



Freedom of Association

A) Function of Free Association:

Human beings are in many cases too weak to solve their problems alone. Therefore they have a basic need of communicating and working together to solve their common problems. They naturally work together in groups because by doing so they can combine their different capabilities and strengths. Acting together in a group in an organized way makes every individual member of the organization stronger: The group members can mutually profit from the experience, support and the protection of the other members of the group and can share their ideas. A single person can be easily attacked but to attack a group of persons is much more difficult.

See the motto:

"Divided we fall, united we stand"

or the saying:

"You can break one chop stick but you can not break a bundle of chop sticks"



So to form an association is a very powerful way for people to push forward their common interests and to solve economical, social, political, cultural or any other kind of problems. This is the reason why:

- workers found **labor unions** to fight for their workers' rights and interests
- citizens found **political parties** to strengthen the impact of their common political ideas
- students found **students' associations** or teachers found **teachers' associations** to give their concerns more attention
- people found **NGOs** to solve common social problems like helping poor people, supporting human rights, protecting the cultural heritage or the environment
- people found associations like **sport clubs** or **cultural clubs** to enjoy and organize sports or cultural events which they have a common interest in
- businessmen found **companies** to combine their economical capacities to achieve a common profit (for example: fishermen organizing themselves in fishery communities).

All these activities are encouraged by Article 35 I Cambodian Constitution:



Article 35 I CC:

Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

B) Legal protection of freedom of association:

To protect this basic human need of forming a group the laws guarantee the **basic human right to freedom of association.**

This right is one of the most important political and civil rights because it enables people to act in a strong and powerful way independently on their own interest outside the organizational structures of the state and government in the private sector.

So it is very important to point out that freedom of association is an **inborn right** of every human being and **not just a privilege** which can be granted by the state at its discretion. So there is **no need to ask for a permission to found an association** but people can freely decide to do so⁵⁰. (Note: Registration of associations is often required by different laws but has only the function to inform the authorities and regulate some formalities. Applying for registration is does not mean to ask for permission!):

Example:

When the Cambodian teachers wanted to found an independent teachers' association the authorities tried to prevent them from meeting and electing the president of their association. The authorities claimed that the teachers needed a permission by the Ministry of Interior to do so but had none. This act of the authorities was unconstitutional because the freedom of association needs no permission to be exercised. This is why the Cambodian Draft Law on Associations (Article 6) also states only a duty to inform the authorities about the founding of an association and to have it registered but does not require any permission!

The protection of the freedom of association can be found in many law texts:

Article 42 I 1 CC:

Khmer Citizens shall have the right to establish associations and political parties.

⁵⁰ For example: Article 2 of the ILO-Convention on Freedom of Association states very clearly that workers can found a union “without previous authorization” (see www.hrni.org : click on “rights and freedoms”, then on “freedom of reunion and association” and then on “specific instruments”).



Article 22 I ICCPR:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

For **women, children** and **minority groups** there are law texts which additionally ensure that also these groups can really enjoy and exercise their human right of free association.

Article 14 II e of the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW):

... States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

... (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment...

Article 15 I International Children's Rights Convention (CRC):

States Parties recognize the **rights of the child to freedom of association** and to freedom of peaceful assembly.

Article 5 d (ix) Convention on the Elimination of all Forms of Racial Discrimination (CERD):

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

d) Other civil rights, in particular: The right to freedom of peaceful assembly and association ...

There are also **special** legal **guarantees** for the right to found **trade unions**. (In the ICCPR this right is explicitly included in the right of freedom of association, Article 22 Nr.1 ICCPR above).



Article 36 V CC:

Khmer citizens of either sex shall have the right to form and to be member of trade unions.

Article 5 (e) (ii) CERD:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:.. (e) Economic, social and cultural rights, in particular ... (ii) The right to form and join trade unions...

Article 8 I a) International Covenant on Economic and Social Rights (CESCR):

The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.

International Labor Organization (ILO) – Article 2 of the Convention on Freedom of Association and Protection of the Right to Organize, (1948):

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization ...

