

KINGDOM OF CAMBODIA
Nation Religion King



The Constitutional Council

CASE

N° 153/016/2008

Of August 14, 2008

Decision

N° 102/007/2008 CC.D

Of August 26, 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 National Election Committee (NEC)'s decision N° 590/08 N.E.C/D;
- Seen the August 13, 2008 petition of Mr. MEAS KHENG, a representative of the SAM RAINSY Party, concerning the discrepancy between the figure of ballot count conducted by NEC and the total figure found in form 1104 by the SAM RAINSY Party in SVAY RIENG Province, by asking for the ballot re-count of 650 polling stations;
- Seen the August 13, 2008 Power of Attorney given by H.E. SAM RAINSY, President of the SAM RAINSY Party, to Mr. MEAS KHENG to be his representative in appealing and attending the Constitutional Council Public Hearing;

- Seen NEC introduction Letter N° 1001/N.E.C of August 22, 2008 ;
- Seen the August 18, 2008 minutes recording the clarifications given by Mr. MEAS KHENG;
- Seen the August 19, 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 August 13, 2008 appeal of Mr. MEAS KHENG, representative of the SAM RAINSY Party, submitted to the Constitutional Council and received by the Constitutional Council Secretariat General on August 14, 2008 at 01:49 pm, was made within the period of 72 hours after the party received the August 12, 2008 NEC's decision N° 590/08 N.E.C/D rejecting his petition. The said petition requested that the preliminary result of SVAY RIENG Province declared by NEC on August 09, 2008 be rejected. According to Article 115 (New) and Article 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, Mr MEAS KHENG 's appeal is admissible;
- Whereas in his appeal, as well as at the Inquiry Session of the Constitutional Council Group II and at the Public Hearing, Mr. MEAS KHENG affirmed that:” I would like to petition against the irregularities of the NEC ballot count, compared with the figure in the form 1104 by SAM RAINSY Party for SVAY RIENG Province. I request NEC to recount the ballot of the 650 polling stations”, on the ground that the figure declared by the NEC on August 09, 2008 was different from the one of the SAM RAINSY Party. Mr. MEAS KHENG clarified before the Constitutional Council Group II that the total results were obtained by way of using calculator, but at the Public Hearing; he affirmed that the computers were used. As for the discrepancy of figures in which one of the polling stations, he does not know. He, furthermore, clarified before the Constitutional Council Group II that he did not remember which polling station and which commune has lodged petition concerning the ballot counts. At the Public Hearing, he finally said that he would be satisfied with ballot recount in even only one polling station;
- Whereas in the Inquiry Session of the Constitutional Council Group II as at the Public Hearing, NEC Representatives, H.E. EM SOPHAT and H.E. KLAUK BUDDHI, clarified that Mr. MEAS KHENG lodged a petition with NEC on August 11, 2008. On the same day NEC held a meeting to examine and consider his petition by demanding that the plaintiff provides evidences which are the documents of the electoral results, i.e. the form 1104, from each polling station, and decided on verification of the ballot counts figure of SVAY RIENG Province at its Headquarter. On August 12, 2008, NEC proceeded for verification of ballot counts at each polling station according to form 1104, in the present of Mr. MEAS KHENG, SAM RAINSY Party's representative, and representatives from other political parties such as those from HANG DARA Democratic Movement

Party, Khmer Democratic Party, Human Rights Party, League for Democracy Party including a number of observers and reporters. During the verification, Mr. MEAS KHENG has produced form 1104 from 642 out of 650 polling stations of SVAY RIENG Province, besides those, there is no other evidence. Concerning the evidences, which are the documents of the ballot counts, i. e form 1104 in each polling station produced by Mr. MEAS KHENG, most of the figure was altered by written of the old figure with ball- pen. Besides, form 1104 produced by Mr. MEAS KHENG for verification in priority were:

First: The form 1104 of 11 polling stations with code numbers: 0331, 0393, 0198, 0234, 0256, 0265, 0266, 0278, 0268, 0536, 0213, 0186, 0097 and 0093 all of which has the same figures as those of the original form 1104 kept as documents at NEC Headquarter despite the blurredness due to the carbon copy or due to the arrangement with ball pen.

Second: The form 1104 of 4 polling stations with code numbers: 0184, 0185, 0638 and 0597 are also carbon copy, some of them have unclear imprint and some figures corrected with ball pen. The figures of valid ballots for each political party differ from those of the original forms 1104 and 1102, kept as documents at NEC Headquarter. On the other hand, the result of the valid ballot counts of the political parties, the figures of which had been corrected do not match with the figures of the total valid ballots, recorded on the result paper (form 1104) of the election at each polling stations and in the minutes of the ballot count (form 1102), which are the original forms kept as documents at NEC Headquarter.

NEC representatives further stated that according to the minutes of the ballot count (form 1102) of the polling stations, on the day of the ballot count there was no instance official petition contesting the ballot count or the total account of the ballot papers. According to the verification of the documents, which are the result papers of the election at each polling station (form 1104), produced by Mr. MEAS KHENG as evidences at the Constitutional Council, with NEC documents(form 1104) double-check in priority with form 1102 of the polling stations at SVAY RIENG constituency, both forms being jointly signed by representatives of the political parties and observers, especially by those of the SAM RAINSY Party, showing their approval of the process of the ballot count; and according to the verification of the minutes dealing with the summing up of the election result in the communes of the SVAY RIENG constituency known as form 1103, especially at the communes where there are ballot counting stations which Mr. MEAS KHENG requested in priority to be checked at the NEC Headquarter, it has been proving that besides a number of political parties and observers, there were also representatives of the SAM RAINSY Party who signed the form 1103 which is the evidence of their approval of the total ballot count at the Commune Election Commission;

- Whereas the evidences of Mr. MEAS KHENG attached with his petition, received by the Secretariat General of the Constitutional Council on August 14, 2008 at 01:49 pm, are the result sheets of the election at each polling station, known as form 1104, filled up by the commission of the ballot counting station. But the evidences provided by the 18 sheets of the afore-mention form 1104 were falsified, with the figure being inflated

and deflated by correction and with traces of altered name of political parties making them to differ from those of the original forms given by NEC to the representatives of the political parties;

- Whereas the August 12, 2008 NEC decision N° 590/08N.E.C/D is based on sound motive and is correctly drawn up in regard to the legal form and substance;

Decides:
in the presence of the parties

Article 1 : The August 13, 2008 petition of Mr. MEAS KHENG, representative of the SAM RAINSY Party, is admissible for its legal form, but is rejected for being unfounded.

Article 2 : Is upheld the August 12, 2008 NEC decision N° 590/08N.E.C/D

Article 3 : The present decision pronounced at the Public Hearing of the Constitutional Council in Phnom Penh on August 26, 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 26, 2008

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

Signed and Sealed: EK SAM OL