

KINGDOM OF CAMBODIA
Nation Religion King

The Constitutional Council

CASE

N° 056/010/2002

Of December 26, 2002

Decision

N° 050/001/2003 CC.D

Of January 15, 2003

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 8, 1998 on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0301/05 of March 19, 2001 on Commune Administration;
- Seen the letter of December 24, 2002 of 13 Deputies of SAM RAINSY Party to Mr. BIN CHHIN, President of the Constitutional Council, requesting the Constitutional Council to interpret article 30 of the law on Commune Administration, which was received by the Constitutional Council on December 26, 2002;

Having heard the reporting member,

Having deliberated in compliance with the law,

- Whereas 13 Deputies, the number superior to one_tenth (1/10x122), request the Constitutional Council to interpret article 30 of the law on Commune Administration; that this request is inconformity with the articles 136 N and 141 N of the Constitution, therefore admissible;
- Whereas the Commune Council is not only the representative body of citizens in its commune but also a state agency by appointment or by mandate from state authority (article 42). As citizens' representative and within the framework of the decentralization policy, the Commune Council plays an essential role in the local affairs: ensuring the public order, the public services, the comfort and the wellbeing of citizens, the economic and the social development, the environment protection etc. As State Agency, the Commune Council has to respect and execute the instructions of the high hierarchies;
- Whereas the article 30 (paragraph 1 and 2) of the law on Commune Administration stipulates that the Commune Council shall recruit chiefs of village (Mephum), that the Mephum has to appoint a deputy chief and an assistant member, and that paragraph 3 also explicitly stipulates: "The Minister

of Interior has to issue directive on the modalities and the procedures for the recruitment of the chiefs of village (Mephum), their taking office, their replacement and the nomination of Mephum's assistant"; whereas the article 86, in the transitional provision, affirmed furthermore that "The recruitment of Mephum (chiefs of village) must be done...in accordance with the modalities and the procedures as stipulated in article 30 of this law";

- Whereas the law on Commune Administration does not limit the time for the Minister of Interior to issue the directives related to this matter, but there is a deadline for other matters, limited to 60 months at the latest; that besides, the law on the Commune Administration requires the Ministry of Interior to issue around 20 directives to promote the efficiency of this decentralization policy;
- Whereas "The National Committee to support the Commune" headed by the Minister of Interior and created by the article 87 of the law on the Commune Administration, in order to facilitate the implementation of the decentralization policy has adequate competence (article 88) in finding solutions or in issuing directives within a reasonable time;
- Whereas following the article 44, the Commune Council as a state agent can receive power delegation from the state authority to carry out the affairs, except in the domains stipulated in the article 45, which are relevant to the competence of central authorities;
- Whereas the Commune Council, as a state agent, shall refer to the Minister of Interior for principled directives on recruiting chiefs of village (Mephum), even if temporarily. The Minister of Interior has to respond to this request within a reasonable time;

Decides

Article 1: The article 30 of the law on Commune Administration shall be interpreted in Compliance with the above-mentioned motives.

Article 2: This decision made in the plenary session of the Constitutional Council in Phnom Penh on January 15, 2003 shall be final without recourse, shall have authority over all instituted powers stipulated in the Constitution and shall be published in the "Journal Officiel".

Phnom Penh, January 15, 2003
For the Constitutional Council
The President

Signed and Sealed

BIN CHHIN