



INTRODUCTION TO ACCESS TO INFORMATION IN CAMBODIA

ACKNOWLEDGEMENTS

Produced by the Advocacy and Policy Institute (API) and the Freedom of Information Working Group, with support from the UNDP Strengthening Democratic and Electoral Processes (SDEP) program in Cambodia.

Thank you to Professor Raymond Leos for his considerable contribution to the writing of this handbook, in addition to the Access to Information Train the Trainers manual.

August 2010

Photographs: API/Khim Nina, Man Vanpannit and UNDP/Nathan Horton, Isabelle Lesser, Rebecca Murray, Ricardo Bobis

Cover photo: UNDP/Nathan Horton



Photo: APJ/Khim Nina

TABLE OF CONTENTS

Introduction	2
What is Access to Information (A2I)?	3
The Benefits of Access to Information Legislation	5
The Basic Principles of Access to Information Legislation	9
Access to Information in Cambodia	11
Working Group	13
Quiz	14
Key Terms	15
Further Reading	16



INTRODUCTION

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's rights and children's rights.

Article 31, The Constitution of the Kingdom of Cambodia

The right to information is a fundamental human right, and access to information can benefit all Cambodians in their everyday lives.

The term "access to information" varies around the world; some say "freedom of information", "right to information" or "the right to know". While they all mean the same thing, the most common international phrase is access to information, and this is what we will use here.

This booklet serves as a basic introduction to access to information for Cambodian civil society, public officials, business owners, journalists, students, community members and those committed to support and promote access to information across the country.

First explained will be access to information, the right to access information in the public and private realm, and how information can positively impact our lives.

Second, the right to access information around the world will be explored, with a special focus on Asian countries.

Third, the status of access to information in Cambodia will be examined; the country's current laws and prospects for passing and implementing domestic access to information legislation.

Finally, included is a glossary of common words used in access to information discourse, and a short, concise list of valuable resources for continued research.

Following the successful adoption of anti-corruption legislation in April 2010, passage of an access to information law would support anti-corruption implementation and ensure greater transparency and trust between Cambodian citizens and their government.



Photo: UNDP/Nathan Horton

WHAT IS ACCESS TO INFORMATION (A2I)?

In 1946 the United Nations General Assembly declared: “The right to information is the touchstone of all freedoms.”

What this means is that everyone is entitled to access information, to help empower him or her to make well-informed choices about their lives.

Access to information means that information held by public institutions, as well as some held by private bodies, is the property of the people.

People have the right to access public information that is being held about them, or that can benefit them. They have the right to follow what is happening in public institutions dealing with everything from government policy debates, finances, investments, elections, education, health, property and the environment, to justice and security.

Privatization is a widespread phenomenon today, with many public services put into private hands, for example: health care, education, water and electricity supplies, sanitation, prisons, air traffic and security. If private companies are fulfilling a public function, their obligations under access to information law requirements should remain the same as that of public bodies.

Private bodies should, at the very minimum, disclose their health and safety working conditions, environmental impact, and financial health.

Under an access to information law, an individual can file a request for information, which would be answered by the authority in reasonable time. Access to information applies to any information held by or on behalf of an authority, which includes documents, email, video, photographs and audio records.

