

Access to Information and the Cambodian Parliament: An Assessment

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I. Introduction

As the secretariat of the Access to Information Working Group,¹ the Advocacy and Policy Institute (API) seeks to fill gaps in information and resources for advocacy on an access to information (A2I) law in Cambodia. As yet, there is no documentation on attitudes of parliamentarians toward A2I, or on ways they could support development and implementation of such a law. This assessment seeks to fill these gaps in an effort to inform further education and advocacy efforts. Noting the lack of official action since the Ministry of National Assembly and Senate Relations and Investigations (MONASRI) released a draft policy framework on access to information (A2I) in 2007,² API seeks to move forward.

II. Methodology

This assessment included several tools, including:

- A literature review
- Meetings with key development partners and experts on A2I
- A workshop for parliamentarians and other stakeholders and
- A survey of workshop participants.

A. Literature Review

API reviewed a range of documents reflecting the history of efforts to enact an A2I law in Cambodia.

In order to clarify the legal framework in Cambodia that would underpin an A2I law, API reviewed provisions of the constitution as well as the internal regulations of the National Assembly and the Senate.³

The draft *Access to Information: A Clear Policy Framework for Cambodia*, released by MONASRI in 2007, outlines the rationale and goals for an A2I law. The document states clearly “all Cambodian citizens should have the right to access government-held information as required by law.”⁴ The document also calls for a balance between providing access to information and protecting government information from disclosure. As outlined in the policy, “this balance will require government institutions to carefully assess the information they hold and determine what information needs to be treated carefully and protected and that information that could be and should be shared with the people of Cambodia.”⁵ Among other provisions, the policy sets

¹ Composed of 19 Cambodian and international NGOs, the working group seeks to improve access to public institutions and public information, and to encourage lawmakers to adopt an Access to Information law that meets international standards.

² Following final approval by the ministry, the next step in the lawmaking process would be review and approval by the Council of Ministers. As yet, there is no indication that the Council of Ministers is considering the policy.

³ For further details on the legal framework please see Section IV.

⁴ Ministry of National Assembly and Senate Relations and Investigations (2007) draft *Access to Information: A Clear Policy Framework for Cambodia*, page 5.

⁵ Ibid.

out procedures for citizens to gain access to government information as well as a process to implement exemptions balancing the interests of protecting information that could harm the public interest with the interests of providing access to information.

API also reviewed documents produced by A2I advocates. API's *Introduction to Access to Information in Cambodia*, released in 2010, provides an explanation of A2I concepts and the benefits of A2I to Cambodians. The document explains that A2I legislation strengthens democratic governance, encourages public participation, promotes economic growth and investment, protects human rights, supports the media, protects the environment and enhances public security. The document includes a quiz on the application of an A2I law, which provides concrete examples of citizens seeking government information.

A draft law on A2I prepared by members of civil society (which had not been formally filed with legislative officials) creates a duty to publish certain records and states that every person has the right to freedom of information.⁶ The draft establishes a process for requesting information and also a process for handling exemptions, among other provisions.

In addition, API consulted the Access to Information Working Group's position paper *Access to Information Policy Framework*. The position paper links A2I to governance principles in the Rectangular Strategy of the Royal Government of Cambodia (RGC). The paper notes "some progress" on A2I with the release of the MONASRI draft policy, but explains that in practice such access to information is still limited in Cambodia. Participants in the working group's forums and workshops said they wanted more information on government policies, sub-decrees, commune development plans, budgets and livelihood information, among other topics, the paper reported. The position paper called on the RGC to approve a policy framework consistent with international standards and to formulate strategies for effective implementation.

B. Meetings with Key Development Partners and Experts on A2I

API began this assessment by consulting with organizations that work with the Cambodian Parliament and those which focus on access to information issues. These organizations provided background materials and insight on earlier efforts to promote A2I and made recommendations on ways to pursue further feedback from parliamentarians.⁷

C. Workshop for Parliamentarians and Other Stakeholders

API co-hosted an informational workshop on A2I, together with the General Secretariat of the Senate, on December 7, 2010. The aim of the workshop⁸ was to increase understanding about the law and its role in advancing social development in Cambodia and to facilitate discussion on ways to promote its enactment. Workshop participants included parliamentarians, representatives of the executive branch,

⁶ *Draft Law on Freedom of Information*, Article 14.

