

**LAW**

**ON**

**THE ORGANIZATION AND FUNCTIONING**

**OF THE SUPREME COUNCIL OF MAGISTRACY**

**(UNOFFICIAL TRANSLATION**

**By CCHR)**

## **Chapter 1: General Provisions**

### Article 1 –

This Law aims at establishing and stipulating the organization and functioning of the Supreme Council of the Magistracy for the purpose of assisting the King to guarantee the independence of judicial power in accordance with the Constitution of the Kingdom of Cambodia.

### Article 2 –

This Law has a scope of applying to all judges and prosecutors throughout the Kingdom of Cambodia, unless stipulated otherwise by a separate law.

### Article 3 –

The technical terms used in this law have the following meanings:

- judges refer to the sitting judges namely penal judges and investigating judges;
- prosecutors refer to deputy prosecutors, prosecutors, deputy general prosecutors and general prosecutors;
- magistracy refers to judges and prosecutors.

## **Chapter 2: The Organization of the Supreme Council of the Magistracy**

### **Section I: Composition of the Supreme Council of the Magistracy**

### Article 4 -

The Supreme Council of the Magistracy is under the royal presidency of His Majesty the King and has the following composition:

- |  |        |
|--|--------|
| 1. Minister of Justice,                              | Member |
| 2. President of the Supreme Court,                   | Member |
| 3. General Prosecutor Attached to the Supreme Court, | Member |

4. One Member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector, elected by the Senate in an absolute majority of all Senators.

5. One Member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector, elected by the National Assembly in an absolute majority of all members of parliamentary.

6. One Member, who is a judge of higher courts, elected by judges of higher courts.

7. One Member, who is a prosecutor of General Prosecution attached to higher courts or a prosecutor serving in the Ministry of Justice, elected by prosecutors serving in General Prosecution attached to higher courts or in the Ministry of Justice.

8. One Member, who is an eligible judge in a court of first instance, elected by eligible judges in courts of first instance throughout the country.

9. One Member, who is an eligible prosecutor attached to the prosecution of a court of the first instance, elected by eligible prosecutors in prosecutions attached to courts of first instance throughout the country.

All members of the Supreme Council of the Magistracy above-mentioned shall be appointed by His Majesty the King. The Minister of Justice puts forward the draft royal decree to His Majesty the King with regard to this matter.

The formalities and procedures for the elections to select the members of the Supreme Council of Magistracy as mentioned in points six to nine of this Article shall be stipulated by a proclamation by the Minister of Justice after obtaining consent from a majority of members of the Supreme Council of Magistracy.

**Article 5:**

The term of the elected member of the Supreme Council of Magistracy shall be for five (5) years and shall be finished once new members elected have been appointed. Thereafter elected members of the Supreme Council of Magistracy may run for continuous terms. The elections of member of the Supreme Council of Magistracy shall be arranged within ninety (90) days before the end of each mandate.

In the event any member of the Supreme Council of Magistracy dies, resigns or loses his/her qualifications as provided for in Article 4 above or is under any situation where he/she is unable to perform his/her duties for any reason, that member shall be replaced by a new member for the remaining period of the term in line with the formality prescribed in Article 4 here-above. The Minister of Justice shall proceed this task within a period of no later than 60 days.

The Supreme Council of Magistracy may decide to remove any elected member on the ground of serious violation of its internal rule or any action led to serious damage of reputation and dignity of the Supreme Council of Magistracy. The Supreme Council of Magistracy's decision to remove any elected member requires consent from at least six members of all members. Any member of the Supreme Council of Magistracy who has been convicted and sentenced by the court to imprisonment (without a suspended sentence) for an intentional act of felony or misdemeanour shall be automatically removed from the post. The new member who replaces this post shall apply the provisions of this Law.

**Article 6:**

Membership of the Supreme Council of Magistracy is incompatible with the position of judge or prosecutor at any tribunal/court and the prosecution attached to the tribunal/court during his/her term of membership of the Supreme Council of Magistracy, except for the President of the Supreme Court and the General Prosecutor attached to the Supreme Court.

The member of the Supreme Council of Magistracy whose membership is incompatible with the position as stipulated here-above shall submit his/her request to disconnect from the position of judge or prosecutor at the tribunal/court and the prosecution attached to the tribunal/court.