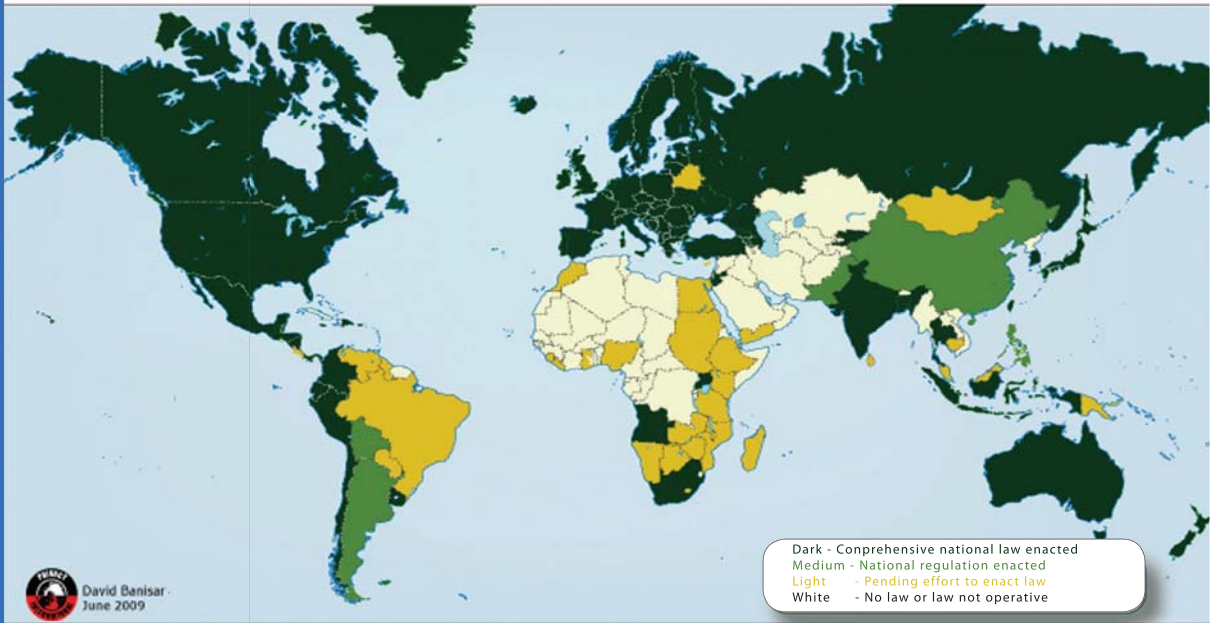
Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers...

Article 19, The United Nations Declaration of Human Rights

The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by governments in all types of storage and retrieval systems.

The UN Special Rapporteur on the Right to Freedom of Opinion and Expression, 1998

National Freedom of Information Laws, Regulations and Bills 2009



*Not all national laws have been implemented or are effective. See www.privacyinternational.org/foisurvey for reviews of the laws and practices

www.privacyinternational.org

Access to information legislation is essential to support the ability of people worldwide to obtain information.

The first access to information law was passed in Sweden, in 1766. But the world had to wait two centuries for another country to pass the legislation, this time the United States of America in 1967.

Currently an unprecedented number of over 70 countries had passed access to information legislation worldwide.

In Asia, China, Hong Kong, Singapore, Japan, South Korea, Taiwan, Thailand, India and Pakistan have all passed the law. A few countries, like the Philippines, have access to information mentioned in their constitutions. Now several more laws are pending, most notably in Indonesia, Vietnam, Sri Lanka, Malaysia and Cambodia.



Photo: API/Khim Nina

THE BENEFITS OF ACCESS TO INFORMATION LEGISLATION

Everyone - government, civil society, journalists, students, businesses, and communities - can benefit from access to information legislation. This is particularly true for poor and marginalized people, who often lack information resources and are consequently excluded from decision-making.

Access to information contributes to strengthening democratic governance, empowering public participation, promoting economic growth and investment, protecting human rights and privacy, and preventing conflict.

A2I strengthens democratic governance

Elected governments are likely to be more accountable to their electorate's needs if their actions are publicly followed through an access to information mechanism.

An open government could work more efficiently by keeping its records in order and accessible to the public.

By encouraging the public to partake in open discussions, the government could also be more inclusive and well informed by diverse opinion.

For example, a recent survey found that around two-thirds of the population in 13 communes across five rural provinces did not know the procedure and fee to register a birth certificate. The remaining third thought the processing charge was up to 10,000 riel instead of the official cost of 400 riel. The commune council could publicize the official procedure and charges to avoid confusion.

A2I encourages public participation

Increasing public participation means voters are better informed when voting for their representatives, and are active in policy advocacy when their candidate is in office.

Citizens concerned with particular issues affecting their communities could use the access to information law to obtain policy information. Or they could attend meetings of public decision-making bodies and voice their opinion during the policy-making process.

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 explanation. A community meeting should take place for rice farmers, the commune council and government officials to discuss the decision and livelihood alternatives.



Photo: UNDP/Ricardo Bobis

The Nobel Prize winning economist Amartya Sen famously said a drought never became a famine in a democratic country because an open society can effectively educate the public about famine.

