



# ACCESS TO INFORMATION TRAINING CURRICULUM

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Danida

A D V O C A C Y   A N D   P O L I C Y   I N S T I T U T E

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## TABLE OF CONTENTS

03

### INTRODUCTION

05

### SESSION EXERCISES

- 1: Introduction to A2I
- 2: Definitions of A2I
- 3: Understanding A2I in an International Context
- 4: Importance of A2I
- 5: Principles of A2I
- 6: Exemptions for A2I
- 7: Implementation of A2I
- 8: Developing an A2I Campaign
- 8: Summary and Evaluation

31

### SESSION HANDOUTS

- Session 2: Definitions
- Session 2: Interpretations of Information
- Session 3: International Legal Background
- Session 3: Cambodia's Case
- Session 3: Who Has The Right to Access to Information?
- Session 4: The Debate Around Access to Information
- Session 4: Criteria and Score Sheet
- Session 5: Access to Information Case Studies
- Session 5: Nine Principles for Access to Information
- Session 6: Restricted Information Case Studies
- Session 6: Exemptions to Public Access of Information
- Session 6: Proposed Exemptions for Cambodia
- Session 6: The Three-Part Test
- Session 7: Law Implementation
- Session 7: The Role of NGOs
- Session 8: The Access to Information Campaign
- Session 9: Training Review
- Session 9: Training Evaluation

99

### APPENDIX:

- A. Key Terms
- B. Cambodia's FOI Working Group
- C. Access to Information Worldwide
- D. Access to Information on the Web

## INTRODUCTION

This access to information (A2I) training curriculum is designed for members of the Freedom of Information Working Group, other civil society organizations and those with an interest to advocate for an Access to Information law in Cambodia.

The purpose of the training manual is to ensure all interested parties are equipped with the knowledge, skills, tools and commitment required for raising public awareness about the benefits of access to information.

The workshop will introduce the participants to the concept and importance of access to information and provide a legal and international context for Cambodia's case. Principles supporting access to information laws, as well as exemptions, will be explored, as well as the complexity of the law's implementation. Finally, participants will build the framework for an effective, coordinated local access to information campaign, in which each group can develop an approach tailored to their organizational needs.

The right of access to information is a crucial human right. A number of different terms are used to describe the same right, such as 'freedom of information', the 'right to information', the 'right to know' and 'access to information'.

These terms all refer to a key strategic right that can be used to realize many other human rights.

However, access to information is often viewed as an elitist right concerned with the media or researchers. While it is true that the media have an interest in gaining easier access to official information, the crucial importance of access to information is that this right belongs to everyone, and can be especially useful as a campaign tool for economic and social rights.

### Access to Information legislation has a variety of practical uses:

- It can expose corruption, making government and the economy more efficient.
- It can uncover mismanagement of food supplies, making shortages less likely.
- It can expose environmental hazards that threaten health and livelihoods.
- It can reduce the danger of human rights violations.
- It can increase popular participation in government and development.

The right of access to information is based on the democratic assumption that information held by public institutions is the property of the public.

The phenomenon of privatized public services today means in many cases information held by private entities should be available to the public. In addition, to protect the public good, access to specific information about corporate governance is required.

In Cambodia, a wide variety of stakeholders have an interest in establishing an access to information law. They could be environmental groups, development organizations, women's groups, human rights organizations, the media, and academia, to name a few.

However, many people do not have a clear idea of what exactly access to information means, what should be included in an access to information law, and how to campaign for it.

This curriculum focuses on what access to information is, why it is important, what an access to information law should contain, and how to begin campaigning.

The need for an access to information law in Cambodia is considerable. Several countries in South East Asia have access to information draft laws or passed legislation. In Cambodia access to information legislation is still only in a policy framework stage.

However, even when there is a draft policy paper, a draft law, or a law already in place, is still important to scrutinize the legal contents and policies to ensure they have the best provisions possible with few loopholes. Finally, it is crucial to ensure that a new access to information law is not only passed, but also properly implemented.

# ACCESS TO INFORMATION TRAINING MANUAL SESSION EXERCISES

SESSION  
**1**

# INTRODUCTION TO ACCESS TO INFORMATION

Session One will introduce the group to the wide set of training objectives, to enable them to launch a knowledgeable and effective A2I campaign. By the end of the session participants will:

- Have a broad understanding of the course objectives
- Establish a baseline perception of expectations
- Get to know each other better as individuals
- Create the 'ground rules' for the training

## SESSION ONE EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** Workshop schedule, feedback questionnaire 1

**Time:** 4 hours

<h3>INTRODUCTION</h3>	<ul style="list-style-type: none"> <li>• The FOI Working Group head will introduce project</li> <li>• Facilitators will introduce themselves and organizations</li> <li>• Group will partner up, interview and present each other's name, background and exposure to A2I</li> <li>• Sign registration sheet</li> </ul>
<h3>TRAINING OBJECTIVES</h3>	<ul style="list-style-type: none"> <li>• <i>The facilitator will present the training schedule and objectives. By the end of the workshop participants will be able to:</i></li> <li>• Define A2I</li> <li>• Describe international legal sources of A2I</li> <li>• Understand the link between private entities and A2I</li> <li>• Describe the difference between 'information' and 'records'</li> <li>• Make the main arguments in favor of A2I</li> <li>• Engage the most common objections/exceptions to A2I</li> <li>• Explain why a law is needed to enact A2I</li> <li>• Outline each of the principles required in the law</li> <li>• Describe the best practice of A2I (and bad practice)</li> <li>• Understand the role of NGOs in making A2I work</li> <li>• Plan and implement an A2I campaign</li> </ul>

<h3>GROUND RULES</h3>	<ul style="list-style-type: none"> <li>• The group will brainstorm ground rules: respect, equal time to talk, one at a time, contribute to group discussions and creativity, complete assignments to deadline, punctuality and attendance, switch off cell phones</li> <li>• Assign one person to recap the previous session at the start of every session</li> <li>• Assign one person to a 10-minute presentation of a training aspect at the start of every session (for example, about public speaking, dealing with difficult audiences, or researching material)</li> </ul>
<h3>WORKSHOP DIARY</h3>	<ul style="list-style-type: none"> <li>• Participants are required to keep workshop diary of their notes, questions, challenges and ideas around A2I. Each participant will present an entry to the group every session</li> </ul>
<h3>GROUP EXPECTATIONS (BASELINE M&amp;E)</h3>	<ul style="list-style-type: none"> <li>• Each participant will write their personal workshop expectations on post-it notes, which the facilitator will pin to the wall. The group will discuss the main points</li> <li>• The post-it notes will be kept for Baseline M&amp;E</li> </ul> <p><b>Facilitator notes</b></p> <p><i>Examples of expectations could be:</i></p> <ul style="list-style-type: none"> <li>• Get better understanding of A2I principles</li> <li>• Develop implementation strategy</li> <li>• Add more input on curriculum development</li> <li>• Improve on participatory training sessions</li> <li>• Learn new public advocacy tools</li> <li>• Use this knowledge to meet citizen needs</li> </ul>
<h3>WHAT A2I MEANS TO YOU</h3>	<ul style="list-style-type: none"> <li>• Each participant will discuss what A2I means to them, and provide a personal, everyday life example to illustrate the point</li> </ul>

# DEFINITIONS OF ACCESS TO INFORMATION

SESSION

2

COMMUNITY MAPPING	<ul style="list-style-type: none"> <li>Each participant will draw their daily routine on a community map, and pinpoint where A2I would benefit their lives. They will present this to the group</li> </ul>
FEEDBACK QUESTIONNAIRE 1	<ul style="list-style-type: none"> <li>Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
END OF SESSION ONE	

Session Two will examine the definitions around A2I, and the differences between public and private information. By the end of the session, participants will be able to:

- Define access to information
- Determine the difference between public and private information

## SESSION TWO EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 2.1: Definitions, 2.2: Different Interpretations of Information, feedback questionnaire 2

**Time:** 2 hours

ICEBREAKER	<ul style="list-style-type: none"> <li>One participant recaps previous session to the group</li> <li>One participant gives a ten minute presentation on public speaking</li> </ul>
INTRODUCTION Facilitator notes See Session Two handouts	<ul style="list-style-type: none"> <li>The facilitator will introduce the session agenda</li> <li>Reiterate ground rules</li> <li>Participants fill out registration sheet</li> <li>Participants will discuss diary entries</li> </ul>
DEFINITIONS Facilitator notes See handouts 1 & 2	<ul style="list-style-type: none"> <li>The facilitator will ask the group what A2I means, and write answers on the flipchart</li> <li>The participants will break into groups and discuss the meanings of freedom of information, right to information, access to information and right to know (See facilitator notes)</li> <li>The facilitator asks what terminology is used in Cambodia?</li> </ul>

(Continued)

## DEFINITIONS

Facilitator notes  
See handouts 1 & 2

### Facilitator notes

*Group answers could be:*

- Right to Information: never used within FOI team
- Access to Information: used
- Freedom of Information: used
- Right to know: used

*Group 1:*

- Right of Information: limited and unlimited right to information
- Access to Information: To find out information
- Right to Know: An individual's unlimited legal right to know

*Group 2:*

- Same general meaning but term varies internationally
- Freedom of Information: right to information and right to know share the same meaning, but used in different context and region
- Access to Information: focuses on approach to obtain information

*Group 3:*

- All words have the same meaning. It is the right of all people to access public information from public institutions as set forth by law

*Answer: What is the terminology used in Cambodia?*

- Different terms are used by NGOs, donors, the FOI Working Group and the Government policy framework
- Previously, there was confusion between FOI and the press law
- A2I is more accepted by the Government, and there are problems translating FOI into Khmer
- Recommendation: use A2I

## INFORMATION IN AN A2I CONTEXT

Facilitator notes  
See handout 1 & 2

- The facilitator will discuss the difference between a record and information
- The facilitator will explore how A2I relates to the public and private sectors

*The facilitator will ask:*

1. Is there access to public information of a private company?
2. What is the difference between a record and information?
3. Is there access to private sector and private information?

### Facilitator notes

*Expected Answers:*

1. Yes, if the information is of a public nature, even if it is held by a private entity
2. People have the right to access information regardless of the type of record or instrument containing the information
3. It is based on the policy of the private company

## FEEDBACK QUESTIONNAIRE 2

- Participants are required to fill out questionnaire for M&E purposes

## END OF SESSION TWO

- Participants will be given all Session Two handouts

SESSION  
**3**

# ACCESS TO INFORMATION IN AN INTERNATIONAL CONTEXT

Session Three will focus on A2I in an international context, its origins and the important legal and human rights standards that underpin it, and the different ways the public can realize their right of A2I. By the end of the session, participants will be able to describe:

- International legal sources of A2I
- The current status of A2I around the world
- Cambodia’s relevant legislation and A2I draft policy
- Where Cambodia stands now

## SESSION THREE EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 3.1: International Legal Background, 3.2: Cambodia’s Case, 3.3: Who has the Right to A2I?, feedback questionnaire 3

**Time:** 3 hours

<p><b>ICEBREAKER</b></p>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant will give a ten minute presentation about how to deal with difficult audiences</li> </ul>
<p><b>INTRODUCTION</b></p> <p>Facilitator notes See Session Three handouts</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>

### LEGAL BACKGROUND AND A2I CONTEXT WORLDWIDE

Facilitator notes  
See handout 3

- The facilitator will discuss the meaning of the UN General Assembly’s ‘touchstone of all freedoms’
- The trainer will ask participants to name any other international legal frameworks that recognize A2I
- The trainer presents relevant international legal frameworks (global, regional and Cambodia) that recognize A2I
- The facilitator will discuss which countries have A2I laws, and which don’t (See Appendix)
- The speaker will talk about specific country cases, focusing on Asian states

### CAMBODIA’S LEGAL FRAMEWORK FOR A2I

Facilitator notes  
See handouts 4 & 5

- The facilitator will discuss Cambodia’s constitutional provisions and legal framework for A2I, and the group will compare its status to other countries
- The facilitator will ask who has the right to A2I in Cambodia?

