

Joint NGO Submission to the Universal Periodic Review of Cambodia-June 2013

The joint submission is been prepared with consultation with Access to Information Working Group. It is endorsed by 30 NGOs listed in the attachment.

1. Problem Statement:

Existing legal framework relating to access to information

The protection of the right to information in the *Constitution of Cambodia* does not express. While a patchwork of legislation touches on access and disclosure obligations, there is currently no specific law addressing access to information. Although the *Constitution of Cambodia* provides no express protection for the right to information, some provisions support the principles of disclosure, public participation, and expression.

Patchwork of legislation relating to access and disclosure

A patchwork of legislation addresses access to information in various sectors to varying degrees. In 2010, the Advocacy and Policy Institute reviewed 310 Cambodian laws and 188 sub-decrees to identify articles related to access to information.¹ Researchers studied legislation relating to education, health and medicine, public administration, de-centralisation and de-concentration, economy, investment, and labour, and natural resource management and the environment. One relevant law is the *Press Law*, but it applies only to the media and is riddled with exemptions. The *Archive Law*, *Anti-Corruption Law*, and the *Civil Code* also have relevant provisions.

The report concludes that the current legal framework is inadequate:

The Cambodian laws and sub-decrees the research team studied considerably mention about access to information, but they are still fragmented, not concentrated and not responsive to better implementation. It is, therefore, difficult for the public to access information. The public cannot even request for information about laws that have already been promulgated or national policies adopted.²

State of disclosure of information

The general consensus among experts is that government disclosure practices are weak. Today, “[g]aining access to even basic information such as draft laws, regulations, national budgets, and policy papers is exceptionally difficult.”³ According to an opposition Sam Rainsy Party lawmaker, “all types of information – from government payrolls to licenses for exploitation of natural resources – are kept secret from the public, and even from parliamentarians”.⁴ A journalist has attested that “many journalists are only able to get access to the government-held records only at the mercy of officials who are willing to release partial information to the media while keeping secret other important

¹ Advocacy and Policy Institute. *Review of Legislation Relating to Access to Information*. Undated.

² Report, pp. 32-33.

³ Advocacy and Policy Institute. *Review of Legislation Relating to Access to Information*. Undated. Pg. 1.

⁴ Paul Vrieze and Phorn Bopha. “Group Backs Freedom of Information Draft”, *Cambodia Daily*. September 27, 2011.

information”.⁵ Citizens concerned with particular issues affecting their communities. For example, a commune council in Kompong Thom province notified community members they could not grow rice next year along the Tonle Sap River. The council said the government notified them without explanation⁶. According to Transparency International, Perception Index of 2012, Cambodia was 157 among 176 countries which places Cambodia one of the most corrupted countries in the world. The Anti-corruption law's stipulation about punishment of those who give false information is an obstacle to the principle of whistleblowers protection. The NGO Access Initiative summarises, “In practice, the government keeps strict control over what is open to public scrutiny”.⁷

Sectoral and issue-based consultations undertaken between 2010 and 2012 in the education, labour, health, decentralisation, and media sector, and with those involved in forestry and land concessions, fisheries, the extractive industries, and housing rights revealed the following barriers to access:⁸

- absence of clear procedures for requesting information;
- absence of information on where to request information/public body;
- absence of clear procedures for transferring information in public body;
- absence of staff available to provide requested information;
- discrimination (e.g. against minors, people with disabilities, illiterate Cambodians, journalists, people who are not part of the ruling party);
- requirement to pay a fee;
- requirement to state a reason for requesting information;
- requirement to present an official letter;
- requirement to leave ID card with the official;
- requirement to travel a long distance to request or receive information;
- delays in receiving information such that it may be out of date when it is received;
- refusal to provide information;
- provision of inaccurate or false information;
- absence of legal protection for journalists or whistleblowers.

Furthermore, a UNDP report on access to information summarises some of the problems related to government disclosure capacity:

[E]ven in those ministries and other public bodies that have some semblance of an A2I policy, specific rules, procedures, and regulations governing public information access are often confusing, vague or

⁵ Moeun Chhean Nariddh. “All Parties Stand to Gain from Freedom of Information Law”. Letter to the Editor, *The Cambodia Daily*. September 29, 2011.

⁶ Introduction to Access to Information in Cambodia. August 2010. Pg.5.

⁷ The Access Initiative Cambodia. *Cambodia Assessment Report: Access to Information, Public Participation, and Access to Justice*. December 2010. Pg. 25.

⁸ Advocacy and Policy Institute. Reports on consultative meetings. 2010-2012.

even non-existent. And, even in cases where the policy procedures are clear, staffs often lack the knowledge, training, and motivation to effectively implement the policies.⁹

Challenges to passing access to information legislation

The Royal Government of Cambodia (RGC) committed to pass an international-standard Access to Information Law by the end of 2006. This task was assigned to Ministry of National Assembly and Senate Relations and Inspection (MONASRI). However, approaching the second half of 2007, the RGC agreed upon charging a committee with initiating the Access to Information Policy Paper/framework drafting process. While some progress had been observed in the Policy Framework development, there was no advancement towards its approval. To date, the RGC has still not passed a comprehensive access to information law. The proposed legislation introduced by the opposition Sam Rainsy Party (SRP) has not been passed. Some government officials and members of Parliament have shown support for access to information. However, this support has been scattered, and political will to act remains low.

