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<b>Comments</b>	This is an unofficial translation. The Law was adopted by the National Assembly of the Kingdom of Cambodia on 19 March 1998 during the 8th Session of its first legislature. It was promulgated by Decree No. CS/RKM/0498/06 on 8 April 1998.

## Law on Organization and Function of the Constitutional Council

### CHAPTER I

#### ORGANIZATION OF THE CONSTITUTIONAL COUNCIL

##### Article 1:

This law has an objective to establish and determine the organization and functioning of the Constitutional Council, in order to guarantee the protection and respect for the Constitution, interpret the Constitution and Laws and to consider and decide on disputes related to the election of members of the National Assembly.

##### Article 2:

The Constitutional Council is an institution which is independent and neutral in the fulfilment of its function.

The Constitutional Council consists of nine (9) members who shall be appointed by Royal-Decrees.

Members of the Constitutional Council have a 9 year term.

##### Article 3:

All the 9 members of the Constitutional Council shall be selected from amongst dignitaries who have Khmer nationality from birth of at least 45 years old and at least a superior education degree in law, administration, diplomacy or economics and who have at least 15 years of work experiences.

Three (3) members of the Constitutional shall be appointed by His Majesty the King, three (3) the Supreme Council of Magistracy and three (3) other members shall be elected by the National Assembly by an absolute majority of votes of members of the whole National Assembly.

This above election by the National Assembly may be proceeded into two times.

During the first mandate, if it is failed to obtain an absolute majority after the first vote, then a second vote shall be proceeded, for which 5 of the members who received most of the votes, shall be voted again. During this second vote, (the National Assembly) shall adopt by a comparative majority of votes. Who received a highest majority in the vote, shall be appointed for a 9 year

term, who received a second majority in the vote, shall be appointed for a 6 years term and who received next majority in the vote, shall be appointed for a 3 years term.

During the next mandate, if it is failed to obtain an absolute majority after the first vote, a second vote shall be proceeded, for which two (2) of the members who received most of the votes, shall be voted again. During this second vote, ( the National Assembly ) shall adopt by a comparative majority of votes.

In case when candidates received equal votes, one of the candidates who has the oldest age shall then be elected.

Each candidate who is elected by the National Assembly, shall be required to have supporting signatures in advance from 1/10 of the whole members of the National Assembly. One member of the National Assembly may have right to support only one sole candidate.

#### **Article 4:**

Every 3 years, three (3) of the members shall be replaced and newly appointed, in which one (1) member will be appointed by His Majesty the King, one (1) by the Supreme Council of Magistracy and another one will be elected by the National Assembly.

Once every three years, the President of the Constitutional Council shall be elected through vote amongst members of the Constitutional Council, by an absolute majority of the whole members, after 3 members have taken their office.

The old President of the Constitutional Council may be re-elected.

The President of the Constitutional Council, shall be appointed by a Royal-decree.

The President of the Constitutional Council has title and prerogative equal to which of the President of the National Assembly.

Each member of the Constitutional Council has title and prerogative equal with which of the Deputy-president of the National Assembly.

#### **Article 5:**

Functions of the members of the Constitutional Council are incompatible with those of the members of the Royal Government and the National Assembly, Presidents and Deputy-presidents of political parties, Presidents or Deputy-Presidents of trade unions and sitting judges.

During their terms, members of the Constitutional Council shall not hold any other position or professional occupation .

Before assuming their positions on the Constitutional Council, persons appointed to the Council shall resign for temporary from all the positions or professional occupations as stated in the above paragraph.

The President of the Constitutional Council shall inform in writing to those members of the Constitutional Council who are holding the positions or occupations as above that they must immediately resign from those positions or occupations .

Members of the Constitutional Council shall recuse themselves from all cases in which their personal interests could be effected by the outcome of the cases. Any request for recusal or requirement of recusal, shall be decided by the Constitutional Council, by an absolute majority of its whole members.

**Article 6:**

A new member of the Constitutional Council shall be appointed for replacement within 30 days, before the end of the mandate of the member who is to leave the position.

In case of resignation or removal from position or deceased of any member, a new member who is to replace, shall be appointed as stated in the article 4 within a period of 30 days.

**Article 7:**

Before assuming their positions, members of the Constitutional Council shall take an oath.

Members of the Constitutional Council shall keep confidentiality of the discussions and votes, and must not express their opinion outside of the meeting.

