

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

**Council for Legal Reform and Justice System
Permanent Coordinating Body
No. 017/07 KN.ASS**

**Minute
of
the meeting of the council of Legal and Judicial Reform
on
the important results of the implementation of the Program of Action
For the implementation of Legal and Judicial Reform strategy, year 2007
and future plan**

Year 2007, month of June, day 6, at 9 am, at the meeting hall B21, in the council of ministers, a meeting was held under the presidency of **HE. Dith Monty**, head of the Supreme Court and **HE. Sok An**, Deputy Prime Minister, Minister in charge of the council of ministers, Co-Chairmen of the Legal and Judicial Reform, to discuss and review and have a discussion on a draft report concerning the important results of the implementation of the Program of Action for the implementation of the strategy of Legal and Judicial Reform in the year 2006 and set an objective for the implementation of the future works.

The agenda of the meeting and the list of participants are herewith attached.

To start, **HE Sok An**, Deputy prime Minister, on behalf of **HE Dith Monty**, Co-Chairman of the Legal and Judicial reform, expressed his thanks to Ministers, Secretaries of State, members of the Legal and Judicial Reform Council and all participants for their presence in the meeting. HE Deputy Prime Minister mentioned that it has been one year now since the last meeting of the council held in August 2006. In between that period, we had achieved lots of results. However, our week point was that we did not speak enough. That was why people kept saying that the process of the Legal and Judicial reform was late. HE, then, suggested that Mr **Sar Siphon**, and **Mr Sar Sambath** also participate and listen to the discussion of the council in order for them to inform the press of what was going on re. the process of the Legal and Judicial reform.

HE continued that this is the point to be noted seriously. Because we did not speak out, people were not aware of what we were doing. Not only within the internal circle, but it is among the international community, the progress of this reform had not been well informed. For example, for land issues, anti corruption, and others, we had done enormous works, but people did not know since we did not speak out.

In the following agenda **HE. Sum Manith**, Head of the Permanent Coordinating Body of the Legal and Judicial Reform expressed his thanks to HE Co-chairman for allowing the Permanent Coordinating Body, and the Project Management Unit to organize the meeting of the

Council for Legal and Judicial reform, to-day, in order to examine and give approval on the draft report on the important results of the implementation of the Program of action for the implementation of the Legal and Judicial Reform strategy, which were defined in the Policy Program of the Royal Government. During the meeting held on 16, 30 August, and 14 September 2006, the Council for the Legal and Judicial reform had found solutions to a number of issues, namely:

- Publication of the Court final Judgment
- The establishment of Commercial Court
- The extension of the Model Court in order to draw experience from the Extra Ordinary Chamber in the Court of Cambodia (ECCC), and examine and give comments on the draft Code of Ethic of judges and prosecutors developed by the Supreme Court.

HE Sum Manit also informed the meeting of the frequently asked questions from the development partners, such as;

- 1- Draft Law on the Law Amendment concerning the Organization, and Functioning of the Supreme Council of Magistracy
- 2- Statute of Judges and Prosecutors
- 3- Procedure of law making.

HE Sam Sok Phal, Head of the Mix Working Group present a report to the meeting on the relationship between the government and the development partners, focusing on the Joint Monitoring Indicators by ignoring the challenges in reaching the expected results. Then, HE mentioned the slow process of the law drafting, such as the Anti-Corruption Law and other laws which is the responsibility of the concerned Ministry, namely the Ministry of Interior. HE suggested that the Ministry of Justice, the Supreme Council of Magistracy make efforts to push for the finalization of the Statute of Judges, and other laws as soon as possible.

For the Model Court, **HE Sok An**, Deputy Prime Minister said we should take the model of the ECCC (the Khmer Rouge Tribunal). This Court will start soon. The Project Management Unit should take action to include the Model court project in the new budget proposal of this Extra ordinary Chambers. HE Deputy Prime Minister gave instruction to the Project Management Unit to well prepare, and make it short the documents concerning the implementation of these significant seven strategic goals.

