



THE ACCESS INITIATIVE (TAI) Cambodia

Cambodia Assessment Report Access to Information, Public Participation, and Access to Justice



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Executive Summary

a. Introduction

The Access Initiative (TAI), a global network comprising of 50 countries, is a coalition of civil society organizations promoting good governance by developing indicators to assess national performance on its implementation of Principle 10 of the Rio Declaration which focuses on access to information, public participation, and access to justice. These indicators have been applied worldwide.

Principle 10 states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

This assessment represents the Kingdom of Cambodia's first national assessment on environmental issues, and includes 18 environmental case studies. It focuses on three categories: access to information, public participation, and access to justice. One major objective was to assess how well the government provided its citizens access rights on environment-related issues, which is consistent with the spirit of Principle 10 of the 1992 Rio Declaration on Environment and Development. A second major objective was to improve the research, analysis, and writing skills of the staff members of the participating organizations. Developing these skills is vital, and will insure the production of clear, detailed, and insightful national assessments in the future.

On November 19, 2009 the National TAI Coalition was formed with the Advocacy and Policy Institute (API) as its leading organization. In addition, an advisory committee of local environmental experts and activists was formed to support the Coalition as needed. Members of the Coalition conducted the TAI assessment, using the TAI indicator based methodology.

In addition to API, the Coalition included the following organizations: Community Legal Education Center (CLEC); Culture and Environment Preservation Association (CEPA); and the Center of Development Oriented Research in Agriculture and Livelihood Systems (CENTDOR).

Before and during the course of the assessment, researchers received training to improve their research, assessment, and writing skills. In addition the Coalition held three meetings, one in August; September and December 2010, to update the progress, lessons learned, challenges, technical problems and support, budgetary issues, activity plans, finalize case study and assessment report.

b. Main Findings

i. Conclusion: Access to Information Cases

One common thread among the cases involving Access to Information was that those cases involving non controversial or sensitive domestic issues, such as those dealing with the bird

flu outbreak, flooding, and climate change received higher score assessments from the researchers. Natural disasters and crisis, such as disease outbreaks and flooding have a great impact on rural communities. Also, in these situations, there is the potential for panic and rumor, which can potentially lead to social unrest. In order to prevent these occurrences government therefore appears more willing and able to proactively provide the public with the requisite information in these cases.

On the other hand, those cases involving issues dealing with economic land concessions, mining projects, and garment factories often involve clashing economic interests, as well as power imbalances between parties (such as poor rural villagers, factory workers and wealthy /powerful economic interests).

Those cases that involved issues in which there is no apparent immediate crisis or emergency, and which there was little apparent public awareness or interest, (such as city air quality monitoring and city tap water quality) received average or slightly below average scores, mainly due to a lack of proactive effort by the relevant agencies to provide information to the public. Some of this can be attributed to a lack of knowledgeable and trained staff, but can also be due to governmental budgetary constraints, which can impede the timely and accurate release of information to the public.

Recommendations

1. The law on the Access to Information should be adopted with international standard in Cambodia.
2. To enable public access to accurate information a simple and open mechanism should be used which makes available information on all economic land concessions granted and proposals under consideration, including concessions not exceeding 1,000 hectares of land. Information should include location, size, use and status of concessions, and comply with the requirements of the Sub-Decree on Economic Land Concessions. This information should be made available at a local level. Government should publish information beyond the current legal requirements on the internet. This includes information related to their functions, the type and form of records held, relevant laws and policy documents, audited accounts, services to the public, achievements and so on. In the case of Cambodia where even senior civil servants often find it difficult to obtain official documents and hold on to their hard copies, it would be unrealistic to expect the general public to have access to reports, studies, EIAs, gazettes or laws in print. As a result of advances in information technology it is possible to maintain basic websites for all public institutions, to provide meaningful information in electronic format which is regularly updated.
3. The governments of the Mekong River should improve access to information and the involvement of communities in decision making. The notification system should similarly be improved to use more advance technology that is accessible to local communities.
4. Development of information, education and communication materials should be targeted to the public on the right issues and address the root causes of environmental emergencies. With specific regard to indigenous and local communities, efforts should be made to provide information in the different languages and dialects spoken in the national territory. In addition, it should be ensured that information is also made available in remote areas, possibly with the collaboration of local authorities. In areas of high illiteracy rates, non-print media such as the radio should be used. When working with communities, special attention should be paid to the fact that they may have power and gender structures of

their own, and every possible effort should be made to support gender equity without being disruptive. Project or activity proponents should take the initiative in disseminating information to potentially affected persons about their legal rights and the modalities of exercising them. Concentration of information activities matching the annual and monthly seasonal availability and accessibility by a farming household in Cambodia and technical pre-conditions (equipment) for effective disclosure of information both at sub-national and national levels should be included in information requirements and supported in budgets to further improve the government development plans..

