



Freedom of Assembly

As we have learned the freedom of expression contributes to a better communication among people, ensures their participation in society and improves the accountability and transparency of opinion building processes.

In a democratic and pluralist society people can exercise their freedom of expression in many different ways like writing an article to a newspaper, talking to family members or friends, by painting cartoons or publishing pictures and much more. They can exercise it as a single person.

But a more powerful and effective kind of expressing opinions is to come together with other people to exchange, discuss, counsel and publish ideas and information. When people gather to express their opinions they exercise their freedom of assembly. This is a natural born freedom, it is inherent. It is not a privilege which can be granted by the government at its discretion, it is inalienable.

The fundamental human right of freedom of assembly is stipulated in

Article 41 Sentence 1 CC:

Khmer citizens shall have freedom of expression, press, publication and **assembly**. ...

as well as in

Article 21 Sentence 1 ICCPR:

The right of peaceful **assembly** shall be recognized. ...

A specific form of freedom of assembly is the right to strike (Article 37 Cambodian Constitution)

A) Function of the Freedom of Assembly:

The freedom of assembly is a specific form of communication with others. This human right functions as a loudspeaker or multiplier (amplifier) of the freedom of speech so that many other people can become aware of the opinion of one group. Joint forming and expressing of public opinion in Cambodia is all the more important as there are almost 40% illiterate people – for them it is the only way to exchange and express their opinions to the authorities.



The purpose of freedom of assembly is to break the isolation of people and give them the feeling of community and strength.

B) Elements of the Freedom of Assembly:

What is an assembly?

An assembly (or a demonstration) is a

- **peaceful** gathering of
- **two or more**
- **unarmed** people
- in a **private** or a **public** place, **inside** or **outdoor**
- **with the common intention** to express an opinion, idea or information to others.

I) A **peaceful** assembly means a non-violent demonstration where demonstrators have no weapons or other life threatening equipment and do not cause damage to private or public property or bodily harm or death to other people (Article 7 par. 1 and Article 8 of the Law on Demonstration).

The anti-Thai riots of 29th January, 2003 for example were definitely not a peaceful but a violent demonstration.

Attention: Even if one might consider the course of a demonstration as peaceful it can be considered violent when it is most probably about to become violent. To prove that a demonstration may turn violent the authorities must have clear and specific indications which are based on facts not just on theoretical assumptions.

It is not enough that they just “think” (Article 3 Sentence 2 Law on Demonstration) that a demonstration will turn into violence.

Examples for such clear and specific indications:

- 1) Experiences in the past show that demonstrations of a particular group always turned violent. These experiences indicate that also this demonstration will turn violent.
- 2) Leaflets distributed during a demonstration calling for violence against persons and property indicate that the demonstration will turn violent.
- 3) The demonstration is held for the only purpose to prevent or disturb another demonstration. This purpose indicates that the assembly is not hold to jointly and peacefully express a specific opinion but only to harass other demonstrators. (for example the “Pagoda Boys Association” often breaks up demonstration, see Cambodia Daily of 7th February, 2003)



II) What is a common intention?

People gather with a common intention if there is a common purpose to express a specific opinion.

1)

Example:

When women want to come together in front of the National Assembly to ask for the adoption of the “Law on Domestic Violence” then they all do this with the common purpose to draw the public attention to their request.

2)

Example:

People stand together after a traffic accident to look what happened.
Is this an assembly?

No, because the people do not come together on purpose or with an intention to do something together. They simply happen to be at the same place at the same time.

C) Dangers for the Freedom of Assembly:

Always keep in mind that all the above mentioned restrictions can not be used as an argument to prohibit free assembly as such. Authorities always have to take effective steps to guarantee the exercise of the right of assembly. Their failure to do so violates constitutional as well as international law⁴⁶.

Looking at the above mentioned very indefinite restrictions on the freedom of assembly one very quickly becomes aware of the dangers for this human right.

