



## ***Solutions***

### **Study Question 1**

Please read the Declaration of Human Rights (1789).  
What article of this Declaration refers to “free speech”?

Article 11 Declaration of Human Rights (1789)

### **Study Question 2**

Some Asian leaders (for example in Singapore and Malaysia) claim that "Asian Values" (= sense of respecting authorities and belief that the group is more important than the individual) prevail over human rights. They say that they can grant economic freedoms (like freedom of possession and freedom of profession) but must not grant other individual freedoms (like freedom of speech) at the same time, because these individual freedoms are an obstacle for state control and economic growth.

Do you agree or disagree with that opinion? Explain your opinion!

As human rights are not only inherent to each individual and inalienable but also indivisible and universal the claim that Asian values prevail over human rights is not correct.

### **Study Question 3**

Please read the covenants and declarations which are called the “International Bill of Rights”.

What articles deal with the “right to vote”?

Article 21 UDHR  
Article 25 b ICCPR



### Study Case 1

A mob of angry people kills a thief in the streets of Phnom Penh. The people are laughing.

- a) Try to imagine what they think and feel. Describe the peoples' feelings!
- b) Try to imagine what the victim feels and thinks. If you were in her/ his position, what would you say for your defense?
- c) Try to imagine what the shopkeeper feels and thinks, whose property was stolen by the thief. Describe what s/he would say?

Discuss these questions with friends and / or colleagues!

### Study Question 4

- a) What basic human rights are involved in the conflict between shopkeeper, thief and mob members?

Shopkeeper: right of property (Article 44 I CC)  
right of protection by the police (security - Article 32 I CC)

Thief: right to live  
right of physical integrity (Article 38 I, II CC)  
right not to be tortured (Article 38 III CC)  
right not to be sentenced to death (Articles 32 II CC)

Members of the mob: right of free expression (Article 41 I 1CC) but no right to kill

- b) What are the reasons for mob killings?
  - Weak law enforcement by the police and the judiciary (no punishment of thieves and no punishment for mob killers).
  - No public condemnation of mob killings by leading politicians, governors.
  - Getting rid of frustration and tension by mistreating a lower person creates good feeling.
- c) How could this conflict be solved?
  - Intervention by bystanders to rescue the thief.
  - Clear instructions by the chief of police or chief prosecutor punish people who kill a thief.
  - Teaching of clear moral and legal standards in the schools about the human rights that even a thief has.
  - Anti-Corruption measures to prevent policemen to release caught thieves for money.



### Study Question 5

Please cite international and national legal provisions (articles) which protect the rights of women to control their own bodies.

#### International provisions:

- Article 5 UDHR (Universal Declaration of Human Rights)
- Article 7 Sentence 1 ICCPR (International Covenant in Civil and Political Rights)
- Article 2 lit b, c e, f, Art. 3, Art 5 I, Art 6 and Art 16 I lit e CEDAW (Convention on the Elimination of Discrimination against Women)
- Article 34 CRC (Convention on the Right of the Child)
- Article 2 in connection with Article 1 Slavery Convention (in case of women being trafficked)

#### National provisions:

- Article 45 I and II, Art 46 I and Art 48 I Cambodian Constitution
- Article 172 Labor Law
- Article 33, 41 and 42 UNTAC Criminal Code
- All articles of the Law on Kidnapping, Trafficking and Exploitation of Human Persons (January 1996)
- All articles of the Draft Law on Domestic Violence (1<sup>st</sup> chapter is already adopted by the National Assembly, see attachment)

### Study Question 6

In 2002 all karaoke bars in Phnom Penh were shut down by a decree and had to close within a very short period of time.

**a)** Who are the involved parties in this case?

The involved parties are:

- the Government
- the karaoke bar owners
- the employees in the karaoke bars
- the customers of the karaoke bars and
- the neighbors of the karaoke bars who might be embarrassed by the noise

**b)** Please name and explain the competing interests of each party. Also cite the relevant legal provisions:

Interest of the Government:

- to ensure public order and security, Article 52 sentence 2, alternative 2 of the Cambodian Constitution (CC)
- to abolish exploitation of women in employment, Article 45 II CC
- to create decent living conditions for women, Article 46 III CC



Interest of the bar owners:

- to have the right of property, Article 44 I and II CC

Interest of the employees:

- personal freedom, Article 32 2<sup>nd</sup> alternative CC
- to freely choose any employment, Article 36 I CC,

Interest of the customers:

- to enjoy personal freedom, Article 32 2<sup>nd</sup> alternative CC

Interest of the neighbors:

- to enjoy personal freedom (for example to sleep whenever they want to) and security, Article 32, 2<sup>nd</sup> and 3<sup>rd</sup> alternative CC

**c)** Did the order to shut down the karaoke bars comply with the “principle of proportionality”? Explain your legal opinion!

The “principle of proportionality” states that administrative actions can only be taken by using the softest measure first. Only if the softest measure does not lead to the intended reaction the next strongest measure can be taken. Step by step the scale from soft to radical measures has to be followed.

To shut down **all** karaoke bars **within a very short period of time** is not proportionate. To achieve the Government’s goal which was to ensure public order and security (Article 52 sentence 2, alternative 2 CC) it was not necessary to close down all karaoke bars because not all karaoke bars were operating illegally (for example as brothels). But even if they were operating illegally, it was not proportionate to shut them down in a very short period of time. The fundamental right of the bar owners to possess (Article 44 I and II CC) requires a previous information that they will be given time (i.e. 2 weeks) to shut down the location by themselves. Only when the illegally operating owners do not close down their bars the Government can execute its order by itself (so called “substitute execution”).

### **Study Question 7**

After the Anti-Thai riots of 29<sup>th</sup> January, 2003 the authorities stated:  
“We could not stop the violent demonstrators because we only had two choices: Either to let them go on or to shoot them”.

Please read the Law on Demonstration.

Are there really only two choices for the authorities?

What different measures does the Law on Demonstration provide for violent demonstrations? (Do not forget to quote the relevant articles precisely!).