Facilitator notes

*Expected answers:*

1. Only Khmer citizens
2. Everyone, regardless nationality in Cambodia, including foreigners who work or live here
3. Anyone in the world can access information published on the web

*The facilitator will ask:*

1. In everyday life, how do ordinary people get A2I?
2. Who holds public information?
3. Should we also have A2I that bodies hold?
4. If so, which private bodies?
5. What kind of information would people need to protect their rights?

# IMPORTANCE OF ACCESS TO INFORMATION



(Continued)

## CAMBODIA'S LEGAL FRAMEWORK FOR A2I

Facilitator notes  
See handouts 4 & 5

*Group summary quiz:*

1. Why did the UN General Assembly in 1946 think access to information was so important?
2. What does Cambodia's constitution say about access to information?
3. What are the specific ways in which an access to information law can ensure people can receive the information they want and need?
4. What are the two main circumstances in which an access to information law can apply to information held by private bodies?

## FEEDBACK QUESTIONNAIRE 3

- Participants are required to fill out questionnaire for M&E purposes

## END OF SESSION THREE

- Participants will be given all Session Three handouts

Session Four will focus on why A2I is important, and its main uses, such as accountability and participation, health, environment and development. Arguments for and against an A2I law will be made, analyzed and argued. By the end of the session, participants will be able to:

- Make the main argument in favor of access to information
- Debate the most common objections to access to information

## SESSION FOUR EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 4.1: The Debate around A2I, 4.2 Debate Chart, feedback questionnaire 4

**Time:** 3 hours

<h3>ICEBREAKER</h3>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten minute presentation about how to research presentation materials</li> </ul>
<h3>INTRODUCTION</h3> <p>Facilitator notes See Session Four handouts</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>
<h3>THE DEBATE FOR AND AGAINST A2I</h3> <p>Facilitator notes See handouts 6 &amp; 7</p>	<p><i>Participants will divide into three groups:</i></p> <ul style="list-style-type: none"> <li>• Group 1 will examine arguments for A2I, and Group 2 will examine arguments against A2I for 10-minutes</li> <li>• The groups will present their 15-minute arguments, and Group 3 will serve as committee to evaluate the debate</li> </ul>

# PRINCIPLES OF A2I



<p><i>(Continued)</i></p> <p><b>THE DEBATE FOR AND AGAINST A2I</b></p> <p>Facilitator notes See handouts 6 &amp; 7</p>	<p><b>Facilitator notes</b></p> <p><i>A2I can improve life by:</i></p> <ul style="list-style-type: none"> <li>• Making government accountable</li> <li>• Increasing public participation</li> <li>• Promoting women’s involvement</li> <li>• Making private companies accountable</li> <li>• Tackling corruption</li> <li>• Making better decisions</li> <li>• Protecting privacy</li> <li>• Protecting human rights</li> <li>• Protecting worker rights</li> <li>• Promoting health</li> <li>• Strengthening the economy</li> <li>• Protecting the environment</li> <li>• Making the country secure</li> </ul>
<p><b>GROUP DEBATE</b></p>	<ul style="list-style-type: none"> <li>• <i>Participants will be asked to debate:</i></li> </ul> <p>Can citizens in a community be able to access personnel or work history records of the new principal of their local high school from the Ministry of Education?</p>
<p><b>FEEDBACK QUESTIONNAIRE 4</b></p>	<ul style="list-style-type: none"> <li>• Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
<p><b>END OF SESSION FOUR</b></p>	<ul style="list-style-type: none"> <li>• Participants given all Session Four handouts</li> </ul>

Session Five examines what should be included in an A2I law. The starting point is a set of Nine Principles on A2I developed by the human rights NGO, ARTICLE 19, and endorsed by the United Nations Special Rapporteur on Freedom of Expression. By the end of this session participants should:

- Understand the principles that should be included in an A2I law
- Analyze case studies for A2I criteria

## SESSION FIVE EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, PPT presentation, refreshments

**Handouts:** 5.1: Case Studies, 5.2: Nine Principles for A2I, questionnaire 5

**Time:** 3 hours

<p><b>ICEBREAKER</b></p>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten minute presentation on how to tailor your presentation to the audience</li> </ul>
<p><b>INTRODUCTION</b></p> <p>Facilitator notes See Session Five handouts</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>
<p><b>THE NINE PRINCIPLES OF A2I</b></p> <p>Facilitator notes See handout 8</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce a PPT presentation of the Nine Principles of A2I, providing Cambodian examples and encouraging discussion for each</li> </ul>

## EXEMPTIONS FOR A2I

SESSION

6

<p><b>NINE PRINCIPLES DEBATE</b></p> <p>Facilitator notes See handout 9</p>	<p><i>Three groups will be given a case study and discuss what and how the Nine Principles of an A2I law can apply:</i></p> <ul style="list-style-type: none"> <li>• Case study 1: Cambodia's Angkor Wat concession</li> <li>• Case study 2: ECCC Whistleblower</li> <li>• Case study 3: BHP-Billiton Agreement</li> </ul>
<p><b>FEEDBACK QUESTIONNAIRE 5</b></p>	<ul style="list-style-type: none"> <li>• Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
<p><b>END OF SESSION FIVE</b></p>	<ul style="list-style-type: none"> <li>• The group is given all Session Five handouts</li> </ul>

Session Six concentrates on an important and complex issue: how to deal with information that cannot be released in an A2I request without damaging an important interest such as national security, commercial confidentiality or personal privacy.

By the end of this session all participants should be able to describe what kind of common types of information may be exempt from A2I.

## SESSION SIX EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 6.1: Restricted Information Case Studies, 6.2: Exemptions to Public A2I, 6.3: Proposed Exemptions for Cambodia, 6.4: The Three-Part Test, feedback questionnaire 6

**Time:** 4 hours

<p><b>ICEBREAKER</b></p>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten minute presentation on creative presentation materials</li> </ul>
<p><b>INTRODUCTION</b></p> <p>Facilitator notes See Session Six handouts</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>
<p><b>DEBATE EXEMPTIONS TO A2I</b></p> <p>Facilitator notes See handouts 10 &amp; 11</p>	<p><i>Participants will divide into three groups:</i></p> <ul style="list-style-type: none"> <li>• The facilitator will discuss exemptions to the A2I law</li> <li>• Participants will divide into groups and debate the types of information held by officials and not subject to the principle of maximum disclosure</li> <li>• The groups will present their arguments to the overall class</li> </ul>

<p><i>(Continued)</i></p> <h2>DEBATE EXEMPTIONS TO A2I</h2> <p>Facilitator notes See handouts 10 &amp; 11</p>	<p><b>Facilitator notes</b></p> <p><i>The two major points of concern:</i></p> <ol style="list-style-type: none"> <li>1. It could endanger security if military secrets were released</li> <li>2. It would invade my privacy if public authorities released personal information to someone else without my permission.</li> </ol> <p>Yet, access to information laws does not actually do any of these things. A properly drafted access to information law will not reveal military secrets, but it may help to improve national security by making the military and security agencies more accountable.</p> <p>An access to information law will not normally allow release of personal information about me – but it will allow me to check what information the authorities hold on me. That is a way of protecting my privacy, not invading it.</p>
<h2>CASE STUDY DEBATES</h2> <p>Facilitator notes See handout 12</p>	<ul style="list-style-type: none"> <li>• Participants will divide into groups to analyze case studies of restricted information, and decide whether the information should be publicly released</li> <li>• The groups will analyze their cases in context to the principles of A2I and the Three-Part Test</li> </ul>

<p><i>(Continued)</i></p> <h2>CASE STUDY DEBATES</h2> <p>Facilitator notes See handout 12</p>	<ul style="list-style-type: none"> <li>• The groups will present their arguments to the overall class</li> <li>• The facilitator summarizes the Nine Principles of A2I</li> </ul> <p><b>Facilitator notes</b></p> <p><i>Summarize Nine Principles:</i></p> <p>The general idea is maximum disclosure. However, there is a limit that must be clearly and narrowly drawn by checking exemptions and the Three-Part Test.</p> <p>Keeping information secret must show outweighing of the public interest.</p> <p>Case by case analysis of whether to disclose information or not it must be analyzed by balancing harm and public interest.</p>
<h2>FEEDBACK QUESTIONNAIRE 6</h2>	<ul style="list-style-type: none"> <li>• Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
<h2>END OF SESSION SIX</h2>	<ul style="list-style-type: none"> <li>• The group is given all Session Six handouts</li> </ul>

# SESSION 7

## IMPLEMENTATION OF A2I

Session Seven examines the issues that are likely to arise once an A2I law has been put in place. There is a review of good and bad practices in various countries, a discussion about the practical steps needed to make A2I a reality, and the important role NGOs can play, even after a law has been passed. By the end of this session, participants will be able to:

- Describe what are the best and bad practices in application of an A2I law
- The role of NGOs in implementing an A2I law

### SESSION SEVEN EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 7.1: Law Enforcement, 7.2: Role of NGOs, questionnaire 7

**Time:** 4 hours

<h3>ICEBREAKER</h3>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten minute presentation on constructing an effective advocacy speech</li> </ul>
<h3>INTRODUCTION</h3> <p>Facilitator notes See Session Seven handouts</p>	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>

### BRAINSTORM SESSION

- The group brainstorms the key concepts of law principles, and the role of lawmakers, law implementation and NGOs after an A2I law is passed

#### Facilitator notes

##### 1. What is a law?

A legal paper made by legislative branch and implemented by executive branch, enforced by all for all by force and punishment. The objectives of law making are different intern of communist or democratic leaders. Democratic leaders make law for the people. Non-democratic leaders make law for their own interests.

##### 2. What is a good law?

Made for the people, and serves the needs and will of the people

##### 3. Implemented effectively for all people not only local citizens:

Widely disseminated, respects human rights and rule of law, protects public and national interest Clear mechanism of law: good implementation and conflict resolution Does not have an additional decree, sub-decree or Prakas decree  
Consistency and adherence to international standards and human rights principles

##### 4. Which institution is involved in the law making process?

The Executive branch, the Legislative branch, NGOs, Experts

##### 5. Law Enforcement institutions?

The Executive branch, Legislative branch, people

<p><b>GOOD AND BAD A2I PRACTICES IN ASIA</b></p>	<ul style="list-style-type: none"> <li>The facilitator introduces good and bad practices of A2I law development in other Asian countries, for example: Japan, Philippines, Singapore, Sri Lanka and Indonesia</li> </ul>
<p><b>GROUP DISCUSSION ABOUT A2I IN CAMBODIA</b></p> <p>Facilitator notes See handout 14</p>	<ul style="list-style-type: none"> <li>Groups discuss how the Cambodian government can make A2I a reality in practice</li> <li>Groups present their ideas to the overall class</li> </ul> <p><b>Facilitator notes</b></p> <p><i>What do you think the government of Cambodia can do make access to information a reality or work in practice?</i></p> <p><b>Expected group answers:</b></p> <p>Create financial and management independence and appeals process A2I awareness for all communities throughout Cambodia</p> <p>Make clear a clear, easily accessible public procedure Adequate budget for A2I law-enforcing institutions Good cooperation of local authorities and citizens All NGOs in Cambodia should encourage citizens to access information from local authority and government</p> <p><b>Facilitator's answer:</b></p> <p>Publish information Staff responsibility and training Information management systems Publicize access to information law Report on access to information activities Appoint an Information Commissioner</p>

<p><b>THE NGO ROLE IN A2I LAW IMPLEMENTATION</b></p> <p>Facilitator notes See handout 15</p>	<ul style="list-style-type: none"> <li>The facilitator talks about the most effective roles for NGOs and A2I</li> <li>The class discusses what NGOs can do to make A2I law work in practice</li> </ul>
<p><b>FEEDBACK QUESTIONNAIRE 7</b></p>	<ul style="list-style-type: none"> <li>Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
<p><b>END OF SESSION SEVEN</b></p>	<p>The group is given all Session Seven handouts</p>

SESSION

8

## DEVELOPING AN A2I CAMPAIGN

Session Eight pulls all previous threads together by looking at how to develop a broad A2I campaign and focus on its objectives, whom should be involved and some of the strategies and tactics adopted. At the end of the session, participants can:

- Begin to design campaign materials to be used in Cambodia, as well as share information with others about campaigning methods that have worked elsewhere
- Produce a campaign plan for their organizations and partners in Cambodia

## SESSION EIGHT EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, PPT presentation, refreshments

**Handouts:** 8.1: The campaign, questionnaire 8

**Time:** 5 hours

<b>ICEBREAKER</b>	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten-minute convincing argument about why Cambodia should adopt an A2I law</li> </ul>
<b>INTRODUCTION</b> Facilitator notes See Session Eight handouts	<ul style="list-style-type: none"> <li>• The facilitator will introduce the session agenda</li> <li>• Reiterate ground rules</li> <li>• Participants fill out registration sheet</li> <li>• Participants will discuss diary entries</li> </ul>
<b>PPT PRESENTATION ABOUT A2I CAMPAIGN GOALS AND OBJECTIVES</b> Facilitator notes See handout 16	<ul style="list-style-type: none"> <li>• One participant recaps previous session to the group</li> <li>• One participant gives a ten-minute convincing argument about why Cambodia should adopt an A2I law</li> </ul>

## Facilitator notes

*What is a campaign?*

*Expected participants' answer:*

A series of actions taken for a specific purpose and timeframe involved by stakeholders' strong cooperation  
 Several actions for specific issue, objective of non-violence and using legal means  
 Actions to raise voices for achieving an objective

*How are A2I materials developed?*

*Expected participants' answer:*

Poster, brochure, leaflet

*What are approaches?*

*Expected participants' answer:*

Dialogue, lobby, media, research, working group, network and build capacity

*What are types of campaign activities?*

*Expected participants' answer:*

- Organizing petitions
- Holding public meeting
- Writing newspapers
- Meeting members of parliaments
- Organizing street theatre
- Holding marches or demonstrations
- Passing resolutions through organizations thatone belongs to
- Organizing a conference or workshop on access information

*What can NGOs do to campaign for access to information law?*

*Participants expected answer:*

- Research on advantage and disadvantage, ASEAN
- A2I law statements.