(The full text of this convention can be found in the internet⁵¹.)

⁵¹ see www.hrmi.org – click on “rights and freedom”, then on “freedom of reunion and association” and then on “specific instruments”.



C) Elements of the “Right of Freedom of Association”:

I) What does “association” mean?

An association is a

- **group** of human beings,

The term “group” or “association” requires a minimum of 3 persons because just 2 people can not be called a group (Article 11 Draft Law on Associations). The question whether the law can require that a political party or a labor union must have a certain minimum number or more than 3 members is a question of restrictions on the right of free association (see next chapter). As the freedom of association is a human right which is granted to any human being (Article 20 I UDHR and Article 22 I ICCPR) an association of foreigners can also claim protection by this right. If their right to free association is not granted by the Constitution (Article 42 I 1 CC which only refers to “Khmer Citizen”) it must at least be granted and protected for foreigners by a simple law. Article 3 I of the Draft Law on Associations therefore needs to be amended.

- who join each other **voluntarily**
- to pursue a **common purpose whatsoever**

Every purpose is protected. There are no limitations to certain purposes. (Article 20 Draft Law on Associations which names different purposes just as examples but not as a fixed enumeration). The question whether some criminal purposes (for example racist or separatist purposes) can be ruled out by law is a question of restrictions (see next chapter).

- for a certain **durable period of time**

A spontaneous forming of a group is not enough. People who just come together to spontaneously help after an accident can not be called an association. Their common purpose is limited to a very short time of the actual emergency action.

- within an **organized structure** of forming a common will

As an association needs to be able to act as a representative for all its members it needs a minimum of an organizational structure. But it is enough if there is one elected person who is able to sign on behalf and in the name of the association (Therefore Article 12 Draft Law on Association which requires more than one person such as a President, a Board of Director, a Treasurer etc. is not covered by the Constitution – Article 42 I 1 CC).



II) What does “freedom” of association mean?

Freedom of association means that there shall be no state interference⁵² with the affairs of the association⁵³.

Of course some state regulations are necessary to grant and ensure that an association has a legal personality of its own so the members of the association can act effectively as a unit to the outside. If there are such state regulations about the founding, registration and operating of an association they must grant and ensure this freedom but not inhibit it. Article 2 I ICCPR clearly states that the state “must ensure to all individuals within its territory the rights contained in this covenant”. This means that the state has a positive duty to provide a regulatory and legal framework enabling individuals who wish to work together in a legally recognized form to do so. If the state does so and creates laws that for example enable NGOs to get a legal status then the state does not grant a favor at its discretion but simply fulfills its duty.

1) In detail freedom of association includes the **right of every individual to:**

- freely decide together to **found** an association for whatever purpose⁵⁴

This includes the right to freely choose a name for the association. This sometimes creates problems because authorities try to create obstacles for the foundation of an association claiming that its chosen name is already occupied or can easily be confused with other names.

Example:

The Cambodian authorities dissolved a political party for three times, always claiming the party name – which every time was changed again – would not be correct (Article 11 Law on Political Parties). The party was finally established under the name of its leader (“SRP”).

In another case the Bar Association claimed that the name of the newly found “Cambodian Law Society” could be confused with the Bar Association’s name. Taking these two cases into consideration Article 11 Nr. 3 Law on Political Parties seems to be too vague and unconstitutional. This article prevents any use of national symbols whatsoever (also the flag?) and even would prevent royalist parties to use some kind of royal symbols. But actually there is no convincing reason for this.

⁵² see for example Article 3 Nr. 2 ILO Convention on free association: “The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”.