The answer is: No, there are not only two choices (to shoot or let go on) but there are a lot of different measures according to the Law on Demonstration.

- 1) the authorities can ban the demonstration (Article 4 I Demonstration Law)
- 2) the authorities can announce the ban twice (Article 4 II)
- 3) if the demonstrators continue to demonstrate they can be dispersed with equipment that does not endanger life
- 4) armed demonstrators can be disarmed (Article 5 I)
- 5) demonstrators who do not hand over weapons can be detained temporarily (Article 5 II)
- 6) violent demonstrations can be stopped with the most appropriate measures (Article 6 I)

### Study Question 8

Case:

The police arrest one of the men who raped a woman. In prison they ask him to give the names of the other perpetrators but he refuses to do so. The police beat him severely in order to get the names of his friends.

The beaten prisoner contacts his lawyer and asks him/her to complain about his ill-treatment with the authorities.

Is his claim justified?

Please examine this question by answering – step by step – each question of the checklist!

1) Who are the **persons and institutions involved** in the conflict?

- prison officers (police)
- beaten rapist
- lawyer
- prison
- court

2) What are the **conflicting interests** of these persons and institutions and how do they relate to each other?

beaten rapist:	he does not want to be beaten
prison officers:	they want to get information with whatever means (even by beating severely) from the rapist about other perpetrators who have raped women
lawyer:	he wants to defend the interest his client
prison:	detains convicted criminals and accused persons in pre-trial detention
court:	must find justice through independent judges by applying the law



### 3) Human rights and duties:

a) What human rights are affected?

#### Beaten rapist:

- Article 38 VI 1 Cambodian Constitution: right not to be ill-treated as a detainee
- Article 7 Sentence 1 ICCPR: right not to be tortured or treated cruelly and inhumanely (general clause for everybody!)
- Article 10 I ICCPR: right of detainees to be treated with humanity and respect for the inherent dignity.
- Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988

principle 1 }  
 principle 6 }

every prisoner shall be treated in a human manner, no torture or cruel, inhuman or degrading treatment
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#### Prison officers:

- Article 32 I Cambodian Constitution: right to personal freedom

b) What are the legal duties of the involved institutions?

#### Prison:

Article 38 III Cambodian Constitution in connection with Article 3 Nr. 1 Proclamation on Administration of Prisons (Prakas of 31<sup>st</sup> March 1998): Prisons must be administered in accordance with “relevant laws and human rights conventions”. That means that the Cambodian Government has to ensure that no ill-treatment or torture happens in Cambodian prisons

#### Court:

Article 128 II Cambodian Constitution: Courts have the duty to guarantee and uphold impartiality and to protect the rights and freedoms of the citizens

4) What is the meaning of the different terms in the human rights articles?

#### Right to be treated humanely:

= to be protected against physical or mental abuses and not to be deprived, temporarily nor permanently, of the use of any of one’s natural senses, such as sight or hearing or of one’s awareness of place and the passing of time.

A definition of “torture” which is the exact opposite of being treated humanely can be found in Article 1 I CAT (Convention against Torture)

#### Right to personal freedom:

= to do what I want to.



5) Does the human rights article **apply** to the concrete case?

Beaten rapist:

He does not want to be beaten. Beating is a physical abuse where somebody can at least temporarily loses her/his awareness of place. **Yes**, Article 7 Sentence 1 and Article 10 I ICCPR, Article 38 IV 1 Cambodian Constitution and the principles 1 and 6 of the Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988 **do apply** to this case.

Prison officers:

They want to get more information about other men raping women. To do so they want to use every mean to find out regardless what consequences. They want to act as they want to.

**Yes**, Article 32 I Cambodian Constitution **does apply** to this case.

6) What are the **restrictions** on this human right?

Beaten prisoner:

There are **no** restrictions on his human right to be treated humanely in Article 7 Sentence 1, 10 I ICCPR and **no** restriction in Article 38 IV 1 CC Article 2 Nr. 2 CAT even clarifies that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, international political instability or any other public emergency may be invoked as a justification of torture.”. That means that even under the above mentioned serious circumstances the human right of being treated humanely and not be tortured **can not be restricted** – a “little bit of torture whatever sort” is not allowed!

Prison officers:

There is only **one restriction** to the right of freedom in 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 exercise of such rights and freedom shall be in accordance with the law.”

That means that the right of freedom can only be restricted by the rights and freedom of others

7) Do **special laws** exist which **regulate restrictions** on the human right?

Beaten prisoner:

there can be no special law because there is no restriction!

Prison officers:

Article 12 Nr. 1 and Article 12 Nr. 2 UNTAC Criminal Code in connection with Principle 1 and 6 for the Protection of all Persons under Any Form of Detention or Imprisonment (1988) is such a special law which regulates the restriction “rights and freedom of others” (Article 31 III CC). The prison officers are not entitled to beat the rapist to get further information from him about other culprits. No circumstances whatsoever can justify their beatings even if other criminals will not be found and will go on raping women!



**8) Are the imposed restrictions proportionate or too strong?  
 (“Principle of Proportionality”)**

In this case we do not need to examine whether the measures taken by the prison officers were proportionate or not because there are not any restrictions on the beaten prisoners’ human right of being treated humanely.

If the International Conventions or the Cambodian Constitution do not say anything about restrictions then every measure taken to restrict a human right is illegal – there is not any room left for proportionate action.

In our case here the claim (see Article 39 Sentence 1 CC – right to make complaints) of the beaten prisoner is justified.

The court which has to settle this conflict (Article 39 Sentence 2 CC) has to punish the prison officers. Article 38 IV 2 CC states that persons who commit, participate or conspire in acts of coercion or physical ill-treatment shall be punished according to the law. This law is Article 57 in connection with Article 41 UNTAC Criminal Code. The prison officers can face imprisonment of one to three years.

### **Study Question 9**

**a)** Please cite international and national legal provisions (article numbers) which protect the rights of free expression!

