

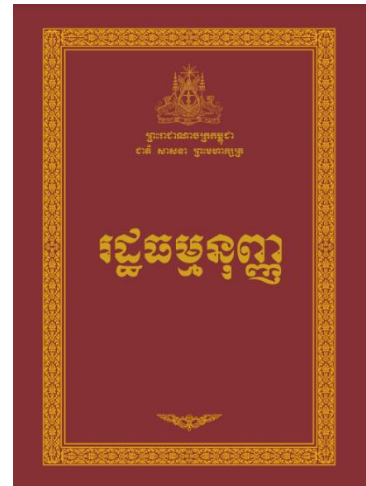
CCHR Briefing Note – September 2022

The Tenth Amendment to the Constitution of the Kingdom of Cambodia

Introduction

The Constitution of the Kingdom of Cambodia (“the Constitution”) was officially adopted by the Constitutional Assembly at its second plenary session on 21 September 1993, turning Cambodia into a constitutional monarchy. The Constitution was then proclaimed a few days later, on 24 September 1993, a day that has since then been celebrated every year in the Kingdom as Constitution Day.

Since its adoption, the Constitution has been amended on several occasions. On 8 July 2022,¹ the Council of Ministers approved new constitutional amendments to eight provisions of the Supreme Law of Cambodia.² Ruled as legitimate by the Constitutional Council of Cambodia (“CCC”) on 13 July 2022,³ the amendments were passed by the National Assembly on 28 July 2022 and by the Senate on 5 August 2022. They were promulgated by the King on 6 August 2022.⁴ It is the tenth time the Constitution was amended.



*Constitution of the Kingdom
of Cambodia
Photo: CCC*

This year, to mark the 29th Constitution Day, the Cambodian Center for Human Rights (“CCHR”) releases the present Briefing Note, which provides a brief analysis of these latest constitutional revisions. Its first section outlines and explains the constitutional amendments and then highlights the key concerns that those changes have raised. It concludes with recommendations to the Royal Government of Cambodia (“RCG”).

This Briefing Note is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

I. Constitutional Amendments of August 2022

The constitutional revisions of August 2022 modify eight articles, namely Articles 19, 89, 98, 102, 119, and 125 of the Constitution, as well as Articles 3 and 4 of the Additional Constitutional Law.⁵ These articles mainly relate to the appointment of the Prime Minister and the functioning of the legislative

¹ Mech Dara, “Government pushes news constitutional amendments, gives few details,” ([VOD](#), 11 July 2022).

² Constitution of the Kingdom of Cambodia, Unofficial translation supervised by the Constitutional Council of Cambodia, ([CCC](#), October 2015).

³ Hang Punreay, “It’s legitimate: The Constitutional Council of Cambodia has ruled that the proposed Constitutional amendments are legal,” ([Khmer Times](#), 24 July 2022).

⁴ Torn Chanritheara, “King Norodom Sihamoni signs the Constitutional Amendment Bill into law,” ([Cambodiansess](#), 7 August 2022).

⁵ The Additional Constitutional Law was promulgated on 13 July 2004 with the aim to ensure the good functioning of the national institutions in respecting the basic principles of a liberal multi-party democracy. See CCC’s [website](#).

bodies. The tables below compare the former articles and the passed amendments (highlighted in red) and explain what these changes entail.

- **Article 19 of the Constitution**

Previous Version	New Version ⁶
The King shall appoint the Prime Minister and the Council of Ministers according to the procedures stipulated in Article 119 .	The King shall appoint the Prime Minister and the Council of Ministers according to procedures stipulated in Article 119 new (two) .

The proposed change to this article modifies the reference to Article 119, which has also been amended in the new Constitution.

- **Article 89 of the Constitution**

Previous Version	New Version
Upon the request from at least 1/10 of its members, the National Assembly can invite a high-ranking personality to come and clarify on issue of particular importance.	Upon the request from at least 1/10 of its members, the National Assembly can invite one or multiple members of the government, accompanied by high ranking officials specialized in a particular sector , to clarify issues of particular importance before the National Assembly.

