



## *Solutions*

### **Study Question 1**

Look into the Cambodian Constitution and enumerate the functions of the parliament (National Assembly)!

- 1) to **make laws** (to exercise legislative power), Article 90 I CC
  - a) to initiate new laws, Article 91 I CC
  - b) to amend existing laws, Article 91 II CC
- 2) to **control** the executive branch, Article 121 I CC:
  - a) to elect other state organs, Article 119 I and II CC
  - b) to question the government, Articles 89 and 97 CC and to put a motion against the government, Article 96 I CC
  - c) to dismiss members of the government, Article 98 CC
  - d) to file charges against members of the government, Article 126 II und III CC
  - e) to approve decisions of the government, Article 90 II - V CC
    - budget
    - amnesty
    - international conventions
    - declaration of war or state of emergency, Article 86 I CC

### **Study Question 2**

Which core elements of democratic decision making can be found in the following summary of Cambodian Daily's article of April 3, 2003?

The core elements of democratic decision making in this article are:  
Transparency and public debate

### **Study Question 3**

Why do you think would the proposal of Prince Ranariddh mentioned in the Cambodian Daily article of August 30, 2003 improve the work of the NA?

Because law drafting requires specialized expertise and various actors. The establishment of sub-commissions accelerates the speed of the law making process as the nine main commissions of the NA can not discuss all topics at the same time.



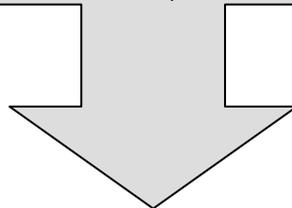
## Study Question 4

- a) Look into the Cambodian Constitution and describe the steps to be taken to establish a new government after the NA election!

Official proclamation of the final election results by the National Election Committee (NEC), Article 118 LEMNA

### 60 days later

- winning party formulates a proposal on the establishment of the new government, Article 119 I 1 CC
- existing government continues to conduct “routine business” with limited power, Article 78 III 2 CC (i.e. no proposals of new laws or law amendments!)



### First session of the NA, Article 82 I CC

- with a two-third majority (66,6% of the votes) the NA votes for a new Government, Article 90 VII CC
- the Constitution does not provide a time limit within the NA has to vote for a new Government – this can lead to a very long deadlock for the country



b) If the necessary 2/3 majority in the NA can not be achieved due to a political deadlock what different constitutional amendments could you imagine to solve the deadlock?

This deadlock can be **solved** in two ways:



**Amendment of the Constitution** that also only a simple majority (50 % + 1 of the votes) is entitled to approve a new Government.

**Problem:** amendment itself requires a 2/3 majority!

**or**

**Amendment of the Constitution** that a new election must be held.

### Study Question 5

Prime Minister Hun Sen does not want to negotiate with the “Alliance of Democrats” which was recently formed by FUNCINPEC and SRP.

a) He says that FUNCINPEC and SRP can not first run for the election as two separate parties and later after the election unite in only one coalition to negotiate about the forming of a new government. He says this is against the constitution.

Is this right or wrong? Do not just answer with “yes” or “no” but give reasons for your opinion and quote the relevant articles!

The Prime Minister is wrong.

- There is no article in the Cambodian Constitution that prohibits political parties to form a coalition after the election. To the contrary: They political parties can claim the right of association (Article 42 I 1 CC) at any time.
- Furthermore: Article 119 I 2 CC states that one assembly member of the winning party who has been designated by the King (Article 119 I 1 CC) shall lead his colleague members of the assembly **or** political parties represented in the Assembly who are to be placed in various positions in the Royal Government, to ask for a vote of confidence from the assembly members. This shows that membership in the National Assembly must not necessarily be linked with a membership in a political party at all.
- Articles 77 I and 76 IV CC also show that every Khmer can be elected to be a member of the National Assembly. It is not necessary at all that assembly members are also members of political parties. The vote of confidence for the proposed new government is a decision of the members of the National Assembly not of the



political parties themselves. Members of the National Assembly who belong to different political parties can always form parliamentary groups to combine their votes in the assembly no matter if their parties have been running separately for election before.

**b)** Some CPP officials say that Cambodia would not be a democracy if there is no opposition party in the National Assembly. It would be against the constitution if all three parties (CPP, FUNCINPEC and SRP) form a joined government.

Is this right or wrong? Do not just answer with “yes” or “no” but give reasons for your opinion and quote the relevant articles!