International provisions:

- Article 19 UDHR (Universal Declaration of Human Rights)
- Article 19 Nr. 1 and Nr. 2 ICCPR (International Covenant in Civil and Political Rights)
- Article 5 lit d (8) CERD (Convention on the Elimination of Racial Discrimination)
- Article 13 I CRC (Convention on the Right of the Child) is a specific protection of free speech for children

National provisions:

- Article 41 I 1 Cambodian Constitution
- Article 1 and Art 20 sentence 2 Press Law
- Article 28 Nr. 1 UNTAC Criminal Code



**b)** For what reasons the freedom of expression can be restricted?

Please list them all as they are mentioned in the national and international law texts.

Reasons of restrictions in international law texts:

- Article 29 Nr. 2 UDHR: freedoms (also the freedom of speech) can be restricted by laws which have the purpose to protect
  - rights and freedoms of others
  - morality, public order and general welfare
  
- Article 19 Nr. 3 ICCPR: freedom of speech can be restricted only by laws which protect
  - rights or reputation of others
  - national security
  - public order
  - public health or
  - morals

Reasons of restrictions in national law texts:

- Article 41 I 2 Cambodian Constitution:
  - rights of others
  - good traditions of the society
  - public law and order
  - national security
  
- Article 5 Press Law:
  - national security
  - relation with other countries
  - rights of individuals
  - confidential commercial and financial documents
  - rights of others to a fair trial
  - public officials carrying out the law
  
- Article 62 UNTAC Criminal Code:
  - disturbance of public peace
  
- Article 63 Nr. 1 Sentence 1 UNTAC CC:
  - honor or reputation of another person

**Study Question 10**

An article in a small newspaper names a politician a “corrupt dog”. The politician files a complaint against the newspaper at the civil court. The civil court imposes a fine of 5 Million Riels on the newspaper (see Article 10 V Press Law). The small-sized newspaper can not pay this amount of money and has to close down.



**a)** Is this restriction of the freedom of expression covered by the Cambodian Constitution?

No, this restriction (a fine of 5000.000 Riel) is not covered by the constitution. The purpose of the restriction is covered by the constitution (protection of the rights of others) but the intensity of the restriction is not covered by the constitution.

In other words: It is constitutional to fine a newspaper for using insulting words but it is not constitutional to choose such a strong fine with the consequence the newspaper has to close.

In detail:

Article 41 I 2 CC limits the freedom of expression and authorizes the lawmaker to restrict this freedom for the purpose to protect the “rights of others”. Based on this constitutional authorization Article 10 V Press Law provides the possibility to impose restrictions on the free press for the protection of the right of personal dignity (Article 38 II CC) against insults and defamation. Therefore Article 10 V Press Law is covered by the Constitution. The newspaper can be fined for using the word “dog” which insults the politician.

But the constitution only allows restrictions which are necessary to protect the right of others (“principle of proportionality”). This means the intensity of the restriction must always keep a balance between the restricted right (freedom of press) and the protected right (dignity).

Article 10 V Press Law gives the court the choice to impose a fine between 1000.000 Riel and 5000.000 Riel to protect the dignity of persons against insults. So when the court applies Article 10 V Press Law it has to balance the freedom of press and the right of dignity. So it can only impose a fine which is strong enough to protect the dignity but is not so strong that it forces the newspaper to close.

In the abovementioned case the fine was too strong because it forced the newspaper to close.

So this restriction was not covered by the constitution.

**b)** What would be a proportionate reaction of the court to this case?

The court could have imposed softer restrictions which do not force the newspaper to close but which still are painful enough for the newspaper that it does not repeat the insult.

Example:

- The court could have imposed a fine of only 100.000 Riel (Article 10 V Press Law). If such a fine would be still too much and would force the newspaper to close then:
- The court could have ordered only the publication a retraction (or a public excuse) by the newspaper (Article 10 III Press Law) or
- The court could have ordered the payment of financial compensation to the politician for the damage of his personal reputation and dignity.



**c)** Look at the restrictions on freedom of expression in Article 12 I Press Law. Are the two different terms “national security” and “political stability” compatible with the Cambodian Constitution?

Article 41 I 2 CC allows restrictions on freedom of expression only for a limited number of purposes. It names explicitly 4 different purposes. These purposes are:

- to protect the right of others
- to protect the good traditions of society
- to protect public law and order
- to protect national security.

Only in these explicitly named cases the lawmakers can regulate restrictions on the right of free expression. In all other cases which are not mentioned by Article 41 I 2 CC restrictions are not allowed by the constitution.

Therefore Article 12 I Press Law is only covered by the constitution as it regulates restrictions on the right of free expression for the purpose to protect “national security”. But Article 12 I Press Law is not covered by the constitution as it regulates restrictions on the right of free expression for the **purpose to protect “political stability”**, simply because this purpose is **not mentioned in Article 41 I 2 CC**.

Political stability may be a positive value for a troubled society. But the term “political stability” is too vague and unclear. What is political stability? Who can give a definition of this term which is so precise that people know in advance what would be allowed or not? Allowing restrictions on free expression to protect “political stability” would open the door for the government to restrict any expression of criticism or opposition or free discussion by just calling it a “threat for political stability”. Therefore the constitution does not allow restrictions on the fundamental right of free expression for the purpose to protect “political stability”. The constitution basically allows only restrictions of free expression if it damages the honor of other person by insults or defamation or if it disturbs public order by intentionally inciting people to commit violence or if it endangers the security of the nation by disclosing for example military secrets.

### Study Question 11

Please read the Press Law.

**a)** Does the Press Law allow censorship? Quote the relevant regulation(s)!

In general: Censorship means prior approval of the contents of any publication of the mass media by the government for the purpose of spreading or concealing certain information. Without this permission publication is illegal.

Censorship means pressure on journalists and hinders them from performing their professional duties.

To avoid this interference Article 3 Press Law states: “To maintain the independence of the press, pre-publication censorship shall be prohibited.”