While Article 89 in its previous version provided that the National Assembly (“NA”) was allowed to invite “*a high-ranking personality*” to discuss important issues, the amended article enables the NA to invite “*one or multiple members of the government*” as well as experts to discuss important matters. The RGC stated that this article was modified because the term “*high-ranking personality*” was too vague and that the article should directly refer to members of the executive or government, thus clarifying their responsibility before the NA.⁷

- **Article 98 of the Constitution**

Previous Version	New Version
The National Assembly can dismiss a member or members of the Royal Government or remove the Royal Government from office by voting a motion of censure at the absolute majority of all its members.	The National Assembly can dismiss member(s) of the Council of Ministers or dismiss the Royal Government from office by the adoption of a motion of censure by a majority of the entire National Assembly members.
The motion of censure against the Royal Government must be submitted to the National Assembly by 30 of its members	In case the government is removed from its position by the National Assembly, the Royal Government subjected to leave from the

⁶ Draft Constitutional Law, unofficial translation, 14 July 2022.

⁷ Ouch Sony, “Constitutional amendments fill gaps in transition of power: Justice Minister,” ([VOD](#), 14 July 2022).

<p>before this motion of censure can be examined.</p>	<p>position shall have only a duty to lead the daily work until a new government takes office.</p> <p>Once the motion of censure against the Royal Government is proposed to the National Assembly by 1/3 of the entire assembly members, the National Assembly can bring it to discussion.</p>
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Two modifications were made to Article 98: the first adds a procedure for a temporary office in the event the Government is dismissed by the adoption of a motion of censure. The second modification changes the minimum number of NA members needed to propose a motion of censure against the Government. Prior to these amendments, such a motion could be presented by at least 30 NA members. The revised Article 98 now requires 1/3 of NA members to do so. The NA is currently composed of 125 seats, meaning that 41 members are now required to propose a motion of censure to have the Government removed. This represents an increase compared to the 30 members needed previously, making the proposal and thus the adoption of a motion of censure against the Government more difficult. In addition, the number will change according to alterations in the number of NA seats. Should more seats be added to the NA, as it occurred in 2018 when two seats were added, bringing the total number of seats from 123 to 125,⁸ the number of members needed for the NA to propose a motion of censure against the Government will also increase.

The RGC stated that the first proposed change aimed to ensure there were provisions for a caretaker government during a transition of power to a new government. The second modification seeks to ensure that the Government can work without disturbance and that the invocation of censure is an "important issue."⁹

- **Article 102 of the Constitution**

Previous Version	New Version
<p>The legislature of the Senate is of six years and shall terminate on the day the new Senate enters into function.</p> <p>In times of war or in other exceptional circumstances when it is impossible to organize the elections, the Senate may, on the proposal of the King, declare the prorogation of its legislature for one year each time. The declaration of prorogation of the Senate’s legislature must be adopted by at least 2/3 of all the Senators.</p> <p>Under the aforementioned circumstances, the Senate shall convene every day, in</p>	<p>The legislative term of the Senate shall be six years and shall be terminated when the new Senate takes office.</p> <p>When there is a war or other special circumstances, which makes it impossible to conduct an election, the Senate may declare the extension of its mandate once a year following a request from the King. The declared extension of the Senate’s mandate shall be decided by at least 2/3 of the entire Senate members.</p> <p>In the circumstances stated above, the Senate shall meet every day, regularly. The Senate has the right to terminate the above special</p>

⁸ Mom Sophon, “Two more seats added to the National Assembly,” ([Khmer Times](#), 18 March 2018).

⁹ Ouch Sony, “Constitutional amendments fill gaps in transition of power: Justice Minister,” ([VOD](#), 14 July 2022).

