



## *The Right to Vote*



### **A) Introduction:**

As human beings live together in groups they have the **basic need to participate** when decisions are made by the group that affects their lives.

As citizens they can **participate in the conduct of public affairs**

- **directly:** by exercising power as members of the legislative bodies (National Assembly and Senate) or by holding an executive office.
- **indirectly:** through freely chosen representatives in the legislative and executive bodies.

The basic need to participate is protected by the **human right to vote:**

#### Article 34 CC:

Citizens of either sex shall enjoy the right to vote and to stand as a candidates for the election.

#### Article 25 ICCPR:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;



Exercising the right to vote in an election process means for the people:

to articulate the will of the people<sup>42</sup>

and

to delegate their original power of decision about their own destiny to the elected representatives.

Article 51 CC:

The Kingdom of Cambodia adopts a policy of Liberal Democracy and Pluralism.

The Cambodian people are the master of their own country.

All powers belong to the people. The people exercise these powers through the National Assembly, the Royal Government and the Judiciary.

**B) The Basic Principles of a Democratic Election:**

As the elected representatives must be **accountable** for their work they are only elected for a limited period of time. After that period they have to face a new election process and have to compete again for the votes. This guarantees that the **executive power is based on the free will of the people** and can be held accountable at the next election (for example: not being reelected).

To vote means to choose among different solutions for public problems as offered by the political parties or single candidates. The process of selecting and choosing candidates as well as holding them accountable later on implicates that the voters are fully **informed** and can **freely discuss** about the parties, the candidates, the party goals, the actions of the government and the performance of the assembly members.

**Therefore freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.**

Furthermore the **formation of the free political will of the voters** needs protection against any form of undue influence.

To make sure that an election achieves the abovementioned goals and functions effectively some basic principles for any democratic election system have been defined in various law texts. These principles apply to all sorts of election:

<sup>42</sup> The word “Democracy” means: rule of the people!



An election must be:

- universal (all citizen of a certain age have the right to vote)
- equal (everyone has only one vote, no distinction between voters)
- direct (the candidates are elected directly without intermediaries)
- secret (the privacy of the act of voting at the ballot box is guaranteed)
- free (no intimidation or other undue influence on voters during the whole election process)

Article 76 CC:

The National Assembly consists of at least 120 members.  
The deputies shall be elected by a free, universal, equal, direct and secret ballot.

Article 25 ICCR:

Every citizen shall have the right ... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

The Human Rights Committee of the United Nations has given a detailed comment on these basic principles of a democratic election as enshrined in Article 25 ICCPR<sup>43</sup>. At the “Human Rights Network international”-homepage<sup>44</sup> more detailed information and decisions (case law) on election and international elections standard can be found.

**C) Free and Fair Elections:**

The first four principles (“universal”, “equal”, “direct” and “secret”) fortunately do not cause many problems in Cambodia.

- I) But the principle of a “**free**” election causes a lot of problems in Cambodian reality. The free formation of the voters will is often harmed by vote-buying or intimidations.

In detail the principle of free election requires

- to provide **effective procedures for voters to file claims** about violations of their free formulation of a political will
- immediate and thorough **investigations** of all claims
- sufficient **administrative or criminal law sanctions** on any form of intimidations or other undue influence on voters

<sup>43</sup> see Article 25 ICCPR at: [www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (click on the comment to this article)

<sup>44</sup> see [www.hrni.org](http://www.hrni.org) (click here on: Rights and Freedoms/Qualified Rights/Right to participate in government)



II) The “**fair**” conduct of the election process is also frequently not guaranteed in reality. Although there is no provision in the Cambodian Constitution, in the Cambodian Law on the Election of the Members of the National Assembly (LEMNA) or in any International Conventions that claims explicitly that an election has to be “fair” this principle exists and is applicable. It derives from the general provision in Article 51 of the Cambodian Constitution. This article states that Cambodia follows the way of a liberal democracy and abides to the principle of “pluralism” which means that all different political parties or candidates shall have the same (=fair) “chance” to participate in the conduct of public affairs. (see also the preamble and Articles 1 I, 34 I, 35 I, II and 50 I CC).

The **principle of pluralism** guarantees that **all candidates and political parties must have a fair chance to participate in the election.**

In the same way the **right to vote** (Article 34 CC) also implicitly includes that **every voter must have a fair chance to take part in the election process.** This means especially that s/he must be given sufficient chance to be registered as a voter and to cast her/his ballot.