Challenges in promoting openness and disclosure

One challenge to the promotion of access to information is that Cambodia has not historically been an open society. A Cambodian legal scholar has described the roots of this culture of secrecy. A culture of openness makes serious abuses like torture or detention less likely to happen. Sub-National Officials are reluctant to openness and disclose information with reasons of leaking resource, limited capacity, and culture of secrecy, even the Sub-National legislation provisions declare definitely the roles and duties of the Sub-National officials to disclose public information¹⁰.

Government capacity is low

Government bodies tend neither to have set processes for responding to requests for information, nor sufficient staff capacity for doing so. Institutional capacity is weak and mechanisms for disclosure are lacking, so information is not easily accessible to the public.

The Advocacy and Policy Institute's research has found that commune councilors, for example, often lack capacity. Some are newly elected and have little experience. Others are older and have difficulty absorbing new skills or taking on new responsibilities. In addition, as a lowest sub-national body, the communes tend to have limited information management systems.

Government actors are reluctant to disclose information related to "sensitive" issues

Research conducted by The Access Initiative found that the government was less likely to disclose information relating to issues it deemed politically sensitive: "those cases involving issues dealing with economic land concessions, mining projects, and garment factories often involve clashing economic

⁹ Raymond Leos. *The Role of Access to Information in Promoting Democracy, Good Governance, and Development in Cambodia*. Undated. Pg. 28.

¹⁰ *Advocacy and Policy Institute. Access to Information Baseline Survey. November 2011. Pg. 31.*

interests, as well as power imbalances between parties (such as poor rural villagers, factory workers and wealthy/powerful economic interests).¹¹

Cambodian citizens have limited awareness of their right to access public information

Cambodians' understanding citizens' rights generally is low. They have limited awareness of their right to access public information. For example, less than 20% of respondents to a 2011 Advocacy and Policy Institute survey agreed with the statement that "It is the obligation of the state to let the citizen know and receive information about what is going on around them".¹²

Cambodian citizens have limited capacity to demand access to information

Specific issues such as high illiteracy rates in some communities and lack of knowledge of the Khmer language in minority communities limit individuals' ability to demand information.

In addition, the agricultural season "limits the preparedness and willingness of villagers to get engaged into information related activities to essential 'must do' actions only".¹³

2. Recommendations for government

Pass access to information legislation

The most powerful step the government can take is to pass an Access to Information Law. This law should reflect the nine principles advocated by the NGO Article 19, notably the principle of maximum disclosure to promote open government. The current proposed law is a good beginning, but it has to be considered and revised to reflect the Cambodia context and the fundamental principles of the access to information. It is necessary that the government opens for engagement and meaningful consultation with civil society.

Enforce existing laws relating to information disclosure

Government must to strengthen existing laws and legislation relate to information disclosure enforcement and implementation. It is important that government actors enhance its legal and the judiciary must act independently and impartially.

Develop a culture of openness

Government actors at all levels must take steps to develop openness and disclosure (disclosure information policy). They should work to disseminate information proactively and respond promptly to requests for information.

It is important that government actors disclose not just information relating to non-controversial administrative matters, but also information relating to issues it may deem to be politically sensitive such local resource management, environmental governance, and land use. They should cultivate the attitude that citizens are entitled to understand government actions and decisions that affect their lives.

¹¹ The Access Initiative Cambodia. *Cambodia Assessment Report: Access to Information, Public Participation, and Access to Justice*. December 2010. Pg. 5.

¹² Advocacy and Policy Institute. *Access to Information Baseline Survey*. November 2011.

¹³ Advocacy and Policy Institute. *Commune Information Disclosure Pilot Project: Findings of the Project Evaluation*. December 2010. Pg. 23.

Build capacity to disclose information

Government must build its capacity to disclose information and develop an information management system. It must develop and publish clear processes for requesting and providing information. It must devote sufficient budget and staff to information disclosure processes. Access to information should be mainstreamed into government activities at all levels.

Build business support

Government must provide a mechanism to enable investor's access to government resources, and an accurate exchange of information could assist in better decision-making. That is, it promotes transparency of the business risks and benefits from varied courses of actions. The provision of more information allows for greater accuracy in predicting the costs of a business venture

The report endorsed by:

1. API Advocacy and Policy Institute
2. ADHOC Cambodian Human Rights and Development Association
3. AT Advocacy Team of Association NGO
4. CD Cam Conservation and Development on Cambodia
5. CLEC Community Legal Education Center
6. CEDO Cambodia Economic Development Organization
7. CHRAC The Cambodian Human Rights Action Committee
8. COMFREL The Committee for Free and Fair Elections in Cambodia
9. CSD Center for Social Development
10. EA Equal Access
11. KWVC Khmer Women's Voice Center
12. KID KID
13. KYA Khmer Youth Association
14. HRTF Housing Rights Task Force
15. MB Mlob Baitong
16. NICFEC Neutral and Impartial Committee for Free and Fair Election In Cambodia
17. OFC Open Forum of Cambodia
18. OI Open Institute
19. RAO Rural Aid Organization
20. DRHAC Democracy and Human Rights Organization in Action
21. Pact Pact Cambodia
22. PDP Center People Center for Development and Peace
23. Star K Star Kampuchea
24. VOD-CCIM Voice of Democracy Cambodian Center for Independent Media
25. WMC Women's Media Center
26. CPN Community Peace-Building Network
27. KBSC Khmer Buddhist Society in Cambodia
28. Fact Fishery Action Coalition Team
29. NGO Forum NGO Forum on Cambodia
30. TI Transparency International Cambodia