In the following agenda, **HE. Suy Mong leang**, Head of the Project Management Unit made a presentation on the report and important results of the implementation of the Program of Action for the implementation of the Legal and Judicial Reform strategy for the year 2009. He also presented, through slides, the goal to be followed, as stated in the attached annex:

- 1 Speaking about Progress

- 2 Conclusion on the implementation, in general (Implementation of the Program of Action)
- 3 Works to be followed

With regard to the issue of the lack of court room, lack of budget for the delivery of the warrants, and transportation, HE had asked **HE Chiv Keng** to make clarification.

HE Chiv Keng, Head of the Phnom Penh Court, and a member of the council for the Legal and Judicial Reform mentioned that since he took this post, he had gone through more that 1000 files which have been kept without taking any action since 1991-92. HE further said that the backlog files were not caused by the lack of the court rooms. It was because the court clerks had not done their jobs properly. In fact, the Phnom Penh municipal court has three rooms but they were all dirty. However, the three rooms had been repaired and cleaned up.

Had been informed by the former Head of the Phnom Penh Municipal Court of the shortage of court room, the government, through the council of the Legal and Judicial Reform, had rented a house for the Phnom Penh Municipal Court to use for a period of one year. Seeing that the location of court room was far and created difficulty for the clients, we had arranged the court room to be at the same place and used the rented place as warehouse to keep all the evidences. At present, the Phnom Penh Court rented a warehouse for one million Riels per month to keep a huge amount of evidences, such as around 100 motorbikes, twenty to thirty cars.

The Municipal Court of Phnom Penh also arranged the transportation of the accused persons to the trial in the afternoon with good co-operation from the prison.

For the transportation and the turning of the subpoena, the Phnom Penh Municipal Court had made an arrangement to have a police from the Phnom Penh Police Commissariat to be responsible for this matter at the court.

At present, the enforcement of the verdict faces some difficulties since the legal procedure of the instruction No.011 of the national police commissariat is too long and complicated. In order to solve this issue, the Bailiff of the court should be created.

The main challenges that the court had been facing was the shortage of human resources namely the shortage of judges, prosecutors, and clerks at every court. According to the new Civil Code and Civil Procedure, a case-file which involves over 5 million riels requires three judges to try the case. However, at present, in five provincial courts there are only two judges, so these five provincial courts cannot try. Particularly, the Phnom Penh Municipal Court has 12 judges, but we need 45 judges, otherwise, one judge shall try 1 thousand case-files a year. Normally, a judge can try a maximum of 200 hundred case-files within a year only. Base on what had been informed above, H.E suggested that H.E Deputy Prime Minister and head of the advisory board and H.E Tep Darong who is head of the Royal Academy for Judicial professions recruit one hundred judge a year in order to meet this demand the sooner the better. The court also faces the

budget issue, for example, the Phnom Penh Municipal Court had limited budget which can only pay for the salary of judges, prosecutors, clerks, and the electricity. The barrier of the trial could be caused by the shortage of budget to make assessment. H.E also informed the meeting that at present, at the Phnom Penh Municipal Court there aren't any more middle men like before. H.E had arranged an information office for the customers who need the service of the court. The civil case file which arrived at the court must be handed to the head of the court by four o'clock for actions. The subpoena should be issued between one or two days maximum after the clerk had received the case file.

In response to the suggestions made by **HE Chiv Keng** with regards to the lack of judges, **HE Sok An** asked **HE Tep Darong** whether or not it is possible to recruit more judges?