Nota Bene:

- Article 10 paragraph 1 sentence 1 Press Law does not allow censorship but is a legal basis for a claim in case of publication of false information which can harm the honor or dignity of a person – or in case of a public figure (like a politician) – if a false information is published with malicious intend. As you can see in Article 10 paragraphs 3, 4, 5 and 6 it is the court (not the government!) which has to decide whether a published information is false or not.

- Article 11, 12, 13, 14 and 15 Press Law do not regulate censorship but clarify restrictions on the freedom of speech for the press media.

Attention: Article 12 III Press Law may be abused as a post-publication control (and therefore as a mean of intimidation to the journalists and newspapers) by the government because the Ministry of Information and the Ministry of Interior are entitled to confiscate publications of the press which “affect national security and political stability” (see Article 12 I Press Law). It is not yet defined clearly – neither by the Cambodian Courts nor by the lawmakers – what “national security” and “political stability” really mean. There is plenty room of interpretation and a risk that the government arbitrarily will define this indefinite legal terms for its own political purposes.

**b)** Article 20 Press Law refers to possible violations of the Criminal Code. Please cite them carefully!

Article 48, 49, 50, 59, 60, 61, 62 and 63 UNTAC Criminal Code

**c)** Case:

The members of “The Teachers’ Association” discuss their salaries and a possibility to go on strike. The Provincial Governor claims that this discussion is illegally because it is a threat to “national security” as higher salaries would damage the national budget. Then he prohibits the discussion.

Is his prohibition legal or illegal?

**1)** By sitting together and discussing their salaries the teachers exercised their right of freedom of speech as stipulated in Article 41 I 1 Cambodian Constitution.

**2)** By prohibiting the discussion the Provincial Governor referred to the “national security” as one of the restrictions of the freedom of speech, Article 41 I 2 Cambodian Constitution.

The legal term “national security” is not defined in the law. As this legal term is a restriction of one of the most fundamental human rights its definition has to be very narrow and can not be any security interest of the government.

In order to find a definition Article 52 Cambodian Constitution which regulates the general obligation of the Royal Government of Cambodia can help: “The Royal Government of Cambodia shall protect the independence, sovereignty, territorial integrity of the Kingdom of Cambodia, adopt the policy of national reconciliation to insure national unity, and preserve the good national traditions of the country. The Royal



Government of Cambodia shall preserve and protect the law and ensure public order and security. ...”

The context of this article shows that “national security” can only mean a threat to the state of Cambodia in a whole and a danger for the life and security of the whole population, for example caused by a military attack of another country or incitements to a violent overthrow of the government (also see the “Johannesburg Principles” Art. 1.1, 1.3, 2, 6 and 7 ([www.hrni.org/~lhennebe/files/instruments/HRNi\\_EN\\_470.rtf](http://www.hrni.org/~lhennebe/files/instruments/HRNi_EN_470.rtf)))

**Result:** The peaceful discussion of the teachers about higher salaries is not a threat to “national security” even if the national budget might be concerned. The Provincial Governor’s prohibition is illegal.

### Study Question 12

Please read the following Chapter 7.12.14 of the regulation of the National Election Committee (NEC).

“The NEC has the right to order the correction or removal of parts of or all educational materials that do not comply with the definition above or that is in infraction of point 7.12.3. and 7.13.8. The concerned organizations shall make the correction as necessary as requested by NEC. In case of serious mistake the concerned organization shall be subject to penalties as stated in Article 131 LEMNA.”

Does of this regulation violate the LEMNA or not? Give a reason for your answer!

The NEC regulation (chapter 7.12.14) is not based on the law. The NEC regulation violates Article 131 of the Election Law because this article authorizes NEC only to punish political parties for illegal campaigning activities (Article 73 - 76) but not to punish NGO which only distribute neutral voters’ education material. NGO are not political parties. They can not campaign because they do not stand for election and voters education is not informing about party platforms (see Article 70 of the Election Law). So the NEC regulation is illegal, because it is not based on the law.

### Study Question 13

**a)** Please read the LEMNA!

Which articles of the LEMNA regulate punishment for negative influences on the election process? Please name the article(s) and the article number(s)!

Articles 122 -133 of the Election Law



**b)** Which article(s) of the Criminal Code regulate punishment for negative influences on the election process? Please name the articles and the article number(s)!

Article 64 of the Criminal Code

**c)** Which of the article(s) of the LEMNA and the Criminal Code prohibit vote-buying?

Article 124 Nr. 10 of the Election Law says:

Regardless of any possible criminal penalty his/her name shall be deleted from the lists of voters and of a political party list participating in the election, and his/her candidacy shall be cancelled by the National Election Committee, and/or shall be fined from five million (5,000,000) to twenty-five million (25,000,000) Riels, a person or political party that offers material or monetary incentives to buy votes.



### Study Case 2

The Supreme Patriarch Tep Vong released a “Prakas” (decree) which prohibits monks to register and vote during the 2003 National Assembly Election.

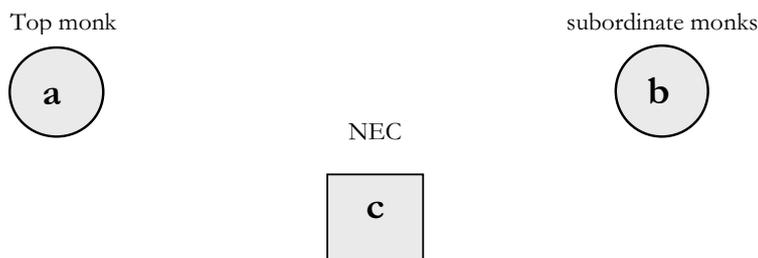
Does he act legally or illegally?

Use the checklist on page 29 and answer all questions step by step!

