

**Kingdom of Cambodia
Nation Religion King**

The Constitutional Council

CASE

N°: 357/002/2019

Of January 11, 2019

Decision

N°: 199/002/2019 CC.D

Of January 16, 2019

The Constitutional Council

- Seen the Constitution of Kingdom of Cambodia;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998, promulgating the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0107/005 of January 31, 2007, promulgating the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0318/005 of March 10, 2018, promulgating the Law on the Amendment of the Article 26, Article 27 (New), Article 28, Article 31 and the Article 32 of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0508/018 of May 24, 2008, promulgating the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils;
- Seen Preah Reach Kram N° NS/RKM/1017/013 of October 25, 2017, promulgating the Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils;

- Seen the letter N° 016 N.A January 11, 2019 of Samdech Akka Moha Ponhea Chakrei **HENG Samrin**, President of the National Assembly, requesting the Constitutional Council to examine the Constitutionality of the Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils adopted by the National Assembly on January 03, 2019 in the 1st Session of its 6th legislature and reviewed and entirely approved by the Senate on the legal form and substance and considered to be urgent in the 2nd Session of its 4th legislature of January 11, 2019, the letter received by the Secretariat General of the Constitutional Council on January 11, 2019 at 16:00;

Having heard the rapporteurs,

Having deliberated in compliance with the law,

- Whereas the National Assembly and the Senate have duly implemented the procedure stipulated in Article 113 (New) of the Constitution for reviewing and adopting the Law on the Amendment of the Law on Elections of Capital Council, Provincial Council, Municipal Council, District Council and Khan Council;
- Whereas the request of Samdech Akka Moha Ponhea Chakrei **HENG Samrin**, President of the National Assembly, made in accordance with Article 140 (New) of the Constitution and Article 16 (New) of the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council, is therefore admissible;
- Whereas the form in drafting and adopting the Law on the Amendment of the Law on the Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils is in conformity with the Constitution;
- Whereas the Law on the Amendment of the Law on the Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils consists of **two Articles** with the following contents:

Article One.

- The Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils promulgated by Preah Reach Kram N° NS/RKM/0508/018 of May 24, 2008, and the Law on the Amendment of the Law on the Elections of Capital Council, Provincial Council, Municipal Council, District Council

and Khan Council promulgated by Preah Reach Kram N° NS/RKM/1017/013 of October 25, 2017, were amended as follows:

- Chapter 3 (on the Budget) and Chapter 5 (on the Transitional Provision) shall be deleted;
- Chapter 4 shall be changed to Chapter 3 New (on the Penalty);
- Chapter 6 shall be changed to Chapter 4 New (on the Final Provision);
- Article 11, Article 85, Article 86, Article 87 and Article 88 shall be deleted
- Article 3, Article 10, Article 12, Article 13, Article 13 (bis), Article 17, Article 29, Article 30, Article 44, Article 46, Article 55, Article 57, Article 58 and all Articles from Chapter 4 to Chapter 6 shall be amended.

Article Two.

This law shall be declared to be urgent.

-Whereas the aforementioned **Article One** of the Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils and the Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils, were amended as follows:

- Chapter 3 (on the Budget) and Chapter 5 (on the Transitional Provision) shall be deleted;
- Chapter 4 shall be changed to Chapter 3 (New) (on the Penalty);
- Chapter 6 shall be changed to Chapter 4 (New) (on the Final Provision);
- Article 11, Article 85, Article 86, Article 87 and Article 88 shall be deleted;

The aforementioned deletion and revision are in conformity with the Constitution.

- Article 3, Article 10, Article 12, Article 13, Article 13 (bis), Article 17, Article 29, Article 30, Article 44, Article 46, Article 55, Article 57, Article 58 and all Articles from Chapter 4 to Chapter 6 were amended as follows:
 - Article 3 was amended to:
 - Article 3 (New) stipulating the provisions as stipulated in Article 18 (New) of the Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans shall be applied for determining the number of Councillors.

This Article is in conformity with Article 146 (New) (One) of the Constitution.

- Article 10 was amended to:
 - Article 10 (New) stipulating that the Management of the Election of the Council shall be implemented following the Law on the Organization and Functioning of the National Election Committee.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 11 (New) (Article 12 old) stipulating that the National Election Committee shall form the regulations and procedures related to the Management of the Election of the Council by following the principles of this Law and the Law on the Elections of the Members of the National Assembly.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 12 (New) stipulating that the Election of the Council shall be implemented by following the proportional system where seats are allocated based on the highest average.

All steps and procedures of the seat allocations depend on each case.

The announcement of candidate elected as council member.

This Article is in conformity with Paragraph 1 of Article 51 (New) and Article 150 (New) (Two) of the Constitution.

- Article 13 (New) stipulating the invalidity and the termination of candidate lists and all Councillors of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils in mandates of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils, in case a political party abandons seats, or is removed from the list of Political Party or is dissolved; the available seats shall be allocated by the National Election Committee the candidate lists of other political parties that participated in the Election of Capital Council within no longer than fourteen days, Provincial Council, Municipal Council, District Council and Khan Council. Any Political party which had participated in the Election may declare not to receive the available seats of any Capital Council, Provincial Council, Municipal Council, District Council and Khan Council by informing to the National Election

Committee in written form within no longer than 5 (Five) days \. The procedures shall be re-determined by the National Election Committee in case no political party receives the available seats. All steps of allocation of the seats depend on each case. In case one political party receives one or more seats but the candidate lists of the political party has less candidates than the number of seats, therefore, the National Election Committee shall make a request in writing to the political party to add more candidates in the candidate lists no later than 5 (Five) days after receiving the request.