**Article 7:**

The Royal Chairman of the Supreme Council of Magistracy may appoint his Royal Representative to act as the Chair of the Supreme Council of Magistracy. The Royal Representative who is appointed to lead and manage the operation of the Supreme Council of Magistracy shall regularly report about the activities of the Supreme Council of Magistracy to His Majesty Chairman of the Supreme Council of Magistracy.

The Royal Representative shall not participate in the decision-making process of the Supreme Council of Magistracy. However, in the event that the Minister of Justice or President of Supreme Court shall be appointed as the Royal Representative, the Minister of Justice or President of Supreme Court shall have the privilege to participate in the decision-making process of the Supreme Council of Magistracy like other members of the Supreme Council of Magistracy.

## **Section II**

### **The General Secretariat of the Supreme Council of Magistracy**

#### **Article 8:**

The Supreme Council of Magistracy shall have a General Secretariat under the central administration of the Ministry of Justice to serve in support of its functions. The General Secretariat of the Supreme Council of Magistracy shall be directed by a General Secretary whose rank is equivalent to that of the Secretary of State and shall have some deputy General Secretaries, as deemed necessary, whose ranks are equivalent to that of the Under Secretary of State.

The General Secretary and deputy General Secretary shall be appointed by the Royal Decree upon the request of the Minister of Justice, following a consultation with all members of the Supreme Council of Magistracy. The General Secretary and deputy General Secretary shall be selected among the Civil Servants and shall have working experiences of at least 10 years in the fields of law, administration or finance. The General Secretariat of the Supreme Council of Magistracy shall employ contractual staff to assist its works as deemed necessary.

The General Secretariat of the Supreme Court of Magistracy shall be divided into departments that are led by one head and some deputies as deemed necessary.

The organization and functioning of the General Secretariat of the Supreme Council of Magistracy shall be determined by Sub-decree.

#### **Article 9:**

The General Secretary of General Secretariat of the Supreme Council of Magistracy is accompanied by some officials of the General Secretariat, as needed, as a minute taker for every meeting of the Supreme Council of Magistracy and for the meeting of the Disciplinary Council of the Supreme Council of Magistracy.

## **Chapter III**

### **Functioning of the Supreme Council of Magistracy**

#### **Article 10:**

The Minister of Justice shall convene a meeting as a royal order of His Majesty the King. The initiative for convening a meeting may be requested by at least three (3) members of the Supreme Council of Magistracy. The Minister of Justice shall submit a letter to His Majesty the King seeking his royal permission to convene a meeting.

#### **Article 11:**

The meeting of the Supreme Council of Magistracy shall be deemed valid as long as at least five (5) members attend the meeting.

Any decision of the Supreme Council of Magistracy shall be considered effective, provided that it has at least five (5) voices through secret votes. The Royal Chairman of the Supreme Council of Magistracy shall not participate in the decision-making process of the Supreme Council of Magistracy.

In case of emergency and upon the request of at least five (5) members of the Supreme Council of Magistracy, any decision of the Supreme Council of Magistracy may be made through indirect secret votes. The Minister of Justice shall prepare this task after receiving royal advice from the Royal Chairman of the Supreme Council of Magistracy.

**Article 12:**

Members of the Supreme Council of Magistracy including a minute taking secretary and staff accompanied the minute-taking secretary shall keep the confidentiality of the meeting.

**Article 13:**

All works of the Supreme Council of Magistracy related to the drafting of Royal Decrees for submission to His Majesty the King is the burden of the Minister of Justice acting on behalf of the Supreme Council of Magistracy. The Minister of Justice shall be the representative of the Supreme Council of Magistracy in its relations with private or public individual persons and has the responsibility to manage all administrative affairs of the Supreme Council of Magistracy with the General Secretariat of the Supreme Council of Magistracy as the staff.

**Article 14:**

The Supreme Council of Magistracy shall set up its internal regulation to determine the way it functions. The internal regulation shall be adopted by at least five (5) voices of all members the Supreme Council of Magistracy.

**Article 15:**

The Supreme Council of Magistracy shall have its own budget provided in the national budget. The Minister of Justice is the legitimate budget authorizer, whose rights are delegated by His Majesty the King, the Royal Chairman of the Supreme Council of Magistracy.