*(Continued)*

## PPT PRESENTATION ABOUT A2I CAMPAIGN GOALS AND OBJECTIVES

Facilitator notes

See handout 16

<p><i>(Continued)</i></p> <p><b>PPT PRESENTATION ABOUT A2I CAMPAIGN GOALS AND OBJECTIVES</b></p> <p>Facilitator notes See handout 16</p>	<ul style="list-style-type: none"> <li>• The research conducted in collaboration with government research agencies to ensure validity and credibility of result findings.</li> <li>• Present it to members of parliament and key stakeholders. Mass media on research findings for getting more support</li> <li>• Lobby donors and government for A2I</li> <li>• Promote community awareness of A2I issues and rights through capacity building, training, workshop, media, education materials</li> <li>• Collect community voices, petitions, networking, position paper, mobilize more supporters</li> <li>• Follow up and monitoring the legal process</li> <li>• Provide comments/inputs to the draft law</li> <li>• Provide technical support</li> <li>• Select A2I point person for government on A2I law agenda</li> </ul>
<p><b>PLANNING AN A2I CAMPAIGN</b></p>	<p><i>Groups will brainstorm and present how to plan and implement A2I campaign:</i></p> <ul style="list-style-type: none"> <li>• What is a campaign?</li> <li>• How are A2I materials developed?</li> <li>• What is the goal of the campaign?</li> <li>• What are campaign approaches and activities?</li> <li>• Who are the stakeholders, and what roles do they play?</li> <li>• What is the implementation timeline?</li> </ul> <p><b>Facilitator notes</b></p> <p><i>What is the aim of our campaign?</i></p> <p><i>Expected answer</i></p> <ol style="list-style-type: none"> <li>1. Create general public awareness of the benefits of open government</li> <li>2. Mobilise a broad constituency to take action on A2I</li> <li>3. Put pressure on the government to recognise the importance of A2I</li> <li>4. Succeed in winning an A2I law</li> <li>5. Create continuing pressure to make the new law work effectively</li> </ol>

<p><b>DESIGNING AN A2I CAMPAIGN FOR FOR CAMBODIA</b></p>	<p><i>The facilitator will give a format and handouts for groups to draft an A2I campaign in Cambodia. Factors should include:</i></p> <ul style="list-style-type: none"> <li>• An assessment of the current status of A2I in Cambodia</li> <li>• A description of the constituency for the campaign</li> <li>• An analysis of the prospects for building a coalition to push the campaign forward</li> <li>• A description of the overall campaign strategy, including media relations</li> <li>• An identification of possible pressure points</li> <li>• An assessment of the potential for cooperation with other regional organizations active on A2I</li> <li>• A statement about whether and how you will use a draft model law</li> <li>• Some draft campaign materials</li> <li>• Information, in the form of a table, about specific campaign activities</li> </ul>
<p><b>FEEDBACK QUESTIONNAIRE 8</b></p>	<ul style="list-style-type: none"> <li>• Participants are required to fill out questionnaire for M&amp;E purposes</li> </ul>
<p><b>END OF SESSION EIGHT</b></p>	<p>The group is given all Session Eight handouts</p>

# SESSION 9

## WORKSHOP SUMMARY AND EVALUATION

As the workshop draws to a close with Session Nine, participants are each expected to make A2I presentations from the workshop material to the overall class.

The group will also provide feedback about other module content and design, as well as the effectiveness of the facilitator in enhancing the learning experience.

Most importantly, the session will gauge how equipped each individual feels about training others in A2I, and building a dynamic national campaign from scratch.

### SESSION NINE EXERCISES

**Resources:** Registration sheet, flip chart, markers, notebooks, pens, tape, stapler, name tags, post-it notes, computer, printer, refreshments

**Handouts:** 9.1: Review, 9.2: Evaluation

**Time:** 5 hours

<b>PARTICIPANT PRESENTATIONS</b>	<ul style="list-style-type: none"> <li>For ten minutes each, participants will summarize a session and convincingly advocate the importance of A2I for the overall class</li> <li>Group feedback is expected after every presentation</li> </ul>
<b>WORKSHOP WRAP</b> Facilitator notes See handouts 17 & 18	<i>The facilitator will wrap the workshop up, and participants will:</i> <ul style="list-style-type: none"> <li>Express any lingering concerns or anxieties</li> <li>Provide verbal feedback on the workshop's content</li> <li>Complete a summary quiz</li> <li>Complete the overall workshop evaluation form</li> </ul>
<b>CERTIFICATE CEREMONY</b>	<ul style="list-style-type: none"> <li>Each participant will receive a A2I 'Train the Trainer' certificate</li> </ul>
<b>END OF SESSION NINE</b>	

# ACCESS TO INFORMATION TRAINING MANUAL HANDOUTS

# HANDOUT 1: DEFINITIONS

SESSION

2

Defining the term around access to information is important, as it should provide the right meaning and context, even in translation. There is no right or wrong term, however, it is important to remain consistent with one definition, and not confuse the stakeholders of public awareness campaign:

## Freedom of information:

A term widely used in laws and international standards, including the United States Freedom of Information Act.

'Freedom of information' refers to the right to seek, receive and impart information, and thus includes freedom of opinion and expression.

Some experts are critical of the term. One describes it as 'inaccurate and misleading' at the term is too passive, and doesn't emphasize the proactive nature of the right (see right to information below)

## Right to information:

More widely used, this term was coined by activists in India who felt that 'freedom of information' was too passive. Right to information means people are entitled to information, not just free to receive it.

## Access to information:

Means public access to official information, and information held by some private bodies. Many of the laws that have been introduced in the past 10 or 15 years use this phrase.

## Right to know:

In the context of workplace safety and community environmental laws of various nations, it is the legal principle that the individual has the right to know the chemicals or other materials to which they may be exposed in their daily living or work.

## Open government:

This describes the underlying idea that government behavior and processes should be open and transparent. Access to information is a large part of this, but open government refers to a broader principal.

For example, this includes the idea that government bodies should hold meetings that are open to the public, for example. It encompasses the principle that government should proceed, as much as possible, by consulting the public rather than making decisions behind closed doors.

## HANDOUT 2: DIFFERENT INTERPRETATIONS OF INFORMATION

### How should information be defined for the purpose of an access to information law?

Access to Information applies to any recorded information held by or on behalf of an authority. This includes paper records, Email, information stored on computer, audio or videocassettes, microfiche, maps, photographs, handwritten notes or any other form of recorded information.

#### Different countries define information in different ways:

**Thailand** has an extremely broad definition. *Any material held by any state agency is regarded as information under the law.* It does not matter what form the material takes.

**South Africa** has a similar, extremely wide definition. *The law applies to any recorded information, regardless of the form in which it is held* (video, dvd, audio, digital or online materials held in government computer servers). It does not matter whether the information was created or generated by the body that holds it or someone else. Nor does it matter when the information was created. This is similar to Thailand.

These sorts of broad definitions give the best effect to the principle of maximum disclosure.

Some other countries define information more narrowly.

**Swedish law** says that *only information related to matters that have already been agreed can be disclosed.* This is justified as a way of protecting the freedom and confidentiality of internal discussions. For example, a new policy is being considered by a ministry or other government body. Deliberations and discussions regarding proposed policies or policy options are not subject to disclosure under Swedish law until the policy is officially agreed upon and implemented.

**Pakistan** has a particularly narrow definition of 'public record': access to information is limited to material that is held in one of the categories set out in the law. This means that only those materials specifically listed in the law are subject to disclosure and nothing else.

These sorts of narrower definitions can be dangerous and have the effect of excluding important items of information from the scope of the access law.

The important point is that *information is not the same thing as the record that contains the information.*

This means that you or I are entitled to *any piece of information that is covered by the access to information law, regardless of what form it is held in.* It does not matter whether it is a printed document, a computer record, an audio recording or is held in some other format.

So, if a member of the public makes an information request, they should be able to do so by identifying the information that they want.

They should not be required to identify where the information is held - in which document or computer file or whatever. The reason is obviously that a member of the public will almost certainly not know where the information is held.

#### For example, an individual can say:

'I want to request information about the budget for repair of street lighting this year, please.'

And not - 'I want to request local council document SL/40275/GHR234/pb/632/g, please.'

There will always be some information that the authorities will be allowed to keep confidential. For example, it would not be correct for them to release private personal data about an individual to someone else.

But a single record - a document or a computer file - may contain a mixture of confidential and public information.

Making a distinction between the record and the information it contains means that the body holding the record can release the part that is public, but not the part that is confidential.

Information is a much broader term than **records**. The right of access to **information** should give the public the opportunity to scrutinize more than just written records.

For example, in India, the Delhi Right to Information Act gives the public the right to inspect the materials used in public works. This allows members of the public to inspect work to make sure that it has been done to an adequate standard.

Pakistan has a particularly narrow definition of 'public record': access to information is limited to material that is held in one of the categories set out in the law. This means that only those materials specifically listed in the law are subject to disclosure and nothing else.

### NEWS VS. INFORMATION

*News is a description or report about what has recently happened as in a news program on the TV or radio, or in a newspaper article telling you what has happened in the world or in your community.*

*Information describes facts and details about a certain subject. For example when you go to a large store and you want to know where you can buy something, you ask a store employee where the product is located. Or when you tell your doctor about a pain that you have in your chest, you are giving him information which he can use to determine what is causing the pain. When your doctor gives you medicine and informs you about how often you should take the tablets, he is giving you information.*

# HANDOUT 3: INTERNATIONAL LEGAL BACKGROUND

SESSION

3

## Legal Framework and Background

One of the very first resolutions passed by the new United Nations General Assembly in 1946 declared: “the right to information is the touchstone of all freedoms”

This means that people cannot make real choices in any area of their lives unless they are well informed; that information is at the foundation of all activity. This could mean in politics, the workplace, education, health, civic life, etc.

Unless we have proper, accurate information, we cannot fully exercise our rights and freedoms. This is the sense in which freedom of information is a “touchstone”.

Bearing in mind this clear and simple point, it is a pity that the UN did not create a separate and independent right to freedom of information.

Instead, Article 19 of the Universal Declaration of Human Rights (UDHR) in 1948 states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Freedom of information is in there; you just have to dig a bit.

What Article 19 of the UDHR creates is a right to freedom of opinion and expression. Part of this right is the freedom to seek, receive and impart information.

The relevant part for us is the ‘seek and receive’ bit. So, the UDHR says there is a freedom to seek and receive information.