As demonstrations can be very powerful sometimes authorities feel threatened and try to suppress them by various means:

I) Dangers for freedom of assembly before the demonstration takes place:

1) Authorities tend to define the five restrictions (“rights of others”, “good tradition of society”, “public law and order”, “national security” and “public health”) very broadly, because they want to open the door for restriction very widely. They sometimes refuse to permit a demonstration and by doing so limit the freedom of assembly down to zero.

Example:

On May 26, 2003 a coalition of 32 women’s groups wanted to demonstrate outside the National Assembly in support of the adoption of the draft domestic violence law. For them – as victims of domestic violence – it was important to speak out directly to members of parliament and government officials about their wants and needs. The

⁴⁶ www.bayefsky.com/themes/assembly_concluding-observations.php



Governor of Phnom Penh banned the women’s demonstration and said that their demonstration will “affect security and public order in Phnom Penh”.

As we have learned in the previous chapter about the freedom of speech “national security” does not mean every security interest of the government but a threat to the life and security of the whole nation.

A danger for “public order” means a concrete and real threat to the security of other people in the very near future – a mere presumption of such a threat is not enough.

How will some women who became victims of violence themselves – even if they gather in large numbers – be a threat to the security of the whole nation or other people? The Governor of Phnom Penh based his decision only on presumptions and not on clear indications and facts or past experiences (it would be such a clear indication if women in the past always had carried weapons, created a traffic chaos, insulted Members of Parliament or caused violence when they demonstrated – but they never did actually!).

A very serious and worrying consequence of his unconstitutional and illegal ban was that the women’s inalienable human right of freedom of assembly was completely taken away and also its future exercise is endangered because the women now feel discouraged and frustrated by the ban.

In this case the Governor referred to Article 3 Sentence 2 Law on Demonstration which is not in compliance with Article 41 Cambodian Constitution and Article 21 ICCPR⁴⁷. This article states:

“... if the authorities concerned **think** that demonstrations have characteristics conducive to causing turmoil they **can ban** the demonstration”

This possibility of a ban is a “de facto” limit on the right of assembly which means it abolishes the freedom in a whole even before it can be exercised.

For the same reason also Article 4 Alternative 2 Law on Demonstration is not in compliance with Article 21 ICCPR. Article 4 Alternative 2 Law on Demonstration states:

“If any demonstration takes place ... **without authorization** from local authorities, the latter can take measures **to forbid** the demonstrators on the site.”

Article 2 paragraph 3 and Article 4 alternative 1 Law on Demonstration require local authorities to be informed about the demonstration prior to it. These provisions comply with Article 21 ICCPR because they do not limit the freedom of assembly as such⁴⁸. But they are just necessary to enable the police to ensure a safe course of the demonstration free of disturbances by other counter-demonstration or busy traffic.

⁴⁷ www.bayefsky.com/themes/assembly_concluding-observations.php

⁴⁸ The duty of notification should be restricted to outdoor assemblies only - see also www.bayefsky.com/themes/assembly_concluding-observations.php



Attention: When people gather spontaneously a prior information (notice) can not be required because it simply would not be a spontaneously gathering anymore if it had to be announced. People coming together spontaneously do not have any organizer.

2) Even if the need of a prior permission of a demonstration were in compliance with the Cambodian Constitution and International Law still the narrow legal timeframe of the permission process can violate the freedom of assembly.

Article 3 Paragraph 1 Sentence 2 Law on Demonstration:

“Authorities ... can ban the demonstration by issuing a decision within 48 hours. ...

Article 3 Paragraph 3 Law on Demonstration:

In case there is a disagreement, demonstration organizers may lodge a protest to higher authorities. The latter should make a decision ... and communicate it to the petitioner within 24 hours.”

The authority has to be informed at least three days prior to the demonstration (Article 2 paragraph 3 Law on Demonstration). The banning authority need to issue its decision within 48 hours and the next higher authority within an additional 24 hours. This tight timeframe can prevent people from exercising their freedom of assembly and therefore is not constitutional because it does not leave enough time for a judicial control of the legality of the banning decision although judicial remedy is guaranteed in the Cambodian Constitution.

Article 39 CC:

“Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.”