HE Tep Darong, Head of the Royal Academy for Judicial Professions, in his response, said that the Royal Academy had organized numerous programs by inviting different groups of judges to take turn to come for training. There had been 200 judges divided into six groups. These groups included also military judges. The Second batch consisted of 65 judges, and the third batch consisted of 63 had also received trainings. HE further said that since 2007, we had created many training rooms. At this point, he suggested that the judge trainers should be assigned or sent to far provinces which caused high expenses for the transportation. Another challenge to be mentioned here was the shortage of Judge Trainers, for example, Trainer You Bun Leng, and Trainer Mong Mony Chakria had engaged in the Khmer Rouge Tribunal. HE, therefore, suggested that the government should help identify qualified trainers in this regards. It was similar for the situation of clerks since there were a number of clerks had passed judge exam and then became judges. This was the reason why there were a number of provinces that were facing the problem of the shortage of clerks. The Japan's Emissary of Court was ready to assist the commercial Court. HE had discussed with **HE Heng Vong Bun Chhat** and would do some editing. The qualification for the trainees should be judge on the job or in training to become judge. The Commercial Judge should only try the cases which involved commercial issue only. When there were not any commercial case files, those judges should work on the normal case files. As for the recruitment of the commercial judges, it should be limited to only twelve since the majority of provinces have rarely had commercial disputes. HE continued that to recruit 100 judges at one time might encounter some difficulties.

HE Deputy prime Minister contributed his point of view that the training of judges should be continued because judges need to be trained on the new laws which had just been issued. The recruitment of big numbers of judge students in each session could be difficult for us to identify the qualified ones. As for the training of the emissary/Bailiff of the court, we could issue a decree or a sub decree pending the issuance of the law in this respect, and the training should be started as soon as possible for a period from 6 months to one year.

Re. the lack of clerks, HE recommended recruiting more clerks but consideration should be given to quality.

The training of twelve judges for commercial disputes was reasonable. These judges should be recruited from the professional judges. HE Deputy prime Minister invited the participants to make comments on the proposed ideas above.

HE Heng Vong BunChhat, Deputy Head of the Council of Jurists, and a member of the Council for the Legal and Judicial Reform gave his opinion that it was difficult to implement the four codes which would come into effect in the very near future. As for the judge trainer, the Royal Academy for Judicial Professions shall make every effort to look for adequate budget, otherwise, it would be difficult to get highly educated trainers.

HE Deputy Prime Minister contributed his idea that we should postpone the idea that the trainers for the judges should only be selected from among the judges.

HE Heng Vong BunChhat suggested canceling the principle which defined that only Judge can be the Trainer of the Judge Students and the relevant institution should look for sufficient budget to hire trainers. **HE Heng Vong Bun Chhat** gave an example that, in France, they got the Specialized Professor to teach theory first, and then the on-the-job Judge would provide additional training to the judge students.

As for the backlog dossiers, he raised that, at present, in the Supreme Court of Thailand, the country that had enough budget also had experienced similar situation. Last week, a Thai newspaper had an article saying that there had been almost 2, 500 backlog dossiers in the Thai Supreme Court. As for the training of the new laws, HE mentioned that it required big budget, the concerned donors should help tackle this budget issue also. However, in order to convince foreign investors, we need to show the effectiveness of the commercial court, for example, China and Vietnam, they had done so already. As for the Emissary/Bailiff of the Court, it could be set up in order to get experience first.

HE deputy prime Minister draw the attention that, the setting up of the Emissary/Bailiff of the Court, should be based on an appropriate law, for this issue is a confronting issue with the Police . In the mean time, HE raised a question to the meeting that whether of we should keep the Pilot Court Program.

HE Heng Vong Bun Chhat expressed his concerns over this Pilot Court Program which existed at the Faculty of Law because this program might affect the court institution itself. So we should interrupt this program. It should not be functioned in parallel with the official court like this and should not conduct trial of important cases before the official court which, in the future, would make things complicated in the society.

Concerning the publication of the court decision, what had been done could not be used as the strategy yet. A committee should be created to make a synthesis on all those decisions.

HE Sam Sok Phal shared his idea on the creation of the Emissary/Bailiff of the court. The recruitment of the Emissary/Bailiff of the court should necessarily require high education background. He said this is a means to help solve the urgent problems for poor people. For the

Alternative Dispute Resolution, this mechanism should be pushed forwards as quickly as possible, and heads of the commune councils or district governors should be given the possibility to perform this role, but their authority should be limited and well defined.