The International Covenant on Civil and Political Rights (ICCPR), adopted by the UN in 1966, uses the same language. Article 19, paragraphs 2 and 3 of the ICCPR states:

“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, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order or of public health or morals.”

#### Article 5.2 of the Asian Human Rights Charter states:

“The state, which claims to have the primary responsibility for the development and well-being of the people, should be humane, open and accountable. The corollary of the respect for human rights is a tolerant and pluralistic system, in which people are free to express their views and to seek to persuade others and in which the rights of minorities are respected. People must participate in public affairs, through the electoral and other decision-making and implementing processes, free from racial, religious or gender discriminations.”

The African Charter on Human and Peoples’ Rights also addresses the issue in Article 9(1) very clearly:

*“Everyone shall have the right to receive information.”*

#### So, the right to seek and receive information is explicit. But who has the duty to provide it?

This is the weakness of freedom of information provisions in international law. For this reason, in 1997 the UN Commission on Human Rights issued a request to the top United Nations expert on the issue, the Special Rapporteur on Freedom of Opinion and Expression, to look more closely into the right to seek and receive information.

The following year the Special Rapporteur reported on the issue:

*“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 importance of this statement is that it pins the responsibility on states to make sure that people have access to the information that states hold.

Significant steps to strengthen the international legal framework on access to information have been taken over the last decade in issue-specific areas such as the environment.

In 1998 Member States of the UN Economic Commission for Europe and the European Union signed the [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(The Aarhus Convention\)](#).

The Aarhus Convention recognizes access to information as part of the right to live in a healthy environment rather than as a right in itself. However, it is the first legally binding international convention that sets out in detail what the responsibilities of the state are on access to information.

#### Access to Information Legislation Worldwide

The first access to information act was passed, amazingly, in 1766 in Sweden.

With the one exception of Colombia, which allowed access to official documents in 1888, the world had to wait

two centuries for another freedom of information act. This one, in 1967, was in the United States.

In the 1980s the passing of similar acts began to gather speed: Australia, New Zealand, Canada. By this point, access to information laws had evolved slowly and mainly in long-standing democracies.

Since the 1990s an unprecedented number of countries around the world have created access to information legislation – including Fiji, Japan, Mexico, Nigeria, South Africa, Ghana, Uganda, Japan, India, Pakistan South Korea, Thailand, Trinidad and Tobago, the United Kingdom and most East and Central European countries. In doing so, they have joined the countries that enacted such laws some time ago, such as Sweden, the United States, Finland, the Netherlands, Australia, and Canada.

The leader in Africa is South Africa, which passed the Promotion of Access to Information Act in 2000. Both governments and campaigners across Africa have taken the South African legislation as one of their starting points.

In 2002 Zimbabwe passed the Access to Information and Protection of Privacy Act (AIPPA). It sounds positive enough from the title. However, the key provisions of this law were aimed at regulating the media. All media houses and individual journalists were required to register with a government-appointed Media Commission.

Severe limitations were placed on foreign journalists’ access to the country. In effect, the government was undermining the constitutional right to freedom of expression by deciding that it alone had the right to decide who could publish a newspaper or be a journalist. Not surprisingly, Zimbabwe’s AIPPA became the subject of widespread protest.

What was largely ignored was that AIPPA does indeed include some access to information provisions. They are not strong ones, but they do provide a weak acknowledgment of the principle of public access to government information. The problem is that, in the current Zimbabwean situation, any positive aspects of this law are effectively unusable. The law has not been used at all to gain access to official information. So, in effect, it is as if there was no access to information law.

#### Overview of Legislation in Regional Asia

Currently seven Asian countries - China, Hong Kong, India, Japan, Pakistan, South Korea, Taiwan, and Thailand - have access to information legislation. A few others, like the Philippines, have included access to information as explicit provisions in their national constitutions. However, legal recognition of the right of access to information has come more slowly in Asia.

South Korea was the first Asian nation to pass a specific law, although its Constitutional Court previously ruled in 1989 that there was a constitutional right to information. The Act on Disclosure of Information by Public Agencies was enacted in 1996 and went into effect in January 1998, allowing citizens to demand information held by public agencies.

In 2007 China became the latest Asian nation to pass an access to information law. Several laws are pending in legislative bodies, most notably in Indonesia, Sri Lanka, and Malaysia.

### Some regional examples:

#### ■ JAPAN: ACCESS TO INFORMATION

In Japan, much of the effort towards establishing an Access to Information Law has come from a coalition of consumer and civic activists, academics, and public interest lawyers, who have been campaigning for a national disclosure law since the early 1970s.

Their efforts had their roots in growing public concern over governmental involvement or negligence in various high profile incidents, such as the Lockheed corruption scandal, along with illness, death, and birth defects due to defective drugs, severe cases of industrial pollution, as well as other public scandals and governmental regulatory failures.

Finally, after more than 20 years of intense pressure by these groups, along with opposition political parties, a national access to information law, "Law Concerning Disclosure of Information Held by Administrative Agencies" came into effect on April 1, 2001.

Although a number of local government access to information laws had been in existence in Japan since the late 1960s, this new law creates for the first time a legally enforceable right of access to Japanese national government files.

The Japanese law was patterned after the U.S. Freedom of Information Act (FOIA), which was first enacted in 1966 and has been revised and expanded ever since.

Public reaction in Japan towards the new law was generally positive, and more than one thousand information disclosure requests were filed with national government agencies during the first week of its existence alone.

Japan's law provides that "all persons have the right to demand information" and outlines the various procedures by which governmental information can be accessed. Six specific exemptions from disclosure are listed:

- Individual privacy information
- Business information and trade secrets: A trade secret is a commercially valuable plan, formula, process, or device, and is a narrow category of information. An example of a trade secret is the recipe for a commercial food product. Detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information
- National security and diplomacy information: This is military information and information related to national defense, as well as diplomatic information (memos, reports, messages) which if released could harm national security or relations with other countries
- Criminal investigation information
- Deliberative process information: This is "information concerning deliberations, studies, or consultations internal to or between either national or local public entities that, if made public, would risk unjustly

harming the frank exchange of opinions or the neutrality of decision making, risk unjustly causing confusion among the people, or risk unjustly bringing advantage or disadvantage to specific individuals."

- Agency operations: This is (a) information concerning "audits, inspections, supervision and testing," (b) information concerning "contracts, negotiations, or administrative appeals and litigation," (c) information concerning research studies, the release of which would risk obstructing "their impartial and efficient execution," (d) information concerning personnel management, the release of which would risk hindering the "impartial and smooth maintenance of personnel matters."

One major criticism is that the language creating each of these exemptions is broad and appears to give a great deal of discretion to agency personnel. If requests for information are denied, requesters can appeal the denial in two different ways. They can file a request for review of the non-disclosure decision by an "Information Disclosure Review Board" established by the law under Articles 21-26. Or they can file a suit for nullification of the non-disclosure decision directly with the district courts located at the eight appellate court venues throughout Japan.

The Review Board consists of nine members, attached directly to the Office of the Prime Minister, with panel members appointed by the Prime Minister subject to Parliamentary approval. In the majority of cases, the Review Board reviews appeals in three-member panels. These panels have the power to demand that the agency submit document(s) in question for an in camera examination. When the Review Board reaches a decision, it issues a written opinion on the matter, which is published and sent to the agency head.

The agency then must decide whether to follow the opinion of the Review Board, or stand by its original disposition. The Review Board does not have the power to compel the agency to follow its decision, however. All Review Board recommendations are published on the Internet

If a requester decides to take the case directly to the court system and file a lawsuit, there is no requirement that the requester first appeal to the Review Board.

In contrast with Cambodia's draft policy paper proposal - which provides for an Information Commissioner, but includes no provision for judicial review - the Japanese law does provide for a judicial review option, even to the extent of giving the requester the option of completely bypassing the administrative appeal avenue.

#### ■ PHILIPPINES: ACCESS TO INFORMATION

Although there is no statutory access to information law in the Philippines, the Philippine Constitution guarantees the right of citizens to information on "matters of public concern."

##### The 1987 Philippine Constitution's Bill of Rights (Section 7) states:

"The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law."

The Philippine Supreme Court has clarified the nature and scope of the right to information, citing that the right is not a private right, but a public right, which may be asserted by any citizen on matters of public concern. The government correspondingly has an affirmative duty to afford access to such information.

Section 7 of the Bill of Rights allows for exemptions to disclosure, declaring the right to information “subject to limitations as may be provided by law. The Philippine Supreme Court has listed some of these restrictions:

- National Security matters
- Trade Secrets and banking transactions
- Classified law enforcement matters
- Other confidential information, such as those provided by statutes.

Because there are no statutory provisions and few administrative rules regarding access to information, there are also no clear guidelines for agencies or governmental bodies regarding disclosure procedures. Requests for information are often denied or delayed. There are no administrative appeal procedures, with the only option for relief being the courts. However, getting the overburdened courts to issue orders to compel access is often slow and costly, which discourages requesters.

## ■ THAILAND: ACCESS TO INFORMATION

In December 1997, Thailand passed the Official Information Act (OIA) and became the first Southeast Asian nation to adopt an access to information law. The OIA’s purpose is to guarantee “the people’s rights to have full access to government information.”

The OIA covers all national, provincial, and local government bodies, as well as state owned enterprises, professional supervisory organizations (such as bar and medical associations), and legislative bodies and committees.

Section 7 of the OIA establishes an affirmative duty for public bodies to regularly disclose information, and provides for the publishing of a “Government Gazette.” All public bodies must comply with individual requests for disclosure, subject to the following exceptions:

- Official information which may jeopardize the Royal Institution (Section 14)
- A State agency or official may issue an order prohibiting the disclosure of official information falling under any of the following descriptions:
  1. The disclosure will jeopardize national security, international relations, or national economic and/or financial security
  2. The disclosure will result in the decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the information’s source
  3. An opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report, or information relied on for giving opinion or recommendation internally
  4. The disclosure will endanger the life or safety of any person

5. A medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy
6. An official information protected by law against disclosure or information given by a person intended to be kept undisclosed
7. Other cases as prescribed by Royal Decree

There does not appear to be any mention of a public interest balancing test; the agency can justify denial of disclosure merely on the basis of the listed exceptions. There is also no specific whistleblower protection.

Once a governmental body denies the request, the requester can appeal to the Office of the Official Information Board (OIB). Members of the OIB are appointed by the Prime Minister.

If the OIB denies the request, one final appeal can be made to a quasi-judicial Information Disclosure Tribunal. Each of these Tribunals handles cases related to specific fields or subject matter. Members of the Tribunal are appointed by the Council of Ministers and their decisions are final, with no opportunity for judicial review.

In the decade since the OIC was adopted, problems still remain. There is still a lack of understanding from the public on how to utilize the law, and government agencies are often confused or unaware of the law and its implementation.

Political influence has also played a role in the lack of proper implementation. This was particularly the case during the administration of former Prime Minister Thaksin, who appointed members of the OIB and used it to block disclosure of politically damaging information.

## ■ SINGAPORE: ACCESS TO INFORMATION

Most official information in Singapore within the public domain is updated regularly, ranging from daily to quarterly, depending on its nature.

This includes general social data, population census data, official audit reports of government agencies, election contributions and expenditures, national government budget records and government loans and contracts.

Because of Singapore’s well-developed and modern information technology sector, information is made available quickly and efficiently in a variety of formats.

But behind Singapore’s appearance of transparency, the situation is very different. Despite its reputation for efficiency, good governance, economic development, and lack of corruption, Singapore still has no Freedom of Information Law.

Instead, information disclosure is regulated in a variety of formal and informal ways. Both formal regulations and the informal culture of secrecy serve to prevent the public’s full access to information.

Although there have been some reforms, particularly in the areas of corporate and fiscal transparency, there has been little or no progress in expanding the public access to governmental information.

The ruling party (PAP) controls nearly all segments of the governmental machinery, and its authorities still exercise a high degree of control over the release of information. Information disclosure and dissemination are regulated through a series of law, most notably the Official Secrets Act (OSA), which provides stiff penalties to those who divulge “any type of information which is prejudicial to the safety or interests of Singapore.”

An informal culture of secrecy pervades governmental institutions in Singapore, including government employees. Many officials are suspicious of the motives of the person or group seeking information, including journalists. This lack of transparency is the result of over 40 years of quasi-authoritarian rule, in which the guiding philosophy of governmental operations was in preserving secrecy. Government data is often selected in which only “positive” or non-controversial data is released to the public.