⁷ For details on these discussions please see Section V.

⁸ For a copy of the agenda, please see Appendix A. For a list of participants, please see Appendix B.

commune councilors, members of the diplomatic community, development partners and journalists.

D. Survey on A2I and Parliamentarians

The workshop included an anonymous survey on attitudes about A2I, ways that it may be useful to parliamentarians, and ways to promote the law.⁹

III. Limitations of the Assessment

Members of parliament faced many pressing priorities, therefore the project did not have adequate time for additional individual interviews. Several key members of parliament, including the chairs of the commissions that focus on information issues, have not been interviewed. The assessment includes interviews with only four members of parliament.

Furthermore, the assessment does not include the views of the full range of development partners and civil society groups who are stakeholders in this area. The assessment includes interviews with representatives of five such international and local organizations.

IV. Legal Framework

A. Cambodian Constitution

Cambodia's constitution includes several provisions that highlight the role of access to information. The constitution recognizes human rights (Article 31) and the "right to participate actively in the political, economic, social, and cultural life of the nation," while ensuring citizens that their suggestions will be given "full consideration by the organs of the State" (Article 35). The constitution also grants "freedom of expression, press, publication and assembly," (Article 41). In order to fully benefit from these rights in practice, citizens need access to government information.

The constitution outlines the responsibilities of members of parliament, in representation (Article 77), legislation (Articles 90 and 91) and oversight (Articles 96 and 97). Furthermore, the Constitution and internal rules for both the National Assembly and Senate contemplate factual investigations by members, creating a need for information on the part of parliamentarians, as detailed below

B. Internal Regulations of the National Assembly

The regulations allow members of the National Assembly to raise questions to members of the executive branch (Principle 32).

⁹ For details on results of the survey, please see Section VII.

C. Internal Regulations of the Senate

The Senate regulations include several provisions that highlight the need by Senators for government information. Specifically, the regulations direct certain committees to investigate and resolve complaints. This provision applies to the 1st Committee (on human rights and complaints reception), the 3rd Committee (on economy, planning, investment, agriculture, rural development and environment), the 4th Committee (on interior, national defense, ethics and investigation) and the 9th Committee (on public works, transport, post and telecommunications, industry, energy and commerce). Other regulations require the 4th Committee, the 5th Committee (on foreign affairs, international cooperation, information and the media) and the 6th Committee (on the judiciary) to monitor the implementation of existing laws. Finally, the 5th Committee and the 9th Committee are charged with conducting research and gathering information in their subject areas.

D. Procedural History of Access to Information Legal Framework

As noted above, a drafting group led by the Ministry of National Assembly and Senate Relations and Investigations developed a draft policy, *Access to Information: A Clear Policy Framework for Cambodia*, in 2007 following an extensive consultative process. The official drafting group included key members of the executive branch, and the group also reached out to the chairs of the National Assembly's 5th Commission and the Senate's 5th Committee, as well as members of civil society and donors. Since the draft policy was released, there has been no further government action. However, in September 2010, a spokesperson for MONASRI stated that the policy would be approved by the government by 2013.¹⁰

V. Perspectives on the Cambodian Parliament Role in Supporting A2I

Staff from the organizations that work with parliamentarians – the UNDP Legislative Assistance Project, the Parliamentary Centre and the Centre for International Migration and Development – agreed that parliamentarians are key stakeholders in access to information issues. They noted that parliamentarians themselves have a need for government information as they seek to fulfill their constitutional responsibilities for oversight and representation, as well as for legislation.

With regard to activities by parliamentarians to promote A2I, they said this law would represent a significant change in Cambodian ideas about use of information, and that advocates would face challenges. However, one informant observed that Cambodian society is becoming more open, and expressed optimism about passage of the law.