5. A mechanism for air quality data dissemination should be made available to the public by any of the following (1) place notices in public areas in order to keep the community informed about current and trends of air quality in the city, (2) a monthly report in the newspaper (3) posting on the Ministry of Environment and Ministry of Public Transport's website. Offering encouragement or incentive to field staff who collect air quality data in order to produce reliable data regularly.
6. Civil society and the media should pay more attention on environmental problems especially air pollution, as it is vital for human health. By doing this it is more likely to reach the mass public.
7. More publicity on the drinking water quality in Phnom Penh and other cities in Cambodia to the public through the media. An upgrade of the existing resource center for public research, making more documents and reading material available in libraries and resource centers and greater cooperation between public, private institutions and civil society to promote water quality information to the public.
8. Access to public information from the government should be free of charge or at a minimal cost which is clearly stated and disseminated to the public.
9. Local communities [especially those who are most likely to be affected] should demand information relating to a project, specifically the compensation and resettlement plan which the company has to consult with. There are no grounds for asking the local communities to believe in hearsay about the project unless there is a formal meeting or discussion between the company, local authority and the communities.
10. There is a need to strengthen the demand for accountability and build civic competencies. There is also a need to empower people (the public) to "be heard". Media is not fairly treated and people are easily confused due to their unclear position. It is also important to note that the media is normally perceived as a partner of convenience, expected to report only on successes and praise achievements. The public bodies should encourage independent and balanced journalism to lay the foundation for informed social, economic and environmental choices.
11. There is a need to break the culture of secrecy amongst Cambodians. This requires successfully building trust amongst better informed citizens to participate in decision-making processes. Thus the public will better understand their role, which in turn should reduce friction, misunderstandings and unwarranted criticism. As a result, officials will have better and more comprehensive information upon which to base their work.
12. A capacity building programme on access to information, especially for government officials who are responsible for disclosing and disseminate public information should be initiated.

ii. Conclusion: Public Participation Cases

One common thread among the cases involving Public Participation was that those cases involving policy frameworks or administrative orders scored higher than those dealing with actual practice or policy implementations. For example; the case dealing with inclusion of indigenous peoples in Deforestation and Forest Degradation. Cases involving large projects, such as hydroelectric power projects, also received lower assessment indicators. This would indicate that government agencies lack the resources and training to effectively implement participation. Or, it could also indicate a lack of will of the government to encourage public participation, particularly in large scale infrastructure projects.

As with the public participation cases, non controversial or sensitive domestic issues, such as those dealing with fisheries and climate change policy received higher score assessments from the researchers.

Recommendations

13. The government's legal and policy framework: plans, policies, sub decrees and laws should be open for public participation and involvement in decision making from relevant stakeholders and should be published and distributed nationwide to the public.
14. Public participation in regulatory decisions has been mentioned in some existing Cambodian legal frameworks but there was very limited enforcement. Government agencies should take action to enforce legal frameworks to promote public participation.
15. Public awareness is strongly needed in the Cambodian environmental legal framework, around regulatory decisions and project level decisions.
16. The initial environmental and social impact assessment process should be reviewed to ensure that any potential consequences from the proposed development project are minimal. A clear process of promoting public participation of key stakeholders should be clearly included in this revision to ensure the proper assessment of environmental and social values. Together with this guideline, The Corporate Ecological Service Review (ESR) or Corporate Social Responsibility (CSR) should also be made for the purpose of standardizing the assessment.
17. The Cambodian government should review recommendations from the World Commission on Dams for the purposes of integrating best practices for hydropower development into Cambodia's energy sector. As well as policies regarding effective public participation and the minimization of the hydropower development impact on the environment and communities.
18. The government institutional structure must be well set and empowered through institutional capacity building, combating corruption, and enhancing justice. Policies should be well written and focus on a participatory approach to the implementation mechanisms needed to be clearly integrated.
19. The government and private sector should identify key persons to address queries or problems during IESIA and the project. The environmental and social impact is a priority and must be addressed by the government and private companies. Though IESIA is not participatory but already approved, the strategic implementation and monitoring plan should be participatory and efficiently carried out, especially the compensation plan for the possible damages.
20. In terms of public participation, some development projects have not employed the national, regional or global recognized best practices for participation. Both the government and private companies should be more proactive and participatory oriented at

the commencement of the project and especially during the construction, operation and transfer phases.