Economic data is routinely withheld. Information regarding Government Linked Companies (GLC) is also restricted, along with data from the Government of Singapore Investment Corporation (GIC). The latter is responsible for investing Singapore’s offshore wealth, which is estimated to be over USD\$100 million, but its assets and returns are unknown, as the government refuses to make this data available to the public.

## ■ INDONESIA: PROPOSED ACCESS TO INFORMATION LAW

A draft of the “Freedom to Obtain Public Information” has been under consideration for several years now. The parliament’s current version is being reviewed by the government, which is in favor of a more restrictive draft.

Article 7 of the latest draft contains a number of provisions that establish a governmental duty to provide and/or publish non-exempt public information. Articles 9-12 set the main proactive government publication duties, which are categories of information that must be published regularly, at least once every six months by the government without request.

These include information on each public body, including its performance and financial reports. The information must be disseminated in a way that can be easily accessed and understood by the general public. Article 12 also requires that each public body publicize its progress and performance in implementing the Law.

Article 11 lists information that must be available at all times, for public access. This includes all non-exempt public information held by the public body, decisions, policies, supporting documents, work plan, and estimates of annual expenditures, and opinions of public officials expressed at public meetings.

Article 10 requires public bodies to publicize immediately information that is required to save lives, in a manner easily accessible and understood by the public.

One of the better elements of this law, as compared with other access to information laws is its emphasis in requiring proactive publication by the governmental bodies.

Unlike many access to information laws, which often do not require bodies to proactively reveal government information to the public, Indonesia’s draft law specifically cites that Government has a duty to actively disclose.

## Article 15’s exemptions under the Law:

- Law Enforcement and Investigations
- Commercial and Trade Secrets
- National Security
- Protection of Natural Resources
- National Economic Interests and Foreign Relations
- Personal Information
- Internal Deliberations of Public Bodies

In addition, the Law requires a showing of harm that outweighs the public interest. These particular provisions are currently the subject of much discussion with the Government. The Law also includes provisions dealing with appeals of denials of disclosure. As with Thailand, Article 4 and 22-46 address the issue of independent bodies, which would be in charge of oversight and appeals.

The Law also provides for the establishment of Central and Regional Information Commissions, which would rule on disclosure appeals. Members would be appointed by the Government for five-year terms. As in Thailand, there are no provisions for court appeal.

## HANDOUT 4: CAMBODIA'S CASE

Although there is currently no access to information law in Cambodia, the Royal Government, with the encouragement and support of donor countries has recognized the need for a national access to information policy and legislative framework, which will eventually become law.

Three provisions in the current Cambodian Constitution provide the constitutional basis of a protected right of “timely and effective access to high quality and accurate information held by the Royal Government of Cambodia and other public institutions”.

Article 31 of the 1993 Constitution of the Kingdom of Cambodia pledges to “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, and children’s rights.”

Article 35 of the Constitution also gives Khmer citizens the “right to participate actively in the political, economic, social, and cultural life of the nation. Any suggestions from the people shall be given full consideration by the organs of the State.”

Further, under Article 41, Khmer citizens “shall have freedom of expression, press, publication, and assembly.”

Access to information legislation gives people a statutory right to access government-held information. The drafting of a Draft Policy Framework Paper in 2007 was the first major step in the Royal Government of Cambodia’s efforts to pass an access to information Law in the near future.

This Policy Paper is guided not only by Cambodia’s commitments under the United Nations Charter but also by the clear requirements of Articles 31, 35 and 41 of the Constitution of the Royal Kingdom of Cambodia:

- Article 31 of the Constitution recognizes the existence of personal rights and freedoms, as set forth by the UDHR and the UN Charter. Article 35 is more specific and recognizes the right of citizens to participate publicly in various political, economic, cultural, and social affairs. Article 41 is also more specific and recognizes specific freedoms of expression, including freedom of press, publication and assembly.
- For example under Article 35, people have to right to join and participate in meetings of commune councils. They also have the right to join social, professional, labor, educational, and economic associations. This could include labor unions, cultural organizations, political parties, business associations, farmer or agricultural organizations.

Freedom of expression means freedom of speech, which includes your right to give your opinions or state your beliefs openly without restriction, and the freedom to hold public meetings and demonstrations.

All of these rights taken together provide the constitutional basis to the right of access of information.

These constitutional rights are also guaranteed under the International Covenant on civil and Political Rights (Article 19), which Cambodia ratified in 1992:

- Everyone shall have the right to hold opinions without interference
- 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, either orally, in writing or in print, in the form of art, or through any other media of this choice

By adopting Access to information legislation Cambodia would be fulfilling these constitutional requirements and join over 70 other countries with similar legislation including Sweden and China. Other countries in the Asian region that adopted Access to Information legislation include Japan, Thailand, South Korea, India, Taiwan, Pakistan, and very recently Nepal.

The drafting team considered a wider national information policy for the Royal Government of Cambodia when designing an access to information law.

### RELEVANT LEGISLATION

#### Access to information under the Press Law

Article 5 of the Press Law may be the closest thing that Cambodia has to an access to information law. It recognizes the “right of access to information in government held records”. However, access can be denied on the following grounds:

- Harm to national security
- Harm to relations with other countries
- Invasion of the privacy rights of individuals
- Disclosure would lead to the exposure of confidential information and financial information
- Disclosure would affect the right of a person to a fair trial
- Cause danger to public officials carrying out their duties

Although Article 5 may satisfy two of the three parts of the restriction of disclosure test (legitimate protected interest and substantial harm), there is no explicit consideration given to the third part of the test (balancing these factors with the overall public interest).

The article does not provide for appeal if a request is denied, and there are no provisions for an independent administrative entity, or Ombudsman to hear any appeals by applicants.

#### Access to Information under the Archive Law

In 2005, the Archive Law was adopted. The law regulates the management and maintenance of official archives and outlines the rights of persons to access archives for research purposes. Unfortunately, it suffers from a lack of clarity, with many of its provisions vague or confusing, which may lead to various interpretations. Article 1 for example, outlines the purposes of the Law and refers to “historical documents”. Yet nowhere in the law is that term precisely defined.

#### Chapter 5, Article 13 states:

“Public archives which are publicized documents are permitted to be used by the public for research and

consultations as unrestricted information. Other public activities shall be permitted for free research 20 years thereafter the date of the documents or thereafter the end of proceeding, or in special cases as stipulated in Article 14 of this Law.”

The term “publicized documents” is never defined. This is problematic since documents that are not considered “publicized documents” cannot be accessed for 20 years after the date of creation or the end of a proceeding. Article 14 lists categories of documents that attract longer periods of secrecy:

- Forty years thereafter the date of the documents or thereafter the end of proceedings for the documents that affect national defense, national security, and public order as well as birth certificates, notary papers, and litigations.
- Documents that affect national defense, national security, and public order shall be specified by a sub-decree.
- 120 years thereafter inception for personal documents and medical documents of each individual.

As in the Press Law, there is no balancing test with the overall public interest. Nor is there any mention of harm or even substantial harm, which is required under the three-parts restriction of disclosure test.

Potential whistleblowers are certainly not protected under the Archive Law. In fact, the penalties for violating provisions of the Article 14 are severe – a violator is subject to a fine of between \$1,250 and \$6,250 US dollars and imprisonment of between seven and fifteen years.

### Lack of defined procedures accessing information

Due to the lack of a clear access to information policy, many requests are handled informally and decided on a case-by-case basis.

#### An officer from the Council of Ministers recently pointed out that:

“Cambodia has no law on the classification of such documents. If people want to get access to a document then we need to follow informal procedures. If I am not sure whether to give the document, then I will ask my boss. If he is not sure, then he will ask his boss, and so it goes until someone can decide yes or no.”

In a 2004 report to the U.N. General Assembly, Peter Leuprecht, Special Representative for Human Rights in Cambodia, outlined the difficulties in accessing governmental information:

“It remains difficult to obtain access to basic information held by public authorities, given public reports, draft laws, which have been tabled in the National Assembly, government instructions and circulars, all of which are often treated as if they were confidential.

Civil society groups face considerable problems in accessing information that is in the public interest, as do the media, despite the latter’s right to access certain information being provided for in the Press Law. The problem of accessing information is customarily overcome through personal contacts, rather than through institutionalized and transparent mechanisms . . .

Access to information held by public authorities has to be provided and legislation giving citizens the right to access to such information should be enacted and implemented, thereby assisting the effort to build open government, inform public debate, and reduce corruption.”

## RECENT DEVELOPMENTS

Under pressure in recent years from donor countries to improve transparency and commitment to a ‘good governance’ plan, the Royal Government moved tentatively towards the establishment of an access to information law that meets international human rights standards. In 2004, the Royal Government formally acknowledged the need for an access to information law, “in order to create transparent government, reduce corruption, and promote confidence in the government by the citizens of Cambodia”. A target was set (with donor approval) to develop a clear policy framework on access to information, which would lead to an eventual drafting and adoption of the law.

### The Access to Information policy paper

After three years of public workshops and conferences involving government officials, members of civil society, local and international NGOs, as well as members of the general public, the Council of Ministers mandated the Ministry of National Assembly Senate Relations and Inspections (MoNASRI) to draft a government Policy Paper on Access to Information, which would serve as a precursor to the drafting of a national FOI law.

“The Policy Paper will set out the framework for the government’s strategy on increasing access to information. It will define access to information, the role of government agencies, and other stakeholders in promoting access to government information, fundamental principles to be included in the law, time frame for its passage and designated agency responsible for the development of the draft law.

The Policy Paper used a number of guiding principles relating to Access to Information, taking into account existing human rights instruments, current FOI laws in other States, opinions by international legal experts, and guidelines established by various international

NGOs, most notably the international human rights NGO Article 19. These guidelines were similar in scope to the nine issues specified by the U.N. Special Rapporteur in his 2000 report. The Policy Paper also outlined the broad benefits of a national information policy based on international standards.

Access to Information legislation promotes good governance and accountability, helps to educate the public about government programs and services, and encourages public participation in the society.”

### Determination of the public interest

The paper also proposed that in determining what is in the public interest, “officials should prioritize the need to contribute” to the following: effective decision-making and accountability; ensuring that a public body is adequately discharging its functions; the effective use and oversight of public funds; debate on issues of public interest; public participation in the political process and decision-making; public safety and public health; and protection of the environment.

### Current status of the policy paper and legislation

The Draft Policy Paper on Access to Information was completed in late August 2007. The Draft currently sits at the Ministry of National Assembly Senate Relations (MoNASRI). To date, it has still not been forwarded to the Council of Ministers for review.

## HANDOUT 5: WHO HAS THE RIGHT TO ACCESS TO INFORMATION?

Everyone has the right of access to information. Most human rights belong to everyone no matter where they are. For example, you do not need to be a citizen of the country where you are living in order to have the right to food, or the right not to be tortured.

There is no reason why the right of access to information should be any different. Some countries allow anyone within the country to use the law: Bulgaria, Japan, and the United States, for example. This is how it should be.

Swedish law says that the right of access is restricted to Swedish subjects. But in practice anyone can use it.

Other countries do not state explicitly who has the right of access to information. Pakistan is an example where the law restricts the right to citizens.

### Which bodies are covered by the legislation?

Government ministries, departments, and agencies; local authorities; public hospitals, public schools, public colleges and universities; the police, the armed forces, regulators, advisory bodies, publicly owned companies and Government owned television and radio channels. The Houses of Parliament, Congress, National Assembly, Senate, and any other public authorities including courts and tribunals, as well as the security and intelligence services. Private contractors providing services, consultancy or research for public authorities are also covered. So are the electricity, gas, water and sewerage utilities. In Cambodia, examples of the latter are CINTRI (trash) and EDC (electricity)

### Examples of countries with Access to Information law

South Africa has a unique and progressive access to information law that applies not only to public bodies, but in some circumstances to private ones as well.

#### The following are the two circumstances in which this can happen:

- When a private body is carrying out a public function (as with a privatized public service)
- When the information is needed for the protection of someone's rights

However, access to information in South Africa does not apply to certain public bodies: the Cabinet or its committees, the courts and their officers and individual members of parliament.