## *Checklist to Solve a Human Rights Case*

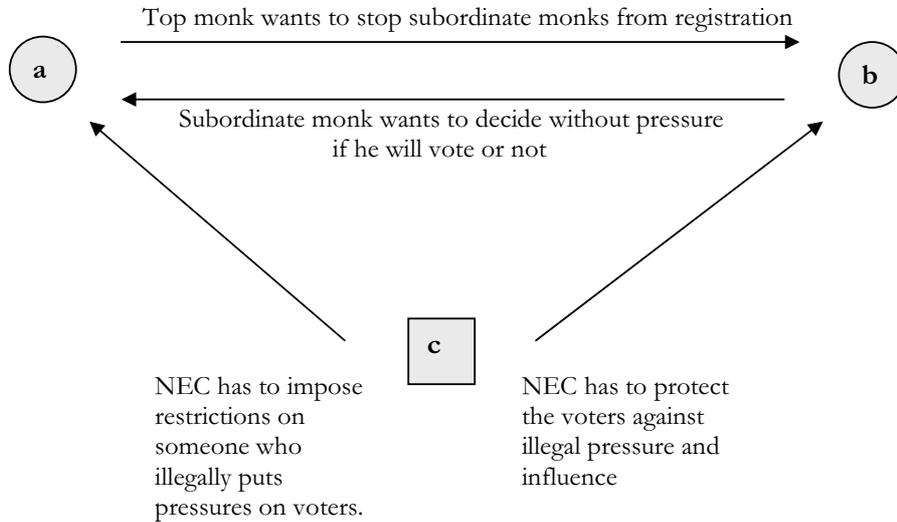
### **1) Who are the persons and institutions involved in the conflict?**

The top monk (a) orders his subordinate monks (b) not to register and not to vote.  
The National Election Commission (NEC) (c) is requested to check the compliance of this order with the Election Law.





**2) What are the conflicting interests of these persons and institutions and how do they relate to each other?**



**3) Human rights and duties:**

**a) What human rights are affected?**



- freedom of expression
- freedom of religion



- right to vote freely

The top monk (a) is a religious person. He claims religious reasons for his position. So he could claim that he is only exercising his right of free religion when he orders the monks not to register and not to vote. The top monk has also written a “Prakas” in which he expresses his position that the monks should not register or vote. He could also claim that he exercises his right of free expression.

The subordinate monk (b) wants to register and to vote. So his right to vote could be affected. He wants to vote without pressure in a free election process so the right of free vote could be affected by pressure from the top monks order.

**b) What are the legal duties of the involved institutions?**

The NEC has the right to investigate violations of the Election Law and has the duty to protect voters (for example by imposing a fine on the violator), see Article 76 III CC, Article 16 Sentence 2 and 3 Election Law.

The Cambodian Government has the duty to protect law and public order (see Article 52 S.2 CC).



#### 4) What is the meaning of the different terms in the human right articles?

You find more information on the meaning of the term “free expression” on page 34 and 35 and of the term “free election” on page 45 and 46. If you do not know what “freedom of religious belief and worship” in Article 43 I, II CC means you find a more detailed description of this freedom in Article 18 I 2 ICCPR.

#### 5) Does the human rights article apply to the concrete case?

The top monk can claim freedom of expression for his order because he is expressing his opinion in writing (Article 19 II ICCPR which clearly points out that all forms of expression are protected - not only free “speech” is protected).

He can also claim freedom of religion for his order because he is acting as a religious leader giving instructions to the members of his religious group. This is part of exercising religious freedom (Article 18 III ICCPR).

The subordinate monk can claim the right to a “free” vote. This means that not only his right to vote must be given to him by the election law but that the whole election process which includes voters registration must be “free”. So his right is already affected when long before the day of election the top monk orders him not to register and not to vote. As “free” means free of undue, illegal or illicit influence, the monk can claim that he should not be put under pressure.

If the top monk would have just expressed his personal view but would have left it up to the monks to follow him because they are convinced or not then it does not affect their freedom of voting because this kind of intellectual influence is a legal and normal influence. But using pressure like using the form of an order which is called “Prakas” could be a violation of this freedom.

#### 6) What are the restrictions on this human right?

- Freedom of religion: Article 43 II CC protects this freedom only under the condition that it does not affect “other religious belief” or violates “public order and security”. Article 18 III ICCPR additionally names “public health” as a purpose for restriction.

The top monk’s freedom of religion could be restricted to protect “public order” which includes free voting. Free religion gives him no right to put pressure on other voters.

- Freedom of voting: This freedom does not know any restrictions. It is protected absolutely without any conditions (Article 43 I, II and Article 76 II CC and Article 25 b ICCPR).



## 7) Do special laws exist which regulate restrictions on the human right?

Yes. Look into the

- Law on the Election of the Members of the National Assembly (LEMNA) and
- the UNTAC Criminal Code!

In the LEMNA you can find detailed provisions on how the National Election Committee (NEC) can impose sanctions against undue and illicit influencing of voters. It regulates in detail which restrictions can be imposed to persons who violate the right of free voting of another person.

Article 124 LEMNA for example regulates restrictions which can be imposed to protect the right of the voters. It reads as follows:

### Article 124 LEMNA:

Regardless of any possible criminal penalty, his/her name shall be deleted from the list of voters and of a political party list participation in the election, and his/her candidacy shall be cancelled by the NEC, and s/he shall be fined from five million to twenty five million Riels, a person or political party that:

- uses force, violence or intimidation against any eligible voter to deter him from registering or prevents registration of eligible person in the list of voters and electoral book list...
- use force or violence to prevent eligible voters from voting or standing as a candidate...
- use force, violence, threats, or insults as to intimidate, confuse the voters, or to undermine the credibility of the election or the secrecy of the voting ...

The “Prakas” of the top monk, telling his subordinate monks that they should not register and vote, can not be considered “as a use of force or violence” but as an “intimidation” to “deter” the monks as citizens and voters from registering under Article 124 LEMNA as the monks may fear to do something wrong and forbidden if they register against the order of their superior monk. (*On the contrary one might say that intimidation is only an act which causes fear or real anxiety or even horror or comparable strong feelings*)

It could be also seen as an act of “preventing” registration of monks as the reality has shown. When the “Prakas” was posted at the registration offices in many cases monks hesitated to register or were not registered by the officials who referred to the parkas. (*On the contrary one might say that the act of prevention of registration can only be committed by registration officers, who directly have an influence on registration. But as Article 124 LEMNA refers to anybody and not only to election officials like Article 122 LEMNA this interpretation seems not be correct*).