21. Due to the limitation of Cambodia's resources, foreign investment should demonstrate a commitment to help Cambodia enhance and strengthen the local legislatures and preferably adopt the best practices of recognized standards of investment (including the public participation of the key stakeholders).
22. Transparency and accountability for both the government and local and foreign investments need to be considered and enhanced at the commencement of the project. This can be done by participatory investment bidding, and disclosure of information about the project. The government of Cambodia needs to ensure this acknowledgement within the policies and its implementation.
23. Local communities need to become better informed and involved in understanding the proposed activities of the companies and local authorities in order to keep track of what is happening and what is going to happen. Be ready for any participation regarding the project. Often, report to the company (if possible) or the local authorities or the local NGOs about what is affecting livelihoods and the natural resources. Always seek advice and comments from local authorities or NGOs in regard to the impacts of the project.
24. The Government should offer more substantive, systematic dialogue between CSOs and development partners, using existing mechanisms eg Cambodia Development Cooperation Forum and Technical Working Groups, etc. The Government should be open and receptive to ongoing and ad-hoc communication with civil society organizations during which ideas are heard and respected.
25. More public consultations/dialogues and hearings need to happen among the affected people, private companies and the government agencies in order to avoid conflict, as well as balance the benefit of sustainable natural resource management.

iii. Conclusion: Access to Justice Cases

In the Access to Justice cases, the legal frameworks provide a broad support for the principles of access to justice, both at the constitutional level, statutory level, and executive and sub-decree level. Yet in practice, these rights are not enforced or provided through proactive efforts by the courts and / or governmental authorities. This is especially true in large land and development projects, which are promoted by wealthy and powerful interests. According to the case studies, courts and governmental authorities are often unwilling or unable to provide ordinary citizens with the opportunity to bring complaints, receive redress, or consult with governmental authorities and developers regarding the social, environmental, and economic impacts on community livelihoods and health.

Recommendations

26. Strengthen law enforcement and implementation in a fair and accountable manner, particularly the Law on Environmental Protection and Natural Resource Management, The Land Law, Law on Mineral Resources Management and Protection, The Forestry Law, The Fishery Law, Law on Governance of Water Resources, Labor Law, Organic Law, Sub-Decree on Environment Impact Assessment Process, Sub-decree on Addressing the Socio-Economic Impacts of Development, The sub-decree on Air Pollution Control and Noise Disturbance, Sub-Decree on Fishing Lot Cancellation, Sub-Decree on Community Forestry Management, Civil Procedure Code, Criminal Procedure Code; Sub-

decree on Procedures of Registration of Land of Indigenous Communities, Sub-Decree for Economic Land Concession, Royal Degree on National Authority on Land Dispute Resolution...etc. The Government should enhance its legal and judicial reform mandate, especially the much-needed training of its officials on the access to justice procedures, and available resources and services to which anyone can access when he or she has any problem.

27. The judiciary should act independently and impartially when hearing a case to ensure that the rights of all parties are fully upheld and equally addressed. As well as watching/monitoring to ensure court-case procedures are respected by the public including the media.
28. The raising of public awareness on access rights and laws related to environment and natural resource and complaint mechanisms should be done to ensure the understanding and accessibility for affected people, vulnerable groups including illiterates and minority groups.
29. The Government should establish a mechanism to enable communities or their representatives to initiate actions or challenge the validity of a private companies' license. As well as challenging economic land concessions for mining or plantation and participatory monitoring of the private companies' compliance, and call for their review or cancellation. Ensure that all new economic land concessions, including those that do not exceed 1,000 hectares, comply fully with the provisions of the Land Law and Sub-Decree on Economic Land Concessions. In particular, ensure that public consultations and genuine environmental and social impact assessments are conducted prior to granting concessions, with the effective participation of local populations. Assist families in rural communities to register their interests in land, in accordance with the Land Law. Review all existing economic land concessions for compliance with the Land Law, Sub-Decree on Economic Land Concessions and concession contracts, and ensure they do not encroach upon land possessed and used by communities, including forested areas.
30. The Government has to urgently adopt a national housing policy and properly implement the 2001 Land Law, particularly in accordance with the internationally accepted principle of the rights to adequate housing.
31. The Government should try to avoid forms of forced or violent evictions. If inevitable, it should be carried out only as a last resort, after the resettlement and relocation is properly addressed in advance. Full participation and consultation ahead of any forced eviction involving the community, the company, and authorities must be made in an open and transparent manner and fair compensation must be also provided. The government provides communities with remedies to deal with the past, present and future impacts of the development projects.
32. Neighboring governments should negotiate a long term agreement on cross border water management issues and natural resource issues to establish a concrete process or mechanism for resolving claims and determining appropriate redress. This should include specific timetables so as to avoid further delays which have plagued the issue to date.