**Article 16:**

The Supreme Council of Magistracy shall be entitled to receive salary, remunerations for attending meetings and other allowances for performing their duties.

Members of the Supreme council of Magistracy may opt for one package of remuneration among other packages they are entitled to.

**Article 17:**

The Supreme council of Magistracy shall use its stamp/seal in the performance of its duties.

## **Chapter IV**

### **Jurisdiction of the Supreme Council of Magistracy**

#### **Section I**

#### **General Jurisdiction of the Supreme Council of Magistracy**

##### **Article 18:**

The Supreme Council of Magistracy shall decide and submit requests to His Majesty the King regarding the appointment, transfer, discharge from post, suspension from job, and the removal of all judges.

The Supreme Council of Magistracy shall submit requests to His Majesty the King regarding the appointment, transfer, discharge from post, suspension from job, and the removal of all prosecutors at the request of the Minister of Justice. It is mandatory that the Supreme Council of Magistracy shall be consulted regarding the request stated here-above.

The Supreme Council of Magistracy shall advise on the advancement and promotion of all judges and prosecutors in line with the procedures and requirements set forth in the Law on the Statutes of Judges and Prosecutors.

##### **Article 19:**

It is mandatory that the Supreme Council of Magistracy shall be consulted for advice on the proposed draft law or drafting law that relates to the organization and functioning of the judicial sectors. The Supreme Council of Magistracy shall provide comments within thirty days commencing from the received date of the proposed draft law or proposals for drafting the law from the Minister of Justice. In case of emergency, this duration may be reduced to ten days.

The Supreme Council of Magistracy shall review and decide on the code of conduct of judges and prosecutors.

#### **Section II**

#### **Jurisdiction of the Supreme Council of Magistracy Regarding Disciplinary Actions Against Judges and Prosecutors**

##### **Article 20:**

In the function of disciplinary actions on judges, the Supreme Council of Magistracy shall conduct a meeting in the form of a Disciplinary Council under the Chairmanship of the President of the Supreme Court. In its function regarding disciplinary actions against prosecutors, the Supreme Council of Magistracy shall conduct a meeting in the form of a Disciplinary Council under the Chairmanship of the General Prosecutor attached to the

Supreme Court. In the above-mentioned matters, His Majesty the King and the Minister of Justice shall not take part in the Disciplinary Council.

In the case of a disciplinary action concerning the President of the Supreme Court or the General Prosecutor attached to the Supreme Court, the meeting of the Disciplinary Council shall be presided over by His Majesty the King or his royal representative. The Minister of Justice shall attend this meeting of the Disciplinary Council.

A judge or prosecutor who is a member of the Supreme Council of Magistracy and who is subject to disciplinary actions cannot attend the meeting as a member of the Disciplinary Council of the Supreme Council of Magistracy to examine and decide on the disciplinary case in question.

**Article 21:**

An inspection team of the Supreme Council of Magistracy shall be created to assist the works of the Disciplinary Council of the Supreme Council of Magistracy for matter involving investigation and inquiry for disciplinary case. The composition of an inspection team of the Supreme Council of Magistracy shall be appointed by Royal Decree upon obtaining the consent of the majority of the members of the Supreme Council of Magistracy. The inspection team shall be supervised by a co-chair who shall be chosen from among the judges within the rank of supreme judges and another co-chair who shall be chosen from among the prosecutors within the rank of supreme prosecutors.

The detailed functions as well as the organization of the inspection team of the Supreme Council of Magistracy shall be determined by the Disciplinary Council of the Supreme Council of Magistracy.

**Article 22:**

The inspection team shall carry out its duties as assigned by the Disciplinary Council of the Supreme Council of Magistracy. In performing its duties, an inspection team may make requests to examine case profiles related to disciplinary actions or of interest to the disciplinary actions. In case of necessity, an inspection team may make requests for clarifications from all concerned individuals. If a judge or prosecutor refuses to cooperate as requested by the inspection team, this shall be recorded in inspection report as a disciplinary breach.

**Article 23:**

A complaint related to disciplinary actions against the judges and prosecutors shall be submitted to the General Secretariat of the Supreme Council of Magistracy or the Ministry of Justice. The Minister of Justice shall make a preliminary examination and investigation to establish a disciplinary case file before deciding to forward it to the Disciplinary Council of the Supreme Council of Magistracy for further procedures.