Finally this “Prakas” could be a “threat” to “confuse” the (monk) voters about their rights, as they are insecure whether they can or can not refuse to follow the order and vote. It also could be seen as an act of “threatening” the voters “to undermine the credibility of the election” as monks are seen by the public as valued examples of leading



a good honest life and as monks are educated people whose widespread absence from the act of voting puts damage to the public awareness of the value of the election as a means of nonviolent articulation of political will. (*Again one could counter this interpretation by saying that a threat holds out the prospect of an immediate and severe disadvantage which makes the threatened one anxious*).

As the free formation of the voter's will has to be protected it is tenable to state that any form of influence and interference is enough to violate voters' rights, so it does not necessarily take horror, fear or anxiety on the side of the victim but any undue influence caused by simple threats or coercions such as by orders of the superior who uses his/her authority and power is illegal already.

The clearest provision is Article 64 UNTAC Criminal Code which explicitly protects the "free exercise of electoral rights of a voter" against "any form of coercion and interference" not only by intimidation but also by "illicit behaviour".

As an illicit behaviour it could be seen that the superior monk uses his authority and his influence to order directly his subordinates who depend on him and his leadership not to vote, thus clearly acting against the spirit of the constitution and the LEMNA that obviously wants a free exercise of voters' wills.

Even though Buddhism is called the state religion by the Cambodian Constitution (Article 43 III CC) this does not entitle the superior monk to interfere in such a political and important matter of public life as the elections because Article 43 II CC clearly says that the exercise of freedom of religion shall not violate the public order, part of which is holding free elections. So the superior monk behaves "illicitly" if he does not remain silent and neutral but clearly and outspokenly tries to deter his monks from voting. Not voting is itself also not a neutral act but a kind of expressing the political will as well.

### **8) Are the imposed restrictions proportionate or too strong? (Principle of Proportionality)**

The LEMNA gives the NEC different measures to react (Article 16 Nr. 1, 16, 24, 26 and Nr. 28 and Article 122 Nr. 4 and Article 124 LEMNA). The NEC is responsible for preventing electoral irregularities and for reviewing the legality of the elections. Therefore it has the duty to check the legality of the "Prakas" of the Superior Monk.

NEC could first talk with the top monk and inform him about the principles of free vote. This would be the softest measure.

NEC could further

- issue a warning or,
- instruct him to withdraw his order or,
- impose a fine (Article 124 LEMNA) or
- file a claim with the prosecutor for criminal punishment (Article 64 UNTAC Criminal Code - strongest measure). The criminal law court would have to decide if this law was violated. It is not necessary to file a criminal claim against the top monk when it would be enough to convince him by teaching him about the election law.



### Study Question 14

a) Please cite international and national legal provisions (article numbers) which protect the freedom of assembly.

#### International provisions:

- Article 20 Nr. 1 UDHR (Universal Declaration of Human Rights)
- Article 21 Sentence 1 ICCPR (International Covenant in Civil and Political Rights)
- Article 5 lit d (9) CERD (Convention on the Elimination of Racial Discrimination) (Article 15 I CRC (Convention on the Right of the Child) is a specific protection of freedom of assembly for children)

#### National provisions:

- Article 41 I 1 Cambodian Constitution
- Article 1 Sentence 1 Law on Demonstration

b) What are the restrictions on the freedom of assembly?

- Article 41 **Sentence 2** Cambodian Constitution:  
“... No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. ...”
- Article 21 Sentence 2 ICCPR:  
“... No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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.”

Therefore restrictions to the freedom of assembly can only be:

- rights of others (ICCPR: “rights and freedoms of others”)
- good tradition of society (ICCPR: “morals”)
- public law and order (ICCPR: “public safety and public order”)
- national security (ICCPR: “national security”)
- public health (ICCPR)

In detail:

- rights of others: human rights of others
- good tradition of society: This is a very vague legal term and it is the society itself who must define these traditions. The lawmakers as representatives of society define this term in **law** texts (example: Article 14 Press Law). For example “good traditions of the Khmer society” should be to respect older people (Article 47 II CC) or to respect the “inviolable” Cambodian King (Article 7 III CC).



- public law and order: all laws which protect the rights of others
- national security”: “national security” does not mean every security interest of the government but a threat to the life and security of the whole nation (for example: a military attack on Cambodia by an other country or incitements to a violent overthrow of the government)
- public health: the health of **all** Cambodian people  
SARS or DENGUE for example can be considered as a threat to public health

**c)** In February 2002 Police units, military police units and roadblocks were stationed on all major roads to Phnom Penh to prevent demonstrators entering the city. Potential demonstrators coming from Kandal, Kampong Cham, Kampong Chhnang and Kampong Speu were following a call of the “Cambodia Watchdog Council” – a consortium of five union groups – for a meeting in Phnom Penh to decide on strike action for the release of students and journalists arrested following the January 29 anti-Thai riots. Council members of the watchdog having earlier called for the resignation of Hun Sen canceled the meeting because of the Pagoda Boys’ presence, a pro-Hun Sen group, near the National Assembly (from: Cambodia Daily, February 11, 2002)

Was the action taken by the police in the first article (“Police: Protesters Turned Away From City) legal or illegal.

It was illegal.

Reason:

The police forces prevented peaceful and unarmed people from reaching the demonstration place although there were no clear and specific fact-based indications that their gathering would turn violent. Even potential violent counter-demonstrations (here by the “Pagoda Boys Association”) and violent clashes between pro-Hun Sen and anti-Hun Sen groups do not justify such strong measures.

But the contrary is true: The authorities are obliged to create circumstance where the fundamental right of freedom of assembly can be exercised without disturbance.

Here for example: allowing the people to reach the demonstration place and to protect them and their demonstration against violence of other persons by separating the two demonstrations.