⁵³ All the following comments on this right are based on the essay of the Lawyers Human Rights Committee: “The neglected right: Freedom of Association in International Human Rights Law” which is strongly recommended for further reading – see www.lchr.org/pubs/descriptions/neglrt.htm

For case law and international resolutions and conventions related to this freedom also look at the HRNi homepage under “Rights and Freedoms” at “Freedom of Reunion and Association” – see www.hrni.org

Finally you can find all the Human Rights Commissions concluding observations and the Human Rights Committee jurisdiction on the respect freedom of association in different states in the world in the last ten years at the Bayefsky homepage – see www.bayefsky.com (click on: “Documents by Theme and Subject Matter” and then click on “Association -freedom of”)

⁵⁴ see for example Article 2 ILO Convention on free association: “Workers shall have the right to establish organizations of their own choosing.”



- freely **dissolve** an association by a common decision for whatever reason

The right to self-dissolution according to the by-laws of the association is granted, Article 33 sentence 1 Law on Political Parties and Article 16 Nr. 1 Draft Law on Associations. But an association shall in general not be dissolved or suspended by an administrative authority but only by a common decision of its members (see Article 4 ILO Convention on Freedom of Association). Only in exceptional cases there may be a dissolution by judicial order (for example Article 34 Law on Political Parties: only in case of bankruptcy an association can be dissolved by a judicial order). From that point of view Article 16 Nr. 2 and 3 of the Draft Law on Associations goes too far, allowing administrative dissolution under very vaguely defined conditions.

- freely **join** any existing association

The exercise of the right to join an association is only free if it happens voluntarily without force. So it also gives anyone the right to refuse membership in any organization which s/he does not like.

See also Article 20 I UDHR: “No one shall be forced to be a member of an association”.

See further Article 5 I 2 Law on Political Parties: “No person may have the right to compel anybody to join any political party”.

(See also Article 273 Labor Law)

- freely **be a member** of any association

This freedom includes the right to be protected against any direct or indirect threats or coercions by the state or other persons which intend to punish someone for his/her membership and try to make him/her give up the membership.

Article 5 II Law on Political Parties: “No one shall be deprived of his civil, political, professional rights on the grounds that he is or is not a member of any legally established party”.

See also Article 279 and 280 of the Labor Law protecting union members against professional disadvantages on grounds of their membership.

- freely **leave** any association

As no one shall be forced to join there shall also be no force to keep someone in an association as a member. Otherwise his/her membership would no longer depend on his/her free decision.

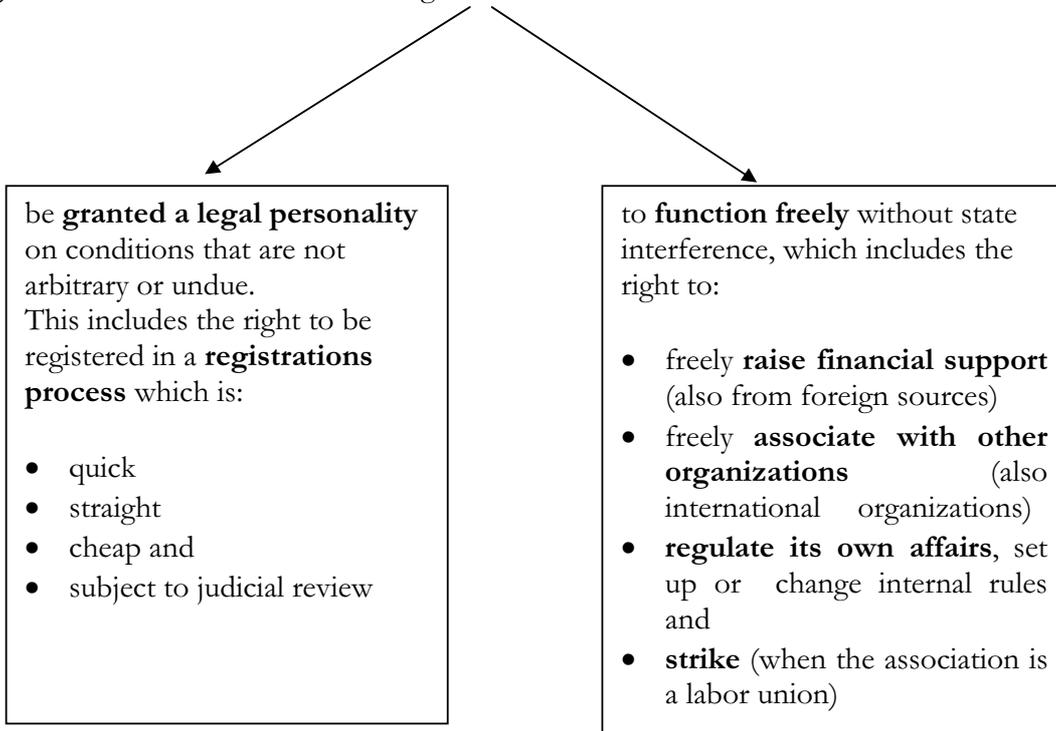
Example:

The “Pagoda Boys” forced some of its members by intimidation and physical abuse to stay as members although these persons publicly resigned from that organization (see Article in “The Cambodia Daily” dated 10th of June 2003, page 1 and especially page 2). This behavior is not protected by the freedom of association.

See further Article 273 Labor Law which protects the freedom to withdraw from a labor union “at any time”. Free resignation is only really “free” if the person can resign without giving any reasons (see also Article 13 sentence 2 Law on Political Parties).



2) The **association itself** has the right to:



This means in detail:

a) right to be **granted a legal personality:**

The legal personality is essential for an effective operation of a group of people who want to act as an association. It enables the association to open a bank account, to hire and fire employees, to rent a house and last but not least gives it a right to bring a case to court.

As the right of free association is an inherent right the granting of a legal personality is not just a favor, which the government can give or not give for example in return for some friendly or uncritical behavior of the association. But it is a duty to provide such a status as long as some minimum conditions are fulfilled which enables an association to act as a legal entity. This includes clear responsibilities and authorization of its representing members and also clear liabilities. So conditions are without concern as long as they only pursue the purpose to make sure that an association has such clear structures and rules, that no one can use it to evade taxation or to avoid liability or responsibility for actions taken in the name of the association.

b) **due registration process:**

aa) Registration is a necessary condition for being granted a legal status. But registration itself shall always be voluntary. Compulsory registration can violate the freedom of association as it opens a door for government supervision and obstruction. So only if they voluntarily chose to have a legal personality they are subject to this



optional (not compulsory) registration. (See Article 6 Draft Law on Association which clearly points out: “In order to enable an association to receive a judicial personality the founder shall file an application for registration”).

bb) Registration shall be quick, this means it shall not be unduly delayed.

Example:

To speed up the registration Article 8 sentence 3 Draft Law on Association regulates that an association shall be considered to have a legal status of a registered association if the Ministry fails to respond within 45 days after the registration application.

cc) Registration means informing the authorities and fulfilling some basic conditions. This is without concern.

But always keep in mind: The basic rule is that the conditions should be limited only to a minimum of conditions!

(1) Can the law require a minimum number of members?

Yes, but only if it pursue the legitimate purpose to ensure a minimum of durable and reasonable existence of the association. A law would be unconstitutional if it prevents little association from registering only because they are little.

Example:

It may be o.k. to require only 3 founding members but it is not justified to require that an association must also have a president, a treasurer and so on (Article 11 and 12 Draft Law on Association). Concerning that political parties want to take part in national elections and want to exercise power once they are elected the requirement of 4.000 members for registration may be without concern (Article 19 Law on Political Parties which seems not to be consistent with Article 9 I of this Law). But to require that these 4.000 members must come from a number of different provinces does not have a clear goal. Why should it not be possible to have a party which just wants to represent one region?

(2) Can the law require information on internal details of the association?

Yes, because some information may be unavoidable for registration purposes.

The duty to give the detailed name and address of the responsible persons who represent the association and to name the purpose and the address as well as the by-laws and internal structure of the association is just basic and necessary. Article 268 Labor Law is a good example for a very relaxed and liberal registration regulation which only requires the very basic information for registration of a labor union.