It is not uncommon to exclude such bodies from access to information laws, especially the courts. However, it is not really necessary to do so. A system of exceptions can easily maintain the necessary confidentiality of court proceedings.

Mexico has adopted a different approach. All public bodies are covered by its access to information law, but they are grouped into different categories, with different obligations.

Thailand includes the courts under its access to information law, but only on matters that do not directly relate to trials.

The broad term "public bodies" covers a wide variety of different sorts of institution. In addition to the difference between legislative, administrative and judicial public bodies, there are also important distinctions to be made between, for example, institutions that are part of government proper and those that are other sorts of publicly owned body.

The "public owned" might include quasi-state companies or other public enterprise. It might include independent public bodies of various sorts: national human rights institutions, public broadcasters and a host of other organizations.

There is no reason in principle why all of these should not be included in the scope of the access to information law, although in practice different countries have tended to include different types of body.

The better laws include a degree of flexibility, so that they do not simply list the institutions covered. This allows new institutions to be brought under the access to information law in future.

### COVERED BY THE CAMBODIA DRAFT POLICY FRAMEWORK

*Under the access to information law proposed for the Royal Government of Cambodia, the public would have the right to information held by bodies that:*

- *Are established by or under the Constitution of Cambodia*
- *Form any part of any level or branch of government, such as ministries and local authorities*
- *Are controlled or substantially funded by the government*
- *Carry out a statutory or public function. A body that has a statutory function is a body specifically created by a law. For example, the new Corruption body is one that has been created by law and has a specific statutory mandate. A body that has a public function can also be specifically created by a law, but not necessarily*
- *Are contracted by a public body to undertake a statutory duty or public function on its behalf*

### Private Bodies

The African Commission statement addressed the question of information held by private bodies: "Everyone has the right to access information held by private bodies that is necessary for the exercise or protection of any right."

The South African Promotion of Access to Information Act has the same provision. What is not entirely clear is whether this refers to internationally protected human rights or rights protected in the law of the country.

#### Information people would need to protect their rights include:

- Information affecting health and safety at work
- Information about the environmental impact of a private company's activities
- Information about the financial health of a company, for example in wage negotiations

## HANDOUT 6: THE DEBATE AROUND ACCESS TO INFORMATION

SESSION

4

- Personal data held by a private company

The last example, personal data held by a private company, is particularly important. Some countries have specific laws to give people access to personal information that private companies hold about them. This is an important way of protecting their privacy.

When private companies carry out public functions they have the same access to information obligations as public bodies. This would happen, for example, when a public service was privatized.

Privatization is such a widespread phenomenon today that this provision is extremely important. Many public services are put into private hands, for instance, health care, education, water supply and sanitation, prisons, air traffic control and security.

These are all services that are vital to the everyday welfare of the community. The providers of these services must be held accountable, whoever they are.

The obligations on private bodies are likely to be different depending on whether they must give access to information in order to protect rights or because they are fulfilling a public function. If it is because they are fulfilling a public function, their obligations will be just the same as for a public body.

If it is in order to protect rights, this will be an obligation that applies to all private bodies, such as companies. But it will be up to the person requesting the information to show that they need it in order to protect their own rights.

### ARGUMENTS FOR A2I

#### Making government accountable

This will be near the top of people's list of reasons for having an access to information law.

Elected governments are likely to be more responsive to the electorate - and more likely to deliver on their promises - if their actions can be scrutinized through an access to information mechanism.

By government we mean not just the government of the day but the whole unelected apparatus of state as well. Sometimes even elected governments have difficulty controlling the bureaucracy.

The problems may range from outright mismanagement to simple inefficiency, delay and insensitivity to the needs of ordinary people.

Public access to information is a way of keeping the apparatus on its toes, of making it more responsive to people's needs and demands.

It is also, as we will argue later, a way of making government more efficient.

#### Increasing public participation

Most people's experience of democracy is of casting a vote and then spending the next four or five years wondering what effect it has had.

The weakness of representative democracy - periodically electing members of parliament who make decisions on your behalf - is that they have a long, long time when they can do anything they choose (or nothing at all) before the electors can call them to account.

And when the opportunity comes to re-elect your representatives, the voters usually have little idea what the government has really been up to while it was in power.

Of course this is closely related to the previous argument about keeping government Accountable.

#### This is what India's Supreme Court has to say:

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that its citizens ought to know what their government is doing... It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy." *S.P. Gupta v. President of India [1982] AIR (SC) 149 (Supreme Court of India)*

If the Indian court is right - and surely the argument is unanswerable - then access to information is not just related to freedom of expression. It is also part of the right to participate in the government of your country - which is also an internationally guaranteed human right.

In India, one way that this has worked has been that the “right to know” obliges all candidates in elections to file affidavits (sworn legal statements) setting out their educational qualifications and any criminal record. These affidavits should be available to the public. In the 2004 national elections, these affidavits were widely publicized by the media.

When we talk about increasing political participation, part of what we mean is that voters are better informed when they choose their government. But it is only part.

Just as important is the idea that political participation means that citizens are informed and active.

Citizens concerned about particular issues affecting their community may use the law to get hold of information. Or they may turn up at meetings of decision-making bodies - another important part of an access to information law - and get closer to the policy process in that way.

### Promoting women’s involvement

The reasons why access to information can improve general political knowledge and participation also apply particularly to women.

There are many ways in which women are discriminated against and disadvantaged politically. Discrimination in access to information is one way.

It is often said that we live in an “information society”. From this emerged the idea - and indeed the reality - of the “information rich” and the “information poor”. Of course, to a very large degree these are just the rich and the poor by a slightly fancier name.

There is no doubt that traditionally disadvantaged groups - of whom women are the largest - are almost always to be found among the information poor.

For women, information may just be important in itself. For example, information about reproductive health is something that affects every woman for a large part of her life. But information may also be a way of unlocking the restrictions on women’s power and role in society.

Indeed, the example of reproductive health is just such a case in point. Women’s lack of control over reproductive health is one of the major reasons why they are not able to play a fuller role in society, including participating politically

### Making private companies accountable

If governments often seem unaccountable, the activities of private companies appear much more so. Most governments in Southeast Asia are elected. They could, in principle, be voted out next time the voters have their say. Yet ordinary people, who may be vastly affected by the activities of private companies in their everyday life, have no way of calling them to account (unless they have the good fortune to own large parts of them).

Indeed, it is not only ordinary people who lack the means to call companies to account. The major transnational corporations have turnovers larger than the economies of many countries. They are more powerful than governments.

There is an interesting and innovative provision in the South African Promotion of Access to Information Act, which allows the government to make a request under the law to gain access to information held by a company where:

- It is running a public service, or
- The information is necessary to realize someone’s human rights

Potentially this covers an unpleasant lot of situations.

### Tackling corruption

Corruption is a major blight on democratic government and respect for human rights.

As we know, corruption is a particular problem in developing countries. It thrives on the relationship between powerful companies, weak governments and greedy individuals. Individuals and institutions become corrupt when there is no public scrutiny of what they do. The more that they operate in the public gaze (look) the less corrupt (and more efficient) they are likely to become.

Access to information is crucial for effective democracy. Political leaders are more likely to act in accordance with the wishes of the electorate if they know that the public can constantly scrutinize their actions.

### Making better decisions

This general move towards open government also contributes towards greater efficiency. Not only will the apparatus of government work more smoothly, but also an open government will be more likely to make better decisions.

#### There are two main reasons for this:

The first is that when governments are required to make their records accessible to the public, they will rapidly have to start keeping their records in better order.

This will mean that they work more efficiently, but also that they know more about what they are actually doing. This helps them to make more informed, rational and sensible decisions.

The second reason why access to information promotes better decision-making is that a more open style of government is more inclusive. It encourages the public to contribute to discussions. Because more opinions are included, this means that decisions are likely to be better informed.

Let’s consider a simple example of how this might work. You work for a civil society organization that does health education for women in the rural areas. A parliamentary committee is reviewing the budget vote for the ministry of health.

Using the access to information law, you get information about the ministry’s work in the area of women’s health education.

You find out that the ministry is ignoring crucial issues at a local level. Using the ministry’s own facts and figures you are able to make a submission to the parliamentary committee and the vote is amended.

## Protecting privacy

Governments and other large organizations hold data about us. There is nothing sinister or evil about this in itself. They need some information in order to provide the services that we require and expect.

**But things can go dangerously wrong in a number of respects:**

- Personal data can be inaccurate
- Personal data can be used wrongly
- Personal data can be passed to the wrong people

Some countries have data protection laws that deal with this issue separately from an access to information system.

**But whichever law it is in, it is vital that you have the right:**

- To see, check and correct personal data about yourself
- To be protected against the data being passed to those who are not entitled to see it

Whether the issue is dealt with by a data protection law or an access to information law, it should include a procedure that gives everyone a right to look at personal information held about them. It should also create penalties for releasing or passing on personal information without consent.

## Protecting human rights

It is clear that access to information is a human right in itself. But one of the reasons that it is especially important is that it is a key to protecting and guaranteeing many other human rights.

Some of these we have already mentioned are political participation, women's rights, and privacy. Others we will come to are workers' rights, health rights and environmental rights.

In general, the reason why access to information and open government protect human rights is the same as the reason why they help to tackle corruption. It is much easier to deal with malpractice of whatever sort when it is out in the open.

The same applies whether we are talking about serious violations of civil and political rights - say, torture or detention without trial - or economic, social and cultural rights.

There is a general sense in which a culture of openness makes serious abuses like torture less likely to occur. Those sorts of human rights violations are secret almost by their very nature.

Information gathered under an access to information law can be extremely effective in the struggle for socio-economic rights.

One of the most important socio-economic rights is the right to food. The link between food and information might appear a strange one, but it seems well established.

For example, during Ethiopia's famine in the 1980s, the fertile country suffered civil unrest and delayed international aid, and nearly one million people died of starvation and disease. One of the big problems

was there was very little information coming from the government.

The Indian economist Amartya Sen, winner of a Nobel Prize, has written that famines do not happen in countries with a free press and freedom of expression. This is because famines are seldom, if ever, caused by an absolute shortage of food. They are caused by the inability of sections of society to get food. They cannot grow it or they lack the resources to buy it.

Sen's argument is that when governments are under public scrutiny they will take the steps needed to make sure that people have food. The evidence seems to support his claim.

## Promoting worker rights

One very important set of socio-economic rights that can be greatly helped by access to information is rights in the workplace.

It is not difficult to think of examples of how access to information might benefit workers. In particular it will give them information about health and safety issues and other aspects of working conditions.

For example, they will be able to find out about new processes being used and whether these have harmful side effects.

For workers in government employment - or for any other employer covered by the law, public or private - an access to information law will allow them to get financial information about the state of the enterprise in public bodies, or private companies fulfilling public functions. This may be extremely important in wage negotiations.

There is a common assumption that it is quite normal and reasonable for employers and employees to sit at the negotiating table on completely unequal terms. One side knows everything that it needs to know, while the other side knows nothing that it has not learned from its own experience.

**This may indeed be normal, but it is far from reasonable.**

## Promoting health

At an individual level it is clear why information is important to health. Knowing what are healthy practices and what are risky ones; knowing what symptoms indicate potentially dangerous illnesses; and knowing how to treat simple problems - all help to promote good individual health.

**We have already talked about the importance of information to reproductive health.**

The importance of information also applies to large public health issues. A very clear recent example was the outbreak of SARS (Severe Acute Respiratory Syndrome) in China. At first the government denied the extent of the outbreak and did not give information about the measures necessary to restrict it. As soon as they reversed this policy - rather too late, unfortunately - the outbreak was easily brought under control.

Closer to the above is another clear example of the same phenomenon. The greatest public health crisis of our time: the HIV-AIDS pandemic. In its early years, HIV infection was able to spread so rapidly because of

the lack of publicly available information about the virus and how to avoid it. Countries that had effective public information programmes – such as Uganda, which was once the worst affected in the world – have been able to turn the tide of HIV infection.

### Strengthening the economy

A country with open government will have less corruption, better public decision making and a healthier population with fewer going hungry. Of course the economy will benefit from this.

Add to these reasons the fact that businesses too can use the access to information law to gather information. This allows them an insight into government policy as well as a better understanding of their market.