**Article 24:**

Upon receiving the disciplinary case file and if satisfied as necessary, the President of the Disciplinary Council may order additional investigation, using an inspection team of the Disciplinary Council of the Supreme Council of Magistracy.

**Article 25:**

The President of the Disciplinary Council shall convene the Disciplinary Council of the Supreme Council of Magistracy. The disciplinary case file as well as the case files related to disciplinary actions against the judges and prosecutors shall be submitted to all members of the Disciplinary Council at least 10 (ten) days prior to the meeting. The judge or prosecutor to be disciplined has the right to be informed of the disciplinary charge against him/her and has the right to self-defence or to seek legal assistance from counsel/lawyer before the Disciplinary Council of the Supreme Council of Magistracy.

The meeting of the Disciplinary Council shall not be in public. The President of the Disciplinary Council may invite any concerned persons to attend its meeting, as deemed necessary. The members of the Supreme Council of Magistracy as well as all persons who attend the meetings of the Disciplinary Council of the Supreme Council of Magistracy shall keep the confidentiality of the meeting.

The quorum of the Disciplinary Council shall be the same manner as that of the Supreme Council of Magistracy as provided for in the Article 11 of this Law.

The detailed procedures of the Disciplinary Council shall be determined by the internal regulations of the Disciplinary Council of the Supreme Council of Magistracy.

**Article 26:**

If found guilty, the Disciplinary Council of the Supreme Council of Magistracy shall decide on penalties as disciplinary actions as provided for in the Law on the Statutes of Judges and Prosecutors. The decisions of the Disciplinary Council shall consist of legal and factual grounds.

The decision of the Disciplinary Council shall be in the same manner as that of the Supreme Council of Magistracy as stipulated in Article 11 of this Law.

The decision of the Disciplinary Council shall be submitted to the Supreme Council of Magistracy for review and its decision. The decision of the Supreme Council of Magistracy shall not be subject to any appeal.

In circumstances where a disciplinary action is to result in a second-class penalty, the Supreme Council of Magistracy shall first make a request to His Majesty the King.

## **Chapter V**

### **Transitional Provisions**

**Article 27:**

During the period of setting up the new membership of the Supreme Council of Magistracy as provided for in Article 4 of this Law, the membership of Supreme Council of Magistracy existing before this Law coming into force shall continue its work in compliance with the provisions of this Law, until the time when the new membership shall be officially appointed by the Royal Decree. In this circumstance, the principle of incompatibility as set forth in Article 6 of this Law shall not be applied.

**Article 28:**



During the time when the regional Appeal Courts have not yet been put in place, the President of the current Appeal Court and the Prosecutor General of the General Prosecution Department attached to the Appeal Court shall continue to be members of the Supreme Council of Magistracy. The principle of incompatibility as set forth in article 6 of this law shall not be applied in this case.

The Minister of Justice shall prepare the election to the Supreme Council of Magistracy as set forth from point six to point nine in Article 4 of this Law within three months after this Law coming into force.

The formalities and procedures of the first election to the Supreme Council of Magistracy as set forth in paragraph 3 in Article 4 of this Law shall be stipulated by a proclamation (Prakas) by Minister of Justice.

**Article 29:**

During the time when an inspection team of the Disciplinary Council of the Supreme Council of Magistracy has not yet been appointed in accordance with Article 21 of this Law, the President of the Disciplinary Council of the Supreme Council of Magistracy may assign judges or prosecutors working at the tribunals/courts and at the Prosecution attached to the tribunals/courts to conduct inquiries and investigations on the disciplinary case files.

**Article 30:**

The provision of Article 6 of this Law shall not be applied to judges or prosecutors in their position at the Extraordinary Chamber in the Courts of Cambodia adjudicating the crimes committed during the period of Democratic of Kampuchea.

**Chapter VI**

**Final Provisions**

**Article 31:**

The Law on the Organization and Functioning of the Supreme Council of Magistracy which was promulgated by the Royal Decree No. 09 N.S 94, dated 22 December 1994 as well as any legal instrument contrary to this Law shall be abrogated and shall be replaced by this Law.

This law was adopted by the National Assembly of the Kingdom of Cambodia, on .....2014, during the .... Session of its 5<sup>th</sup> Legislation.

President of the National Assembly

**Samdech Akka Moha Chakrei Heng Samrin**