<p>permanence. The Senate has the right to put an end to the aforementioned special circumstances, whenever the situation permits.</p> <p>If the Senate cannot convene for imperative reasons, notably in case of occupation by foreign forces, the declaration of the State of emergency must be automatically extended.</p>	<p>circumstances if the situation permits. But to terminate the special circumstances in which the nation is in an emergency, the Senate shall jointly decide with the National Assembly in the National Assembly and the Senate congress, except the enforcement of Article 86 of the Constitution.</p> <p>If the Senate is unable to meet for imperative reasons such as the occupation of the territory by foreign forces, the declaration of emergency shall be automatically extended.</p>
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The previous version of the Constitution gave both the Senate and the NA the right to terminate a state of emergency in separate provisions: Article 102 for the Senate and Article 86 for the NA. The new amendment to Article 102 now requires the Senate and the NA to decide jointly on the termination of a state of emergency. The RGC explained that the reason for the amendment was to require both parliamentary bodies to make a unified decision about the end of a state of emergency to avoid opposing decisions.¹⁰ However, the new Article 102 states that the NA and Senate must decide together, “*except the enforcement of Article 86 of the Constitution,*” which appears to mean that if the National Assembly uses its power to end a state of emergency under Article 86, a joint decision with the Senate would not be required.

- **Article 119 of the Constitution**

Previous Version	New Version
<p>Upon the proposal of the President of the National Assembly in agreement with the Vice-Presidents, the King assigns a high-ranking personality among the members of the National Assembly from the elections winning party, to form the Royal Government.</p> <p>This assigned high-ranking personality, accompanied by his collaborators who are members of the National Assembly or members of the parties represented at the National Assembly and who are in charge of ministerial functions withing the Royal Government, solicits the confidence from the National Assembly.</p> <p>Once the National Assembly has voted the confidence, the King signs the Kret (Royal</p>	<p>Upon a proposal from the party with the most seats in the National Assembly, the King appoints a dignitary as Prime Minister to create a Government. The proposal from the party with the most seats in the National Assembly shall be copied for the President of the National Assembly.</p> <p>The dignitary who is supposed to be the Prime Minister must be a lawmaker who owns Khmer citizenship only and shall be chosen from the party with the most seats in the National Assembly.</p> <p>The appointed dignitary leads colleagues who are lawmakers or members of the represented party in the National Assembly that are in charge of various positions in the Royal Government to seek the confidence from the National Assembly.</p>

¹⁰ Ibid.

<p>decree) appointing the whole Council of Ministers.</p> <p>Before taking office, the Council of Ministers shall take an oath according to the text written in Annex 6.</p>	<p>The election for confidence shall be conducted on the listed composition of the entire Council of Ministers.</p> <p>Once the National Assembly has voted the confidence, the King shall issue a Royal Decree to appoint the Council of Ministers. Before taking office, the Council of Ministers shall take an oath according to the text written in Annex 6.</p> <p>At the end of each mandate of the National Assembly, the Royal Government supposed to leave office has only the duty to lead daily work until a new government takes office.</p>
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Several modifications and additions have been made to Article 119 of the Constitution. First, the NA President and Vice-Presidents no longer have the power to decide who to appoint for the Prime Minister position, as the amended Article 119 now leaves it to *“the party with the most seats in the NA.”* The NA only needs to be sent a copy of the proposal from the majority party. The RGC expressed their wish to give the duty to select the Prime Minister and form the Council of Ministers to the majority party as it has been *“directly voted by the people.”*¹¹

Second, the amended article requires the Prime Minister to be a lawmaker and have single Khmer citizenship. This new requirement stems from the ninth amendment to the Constitution promulgated in November 2021, banning the NA and Senate Presidents, the Prime Minister, and the President of the Constitutional Council from having dual citizenship.¹²

Finally, like in amended Article 98 of the Constitution, a paragraph was added on the transition of power between the leaving and the incoming Government at the end of each mandate to ensure effective day-to-day governance during the transition of power to a new government.