These informants agreed that parliamentarians could play a role in promoting A2I. On a practical level, they said that it is rare for parliamentarians to introduce legislation on their own, but that parliamentarians may be able to promote this idea through their own networks of contacts, including contacts in the government.

¹⁰ Phnom Penh Post, *Groups Call for FOI Draft Policy Approval*, September , 2010.

A representative of Article 19, an international advocacy organization focusing on A2I issues, noted that such legislation took many years to gain approval in the United Kingdom. In the meantime, advocates focused on gaining approval of several more limited laws providing access to certain types of information, such as individual medical records, environmental and safety issues.

All the informants cautioned that disclosure of information was a sensitive topic, easily characterized as an area of interest mostly to members of opposition parties. Noting that parliamentarians are busy with many other duties, informants said they were not aware of discussions, formal or informal, among members on this topic. They suggested that advocates should focus on sharing information on A2I. Furthermore, they suggested that it may be useful to target parliamentarians active on commissions and committees focusing on information (the 5th Commission in the National Assembly and the 5th Committee in the Senate) and the budget.

In addition, UNDP governance staff indicated that they will be focusing more intently on A2I in the future than they have in the past. Advocates may therefore wish to expand their outreach to this agency.

VI. Workshop on Access to Information and the Cambodian Parliament

The Senate and API workshop on December 7, 2010 was characterized by strong statements of support for A2I. The 120 workshop participants included parliamentarians (43 Senators and eight members of the National Assembly), two representatives of the executive branch, commune councilors, members of the diplomatic community, development partners and journalists.

HE Mr. Tep Ngorn, Second Vice President of the Senate,¹¹ said that the right to information is “very important,” and noted that it is recognized in the constitution. Noting that Senators often conducted Senate missions to their constituencies to conduct oversight activities and to disseminate information about laws themselves, he said that A2I would help improve delivery of government services.

HE Khieu Kanharith, Minister, Ministry of Information,¹² said A2I involves not just the law but also the culture of information. Democracies rely on participation and officials are elected based on information, he said, therefore access to information is important for building confidence and trust in the government. He linked A2I to the basic elements of good governance, such as transparency and accountability.

“Democracy is not just about elections,” HE Khieu Kanharith said, and pointed out that voters should how government funds are spent.

¹¹ HE Mr. Tep Ngorn is a member of the Cambodian People’s Party (CPP), the majority party.

¹² HE Khieu Kanharith is a member of the CPP.

However, HE also said that there should be a balance between the right of access and the right of government to withhold certain information, and noted that the existing press law has exceptions for producing government information on matters of national security, foreign relations, and other areas.

Ms. Lesley Saunderson, Deputy Head of Mission of the British Embassy, said that “information is the oxygen of democracy.” She echoed HE Khieu Kanharith in acknowledging that it can be difficult for officials to determine what information should be withheld from the public due to its sensitivity (such as security information, or information that would harm an individual). She said that Cambodia needs not only a new law in this area, but also a cultural change, as well as frameworks and tools for creating an open culture of information. This would contribute to improved decisions as it increased participation by a more informed public. She said that ultimately A2I would reduce corruption and build public confidence in the government.

Dr. Raymond R. Leos, Professor of Law and Communications, Pannasastra University of Cambodia and a specialist on A2I, provided an international and regional overview of similar laws in other countries and highlighted ways such a law could benefit Cambodia. He explained that 82 countries --including 19 in Asia and the Pacific -- have enacted A2I laws, and highlighted their key provisions. Dr. Leos said a recent survey showed a need for greater government information, as two-thirds of the citizens in a rural commune did not know the amount of the required fee or the procedure for registering a birth certificate, and one-third thought the fee was much higher than it is. Under an A2I law, these fees would be published. Ultimately, A2I could promote economic growth and attract investments, he said, by making it easier for businesses to gather information on market policies, legal requirements and market conditions. The law would also protect the environment as more information on environmental threats was disclosed. In addition, A2I would help combat rumors, which cause many problems in Cambodia.