But it is not necessary that the state knows every internal details of an association, like getting annual reports, the names of all members, or detailed account documents on all assets and financial backgrounds or the detailed curriculum vitae of the leading persons. This would open a door for government supervision, which goes too far and would be not proportionate. It is a softer measure to act only after an association acts illegally. The authorities would act too strong if they



restrict an association even before the association acts. To require names and addresses of association members may expose them to threats and intimidation.

Example:

From that point of view Article 6 and 14 Draft Law on Association and Article 20 Nr. 1 - Nr. 7 Law on Political Parties seem to be without concern. But Article 20 Nr. 8 - 11 Law on Political Parties seems to go too far as all these information do not seem to be necessary.

Also the detailed duties to reveal all activities, financial affairs, an annual reports seems to be not necessary to this full extent, although there may be some reason to have a certain degree of transparency especially for parties and NGO who can play a quite powerful role in public life even without being elected.

The extensive duties in Article 18, 21, 22 and 27 Draft Law on Association or in Article 31 Law on Political Parties to inform the authorities already might prevent people from registering an association because to fulfill these duties requires a lot of manpower and organization skills and reveal confidential internal affairs to the public (for example salaries of curriculum vitae of the association's employees etc.).

Example:

The American Supreme Court ruled that the duty imposed on a Civil Rights Association of Black People to list up all names, addresses of members and all financial records would cause a great danger of harassment for the members and compromise the organizations effectiveness.⁵⁵

(3) Should the law require a judicial control of rejection of the registration application?

Yes. Any administrative decision - also the one in the registration process - must be subject to judicial control. Otherwise the government could just stop all associations from being established without giving any reason. This principle of control is guaranteed for example in Article 25 Law on Political Parties which states that a party can file a claim against rejection of its registration with the Constitutional Council which has to decide within 30 days. (see also Article 10 Draft Law on Association).

c) The right to **function freely** without state interference means in detail:

- freely **raise financial support** (also from foreign sources)

There seem to be no real convincing reason why foreign funding should be not allowed. What damage would that do to a society? For most NGOs in developing countries such support is just vital Therefore Article 21 sentence 1 Draft Law on Association explicitly states that foreign funding is legal.

⁵⁵ see NAACP v. Alabama 357 US 449 (1958) – reference to this case in www.lchr.org/pubs/descriptions/neglrt.htm



Contrary to that Article 27 Nr. 4 and 29 Law on Political Parties prohibits that political parties receive funds from foreign private donors, NGOs and from “foreign companies”. The constitutionality of that general regulation is questionable. To guarantee transparency and accountability of political parties the Law on Political Parties might require that donations higher than a specific amount of money (for example USD \$ 5.000) should be published.

- freely **associate with other organizations** (also international organizations)

This freedom is clearly mentioned in Article 5 ILO-Convention on Freedom of Association which states that workers or employers organizations have the right to establish and join federations of other organizations including international organizations.

- **regulate its own affairs**, set up or change internal rules

Article 3 I ILO-Convention on Freedom of Association clearly mentions this freedom. It states that the workers/employers organizations have the right to draw up their constitutions and rules, elect their representatives in full freedom and organize their administration and activities and to formulate their programs. This is expression of the general freedom of associations to self rule.

Example:

It would violate this freedom of self rule if a law creates a right for any citizen to “join any association provided s/he subscribes to its principles”. Such a law for example was passed in Tunisia to enable the government to send members of the ruling party into a human rights association and gain the majority and then destroy it from inside.

Or the Nigerian government was passing a law which established a new body of the Bar Association which included three quarters of government appointees.

Therefore any association must be free to decide who its members want to accept as new member.

Example:

It also seems not compatible with the freedom of self-rule that

- Article 3 Law on Political Parties regulates that all Cambodian political parties must place its head-office in Phnom Penh. Why can this decision not be left up to the party members’ own decision on its statutes?

- Article 15 sentence 1 Law on Political Parties states that no one can be member of two parties at the same time. Why can’t the law leave this to the internal rules of the parties themselves? The parties know what they do. If they want to accept double membership, for example in a coalition party, it is up to them to live with the consequences.