- **Article 125 of the Constitution**

Previous Version	New Version
<p>In case of the definitive vacancy of the Prime Minister’s position, a new Council of Ministers shall be appointed under the conditions provided by the present Constitution. If the vacancy is temporary, a Prime Minister <i>ad interim</i> shall be provisionally appointed.</p>	<p>In case of temporary vacancy of the Prime Minister, the Prime Minister shall assign a Deputy Prime Minister to act as Acting Prime Minister responsible for temporary leading the Council of Ministers.</p> <p>If the position of Prime Minister is definitively vacant due to death or resignation from the position, a new Council of Ministers shall be immediately appointed following the conditions stated in this Constitution. The President of the</p>

¹¹ Ibid.

¹² Royal Kram n°NS/RKM/1121/016 of 3 November 2021. No English translation available.

	<p>National Assembly shall immediately call for a meeting and shall speedily take other necessary actions within seven days at the longest after receiving a request from the party with the most seats in the National Assembly. In case the position of the Prime Minister is definitively vacant due to death, the Council of Ministers supposed to leave office under the leadership of a Deputy Prime Minister, who was assigned as Acting Prime Minister, shall have only the duty to lead daily work until a new Council of Ministers takes office.</p> <p>The resignation from the position by Prime Minister shall be conducted through a resignation letter that has to be sent to the King and a copy sent to the President of the National Assembly. In this case, the Council of Ministers supposed to leave office shall continue leading the work of the Government until a new Council of Ministers takes office.</p>
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Article 125 is perhaps the article that was most significantly amended. Details on the procedure to follow in the case of a definitive vacancy of the prime ministership (i.e., death or resignation of the Prime Minister) were added. Article 125 now requires the NA president to take any necessary actions within a period of seven days after receiving a request to appoint a new Prime Minister from the party with the most seats in the NA.

In addition, in the event of the temporary absence of the Prime Minister in office, the new Article 125 grants the Prime Minister the power to directly appoint a Deputy Prime Minister to act as acting Prime Minister in his absence, a power that previously belonged to the president and vice-presidents of the NA. The new article further provides that in the case of a definitive absence (due to death or resignation) of the Prime Minister, it is this appointed Deputy Prime Minister who will take the lead of the Government until a new Council of Ministers takes office.

Finally, the new article sets out the procedure for the resignation of the Prime Minister, which the previous version of the Constitution did not provide. It puts the leaving Council of Ministers in charge of leading the work of the Government until a new Prime Minister is appointed and a new Council of Ministers is formed.

The RGC justified these revisions by the need to clarify all the possible scenarios and what needs to be done in the temporary or permanent absence of the Prime Minister in order to avoid instability in the Government when its head is absent.¹³

¹³ Ouch Sony, “Constitutional amendments fill gaps in transition of power: Justice Minister,” ([VOD](#), 14 July 2022).

- **Article 3 of the Additional Constitutional Law**

Previous Version	New Version
In case when the procedures stipulated in the Articles 82 and 119 new of the Constitution cannot be implemented, the National Assembly, on the proposal of the majority political party, can proceed with the package vote to elect its President and its Vice-Presidents as well as the Chairpersons and Vice- Chairpersons of the Commissions, and at the same time to grant the confidence to the Royal Government.	In case when the procedures of Article 82 new (one) and Article 119 new (two) of the Constitution cannot be implemented, the National Assembly, on the proposal of the party with the most seats in the National Assembly may proceed with the package vote to elected its President and Vice-Presidents as well as the President and Vice Presidents of committees at the same time that its gives confidence to the Royal Government.

The modification seems to only update the Constitution articles referenced in Article 3 of the Additional Constitutional Law.