**Article 8:**

A new member of the Constitutional Council who is appointed to replace any member who has left the position before the end of normal term, shall hold position only for the remaining term.

But if such remaining term is equal or less than 3 years, at the expiry of this term, that member may be re-appointed or re-elected for one more term.

**Article 9:**

Each member of the Constitutional Council may ask for resignation, by simply submitting a written notice to the Constitutional Council.

**Article 10:**

The Constitutional Council may remove from position any of its members who violated the articles 5 and 7 of this law or was absent for more than three (3) consecutive meetings without giving notice in advance or who is definitively unable to exercise his/her duties because of a permanent loss of mental or physical capacity.

A decision to remove from position of any member of the Constitutional Council, requires a 2/3 majority decision of all members of the whole Council.

Any member of the Constitutional Council who has been sentenced by the court for misdemeanour or felony, shall automatically be removed from position.

**Article 11:**

Members of the Constitutional Council shall not be liable for any criminal or civil prosecution, for any decision which they made whilst carrying out their duties as members of the Council.

**CHAPTER II  
FUNCTIONING OF THE CONSTITUTIONAL COUNCIL**

**First Section  
Common Provisions**

**Article 12:**

The Constitutional Council shall establish its own Internal Rules.

The Internal Rules shall be adopted by a 2/3 majority of the all members of the whole Constitutional Council.

The Constitutional Council shall establish a General Secretariat to assist it.

The organization and functioning of the General Secretariat, shall be determined by a Sub-decree.

**Article 13:**

The Constitutional Council has its own budget which is provided from the national budget.

The president of the Constitutional Council is a first level budget authorizer.

**Article 14:**

Meetings of the Constitutional Council shall be convened by the President of the Council or, if the President is busy and unable to do it, by an oldest member.

Meetings of the Constitutional Council shall not be valid unless attended by 7 members.

**Second Section**

**Competencies of the Constitutional Council concerning the constitutionality of laws**

**Article 15:**

The Constitutional Council has competence in guaranteeing the protection and respect for the Constitution, interpretation of the Constitution and laws which have been adopted by the National Assembly, within a framework of controlling the constitutionality of laws.

**Article 16:**

Organic laws, Internal Rules of the National Assembly and all amendments of organic laws and Internal Rules of the National Assembly, after adopted by the National Assembly, shall be submitted by the President of the National Assembly to the Constitutional Council to determine whether they conform or not with the Constitution, prior to promulgation.

**Article 17:**

The King, President of the National Assembly, Prime Ministers or 1/10 of the members of Parliament, may submit other laws which have been adopted to the Constitutional Council for consideration, prior to promulgation.

**Article 18:**

After promulgation of any law, His Majesty the King, President of the National Assembly, Prime Ministers or 1/10 of members of the Parliament or court, may request to the Constitutional Council to determine whether it conforms with the Constitution.

Citizens may have right to appeal against the unconstitutionality of laws through the President or members of the National Assembly as stated in the above paragraph.

**Article 19:**

Any person who involves in any suit at court, may request to the court of an unconstitutionality of

any provisions of a law or any decision of a State's Institution which he/she affirms of affecting any of his/her fundamental rights-freedoms.

If the court determines that the above request has sufficient basis, it shall refer the case to the Supreme Court within a period of 10 days.

The Supreme Court shall proceed to consider and complain to the Constitutional Council within a period of 15 days, except when Supreme Court determines that such request is not acceptable.

#### **Article 20:**

If the Constitutional Council determines that any provisions of a law is contrary to the Constitution :

a- if that provision is not separable from the rest of the text, the whole of the law text shall not be promulgated or applicable.

b- if that provision is separable from the rest of the text, only a provisions which is contrary to the Constitution shall not be promulgated or applicable.

#### **Article 21:**

The Constitutional Council may have right to invite one or more persons to clarify or provide relevant documents.

Every individual, State or private institution shall abide by the invitation and request of the Constitutional Council.

#### **Article 22:**

The Constitutional Council shall make decisions in writing on all cases submitted within a period of 30 days. In case if it is urgent, this above period shall be reduced to only 8 days.

The Constitutional Council determines on the constitutionality based on a report made by a member that the President has assigned duty to him/her for considering and making such report (for the Council).