This is wrong. There is no article in the Cambodian Constitution that mentions the word opposition at all. There is only the term “winning party” in Article 119 I 1 CC. But this only means the party whose members won most of the assembly seats in the election. It does not say anything about a “loosing” party which has to play the role of the opposition. Article 119 I 2 CC also shows that the candidate members for a new government can be chosen among all members of the assembly but also among party members of parties who are represented in the national assembly. A democracy mostly has opposition parties but there can always be a coalition of all parties to form a government. If there is no opposition in the parliament of course public control by the citizen, by the senate or by the constitutional council becomes more important.

### Study Question 6

Read the following summary of the Cambodian Daily article of June 26, 2002 carefully.

**a)** How many commissions does the National Assembly have? Do not forget to quote the relevant article (s)!

The National Assembly at the moment has 9 different commissions (Principle 6 Sentence 2 Nr.1-9 NA Internal Rules)

**b)** Can the lawmaker create a new commission called “Independent Border Commission”?

Do not just answer with “yes” or “no” but give reasons for your opinion and quote the relevant articles!

Yes, the National Assembly can establish “various necessary commissions” (Article 94 sentence 1 CC). The NA is authorized to regulate its own function (self rule) by Internal Rules (Article 94 Sentence 2 CC). So the assembly can establish an additional commission by just changing its internal rules.  $\frac{1}{4}$  of the Assembly members can suggest an amendment of the Internal Rules. They can be amended with  $\frac{2}{3}$  majority (see Principle 82 Internal Rules)



## Study Question 7

After the anti-Thai riots on January 29, 2003 the Chairwoman of the Foreign Affairs Commission of the National Assembly, Princess Vacheara, asked Prime Minister Hun Sen to appear before the National Assembly to testify about the incidents.

**a)** Is this possible according to the Constitution?

Do not just answer with “yes” or “no” but also quote the relevant article(s)!

Yes, it is possible according to Article 97 CC which entitles Princess Vacheara – as Chairwoman of the Foreign Affairs Commission – to ask for the appearance of the highest ranking minister in the government, the Prime Minister.

**Article 97 CC** states:

“The National Assembly commissions may invite any minister to clarify certain issues under his/her field of responsibility.”

**b)** What other possibilities could she have chosen instead of inviting the Prime Minister to appear before the National Assembly?

She could have chosen the following other possibilities:

- to lobby 1/10 of the National Assembly member to invite the Prime Minister to clarify the incidents, **Article 89 CC**. In this case she would act as a regular parliament member and not as the Chairwoman of the Foreign Affairs Commission.
- to put a motion against the government via the President of the National Assembly, **Article 96 I CC**
- to lobby 30 other National Assembly members to initiate a motion of censure, **Article 98 CC**.
- to initiate a parliament decision on whether or not to file a charge against one of the government members for having committed a crime in the course of his/her duty (here: incitement by a speech concerning a Thai actress), **Article 126 II and III CC**.

**c)** Why do you think the Princess asked the Prime Minister to appear before the National Assembly and not the Minister of Foreign Affairs or any other minister?

She asked the Prime Minister because in political matters which can affect the whole nation (like the anti-Thai riots of January 29, 2003) it is the Prime Minister who bears the very last responsibility for the government’s overall policy.

**Article 97 CC** states:

“The National Assembly commissions may invite any minister to clarify certain issues under his/her field of responsibility.”

What does “under his/her field of responsibility” exactly mean?

**Article 121 CC** completes Art. 97 and states:

“Members of the Royal Government shall be collectively responsible to the National Assembly for the overall policy of the Royal Government.



Each member of the Royal Government shall be individually responsible to the Prime Minister and the National Assembly for his/her own conduct.”

Even if for example only the Minister of Foreign Affairs or the Minister of Interior were responsible for the causes and consequences of the anti-Thai riots it is the Prime Minister’s over all responsibility to clarify the incidents before the National Assembly.

In cases like the anti-Thai riots the government’s overall policy is in question because a variety of sensitive political fields are concerned like internal affairs (security for the citizens and foreigners), foreign affairs (future diplomatic relationship to the neighbor Thailand), financial affairs (costs of re-compensation) and commercial affairs (future trade with Thailand). As so many different ministries are targeted it is the Prime Minister’s duty to answer parliamentary questions.

**Article 118 II CC** clarifies that by stating:

“The Council of Ministers shall be led by the Prime Minister ...”