- **free exercise of activities, especially right to strike** (when the association is a labor union)

The freedom guarantees that an association can freely follow all its purposes and aims as long as they do not violate other rights, Article 31 III CC.

The right to strike is included and especially mentioned in the Cambodian Constitution (Article 37 CC; see also Article 319 I 1 Labor Law). The freedom to exercise all lawful activities includes also the freedom of any registered party to set up a party sign, for example in the garden of a party member house, without any prior permission by the authority. (Article 9 III Law on Political Parties even foresees that this right can be granted to a party already during the process of its registration! The National Election Committee has recently issued an administrative instruction to all Cambodian state authorities that no one needs a permission if s/he wants to set up a party sign unless s/he wants to put it on the public road. This is important because in many cases local authorities in Cambodia violated the freedom of political parties by claiming that their signs were not permitted and were therefore illegal! In many cases they even cut down such signs).

D) Restrictions on Freedom of Association

The constitution does not regulate special restrictions on the freedom of association. It does only say:

Article 42 CC:

Khmer Citizens shall have the right to establish associations and political parties. These rights shall be determined by law.

But it does not say for which specific purposes the law can restrict this freedom. Therefore only the general restriction on every human right applies which is regulated in Article 31 III 1 Cambodian Constitution:

Article 31 III CC:

The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others.

The law therefore can only restrict the freedom of association for the purpose to protect the rights and freedom of others.



The International Convention on Civil and Political Rights regulates some more possibilities for restrictions, but also explicitly prohibits legislative measures that are intended to obstruct the freedom of workers unions:

Article 22 I and II ICCPR:

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 6 of the Law on Political Parties is a restriction for parties. They are prohibited to create an autonomous zone within the Cambodian state to organize armed forces and to conduct subversive actions against the liberal pluralist regime by use of violence for the purpose to take over the power. These restrictions are clearly protecting national security and the right of others. The use of violence and the creation of armed forces can obviously violate the right to live, the right to health and the right of freedom of action (freedom of being threatened or forced to do something).

Another restriction to protect the right of others (Article 31 III CC) can be found in Article 4 (b) CERD:

Article 4 (b) CERD:

... State parties ... shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law ...

This article even creates a **duty** of a state to prohibit and dissolve any association who pursue racist goals⁵⁶.

⁵⁶ for more examples: www.bayefsky.com (click on: "Documents by Theme and Subject Matter", then click on "Association - freedom of" and then click on "concluding observations – CERD")



Freedom of Association

elements		restrictions
“association”	“freedom” of association	
<p>group of human beings</p> <p>join each other voluntarily</p> <p>all have common purpose</p> <p>for a durable period of time</p> <p>with an organized structure</p>	<p>right of individual</p> <p>right to freely found an association</p> <p>join an association</p> <p>be member of an association</p> <p>dissolve an association</p> <p>leave an association</p>	<p>right of association</p> <p>right to be granted legal personality</p> <p>due registration process</p> <ul style="list-style-type: none"> • quick • cheap • judicial control • minimum number of members? • detailed information duties? <p>function freely:</p> <ul style="list-style-type: none"> • raise financial support • associate with other organization • regulate own affairs • exercise activities (especially strike)
<p>combination of individual strength, knowledge, information, finances</p> <p>protection of group members</p> <p>increase of chance to be heard (participation)</p>		<p>Rights of others (Article 42 I 2, 31 III CC)</p> <p>national security</p> <p>public safety/order</p> <p>public health/morals (Article 22 II 1 ICCPR)</p> <p><u>Examples:</u></p> <ul style="list-style-type: none"> - Article 6 Law on Political Parties - Article 4 b CERD



Study Question 15

In January 2003 violent Cambodian demonstrators attacked Thai shops and buildings and chased away Thai people who in some cases got hurt when they jumped out of the windows to flee.

The police did not stop the demonstrators.

- a) What are the basic human rights of the involved conflict parties?

- b) What was the reason for this violence?

- c) Are there any legal regulations that prohibit the dissemination of racial hate in Cambodia?