliminary order to temporarily suspend the result of the elections concerning a Member of the National Assembly or a Senator or a political party contested. The effect of this order shall end upon the final decision of the Constitutional Council.

Article 30 new

For the researches and investigations on litigations related to the elections of the Members of the National Assembly and those of the Senators, as well as for the examination of the constitutionality or the interpretation of the laws, the Constitutional Council shall be divided into 3 groups. Each group

has three members, one being a member appointed by the King, one being a member elected by the National Assembly, and the other one being a member elected by the Supreme Council of Magistracy. The Members of these 3 groups shall be selected by drawing lots, under the chairmanship of the President of the Constitutional Council.

Article 31.

After receiving the petition, the President of the Constitutional Council shall delegate the power to one of the groups responsible for the investigations. This group shall immediately inform in writing the plaintiff and the contested person or party that they have only ten days to examine the petition and the evidences provided by the plaintiff to the Constitutional Council, and to prepare a written reply.

Article 32.

After receiving the aforementioned reply or after the expiration of the time period of ten days and after having completed the investigations, the group in charge shall submit the results of the investigations as well as its views to the Plenary Session of the Constitutional Council. The Constitutional Council may request further investigations, and may directly hear the plaintiffs and the defendants.

Article 33.

During the investigations, the Constitutional Council or one of its groups can make the inquiries on all subjects, ask for other documents and reports, and summon all persons involved in the elections.

The Constitutional Council or one of its groups may appoint its own personnel or other individuals to assist in the investigations, especially in recording the answers of witnesses under oath. The written minutes of the witnesses' depositions shall be kept available for all parties. If the investigator or the member of a group knows that the witness is afraid of retaliation, the latter's name shall be kept secret from anyone's knowledge, except from the Constitutional Council's, only the substance of the deposition being accessible.

Article 34 *new*

The Constitutional Council decides on the cases contesting the regularity of the elections, the eligibility of a candidate for the elections and the eligibility of a candidate declared elected.

The Constitutional Council may agree or disagree with the decisions of the National Election Committee, declare the nullity of the elections that have been contested, or declare the candidate as duly elected.

The Constitutional Council shall take its decisions at the absolute majority of all its members. The decisions of the Constitutional Council shall be founded on motives.

The decision of the Constitutional Council shall be final without recourse.

These decisions shall be submitted to the King, sent to the Senate, to the National Assembly, to the Royal Government and shall be published in the Royal Gazette.

Article 35.

The Constitutional Council has the right to forward any petition that does not fall within its competence to the competent organization.

CHAPTER III
THE PENALTIES

Article 36.

Any witness guilty of perjury or subornation of perjury in the framework of investigations by the Constitutional Council, or any person who fails to respect the decisions of the Constitutional Council or interferes with the activities of the Constitutional Council shall be subject to imprisonment for a term of 1 month to 1 year and to a fine of 100,000 to 600,000 riels, or either one of the two penalties.

Article 37.

The Members of the Constitutional Council who do not respect the dispositions of this law shall be subject to disciplinary sanctions, regardless of any other criminal penalty. This disciplinary regulation shall be determined by the Rules of procedure of the Constitutional Council.

CHAPTER IV
THE TRANSITIONAL PROVISIONS

Article 38.

For its first mandate, the Constitutional Council shall have 3 members appointed for a term of 3 years, 3 for a term of 6 years and 3 others for a term of 9 years.

The King shall appoint one member for 3 years, one member for 6 years and one member for 9 years.

The Supreme Council of Magistracy shall elect one member for 3 years, one member for 6 years and one member for 9 years.

The National Assembly shall elect one member for 3 years, one member for 6 years and one member for 9 years.

Article 39.

The first convening of the Constitutional Council shall be made within 7 days at the latest after the appointment of its Members by Preah Reach Kret. The convening of and the presiding over the first Session shall be entrusted to the eldest of the attending members, in order to elect the President of the Constitutional Council.

CHAPTER V
THE FINAL PROVISIONS

Article 40.

Any provision that is contrary to this law shall be abrogated.

Article 41.

This law is declared as urgent.

*This law has been adopted by the National Assembly of the Kingdom of Cambodia on
March 19, 1998 during the 8th session of the first legislature,
done in Phnom Penh, on the 23rd of March 1998.
The Acting President of the National Assembly,*

Signed: Loy Sim Chheang

*And promulgated in Phnom Penh, on the 8th of April 1998.
in the August Name and by Royal Order,
The Acting Head of State,*

Signed: Chea Sim