Article 128 Paragraph 3 CC:

“ ... The Judiciary shall cover all lawsuits including administrative ones. ... “



Example:

On 1st May farmers inform the commune authorities that they will conduct a demonstration at the market on the 4th of May.

The commune authorities ban the demonstration and send their decision to the farmers 48 hours later on 3rd of May.

The farmers lodge a protest against this decision to the provincial authorities which reject the protest 24 hours later on 4th of May.

So at that time the envisaged demonstration should have taken place already (4th May) but it could not take place because the permission process was not accomplished yet.

This fictive case shows that the timeframe of Article 3 Law on Demonstration may lead to the consequence that no demonstration at all will be held. Even an administrative law suit to the Court cannot be filed in time to have the demonstration taken place.

3) Authorities prevent people from reaching the demonstration place:

Example:

On 9th February, 2003 police forces and roadblocks were deployed on all major roads to Phnom Penh to prevent people entering the capital and to demonstrate for the Prime Minister's resignation. Passengers and drivers were asked where they were going and what the purpose of their travel was. If it turned out that they wanted to demonstrate they were stopped from traveling on. The envisaged demonstration was neither banned by the authorities nor were there any indications that it will turn violent.

The measures taken limited the demonstrators' freedom of assembly to an extent that they were not able to exercise their fundamental human right any more at all.

Even potential violent counter-demonstrations and violent clashes with other demonstrators do not justify such strong measures. But the contrary is true: The authorities are obliged to create conditions (here: protect a demonstration against violence of other persons) which ensure that the fundamental right of freedom of assembly can be exercised without disturbance.

II) Dangers for freedom of assembly while demonstrations take place:

1) The police is over-equipped. They intimidate demonstrators by their martial appearance (armed with machine guns etc.) and make them to refrain from exercising their human right of free assembly⁴⁹.

2) Excessive observation by the police (for example: 100 police officers observe 10 demonstrators).

3) Excessive use of force by the police (for example electric batons, rubber bullets etc.) which leads to serious injuries and even deaths, violates the Cambodian Constitution as well as International Law.

⁴⁹ This is not in compliance with Article 21 ICCPR – see also www.bayefsky.com/themes/assembly_concluding-observations.php



Example:

An assembly of villagers who want to be heard by the Forestry Department of the Ministry of Agriculture is dispersed by police because the villagers have blocked the entry of the Ministry for more than three hours. Questions arise whether the subsequent death of one villager by a heart attack at the age of only 29 years is the result of police using electric batons to force off the protesters.

The action of the villagers (blocking the entrance of the Ministry) is not covered by their freedom of assembly. But force to remove peaceful, nonviolent protesters must always be proportionate otherwise the excessive use of force violates human rights.



Around 200 “riot police” equipped with AK-47 rifles and plastic batons break up a peaceful demonstration in front of the National Assembly on 21st May, 2003.