Mr. Yoib Meta, an advisor to API, summarized the results of his review of 310 Cambodian laws¹³ to identify provisions related to A2I concepts. Noting that it was difficult to obtain copies of some laws and sub-decrees, he said that 184 laws and 133 sub-decrees refer to A2I concepts, and 126 laws and 55 sub-decrees do not. He highlighted relevant examples such as provisions in the Press Law (which has a 30-day request period for those seeking information), the Civil Code, and Anti-Corruption Law. He said that the Organic Law refers to open access to information, but it contains a loophole, as do other sub-decrees. He also pointed out that the Education Law provides access to information, but for a fee.

Another API advisor, Ms. Catherine Cecil, focused on ways that A2I may be useful to parliamentarians, particularly in their work on representation and oversight, and ways for them to promote passage of such a law. She said that members of the National Assembly and Senate may wish to promote the law within their institutions and

¹³ Please note that he did not review the entire body of Cambodian laws and sub-decrees. Furthermore, he was only able to obtain a copy of 358 of the 369 laws which have been approved.

political parties, as well as by encouraging the executive branch to move forward on the law.

After Mr. Neb Sinthay, Director of API, offered an opportunity for participants to raise questions and answers, HE Mrs. Men Maly, Chairperson of Senate's 1st Committee, closed the workshop. She asked participants to consider approving the A2I policy framework, in order to promote human rights and build confidence in the government.

HE Mrs. Men Maly summarized the workshop as follows:

- A2I is one of the rights of citizens guaranteed by the Cambodian Constitution and other laws.
- A2I is a key tool for promoting citizen participation in all aspects of development; it will strengthen transparency, trust between government and the people, civil society organizations and development partners.
- Key provisions include disclosure of information and the right to demand information from the government institutions.
- Members of the Cambodian Parliament can play several roles in promoting A2I and supporting the development of an A2I law.

In addition to gaining input from participants through the anonymous survey, API interviewed four parliamentarians, two from the National Assembly and two from the Senate, for deeper feedback.

VII. Input from Members of National Assembly and Senate

A. Attitudes About A2I

Responses to the survey revealed positive attitudes about this concept. In the survey, more than half the participants¹⁴ (68) checked the box that said such a law would “promote citizen participation in local government by providing a way for citizens to find out more about the activities of local officials.” Only 10 participants checked the box noting it “may be difficult for the government to implement.” Three participants noted that the law would improve transparency, and three participants said that it would improve democracy..

However, in another survey question, participants made distinctions among different types of information that should be made public. Only 26 agreed with the statement that public information should include “all government information, unless a balancing test shows that release of the information would cause more public harm than good,” which is in line with the draft policy framework. Greater proportions said that public information should include specific information, as noted below:

- 55 participants: “information on land concessions granted by the government”
- 54 participants: “information on government budgets and spending”

¹⁴ Participants returned a total of 77 surveys.

- 49 participants: “information on implementation of government development plans”
- 48 participants: “information on health and safety hazards”
- 46 participants: “registration documents such as birth certificates and marriage certificates”

In individual interviews, several members of parliament made positive comments about A2I. One member of parliament said that the workshop was “very important.” She noted that A2I was already called for in the constitution. Citizens making use of the provisions of the law would have a better understanding of government achievements, she said, which would increase citizen support of the government. HE also said that the regional Asian Inter-Parliamentary Assembly, of which Cambodia is a member, is focusing on this topic. Similarly, HE Mrs. Men Maly, chairperson of the 1st Committee,¹⁵ termed A2I “very important.”

HE Mr. Son Chhay¹⁶ is a strong supporter of A2I. Cambodia would benefit by having an A2I law as it develops a stock exchange, HE said, since transparency will be a key concern to participating companies and there is a need to build trust by these companies..

Answers to open questions on the survey showed a great deal of interest in A2I, with many participants saying they appreciated learning more about the draft policy and its importance to Cambodia. Others said they were pleased to learn about the experience of other countries in this area.