In detail the principle of “fair” elections requires:

- equal **media access** for all parties (especially the small and the opposition parties)  
Example: For the 2003 National Assembly Elections the National Election Committee (NEC) set up media rules to ensure such an equitable media access.
- sufficient **voters education**<sup>45</sup>
- a **law on political parties** that does not restrict but support to found and run a political party  
Example: Excessive registration fees (see Article 20 XI Law on Political Parties) for political parties can obstruct them to participate in the election.
- **regulations for voters’ registration, campaigning and polling** that ensure the best and most unrestricted chances for voters to vote and for parties to campaign.

All this has to be guaranteed as far as possible by the election law and not just by administrative regulations of a not democratically elected body. The whole process has to be supervised by an independent election administration body which must be created in the most public and transparent way as possible.

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<sup>45</sup> see study question 12



### 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!



### 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 articles and the article number(s)!
- b) Which articles of the Criminal Code regulate punishment for negative influences on the election process? Please name the articles and the article number(s)!
- c) Which of the articles of the LEMNA and the Criminal Code prohibit vote-buying?



## 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?**

Who is acting in the case? Who is involved? What institutions act or need to act?

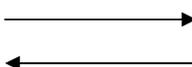
*Draw a graphic:*

Use  for person

Use  for institutions

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

*Draw a graphic:*

Use  *arrows to show the different interests of the involved persons and institutions*

#### **3) Human rights and duties**

##### **a) What human rights and what duties are affected?**

*Look into the Cambodian Constitution, the ICCPR and other international conventions!  
What human rights do you find there? Which one of these articles could be related to the involved persons? Name the human rights article precisely (for example: Article 41 Paragraph 1 Sentence 1 CC = Article 41 I 1 CC)!*

Always try to find not only general rights but the very special right

Example: The right to participate in politics (Article 35 I CC) is just a right which gives a general chance to take part in politics and social and cultural affairs. This right covers a broad scope of all different types of participation. It does not explicitly refer to the right to participate in politics by voting. For this special form of participating in politics there is a special right: The right to vote (Article 34 I CC). So do not quote the general right (Article 35 I CC) but only the special right (Article 34 I CC)!



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

*Look into the Cambodian Constitution and the laws!*

The government or any other state authorities are not human beings but institutions. Therefore as a institution they can not have *human rights*. But there are provisions in the constitution or in the law which authorizes these institutions to act and also gives them the duty to act. So these institutions also have rights and duties.

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

*Look separately at each term of the law article – for example: What means "free" election in Article 76 II CC or "expression" in Article 41 I 1 CC?*

*Where do you find comments, opinions, ideas which help you to interpret the meaning of the term?*

Commentary books and judgements which refer to the human rights articles of the Cambodian Constitution are hardly available in Cambodia. Therefore you first have to find the article of an international convention which deals with the same topic. Then you have to look for comments on this international article.

##### Example:

- If you do not know what the term "free" election means in Article 76 II CC you can take a look at Article 25 ICCPR which also guarantees a "free" vote. Comments on this international article do exist. If you look at the general comments of the UN Human Rights Commission on Article 25 ICCPR this will give you an idea what is "free voting" and what is the purpose of the protection of this freedom (see [www.unchr.ch](http://www.unchr.ch) - click on "treaties", then click on "ICCPR", then click on "general comment" to Article 25 ICCPR).
- If you do not know what the terms "physical ill treatment" or "any other mistreatment that imposes additional punishment" in Article 38 IV CC could mean, you could look at the International Convention against Torture which gives you a definition of the term "torture" in its Article 1. Or you can look at international declarations or resolutions on the rights of prisoners and detainees. (go for example to the "University of Minnesota Human Rights" - Webpage: [www1.umn.edu/humanrts](http://www1.umn.edu/humanrts) then click on: "Treaties and other international Instruments" in the menu "Human Rights Documents and Materials", then click on: "Treaties and other instruments organized by subject matter", then click on: "Rights of Prisoners and Detainees" or on "Protection from Torture, Ill-Treatment and Disappearance". Here you will find all kinds of declarations and resolutions which give further details and ideas about how prisoners should be treated and protected.) These **principles and declarations** are **not binding** but provide a helpful **tool for interpretation** and give you an idea what could be regarded as "ill treatment" of a prisoner.
- If you want to learn more about the term "freedom of expression" in Article 41 I 1 CC take a look at Article 19 II ICCPR which also protects this freedom and gives more details about the scope of this freedom.

If you need further helpful sources of information about any human right you can go to the *Human Rights Network International* homepage of the University of Bruxelles (go to [www.hrni.org](http://www.hrni.org), then click on: "Rights and Freedoms", then click on: "Qualified Rights" and then click on: "Freedom of expression"). Here you find case law (decisions of international bodies like the European or the Inter-American Court of Human Rights or the Human Rights Commission for example on freedom of expression cases), specific instruments (international declarations and resolutions for example on freedom of speech like the Johannesburg Declaration), articles (essays on this subject), special webpage addresses (for example of the International Press Institute) and so on.



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

*Examine the article step by step and term by term!*

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

*Read the human right article of the Cambodian Constitution and of the ICCPR carefully again: Are there any parts of it which refer to possible restrictions? What are the precise conditions for restrictions named in this article?*

*Notice:*

*Always look **first** at the **special restrictions** in the law text of the special human rights article. Only if you can not find any special restrictions there you may refer to the **general restriction in Article 31 III 1 CC** that the exercise of a right shall not adversely affect the rights of others. In this case restrictions on the exercise of rights can be set up by a simple law (Article 31 III 2 CC) which must have the purpose to protect the right of an other person and which can only allow the authorities to impose proportionate restrictions which are necessary to fulfill the purpose ("principle of proportionality").*

Example:

Freedom of expression: Article 41 I 2 CC lists up rights of others, good traditions of society, public law and order and national security. It does not foresee a limitation of free expression for the purpose to protect "political stability" (as it is for example mentioned in Article 12 I of the Cambodian Press Law). Article 19 II ICCPR additionally allows restrictions on free expression to protect "public health" and "morals".

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

*First find the Cambodian Laws related to the topic!*

Simple law regulates the details of constitutional restrictions: The lawmakers of the National Assembly – not (!) the ministers, provincial governors or any other members of the executive branch – have to find the balance between the different human rights of different persons. The lawmakers have to regulate which restrictions shall be imposed on the exercise of one human right to protect another human right. They must take care that the law only prescribes restrictions which are necessary (proportionate) to fulfill the purpose. The lawmakers are bound by the constitutional articles. They can only regulate restrictions which are allowed by the constitution (either by the special human rights article or by the general provision in Article 31 III 1).

Example:

- In a human rights case which has to do with freedom of expression you would look for provisions in the Press Law. Article 10 - 16 Press Law lists different restrictions which can be imposed under different conditions.
- Concerning the freedom of assembly you would look into the Law on Demonstration.
- Never forget to look into the Criminal Code (!) which provides a lot of restrictions on different topics, too. For example sanctions on free speech in case of defamation or sanctions on violating voters rights.



*Second search in these laws for details on measures of restrictions and then apply these laws to the case step by step and term by term!*

Example:

Article 64 Criminal Code states:

“Whoever, through intimidation, illicit behaviour, or any form of coercion, interferes with the free exercise of electoral rights of a voter or candidate or with the proper functioning of the electoral process is guilty of electoral fraud and shall be liable to a term of imprisonment of one to three years.”

Separate the term like this:

who ...

through ...  
- intimidation or  
- illicit behaviour or  
- any form of coercion

interference with ...  
- the free exercise of electoral rights of  
or  
- the proper functioning of the electoral process  
- a voter or  
- a candidate

**... is guilty of electoral fraud.**

*Then answer the question: Did the top monk use intimidation, illicit behaviour or any form of coercion to interfere with the free exercise of the voters’ right?*

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

*First examine what different measures of restrictions does the law provide?*

Example: The Press Law lists up:

- civil court: retraction order, financial compensation order or both (Article 10 III)
- fines imposed by the Ministry of Information (Article 11 II, 12 II )
- criminal punishment according to the Criminal Code (Article 12 II )

*Second sort the different measures by their intensity: What is the softest measure? What is the strongest measure?*

*Third what is the measure that brings the best success with the least damage for the human right?*

Example: It is not necessary to impose a fine on a newspaper for defamation when a retraction order would be enough to settle the problem.