"Our Rights Our Information" by the Commonwealth Human Rights Initiative (CHRI)

A2I promotes economic growth and investment

An open government could make better and more equitable business decisions, act more transparent, and attract more domestic and international investment.

Businesses could use an access to information law to gather market information, understand business policy and more efficiently navigate the government system.

Finally, the government could provide a mechanism to enable investors' access to government resources, and an accurate exchange of information could assist in better decision-making.

A2I protects human rights

Although access to information is a human right, it is a key to protecting and guaranteeing many other rights.

For example, information about reproductive health is something that affects every woman for a large part of her life and is important to understand. Access to information could also be a way of unlocking the restrictions on women's power and role in society.

In an open society, it is much easier to tackle serious violations of civil or political rights, as well as economic, social and cultural rights.

A culture of openness makes serious abuses like torture or detention less likely to happen.

Traditionally disadvantaged groups – of which women are the largest – could especially benefit from access to information, enabling their participation in decision-making processes.

Workers rights can also be greatly enhanced in a work place where critical information is available. Workers can be informed about health and safety issues, and other working conditions. They can obtain financial information about their institution or company, which could help them in wage negotiations, or to form a workers union.

Access to information is important for healthy lives - how to identify health risks and gain access to treatment.

Society can benefit from boys and girls being aware of their right to an education. Awareness is likely to trigger a demand for education and ultimately result in a more highly skilled workforce.

A2I supports the media

The Committee to Protect Journalists says, "a strong press freedom environment encourages the growth of a robust civil society, which leads to stable, sustainable democracies and healthy social, political and economic development."

However, independent media can only thrive if protected by laws, including access to information legislation, enabling journalists to investigate and report stories without fear of reprisal or censorship.



Photo: UNDP/Nathan Horton

A2I protects the environment

An access to information law could encourage good business practices, and reveal bad practices detrimental to local livelihoods and the environment.

For example, a lack of managerial oversight of industrial waste disposal, urban construction with no zoning laws, or wholesale logging and mining without environmental controls or community consultation could be exposed.

Information and communication could broker long-term solutions between communities, businesses, environmentalists and the government.

A2I enhances public security

Transparency encourages the national security sector to focus on state-sanctioned activities, publicly accountable to a civilian leadership and ultimately, the general population.

Some groups or communities feel they are treated unfairly by the government, or by another group. An access to information law could help tackle the causes of conflict by allowing people to examine and partake in the decision-making process. This could contribute to reducing tensions, feelings of marginalization and exclusion from power.

Finally, having a strong access to information law reduces the danger of rumor. Rumors often occur when people are unable to get the true information. This is especially true in societies that lack transparency in public and social affairs. Rumors can have a serious negative impact.

For example, a beer factory in Kompong Chhnang province drilled water wells on company property. Local villagers complained their community water wells were dry as a result. The commune council held a public discussion to explore possible reasons why the residents lack water, including the shallowness of the village wells. The factory has since conducted an analysis of local water use, and could release the results to combat rumor, and build a positive relationship with the community.



Photo: UNDP/Nathan Horton



Photo: UNDP/Rebecca Murray

THE BASIC PRINCIPLES OF ACCESS TO INFORMATION LEGISLATION

To build an access to information law that clearly benefits and empowers citizens and institutions alike, a number of time-tested rules should be followed.

International information rights organization, ARTICLE 19, has drawn up an important set of principles for an access to information law:

1. Maximum Disclosure

In all cases it is assumed that information will be disclosed. In a few circumstances there may be reason for withholding information, but it is the responsibility of the holder to demonstrate this.

2. Obligation to Publish

In addition to public requests for information, public institutions should be under an obligation to publish key information. The success of an access to information law is measured not by how many public requests are submitted and answered, but by how much information reaches the public.

3. Promotion of Open Government

Public institutions should actively promote an open and transparent government by publishing government documents without request, and making meetings and deliberations public.

Example:

Royal Government of Cambodia No. 22 ANK/BK Sub-decree on Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils

Article 10: A Commune/Sangkat Council shall set up a public notice board at its office... Public notice boards shall be used to write or display official notice and other news and information of the Commune/Sangkat Council. An official notice shall remain on the notice board for not less than 10 days.

