

KINGDOM OF CAMBODIA  
Nation Religion King

**The Constitutional Council**

\*\*\*\*\*

**CASE**

N° 071/015/2003  
Of August 10, 2003

**Decision**

N° 057/008/2003 CC.D  
Of August 27, 2003

**The Constitutional Council**

- Seen the Constitution of the Kingdom of Cambodia
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 8, 1998 on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/1297/06 of December 26, 1997 on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0902/017 of September 17, 2002 on the Amendment of the law on the Elections of the Members of the National Assembly;
- Seen the complaint of August 10, 2003 of Mr. SAM RAINSY, President of SAM RAINSY Party contesting the result of the Elections of the Member of the National Assembly 2003;
- Seen the letter of August 10, 2003 of Mr. SAM RAINSY, President of SAM RAINSY Party, delegating his power to Mr. OU BUNLONG, President of electoral commission of SAM RAINSY Party, for lodging the complaint with the Constitutional Council, contesting the result of the Elections of the Members of the National Assembly pronounced by the National Electoral Committee (NEC) on August 8, 2003;
- Seen the minutes of inquiry session of August 13, 2003 at 8:30 by group II of the Constitutional Council asking Mr. TEP NITHA, Secretary General of NEC, to provide additional precision on the complaint of SAM RAINSY Party of August 10, 2003;
- Seen the minutes of inquiry session of August 13, 2003 at 15:30 by group II of the Constitutional Council asking Mr. LUN CHHENG KAI, President of the Municipal Electoral Commission, to provide additional precision on the complaint of SAM RAINSY Party of August 10, 2003;
- Seen the minutes of inquiry session of August 15, 2003 at 8:00 by group II of the Constitutional Council asking Mr. TEP NITHA, Secretary General of NEC, to provide additional precision on the complaint of SAM RAINSY Party of August 10, 2003;

- Seen the minutes of inquiry session of August 15, 2003 at 15:30 by group II of the Constitutional Council asking Mr. OU BUNLONG, President of electoral commission of SAM RAINSY Party, to provide additional precision on the complaint of SAM RAINSY Party of August 10, 2003
- Seen the letter N° 08.1686/03/NEC of August 20, 2003 of Mr. IM SUOSDEY, President of NEC, appointing NEC representatives to attend the hearing of the Constitutional Council on the complaint concerning the Elections of the Members of the National Assembly 2003;
- Seen the letter N° 08.1690/03/NEC of August 22, 2003 of Mr. IM SUOSDEY, President of NEC, appointing three other NEC representatives to attend the hearing of the Constitutional Council on the complaint concerning the Elections of the Members of the National Assembly 2003;

**Having heard the reporting member,  
Having heard the parties,  
Having heard the witnesses,  
Having deliberated in compliance with the law,**

- Whereas the complaint of August 10, 2003 lodged by Mr. SAM RAINSY, President of SAM RAINSY Party, within 72 hours after NEC provisional result pronouncement on the Elections of the Members of the National Assembly, and received by the Secretariat General of the Constitutional Council at 10:30 A.M on August 10, 2003, is admissible (in point of view of the legal procedures);

#### **Phnom Penh cases (12)**

- Whereas the registration of voters for 2003 must be held at commune office but not in the polling station as before;
- Whereas at the beginning of the electoral registration, some members of commune council have registered over 700 voters, the number of which determined by law for each polling stations and that after the instructions of Municipal Electoral Commission, rectifications are made by transferring the exceeding names to the electoral list of other closest polling stations, thus leading to the change of the registration receipt number and of the polling station code;
- Whereas the request for electoral list not yet updated, which is rejected by NEC, does not fall into the provision of article 63 N of the law on the Amendment of the law on the Elections of the Members of the National Assembly;

#### **Svay Rieng cases (20)**

- Whereas SAM RAINSY Party, after having received the form N° 1105<sup>[1]</sup> and verified the figures, found errors and asked NEC for a new cross-checking of the form N° 1105 with the form N° 1104<sup>[2]</sup> of the 14 communes in Svay Rieng province;
- Whereas at the request of SAM RAINSY Party, NEC has authorized the controlling team to verify the figures of the 14 communes in the presence of party's representatives and observers totaling 14 persons;
- Whereas the agents of Commune electoral Commission in filling the form N°