The Constitutional Council takes decisions based on an absolute majority of all members of the whole Council. In case when there are two equal voices in the vote, the voice of the president shall then be preponderant.

In all decisions of the Constitutional Council shall contain reasons.

#### **Article 23:**

Decisions of the Constitutional Council are decisions which close access for further appeals and have binding force to all powers as stated in the Constitution.

#### **Article 24:**

Decisions of the Constitutional Council shall be submitted to His Majesty the King, President of the National Assembly, Prime Ministers and President of the Supreme Court and besides, shall be published in the " Official Journal ".

The President of the National Assembly shall inform of the above decisions to all members of the National Assembly.

The Prime Ministers shall inform (of the above decisions) to all members of the Royal Government.

The President of the Supreme Court shall inform ( of the above decisions ) to the concerned courts .

### **Third Section**

#### **Competencies of the Constitutional Council concerning the election of members of the National Assembly**

##### **Article 25:**

The Constitutional Council decides on disputes related to the elections of members of the National Assembly.

##### **Article 26:**

The Constitutional Council determines and decides on:

1-requests of political parties or contests of candidates against any decision of the National Election Committee (N.E.C.) which rejected the contests against any candidacy or any candidate list. Such requests shall be made within 7 days after the reception of a letter of notice from the National Election Committee.

2-requests of individuals contesting against the decisions of the National Election Committee (N.E.C.) which rejected the requests for registration (in the voter register). Such requests shall be made within 5 days after the reception of a letter of notice from the National Election Committee.

3-requests of individuals or their representatives who contest against the decisions of the National Election Committee which decided to reject the contests regarding the missing names, opposition against any registration or retention in the voter list of any person's name who is considered as not appropriately in conformity with the conditions as stated in the Election Law. Such above request shall be made within five (5) days, after the reception of a letter of notice from the National Election Committee (N.E.C.).

The Constitutional Council shall take decision on the above cases, within thirty (30) days, after the reception of the requests.

4-requests of political parties, which contested against the rejection from registering it in the political party register. Such above requests shall be submitted to the Constitutional Council within five (5) days, after the reception of a letter of notice from the Ministry of Interior .

The Constitutional Council shall take decisions on the above cases within thirty (30) days, after the reception of the requests from the concerned political parties.

##### **Article 27:**

The Constitutional Council determines and decides on:

1-direct requests contesting against the election result of which the individuals or political parties which are running for election are disagreeing with . Such above requests shall be made within seventy two (72) hours after the proclamation of a temporary result of the election.

2-Requests of the individuals or political parties, contesting against the decisions of the National Election Committee (N.E.C.) which rejected the contests against the election result. Such above requests shall be made within 48 hours, after the reception of a letter of notice from the National Election Committee.

The Constitutional Council shall take decision on the above case within twenty ( 20 ) days, after the reception of the requests.

#### **Article 28:**

Any individual or political party who wishes to contest against a decision of the National Election Committee (N.E.C.) or an election result, shall submit a written request to the Constitutional Council. On such request must mention:

- 1-the name of the individual or political party making the request,
- 2-legal status of the person making the request ( who is a person whose name is in the voter register or a candidate or representative of a political party).
- 3-name of the electoral constituency in which the contested election took place.
- 4-name of an individual or political party proclaimed to have won the election and against whom the contest is made.
- 5-all documents or evidence in support of the request for the annulment.

At its discretion, the Constitutional Council may accord to such individual or political party who/which is the contestant, a 5 days extension to produce evidence.

The Constitutional Council may decide not to carry out an investigation on any request, if such request fails to comply with specified conditions under this article.

In all cases, when submitting a request to the Constitutional Council, it is required to pay no fees.

#### **Article 29:**

A request has no effect to stop the implementation. However, pending a final decision, the Constitutional Council may, if deems necessary, issue a preliminary order to suspend for temporary a contested election result of any member of the National Assembly or political party. This above order shall be cease its effect, upon a final decision is issued by the Constitutional Council.

#### **Article 30:**

In order to investigate on disputes related to the election of members of the National Assembly, the Constitutional Council shall be divided into 3 Sections. Each Section composes of 3 members, in which one (1) member is appointed by the King, one (1) member is elected by the National Assembly and one (1) member is appointed by the Supreme Council of Magistracy. Individual members of these 3 Sections shall be assigned to Sections according to a random selection presided over by the President of the Council.

