

KINGDOM OF CAMBODIA
Nation Religion King

The Constitutional Council

CASE

N°:115/015/2006

Of November 17, 2006

Decision

N°: 086/013/2006 CC.D

Of November 25, 2006

The Constitutional Council

- Seen the Constitution of the Kingdom of Cambodia;
- Seen Preah Reach Kram N° NS/RKM/1297/06 of December 26,1997 on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° CS/RKM/0498/06 of April 08, 1998 on the Organization and the Functioning of the Constitutional Council;
- Seen Preah Reach Kram N° NS/RKM/0301/04 of March 19, 2001 on the Elections of Khum / Sangkat Council;
- Seen Preah Reach Kram N° NS/RKM/0902/017 of September 17, 2002 on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen Preah Reach Kram N° NS/RKM/0606/020 of June 27, 2006 on the Amendment of the Law on the Elections of Khum / Sangkat Council;
- Seen Preah Reach Kram N° NS/RKM/0606/019 of June 27, 2006 on the Amendment of the Article 13 (N) of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly;
- Seen the letter of attorney dated November 16, 2006 of H.E. KONG KAM, Acting President of the SAM RAINSY Party, giving the power to Mr. TOUCH RITHY, member of the election committee of the SAM RAINSY Party, to be his representative in lodging the complaint and attending the Hearing of the Constitutional Council;
- Seen the complaint dated November 17, 2006 from Mr. TOUCH RITHY demanding to strike the names of 5,413 Vietnamese people off the electoral lists, and to reject the decision of the Hearing council of the National Election Committee signed by H.E. IM SUOSDEY on November 13, 2006, complaint received by the Secretariat General of the Constitutional Council on November 17, 2006 at 10:24 A.M;
- Seen the decision of the National Election Committee dated November 13, 2006 rejecting Mr. TOUCH RITHY 's complaint N° 0018/06 គ.ជ.ប dated November 11, 2006 ;
- Seen the letter N° 517/06 N.E.C. of November 23, 2006 appointing NEC representatives to attend the public hearing of the Constitutional Council;
- Seen the minutes of investigation of the Constitutional Council's representatives in PREK CHREY commune (KOH THOM district, KANDAL province);
- Seen the minutes of affirmation of NEC representatives on November 22, 2006 from 09:00 A.M;

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

- Whereas the complaint of Mr. TOUCH RITHY was made within the period of public posting of the initial electoral lists. In accordance with the Article 42 (N) of the Amendment of the law on the Elections of Khum / Sangkat Council, the Article 64 (N) of the Amendment of the law on the Elections of the Members of the National Assembly, and the Article 26 of the law on the Organization and Functioning of the Constitutional Council, therefore it is admissible;
- Whereas during the hearing and in his complaint, Mr. TOUCH RITHY demands to strike off the names of 5,413 Vietnamese by referring to the Constitution, to the Law on the Naturalization, to the Sub- Decree N° 36អនក្រឹត្យ of July 26 1996, and by asserting that these people live on the boats, speak Vietnamese, speak unclear Khmer, and do not possess Khmer family names like NGUYEN, YIEK, LE who are not qualified for the Khmer citizenship. He also declares that he doesn't know whether or not these people have identity cards or any other identifying document, because he does not have the rights to check them;
- Whereas during the hearing and in the inquiry, H.E. MEAN SATIK and H.E MAO SOPHEARITH, representatives of the National Election Committee, give clarification on some matters concerning the Law on the Naturalization, ethnic minority, and the International Convention on the Elimination of All Forms of Racial Discrimination to which our country is signatory. They also declare that in the NEC's Hearing, Mr. TOUCH RITHY does not have any documents to prove the case, except the fact that these people possess Vietnamese names and speak with Vietnamese accent. Moreover, they assert that Mr. CHAP SUY, the Chief of PREK CHREY commune and the former Chief of the police station, knows these people and acknowledges that they have been living in the said commune since 1979 and have voted since 1993;
- Whereas the investigation made by the representatives of the Constitutional Council at PREK CHREY commune (KOH THOM district, KANDAL province), the 5,413 people whose names were demanded to be deleted, have their names in the final electoral lists in accordance with the Article 54N point "C" of the Law on the Amendment of the Law on the Elections of the Members of the National Assembly ;
- Whereas the affirmation of the authenticity of an individual's identity is not within the competence of the Constitutional Council;

**Decides:
In the presence of the parties**

Article 1 : The complaint dated November 17, 2006 of Mr. TOUCH RITHY is admissible for its legal form but is rejected for being groundless

Article 2 : The decision dated November 13, 2006 of the National Election Committee rejecting the complaint N° 0018/06 ក.ទ.ជ.ប of November 10, 2006 is upheld.

Article 3 : This decision pronounced in public hearing in Phnom Penh on November 25, 2006 shall be final without recourse, shall have authority over all the instituted powers as stipulated in the Constitution and shall be published in the “Journal Officiel”.

Phnom Penh, November 25, 2006

**For the Constitutional Council and For the Hearing Council
The President**

Signed and Sealed

BIN CHHIN