It is not enough that the authority just “thinks” (see Art. 3 Sentence 2 Law on Demonstration) that a demonstration will turn into violence – only theoretical assumptions cannot justify the reduction of freedom of assembly down to zero.



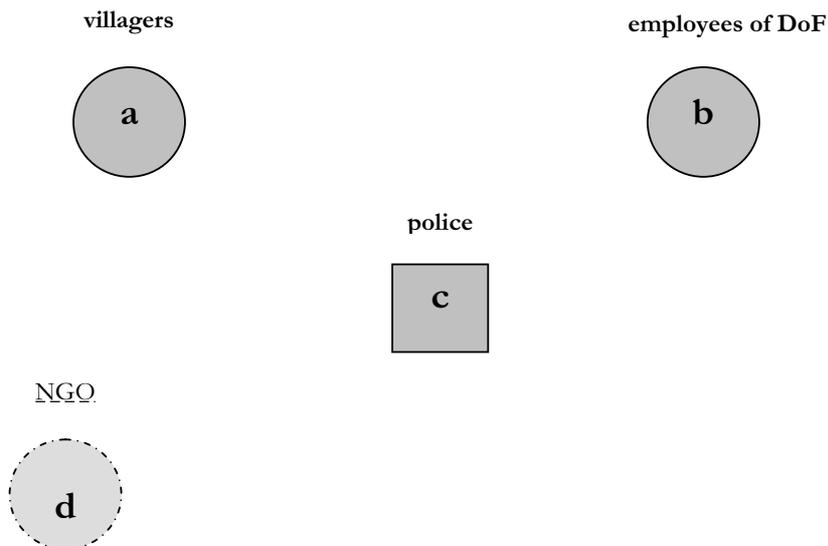
**d)** On 5<sup>th</sup> December 2002 a demonstration of about 175 people, hoping to discuss logging plans with logging companies and the Department of Forestry, was dispersed outside the Department of Forestry by police and military police allegedly using electric batons and truncheons. According to the logging monitor “Global Witness” a dozen of people were hurt and one 29 years old man died hours after the break up of the gathering, but the reason for his heart attack remained unclear. Police officials denied their officers beat the demonstrators but claiming that the demonstrators blocked the gate to the Forestry Department and an official there had called for them to move the demonstrators (from: Cambodia Daily, December 7, 2002)

Use the checklist on page 29 and answer all questions step by step!

### *Checklist to Solve a Human Rights Case*

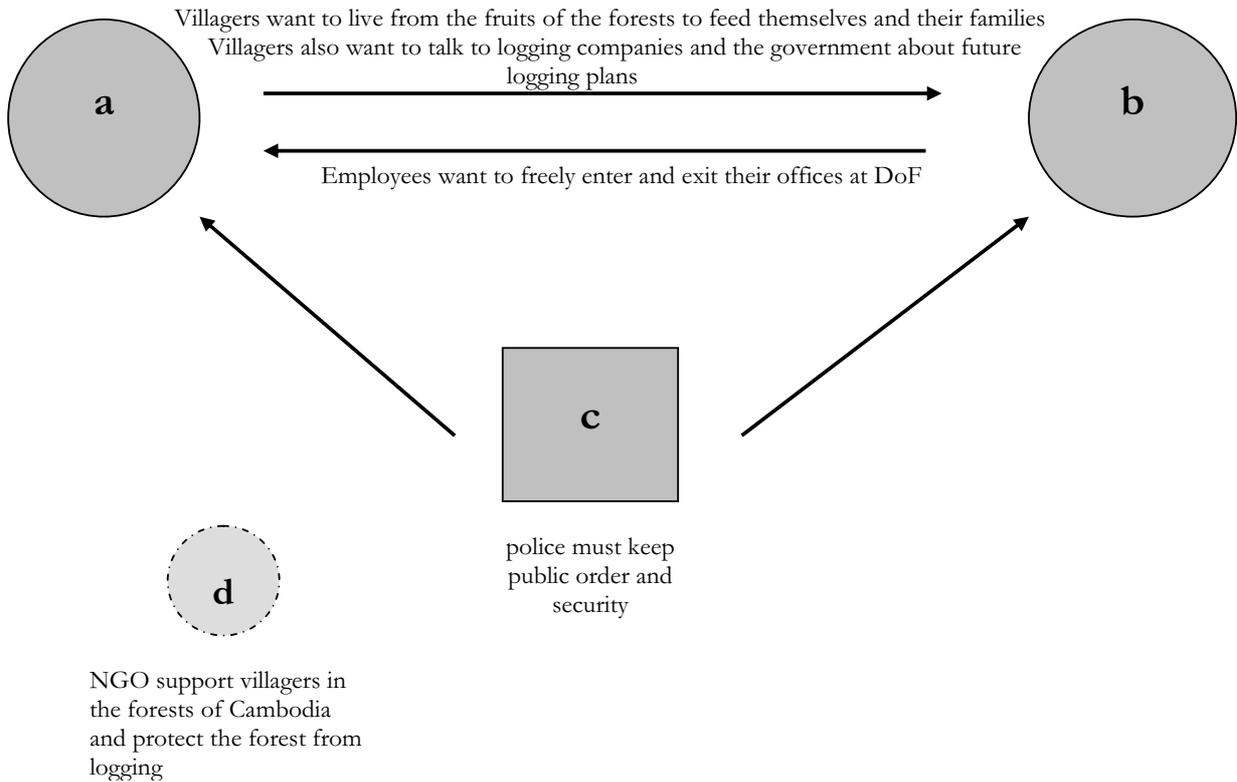
#### **1) Who are the persons and institutions involved in the conflict?**

- villagers demonstrating in front of the Department of Forestry (DoF) (**a**)
- employees of the DoF (**b**)
- police and military police (**c**)
- NGOs like “Global Witness” (not directly involved the conflict) (**d**)



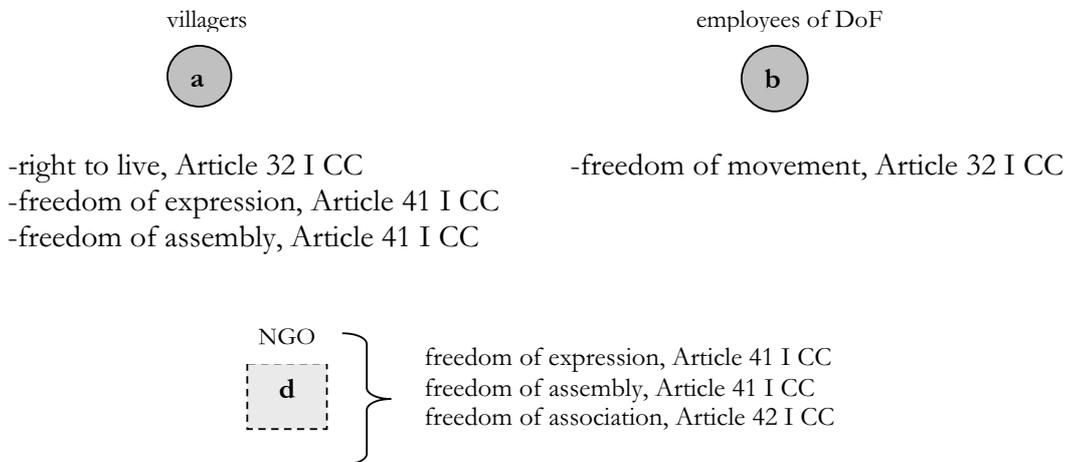


2) What are the conflicting interests of these persons and institutions and how do they relate to each other?



3) Human rights and duties:

a) What human rights are affected?





**b) What are the legal duties of the involved institutions?**

The Cambodian Government has the duty to protect law and order, Article 52 sentence 2 CC. To fulfill this duty the government installed the police.

**4) What is the meaning of the different terms in the human right articles?**

- right to live: to protect yourself against threats to physical integrity
- free expression: free flow and exchange of information, access to all sorts of media (books, newspapers, internet, radio, TV, cinema etc.)
- free assembly: to gather peacefully with other people in public or privately with the common intention to express an opinion, information or idea
- freedom of movement: to be free to move where ever you want to
- free association: to organize within a specific and durable structure to pursue a common interest

**5) Does the human rights article apply to the concrete case?**

- villagers: They want to survive because they live from the forest and its fruits. They want to keep their resources of nourishment alive. To underline this interest they came together in front of the DoF and want to discuss logging plans which may destroy their basis of living.  
**Yes**, Article 32 I and Art 41 I CC do apply to this case.
- employees of the DoF: They want to go in and out the department office freely, when ever they want to.  
**Yes**, Article 32 I CC does apply to this case.

**6) What are the restrictions on this human right?**

- Restrictions on the human rights of the villagers:
  - restriction on the right to live, Article 31 III CC:  
“rights and freedoms of others”
  - restriction on freedom of expression, Article 41 I 2 CC:  
“rights of others”  
“good traditions of society”  
“public law and order”  
“national security”
  - restriction on freedom of assembly, Article 41 I 2 CC:  
the same as for freedom of expression



- Restriction on the human right of the employees of the DoF:
  - restriction on freedom of movement, Article 31 III CC :  
“rights and freedoms of others”

## 7) Do special laws exist which regulate restrictions on the human right?

### Villagers:

right to live: Land Law, Fishery Law, Forest Law, Criminal Law  
freedom of expression: Press Law, Criminal Law  
freedom of assembly: Law on Demonstration, Law on Traffic, Criminal Law

### Employees of DoF:

freedom of movement: Law on Traffic, Criminal Law

## 8) Are the imposed restrictions proportionate or too strong? (Principle of Proportionality)

Or you also can ask: What would have been the measure that brings the best success with the least damage for the human rights involved?

### **Measures from soft to strong:**

- a) The police – by loudspeaker – can impose a condition on the villagers like: “Please leave the entrance of the Department of Forestry free and step 20 meters back.”
- b) If the demonstrators do not follow that order the police can repeat the condition and combine it with a warning like: “If you do not step back to clear the entrance of the Department of Forestry the police will remove all concerned persons to the other side of the street by force.”
- c) If some demonstrators still oppose this second order the police can grab the concerned persons and remove them with physical force to the other side of the street. Physical force means here by carrying the opposing person to the other side of the street and not beating and shooting them!
- d) If the demonstrators turn violent while being removed the police can detain them temporarily.

In our case the demonstrators gathered peacefully without being armed. There weren't any fact-based indications that their demonstration would turn violent which means a concrete and direct threat to the security of other people. The only thing they did was blocking the entrance of the Department of Forestry. But this could have been handled easily with measures described under a) – d).

Therefore the police forces abused their right in Article 6 I of the Law on Demonstration to take the “most appropriate” measures to stop the demonstration. Their measures taken were not “most appropriate”. They allegedly used electric batons and truncheons to beat peaceful demonstrators and there is even a possibility that a young man of 29 years had a lethal head attack caused by their unnecessary force.

Their action is therefore illegal.



### **Study Question 15**

In January 2003 violent Cambodians 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?

Demonstrators:

right of free speech, Article 41 CC

right of assembly, Article 41 CC

Thais:

right to live, Article 32 CC

right of property, Article 44 CC

right of equality, Article 31 CC

**b)** What was the reason for this violence?

- feeling of weakness and of being disrespected by Thais
- need to feel strong and superior by attacking Thais
- disregard of Thais as human beings /racial, national hate
- impunity for the violent demonstrators

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

Press Law:

Article 6 Nr.6: Journalists must avoid publishing information which incites racial discrimination

Article 11: Press shall not publish something which may affect public order by directly inciting one or more persons to commit violence.

Criminal Law:

Article 61 I: provoking national, religious or racial hate, that constitutes an incitement to discrimination

ICCPR:

Article 26: law has to protect against any discrimination

International Covenant to Abolish all Forms of Racial Discrimination:

Signatory states promise to punish all forms of dissemination of racial discrimination ideas.