1105 have not carefully verified the figures with the form N° 1103<sup>[3]</sup>, and have therefore led to errors on the figures of small parties, but these errors have not affected the election result;

- Whereas the allegation of SAM RAINSY Party according to which it lacks only 146 votes representing 0,06% to be entitled to get a seat and has requested for recount is not justified;
- Whereas the law on the Elections of the Members of the National Assembly has not provided for ballot recounting and verifying merely due to the gap between the greater average obtained by political parties;
- Whereas there is no similarity between the figures of the result as pronounced by some Commune Electoral Commissions and between some forms N° 1105 with the figures as provisionally pronounced by NEC, because of the wrong transfer of the figures to the form N° 1105, while the figures reported on the form N° 1103 are correct. However these errors have been already corrected, once discovered by the NEC comptroller;
- Whereas the Daung (039) commune electoral commission has issued two forms N° 1105 which contained different figures due to the error committed by this commission but the importance was that these forms N° 1105 were corrected after having been reviewed. The figures of forms N° 1103 still remain correct;
- Whereas on each form N° 1104 (Ballot Counting Record at the commune level), there are signatures of various representative political parties, in 15 communes ballot counting teams, including those of SAM RAINSY Party except 5 teams such as:
  - Prasot commune has 3 ballot counting teams: the documents of the 1<sup>st</sup> and 3<sup>rd</sup> teams contain parties representative signatures including SAM RAINSY Party except in the 2<sup>nd</sup> team, but no complaint has been lodged;
  - Daung commune has 4 ballot counting teams: the documents of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> teams contain parties representative signatures including SAM RAINSY Party except in the 4<sup>th</sup> team;
  - Chrak Mates commune has 4 ballot counting teams: the documents of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> teams contain parties representative signatures including SAM RAINSY Party except in the 1<sup>st</sup> team where there is no signatures;
  - Nhor commune has 3 ballot counting teams: the documents of the 1<sup>st</sup> and 3<sup>rd</sup> team contain parties representative signatures including SAM RAINSY Party except in 2<sup>nd</sup> team where there is no signatures.
  - In the 2<sup>nd</sup> ballot counting team of Trapeang Sdau commune, the SAM RAINSY Party representatives have not signed the forms N° 1104, but the forms N° 1103;
- Whereas, concerning the request for the recount by SAM RAINSY Party, the forms N° 1108<sup>[4]</sup> of 15 communes have been signed by parties representatives including the SAM RAINSY Party except in:

- Prasot commune, only the 2<sup>nd</sup> ballot counting team where there are no signatures of SAM RAINSY Party representatives.
- Dong commune, only the 2<sup>nd</sup> and 3<sup>rd</sup> ballot counting teams have no signatures of SAM RAINSY Party representatives but there is no contest. Therefore, there are signatures of SAM RAINSY Party representatives on forms N° 1109<sup>[5]</sup> and forms N° 1103;
- Chrak Mates commune, for the 1<sup>st</sup> ballot counting team, the SAM RAINSY Party representative has not certainly signed the form N° 1104 but the form N° 1103;
- Nhor commune, for the 2<sup>nd</sup> ballot counting team, the SAM RAINSY Party representative has not certainly signed the form N° 1104 but the form N° 1103;
- Whereas concerning the request for the recount by SAM RAINSY Party, the form N° 1103 of 15 communes has been signed by parties representatives including the SAM RAINSY Party except in Prasot commune (076) where there is no signature of any parties but there is no complaint;
- Whereas concerning the request for the recount by SAM RAINSY Party in the 15 communes, we notice on the form N° 1109 that in:
  - Prasot commune (076), there are no party representative signatures.
  - Kampong Chak commune (025), there are no signatures of SAM RAINSY Party representatives; but on the forms N° 1108, there are signatures of other party representatives including of SAM RAINSY Party's and also on the form N° 1103, there are three SAM RAINSY Party representative signatures.
  - Thmey commune (021), there are no signatures of any parties representatives; but on the form N° 1108 there are also signatures of SAM RAINSY Party representatives.
  - Trapeang Sdau (047), there are no signatures of SAM RAINSY Party representatives; but on the form N° 1103 and the form N° 1108 there are also SAM RAINSY Party representative signatures.
- Whereas concerning the request for the recount by SAM RAINSY Party, the forms N° 1103 of 15 communes are important basic documents for verifying and summarizing the electoral result of the province; and that the party representatives including SAM RAINSY Party's have signed these documents except forms N° 1103 of Prasot commune (076), in which there is no signature of any party representatives; and that the above mentioned errors notably concerning the carrying forward of the figures into the forms N° 1105 aimed to deliver to party representatives, are not of the nature to modify the electoral result;
- Whereas concerning the request for the recount by SAM RAINSY Party in the 15 communes, the SAM RAINSY Party representatives recognize the exactitude of the figures through their signatures; and that some have signed the forms N° 1108 and some others, the forms N° 1109, N° 1104 and N° 1103;

