Fact Sheet: Institutions Series: The Constitutional Council
Institution: The Constitutional Council
Snapshot: The Constitutional Council does not fulfil its duty to safeguard respect for the Constitution. Strong political affiliations, limited jurisdiction and complicated procedural requirements make the Constitutional Council ineffective - inaccessible to the general public and open to political influence by the executive.

Introduction
This fact sheet explains the designated role of the Constitutional Council of the Kingdom of Cambodia according to the law, its actual role, and suggestions for its improvement. This fact sheet is written by the Cambodian Center for Human Rights ("CCHR"), a non-aligned, independent, non-governmental organization ("NGO") that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

What is the Constitutional Council?
General
The 1993 Constitution of the Kingdom of Cambodia (the “Constitution”) creates a Constitutional Council with the duty to safeguard respect for the Constitution and to interpret the Constitution and laws adopted by the National Assembly and reviewed by the Senate. The jurisdiction of the Constitution Council also includes the right to receive and decide on disputes concerning the election of members of the National Assembly and Senate elections. Whilst Article 150 of the Constitution provides that laws and decisions by state institutions shall have strict conformity with the Constitution, the Law Concerning the Organization and Functioning of the Constitutional Council (the “LCOFCC”) has limited the role of the Constitutional Council in ensuring the constitutionality of decisions by state institutions only when these matters are brought by citizens involved in legal proceedings.

Composition
The Constitutional Council consists of nine members, three of whom are appointed by the King, three by the National Assembly, and three by the Supreme Council of Magistracy. The mandate of members is nine years, but a third of members are replaced every three years. The Constitutional Council is designed to be independent and neutral. This is fundamental as it reviews laws passed by the National Assembly, and its capacity to do so is compromised if it is politically aligned or controlled. Theoretically there is an element of separation of powers in the operation of the Constitutional Council in that the Constitution and the LCOFCC both provide that the functioning of members of the Council is deemed incompatible with being a member of government, the senate or national assembly, President or Vice-President of a political party or trade union, or a sitting judge. The LCOFCC further provides that members shall not exercise any other political position or professional service during their mandate. However, members of the Constitutional Council past and present have held positions of public service, particularly in relation to the ruling party. The positions of certain members of the Constitutional Council raise serious question with regards to its neutrality.

Functioning
The Constitutional Council has two main functions: first to check the constitutionality of draft laws, existing laws and administrative acts, and second to decide on electoral disputes. As a principle, the Constitutional Council cannot examine any matter on its own initiative. The constitutionality of a law
for example can only be examined at the request of the King, President of the Senate, President of the National Assembly, Prime Minister, one fourth of the Senate, one tenth of the members of the National Assembly, or the courts. Citizens engaged in legal proceedings who consider that a provision of law or a decision of any institution violates any of his/her fundamental rights and liberties may raise the constitutionality of this law or decision with the court. The court shall submit the case to the Supreme Court if it believes the question has merits. Except when it deems the case inadmissible, the Supreme Court shall refer the case to the Constitutional Council. Citizens have the right to raise the constitutionality of a law with the Constitutional Council or to ask the Council to interpret it even when they are not involved in existing legal proceedings. Such a right does not translate to direct access to the Constitutional Council, rather citizens have to file their complaints through one of the legally entitled persons mentioned above. As noted above, questions about the constitutionality of decisions of state institutions which affect the rights of citizens can only be raised by citizens involved in legal proceedings.

**Effectiveness of the Constitutional Council**

The Constitutional Council has done some work to date on clarifying Constitutional provisions. In a decision of the Council dated 10 July 2007 for example, it confirmed that international conventions that Cambodia has recognized form part of the law which trial judges must consider, an important decision with regards to the incorporation of international human rights covenants and conventions into the domestic legal system. According to its website, over the last ten years, the Constitutional Council has considered 21 cases involving interpretation of the Constitution and law, 52 cases involving constitutional review and 46 electoral disputes. In total 48 applications have been rejected for “incompetence” or the fact the application failed to adhere to the required legal form. Despite prolific issues with land evictions and questions about the independence of the judiciary, neither one of these issues has been challenged or raised utilizing the mechanism of the Constitutional Council. Ordinary Khmer citizens, and even legal professionals, are not well versed as to the procedures and therefore no petitions have been made in this context. Others may be too sceptical of its independence and neutrality to trust it to consider important questions with regards to the constitutionality of acts of the executive.

**Conclusion/Recommendations**

In order for the Constitutional Council to be an effective check on executive power, CCHR makes the following recommendations:

- Changes to the mandate of the Constitutional Council need to be made to increase its activeness and to allow it to act on its own initiative to defend the Constitution without reference from the legally entitled parties referred to in the Constitution.
- The jurisdiction of the Constitutional Council should be enlarged to cover not only acts of the executive but decisions of state institutions, which can be brought by anyone.
- The public and parliamentarians should consider utilizing the Constitutional Council more to protect the rights of the Cambodian people. This requires greater awareness of the procedures that are available to ordinary citizens so that the public at large, and legal professionals acting on their behalf, can make use of it to protect their rights.

For more details please contact Ou Virak (tel: +855 (0) 1240 4051 or e-mail: ouvirak@cchrcambodia.org) or Sana Ghouse (tel: +855 (0) 8961 4334 or e-mail: sana.ghouse@cchrcambodia.org).