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# FACTSHEET – 4th CYCLE OF THE UNIVERSAL PERIODIC REVIEW OF CAMBODIA



## Access to Information

### SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

- In the previous UPR cycle, Cambodia supported a recommendation by Switzerland to “adopt the law on access to information in line with international standards of the right to the freedom of expression”.
- This recommendation is yet to be implemented and a draft law has been pending since 2008. The latest version, published in April 2020, is not fully in line with international standards.
- The right to freedom of expression and information is enshrined in Article 19 of the ICCPR. Access to information can also have significant impacts on fostering transparency around government action in the health, education and environmental rights sectors.
- This submission calls for the adoption of an Access to Information Law consistent with international standards by 2024.

### Alignment of the Draft Right to Information Law with International Standards

#### POSITIVE FEATURES

#### Positive Features of the Draft Law to Retain in the Full Version

- **The draft establishes a procedure** for a member of public to make an access to information request, for a written response to be made to the request, and for reasons to be provided for any denial of information.
- The draft Law contains a ‘public interest override’, meaning if public interest in disclosing information is greater than the interest in maintaining confidentiality, information must be released. This ensures consistency with ICCPR article 19 and **can ensure public access** to information which pertains to **human rights violations and corruption**.
- Most of the grounds for keeping information confidential are **‘harm tested’**, indicating that there is a framework in place to assess whether a piece of information should be disclosed or kept confidential.

#### AREAS OF IMPROVEMENT

#### Areas of Improvement to Ensure Alignment with International Standards

- There are three key issues with the information request procedure: (i) The requester must provide identifying information, thus is susceptible to discrimination during the request process; (ii) a requester cannot obtain information more than once in a 40-day period; and (iii) the absence of request fee limits means **excessive fees** could become an indirect means of **discouraging access to information requests**.
- The draft Law **lacks an independent oversight system**. Appeals about denied requests would either be dealt with internally – by the same people who denied the initial request – or in an appeal to the courts, an expensive and lengthily process.
- The grounds on which authorities can refuse to disclose information are **overly vague**. For example, it is unclear whether access to information requirements in the draft Law override secrecy provisions in other Laws. If other Laws take precedence, the access to information procedure **can easily be undermined**.

**Recommendation:** Improve the draft Access to Information Law by specifying that it overrides other classification schemes or secrecy laws and provides for an independent oversight system

Submitted by:



## Existing Secrecy Laws and Access to Information Provisions in other Laws

### ENCOURAGING SECRECY

#### Existing Laws only provide minimal access to information

- There are no Laws which establish obligations to publish government information. A review by API found that most access to information protections in sectors ranging from health, education, to labor are unclear, and **lack effectiveness in practice** because of public authorities' failure to implement regulations.
- **Information disclosure is often voluntary rather than mandatory.** In the economics and investment sector, many laws and sub decrees contain some reference to sharing information, but do not create an obligation to publish.
- The Environmental and Natural Resources Code (ENRC), adopted in June 2023 creates a right to request certain types of information from both public and private sector stakeholders, and requires the regular disclosure of some basic information. **However, procedures for determining confidential information have yet to be provided.**

**Recommendation:** Ensure regulations under the new Environmental Code strongly promote access to information by creating clear procedures and rules that reflect international standards.

### SHARING STATE SECRETS

#### Criminal sanctions for disclosing information

- The Criminal Code prohibits the disclosing of 'professional secrets' – punishable by a one-year prison sentence. Since there are no precise standards on what constitutes a 'professional secret', it could be applied over-broadly.
- Making information available to a foreign state which is liable to threaten national security can result in **7-15 years of imprisonment.** This does define what could constitute prejudicing national security, meaning publishing sensitive information in a newspaper could be perceived as sharing information with a foreign state, thus **a punishable crime.**
- Whistleblowers sharing 'national defense secrets' pertaining to evidence of corruption and human rights violations could lead to **2-5 years in prison** according to the Criminal Code, **incentivizing secrecy.**
- Those who lodge complaints with the Anti-Corruption Commission which are unsuccessful and considered defamation or disinformation are liable to **1-6 months imprisonment and a 1-10 million Riel fine** under Article 41 of the Anti-Corruption Law.

**Recommendations:** Strongly promote access to information by reforming laws that do not align with international standards, such as provisions in the Criminal Code which restrict expression and sharing State secrets beyond that allowed by the ICCPR.

### BARRIERS TO INFORMATION ACCESS

#### Barriers to access to information in practice

- Currently, government-held information is only accessible to the public sporadically and at the discretion of the relevant public authority. In 2021, CCIM ran a survey of 125 journalists and persons associated with the media sector. **92% said they had experienced difficulty accessing government sources** on sensitive issues.
- Communities impacted by investment, mining, and other projects lack information about such projects. There are examples of mining-impacted **communities who were unaware of funds** that were supposed to be available to them.
- In the health sector, **92.8% of respondents did not know** that health sectors were required to post annual budget information according to an Oxfam Cambodia survey.

**Recommendation:** Establish dedicated state funding for upgrading government websites and other communications and establish a free, accessible, and synchronized central public information database that is updated regularly with information important for the needs of the public by 2025.

Submitted by:

