

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



**The Constitutional Council**

**CASE**

N° 170/001/2010

Of January 20, 2010

**Decision**

N° 108/001/2010 CC.D

Of February 04, 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 the January 19, 2010 letter N° 039 N.A of **H.E NGOUN NHEL**, Acting President of the National Assembly, requesting the Constitutional Council to review the constitutionality of the Law on the Expropriation, adopted by the National Assembly on December 29, 2009 at the 3<sup>rd</sup> Session of its 4<sup>th</sup> legislature and reviewed and entirely approved on the legal form and substance by the Senate at the 6<sup>th</sup> Plenary Session of its 2<sup>nd</sup> legislature on January 14, 2010, letter received by the Secretariat General of the Constitutional Council on January 20, 2010 at 09:30am.

**Having heard the Rapporteur,**

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

- Whereas the National Assembly and the Senate have duly implemented the procedures stipulated in Article 113(New) of the Constitution for reviewing and adopting the Law on the Expropriation;

- Whereas the request of **H.E NGOUN NHEL**, Acting President of the National Assembly, made in accordance with Article 140(New) of the Constitution and Article 16(New) of the Law on the Amendment 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 Law on the Expropriation is in compliance with the Constitution;
- Whereas the Law on the Expropriation, containing 8 chapters and 39 articles:

- Article 1 stipulates that “this law aims at defining the expropriation in the Kingdom of Cambodia by determining the principle, the mechanism, the procedure of expropriation and a fair and just compensation for the projects of construction, restoration and the projects of physical infrastructure expansion serving public interests, national interests and the development of Cambodia.”

- Article 2 stipulates that “the objectives of this law are:

- to ensure the expropriation of legal private ownership with fairness and justice.
  - to ensure that fair and just compensation is made in advance.
  - to serve public and national interests.
  - to develop public physical infrastructure.

These two articles are in accordance with Article 44, Paragraphs 2 and 3 of the Constitution which stipulates that:

**“Legal private ownership shall be protected by law.”**

**“Expropriation shall be possible only if public utility demands in the cases stipulated by the law and if prior appropriate and fair compensation is granted.”**

Article 61 of the Constitution also stipulates that **“the State shall promote economic development in all fields, especially in agriculture, handicraft, industry, to begin with the remotest areas, with concern for water policy, electricity, roads and means of transportation, modern techniques and credit system.”**;

- Whereas the Law on the Expropriation guarantees a fair and just compensation in advance as specified in:

- Article 19 stipulates that “the expropriation of real estate and real right are possible if the expropriation committee has given a fair and just compensation to the real estate owners and/or the property owners in advance in accordance with the principle and the procedure of compensation...”

- Article 22 stipulates that “compensation in cash to the real estate owners and/or the property owners shall be made in accordance with the market price or the substitution price on the date of the announcement of the expropriation schedule.

The market price or the substitution price shall be determined by the commission or an independent agent, selected by the expropriation committee.”

- Article 24 stipulates that “compensation shall be paid in cash, in asset or in substitution right in accordance with the reality and with the consent of the real estate owners and/or the property owners and of the expropriation committee...”
- Whereas Article 34 of the Law on the Expropriation stipulates that “in case of dissent with the decision of the expropriation committee, the real estate owners and/or the property owners can petition to the competent court against the wrong expropriation procedure, against confiscation which does not serve public interests, national interests and against unfair and unjust compensation...” is in compliance with Article 39 of the Constitution which stipulates that “**Khmer citizens have the right to denounce, make complaints, or file claims for reparations of damages caused by any breach of law by state and social organizations or by staff of those organizations. The settlement of complaints and the reparations of damages are of the competence of the courts.**”
- Whereas the meanings in all articles of the Law on the Expropriation contain no provisions contrary to the Constitution.

**Decides:**

**Article 1:** The Law on the Expropriation adopted by the National Assembly on December 29, 2009 at the 3<sup>rd</sup> Session of its 4<sup>th</sup> legislature and reviewed and entirely approved on the legal form and substance by the Senate at the 6<sup>th</sup> Plenary Session of its 2<sup>nd</sup> legislature on January 14, 2010, is declared to be consistent with the Constitution.

**Article 2:** This decision made in the Plenary Session of the Constitutional Council in Phnom Penh on February 04, 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.

Phnom Penh, February 04, 2010

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

**Signed and Sealed: EK SAM OL**