HE Ngy Tayi, UnderSecretary of State of the Ministry of Economy and Finance expressed his opinion that the recruitment of the Emissary/Bailiff of the Court should not necessarily require too high education background. For the suggestion to increase the court budget HE said, in accordance with the Financial Reform, the Court should prepare its Activity Plan by showing the need for the said budget, the reason and the implementation of that Program of Activity and submit it to the Ministry of Economy and Finance through the Ministry of Justice.

HE Deputy Prime Minister also stressed that the Supreme Court had a separate budget. HE also suggested that **HE Ngy Ta Yi** help in advocacy so that the Ministry of Justice would receive more budget than before.

HE Dit Monti , Head of Supreme Court, and Co-Chairman of the Council for Legal and Judicial Reform highly appreciated the Permanent Coordinating Body, the Mix Technical Working Group, and the Project Management Unit for having facilitated, and monitored the implementation of the program of action. HE suggested that the Project Management Unit disseminate the result obtained through the internet network. If this could be done now, no-one would say that they were not aware of what had been done. HE continued that so far, judges had not been classified in any status. Therefore, HE strongly recommended that the Statute of Judge be passed (promulgated) as soon as possible. For the establishment of the Emissary/Bailiff of the court, HE informed the meeting that, in the old days, the Ministry of Justice can nominate the Emissary/Bailiff of the Court. As for the publication of the subpoena, court judgment, the objective was to facilitate access to legal and judicial information as stated in the third goal strategy, but this was not yet the strategy. For the alternative dispute resolution, we should take it into high consideration as soon as possible since it would be important and effective if the conciliator could have influences in the village, commune or district. With regard to the lack of judges HE shared his view that we should recruit 100 judges. On the other hand, consideration should be given also to the training of the trainers. (professors, lecturers) . There should have a permanent trainer at the Royal Academy for Judicial Professions and their salaries should be more appropriate..

HE Deputy Prime Minister supported the opinions of HE Dith Monti by saying that the Royal Academy for Judicial Professions should have its own Trainer (Professor). HE Deputy Prime Minister stressed that, to set up of the Emissary/Bailiff of the court it needs an appropriate law to be based on.

HE Deputy Prime Minister wrapped up the results of the meeting as follows:

- 1- In order to response to the issue of **shortage of judges**, we decided to recruit judges as many as the highest capacity of Royal Academy for Judicial Professions could afford.
- 2- For the **Alternative Dispute Resolution**, HE deputy prime Minister agreed with the meeting participants that this mechanism should be in place as soon as possible.

- 3- **Publication of court decisions:** HE Deputy prime Minister welcomed the decision of the Supreme Council of Magistracy that the latter would compile and make publication of all the judgments of the provincial and municipality courts. HE also urged the meeting to look for development partners in order to have a study on those judgments from where strategy could be withdrawn from.
- 4- Unanimously agreed on the **recruitment of Emissary/Bailiff of the court** who would take training, and suggested that, in the mean time, the Royal Academy should start making law as the basis for the recruitment.
- 5- The Permanent Coordinating Body, and the Project Management Unit to further publicize with the development partners and with the concerned ministries.
- 6- For the Anti-Corruption Law, those who wish to know about this issue, were invited to communicate with the Council of Ministers. HE Deputy Prime Minister added that Mr Bertrand de Sperville who had been considered as father of Anti- Corruption also had similar opinion, it means that the corruption would not stop immediately after the law had been made. The release of the four codes made the Anti Corruption Law inadequate. So we have to wait for the promulgation of criminal code and criminal procedures. What was important is whether we would do it or not and it also relied on the way that we would work to fight against corruption. What we were doing was a strong action of the unit of Anti-Corruption of the Council of Ministers and the sending of our staff to receive training on this field in foreign countries. **HE Tan Thany**, Secretary of State of the Council of Ministers, and **HE Bin Chhin**, former head of the constitutional council conducted a study on different system in the fighting against corruption.

The meeting finished at 2 pm on the same day.

Capital city of Phnom Penh , 01 August 2007

Seen and approved

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