Governments hold a lot of information that is useful for businesses, but usually no mechanism exists to make that information available when it is needed. An access to information law provides that mechanism.

### Accurate information assists better decision-making in business too.

### Protecting the environment

This is one of the most important reasons for seeking access to information and more open government.

Information can have an immediate impact on decisions affecting the future of the environment, as well as their short-term human effects.

This is partly because an access to information law allows the public to monitor bad decisions - granting permission to build a factory where industrial waste will leak into a town's water supply, for example. But by imposing openness on companies it is also possible to make them behave better.

### Making the country secure

You may be surprised to see 'national security' on the list of arguments in favor of access to information. Usually, this is top of the list of arguments against.

### There are two important reasons for including it on our list of arguments in favor:

The first reason is that in many countries the various agencies responsible for 'national security' in reality spend a lot of their time undertaking surveillance, harassment and repression of political opponents of the government.

For the same reason that access to information is a way of promoting human rights, it will also help to keep national security agencies focused on the proper business in hand.

Corruption in the defense forces is also widespread. Defense procurement - arranging contracts to supply goods and equipment to the military - is one of the most lucrative businesses. Inflation of contracts and awarding them to General So-and-so's brother directly undermines national security.

The second reason for putting national security on the list is that it is important that we think hard about what we mean by security. Governments, when they refer to national security, normally mean the security

of their own grip on power. They might warn of plots and conspiracies organized by enemies, or even threats of invasion. But often what they are most scared of is popular opposition.

Most ordinary people have a completely different view of security. For example, if you ask, people in developing countries what makes them feel insecure; most are likely to give one of two answers: poverty and crime.

An access to information law may also help to tackle the causes of conflict. Some groups may feel the government treats them unfairly or that another social group is being treated better.

An access to information law can help reduce tensions by allowing people to scrutinize decisions personally. Also, greater participation in government processes will contribute to decreasing people's feelings of alienation or exclusion from power.

There is another more down-to-earth argument in favor of access to information: it can make everyday life much simpler and more straightforward.

The culture of government secrecy does not just mean that 'sensitive' information is withheld. It means that all sorts of useful information are difficult to get hold of.

In countries that have access to information laws, often the most popular aspects will be drop-in centers where people can get simple but very important information, i.e. on welfare benefits, local tax rates, building plans and so on.

### Finally, reducing the danger of rumor

Having a strong access to information law reduce 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 serious negative impact.

For example, during the demonstrations in front of the Thai embassy in Phnom Penh in January 2003, a rumor circulated that the Cambodian Embassy in Bangkok had been burned down, with many people dead. In fact, it was not true. Yet the rumor further enraged the mobs, which proceeded to loot and damage the Thai Embassy as well as other Thai businesses in Phnom Penh. The Cambodian Government later paid millions of dollars in compensation to Thailand as a result.

## ARGUMENTS AGAINST A2I

We have identified commonly heard arguments against access to information, we are sure that there are more, but most of them will be connected to these:

### It will cost too much

Of course, there are costs to setting up an access to information system, but if it is well designed it will bring many savings from increased efficiency.

Studies from countries with access to information systems show that the real costs after taking the benefits into account are fairly low. Indeed, it may be that an access to information law actually saves money in the long term.

It will add another burden to an overworked environment

In fact, it is fair to say that the introduction of an open information regime and keen record management systems will result in a far more efficient bureaucracy over time.

When governments are required to make their records accessible to the public, they must start keeping their records in better order, which results in their whole apparatus working more smoothly and increasing their efficiency.

### **It will be impossible for government to make decisions if they are all made public**

An open government will be more likely to make better decisions rather than fewer decisions. It is important to clarify that by 'government' we mean not just the government of the day but the whole unelected apparatus of state as well.

When governments are required to disclose information in the public interest, they are more conscious of the importance of record keeping. This means that there is more information available to them in decision making processes which, in turn, results in decisions that are more informed, rational and sensible.

### **It will undermine national security**

This is one of the most frequent arguments used by detractors of free access to information.

In fact, as it is further detailed in the arguments in favor of access to information, it can be argued that national security is better enhanced by broader access to information, for the following reasons:

- In many countries the various agencies responsible for 'national security' may in actual fact spend a lot of their time undertaking surveillance, harassment and repression of political opponents of the government. Therefore, access to information will also help to keep national security agencies focused on the proper business at hand.
- Often, when governments refer to national security, they mean the security of their own grip on power. Without access to information, secretive governments might warn of plots and conspiracies organized by enemies, or even threats of invasion in order to keep popular opposition at bay. But paradoxically, this may even create a backlash, since the lack of transparency can foster frustration among their people and promote political instability in the country.
- An access to information law may actually help to tackle the causes of conflict within a country. For example, some groups may feel that the government treats them unfairly, or that another social group is treated better, so an access to information law can help reduce tensions by allowing people to scrutinize decisions personally. One argument is that having an access to information law protects national security. The opposite argument as presented here, is that instead of protecting, it will undermine national security (the opposite).

### **It will damage commercial secrecy and scare away investors**

On the contrary, it is acknowledged that an open and transparent state builds confidence in international investors, whose foreign capital can make a significant contribution to growth.

Besides, lack of transparency in the public administration, i.e. the way governments allocate budgets to public procurements for basic infrastructures, allows corruption to thrive and consequently discourages foreign investment. Transparency is integral to minimizing the risks of financial crises, a point that was clearly illustrated by the Asian crisis in the late 1990s and the collapse of corporations such as Enron. It has been increasingly recognized that one of the prerequisites for the development of robust and sustainable markets in the long-term is good governance, founded on the rocks of reliability, predictability and accountability.

### **It will encourage officials to work in less efficient, secretive ways to avoid getting caught out by the new law**

In fact, a good access to information law will require adequate training of public officials charged with its implementation and will make them more accountable to the public by introducing sound and transparent mechanisms of supervision of their activities.

### **The public won't understand the information when they get it**

A more open style of government encourages people normally alienated from the public sphere to participate in discussions and makes them more knowledgeable about the issues that are most relevant to them.

It is also important to always remember that the public has a right to information that it should always be able to exercise. Access to information encourages a democratic culture that goes far beyond the checks and balances that formally constitute a functioning democracy.

After all, how can people choose between electing candidates in accordance with their own beliefs and values if they do not have information about those candidates; the details of their previous track records, their proposed commitments or who funds their party?

In order for people to test and formulate their own political views must be exposed too, and have the right and opportunity to take part in, vigorous public debate.

## HANDOUT 7: CRITERIA AND SCORE SHEET

Support Group		1	2	3	4	Total
	+ Number of arguments with reference and reasons					
	+ Number of presenter with gender					
	+ Attitude of presenter					
	+ Level of response of questions and answer					
<b>Total</b>						
	Note: 1 very poor, 2 poor, 3 Fair, 4 Good, 5 Very good					
Against group		1	2	3	4	Total
	+ Number of arguments with reference and reasons					
	+ Number of presenter with gender					
	+ Attitude of presenter					
	+ Level of response of questions and answer					
<b>Total</b>						
	Note: 1 very poor, 2 poor, 3 Fair, 4 Good,					

## HANDOUT 8: NINE PRINCIPLES FOR A2I

Now widely recognized as the standard for best practice, ARTICLE 19 has drawn up a set of principles crucial for Access to Information law.

### 1. MAXIMUM DISCLOSURE

The principle of maximum disclosure is very simple. In all cases the presumption is that information will be disclosed. In a few cases there may be a reason for withholding information. If there is, it is the responsibility of those who want to keep it secret to demonstrate this.

The reasoning behind the principle of maximum disclosure is equally simple. The presumption that all information should be revealed is a consequence of who owns the information.

All information held by government belongs to the people. Just as governments only hold office, temporarily, as the representatives of the people, so they only hold our information because we allow them to. Therefore, if we choose to take a look at it, they cannot stop us.

Of course, the practicalities are rather more complicated. However, it is important always to bear in mind the simplicity of this basic underlying principle: the information belongs to us.

### 2. OBLIGATION TO PUBLISH

**Public bodies should be under an obligation to publish key information.**

First, there is a clear benefit to the people in seeing what public bodies do. This is not related to requests for specific information, but is part of the general process of holding public institutions accountable.

People often assume that the main part of an access to information law consists of providing a mechanism for members of the public to make requests for official information.

But that is not really so. The success of an access to information law is measured not by how many requests are submitted and answered, but by how much information reaches the public.

In addition, very often the best way of making sure that the public has the information they want is to publish it before they ask for it.

Once the system for processing requests is in place, this will be an easy thing to do. The department concerned can simply look at what requests it receives.

To save everyone the trouble of having to go through a request procedure, it can make the most commonly requested material available to the public.

Publishing information in advance is also important in helping the public to make requests. If a public body or government department makes information available about what it is and what it does, this will help potential requesters to direct their inquiries to the right place.

This will have an advantage for the officials themselves too: it means they will not be constantly having to deal with requests addressed to the wrong departments.

The other important area where information should be made public is on decisions that the department makes.

It can publish information telling the public how to contribute to the decision-making process, for example, by expressing its views on the issues and areas that the department is responsible for.

It can also publish information about what decisions are coming up and what decisions have been taken recently. This should include information about the likely impact of the decision and why it was taken.

This will help the public to understand how the decision will affect their lives, as well as giving them the chance to object to it if they wish.

#### 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 competences and the decisions made at the meetings of the Commune/Sangkat council.*

### 3. PROMOTE PUBLIC INFORMATION

Public bodies should actively promote open government. This is a general principle that everything a government does should be open and transparent, such as public meetings, publishing government documents without request, making public all discussions, conferences and deliberations.

#### OBSTACLES TO MAKING AN ACCESS TO INFORMATION LAW WORK

1. *Officials may be reluctant to hand out information*
2. *The public is unaware what their rights of access to information are, or where to go to find the information that they want.*

*Civil society organizations can play a very important part in making an access to information law work properly, even to the extent of training public officials.*

*However, the primary responsibility is with the government itself: superiors must give clear instructions that they are expected to be open and transparent.*

*It will also be important for the law to contain penalties for officials who fail to make information available to the public.*

*The law will need to devise ways of making sure that people know about the access to information law and what rights they now have.*

### 4. CLEAR AND NARROW EXEMPTIONS

Exemptions should be clearly and narrowly drawn.

Any interests that are going to be protected by an exemption must be clearly set out in the law, for example, national security, privacy, etc.

Information can only be kept secret if it can be shown that revealing it will actually cause damage to national security, privacy, or one of the interests protected in the access to information law.

Even when revealing information will cause damage to one of these interests, it should still be possible to publish it if it is in the public interest to do so.

### 5. PROCESSING CLAIMS FOR INFORMATION

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

There should be a right of appeal to an independent body if a request for information turned down.

## HANDLING REQUESTS QUICKLY

### When someone needs a piece of information they often need it quickly:

- Because it is information that is needed for some official purpose, such as information from an official registrar that is needed to complete a form
- Because it is information about something that may already be causing harm, such as toxic emissions or other sort of environmental damage
- Because the requester is a journalist working to a deadline and many other reasons

### What harm would be caused by delay?

- The requester cannot complete their form in time. Perhaps they receive a fine or other penalty
- Toxic emissions continue, causing damage to the community's health
- The journalist cannot complete the story and the public is not informed about an issue of importance

*If records are kept properly there is no reason why information cannot be produced as soon as it is requested.*

*If records are not kept properly - then they should be.*

*The Access to Information Act in the UK, for example, requires public bodies to develop a code on records management.*

*An access to information law should contain time limits for information requests to be met, but this must be understood as the maximum deadline, not the time that requests normally take to be processed. A normal time limit would be in the region of 20 days.*

### Handling requests fairly

*There are two important aspects of making sure that information requests are handled fairly:*

1. *There should be no discrimination between different requesters. Everyone should be given access to the information to which they are entitled*
2. *The system for processing requests should be clear to everyone*

### Official records

*Official records are kept in written form. Many people who need that information are illiterate. A good system that has been adopted in some countries is to appoint information officers in all bodies that are subject to the access to information law. There are various aspects to their job. They help to overcome the culture of secrecy in the organization and to make sure that records are kept in an organized manner so that information requests can be processed easily. Information officers can also help requesters to formulate their requests, explaining the procedure to them and filling in the request form for them, for example, if they are illiterate or disabled.*

There is nothing wrong with having an initial appeal to a more senior official within the ministry, or whichever public or private body it is. But if that appeal fails, it is vital that someone independent makes the final decision.

