



Discussion Paper No.21

**THE CONSTITUTIONAL COUNCIL OF THE
KINGDOM OF CAMBODIA IN PROMOTING ITS
CORE VALUES: RESPECT RULE OF LAW, PROTECT
INDEPENDENCE, FULFILL NEUTRALITY**

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Abstract:

This paper produced aims at sharing the understanding of the important core values for an organization, particularly the Constitutional Council of the Kingdom of Cambodia. The development of the core values into action plans can be a means to promote public trust and confidence. The readers of this paper will briefly earn knowledge about the Constitutional Council of the Kingdom of Cambodia with a focus on some related issues (i) The Constitutional Council in promoting the core values (ii) The Constitutional Council in determining the conceptions to be implemented, and (iii) The Constitutional Council in developing the conceptions to be implemented.

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INTRODUCTION

The Constitutional Council is a supreme, neutral, and independent institution created by the 1993 Cambodian constitution. This institution has been effectively functioning since June 15, 1998; which is noticed the first time in Cambodian legal history. The Constitutional Council consists one President and 8 Members. The President is elected by 9 Members of the Council at the absolute majority vote. The election of the President shall be conducted every 3 years after the 3 new members come into office. The President has rank and prerogatives equal to those of the President of the National Assembly. Members have rank and prerogatives equal to those of the Vice-President of the National Assembly.

The normal term of the members of the Council shall be 9 years. Every 3 years, 3 members of this Council shall be replaced. Exceptionally, for the first mandate, some members are appointed and elected for a term of 3, 6, and 9 years. His Majesty the King appoints 3 members, while the National Assembly and the Supreme Council of Magistracy elect 3 members each.

According to the constitution and the law on the organization and the functioning of the Constitutional Council, this Council shall have 3 noticed competences (i) To guarantee the respect of the constitution. By this means, the Constitutional Council interprets the constitution and the laws adopted by the National Assembly and completely reviewed by the Senate, and to examine the constitutionality of laws¹. (ii) To examine and rule on electoral litigations: those elections are the election of the Members of the National Assembly and the election of the Senators². (iii) To notify His Majesty the King: the King consults the Constitutional Council on all proposals to amend the Constitution.

The initiative to review or to amend the constitution shall be the prerogative of the King, the Prime Minister, and the President of the National Assembly, at the proposal of one fourth of all its members³. This Constitutional Council shall be assisted by the general secretariat, which is responsible for all administrative work of the Council.

¹ Article 136 (new) of the constitution

² Article 136 (new) of the constitution

³ Article 143 new (former Article 124) of the constitution

The general secretariat of the Council shall be under the directives of the President of the Constitutional Council. It is administered by one secretary-general, assisted in his activities by a certain number of deputy secretaries-general. The secretary-general and deputy secretaries-general shall have the rank of secretary of state and undersecretary of state respectively. The secretary-general manages the administrative works of the Constitutional Council under the instruction of the President of the Constitutional Council. The secretary-general could be authorized by the President of the Constitutional Council to sign the administrative letter or decision.

The general secretariat of the Constitutional Council shall play important roles as following (i) preparing all cases submitted to the Council (ii) taking note minute during the sessions of the Council (iii) being responsible for administrative work of the Council by guaranteeing the continuity of work, official's management, and good cooperation with other inter-departments (iv) keeping cases, minutes, and other documents by not making leaks to outsider without permission from the President, and (v) providing technical assistance to the Council's members, and also fulfilling other works given by the President.

PART I

Research Overview, Literature Review, Research Methodology

CHAPTER 1

RESEARCH OVERVIEW

1.1. Background

The Constitutional Council of the Kingdom of Cambodia is the constitutional review body in this country. It has very important roles in guaranteeing the respect for the constitution, which is to be said a holy text for keeping peace, sustainability, and development in Cambodian society. Thus, this institution shall be well known and respected by concerned stakeholders. Promoting its supremacy among the public awareness is one of the first steps for this institution.

The Constitutional Council has accomplished many appreciated works, but there have been further tasks to be done in coming future, hence the Constitutional Council is calling for an effective promotion of its institution. To strengthen one institution shall be in form of (i) structural strengthening and (ii) human resources strengthening. These two forms of strengthening should be under a policy, which could be found in the core values of the Constitutional Council. These core values need many steps of its concepts to be implemented, hence doing research on how to promote the core values of the Council is now among crucial work for the general secretariat of the Constitutional Council.

1.2 Problem Statement

The Constitutional Council has fulfilled its functions in conformity with the constitution and existing laws of the Kingdom. The Constitutional Council has committed to move upwards to the space of international recognition at larger scale; especially getting trust and confidence from the public. In reaching this purpose, the core values for the Council has been introduced as followed: *Respect Rule of Law, Protect Independence, and Fulfill Neutrality*.

The aforesaid core values were introduced the first time for the Constitutional Council by H.E. Mr. IM Chhun Lim, current President of the Council. It was heard in his speech delivered at 19th anniversary of the Constitutional Council held on 15 June 2017. This initiative core values were then unanimously adopted by all members of the Council and staffs of the general secretariat. They all welcomed and recognized this core values as the common sense of the

Constitutional Council. The creation of this core values aims at promoting public awareness and trust in the Constitutional Council. The aforesaid core values for the Constitutional Council will become an important means to promote supremacy of the Council.

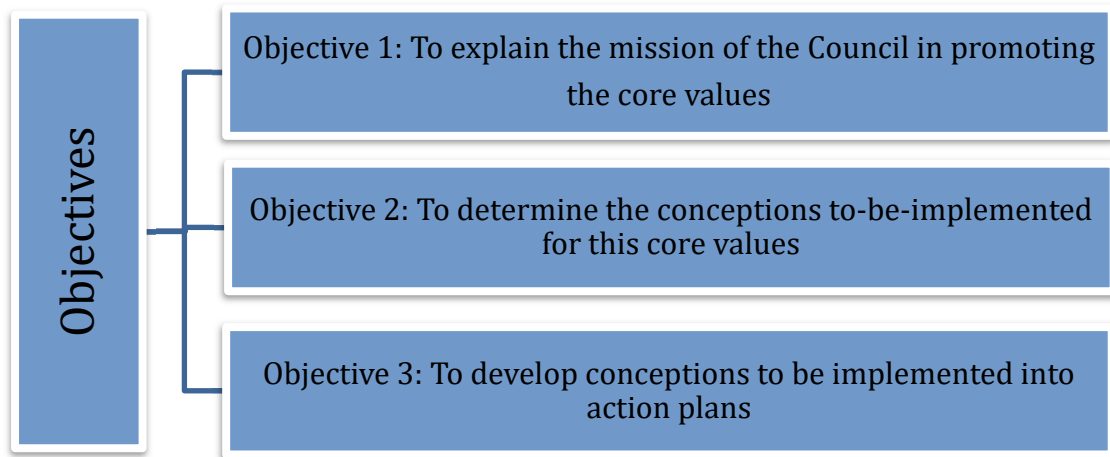
In his speech delivered on 15 June 2018 during 20th anniversary of the Constitutional Council, H.E. Mr. IM Chhun Lim advised the general secretariat of the Constitutional Council to work on the development of this core values. He does suggest the secretary-general and other key staffs to develop this core values into real practice by using the conceptions to be implemented and the action plans. Thus, it is a good opportunity for the secretary-general for working on this proposed plan in research fellowship program at Center for Asian Legal Exchange (CALE) of Nagoya University. The development of this core values shall be beneficial for the Constitutional Council in fulfilling its function, particularly for the general secretariat, which is an important administrative body of this Council.

Moreover, the President of the Council is seeking way on how to strengthen the supremacy of the Constitutional Council and to extend the jurisdiction of this Council in accordance with the constitution and legal frame. He does believe that today Council's jurisdiction has remained larger space to be extended in favor the rule of law in Cambodia. He has advised the secretary general to learn more possible way by starting with the development of the aforesaid core values. The president of the Council also seeks for the further experiences from other similar institutions of different countries on this context. He has two main concerns (i) How could the Council extend its jurisdiction? (ii) How could the Council be widely recognized among all stakeholders?

From the aforementioned concerns, this research topic is good for this research fellowship. The intention of the Constitutional Council of the Kingdom of Cambodia is to build '*a Potential Constitutional Council in Cambodian Legal System*' that stands on three main pillars (i) Rule of Law (ii) Independence and (iii) Neutrality.

1.3 Research Objectives

In this research, we want to achieve the following 3 objectives:



(figure1)

1.4 Research Questions

Objective 1: To explain the mission of the Council in promoting the core values

- 1.1 What are the main reasons in establishing this core values?
- 1.2 What are main concepts of this core values?

Objective 2: To determine the conceptions to be implemented for this core values

- 2.1 What are the conceptions to be implemented with this core values?
- 2.2 What are the proposed ideas in in reaching those conceptions?

Objective 3: To develop the conceptions to be implemented into action plans

- 3.1 How could the Constitutional Council develop this core values?
- 3.2 What are expected results and challenges?

Beyond the above objectives and questions, I also have my personal objective, which is to develop a scholarly understanding of the real situation of the Constitutional Council.

CHAPTER 2
LITERATURE REVIEW, CONCEPTUAL FRAMEWORK,
RESEARCH METHODOLOGY

2.1 Literature Review of Concepts Definition

The core values were adopted by the Constitutional Council of Cambodia. This term is broad in their meaning and interpretation. Thus, there are some terms that need to be defined and understood in this context.

2.1.1 Core Values

There are many definitions of core values provided by different dictionaries. Among them, the core values refer to the principle that guides an organization's internal conduct as well as its relationship with the external world. The core values are usually summarized in the mission statement or in a statement of the core values. There are many concepts for the core values differ from each institution.

In another sense, the core values are the fundamental beliefs of a person or institution. These guiding principles dictate behavior and can help people understand the difference between right and wrong. The core values also help one institution to determine if they are on the right path and fulfilling their goals by creating an unwavering guide. There are many different examples of the core values in the world, depending upon the context.

As result, an institution might expressly share their core values; often the best way to identify these core values is to watch how they perform. In this sense, the core values play an important role in making concept of right and wrong in way of performance of one institution. The concept of right and wrong shall base on the majority of that particular group in their own way of performance. Thus, respect of one's core values is quite important in the sense of respect for the principle.

2.1.2 Rule of Law

Anthony Valcke, Senior Rule of Law Advisor, American Bar Association Rule of Law Initiative Solicitor (England & Wales), who wrote an article on the rule of law, briefly explains that the rule of law is a concept that describes the supreme authority of the law over governmental action and individual behavior. It corresponds to a situation where both the government and

individuals are bound by the law and comply with it. It is the antithesis of tyrannical or arbitrary rule. He provides that the phrase “rule of law” only entered common parlance in the nineteenth century thanks to the writings of British constitutionalist Albert V. Dicey. The introduction of Albert V. Dicey is to study of the laws of the constitution (1885) provides the first major explanation of what the rule of law entails in a liberal democracy. According to Dicey, the rule of law consisted of three inter-connected elements.

Firstly, the rule of law demands that no person should be subject to punishment except for a breach of a pre-established law, and it is the ordinary courts that are the proper venue for determining whether such a breach of law has occurred. The rule of law is therefore incompatible with the “exercise of wide, arbitrary or discretionary powers of constraint” by government officials. Secondly, under the rule of law everyone is equal in the eyes of the law. This implies that government officials should not enjoy special immunities (save for the monarch) and should be held accountable for their actions before the ordinary courts. Thirdly, at least in the United Kingdom where there is no comprehensive written constitution, the rule of law flows from the judicial recognition of individuals’ rights. This aspect of the rule of law consists in the array of legal safeguards that protect individuals from arbitrary action taken by government, with the courts empowered to act as the custodians of those safeguards.⁴

To sum up, according to the aforesaid that quote, the rule of law consisted of 3 inter connected elements as follows (i) the rule of law demands that no person should be subject to punishment except for a breach of a law (ii) the rule of law everyone is equal in the eyes of the law and (iii) the rule of law flows from the judicial recognition of individuals’ rights.

Another scholar, Kate E. Bloch, Professor of Law, University of California Hastings College of the Law, discussed in his work on *Bridging Rule of Law Theory and Implementation: The Role of Professional Ethical Integrity* by raising that definitions of the term "rule of law" vary. But a meaningful discussion involving rule of law must begin somewhere. To launch that discussion, we begin by highlighting the definition given by the United Nations:

⁴ Anthony Valcke, *The Rule of Law: Its Origins and Meanings* (A short guide for practitioners) (March, 2012), available at SSRN, <http://ssrn.com/abstract=2042336>

For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁵

2.1.3 Independence

The common definition of independence is freedom from the control or influence of others. On another hand, *Diego M. Papayannis*, associate professor at the University of Girona, provided that Independence, under the influence of positive state law, is usually associated with certain institutional guarantees or safeguards that allow adjudicators to free themselves to some extent from external pressures when making their decisions. Such safeguards include, among many others, the neutrality of the appointment procedure (i.e., an absence of political intervention), the stability of the position, autonomy from other branches of government, a reasonable sphere of immunity, and the inviolability of their salary⁶.

2.1.4 Neutrality

Neutrality is a state of not taking side. There are different ideas on the definition of neutrality. The first idea is a general principle of neutrality. On that principle, institution may not play favorites; it must be impartial. It may not, for example, take resources or opportunities from one person solely for the benefit of another. Nor may it make social outcomes depend entirely on the exercise of political influence. The second idea refines this principle by distinguishing between neutrality and partisanship. It does so by treating existing distributions of wealth, opportunities, preferences, and natural endowments as the baseline against which assessments of neutrality and partisanship will be made. On this view, government decisions that disturb existing distributions raise the specter of constitutionally questionable partisanship. Decisions that respect existing distributions are neutral and constitutionally unobjectionable. A close

⁵ Kate E. Bloch, Bridging Rule of Law Theory and Implementation: The Role of Professional Ethical Integrity, 39 *Hastings Int'l & Comp. L. Rev.* 81 (2016)

⁶ Diego M. Papayannis, Independence, Impartiality and Neutrality in Legal Adjudication, 28 *Revus: J. Const. Theory & Phil. Law* 33 (2016)

examination of those distributions or of what may be the same thing, the context and history of the practice in question is thought likely to produce impermissible partiality.

2.2 Conceptual Framework

This research will study how to promote the core values of the Constitutional Council by developing it into the pragmatism. The development of the concepts in the core values with a focus on three terms, which are rule of law, independence, and neutrality; shall be only done in the framework of the Constitutional Council's jurisdiction. Thus, this research will go to an understanding how could this institution perform its function in order to respect the principles of rule of law, to protect its independence, and to fulfill its duty as a neutral institution. This work will conceptualize the action of (i) the Constitutional Council, and (ii) the general secretariat.

2.3 Research Methodology

This research study has chosen a qualitative approach due to the complex nature of the core values and its development. Thus, the data collections for this research shall be (i) **primary data collection**, which was collected in form of in-depth- interviews. Those interviewees are the members of the Constitutional Council and senior officials of the general secretariat, who are potential in providing experiences to be beneficial for this research, and (ii) **Secondary data collection**, which was collected from others documents related to core values, rule of law, independence, and neutrality. Moreover, this secondary data was collected from the laws, the speech of the president, the annual reports, and other concerned documents of the Constitutional Council.

PART II
Research Findings

CHAPTER 1
THE MISSION OF THE CONSTITUTIONAL COUNCIL IN PROMOTING
THE CORE VALUES

The overall objective of this chapter is to describe the main reasons of the Constitutional Council of the Kingdom of Cambodia in interesting to promote the core values and to explain the main concepts of these core values. Before going to see the main reason of this establishment, one should have a quick look at different steps of development of the Constitutional Council in brief as followed.

1.1 Introduction

The Constitutional Council of the Kingdom of Cambodia was established on 15 June 1998 and has been functioning its roles in consistent with the Constitution and laws. Since the establishment of this institution, the Constitutional Council has been led by 4 presidents and 4 secretary-generals. Those 4 presidents of the Council are (i) H.E. Mr. *CHAN Sok*⁷ from 1998 to 2001 (ii) H.E. Mr. *BIN Chhin*⁸ from 2001 to 2007 (iii) H.E. Mr. EK Sam Ol⁹ from 2007 to 2016, and (iv) H.E. Mr. *IM Chhun Lim*¹⁰ from 2016 onwards until present day. The Constitutional Council under each president has different development.

1.1.1 The Presidentship of H.E. Mr. CHAN Sok

The Constitutional Council under the presidentship of H.E. CHAN Sok (1998-2001) was considered as the period of starting point for this institution.

Other 8 members of the Constitutional Council for the first 3 years tenure during that period are (i) Samdach Chausen Cosal CHHUM (ii) H.E. BIN Chhin (iii) H.E. THOR Peng Leath (iv)

⁷ H.E. CHAN Sok was passed away

⁸ H.E. BIN Chhin is currently Deputy Prime Minister in charge of Minister of the Council of Minister

⁹ H.E. EK Sam Ol is currently the Chairman of Khmer-Chinese Association

¹⁰ H.E. IM Chhun Lim was the former Senior Minister of Ministry of Land Management, Urban Planning and Construction

H.E. SAY Borey (v) H.E. SON Sobert (vi) H.E. YANG Sem (vii) H.E. PRAK Sok, and (viii) H.E. TOB Sam.

There were only 35 officials in 1998 and 40 staffs in 2001 working for the general secretariat¹¹, who were selected from different cards with no taking entrance examination. White Building¹² of *Chamcar Mon State Palace*¹³ was given to the Constitutional Council for its headquarter. It was an old building by that time, which was needed to be renovated. The foundation of legal instruments such as law on the organization and the functioning of the Constitutional Council, internal rule of procedure, and other important legal documents were established during this period. The Kingdom of Cambodia became the member of ACCPUF¹⁴ in 1998. In short, the Constitutional Council in that period of time was in the state of preparation.

❖ **The General Secretariat:** led by H.E. Mr. PIT Taingsan, the secretary-general, and H.E. Mr. MENG Kimly, deputy secretary-general.

1.1.2 The Presidentship of H.E. Mr. BIN Chhin

The Constitutional Council under presidentship of H.E. BIN Chhin from 2001 to 2004 for second 3 years tenure, and from 2004 to 2007 for third 3 years tenure.

Other 8 Members of the Council for second 3 years tenure are (i) Samdach Chausen Cosal CHHUM (ii) H.E. CHAN Sok (iii) H.E. THOR Peng Leath (iv) H.E. SAY Borey (v) H.E. SON Sobert (vi) H.E. YANG Sem (vii) H.E. PRAK Sok, and (viii) H.E. TOB Sam.

Other 8 Members of the Council for third 3 years tenure are (i) Samdach Chausen Cosal CHHUM (ii) H.E. SON Sobert (iii) H.E. PRAK Sok (iv) H.E. TOB Sam (v) H.E. PEN Thol (vi) H.E. Mrs. SUM Nipha (vii) H.E. CHHOUR Leanghout, and (viii) H.E. PRUM Nheanvichet.

¹¹ Number provided by Department of Personnel and Human Resource Development of the Secretariat General of the Constitutional Council.

¹² Before 1970, it was reserved for the Queen Norodom Monineath Sihanouk, Royal Consort of His Majesty the King Norodom Sihanouk.

¹³ It was the former Royal Residence of King Norodom Sihanouk before 1970.

¹⁴ ACCPUF: *Association des Cours Constitutionnelles ayant en Partage l'Usage du Français*. It is currently changed the name to *Association des Cours Constitutionnelles Francophones* (ACCF)

There are 65 officials in 2007 working in the secretariat general of the Constitutional Council. There were 2 national entrance examinations for recruiting the new officials. In 2005, there were 4 officials recruited for the bureau of legal affairs and other 2 officials recruited for the bureau of foreign language translation. In 2006, there were 4 officials recruited, in second national examination, for the bureau of IT.

❖ **The General Secretariat:** led by H.E. Mr. PIT Taingsan, the secretary-general, and H.E. Mr. MENG Kimly, deputy secretary-general.

1.1.3 The Presidentship of H.E. Mr. EK Sam Ol

The Constitutional Council under presidentship of H.E. EK Sam Ol from 2007 to 2010 for fourth 3 years tenure, from 2010 to 2013 for fifth 3 years tenure, and from 2013 to 2016 for sixth 3 years tenure.

Other 8 Members of the Council for fourth 3 years tenure are (i) SON Sobert (ii) H.E. PRAK Sok (iii) H.E. TOB Sam (iv) H.E. PEN Thol (v) H.E. Ms SUM Nipha (vi) H.E. CHHOUR Leanghout (vii) H.E. PROM Nheanvichet, and (viii) H.H. prince SISOWATH Phandaravong.

Other 8 Members of the Council for fifth 3 years tenure are (i) H.E. Mrs SUM Nipha (ii) H.E. PEN Thol (iii) H.E. CHHOUR Leanghout (iv) H.E. PRUM Nheanvichet (v) H.H. prince SISOWATH Phandaravong (vi) H.R.H. Samdach NORODOM Sirivudh (vii) H.E. MIN Sean, and (viii) H.E. Mrs CHEM Veyrith.

Other 8 Members of the Council for sixth 3 years tenure are (i) H.E. PRUM Nheanvichet (ii) H.H. prince SISOWATH Phandaravong (iii) H.R.H. Samdach NORODOM Sirivudh (iv) H.E. MIN Sean (v) H.E. Mrs CHEM Veyrith (vi) H.R.H. Samdach NORODOM Chakrapong (vii) H.E. PIT Taingsan, and (viii) H.E. UTH Chhorn.

Moreover, there were 11 officials recruited in 2009 for working in bureau of foreign language translation and the bureau of finance.

❖ **The General Secretariat:** led by H.E. Mr. PIT Taingsan, the secretary-general (until 2009) and H.E. Mr. MENG Kimly, deputy secretary-general (until 2013). H.E. Mr. CHAN Rasy became the secretary-general in 2009, and H.E. Mr. CHAN Sovannareth became deputy secretary-general in 2013.

1.1.4 The Presidentship of H.E. Mr. IM Chhun Lim

The Constitutional Council under presidentship of H.E. IM Chhun Lim from 2016 to 2019 for seventh 3 years tenure, and from 2019 to 2022 for eighth 3 years tenure.

Other 8 Members of the Council for seventh 3 years tenure are (i) H.R.H. Samdach NORODOM Sirivudh (ii) H.E. MIN Sean (iii) H.E. Mrs CHEM Veyrith (iv) H.R.H. Samdach NORODOM Chakrapong (v) H.E. PIT Taingsan (vi) H.E. UTH Chhorn (vii) H.R.H. Samdach NORODOM Bophadevi, and (viii) H.E. SAM Promnea.

During seventh 3 years tenure, there were one member deceased and one member resigned, hence H.E IM Soursdey took office on May 25, 2017 in replacement of H.E Mr. PIT TAINGSAN (Deceased) H.E HY Sophea took office on July 03, 2017 in replacement of H.E Mrs. CHEM Veyrith (Resigned).

Other 8 Members of the Council for eighth 3 years tenure are (i) H.E. UTH Chhorn (ii) H.R.H. Samdach NORODOM Chakrapong (iii) H.R.H. Samdach NORODOM Bophadevi (iv) H.E IM Soursdey (v) H.E. SAM Promnea (vi) H.E HY Sophea (vii) H.E. Mrs LY Vouchleng , and (viii) H.E. KEO Puth Reasmey.

During eighth 3 years tenure, there was one member deceased, hence H.R.H. Samdach SISOWATH Pongneary Monipong took office on December 19, 2019 in replacement of H.R.H. Samdach NORODOM Bophadevi (Deceased).

❖ **The General Secretariat:** led by H.E. Mr. MENG Kimly, the secretary-general (until December 2017) accompanied by two deputy secretaries-general, H.E. Mr. CHAN Sovannareth and H.E. Mr. PROM Vichet Akara. H.E. Mr. TAING Ratana became the secretary-general in December 2017 onwards.

1.2 The Reason Beyond the Creation of The Core Values

The president of the Constitutional Council of seventh 3 years tenure, H.E. Mr. *IM Chhun Lim* came to office in June 2016. He is among Cambodian prominent dignitaries, who has committed and hard worked in promoting national interest and institutional developments. In this term, he interests to develop the Constitutional Council in the forms of (i) institutional development, and (ii) human resource development. Other interesting achievements of him could be found during his working in the royal government.

In May 2017, he established a cabinet of the president of the Council in aiming at assembles competent and knowledgeable persons to work in his office. This creation is considered the first time since the establishment of the Constitutional Council in 1998. By that time there were 12 compositions in the cabinet.

In early of June 2017, the president called his cabinet for a meeting, before organizing the event of 19th anniversary of the Constitutional Council, which will be held on 15 June 2017. During this meeting, the President said:

We are very grateful to the previous 3 presidents of the Council, who had committed in promoting our institution. They all had produced different legacies in their mandate. But, there are a lot of works remained for us to accomplish today and onwards. Thus, I myself think that it is very crucial for us to do bigger development in our institution, but at first, we need to create our vision in which is called the core values, since I have noticed it has yet established since the Constitutional Council entered into function [...] According to the real practice of our Council, we fulfill our function in consistent with the constitution and laws, hence I could not find any core values better than 3 terms, which are (i) Rule of Law (ii) Independence, and (iii) Neutrality. These 3 terms characterize our institution as an independent institution, which is invested the power to guarantee the respect for the constitution. Thus, I would like to propose a core values for the Constitutional Council as followed: Respect Rule of Law, Protect Independence, and Fulfill Neutrality. I will put these core values in the session of the

Constitutional Council during the 19th anniversary for getting more point of view from other 8 members of the Council [...]¹⁵

These aforementioned core values were put for discussion during 19th anniversary of the Constitutional Council held on 15 June 2017. Thus, this 19th anniversary of the Constitutional Council was considered as another big step for the Council in paving the way to develop the Constitutional Council. After sharing point of view on these aforementioned core values, all other 8 members of the Council expressed their strong supporting for this initiative of the President, hence the Constitutional Council adopted these core values officially on that day.

The President of the Council provided 3 main reasons to the Constitutional Council for supporting this establishment. Those reasons are:

- (i) These core values shall be used for promoting supremacy of the Constitutional Council.
- (ii) These core values shall be considered as the spirit of institution and it shall be bound with all the activities of the Constitutional Council.
- (iii) These core values shall be used as long-term vision for the Constitutional Council, and for the general secretariat.

In November 2017, the President of the Constitutional Council, accompanied by H.E. Mr. MENG Kimly, the secretary-general; and H.E. Mr. TAING Ratana, director of cabinet of the President; participated in the 20th anniversary of ACCPUF held at the head quarter of the Constitutional Council, Paris of France. During this mission, the President of the Council advised the director of cabinet to take one-day mission to visit the general secretariat of French Constitutional Council. This time of visiting, the director of cabinet, visited 2 services (i) Law service and (ii) Research service. The main goals of the president were to seek more experiences from the Constitutional Council of France. In Paris, the President told his director of cabinet:

It is a right time for the Constitutional Council of Cambodia to promote our supremacy by learning experiences from other councils and courts. We already adopted core values in June 2017, hence what we have to do next is to develop these core values into action plans. I do believe that this development of the core

¹⁵ Personal note of the author, who was then the Director of Cabinet of the President of the Council

values will be in favor for our Constitutional Council in promoting our supremacy and jurisdiction [...] ¹⁶

After this aforesaid mission to Paris, the President of the Council provided the conceptions to be implemented in order to widen the ideas for the general secretariat to work on the development of these core values.

CHAPTER 2

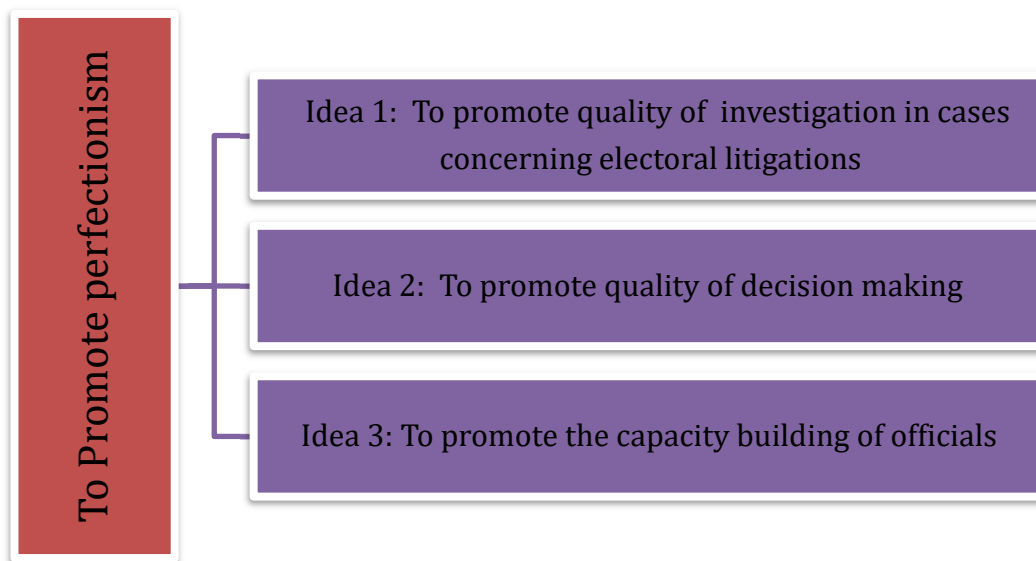
THE CONSTITUTIONAL COUNCIL IN DETERMINING THE CONCEPTIONS TO BE IMPLEMENTED

The overall objective of this chapter is to describe the conceptions to be implemented for the core values, which comes with 2 main points (i) What are the conceptions to be implemented with these core values (ii) What are the proposed ideas in reaching those conceptions. According to the guidance from the President of the Constitutional Council, there are 3 main conceptions to be implemented within these core values. Those conceptions to be implemented shall be used as the roadmap for building other action plans. Understanding well of these conceptions shall be very crucial for all members of the Council and also the officials, who are working at the general secretariat of the Constitutional Council.

2.1 CONCEPTION 1: To Promote Perfectionism in Fulfillment of the Constitutional Council's mandate

Like other Constitutional Councils and Constitutional Courts of various countries, the Constitutional Council of the Kingdom of Cambodia has challenged with what is called '*perfection*'. Even though, we know that, by philosophy, nothing is perfect in its fulfillment; but better commitment with good will to reach perfection must be very crucial for each concerned actors. Based on this concept, the Constitutional Council of the kingdom of Cambodia has strong commitment to promote the perfectionism in its fulfillment of its mandate. Thus, this conception shall come with 3 main ideas: (i) to promote quality of investigation in cases concerning electoral litigations (ii) to promote quality of decision making, and (iii) to promote the capacity building of officials.

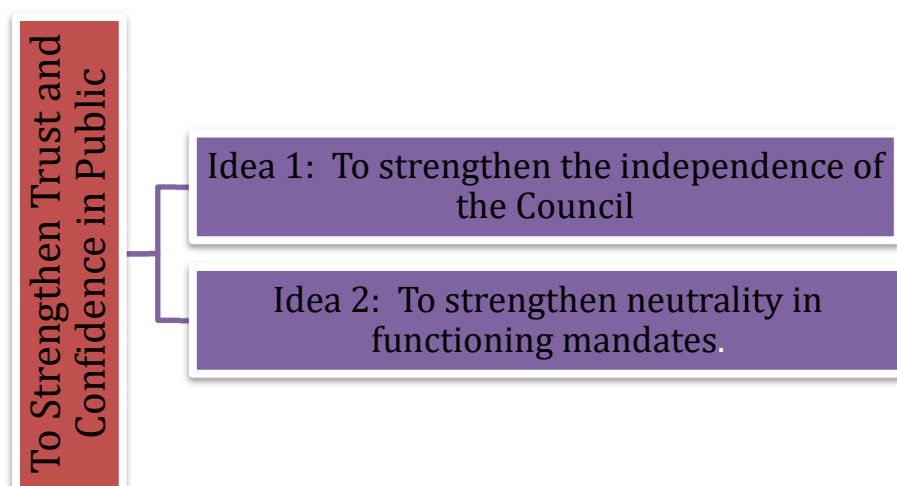
¹⁶ From personal note of author



(Figure 2)

2.2 CONCEPTION 2: To Strengthen Trust and Confidence in Public

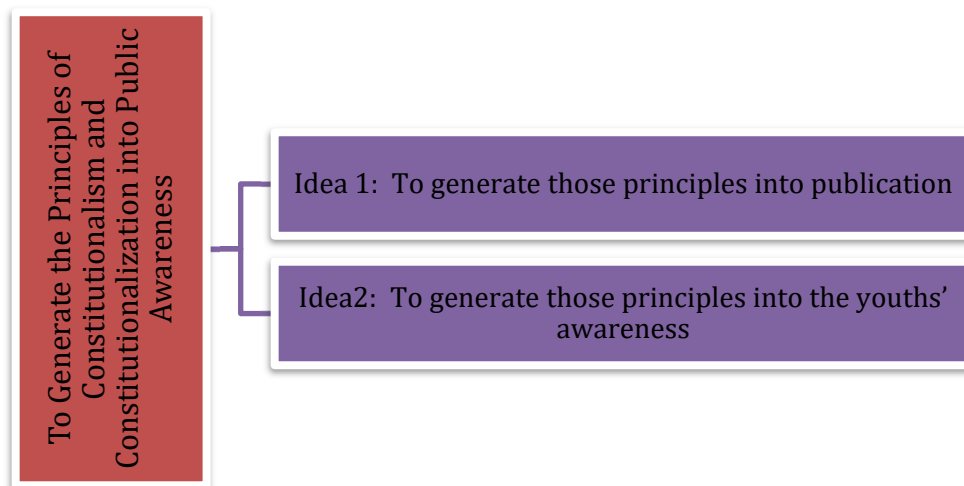
The strengthening of trust and confidence are among central points for promoting the jurisdiction of the Constitutional Council of the Kingdom of Cambodia. They help to increase the investment of trust from all the stakeholders concerning to the cases coming to the Constitutional Council. Thus, this conception shall come with other 2 main ideas (i) to strengthen the independence of the Council (ii) to strengthen neutrality in functioning mandates.



(Figure 3)

2.3 CONCEPTION 3: To Generate the Principles of Constitutionalism and Constitutionalization into Public Awareness

The awareness of constitutionalism is important knowledge for promoting the rule of law in Cambodia that is walking on the path of democracy. The spiritual motivation for Cambodian citizen can be found in the 1993 Cambodian constitution. This constitution was established by the common will of all Cambodian parties. Thus, those constitutional motivations shall be aware by Cambodian citizen in today time and in the future time. The Constitutional Council, the core organ in promoting this awareness, is seeking all possible ways to promote the understanding of the constitutional concepts via means of constitutionalization. Thus, this conception shall come with 2 main ideas (i) to generate those principles into publication, and (ii) to generate those principles into the youths' awareness.

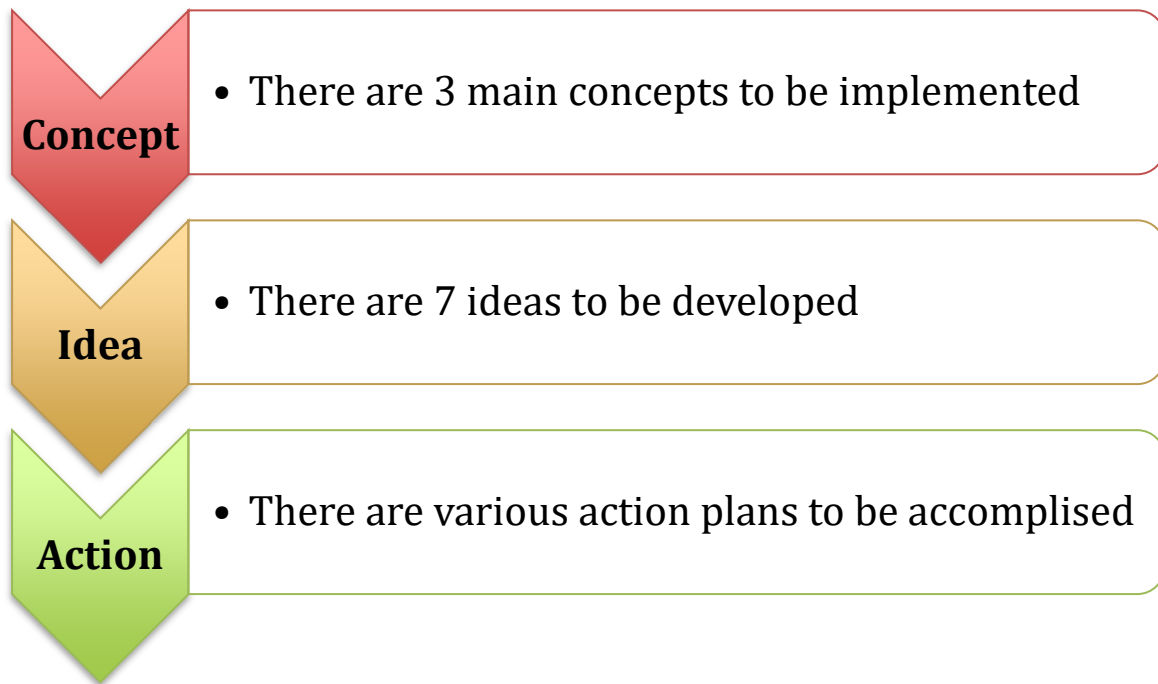


(Figure 4)

CHAPTER 3 THE CONSTITUTIONAL COUNCIL IN DEVELOPING THE CONCEPTIONS TO BE IMPLEMENTED

The overall objective of this chapter is to seeking way on how to develop conceptions to be implemented by making it into clear action plans. Thus, it shall come with 2 main issues (i) How could the Constitutional Council develop these core values, and (ii) What are expected results and challenges. This chapter is the central part of this research as the author need to develop aforesaid core values and conceptions to be implemented. It could be a proposed action plans for the Council in considering for soon future institutional development.

❖ **Structure for Developing those Conceptions:**



❖ **Understanding of Terms:**

Idea and **Concept**¹⁷ are two words that are often confused due to the appearing similarity in their meanings, even though there is a difference between the two words. When paying attention to the definitions of each term, one can comprehend the differences that exist between the two terms. An idea refers to a plan formed by mental effort. On the other hand, concept refers to a procedure. This is the main difference between idea and concept.

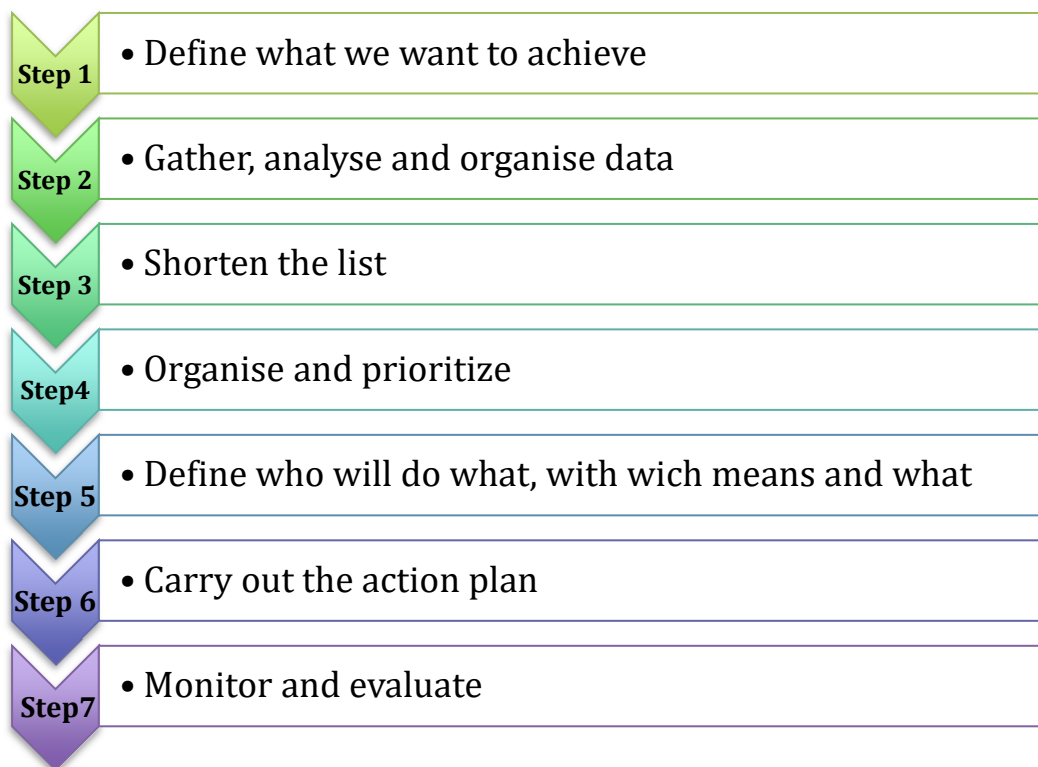
An Action Plan or Action Programme¹⁸ is a detailed plan with specified actions that are needed to achieve a goal. An Action Plan can also consist of a series of steps that must be taken to successfully complete a certain strategy. Furthermore, an action programme determines which resources are required to achieve the (SMART) goal and how and when these must be used. That means that an Action Plan leads to a more concrete vision or objective for an organization. The advantage is that the various parties working on a strategy are on the same page. An Action Plan is an expansion of the well-known ‘to-do list’. It is generally acknowledged that these lists can be useful; many

¹⁷ <https://www.differencebetween.com/difference-between-idea-and-vs-concept/>

¹⁸ <https://www.toolshero.com/personal-development/action-plan/>

people use them in their daily lives. However, the disadvantage of such lists consisting entirely of tasks is that these are often considered to be overwhelming when a person, such as a project manager, bears multiple responsibilities. An Action Plan is a stronger version of such a to-do list, which includes objectives for the short, medium and long term. This makes it easier to delegate certain tasks and helps to save time. Additionally, an action programme encourages prioritizing and focusing on the important matters. This too can help to save valuable time, which increases the effectiveness and productivity of a company or individual employee. What was previously experienced as overwhelming now becomes insightful and controlled.

According to this aforementioned definition, an action plan shall come with various steps as follows:

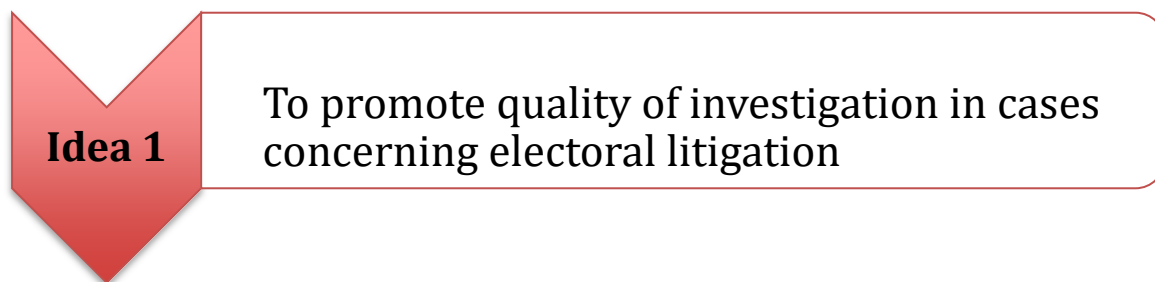


3.1 Developing the Conception 1



The Conception 1 is about to promote perfectionism in fulfillment of the Constitutional Council's mandate as prescribed in chapter 2 that come with 3 main ideas: (i) to promote quality of investigation in cases concerning electoral litigations (ii) to promote quality of decision making, and (iii) to promote the capacity building of officials.

3.1.1 Developing idea 1 into action plan




The idea 1 for conception 1 is about to promote quality of investigation in cases concerning electoral litigations. The Constitutional Council is invested the jurisdiction to rule on the electoral litigation concerning the election of the members of the national assembly and the election of the senators. The electoral litigations occurred for these two elections shall be solved at the National Election Committee (NEC)'s level and at the Constitutional Council level, which is final step. Thus, the Constitutional Council shall play very important role in providing justice for all concerned political parties in electoral litigation. It rules on the cases in consistent with the constitution and existing laws. Like the court procedure, in this case, the Constitutional Council shall play role as jurisdictional council, which will use court's procedure¹⁹. The

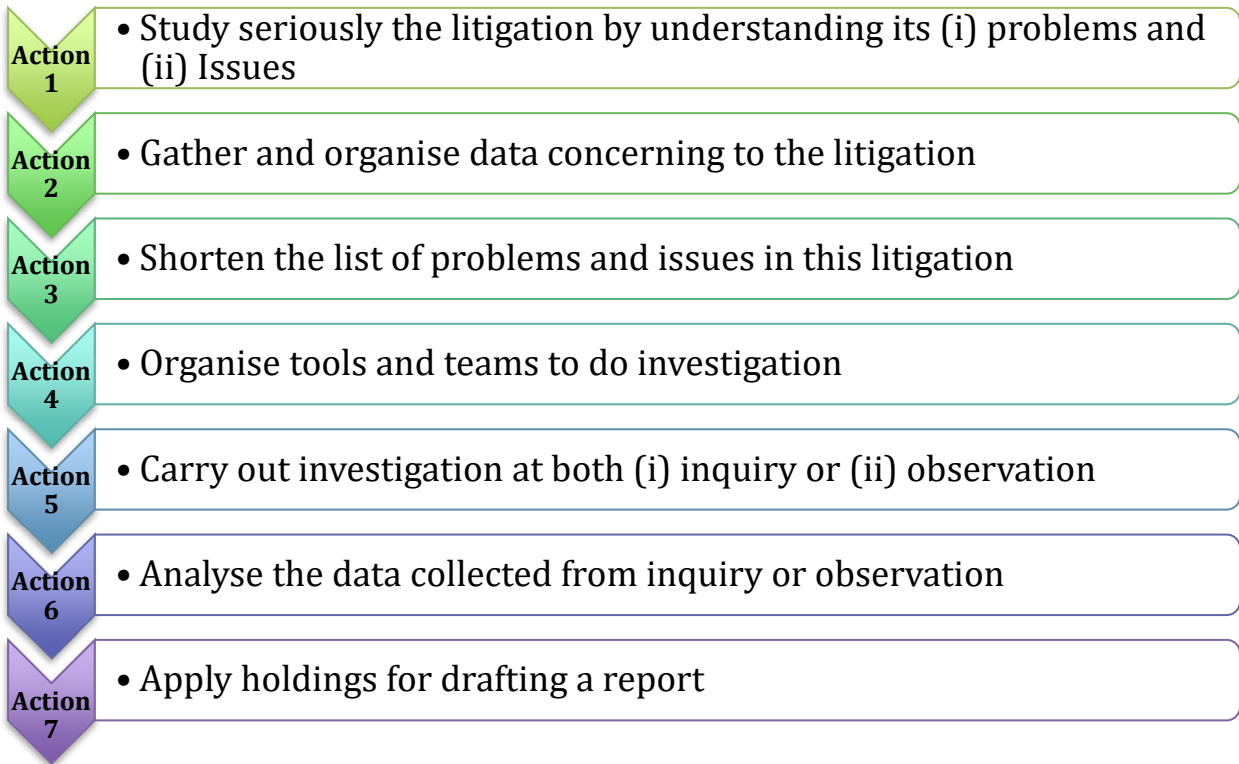
¹⁹ Find more information in Taing Ratana, 'Constitutional Council: Election, structure, procedure, and competencies', in Hor Peng, Kong Phallack and Jörg Menzel (eds.), *Cambodian Constitutional Law*, (Phnom Penh: Konrad-

following part is concerning the developed idea 1 on how to promote quality of investigation in cases concerning the electoral litigations. Ruling process shall come with 3 main steps (i) pre-trial process (ii) trial process, and (iii) post-trial process. Idea 1 intends to focus on the improvement of pre-trial process concerning the quality of investigation. In order to develop this idea, one should briefly understand the pre-trial process as prescribed bellow:

Pre-Trial Process: After receiving a complaint, the chief of the Bureau of Legal Affairs and Litigation shall notify the President of the Council through the director of the Department and the Secretary-General. The President of the Council shall appoint one of the Council's Members to be *the Rapporteur*. This *Rapporteur*, with assistance from the expert officials, shall collect all the important data concerned to the case. The investigation can be also done by group of expert officials under supervision from the *Rapporteur*. They can come to investigate at the site of the conflict in order to collect all data and information. This process shall be done within the time frame provided by law. Besides the investigation, the *Rapporteur* can also invite the parties to the case or others concerned person for inquiry. In practice, the inquiry session shall be made separately between the plaintiff and defendant. This session shall be chaired by the *Rapporteur* and other 2 members of the Council who are in the same group with the *Rapporteur*, assisted by at least 2 expert officials. A minute shall be conducted and shall be thump sealed by the plaintiff or by the defendant. After getting full data, the *Rapporteur* shall conduct a report and submit it to the Group Session, which composes of 3 members before the submission to Preliminary Trial of the Council. The Preliminary Trial is made for the internal discussion on the Report made by the *Rapporteur*.

Pre-trial process normally comes with various steps and it shall paly very crucial part for the making decision of the Constitutional Council. Thus, to promote the quality of investigation, there are action plans as followed:

Adenauer-Stiftung, 2016) 189–218. 



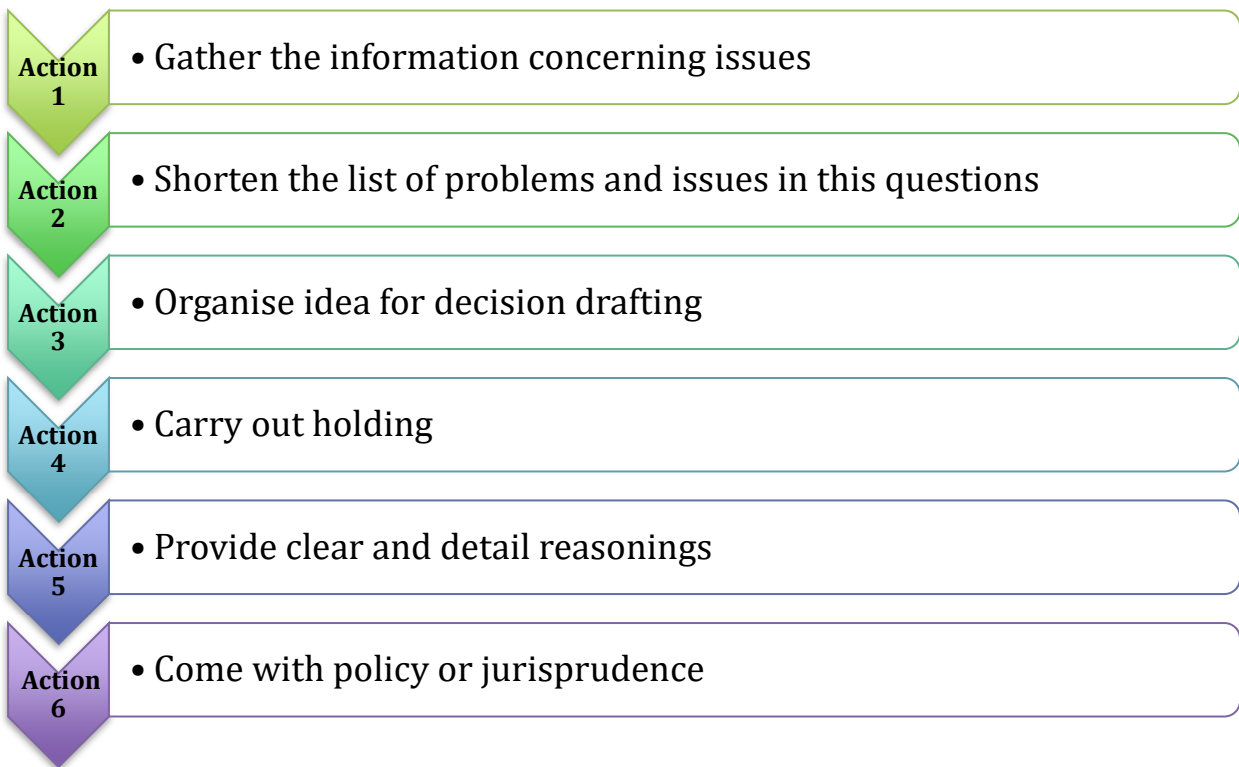
Note: In practice, the Constitutional Council has challenged with time limited. Case concern- ing to (i) Appeal contesting the decision of N.E.C., which shall be made by parties during 5 days or 72 hours depending on each case. In this case, the Constitutional Council has 10 days for ruling on it. (ii) Direct complaints to the Constitutional Council contesting the provisional results of the elections proclaimed by N.E.C., which shall be made within 72 hours by individ- ual or concerned political parties. In this case, the Constitutional Council has 10 to 20 days for working on it. This remained big challenge for the Constitutional Council in promoting its quality of investigation due to this aforementioned time constraint.

3.1.2 Developing Idea 2 into Action Plan

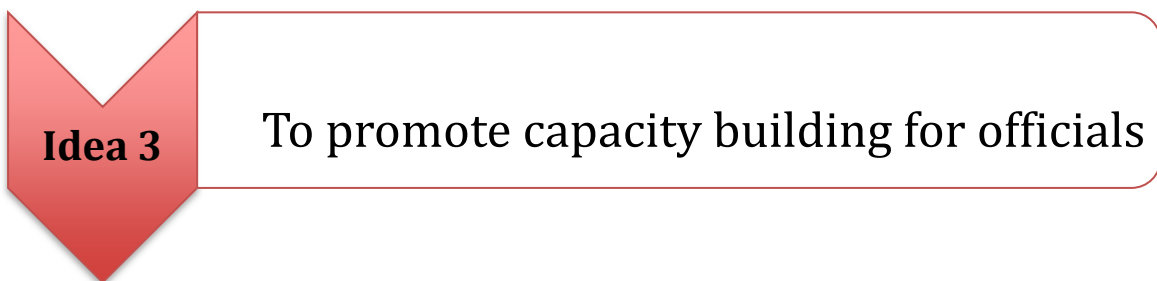


The judgment of the Constitutional Council shall be made in form of '*Sechkdei Samrach*', which is '*Decision*'. The decision of the Constitutional Council, since 1998, has kept its norm for writing. In real practice, the Constitutional Council has strictly followed the rules and norm in decision-making process that provided by the constitution and laws. Thus, there is no any criticism on its procedure. The Constitutional Council has fully been aware that its decision shall be final without recourse; hence the Council has been strictly concerning even a small term in writing its decision.

The Constitutional Council of Cambodia adopted French style in writing its decision, so its decision generally looked not very long as what has been found in German style of writing. Relating to this concerned issue, there is a debate on 'Short writing' and 'Long writing' of decision. Practically, the decision of the Constitutional Council is made within 3 main parts (i) *Visa*, which is part refers constitution, laws concerning the Constitutional Council, laws concerning to the cases/complaints submitted, and cases/ complaints submitted to the Council (ii) *Motive*, which is a part that collects all legal opinions leading to holding the issues found in cases/complaints submitted, and (iii) *Disposition*, which is a part that decides on cases/complaints submitted. Generally, this part comes with 2 Articles for cases concerning the interpretation or examination of the Constitutionality of law. While complaints concerning electoral litigation, this part shall come with 3 Articles. Thus, to promote the quality of decision making, there are action plans as followed:



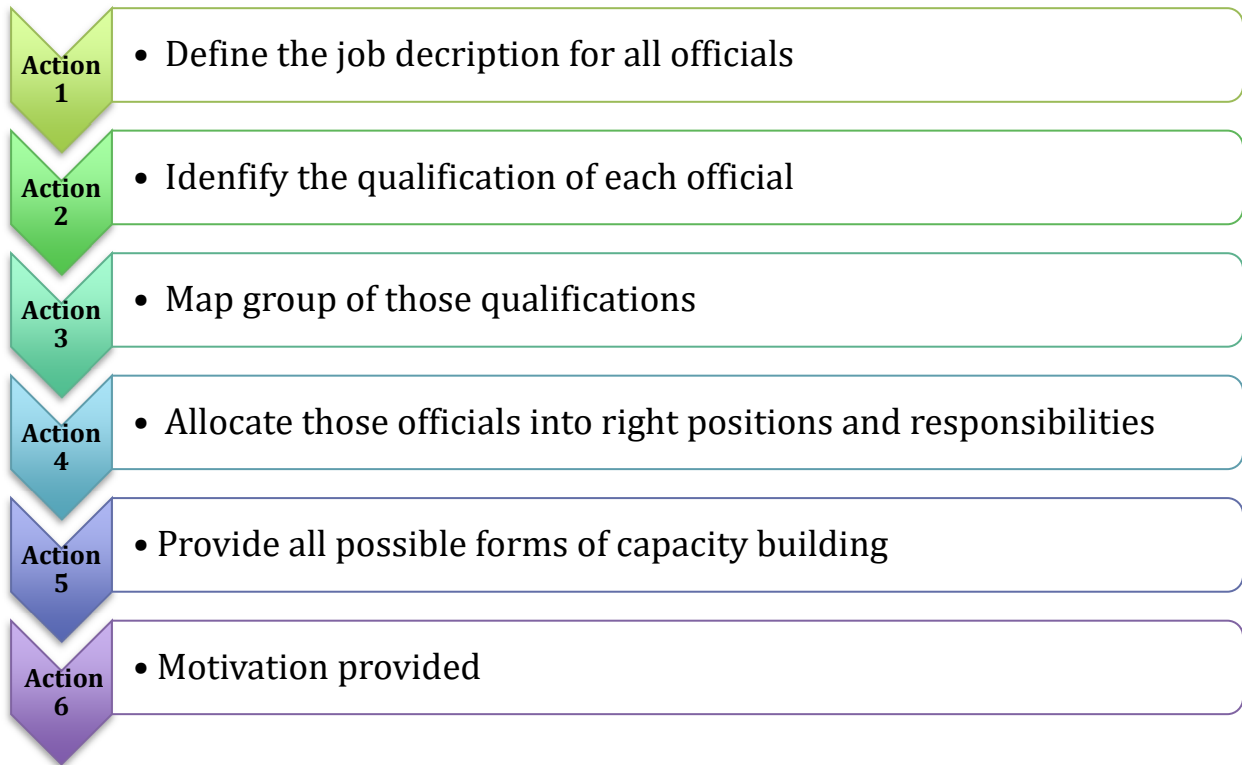
3.1.3 Developing Idea 3 into Action Plan



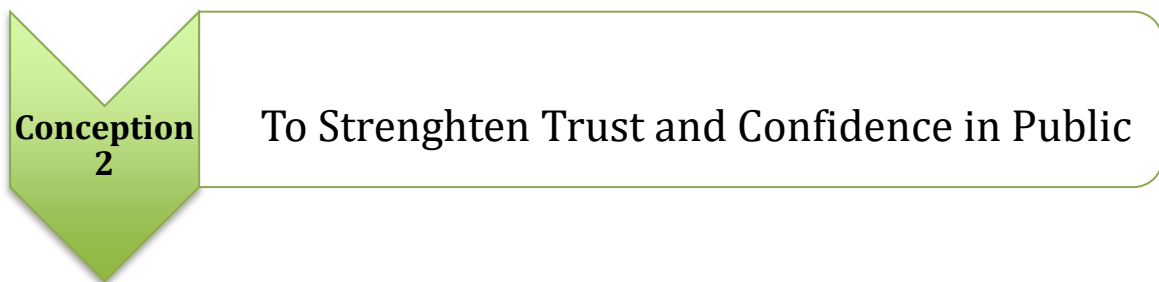
To build the official’s capacity first, then one institution is strengthened. This is the philosophy of H.E. Mr. *IM Chhun Lim*, the president of the Council. Thus, capacity building for officials who are working in the general secretariat of the Constitutional Council is quite crucial in promoting the supremacy of this institution. According to the structure of 2020, the general secretariat of the Constitutional Council composes of two general departments and one center for legal research, which are (i) general department of administration and finance (ii) general department of legal and technical services, and (iii) center of legal research. There are 88 officials in total in the cace of the general secretariat of the Constitutional Council²⁰. In order to

²⁰ Number provided by Department of Personnel and Human Resource Development

promote the capacity building for the officials of the general secretariat, some actions should be carried out as followed:



3.2 Developing the Conception 2



The Conception 2 is about to strengthen trust and confidence in public as prescribed in chapter 2 that come with 2 main ideas: (i) to strengthen the independence of the Council (ii) to strengthen neutrality in functioning mandates.

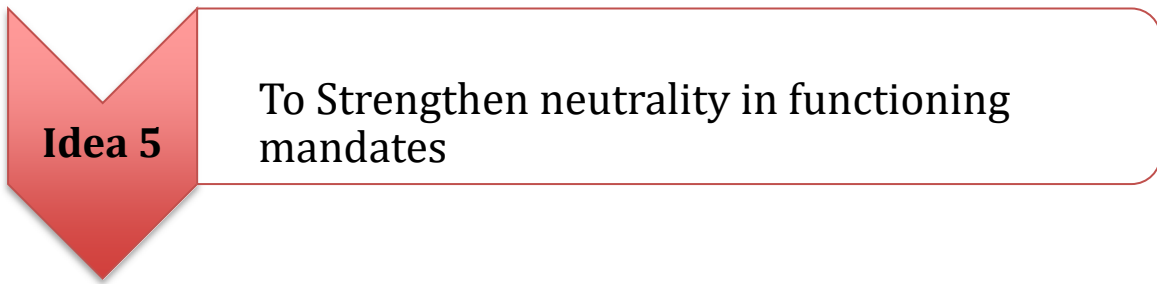
3.2.1 Developing Idea 4 into Action Plan

Idea 4 To Strengthen independence of the Council

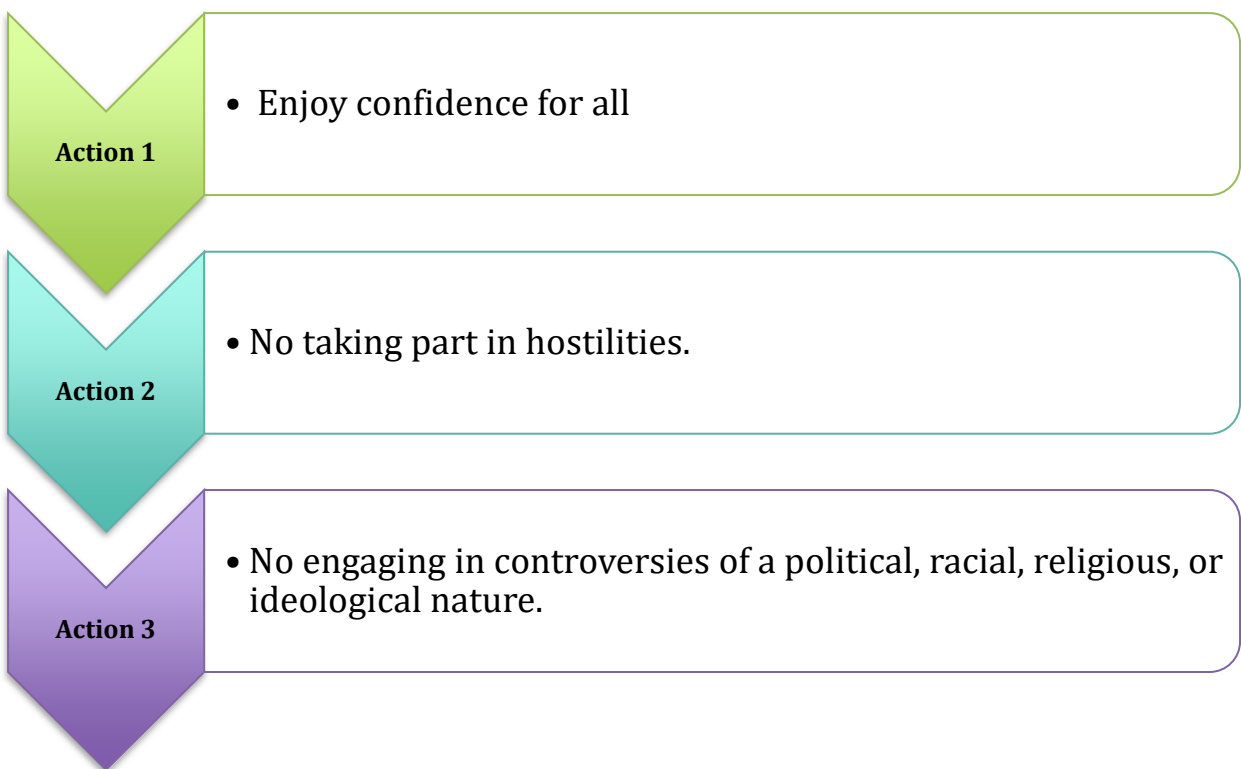
Strengthening independence of the Constitutional Council is core principle for this Council, which is in line with the provisions stated in the constitution and law on the organization and the functioning of the Constitutional Council. The Constitutional Council is committing to fulfill its functions in consistent with this principle. Thus, to strengthen independence of the Council, there are action plans as followed:

- Action 1** • Adhere the constitution and existing laws
- Action 2** • Follow tranperent process
- Action 3** • Conduct fair process for fullfiling its mendates
- Action4** • Enforce rules of procedure and other internal rules
- Action5** • Conduct fair and expeditious system for investigation of requests or complaints.
- Action 6** • Fullfil its function impartially and transparently as stated in the constitution and concered laws

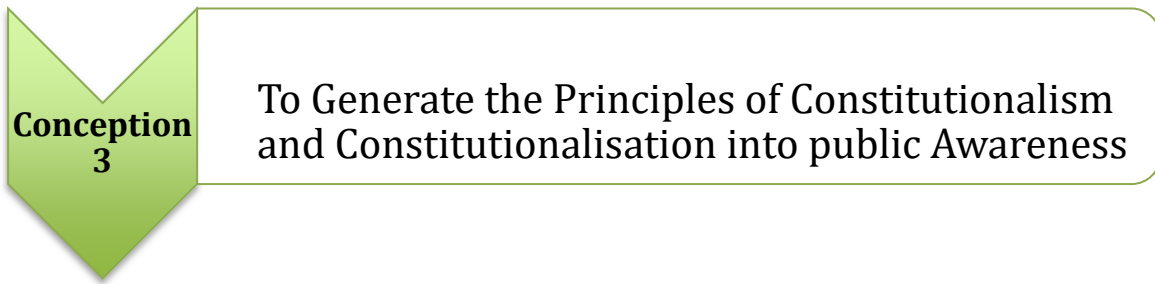
3.2.2 Developing Idea 5 into Action Plan



Strengthening neutrality in functioning the Council’s mandates is core principle for this Council, which is in line with the provisions stated in the constitution and law on the organization and the functioning of the Constitutional Council. The Constitutional Council is committing to fulfill its functions in consistent with this principle. Thus, to strengthen neutrality of the Council, there are action plans as followed:

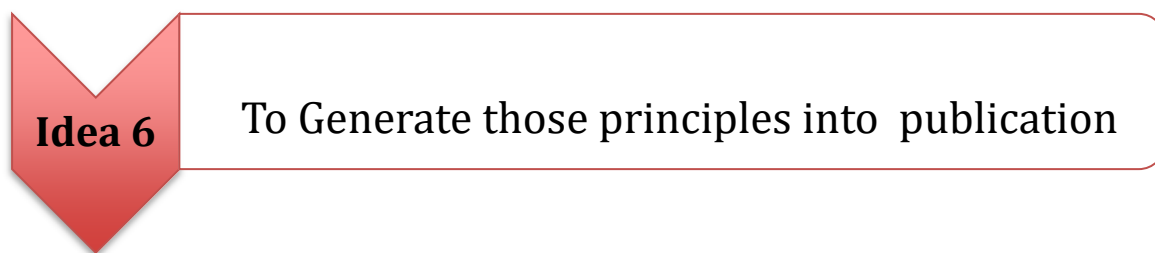


3.3 Developing the Conception 3



The Conception 3 is about to generate the principles of Constitutionalism and Constitutionalisation into public awareness as prescribed in chapter 2 that come with 2 main ideas: (i) to generate those principles into publication, and (ii) to generate those principles into the youth's awareness.

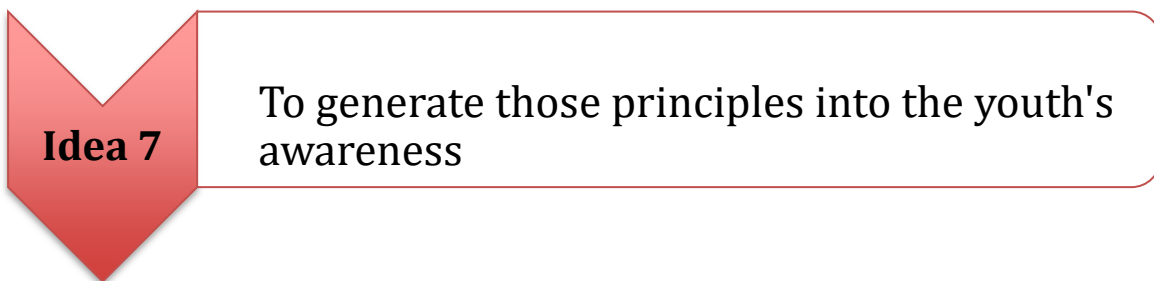
3.3.1 Developing idea 6 into action plan



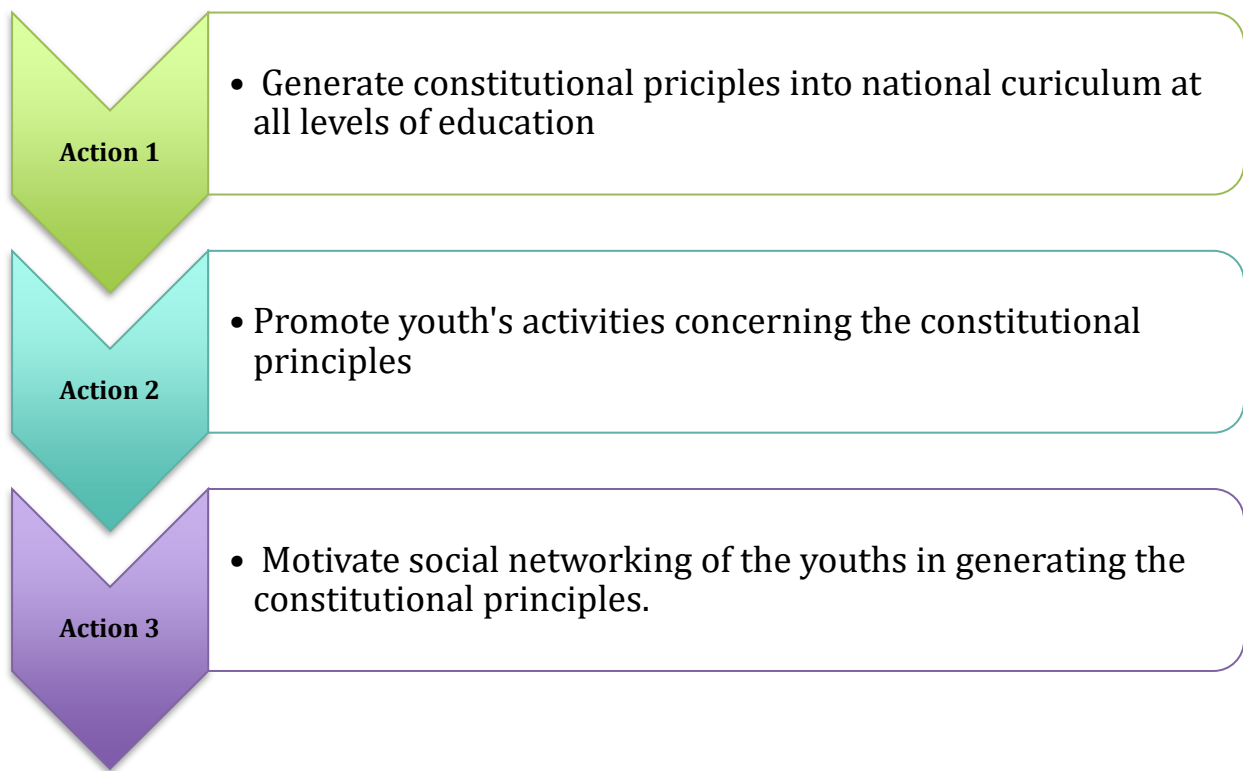
Generating the principles of the constitutionalism into the society is very crucial for the mission to promote the constitutionalism in Cambodia. The Constitutional Council is a core institution in fulfilling this mission. The following actions that the Council should do promotion in order to generate those principles into publication:



3.3.2 Developing Idea 7 into Action Plan



Youth's awareness of constitutional principles is important for promoting the constitutionalism in Cambodia. Thus, generating those principles into the youth's awareness is crucial for today Cambodian society. In order to do so, the Constitutional Council should take actions as follow:



❖ **Some Possible Challenges for Fulfilling Action Plans**

Those aforesaid developments of the conceptions, during its implementation of action plans, may meet some challenges such as (i) resources (both institutional and human resource) and (ii) timing (some core values need long time to be promoted).

The core values is noted with some characteristics:

- 1- Short but Long: core values normally come with few words or sentences, but it need long time to be understood and accomplished.
- 2- Easy but Complicated: core values at first sight looks very easy in its creating, but it in fact could be very complicated in term of its implementation.
- 3- Simple but Noble: Key words or sentences of core values seem very simple, but it is noble in term of its value.

In short, the core values shall show dignity, integrity, and sovereignty of the Constitutional Council of the Kingdom of Cambodia.

CONCLUSION

The core values of the Constitutional Council of the Kingdom of Cambodia shall play very crucial roles in showing the first image of this Council's performance. It shows the commitment and responsibility of the Council at first hand and also shall be the policy of this Council on another hand. Thus, the Constitutional Council could decide what should do or what should not do by looking at what are set in their conceptual framework, which closely related to the creation of this aforesaid core values. The core values are also a symbol of unity and consistency of the Council's action.

The Constitutional Council of the Kingdom of Cambodia has committed to fulfill its functions in accordance with the constitution and laws. The core values formed for this Council shall be very crucial principles in showing the public about its respective mission. The respect for this core values and making its result happened are considered as important means to promote the trust and confidence among society.

The general secretariat of the Constitutional Council, which is an administrative body of this supreme institution, will also take crucial parts in supporting the Constitutional Council to develop this core values into a real pragmatism. Thus, this development of the core values will become a tool in promoting the Council to fulfill its mandates in consistent with the constitution and existing laws.

In short, the Constitutional Council of the Kingdom of Cambodia, under present leadership of H.E. Mr. IM Chhun Lim, current president of the Council; will move upwards to next notable step of strengthening its supremacy. This development of the core values of the Council will pave the way for this Council in looking at possible way to extend the Council's jurisdiction in soon future, which is believed an effective means to promote the constitutionalism in Cambodia.

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THE CONSTITUTIONAL COUNCIL OF THE KINGDOM OF CAMBODIA IN PROMOTING ITS CORE VALUES: RESPECT RULE OF LAW, PROTECT INDEPENDENCE, FULFILL NEUTRALITY

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