Article 33: A Commune/Sangkat Council shall ensure to regularly inform the residents of Commune/Sangkat of all matters within its competencies and the decisions made at the meetings of the Commune/Sangkat Council.

4. Clear and Narrow Exemptions

Exemptions should be clear and narrowly drawn, and set out in the access to information law. Information should only be kept secret if it can be shown that revealing it will cause damage to national security, privacy or an interest protected within the law.

5. Easy Process to Access Information

Public requests for information should be processed rapidly and fairly, and an independent review and right of appeal of any refusals should be available.

6. Control Request Costs

Individuals should not be deterred from making requests for information by excessive costs. A good access to information law will impose no application fee, but only charge the cost of producing the information, for example, for photocopying.

7. Open Meetings of Public Bodies

Working from the principle of maximum exposure, people have the right to attend public meetings and debates, to see how decisions are decided on their behalf.

8. Laws Consistent with Maximum Disclosure

An effective law is supported by existing legislation that does not contradict it.

9. Protect Whistleblowers

Public or private individuals who release information about wrongdoing must be protected. The information could be about human rights violations, corruption, environmental threats or incompetence.

To refuse to disclose information, a public body must prove that:

- *The information is related to a protected interest listed in the law*
- *Disclosure of the information would threaten to cause harm*
- *This harm outweighs the public interest for disclosed information*



Photo: UNDP/Ricardo Bobis



Photo: UNDP/Nathan Horton

ACCESS TO INFORMATION IN CAMBODIA

Although there is currently no access to information law in Cambodia, the Royal Government acknowledges the need for the law to create a transparent government, reduce corruption, and promote confidence in the government by the citizens of Cambodia.

Right now, the closest Cambodia has to an access to information law is Article 5 in the national Press Law, which contains too many exemptions, and applies to the media, and Article 13 and 14 in their Archive Law, which remains vague and confusing.

With the encouragement and support of donor countries and civil society, the Royal Government developed an access to information draft policy in 2007. This draft is currently with the Ministry of National Assembly Senate Relations and Inspections (MoNASRI) pending the legislative process.

Access to Information legislation in Cambodia could:

- *Increase popular participation in government and development*
- *Encourage public education and invest citizens with knowledge and skills*
- *Expose corruption and make businesses more efficient*
- *Uncover mismanagement of food supplies and make shortages less likely*
- *Expose environmental hazards that threaten health and livelihoods*
- *Protect the media and build a well-informed public*
- *Reduce the threat of human rights violations, and the danger of rumor...*

The Cambodian access to information draft policy recommends the government to:

- Publish information, even if not asked by the public
- Appoint public 'information officers' responsible for access to information within each body. The officers would be trained on how to maintain records and respond to the public
- Establish an efficient system of managing information and records
- Publicize the access to information law so that everyone would be aware of their right to information, and how to get it
- Finally, appoint an independent 'information commissioner' that would receive complaints or appeals from public requests, and provide oversight over the process

The Cambodian access to information draft policy recommends civil society to:

- Make the public aware of the access to information law and their rights
- Provide guidance to those requesting access to information
- Train officers to implement the law
- Monitor the implementation of the law
- Finally, use the law to gather information about issues of concern



Photo: UNDP



Photo: UNDP/Rebecca Murray

WORKING GROUP

In addition to government efforts, Cambodian civil society has also been engaged in the promotion of access to information.

The Freedom of Information Working Group was created in 2003. This group is comprised of civil society organizations, and raises public awareness about the importance and benefits of access to information legislation to people throughout the country.

The Working Group's permanent members are:

- Advocacy and Policy Institute (API) – FOI Working Group Secretariat: www.apiinstitute.org
- Cambodia Enterprise Development Organization (CEDO): uchkimy@yahoo.com
- Cambodia Human Rights Action Committee (CHRAC): www.chrac.org
- Cambodian Human Rights and Development Association (ADHOC): www.adhoc-chra.org.kh
- Center for Social Development (CSD): www.csdcambodia.org
- Committee for Free and Fair Elections in Cambodia (COMFREL): www.comfrel.org
- Community Legal Education Center (CLEC): www.clec.org.kh
- Conservation and Development on Cambodia (CDCM) Equal Access: www.equalaccess.org
- Khmer Institute for Democracy (KID): www.bigpond.com.kh/users/kid
- Khmer Women Voice Center (KWVC): kwvc@forum.org.kh
- Khmer Youth Association (KYA): www.kya-cambodia.org
- Neutral and Impartial Committee for Free and Fair Elections in Cambodia: www.nicfec.org
- Open Forum of Cambodia: www.forum.org.kh
- Pact Cambodia (PACT): www.pactcambodia.org
- People Center for Development and Peace (PDP)
- Star Kampuchea: www.starkampuchea.org.kh
- Voice of Democracy: www.ccimcambodia.org
- Women's Media Center: www.wmc.org.kh