B. Potential Use of A2I Law

Participants held positive views on the benefits of this law for parliamentarians. Fifty-nine participants checked the box that said the law would be “useful to members of the National Assembly and Senate in their work.” More specifically, 58 participants said it would help them to “monitor implementation of Cambodian laws;” 56 participants said it would “strengthen the openness of the institutions and increase transparency and accountability to their constituents;” and 56 said it would “support their work to help constituents and their work in other areas.” Only three participants indicated that A2I is not related to the work of parliamentarians.

Several members provided more in-depth comments. One member of parliament said that Senators regularly request information from commune councilors, and that it would be helpful to receive more information on livelihood issues, such as information on rice yields. Other members noted that the law would assist them in their monitoring and oversight efforts, and strengthen checks and balances among government agencies.

HE Mr. Son Chhay noted his own experience in questioning government officials, as he has questioned 13 members of the executive branch since 1993. Without a free

¹⁵ HE Mrs. Men Maly is a member of the FUNCINPEC party.

¹⁶ HE Mr. Son Chhay is a member of the Sam Rainsy Party (SRP).

flow of government information, he asked, “How can we do our job or raise issues with the government?”

C. Ways to Promote A2I Law

Again, survey responses were favorable. A full 58 participants said that parliamentarians could “actively participate in raising awareness to support the development and passage of the law” and 58 participants said that they could “encourage the Cambodian government to see the Access to Information law as a vital law.” In line with their legislative functions granted by the constitution, 49 participants said that members could “take the lead in discussions to develop the legal framework on access to information” and 49 participants said that they could “encourage the Cambodian government (the executive branch) to speed up the process of developing the law.” Two participants said that members should disseminate information about the law. One participant said members should “encourage the government to make a clear plan” for A2I, and another said they should “pass this law immediately.”

In addition, 59 participants said that the A2I law should be a high priority, and 15 said it should be a medium priority. No participants said the law should be a low priority.

HE Mr. Son Chhay said he planned to file A2I legislation in mid-December, 2010. He said his draft is based on input by experts and on international standards. He sees no need to wait for further official action by the RGC on the draft policy framework produced by MONASRI. Beyond supporting his draft, he said that members could promote A2I by lobbying members of the RGC and the political party leaders.

One member of parliament noted that the Senate could discuss it even before it arrives in that chamber, as they did with Anti-Corruption Law. In addition, he said that Senators could submit comments on the policy framework to MONASRI.

Another member pointed out an additional pathway for lawmaking in this area, through possible amendments to the Press Law.

VIII. Conclusion

The assessment identified support for A2I along with several challenges. Comments from members of the National Assembly and Senate in the survey responses demonstrate significant interest in A2I. However, the relatively low proportion of participants who agreed with the statement most closely related to the actual provisions of the law (that all government information should be public “unless a balancing test shows that release of the information would cause more public harm than good”) may demonstrate a lack of understanding about the basic ideas underlying the law or its specifics, or simply reflect the profound change in attitude that that law would represent in modern-day Cambodia. The high numbers of participants who agreed that certain types of information should be public provides a foundation for increasing understanding about the concrete benefits making information available.

With regard to actions by members of the National Assembly and the Senate to promote the law, responses were positive but very general. Survey results showed a general willingness to promote A2I, and particularly to encourage the executive branch to move forward. These responses offer hope that members will pursue both formal and informal channels to promote the law. On the other hand, participants declined to offer suggestions on how they could promote A2I during the workshop discussions, and this may demonstrate that there is insufficient political will – on individual and institutional levels -- to ensure its enactment. In addition, despite their legislative powers granted by the constitution, parliamentarians rarely offer their own legislation, instead limiting their work to legislation that originates in the executive branch.

IX. Next Steps for Advocates

The assessment identifies an opportunity for advocates to take several steps to motivate parliamentarians to promote A2I, by:

- Raising awareness about the underlying concepts and specific provisions of the draft policy, particularly given the high number of participants who said it was valuable to learn about the draft policy and its importance.
- Stressing examples of concrete benefits of the law (such as disclosure of safety hazards).
- Building on the support of parliamentarians by following up to offer further support and encouragement.
- Bringing them together with members of the executive branch (given the strong lawmaking role of this branch) and civil society.

Advocates should expand the stakeholders involved in this effort:

- Reaching out to other government stakeholders, such as the Ministry of Information, while continuing engagement with MONASRI
- Raising awareness through roundtable discussions with members of the press, journalist associations and media officers
- Reaching out to governors, in light of their role in disclosing government information and implementing and A2I law.

Finally, beyond passage of the law, advocates and others will need concrete plans to continue to monitor implementation of the law.

Appendix C

Access to Information and Cambodian Parliament Workshop December 7, 2010

Anonymous Survey and Evaluation Form

Respondent is from (please do not write your name):

- | | |
|--|--|
| <input type="checkbox"/> a. National Assembly | <input type="checkbox"/> d. International or local NGO |
| <input type="checkbox"/> b. Senate | <input type="checkbox"/> e. Diplomatic community |
| <input type="checkbox"/> c. Royal Government of Cambodia | <input type="checkbox"/> f. Other: _____ |

A. Survey part:

1. What do you think of having a Cambodian Access to Information law?
 - a. It would be useful to members of the National Assembly and Senate in their work.
 - b. It may be difficult for the government to implement.
 - c. It would promote citizen participation in local government by providing a way for citizens to find out more about the activities of local officials.
 - d. Other, please be specific: _____

2. Members of the public should have access to the following information:
 - a. Information on government budgets and spending.
 - b. Information on implementation of government development plans.
 - c. Information on land concessions granted by the government.
 - d. Registration documents, such as birth certificates and marriage certificates.
 - e. Information on health and safety hazards.
 - f. All government information, unless a balancing test shows that release of the information would cause more public harm than good.

3. Would an Access to Information law would help members of the National Assembly and the Senate to:
 - a. Monitor implementation of Cambodian laws.
 - b. Gain access to official documents that would support their work to help constituents and their work in other areas.
 - c. It does not relate to the work of the National Assembly or Senate.
 - d. Strengthen the openness of institutions (National Assembly and Senate) and increase transparency and accountability to their constituents.

4. What roles could members of the National Assembly and Senate play to support the passage of an Access to Information law?
 - a. Actively participate in raising awareness to support the development and passage of the law.
 - b. Take the lead in discussions to develop the legal framework on access to information.
 - c. Encourage the Cambodian Government to see the Access to Information law as a vital law.
 - d. Encourage the Cambodian Government to speed up the process of developing the law.
 - e. Other, please be specific: _____

5. Passage of an Access to Information law should have the following priority among lawmakers in Cambodia:
 - a. High.
 - b. Medium.

- c. Low.

B. Evaluation part:

7. Please tick the following:

- | | | | |
|--------------------------------|-------------------------------------|-------------------------------|-----------------------------------|
| - workshop process | <input type="checkbox"/> Excellence | <input type="checkbox"/> Good | <input type="checkbox"/> not good |
| - content of the workshop | <input type="checkbox"/> Excellence | <input type="checkbox"/> Good | <input type="checkbox"/> not good |
| - place and meeting room | <input type="checkbox"/> Excellence | <input type="checkbox"/> Good | <input type="checkbox"/> not good |
| - the presentation of speakers | <input type="checkbox"/> Excellence | <input type="checkbox"/> Good | <input type="checkbox"/> not good |
| - supporting documents | <input type="checkbox"/> Excellence | <input type="checkbox"/> Good | <input type="checkbox"/> not good |

8. What are the key points that you like the most and/or you have learnt?

.....

.....

9. How you evaluate the workshop?

- a. it is very useful workshop and achieved the objective of what we want to learn and discuss
- b. It is good to discuss and learn on access to information but does not reach the objective
- c. it is not useful workshop and learn nothing

10. What would you like to suggest for the next workshop?

.....

.....

.....

Thank you very much for filling out this form!!!!!!!