- **Article 4 of the Additional Constitutional Law**

Previous Version	New Version
<p>The elaboration of the candidate lists for the elections and for the vote of confidence shall be organized as followed:</p> <ul style="list-style-type: none"> - The list of the candidates for Presidency, Vice-presidencies of the National Assembly, as well as of those for Chairmanship and Vice-Chairmanships of specialized Commissions, must be prepared and proposed by the political parties which agree to form a coalition government, then conveyed to the most senior member of the National Assembly; - Upon the proposal by the majority political party at the National Assembly, submitted through the most senior member, the King designates a high-ranking personality among the members of the National Assembly from the elections winning political party to form the Royal Government. This designated high-ranking personality prepares the attribution of the different ministerial posts within the Royal Government, then sends the list of all its members to the 	<p>The elaboration of the candidate lists for the elections and for the vote of confidence shall be organized as followed:</p> <ul style="list-style-type: none"> - The list of candidates for the Presidency and Vice-presidencies of the National Assembly as well as the Presidency and Vice-presidencies of all specialized committees in the National Assembly shall be organized and proposed by the political party with the most seats in the National Assembly and must be sent to the oldest member of the National Assembly. The president of the National Assembly shall be chosen from the members of the National Assembly who only own Khmer citizenship. - Upon a proposal from the political party with the most seats in the National Assembly, the King assigns a dignitary as Prime Minister to create the Royal Government. The dignitary appointed as the Prime Minister shall be a lawmaker who owns Khmer citizenship only and shall be chosen from the political party with the most seats in the National Assembly. The appointed dignitary shall prepare positions in the Royal Government and send the list of all members of the Royal

<p>most senior member of the National Assembly;</p> <ul style="list-style-type: none"> - The most senior member of the National Assembly shall combine these lists into a single one, composed of the candidates for Presidency, Vice-Presidencies of the National Assembly, for the Chairmanships and Vice-Chairmanships of all the specialized Commissions of the National Assembly as well as for the posts of Prime Minister and members of the Royal Government, in order to submit it to the vote of the National Assembly. 	<p>Government to the oldest member of the National Assembly.</p> <ul style="list-style-type: none"> - The oldest member of the National Assembly shall immediately prepare, without delay, the list of names composed of the President and Vice Presidents of the National Assembly as well as the President and Vice presidents of all specialized committees of the National Assembly and the Prime Minister appointed by the King and all members of the Royal Government to be submitted to the National Assembly for vote. The oldest member of the National Assembly shall lead the meeting of the National Assembly to vote and adopt the list immediately. - The oldest member of the National Assembly shall be chosen as the oldest member of National Assembly among all other members. In case the oldest member of the National Assembly is not able to perform his/her duty, the position of the oldest member of the National Assembly shall be given to the second oldest member of the National Assembly.
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The changes made to this article provide further details on the elaboration of the candidate list for the NA presidency and vice presidencies and the vote and adoption of the list of candidates. The new Article 4 of the Additional Constitutional Law also requires the NA president to have single Khmer nationality. This modification reflects the ninth amendment to the Constitution promulgated in November 2021, banning the NA and Senate Presidents, the Prime Minister, and the President of the Constitutional Council from having dual citizenship.

Furthermore, the new article limits the possibility of proposing a list of names for NA presidency and vice-presidencies to members of the political party with the most seats in the NA, while the previous version of the article allowed members of other political parties to propose names if they agreed to form a coalition government. The RGC commented that this last modification was made to ensure consistency with other amendments but did not rule out the possibility of having a coalition government in the future.¹⁴

II. Key concerns arising from the new amendments

¹⁴ Ouch Sony, “Constitutional amendments fill gaps in transition of power: Justice Minister,” ([VOD](#), 14 July 2022).

The RGC has justified the new amendments by the necessity to ensure the proper functioning of the government and fill in the gaps in the transition of power between government mandates.¹⁵ However, in light of Cambodia's current status as a *de facto* one-party state and the relentless repression of the opposition, concerns have arisen regarding the RGC's political agenda behind these constitutional revisions.