For further information about the Working Group and Access to Information, please contact the Advocacy and Policy Institute (API) in Phnom Penh at: 855 (0) 23-213 486



QUIZ

If Cambodia had an access to information law, how would these cases be handled?

Case 1:

The Cambodian police are engaged in an extensive undercover investigation against human trafficking. A member of the public has requested information about the number of wiretaps used by the police in this operation, and whom they have been used against. Should this information be released? Yes or no?

Case 2:

Vanna is a woman living in Battambang province, where she was legally registered as married. She was told by a friend that her husband of three months, who works as a taxi driver, has been married to another woman in Takeo province for the last four years. She wants to find out from the Takeo authorities if her husband has registered a marriage there with another spouse. Should this information be released? Yes or no?

Case 3:

Vireak, a villager living in Prey Veng province, has heard from his village chief that the authorities are planning to widen the national highway that runs next to his land. No decision has been made as yet, but several meetings have been held over the past six months in Phnom Penh, and Prey Veng with local authorities, provincial authorities and the Ministry of Public Works and Transport. Vireak would like to request copies of any documents or other records related to these meetings. Should this information be released? Yes or no?

Answers:

Case 1: No, the police are still engaged in an investigation that could be damaged if made public.

Case 2: Yes, the information could be released (the marriage certificate may fall under the personal information or personal privacy exemption and may harm the couple's marriage, but this will not outweigh the public interest in preventing bigamy and fraudulent marriage.

Case 3: Yes, construction projects should take into account those communities impacted, and includes their voice from the planning phase onwards.



Photo: UNDP/Nathan Horton

KEY TERMS

Access to Information:

A person's right to access official information, and in some cases, information held by private bodies. This is similar to another widely used term, Freedom of Information.

Freedom of Expression:

A person's right to freedom of speech or writing, as well as any act of seeking, receiving and disseminating information or ideas.

Official Information:

Information owned, produced for or by, or subject to government control is Official Information.

Open Government:

All work of the government should be transparent at all levels, for effective public examination and citizen oversight. Access to Information is part of this principle.

Privatization:

The process of transferring ownership of a business, agency or public service from the public sector (government) to the private sector (business). For example, garbage collection, water, electricity and sanitation supply, security.

Public Institution:

A body fully or partially controlled and funded by the government. For example, a ministry, council, committee, hospital, school or university.

Public Information:

Information that would benefit, educate or serve the public. People have the legal right to access public information held by the government, or by private bodies that undertake government functions.

Right to Information:

This phrase says people are entitled to information, not just free to receive it.



FURTHER READING

Article 19

Article 19 takes its name from the UN Declaration of Human Rights, and is a leading international advocate for Access to Information www.article19.org

The Carter Center

The Carter Center works to prevent and resolve conflict and enhance freedom and democracy worldwide, which includes the Access Initiative www.cartercenter.org

The Commonwealth Human Rights

Initiative CHRI is headquartered in India and offers a south-based perspective to right of information www.humanrightsinitiative.org

The Global Access to Information Advocates Network

the Access to Information Network has a global reach www.foiadvocates.net/index_eng.html

The Open Society Justice Initiative

OSI's Justice Initiative promotes rights-based law reform, builds knowledge and strengthens legal capacity worldwide www.justiceinitiative.org

Transparency International

Transparency International is an NGO focused on combating corruption www.transparency.org

UN Special Rapporteur on the Right to Freedom of Opinion and Expression

www.frontlinedefenders.org/manal/ar/rfoe_m.htm

The Cambodian Press and Archive Laws

http://www.bigpond.com.kh/Council_of_Jurists/somg.htm

NOTES

A series of horizontal dotted lines for writing notes.