To prevent violence and illegal behavior of the police the state is obliged

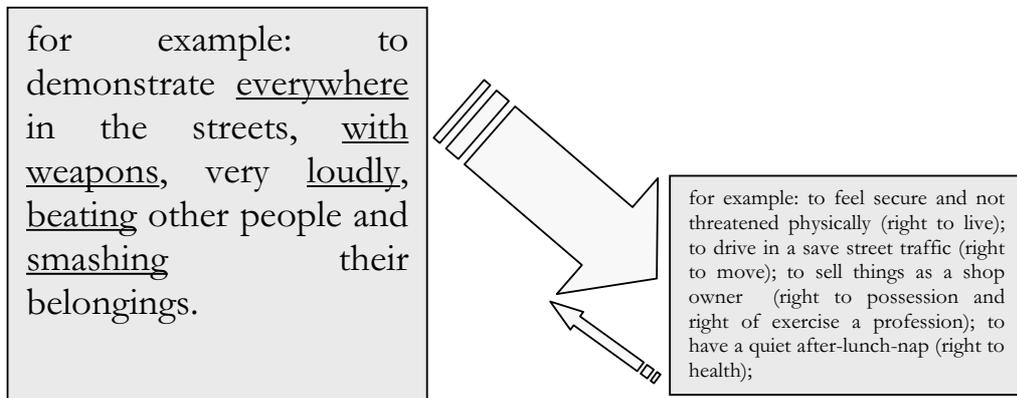
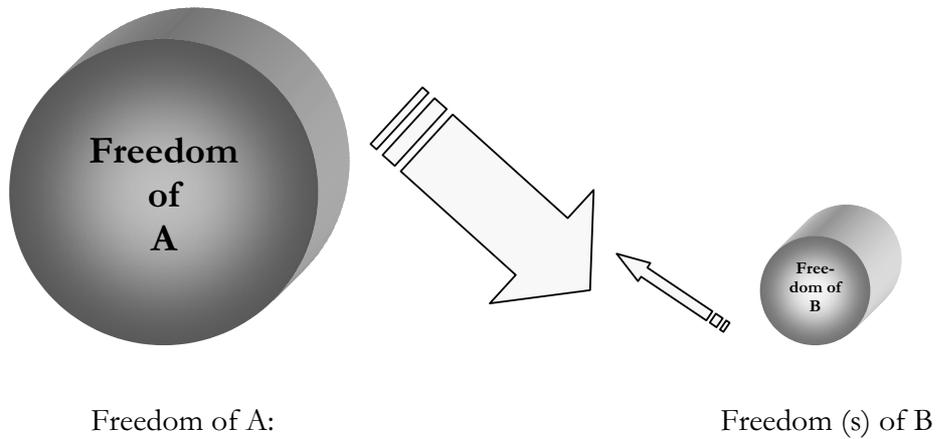
- to provide police officers only with equipment that can not endanger human lives and
- to train police officers on human rights.

D) Restrictions on the Freedom of Assembly:

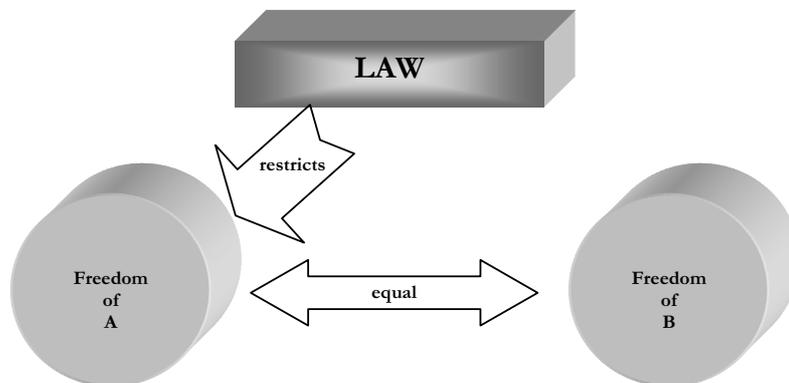
We have learned that human rights have to be balanced to ensure that every single member of society can live a dignified life with all of his or her human rights being well protected.

Unlimited freedom of assembly is not guaranteed by the constitution because the gathering of masses of people can create a lot of dangerous situations and serious problems (violence, traffic jams, destruction etc.). Unlimited freedom of assembly would mean that everybody can demonstrate whenever, wherever and with whatever means.

This could lead to the following situation: An unbalanced relation to freedom of other persons as shown in the following graphic:



To balance these different human rights the freedom of assembly of Person A has to be limited to protect the freedom of Person B – but only **by a law** (not by decree, sub-decree or any other so called “information letter”) **which has passed the National Assembly.**





The Cambodian Constitution stipulates restrictions on the freedom of assembly in

Article 41 Sentence 2 CC:

“... No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security. ...”

So does the International Covenant on Civil and Political Rights (ICCPR):

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 (for example the rights of Person B; ICCPR: “rights and freedoms of others”)
- good tradition of society (ICCPR: “morals”)
- public law and order (ICCPR: “public safety and public order”)
- national security
- public health

E) Proportionality to Ensure the Full Exercise of the Freedom of Assembly:

The above mentioned dangers have shown that not all kind of restricting measures are allowed but only proportionate measures that limit the right in the softest way as possible.

The “**Principle of Proportionality**” is reflected in the International Covenant on Civil and Political Rights (ICCPR):

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.”



This means if there are different measures to protect one freedom by restricting another freedom only that measure which restricts this freedom in the softest way can be chosen.

Example:

On the one hand side: 5.000 students exercise their right of assembly and demonstrate in Monivong Street for a better education system. On the other hand side: shop owners want to exercise their right of property as well as traffic participants want to exercise their right to move freely and safely in Monivong Street.

There is a conflict between the freedom of assembly and the right of property. Proportionate measures to solve this conflict would look like this:

Measures from soft to strong:

I) Measures restricting freedom of assembly **before** the demonstration takes place:

1) Imposing a condition on the demonstration:

After having received a notice that a demonstration will take place (Article 2 paragraph 3 Law on Demonstration) the authority has to check potential dangers which may emerge for other people and for the demonstration itself (Remember: the authority has to make all efforts possible to ensure that the demonstration can take place!)

Example:

10.000 students inform the authority about their demonstration in Monivong Street. This huge number of people in one of the most important main roads in Phnom Penh may cause a major traffic problem, especially during the rush hours. To solve this conflict in a proportionate way the authority could write a letter to the demonstration leader and impose the following condition: “The demonstration can take place only on the left driveway and not during the daily rush hours from 7.00am – 8.30am, 11.30am – 1.30pm and 4.30pm – 6.30pm.”

2) Prohibiting the demonstration in a whole (Article 3 sentence 2 Law on Demonstration):

This legal possibility to prohibit people to demonstrate must be handled by the authorities with the utmost care and reserve because such a total ban reduces the freedom of assembly to nothing.

If the authority wants to prohibit a demonstration the constitutional burden of proof is with the authority.

The authority has to

- present clear and specific fact-based indications which prove that the demonstration will most likely turn violent and
- has to provide sufficient police forces to prevent the demonstration from being a concrete and real threat to the security of other people.



Attention:

For the vast majority of demonstrations Article 3 Sentence 2 Law on Demonstration is not applicable and the authorities must not refer to it as a legal ground to ban demonstrations because a total ban kills the freedom of assembly and constitutes a severe violation of this human right!

II) Measures to restrict freedom of assembly while the demonstration takes place:

1) **Imposing a condition** is also and still possible while the demonstration takes place to ensure a safe course of the demonstration.

Example:

People demonstrate in front of the entry of the Parliament with the effect that Members of Parliament can not get into the building. A proportionate measure of the police would be to announce the following by loudspeaker:

“The demonstrators are requested to leave the area in front of the entry. The police hereby impose the condition that the demonstration can only take place on the other side of the street.”

2) If demonstrators are armed with weapons they can be **disarmed** (Article 5 paragraph 1 Law on Demonstration)

3) If demonstrators persistently refuse to hand over the weapons to the police they can be **detained temporarily** (Article 5 paragraph 2 Law on Demonstration). Later on they have to be released again and their weapons have to be returned to them if the weapons are not illegal.

4) If the demonstration **turns violent** because the above mentioned measures 1) – 3) did not have any effect the police can take the **“appropriate”** measures to stop it (Article 6 paragraph 1 Law on Demonstration). A demonstration is considered to be violent when it creates a concrete and direct threat to the security of other people. Only if this is the case the following steps – from soft to strong – can be taken:

a) The police can **ban** the demonstration (Article 4 paragraph 1 Law on Demonstration).

Example:

The police could announce by loudspeaker: “This demonstration is declared banned. The demonstrators are ordered to disperse.”

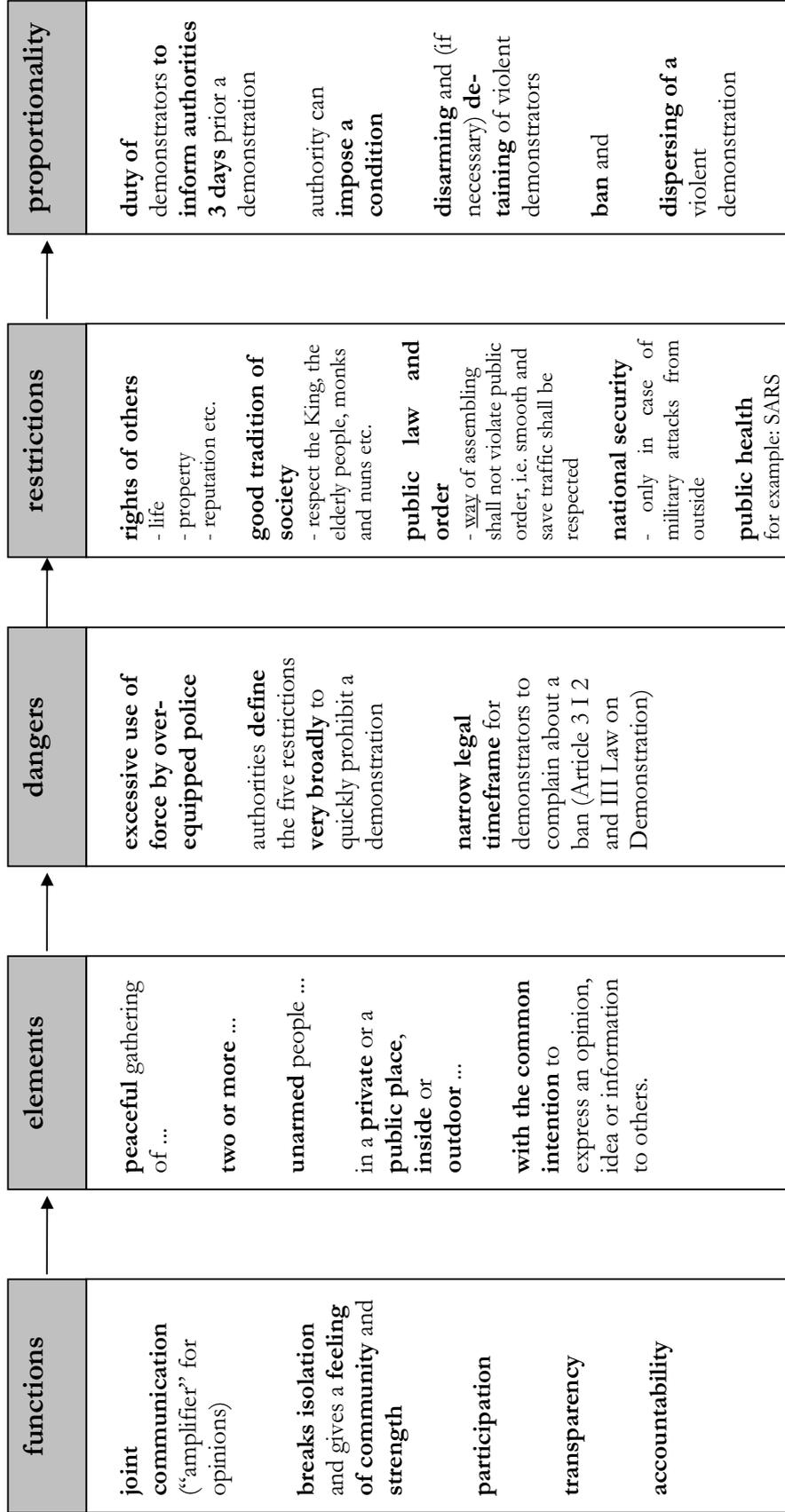
b) The police can announce the **ban a second time** to warn the demonstrators (Article 4 paragraph 2 Law on Demonstration).

c) If the demonstrators continue to demonstrate violently they can be **dispersed with equipment that does not endanger life**.

The softest measures come first (warning and shooting in the air) and the strongest restrictions last (shooting at armed and attacking demonstrators).



Freedom of Assembly





Study Question 14

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

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

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 legal or illegal?

d) On 5th 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 claimed 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!