- Whereas the party representatives including SAM RAINSY Party have signed the forms N° 1103 except in Prasot commune, therefore this action constitutes the recognition of the exactitude of the electoral result in the 15 communes; and that in consequence the request for the recount is not necessary;

### **Kompong Thom Cases (06)**

- Whereas in Kompong Thom province the SAM RAINSY Party had lodged 23 complaints with the Provincial Electoral Commission; and that concerning the request for the recount in 6 communes, the Provincial Electoral Commission offers SAM RAINSY Party representatives to select 2 communes, which were suspected of having serious irregularities; and that the SAM RAINSY Party representatives agree with this offer to verify and count the invalid ballots in Daung commune (039) and to recount in Sakriem commune (042); and that concerning the request for verifying the figures in 14 communes, the Provincial Electoral Commission has verified 6 communes known as : Kravanh (011), Phnoeuv (065), Koki (010), Pongror (013), Chroneang (006) and Daung (039), where no serious irregularity has been noticed;
- Whereas the SAM RAINSY Party requested NEC for verifying 26 communes, and NEC decided to verify 11 communes as follows:  
Svay Phloeung (016), Kampong Thom (029), Kdey Daung (032), Krayar (040), Tuol Kreul (045), Chamna Krom (070), Preah Domrey (078), and Khum Samproch (080), where there are some minor errors which have been already rectified and agreed by all parties. For the other 3 communes, Baksna (001), Sandann (057), Kakoh (063), irregularities have not been noticed; and that during the reviewing process in the presence of SAM RAINSY Party representatives and other organizations representatives, the forms N° 1108, N° 1104, N° 1109, N° 1103 and N° 1105 are correct despite the absence of the minutes, due to the deficiency of NEC comptrollers;
- Whereas concerning the request by Mr. MAU SOPHEARITH, representative of the SAM RAINSY Party for the recount of 6 communes: Phan Nhim (041), Daung (039), Kol (047), Sandann (057), Chroip (061) and Sakriem (042) communes. The Provincial Electoral Commission conducted 2 recounting tests in the 2 following communes: Daung and Sakriem where there are no serious irregularities noticed which affect the electoral result;
- Whereas the error of 63 ballots carried forward of figure on form N° 1105 by Commune Electoral Commission (CEC) is due to the inversion of figures: (81-18 = 63);
- Whereas the parties representatives including SAM RAINSY Party's have signed the form N° 1104 except: 2 counting teams of Banteay Stong commune (counting team 1 and 4), Chong Daung (team 1), Ngorn (team 1), Salavisay (team 1), Sandann (team 4), where there are no signatures of SAM RAINSY Party representatives;
- Whereas the forms N° 1108, which NEC comptroller have verified in 11 communes among 26, requested by SAM RAINSY Party, contain also signatures of SAM RAINSY Party representatives except in the 3<sup>rd</sup> counting team out of 4 of Chamna Krom commune. However on forms N° 1109, there are also signatures of SAM RAINSY Party representatives;