The amendments have been criticized as an attempt from the RGC to further consolidate its grip on power by diminishing some of the prerogatives of the NA - the Parliament body representing the people - and instead increasing the concentration of power with the ruling Cambodian People's Party ("CPP").¹⁶ As previously mentioned, the Prime Minister's appointment is no longer a prerogative of the NA president and vice-presidents but of "*the party with the most seats in the NA*," according to the new Article 119. Similarly, the ability to propose candidates for the NA presidency and vice presidencies is now reserved for "*the party with the most seats in the NA*" according to the new Article 4 of the Additional Constitutional Law when the former version allowed other parties which had agreed to form a coalition government to propose candidates. The increased number of NA members required to propose a motion of censure, a key tool of parliamentary oversight over the executive branch, further strengthens the Government's position. The revised Article 98 makes it more difficult for NA members disapproving of the Government's actions to have it dismissed and replaced, which weakens the checks and balances needed to prevent abuse of power.

The new Article 125 is seen as further weakening the power of the NA in favor of the ruling party as the Prime Minister can now directly appoint a Deputy Prime Minister to take over in case of a temporary absence, a prerogative that belonged to the NA. Critics have interpreted this change as a way for Prime Minister Hun Sen to ease the transfer of power to his son Hun Manet,¹⁷ whom he publicly backed as Cambodia's next leader in December 2021.¹⁸ The CPP promptly followed suit and officially endorsed Hun Manet as its future candidate after his father's retirement.¹⁹

As for the introduction of a resignation procedure for the Prime Minister, it is seen as a further indication of the plan of Prime Minister Hun Sen, who has been ruling the country for 37 years, to resign in the near future to allow for his son to succeed him as the head of Government.

Beyond these political concerns, the constitutional revisions passed in August 2022 constitute the tenth amendment to the Constitution since its adoption in 1993 and come merely a few months after the promulgation of the ninth amendment to the Constitution in November 2021. The RGC passed these constitutional revisions without consultation with civil society and the Cambodian public. The RGC has a track record of passing swift constitutional amendments without adequate consultation with civil society and the public, as detrimental amendments to the Constitution were also secretly and swiftly passed by the RGC in 2018, in flagrant disregard of the democratic principles underpinning the Constitution and the Paris Peace Agreements.²⁰

¹⁵ Ibid.

¹⁶ Khun Narim, "Ministry of Justice downplays proposed constitutional revisions," ([CamboJA](#), 16 July 2022).

¹⁷ RFA, "Plan to ease the transfer of power from Cambodia PM Hun Sen to son advances," ([RFA](#), 14 July 2022).

¹⁸ Som Sarath, "Hun Sen backs oldest son to be the next country's leader," ([CamboJA](#), 2 December 2021).

¹⁹ Ry Sochan, "CPP backs Manet's future PM run" ([Phnom Penh Post](#), 26 December 2021).

²⁰ Joint Statement, "CSOs call for outright rejection of draft amendments to the Constitution and Criminal Code, amid legislative assault on Cambodian peoples' rights and freedoms," ([CCHR](#), 21 February 2018).

III. Recommendations to the RGC

In light of the above, CCHR makes the following recommendations to the RGC:

- Respect the Constitution as the Supreme law of the Kingdom, meaning that it must cease to propose constitutional amendments based on whims or in the pursuit of political interests. The Constitution must be amended only when necessary and for the sake of the people. The RGC must, therefore, thoroughly reflect on and engage in genuine discussions about any changes to the Constitution with relevant stakeholders, including civil society representatives and the public, to ensure that the voices of the people are fully heard. The RGC is notably encouraged to implement the provisions of Chapter 14 of the Constitution by holding a yearly national congress that citizens can directly attend to discuss matters of national interests with their leaders, which it has so far failed to do.
- Safeguard the rights, values, and principles enshrined in the Constitution, including the principle of the separation of powers guaranteed in Article 51, by ensuring a balance between the three branches so that no branch exercises more power than the others. Observance of this principle by the RGC is critical to prevent abuses of power and ensure a healthy democracy in which people are "*masters of their country*" (Article 51).

Should you have any questions or require any further information, or if you would like to give any feedback, please email CCHR's Executive Director, Chak Sopheap, at chaksopheap@cchrcambodia.org. Alternatively, please call us at +855 (0) 23 72 69 01 or contact us at #798, Street 99, Boeung Trabek, Khan Chamkarmon, Phnom Penh, Cambodia.