Many laws have established an information commissioner, or some similar independent official whose role it is to receive appeals when requests are refused, as well as generally supervising the operation of the access to information law.

In other countries, to keep down costs countries have given these independent review powers to administrative tribunals or Ombudspersons with general powers to investigate complaints against public officials.

Ultimately, anyone whose request is turned down should also be able to appeal to a court of law, both on the facts of their request and on any legal issues.

## 6. COST OF MAKING REQUESTS

### Individuals should not be deterred from making requests for information by excessive costs.

If slow and bureaucratic procedures are one way of making sure that access to information will not work, charging people a lot of money for the information is another.

One of the common objections to access to information, as we have seen, is that it will be expensive. It might seem obvious, from the government perspective, to impose charges for requests for information that will allow the system to pay for itself.

However, as we have also seen previously, access to information systems cost a lot less than is usually assumed. Government will actually gain many benefits from having such a system: it will improve efficiency, decision-making and the quality of record keeping. Government and the economy will benefit from reduced corruption.

It can also be argued that taxpayers already contribute towards record creation and management. Access to information is so integral to the proper functioning of government that it should not depend upon the user paying for it.

The argument for using charges to raise money to pay for the system is therefore less compelling than it might seem at first glance. In practice, the fees charged will never cover operating costs, but these costs will be more than recovered by all the other savings resulting from a good access to information system.

But the real argument against high costs is that it undermines the whole principle of access to information. It would be like charging people high fees for going to court.

The underlying principle, as we have seen, is of maximum disclosure. The information belongs to everyone - not just to the officials who have the job of looking after it. If everyone is allowed access to it, in principle, it would be unfair to create charges that would stop many people from being able to look at information that actually belongs to them.

There are a number of different elements to the cost of meeting an information request: helping the requester, searching for the information, preparing it for access and actually granting access, by seeing or copying the file.

Good access to information laws will impose no fee for making an application and set the fee for providing information at no more than the actual cost needed to produce the information, i.e. the cost of a sheet of photocopying.

Some laws have a system of progressive charges. People or entities who can pay more will be charged higher fees. For example, corporate users can be charged a higher fee for information requests, since they want the information for purposes of making money. This higher charge is used to subsidize costs for information requests by the public.

The law may also allow information to be released for free if the request is on a matter that is in the public interest.

## 7. OPEN MEETINGS OF PUBLIC BODIES

This is a provision that is not often included in access to information laws, but in principle there is no reason why it shouldn't be.

However, some countries have separate laws - so-called sunshine laws, because they bring government out in the open - that requires institutions to hold their decision-making meetings in public.

Working from the principle of maximum disclosure, the reason for holding meetings publicly is the same as the argument in favor of access to documents.

Public bodies exist only to serve the public. The public has a right to see what is being decided on their behalf. This provision would probably apply to decision-making meetings rather than to internal or advisory meetings.

### For example:

- The developers of the Gold Tower 42 in Phnom Penh should have had an environmental impact assessment before it began construction. This should have been implemented through public meetings with residents in the Sangkat and Khan about living conditions, traffic, and possible effects on small businesses in the area. However many building projects in Phnom Penh like the Gold Tower are approved by the government before consultation with citizens.
- When the government announced the benefits of the hydroelectric power project in Kampot, NGOs raised concerns on its negative impact on the environment. Public meetings can promote discussions and debates of issues like these.

## 8. LAWS CONSISTENT WITH MAXIMUM DISCLOSURE

Another way in which an access to information law can be made ineffective is by retaining existing laws that keep official information secret.

We have talked about the culture of secrecy - but it is more than just a culture. Most countries have a network of laws that preserve secrecy and make criminals out of people who disclose secrets.

For example, many countries with a British colonial past have official secrets acts.

In practice, the British Official Secrets Act is often the exact opposite of an access to information law. Usually the way that it works is that anyone working for a public body has to 'sign the Official Secrets Act'. This means that they agree not to reveal anything that they learn in the course of their official employment.

The wording was deliberate. An official secrets act often does not just protect real secrets. It sometimes forbids the public official from revealing anything learned in official employment.

This includes everything, down to how many spoonfuls of sugar the permanent secretary takes in his tea, or what is the color of the official wastepaper baskets.

Of course, people are not usually put in prison for revealing this sort of trivial information. But the very fact that all official information is restricted in this way helps to reinforce the culture of secrecy that we have talked about.

It also gives the authorities very wide discretion to clamp down on the disclosure of official information whenever they choose.

There is nothing wrong in principle with having a law that protects genuine official secrets. The South African Promotion of Access to Information Act - perhaps the most progressive access to information law in the world - is also a secrets law. It defines official secrets and prescribes penalties for revealing them.

Yet in practice secrets laws in Southern Africa were not drafted with openness in mind. Repeal, or at least major changes in the laws, are needed in order that secrets laws conform to the idea that official secrets are exceptions to the general principle of maximum disclosure.

Some countries also have laws dealing with the police and armed forces that create other categories of secrets.

Other laws often create restricted areas where members of the public cannot go.

This existing network of secrets laws creates a problem for a new access to information law. It is very likely that much official information - or all of it under some systems - will have been subject to classification.

Classification means that all records are given a label - open, restricted, secret, top secret or whatever - which tells officials who is allowed to see the document, and who is not.

If this classification system is left in force after the access to information law is adopted, it will obviously play havoc with any free public access to information. Officials will simply refuse to hand out information to the public on the grounds that it is classified.

The only sensible and practical way to deal with this is to repeal or amend all existing laws about government secrecy. The new access to information law should then contain all the relevant provisions relating to when information can legitimately be kept secret.

## HANDOUT 9: CASE STUDIES

SESSION

5

But this does not mean that dangerous secrets will automatically be revealed. As we have already seen, there will be a system of exceptions that allows genuinely sensitive information to be kept secret.

### 9. PROTECT WHISTLEBLOWERS

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

Whistleblower protection would override the legal obligations of confidentiality that any employee might have. And, very importantly, it should apply whenever an official or employee acts in good faith.

In other words, it should not be necessary to prove that there was corruption or a danger to the environment - simply that the employee had a reasonable belief that there was and acted in good faith.

There should be prioritization of access to information law over other laws. Other existing laws must be consistent and not contradict the access to information law. For example:

- Although trade secrets are not subject to public release, a few years ago a Taiwanese company was contracted to refurbish the government's Olympic stadium in return for right to develop land around stadium. Nothing improved with Olympic stadium when the contract, worth millions of dollars, was completed. No one knows the details of the contract between Taiwanese company and government. This is not transparency.
- Although personal privacy laws should be adhered, a politician who has a girlfriend on staff is subject to public scrutiny. Even though this may be a personal matter, there is a public interest in knowing about this.

#### CASE STUDY 1: CAMBODIA'S ANGKOR WAT CONCESSION

*APSARA (Authority for the Protection and Management of Angkor and the Region of Siem Reap) is the Cambodian government authority responsible for protecting the archaeological park of Angkor Wat. Founded in 1995 it is in charge of the research, protection, and conservation as well as the urban and tourist development of the park.*

*In April 1999 with no public debate or prior warning the government of Cambodia quietly entered into an agreement with the Sokimex company to operate the ticket concession at the Angkor Archaeological Park. This deal required Sokimex to pay a fee each year to the government in exchange for the right to control the ticket concession.*

*Terms of the contract between the parties have never been made public, and the contract has been renewed several times with no bidding other than Sokimex. Total ticket revenue from Angkor Wat tourists has been estimated to average close to 50 million USD per year. It is unclear how much ticket revenue goes to the government budget and how much ticket revenue goes to Sokimex.*

*Without an access to information law in Cambodia, we may never know.*

#### CASE STUDY 2: ECCC WHISTLEBLOWER

*In the ECCC (Extraordinary Chambers in the Courts of Cambodia), also known in the Khmer Rouge Tribunal, allegations were made 2008 by certain Cambodian court employees of "kick backs" being paid to high ranking Cambodian officials in order to secure positions on the Cambodian side of the court. These court employees did not provide their names, for fear of losing their jobs. The UN side of the court has established "whistle blower" protection rules and the UN is asking the Cambodian side of the court to do the same. An access to information would protect court employees who come forward to reveal corruption in the court. These people are called "whistleblowers."*

*Allegations of Corruption at ECCC: An Overview*  
[www.cambodiatribunal.org](http://www.cambodiatribunal.org)

# HANDOUT 10: EXEMPTIONS TO PUBLIC ACCESS OF INFORMATION

SESSION

6

## CASE STUDY 3: BHP-BILLITON AGREEMENT

*In September 2006, the Australian mining company BHP-Billiton paid \$US1 million to the Cambodian government for a mining concession to conduct exploratory drilling for bauxite on 100,000 hectares in Mondolkiri province. The company also gave the government an additional \$US2.5 million to go towards a "social fund" for development projects for local communities.*

*But while the money was promised by both BHP and the Cambodian government to start irrigation projects, and build dams, schools and hospitals in the province, none was ever seen in Mondolkiri. The social fund would be administered by the Ministry of Finance.*

*An access to information law would allow citizens to access budget documents or any other information from not only the Ministry of Finance, but any other ministry or body that dealt with BHP-Billiton in this mining concession.*

*BHP Billiton Tight-lipped on Tea Money Claims  
Melbourne Herald Sun, April 22, 2010*

### Law enforcement

Investigation, prevention or detection of crime would often be impossible if the police were required to make information available about investigations while they were still going on. Likewise, it would be more difficult for the police to catch criminals if all information about their work was available.

Some methods of detecting and preventing crime must be secret to be effective, for example, surveillance techniques.

But care should be taken not to draft broad exemptions so that the information on law enforcement will never be released. The key issue is that ongoing investigations should not be jeopardized, public/individual safety should not be put at risk or some other damage should not be caused by disclosure of the requested information.

### Personal privacy

It will often be legitimate, and necessary, not to reveal the content of a personal file to another person.

Public bodies, and some private ones, hold some information about individuals. They need to do this in order to provide necessary services, for example, health, education and social services.

But there is no reason why all this information should be made available to anyone other than the subject of the information. That could be an invasion of privacy.

Of course, the subject of the information should always be able to gain access to it. This is an important way of making sure that it is not abused.

Of course, not all personal information is private. And different rules will apply, in particular, where the personal information relates to the work of public officials.

### Commercial secrecy

*This is one of the more difficult ones.*

Suppose, for example, that a company was developing a new product. It would be legitimate for it not have to disclose details that could allow its product to be copied by rival companies, or would affect its competitiveness in the market. The problem arises for two reasons:

- Because companies use commercial secrecy as a way of controlling and restricting the distribution of the social benefits of their product.

A clear example of this is drug companies, which make enormous profits from the sale of branded drugs, when the cheaper reproduction of generic drugs would be of great social benefit.

- The problem with commercial secrecy is that it often allows companies to operate in a socially unaccountable manner. A company may say that it is closing down a factory, with loss of jobs, because it is no longer profitable.

But shouldn't workers and the community be entitled to review the company's accounts to see whether this is in fact true?

### Public or individual safety

It is possible to imagine cases where an individual's safety might be jeopardized. Say, for example, that someone was placed in a witness protection programme. It would not be desirable that information about their whereabouts and identity be released.

Public safety is a more difficult concept. It could refer to the danger of public panic in the event of, say, a health threat. Yet, more often the need is for greater openness and information about health issues, not the opposite.

We have already looked at how lack of information on public health issues such as HIV/AIDS and SARS has led to a worsening of the situation.

### Government confidentiality

Here again, this is a difficult issue. The idea of allowing exceptions on this is not to keep government decisions secret, but to protect the integrity of the decision-making process.

One concern is that officials should not be discouraged from having frank and free discussions about policy issues.

Policy-makers will be cautious and conservative if they fear that every suggestion they make during a discussion can later be published (and perhaps ridiculed). The interests of the public may be put at risk if decisions are released prematurely.

Once again, there may be a valid point, but the bigger danger is that government decision-making is too secretive, not too public.

### