



The Lawmaking Process

A) Key Elements of the Lawmaking Process:

I) Submission of a Draft Law:

To **initiate legislation** means to submit draft-proposals

- for the adoption of new laws
or
- for the amendment of already existing old laws.

Three different institutions have the **right to initiate legislation** (Article 91 I CC):

- every member of the National Assembly
- the Government
- the Senate.

Every **draft law** must fulfill a number of **conditions**: (Principles 21 and 22 NA Internal Rules):

The draft law must:

- be **written**
- be divided into **articles**
- include: "**statement of cause**"
(=reason for proposed law)
- not aim at reducing public revenue or increasing burden on the people (Article 91 II CC)
- be **compatible with the constitution**
(Articles 140 - 142 CC).

II) Necessity of Special Expertise:

To submit and discuss draft laws which fulfill these conditions is a difficult task. It requires two main capabilities:

- expertise on the special subject which the law shall regulate
and
- legal knowledge about how to formulate a law.

For example drafting a Fishery Law requires **special expertise and knowledge** about the economical, social and environmental problems of the fishery sector. Problems have to be identified and different possible solutions for these problems



have to be developed and broadly discussed. As a result of this a policy has to be formulated.

Making a law additionally requires **special juristic and legal knowledge** about how to translate the developed policy and favored problem-solution into the text of a law regulation. Furthermore every law must be compatible with other laws and with the Cambodian Constitution. To check this compliance takes additional legal knowledge.

Of course not all of the 123 members of the National Assembly can have special expertise and knowledge about all the different subjects and fields which need to be regulated by a law (for example: finances, education, health, crime, judiciary, environment protection and so on). Furthermore most assembly members are not jurists and lack legal knowledge.

III) Broad Review of the Draft Law by Different Actors and Specialized Bodies:

- 1) For the above mentioned reasons it is **necessary** that the assembly members **specialize on different subjects** and **put together their special expertise** and knowledge **in different commissions** that cover the special subjects. At the moment there are 9 different Commissions⁹.

These Commissions can give recommendations to the full assembly of all members what to do with a draft. The power of **final discussion** of the draft text and its **adoption** of course remains in the **responsibility of all lawmakers** who have to consider the different proposals and options and who – by a broad process of discussion and comparison of different options – shall find the best possible solution. As shown above the technical process of law drafting may require highly specialized actors. But the final decision in the name of the Cambodian People has to be made by all of the lawmakers no matter if they have specialized knowledge or not and no matter if they are jurists or not. They can only use specialists to offer them solutions and give them advice.

- 2) As law drafting is quite difficult the other actors (government and senate) who can initiate draft laws also use specialization as a tool of clearing the problems first before they submit a draft.

The **government** for example has different specialized ministries that usually draft laws. Then the Council of Jurists reviews and comments the draft and finally the Council of Ministers has to adopt the draft before it is submitted via the Permanent Standing Committee to the National Assembly Commission¹⁰.

Also the **Senate** first internally within its respective commission prepares a draft law before submitting it via the Permanent Standing Committee of the Senate to the National Assembly.

⁹ If you want to know which lawmaker is sitting in which commission look at the NA-homepage: www.cambodian-parliament.org

¹⁰ For a detailed description of this internal governmental process see: Cambodian Legal Resource Development Center (editor): “The Compendium of Cambodian Laws”, 2000, Volume III, I-23 A



- 3) Once the National Assembly has adopted a draft law the constitution additionally requires a **review** and comment on the law **by the Senate**. After this the law finally can be adopted by the National Assembly.

So the whole **lawmaking process** is **characterized** by the **involvement of a large number of different institutions and specialized bodies**. This may be time consuming but ensures the quality of the lawmaking process. The idea behind all this is that a good and durable legal solution of a problem by a new or amended law can only be found in a **broad process of participation and discussion**.

IV) Promulgation and Publication of the law:

When the National Assembly after all these reviews, comments and discussions has finally adopted the new law the original document of this law needs to be **signed by the King**. In this case he acts like a **notary** just checking if all formal requirements have been fulfilled. This act is called **promulgation**. Finally the **publication** of the law puts the law into effect because only rules that can be read and noticed by everyone can have binding force for the people.

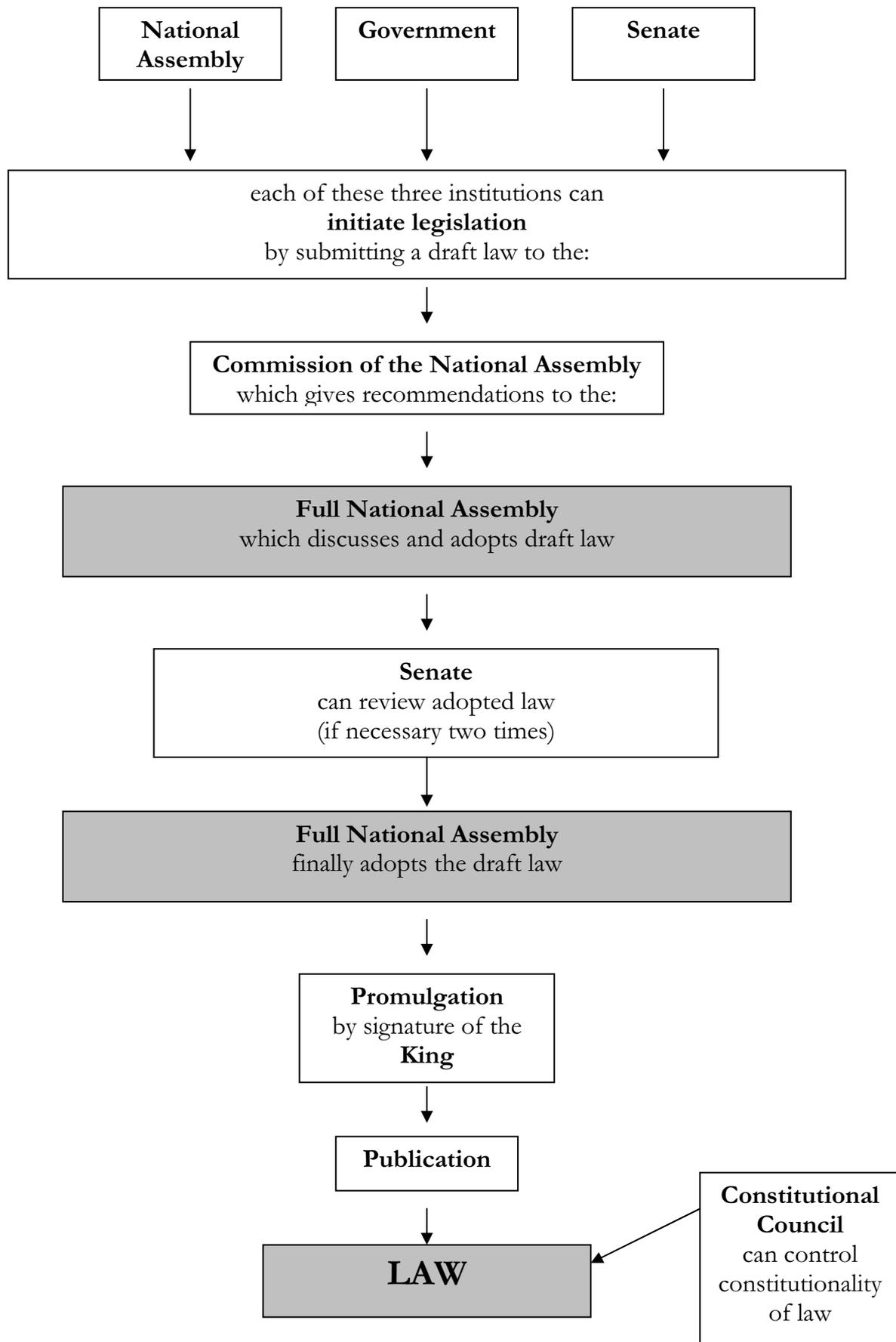
V) Judicial Review of laws:

Finally there is the possibility of a **judicial control** of laws to ensure the compatibility with the constitution: The constitutionality of a law can be examined by the **Constitutional Council** (Articles 136 – 144 CC) before the promulgation of the law or after its promulgation and publication.



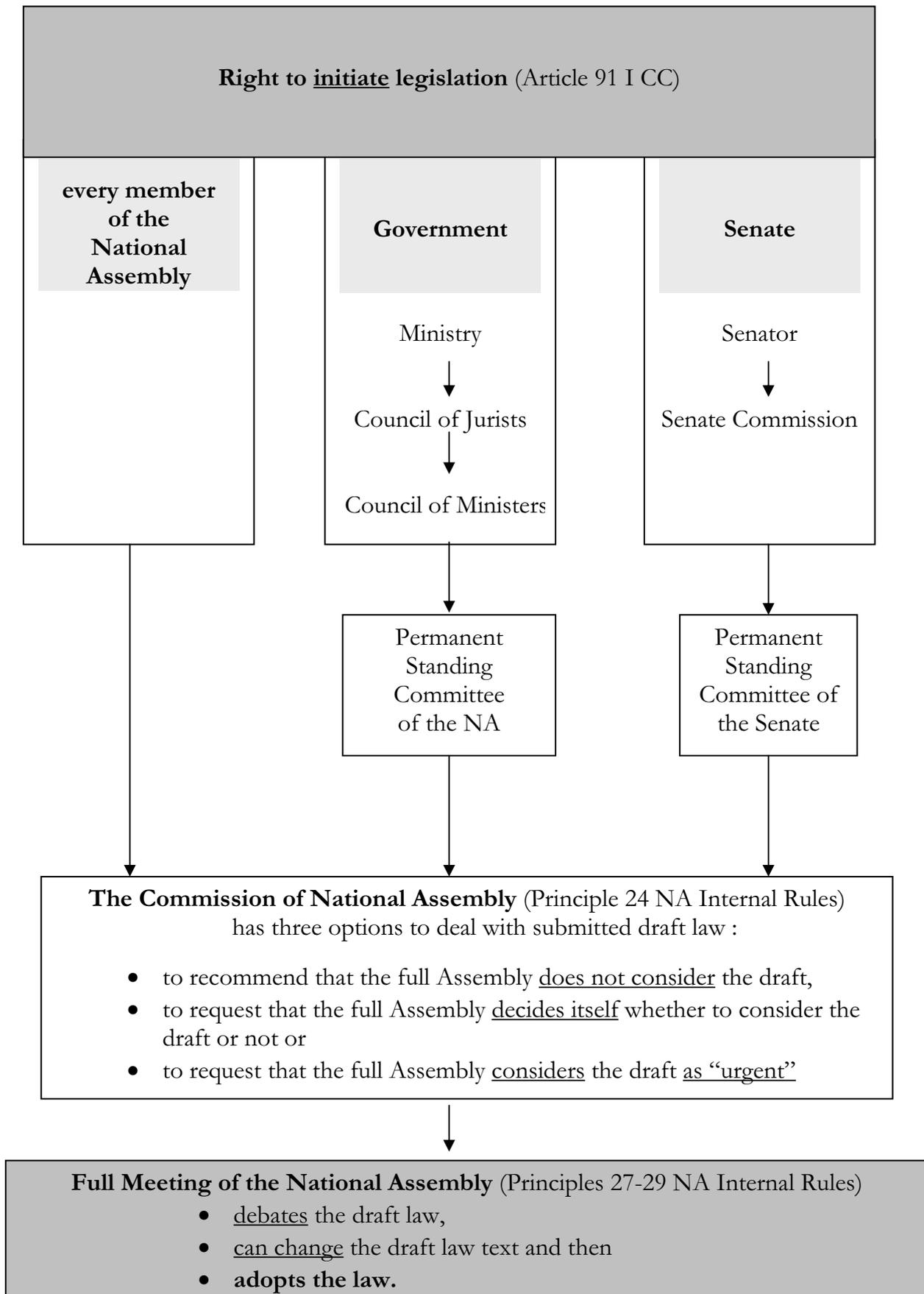


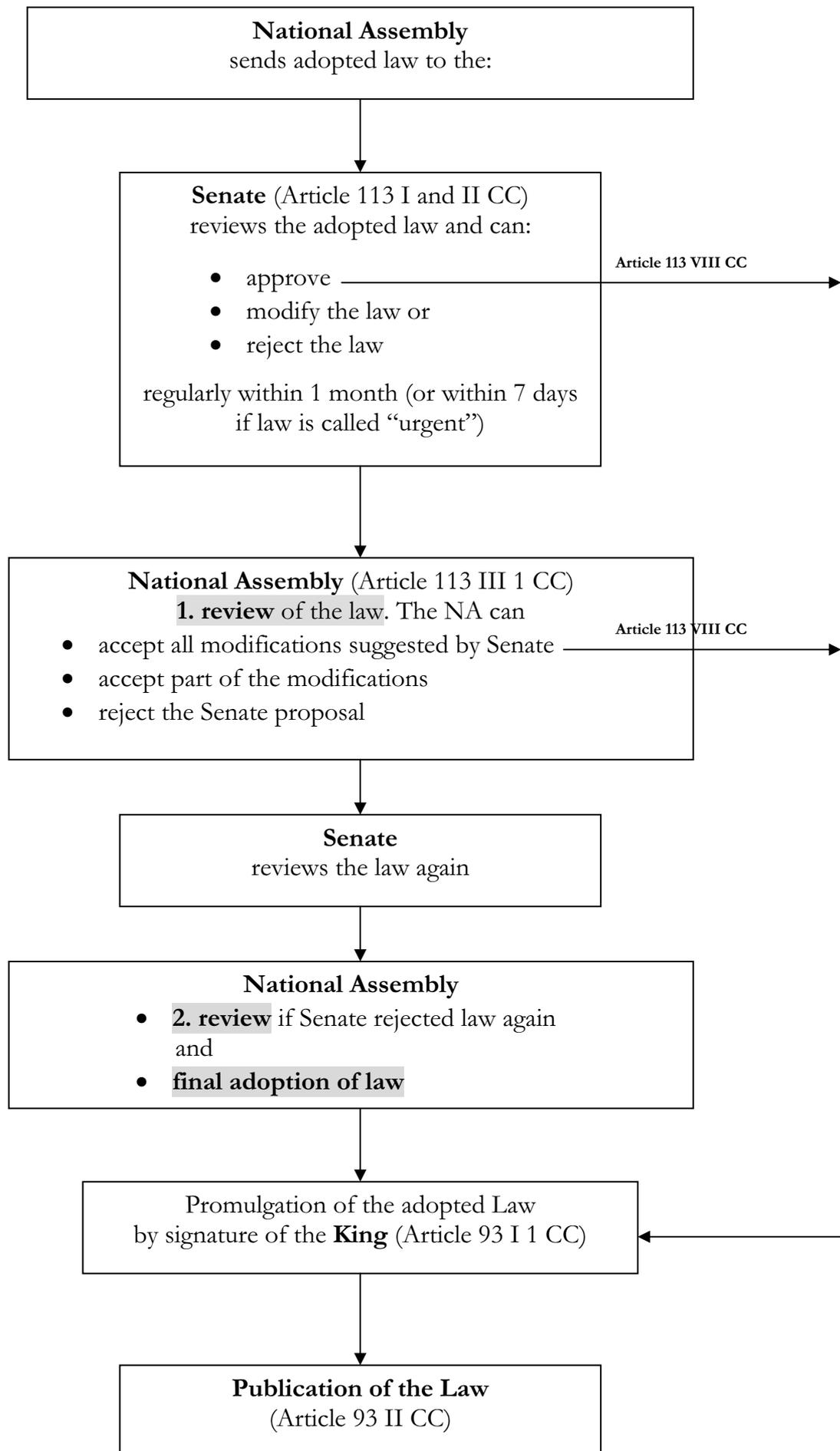
B) The Lawmaking Process on one Glimpse:





C) The Lawmaking Process in Detail:







D) Review of the Constitutionality of Legislation:

The **lawmakers** themselves **have to respect the Cambodian Constitution**. This means that they can not make laws which violate human rights or constitutional regulations and principles. Therefore all laws can be subject to a review by the Constitutional Council if they are constitutional or not.

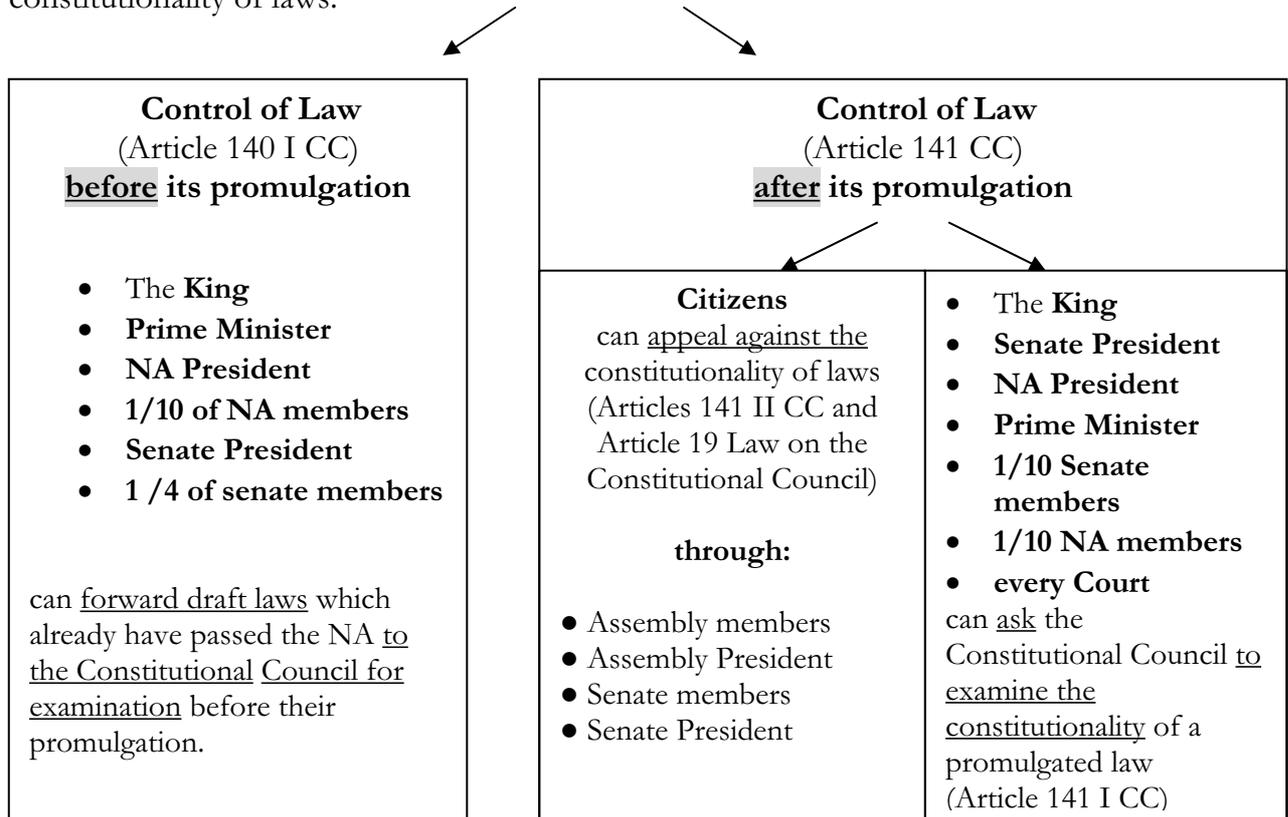
Article 92 CC:

Laws adopted by the National Assembly which run counter to the principles of preserving national independence, sovereignty, territorial integrity, and affect the political unity or the administration of the nation shall be annulled.
The Constitutional Council is the only organ which shall decide upon this annulment.

Article 136 I CC:

The Constitutional Council shall have the duty to safeguard the respect for the Constitution, to interpret the Constitution, and the laws passed by the Assembly and examined by the Senate.

There are different ways to engage the Constitutional Council in controlling the constitutionality of laws:





Study Question 3

Read the summary of the following Cambodian Daily article of August 30, 2003:

Not only Sam Rainsy Party members, but even some CPP parliamentarians and others like Mrs. Chea Vannath, Director of the Center for Social Development, and Dr. Lao Mong Hay, a political analyst, claim that most of the debates in the National Assembly do not get away from the party lines, rarely consider the common interest of all Cambodians and appear to be a “one-man-show”. This critic was opposed by lawmakers from the CPP, for example Mr. Cheam Yeap, and FUNCINPEC, for example Prince Ranariddh, saying that the culture of democracy is on the rise in the parliament and at a much higher level than in previous years taking into consideration that after the 1997 factional fighting only one Assembly member was an opposition lawmaker. In order to improve the work of the National Assembly it was proposed to increase the number of technical experts for the parliamentary commissions and to establish sub-commissions.

Why do you think would the proposal of Prince Ranariddh improve the work of the NA?