

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 154/017/2008

Of August 15, 2008

Decision

N° 103/008/2008 CC.D

Of August 27, 2008

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 promulgating the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0107/005 of January 31, 2007 promulgating the Law on the Amendment of the Law on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/1297/06 of December 26, 1997 promulgating the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0902/017 of September 17, 2002 promulgating the Law on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0606/019 of June 27, 2006 promulgating the Law on the Amendment of Article 13 (New) of the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0107/006 of January 31, 2007 promulgating the Law on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen the August 12, 2008 decision of the National Election Committee(NEC) N° 589/08N.E.C/D;
- Seen the petition of Mr. KONG SAM ONN, attorney and plaintiff representing the SAM RAINSY Party, against the August 12, 2008 NEC decision N° 589/08N.E.C/D;
- Seen the August 19, 2008 minutes recording the clarifications given by Mr. KONG SAM ONN, Attorney;
- Seen the August 21, 2008 minutes recording the clarifications given by NEC representatives;
- Seen the August 26, 2008 written pleadings of Mr. KONG SAM ONN, Attorney;

**Having heard the rapporteur,
Having heard the parties,
Having deliberated in compliance with the law,**

- Whereas the August 15, 2008 petition of Mr. KONG SAM ONN, Attorney representing the SAM RAINSY Party, submitted to the Constitutional Council and received by the Secretariat General of the Constitutional Council on August 15, 2008 at 05:40 pm, was filed within the period of 72 hours after the party received the August 12, 2008 NEC decision N° 589/08 N.E.C/D. According to Articles 115 (New) and 117 (New) of the Law on the Elections of the Members of the National Assembly and Item 2 of Article 27 (New) of the Law on the Organization and the Functioning of the Constitutional Council, the said petition is admissible;
 - Whereas in his petition, as well as before the Constitutional Council Group I on August 19, 2008, and at the Public Hearing, Mr. KONG SAM ONN questioned the August 12, 2008 NEC decision N° 589/08 N.E.C/D ruling that: “the plaintiff did not produce any evidence proving the irregularities for NEC to examine and consider, as stipulated in Article 114 of the Law on the Elections of the Members of the National Assembly and the Law on the Amendment of this Law.” Such a statement is specious on the part of NEC by disregarding the concern for justice and fairness toward the plaintiff; According to Article 114 of the Law on the Elections of the Members of the National Assembly and of the law on the Amendment of this law, the principle pertaining to the evidences to be provided is as followed: (1) proof of irregularities committed by NEC or its Members, (2) the date when those acts are committed, (3) the place where they are committed, (4) the names and addresses of the witnesses, and (5) other documents or evidences;
 - Concerning Point (1): it is written in the petition that, the citizens who have the rights to vote could not do so on July 27, 2008 for the following reasons:
 - + Their names were deleted from NEC voter lists even though they had voted in 2007 and had not changed their domicile;
 - + Their names could not be found on the voter lists, on the day of the election, either because of the polling station being shifted or of the voter lists being changed.
 - + Other electors have voted in their stead.
- To prove the veracity of the aforementioned cases, the SAM RAINSY Party, has enclosed the name lists of citizens who have the rights to vote on July 27, 2008, but could not do so because of the 3 aforementioned irregularities, and who are more than 3000 people provided with names, addresses, phone numbers to help NEC with the investigation. On the contrary, NEC decided that the SAM RAINSY Party’s petition has not provided enough evidences by failing to call anyone as witness among those who have given their names and appendix, submitted by SAM RAINSY Party to NEC for investigation;

- Concerning Point (2) dealing with the date of irregularities committed: it is not difficult to provide evidences. The dates of some acts committed are contained in the documents attached to petition, such as those found mainly in forms 1018. Besides, the date of some other acts committed cannot be precisely determined, as in the case of the voters' names deleted by NEC from the voter lists. However, the impossibility determined the exact date that when any NEC official or any competent had deleted the voters' names should not be the reason to reject the SAM RAINSY Party's petition, since the deletion of the names was made during the period of the 2008 National Election; we do not file the petition against the deletion of the voters' names from the previous National Election periods;

- Concerning Point (3) dealing with the place of irregularities committed: it is also not difficult to provide evidences. The SAM RAINSY Party has petitioned for the rejection of the preliminary results nationwide, so it is unnecessary to even show any precise location because the petition covered the entire Kingdom of Cambodia;

- Concerning Point (4) dealing with the names and addresses of the witnesses: it is even much easier to provide evidences, since their names, addresses and even their fingerprints are contained in form 1018, along with their phone numbers which are easy means to contact them;

- Concerning Point (5) dealing with other documents or evidences: they are not required by the law. On the other hand, the NEC concluding in its decision by affirming that, "the question of falsification of the identity document does not fall within the NEC competence. Such a conclusion shows a lack of their competence and irresponsibility in fulfilling their functions, as well as a total failure to grasp the meaning of the law."

