

**KINGDOM OF CAMBODIA**  
**Nation Religion King**



**The Constitutional Council**

**CASE**

N° 144/007/2008

Of July 25, 2008

N° 145/008/2008

Of July 25, 2008

N° 146/009/2008

Of July 26, 2008

**Decision**

N° 100/005/2008 CC.D

Of August 04, 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 July 23, 2008 NEC decision on petitions N° 074, 075, 076, 077, 078, 083, 084, 085, 086, 087, 088;
- Seen the July 25, 2008 petition of Mr. BENSON SAMAY, lawyer representing the Cambodian People's Party of Kratie province, against the July 23, 2008 NEC decision;

- Seen the July 25, 2008 petition of Mr. KEA EAV, lawyer representing the Cambodian People's Party of Kompong Cham province, against the July 23, 2008 NEC decision;
- Seen the July 26, 2008 petition of H.E. THACH SETHA, representing H.E. SAM RAINSY, against the NEC decision;
- Seen the July 29, 2008 minutes recording the clarifications given by Mr. KEA EAV;
- Seen the July 29, 2008 minutes recording the clarifications given by H.E. THACH SETHA;
- Seen the July 30, 2008 minutes recording the clarifications given by Mr. BENSON SAMAY;
- Seen the July 29 and 30, 2008 minutes recording the clarifications given by NEC representatives;

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

- Whereas the petition of Mr. BENSON SAMAY, lawyer representing the Cambodian People's Party of Kratie Province, lodged within the period of the national electoral campaign in accordance with Article 73 (New) of the Law on the Elections of the Members of the National Assembly, and within the time limit provided by Article 8 (New-2) of the Rule of Procedures to be implemented before the Constitutional Council, is admissible;
- Whereas the petition of Mr. KEA EAV, lawyer representing the Cambodian People's Party of Kompong Cham province, lodged within the period of the national electoral campaign in accordance with Article 73 (New) of the Law on the Elections of the Members of the National Assembly, and within the time limit provided by Article 8 (New-2) of the Rule of Procedures to be implemented before the Constitutional Council, is admissible;
- Whereas the petition of H.E. THACH SETHA, representing H.E. SAM RAINSY, lodged within the period of the national electoral campaign in accordance with Article 73 (New) of the Law on the Elections of the Members of the National Assembly, and within the time limit provided by Article 8 (New-2) of the Rule of Procedures to be implemented before the Constitutional Council, is admissible;
- Whereas at the Public Hearing as well as at the inquiry sessions of the Constitutional Council Group I and Group II, Mr. BENSON SAMAY and Mr. KEA EAV gave nearly the same responses specifying that they have 3 reasons to disagree with the July 23, 2008 NEC decision:
  1. NEC considered the Kompong Cham province 4 cases added to those of Kratie province as only one case.
  2. The petition was filed against the person of H.E. SAM RAINSY, but only his representative has shown up.
  3. The penalty imposed on H.E. SAM RAINSY by NEC was too lenient for insulting the top leaders who are Khmer personalities. These insulting remarks were repeated at several occasions and places. In consideration of

his standing, H.E. SAM RAINSY, as a highly capable person, a Parliamentarian, a Legislator, a Party President, should not be sanctioned too leniently for his intentional harsh words, but should be fined and at the same time have his name deleted from the electoral lists;

- Whereas at the Public Hearing as well as at the inquiry sessions of the Constitutional Council Group II, H.E. THACH SETHA petitions the Constitutional Council to reject the July 23, 2008 NEC decision, by asserting that the accusation has no clear legal basis as well as being contrary to the legal substance of Articles 73(New) and 76 of the Law on the Elections of the Members of the National Assembly, and by referring to the Items 7.18.1 of NEC's Regulations and Procedures, which clearly states that only if the speech impeaches or interferes or makes obstacle, while President SAM RAINSY's speech did not fall into the above-mentioned Item. The petition by the Cambodian People's Party (CPP) accusing President SAM RAINSY of insulting the CPP Leaders is not correct, because President SAM RAINSY was referring to the document of Global Witness, not to the CPP Leaders or to any individual. By stating only that those pictures look like the one in the document of Global Witness, he gave no specific names. Consequently, NEC decision to fine President SAM RAINSY with 10,000,000 Riels is unjustified and does not comply with the substance of the law;
- Whereas at the Public Hearing as well as before the Constitutional Council Group I and Group II, NEC Representatives, their H.E. SOM SOPHAT, MEAN SATIK and KLOK BUDDHI, clarified that NEC Trial Jury decided to hold in only one Hearing the Kampong Cham 4 cases with the 7 others, because there is only one person who commits the offenses that is H.E. SAM RAINSY, only one plaintiff that is the CCP, the places of electoral campaigns are only in one country, the electoral campaign takes place in only one period of time that is from June 26 to July 25, 2008, the petition deal with only one subject, that are insulting remarks. H.E. SAM RAINSY made personal electoral campaign speeches at several locations in Kratie and Kompong Cham provinces. His words were recorded in taps as the evidences, such as: "I see the picture of 3 men, the one in the middle is the most mischievous etc." Moreover, the decision of NEC Trial Jury is based on Articles 169(New), 73(New), 76, 124 (New) and 131 of the Law on the Elections of the Members of the National Assembly, including Items 7.18.1 of NEC's Regulations and Procedures, as well as Items 6 and 15 in chapter IV of the code of conduct to be followed by political parties, candidates and representatives of political parties;
- Whereas the 6 tapes recorded at the communes of SNUOL, SAMBO, PREK PROSOP, KRATIE (Kratie province), and PHA-AV, PEAM CHIKANG (Kampong Cham province) are ample evidences produced against H.E. SAM RAINSY. In those tape recordings, H.E. SAM RAINSY used words essentially such as: "I see the people displaying panels and posters, I see the picture of 3 persons, I look at those 3 men, those are the one, the faces of those who are the thieves of the Nation...among those 3 thieves, the one in the middle is the most mischievous etc. ";

- Whereas Article 76 (New) of the Law on the Elections of the Members of the National Assembly stipulates that: “In exercise their rights to publicize, political parties and candidates shall refrain from using violence, abuse, or contemptuous remarks, intimidation, causing confusion and loss of confidence in the secrecy of the ballot.”;
- Whereas Article 131 of the Law on the Elections of the Members of the National Assembly stipulates that: “Any person or political party who violates Article 73 or 76 of this Law, regardless of any other criminal penalty, shall be fined from five million (5,000,000R) to ten million (10,000,000R) Riels and/or have their registration card confiscated for five (5) years or their names deleted from the voter lists for a period of five (5) years.”;
- Whereas the penalty imposed by NEC is the maximum fine, as specified in Article 131 of the Law on the Elections of the Members of the National Assembly;
- Whereas the decision of imposing any one or both penalties is the discretionary right of NEC Trial Jury ;
- Whereas the July 23, 2008 decision of NEC is admissible for its legal form and substance;

### **Decides:**

**Article 1** : The petition of Mr. BENSON SAMAY, Mr. KEA EAV and H.E. THACH SETHA are admissible for their legal form, but rejected for being unfounded.

**Article 2** : Is upheld NEC July 23, 2008 decision.

**Article 3** : The present decision pronounced at the Public Hearing of the Constitutional Council in Phnom Penh on August 04, 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 04, 2008

**On behalf of the Constitutional Council**

*Sitting as* **the Jurisdictional Council**

**The President,**

**Signed and Sealed: EK SAM OL**