Procedure of the examination and adoption of candidates requested to be added.

The case of a political party considered to abandon the seats and the allocation of the remaining seats available by the National Election Committee.

This Article is in conformity with Paragraph 1 of Article 51 (New) and Article 150 (New) (Two) of the Constitution.

- Article 17 was amended to:

Article 17 (New) stipulating additional conditions for individual who have no rights to stand as a candidate for the Council:

- Members of the Supreme Council of Magistracy;
- Persons who have been convicted to a jail sentence by a court for a felony or misdemeanor and who have not yet been rehabilitated;
- Insane persons or persons under general guardianship certified as such by a competent ministry;
- Person whose rights to vote is temporarily revoked or his/her name is deleted from the voter list by the National Election Committee;

This Article is in conformity with Article 34 (New) (One) and Article 150 (New) (Two) of the Constitution.

- Article 29 was amended to:

- Article 29 (New) stipulating the duration of the organization and the validity of voter lists within 15 (fifteen) days before the election days, the official voter lists, the procedures of changing Councillors, in the case Councillors passed away.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 30 was amended to:
 - Article 30 (New) stipulating the duration of the announcement of the voters list for the Election of the Council within at least 15(fifteen) days before the election days.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 44 was amended to:
 - Article 44 (New) stipulating that the electoral campaign shall be conducted at Capital centers, Provincial centers, Municipal centers, District centers and Khan centers and that the electoral campaign shall have the duration of 8 (Eight) days.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 46 was amended to:
 - Article 46 (New) stipulating the provisions from Article 68 to Paragraph 2 of Article 72 and from Article 73 to Article 91 of the Law on the Election of Members of the National Assembly to be implemented in the electoral campaign of the Council Election. The organization of marches or processions either by foot or by any transportation mean shall be determined no more than 02 (two) times during the electoral campaign.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 55 was amended to:
 - Article 55 (New) stipulating the right to appoint representatives of political parties in observing the process of polling and ballot counting; The determination of right, competence, and other conditions in the request to be a political party agent by the National Election Committee and the provisions from Article 10 to Article 22 of the Law on the Election of Members of the National Assembly to be implemented in the [electoral] observation.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 57 was amended to:
 - Article 57 (New) stipulating the provisions from Article 96 to Article 100 and Article 104, 106, 107, 108, 111, 112, and Article 114 of the Law on

the Election of Members of the National Assembly to be implemented for the functioning of polling station of Council Election.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Article 58 was amended to:
 - Article 58 (New) stipulating the authority of the National Election Committee to determine the regulations and procedures for the organization of the management of the Ballot Counting Station and Ballot counting activities in accordance with this Law and the provisions from Article 115 to Article 122, 124, 125, and Article 137 of the Law on the Election of Members of the National Assembly.

This Article is in conformity with Article 150 (New) (Two) of the Constitution.

- Chapter 3 (New) (on the penalties)
 - Article 82 (New) stipulating the provisions as stipulated in Chapter 10 except Article 155, Article 156 and Article 164 of the Law on Election of Members of the National Assembly to be implemented before the Election of Council.

This Article is in conformity with Paragraph 2 of Article 31, Paragraph 1 of Article 41, Article 42 (New), Article 49 (New), Article 128 (New) (Article 109 Old), Article 150 (New) (Two) of the Constitution.

- Article 83 (New) stipulating the Warning, Fine and the Striking off the voter lists or the candidacy of the individual who commits violations against the Paragraph 2 of Article 44 (New) and Article 46 (New) of this Law.

This Article is in conformity with Paragraph 2 of Article 31, Paragraph 1 of Article 41, Article 42 (New), Article 49 (New), Article 128 (New) (Article 109 Old), Article 150 (New) (Two) of the Constitution.

- Chapter 4 (New) (on the Final Provision)
 - Article 84 (New) (Article 91 Old) stipulating that the provisions which are contrary to this Law shall be null.

This Article has nothing contrary to the Constitution.

- Article 85 (New) (Article 92 Old) stipulating this Law shall be declared to be urgent.

This Article is in conformity with Article 93 (New) of the Constitution.

- Whereas **Article One** of the Law on the Amendment of the Law on Elections of Capital Council, Provincial Council, Municipal Council, District Council and Khan Council, is in conformity with the Constitution;
- Whereas **Article Two** stipulating this Law shall be declared to be urgent and is in conformity with Article 93 (New) of the Constitution;
- Whereas all provisions of the Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils, are in conformity with the Constitution;

Decides:

Article 1: The Law on the Amendment of the Law on Elections of Capital Council, Provincial Councils, Municipal Councils, District Councils and Khan Councils, adopted by the National Assembly in the 1st session of its 6th legislature on January 03, 2019, and reviewed and entirely approved by the Senate on the legal form and substance and declared to be urgent on January 11, 2019, in the 2nd session of its 4th legislature, is declared to be in conformity with the Constitution.

Article 2: The decision made in the Plenary session of the Constitutional Council in Phnom Penh on January 16, 2019, shall be final, without recourse, shall have authority over instituted powers as stipulated in the Constitution, and shall be published in the Royal Gazette.

Phnom Penh, January 16, 2019

**On Behalf of the Constitutional Council,
The President,**

Signed and Sealed: IM Chhun Lim