It is the Prime Minister’s general power to give guidelines and to form the main basis of foreign and domestic policy as a kind of frame for the political agenda of the government of which s/he is responsible for.

### **Study Question 8**

Parliament member Princess Vacheara said in a press conference at the National Assembly that she was informed that during a meeting of the government cabinet the Prime Minister Hun Sen said that he will only address her by the title “neang” or “luk chum teav” in future time and that he will put her to Prey Sar prison with a “herd” of other people.

Prime Minister Hun Sen denied the accusations and said that the Princess’ comments are intentionally defamatory and that he will prepare a defamation lawsuit against her.

Can Prime Minister Hun Sen sue the Princess?

Do not just answer with “yes” or “no” but give reasons for your opinion and quote the relevant articles!

Yes, the Prime Minister can sue the Princess, but the prosecution is not allowed to accuse her because she is a member of parliament and as such she enjoys parliamentarian immunity,

**Article 80 I and II CC.**

This means that the Princess can be held responsible (accused, arrested or detained) for a crime only with a 2/3 consent of the National Assembly, **Article 80 III and IV CC.**

Parliamentarian immunity guarantees the possibility of an open and free discussion in parliament by protecting the deputies when they express their opinions. In a vivid democracy a lively debate among the lawmakers is crucial. Debate and discussion would come to a standstill if lawmakers have to apologize after every verbal attack they launch or always have to be afraid of legal consequences before they comment on something.



### Study Question 9

One article of the Cambodian Constitution states that a meeting of the National Assembly is only valid when a certain minimum number of members of the National Assembly attend it.

Please quote this Article precisely **and** say how many assembly members must be present.

**Article 88 III CC** states: "The National Assembly meeting shall be considered as valid provided there is a quorum of 7/10 of all members".

### Study Question 10

An assembly member can be absent from the meeting of the National Assembly only for a limited number of different reasons.

Please list **all** of these different reasons and quote the respective Principles of the Internal Rules of the National Assembly.

An assembly member can only be absent with the permission of the President of the National Assembly (Principle 67 Internal Rules)

Permission can only be granted for one of the following reasons:

- **regular leave:**
  - 15 days with permission of President (Principle 68 S.1 Internal Rules)
  - more than 15 days only with approval of the Assembly (Principle 68 S.2 Internal Rules)
- **sick leave:**
  - if more than 5 days then only with medical attestation (Principle 69 Internal Rules)

### Study Question 11

Please list the different punishments for the illegal absence of a member of parliament. Start the list with the softest punishment and end with the strongest punishment ("principle of proportionality")

Do not forget to quote the relevant principles of the Internal Rules of the National Assembly!

**1) Absence exceeding permitted absence days:**

cut of incentives according to absence days (Principle 71 Internal Rules)

**2) Absence of 3 days without permission:**

cut of indemnity according to absence days (Principle 70 Internal Rules)

**3) Unexcused absence despite written invitation:**

- a) two days absence: warning (Principle 72 I a)
- b) absence despite warning: cut of incentives (72 I b)
- c) absence despite discipline sanction:
  - cut of salary and dismissal from meeting for 15 days (72 I c)



- d) absence despite three sanctions:
- cut of salary and
  - dismissal for one month and announcement to the people in his/her constituency

### Study Question 12

The political parties represented in the National Assembly enjoy the freedom of association.

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

Articles 36 V and 42 I 1 CC (Cambodian Constitution)

Article 22 I ICCPR (International Covenant on Civil and Political Rights)

Article 14 II e CEDAW (Convention for Elimination of Discrimination against Women)

Article 15 I CRC (Children's Rights Convention)

- b) What is the difference between the freedom of assembly and the freedom of association?

Assembly means that people just meet each other and gather on the street or in a room without any organizational structure or a long term purpose. For example they just meet to discuss something or they make a public demonstration marching on the street.

Association means the people join each other for a long term purpose and have a organizational structure. For example they found an NGO or a students association.

- c) What are the restrictions on the freedom of association? Quote the relevant national and international articles!

The special article on freedom of association (Article 42 I 2 CC) does not regulate any restrictions. So the general article on restrictions (Article 31 III 1 CC) has to be applied. **Article 31 III 1 CC** says that any freedom can be restricted to protect the "rights and freedoms of others".