Khum/Sangkat Authorities have the power to issue the form N° 1018 because NEC delegated the power to do so. This means that Khum/Sangkat Councils act in the name of NEC behalf. NEC must not leave the Khum/Sangkat Councils freehand to commit errors by solving them according to the administrative directive. NEC must control them in conformity with its duties as defined in Article 16 (New) already-quoted above.

For the afore-mentioned motives, I, as a plaintiff representing the SAM RAINSY Party, wish to petition the Constitutional Council: to reject the August 12, 2008 NEC decision N°589/08 N.E.C/D, to do justice to the citizens who have the rights to vote and whose right has been violated, to reject the preliminary result of the Elections of the Members of the National Assembly for the 4th Legislature, and to order NEC to reorganize the Elections in provinces and municipalities where many cases of irregularity had taken place. Furthermore, Mr. KONG SAM ONN, Attorney, in his written pleadings of August 26, 2008, asked NEC to reorganize the Elections in such provinces as (1) Svay Rieng, (2) Pursat, (3) Kompot and (4) Kompong Cham;

- Whereas H.E. MEAN SATIK, NEC Representative, before the Constitutional Council Group I as well as at the Public Hearing, clarified that NEC has issued the August 12, 2008 decision N°589/08 N.E.C/D based on the following summarized motives:

a/- NEC understands that the petition regarding the deletion of names from the voter lists must be done at the when the preliminary voter lists

were posted for public notice, but when the official voter lists were adopted, NEC can not bring back cases of deleted names for reconsideration. NEC made allowances of 3 month period from August 02, to November 01, 2008, for the citizens to contest or to oppose;

b/- Once the voter lists were officially declared, NEC cannot make any change to the polling stations or to the voter lists. At any polling station where the Commune/Sangkat Clerks have registered names of voters exceeding 700 persons, NEC has to split it into a twin one A and B (in accordance with Article 46 (New) of the law on the Elections of the Members of the National Assembly). The twin polling stations must be close to each other, at the same location.

c/- The plaintiff brought up the cases of Phnom Penh and Battambang for NEC to resolve. However, in Phnom Penh there were only two cases and all concerned persons have cashed their voters. There was no petition for such a case in Battambang, where the plaintiff gave the 18 names which NEC found only 5 on the official voter lists. In Phnom Penh, among the names of 49 persons presented by the plaintiff to NEC, only 28 persons had their names on the official voter lists.

d/- NEC delegates the power to the Commune/Sangkat Councils to be its representatives only for the examination of the name lists and for the voter registration by using the seal of the voter registration bureau and entrusted by NEC (Article 53 (New) of the Law on the Elections of the Members of the National Assembly). For issuance of form 1018, it lies in the competence of the Commune/ Sangkat chief acting as the Territorial Authority by using the Commune/Sangkat seal (Article 54 (New), Item B of the Law on the Elections of the Members of the National Assembly). Some persons in the public opinions misunderstand that NEC delegates its power to the Commune/Sangkat chiefs in their issuing these forms 1018. NEC has no rights to control of issuance of form 1018, and in the case of falsifying forms 1018; it lies in the competence of Judiciary.

Concerning the name lists and the fingerprints of witnesses who are those unable to vote in 2008 and presented by the plaintiff as the evidences, NEC has received 4 copies of them: 2 copies for Phnom Penh and 2 copies for Battambang.

The reasons why NEC has not made any inquiry of those persons at the scene are already provided in the aforementioned Points (a), (b) and (c);

-Whereas the August 12, 2008 NEC decision N° 589/08 N.E.C/D provided with sound motive, is made in conformity with legal form and substance;

Decides:

In the Presence of the Parties

Article 1 : The petition of Mr. KONG SAM ONN, Attorney the plaintiff and the representing of the SAM RAINSY Party as plaintiff, is admissible for its legal form, but is rejected for being unfounded.

Article 2 : Is upheld NEC decision N° 589/08 N.E.C/D of August 12, 2008.

Article 3 : The present decision pronounced at the Public Hearing of the Constitutional Council in Phnom Penh on August 27, 2008 shall be

final, without recourse, shall have authority over all the instituted powers as stipulated in the Constitution and shall be published in the Royal Gazette.

Phnom Penh, August 27, 2008

On behalf of the Constitutional Council
Sitting as the Jurisdictional Council
The President,

Signed and sealed: EK SAM OL