

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 173/004/2010

Of March 22, 2010

Decision

N° 110/003/2010 CC.D

Of April 01, 2010

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/0807/024 of August 10, 2007 promulgating the Penal Code of Procedure;
- Seen Preah Reach Kram N° NS/RKM/1109/022 of November 30, 2009 promulgating the Penal Code;
- Seen the March 22, 2010 letter N° 194 NA of **Samdech Akka Maha Ponhea Chakrei HENG SAMRIN**, President of the National Assembly, requesting the Constitutional Council to examine the constitutionality of Anti-Corruption Law, adopted by the National Assembly on March 11, 2010 in the extraordinary session of its 4th legislature, and reviewed and entirely approved by the Senate on the legal form and substance in the extraordinary session of its 2nd legislature on March 19, 2010, letter is received by the Secretariat General of the Constitutional Council on March 22, 2010 at 10:45 am.

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

- Whereas the National Assembly and the Senate have duly implemented the procedure stipulated in the Article 113(New) of the Constitution for reviewing and adopting the Anti-Corruption Law;
- Whereas the request of **Samdech Akka Maha Ponhea Chakrei HENG SAMRIN**, President of the National Assembly, made in accordance with the Article 140(New) of the Constitution and the Article 16(New) of the Law on the Organization and the Functioning of the Constitutional Council, promulgated by Preah Reach Kram N° NS/RKM/0107/005 of January 31, 2007, is therefore admissible;
- Whereas the form in drafting and adopting the Anti-Corruption Law is in compliance with the Constitution;
- Whereas the Chapter 1 on the General Provisions, consisting of 4 Articles, stipulated the purposes, the objectives, the scope of the law and the definition of the terminologies used in this Law has nothing contrary to the Constitution;
- Whereas the Chapter 2 on the Anti-Corruption Institution, consisting of 11 articles, stipulated the Anti-Corruption Institution, the creation of National Council for Anti-Corruption, its mandate, the dismissal and replacement, the elections of its President and Vice-President, the rank of the members as well as the duties of the National Council for Anti-Corruption, the creation of the Anti-Corruption Unit, the qualification of its President and Vice-President, its duties, its staffs, as well as its network, has nothing contrary to the Constitution;
- Whereas the Chapter 3 on the Budget and Resources of the Anti-Corruption Institution, consisting of 1 article, has nothing contrary to the Constitution;
- Whereas the Chapter 4 on the Declaration of assets and debts, consisting of 4 articles, stipulated the persons who shall declare their assets and debts, the way of declaring assets and debts, other persons who shall declare their assets and debts and the keeping of documents on the declaration of assets and debts, has nothing contrary to the Constitution;
- Whereas the Chapter 5 on the Procedure Applicable for the Corrupt offences and the Competent Authorities, consisting of 11 articles, stipulated the procedure applicable for the corrupt offences, the competent officers for investigation on corrupt offences, the entitlement of Anti-Corruption Unit officials as judicial police, the oath, the

investigative power of Anti-Corruption Unit, the special prerogative of Anti-Corruption Unit, the prerogative of the Anti-Corruption Unit concerning the investigation, the prerogative of Anti-Corruption Unit related to the freezing of an individual's assets, the prerogative of the Unit related to the cooperation with the public authorities, the seizure, and the procedure applicable before the criminal court. This Chapter 5 deals with Chapter 3 of the Constitution which stipulates the Rights and Duties of Khmer citizens. In principle, the Rights and Freedom of Khmer citizens are guaranteed by the Constitution. But in case of significant proof revealing the corrupt offence is committed, the Anti-Corruption Unit can undertake the investigation only on this corrupt offence by taking measures in accordance with the procedure stipulated in the Anti-Corruption Law and the Code of Penal Procedure. Therefore, the Chapter 5 has nothing contrary to the Constitution;

- Whereas the Chapter 6 on the Corrupt Offence and the Penalty concerning the corrupt offence stipulated in the Code of Penal Procedure, the bribe taken by foreign public agents or staff of the international public organization, the bribe given to the foreign public agents or staff of the international public organization, the abuse of power, the illicit enrichment, the corruption proceeds offences, the failure to declare assets and debts, the leakage of confidential information on corruption, the obstruction and interference offences in the work of the Anti-Corruption Unit, defamation or disinformation, the abuse of assets which are the subject of the seizure, the petty corruption and penalty, the attempt, the accessory penalty applicable to certain corrupt offences, the accessory penalty applicable to certain artificial persons, the release of bank records, the court decision on confiscation, the repatriation of the corruption proceeds, has nothing contrary to the Constitution;
- Whereas the Chapter 7 on the Extradition and the Mutual Legal Assistance, consisting of 4 articles, stipulated the provision applicable to the extradition, the mutual legal assistance concerning the Khmer citizens holding more than one nationalities and the procedure of mutual legal assistance, has nothing contrary to the Constitution ;
- Whereas the Chapter 8 on Transitional Provision, consisting of 1 article, stipulated the organization and the functioning of the National Council for Anti- Corruption and the Anti-Corruption Unit, has nothing contrary to the Constitution ;
- Whereas the Chapter 9 on the Final Provision, consisting of 3 articles stipulated the abrogation, the promulgation, and the implementation of the law, has nothing contrary to the Constitution ;

- Whereas the essences in the 57 Articles of the 9 chapters of this Law have nothing contrary to the Constitution;

Decides:

Article 1: The Anti-Corruption Law adopted by the National Assembly on March 11, 2010 in the extraordinary session of its 4th legislature and reviewed and entirely approved by the Senate on the legal form and substance in the extraordinary session of its 2nd legislature on March 19, 2010, is declared in conformity with the Constitution.

Article 2: This decision made in the plenary session of the Constitutional Council in Phnom Penh on April 01, 2010 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.

2010

Phnom Penh, April 01,

**On behalf of the Constitutional Council
The President,**

Signed and Sealed: EK SAM OL