**Article 22 II 1 ICCPR** states that the freedom of association can be restricted to protect:

- national security
- public safety/order
- public health/morals

**Article 4b CERD** (Convention on Elimination of all forms of Racial Discrimination) states that all racist organizations must be banned.



### Study Question 13

**a)** What does the preamble of Universal Declaration of Human Rights say about the “rule of law”?

The preamble of the UDHR says in its third section that the most important function of the “rule of law” is to protect the human rights. (so human beings are not ultimately forced to start an insurrection against tyranny and suppression.)

**b)** What does Article 29 of the Universal Declaration of Human Rights say about the function of law? Please quote precisely and give a short description of the function of law!

Article 29 Nr. 2 UDHR says that all rights and freedoms of human beings can only be limited (restricted) by a **law**.

Such a restriction by a law is compatible with human rights only if this law pursues **the goal to protect:**

- the respect and recognition of the **rights and freedoms of others**
- the justified requirements of **moral**
- the **public order**
- the **general welfare** in a democratic society.

### Study Question 14

Cambodian laws which are adopted by the National Assembly have to be compatible with the Cambodian Constitution.

Please quote precisely (!) at least two articles of the Cambodian Constitution which show that laws must be constitutional.

**Article 150 II CC** says that all laws have to be in strict conformity with the Constitution.

**Article 136 I CC** says that the Constitutional Council has to safeguard the respect for the constitution and to check the laws passed by the National Assembly.

**Article 140 II 2 CC** says that the Constitutional Council can decide before their promulgation whether draft bills which have already been adopted by the National Assembly are constitutional or not.

**Article 141 I CC** says that the Constitutional Council can examine the constitutionality of a promulgated law.

**Article 141 II CC** says that the Constitutional Council can decide about appeals against the constitutionality of a law.



**Article 142 I CC** says that provisions in any article which have been ruled as unconstitutional by the Constitutional Council shall not be implemented or promulgated.

So the lawmakers obviously have a duty to adopt only laws which are compatible with the constitution.

### Study Question 15

All the important problems of society have to be solved and regulated by a law. Please quote precisely (!) five articles out of Article 31 – Article 50 CC which explicitly state that a problem “shall be determined by a law”.

|                            |  |
|----------------------------|--|
| <b>Article 33 III CC:</b>  | Khmer nationality shall be determined by a law   |
| <b>Article 34 V CC:</b>    | Provisions restricting the right to vote and to stand for elections shall be defined in the LEMNA      |
| <b>Article 36 IV CC:</b>   | The right to obtain social security or other social benefits shall be determined by law.               |
| <b>Article 36 VI CC:</b>   | The organization of trade unions shall be determined by law.   |
| <b>Article 37 CC:</b>      | The right to strike / and to non-violent demonstration shall be implemented in the framework of a law. |
| <b>Article 41 II CC:</b>   | The regime of the media shall be determined by law.  |
| <b>Article 42 I 2 CC:</b>  | The right to establish associations and political parties shall be determined by law.                  |
| <b>Article 44 II CC:</b>   | Legal private ownership shall be protected by law.   |
| <b>Article 49 II 2 CC:</b> | The duty of all Khmer citizen to defend the homeland shall be determined by law.                       |

### Study Question 16

**a)** Does the government’s ban on disabled teachers restrict any human right(s)? Please quote the exact human right(s) and the (national and international) law texts and articles!

The government’s ban on disabled teachers restricts the following human rights:

- **freedom of profession:**
  - Art. 36 I CC
  - Art. 6 I International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - Art. 7 sentence 2 Declaration on the Rights of Disabled Persons (DRDP)
  - Art. 23 Nr. 1 UDHR



- **right of non-discrimination:** (right to be treated equally):
  - Art. 31 II Cambodian Constitution (CC)
  - Art. 26 International Covenant on Civil and Political Rights (ICCPR)
  - Art. 1 Universal Declaration of Human Rights (UDHR), Art. 2 Nr. 1 UDHR
- **freedom of action:**
  - Art. 32 I CC (“right to personal freedom”)
  - Art. 3 UDHR

**b)** Open the following web-page:

Go to [www.online.com.kh/users/kid](http://www.online.com.kh/users/kid),

→ then to **“Related Links”**,

→ then on **“International Institutions and Law Texts of International Constitutions and Treaties”**,

→ then to **“University of Minnesota”**,

→ then to **“Treaties and other Instruments organized by subject matters”**

and → then to **“Disabled Persons”**.