#### **Article 31:**

After the reception of a request, the President of the Constitutional Council shall delegate the responsibility to one of the Sections to undertake an investigation. That Section shall immediately inform in writing to the person making the request and to the person or political party whose/which election is contested that he/she has in maximum 10 days to review on the request and the evidence submitted to the Council by the parties, and to produce a written response.

#### **Article 32:**

After the reception of the above letter of response or expiry of the 10 days period and after completion of the investigation, the Section which is responsible shall submit the result of the investigation conducted by the Section and its recommendation to the full Constitutional Council Session. The Constitutional Council may order to conduct further investigation and may offer opportunity for a direct hearing of the person making the request and the person whose election is contested.

#### **Article 33:**

The Constitutional Council or the Sections may, in conducting an investigation, inquire into all issues, demand all documents and reports and subpoena any person related to the election.

The Constitutional Council or the Sections may assign its staff members or other persons to assist in the investigation of a contested election, particularly in the reception of testimonies of witnesses upon they took an oath. The written minutes of such testimonies of witnesses shall be made available for all parties. If the investigator or any member of the Section found out that a witness has fear of persecution, the name of such witness shall then be kept secret from all but the Constitutional Council and only the substance of his/her testimony is revealed.

#### **Article 34:**

The Constitutional Council takes decisions in case when there are requests concerning the (ir)regularity of an election, eligibility of a person for an election or eligibility of a candidate proclaimed to have won the contested an election.

The Constitutional Council may express approval or disapproval on a decision of the National Election Committee (N.E.C.), proclaim the nullification of the contested election or proclaim that a candidate is legitimately elected.

The Constitutional Council shall take decision by an absolute majority of all members of the whole Council. In every decision of the Constitutional Council shall indicate of the reasons.

Decisions of the Constitutional Council are final decisions and which close access for further appeal.

This above decision shall be submitted to His Majesty the King, National Assembly and Royal Government and moreover shall be published in the " Official Journal".

#### **Article 35**

The Constitutional Council may have rights to forward any complaint which is not within its competence, to a competent body.

### **CHAPTER III PENALTIES**

#### **Article 36:**

Any person who is found guilty for having been as a dishonest witness or for making pressures to the witnesses within a framework of an investigation by the Constitutional Council, or any person who refuses to respect the decision of the Constitutional Council or who obstructs the operation of the Constitutional Council shall be subject to imprisonment from one (1) month to one (1) year and to a fine penalty of 100,000 ( one hundred thousand) to 600,000 ( six hundred thousand) riels or to either one of the two punishments.



**Article 37:**

Any member of the Constitutional Council who disrespects any provisions of this law, shall be subject to disciplinary sanction, without yet including other criminal punishment(s). Such disciplinary rules shall be determined in the Internal Rules of the Constitutional Council.

**CHAPTER IV  
TRANSITIONAL PROVISIONS**

**Article 38:**

During the first mandate, the Constitutional Council shall consist of three (3) members appointed for a three (3) year term, three (3) members appointed for a six (6) year term and three other members appointed for nine (9) year term.

His Majesty the King shall appoint one member for a three (3) term, one member for a six (6) year term, and another member for a nine (9) term.

The Supreme council of Magistracy shall appoint one (1) member for a three (3) year term, one (1) member for a six (6) year term and another member for a nine (9) year term.

The National Assembly shall elect one (1) member for a three (3) year term, one (1) member for a six (6) year term and another member for a nine (9) year term.

**Article 39:**

The first meeting of the Constitutional Council shall be convened within a period of 7 days, after the Royal-decrees on appointment of members have been issued. This above meeting and presiding over this first meeting, shall be convened by an oldest member who is present, for electing a President of the Council.

**CHAPTER V  
FINAL PROVISIONS**

**Article 40:**

Any provisions which is contrary to this law shall be null and void.

**Article 41:**

This law is declared urgent.

THIS LAW IS ADOPTED BY THE NATIONAL ASSEMBLY OF THE KINGDOM OF CAMBODIA, ON 19 MARCH 1998, DURING THE 8th SESSION OF ITS 1st LEGISLATURE.

PHNOM PENH, 23 MARCH 1998.

THE ACTING PRESIDENT OF THE NATIONAL ASSEMBLY,  
Signature and seal of: LOY SIM CHHEANG.

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