- Whereas the form N° 1103 of 38 out of 39 communes contain signatures of party representatives including SAM RAINSY Party's in particular, concerning the form N° 1108 of Chomna Krom (070) commune where there are 4 counting teams, only the forms N° 1108 of the 3<sup>rd</sup> one does not have signatures of SAM RAINSY Party representatives. However on forms N° 1109 of all 39 communes there are also signatures of SAM RAINSY Party representatives;
- Whereas the forms N° 1109, which NEC comptroller have verified 11 communes among 26, requested by SAM RAINSY Party, contain signatures of party representatives including SAM RAINSY Party's;
- Whereas the form N° 1103, which are the important basic documents for verifying and totaling the provincial electoral result, recognized by party representatives including SAM RAINSY Party's except only one, Kompong Chen Tbang (073) commune, however the SAM RAINSY Party representatives have already signed the form N° 1104. Consequently the recount is not necessary;

#### **Banteay Mean Chey Cases (01)**

- Whereas the number of voters in Poipet commune of Banteay Mean Chey province representing only 46% is small compared to the 74% provincewide. However, the law of the Elections of the Members of the National Assembly does not limit the percentage of voters; that Khmer citizens have the rights to vote guaranteed by laws and they are under no obligation to vote; that this provision is specified in paragraph 2 of article 34 N of the Constitution "...Khmer citizens of both sexes of at least 18 years old have the rights to vote.";
- Whereas pursuant to the declaration of Ms. LAY HUNKY, President of Banteay Mean Chey Provincial Electoral Commission, at NEC's hearing, 27 polling stations have been moved since 2002. Therefore, there is sufficient time to disseminate and to post information according to article 135 N of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly of September 2002;
- Whereas pursuant to the precisions brought by Mr. MEAN SARITH, plaintiff of the SAM RAINSY Party, at NEC's hearing and by Mr. SAN SEAN HO on behalf of chief of Poipet commune on August 14, 2003, all polling stations in Poipet commune do not exceed 5 Km;
- Whereas on certain electoral lists, some voters' villages do not exist in Poipet commune. Following NEC's explanation, it is a question of technical error;
- Whereas some holders of voting cards in 2002 or identification cards still have their names on the 2003 electoral list but they cannot vote; and that after verification, we found errors of orthography in their names, for example, KOEUNG SARIN in voting cards and KOEUN SARIN in voting list; the electoral registration, there were riots against the Thai Embassy and Thai interests leading to the border closure; that the returning workers from Thailand were encouraged to register through various incentives by certain political party activists; and that when the border reopened, most workers went back to Thailand and could not vote;
- Whereas the request for the electoral list not yet updated, which is rejected by NEC, does not fall into the provision of article 63 N of the law on the

Amendment of the law on the Elections of the Members of the National Assembly;

- Whereas the above mentioned motives and documents, the elections in Poipet commune are not tainted with serious irregularities requiring a new election;

**Decides**

**In the presence of the parties**

**Article 1:** Is admissible the complaint of Mr. SAM RAINSY concerning the cases of Phnom Penh, Svay Rieng, Kampong Thom and Banteay Mean Chey for its legal form but is rejected for its groundlessness.

**Article 2:** Is upheld the decision N° 08.504/03/NEC of August 08, 2003 of NEC on the pronouncement of the provisional result of the Elections of the Members of the National Assembly on July 27, 2003, third legislature.

**Article 3:** This decision pronounced in public hearing in Phnom Penh on August 27, 2003 shall be final without recourse, shall have authority over all instituted powers stipulated in the Constitution and shall be published in the “Journal Officiel”

Phnom Penh, August 27, 2003  
**For the Constitutional Council**  
**The President**  
**Signed and Sealed**

**BIN CHHIN**

( Non-official translation )

---

<sup>[1]</sup> Sheet of the Election Result of the Commune/Sangkat  
<sup>[2]</sup> Ballot Counting Record  
<sup>[3]</sup> Election Result Consolidation Record of a Commune/Sangkat  
<sup>[4]</sup> Vote Recording Table  
<sup>[5]</sup> Table of the consolidation of the Election Result