Please find the UN-Declaration which covers the above mentioned teacher’s case. Which article of this Declaration is relevant – please quote only one article!

Article 7 sentence 2 DRDP

### **Study Question 17**

The government wants to collect a fee from car drivers for using the national roads.

Is it necessary to regulate the collection of such a road fee by a law adopted by the National Assembly? Or can the government decide about this by itself without a law?

Please give a legal reason for your answer!

It is necessary to have a law that allows the collecting of a fee from road users. The reason is that due to the principle of separation of power (Article 51 III 2 and IV CC) the main decisions have to be made in form of a law adopted by the members of the National Assembly as elected representatives of the people and only the regulation of minor administrative details can be left to the executive. Collecting road fees severely affects the livelihood, property and economical base of Cambodians as well as their right to move around freely in their country and to do business (Article 40 I CC: freedom of travel; Article 44 I 1 and II CC: right of private property, Article 36 I CC: right of free exercise of profession). So financial restrictions on these rights can only be stipulated by a law.



### Study Question 18

Imagine the lawmakers have drafted a new "Law about the Street Traffic of Cars in Cambodia".

Would it be constitutional if they adopt an article of this law that reads as follows:

“ Every car must have a license number. The details about size, colour and the license number combination shall be regulated by a Anukret of the Ministry of Transport ” ?

Please give a legal reason for your answer!

Yes it would be constitutional. It does not violate the principle of separation of power (Art. 51 III 2 and IV CC) if the lawmaker delegates rule making authority to the executive branch in this case because the main decision about the necessity of the license number which affects the general freedom of car drivers to do what they want (Article 31 I and II CC) is made by the lawmaker in sentence 1 of the abovementioned article. Only the regulating of the minor technical details which do not affect the freedom are left to the executive. To regulate these details in the law would be inappropriate because the lawmaker should not bother with such little questions and the law text would become too long.

### Study Question 19

Many Buddhist Cambodians feel disturbed by foreign Christian missionaries who come to their house, knock on their door and try to convince them that they should become Christians.

Imagine the lawmakers adopt a “Law on Missionary Activities” which would include an article that reads as follows:

“Section I: The purpose of the law is to protect the peace of daily life of Cambodians.

Section II: All activities of foreign Christian missionaries in Cambodia (no matter at what time or in which way such activities are carried out) are totally prohibited from now on.”

Would such a law article be constitutional or not? Please give a legal reason for your answer!

The law would be **unconstitutional**:

**1)** Either because the **restriction purpose** (purpose of this law as defined in Section I) already is **unconstitutional** because the lawmaker is not authorized to restrict the free religion just to protect “peace of daily life”.

**2)** Or because the **restriction** (as defined in Section II of this law) is **disproportionate** because it is not necessary for the protection of the rights of others to restrict all religious activities no matter if they harm the rights of others or not.



In detail:

**Which human right would be affected by this law?**

This law would affect the freedom of religious belief of the foreign missionaries which includes the freedom to exercise the religion and talk about religion with potential new members.

As Article 43 I CC only grants religious freedom to “Khmer Citizen” the foreign missionaries are not protected by this article but they can claim religious freedom according to Article 18 I 1 ICCPR which grants this freedom to “every” human being. The ICCPR regulations are also part of the Cambodian national law (see Article 31 I CC). Article 18 I 2 ICCPR includes the right to exercise and express religion publicly.

**The law stipulates a restriction on this right.**

**Is the lawmaker authorized to make a restriction for the purpose mentioned in Section I of this law?**

Article 18 III ICCPR allows restrictions on the freedom of religion only for the purpose to protect:

- public security and order
- health
- good traditions/morals
- rights and freedoms of others.

Article 43 II CC also allows restrictions on free religion for the purpose to protect

- other religious beliefs
- public security and order

This already raises the question if a restriction to protect the “peace of daily life” is authorized by these articles.

According to the simple wording “peace of daily life” is not mentioned in the catalogue of restriction purposes of these two articles (18 III ICCPR and 43 II CC). But maybe the law means one of the mentioned purposes of this catalogue. So what does the law intend to protect? It obviously wants to protect the Buddhist belief of the majority of the Cambodians. And it also wants to protect them from being disturbed in an undue way by missionaries.

This purpose has nothing to do with public security or with health because the law only aims at someone who privately knocks at the door of a private house and simply asks people to talk with him/her about religion. This also has nothing to do with good traditions because there are no traditions that rule out such activities.

But the protection of “peace of daily life” could be a protection of rights of others not to be frightened, coerced or aggressively disturbed (for example by loud banging on the door or during the afternoon sleep).

The protection of “peace of daily life” in this law could also mean to protect the Buddhist religion of Cambodians (see also Article 43 III CC which declares Buddhism to be the state religion and gives a priority to that religion). But just talking about a different religion does not “affect” the Buddhist religion of Cambodians. The protection purpose of that law can not be the general protection of Buddhist belief against any



attempt to change it but only the protection against any undue forms of such attempts: for example insults of the Buddhist religion or talking about Buddhism in a degrading way.

So if one does not stick too close to the simple wording in Section I of the law the purpose of the law could be constitutional.

### **Is the restriction in Section II proportionate?**

No.

Proportionate means the restriction shall not be stronger than necessary.

In the given case the total ban on all activities would be too strong. To reach the goal of protecting Buddhist religion and the right of not being harassed, coerced or aggressively disturbed it is not necessary to ban all activities (as regulated in Section II). But it would be sufficient to ban only aggressive disturbances with rude or insulting words or the creation of frightening noise by banging at the doors or disrespectful talking about Buddhism, for example calling this religion inferior to Christian belief.

### **Study Question 20**

Enumerate all human rights you can find in the Cambodian Constitution, name them and quote the respective articles.

Also name the **restrictions** of these human rights!



***Human Rights Mentioned in the Cambodian Constitution***

| Name of human right  | Article  | Restriction (s)   |
|--|--|---|
| right of being treated equally<br>(freedom of non-discrimination)  | Art. 31 II CC  | rights and freedoms of others,<br>Art. 31 III 1 CC  |
| <ul style="list-style-type: none"> <li>equality between women and men</li> </ul>   | <ul style="list-style-type: none"> <li>Art. 45 III CC</li> </ul>   | —   |
| right to life  | Art. 32 I CC   | rights and freedoms of others,<br>Art. 31 III 1 CC  |
| <ul style="list-style-type: none"> <li>right not to be tortured</li> </ul>   | <ul style="list-style-type: none"> <li>Art. 38 I CC</li> </ul>   | —   |
| right to personal freedom<br>(freedom of action)   | Art. 32 I CC<br>Art. 35 I CC   | rights and freedoms of others,<br>Art. 31 III 1 CC  |
| right not be deprived of the<br>Cambodian nationality  | Art. 33 I CC   | —   |
| right to vote  | Art. 34 I CC   | LEMNA   |
| right to make a petition   | Art. 35 II CC  | —   |
| freedom of profession  | Art. 36 I CC   | needs of society, Art. 36 I 1 CC  |
| <ul style="list-style-type: none"> <li>right to sell own products</li> </ul>   | <ul style="list-style-type: none"> <li>Art. 60 I 1 CC</li> </ul>   | “special circumstances”,<br>Art. 60 I 2 CC  |
| right to human dignity   | Art. 38 II CC  | —   |
| right to make a complaint<br>to the courts   | Art. 39 I 1 CC and<br>Art. 38 VIII CC  | —   |
| freedom of movement  | Art. 40 I CC   | —   |
| right to have privacy of residence and secrecy<br>correspondence   | Art. 40 III CC   | Criminal Procedure Code   |
| freedom of expression  | Art. 41 I 1 CC   | Art. 41 I 2 CC:<br>rights of others<br>good traditions of society<br>public law and order<br>national security<br><br>Press Law       |
| freedom of association   | Art. 42 I 1 CC   | rights and freedoms of others,<br>Art. 31 III 1 CC<br>Draft Law on Associations<br>and NGOs   |
| <ul style="list-style-type: none"> <li>right to form trade unions               <ul style="list-style-type: none"> <li>right to strike</li> </ul> </li> <li>right to form political parties</li> </ul> | <ul style="list-style-type: none"> <li>Art. 36 V CC</li> <li>Art. 37 CC</li> <li>Art. 42 I 1 CC</li> </ul> | <ul style="list-style-type: none"> <li>Law on Trade Unions</li> <li>Law on Demonstration</li> <li>Law on Political Parties</li> </ul> |
| freedom of assembly  | Art. 41 I CC   | Art. 41 I 2 CC:<br>rights of others<br>good traditions of society<br>public law and order<br>national security                        |
| freedom of religion  | Art. 43 I CC   | Art. 43 II CC:<br>religion of others<br>public order<br>public security   |
| right of property  | Art. 44 I CC   | Art. 44 III CC:<br>confiscation of private property only<br>when there is a public interest and<br>fair compensation                  |
| right to have a family   | Art. 47 CC   | —   |
| right to education   | Art. 65 I CC   | —   |



### Study Question 21

Open the following web-page: [www.online.com.kh/users/kid](http://www.online.com.kh/users/kid)

→ then go to “**Related Links**”,

→ then to “**Legal Education**”,

→ and then to “**Human Rights Network International (HRNi Bruxelles)**”.

Find the “UN-Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief”.

Quote the relevant article which regulates the limitation of the freedom of religion and name all reasons of limitations.

The relevant article is: **Article 1 Nr. 3**

Reasons for **limitations** are: “**public safety**”, “**public order**”, “**public health**”, “**morals**” and “**fundamental rights and freedoms of others**”

### Study Question 22

| Current Article of the Weapon Draft Law   | Critical Comments on Drafted Article<br>(Here fill in your critical comments)  | Proposed Amended Article<br>(Here fill in your proposal of amendment)   |
|---|--|---|
| <p><b>Article 11 I:</b><br/>“The Ministry of National Defense (MoD) is authorized to issue card of the use of all types of arms, explosives and munitions to Royal Cambodian Armed Forces.”</p>   | <ul style="list-style-type: none"> <li>• On which concrete conditions is the MoD authorized to issue a card of weapon’s use? Is there a specific procedure to be respected?</li> <li>• Can also Nuclear/Biological/Chemical-weapons be left over to RCAF? The term “all types of weapon” is too broad and therefore unclear.</li> </ul>  | <p>“The MoD is authorized to issue card of the use of <del>all types of</del> <b>conventional</b> arms, explosives and munitions to Royal Cambodian Armed Forces <b>only for the purpose of weapon training and in case of national defense.</b>”</p>   |
| <p><b>Article 12 III:</b><br/>“All arms shall be registered, and all types of arms shall be stored in and returned to the safe armories. Exception of this case can be available according to inter-ministerial Prakas of the Ministry of National Defense and Ministry of Interior.”</p> | <ul style="list-style-type: none"> <li>• The safe storage of weapons is of public interest because questions of public security are involved. Exceptions of weapon storage therefore must be regulated by the lawmakers and not by the MoD or MoI. Delegation of rulemaking power to MoD and MoI violates the principle of separation of power!</li> <li>• What exactly are “safe armories”? This is an unclear term!</li> </ul> | <p>“All arms shall be registered, and all types of arms shall be stored in and returned to the <b>safe armories</b>. Exception of this <del>can be available according to inter-ministerial Prakas of the Ministry of National Defense and Ministry of Interior.</del> <b>can only be accepted in cases when security forces are urgently needed to restore or maintain public security.</b>”</p> |
| <p><b>Article 20:</b><br/>“Any person, who violates Article 8 and Article 14 of this law shall be liable to five (5) years to ten (10) years imprisonment, excluding other crime.”</p>  | <p>Is this very strong punishment proportionate even in less serious cases like for example cases of negligence? Is an attempt of abusing weapons as serious as the actual abuse itself?</p>   | <p>“Any person, who violates Art. 8 and 14 of this law shall be liable to five (5) years to ten (10) years imprisonment, excluding other crime. <b>In case of: negligence 18 months and in case of attempt: two (2) years.</b>”</p>   |



## *Solution of Final Test*

### **Question 1**

What are the 3 main elements of a democratic decision making process?

Give 1 example for each element and quote for each element 1 article of the Cambodian Constitution (CC).

**1) Representation** of all society members:

Example: - deputies in the National Assembly must represent all Cambodian people, not only a part of them, Article 77 I CC  
- other examples can be found in the lecture paper “Function of the Legislation”

**2) Transparency and Publicity** of the decision making process:

Example: - open access for the public to the hearings in the NA or the Senate, Article 88 I and 111 I CC

**3) Discussion and Debate:**

Example: - one day each week for questions and answers in the NA, Article 96 VI CC

### **Question 2**

What must lawmakers take into consideration when they want to restrict a human right in a law?

1) First, lawmakers must take care that the human right restriction follows a **specific purpose** which is approved by the **Cambodian Constitution or International Conventions**.

2) Second, lawmakers must take care that the human right restriction is **proportional**, that means the restriction must not exceed the limit of necessity.

### **Question 3**

Article 43 of the Law on Commune Council reads as follows:

“The Commune Council shall perform the following duties to serve local affairs:

- manage necessary public services
- encourage the creation of satisfaction and well being of the citizens”

What is the problem with the text of this article? Describe the problem and explain why it is a problem!



The terms “necessary public services” and “satisfaction and well being of the citizens” are **not precise**.

When are services “necessary”? When are citizens “satisfied”? When they all have 1 million dollars or when they just have a house to be to protect them against the rain?

These unprecise terms open door for arbitrary interpretation by the Commune Councils and other authorities. They create more conflicts than they should solve.

It can not be left over to the authorities or courts to fill out these unprecise terms. The lawmakers themselves have to do their homework and fulfill their legislative duties. They have to give a more precise definition of the duties of the Commune Council.

If lawmakers do not do this they violate the **principle of separation of power**.

#### Question 4

Article 47 of the Law on Commune Council reads as follows:

“The duties of the Commune Council may be dealt in details by a sub-decree following the proposal of the Minister of Interior.”

Is this article constitutional? Give a reason for your answer!

No. This article is **not constitutional**.

The article deals with **delegation of rule making power** from the National Assembly (legislative body) to the Ministry of Interior (executive body). In such cases a potential violation of the **principle of separation of power** has always to be checked.

In this case there is a clear violation of the principle of the separation of power because the definition of the duties of the Commune Council is a very important decision which has long term consequences for the future. Such a definition can therefore only be made by the National Assembly.

#### Question 5

How is the right of the lawmakers to have an open discussion in the National Assembly protected? Do not forget to quote articles!

1) **Right to question** members of the government and authorities: Articles 89, 96, 97 CC and Principles 32 and 33 of the Internal Rules of the NA

2) **Right to speak**: Principles 54 – 61 of the Internal Rules of the NA

3) **Right to enjoy immunity**: Articles 80 II and 104 II 1 CC

#### Question 6

What are the differences between the National Assembly and the Senate?

1) The NA has **123 seats** (Article 76 I CC), the Senate only **61** (Article 99 II CC).



- 2) NA members must be at least **25 years** old (Article 76 IV CC), Senate members have to be at least **40 years** old (Article 99 IV CC).
- 3) Members of the NA are **elected** by a free, universal, equal, direct and secret ballot (Article 76 II CC). Members of the current Senate are **appointed** by the King (Article 157 II CC). The next Senate members will be **partly elected** (in a non-universal ballot), **partly appointed**, Article 99 III CC)
- 4) The term of the NA is **5 years** (Article 78 I CC), the one of the next Senate is **6 years** (Article 102 I CC).
- 5) Unlike the NA the Senate has **neither real power to make laws nor to chose and control the government**. It can initiate laws (Article 91 I CC) but it can not question, accuse or dismiss the government or its members.

### Question 7

Lobbying activities can focus on 3 different levels:

- on the lawmakers themselves
- on the lawmaking process
- on the adopted law.

Give 2 examples of lobbying activities for each level.

The following proposals for lobbying activities are given on the topic “Prevention of Domestic Violence”:

#### 1) on the lawmakers themselves:

- to interview lawmakers from each political party represented in the NA on how they intend to prevent domestic violence
- to invite lawmakers to an open forum discussion on the topic “Prevention of Domestic Violence” and to provide information for them (like statistics, victims stories etc.)

#### 2) on the lawmaking process:

- to make a demonstration in front of the NA during a session while the topic “Prevention of Domestic Violence” is discussed
- to organize a meeting with the relevant NA commission which checks the (draft) law before it is presented to the whole NA.

#### 3) on the adopted law:

- to conduct a survey on the flaws of the law and publish it in the media
- to complain publicly to the Constitutional Council if the law is unconstitutional.

### Question 8

What are the 4 main steps of the legislative process until a new law can enter into force?

- 1) A draft of a new law or an draft amendment of an old law is **initiated** either by the NA, the Government or the Senate, Article 91 I CC.
- 2) Then the draft law or draft amendment has to be **adopted** by the NA, Article 90 CC.
- 3) The adopted law needs to be **promulgated** by the King, Article 93 I CC.
- 4) And finally the law has to be **published** to enter into force, Article 93 II CC.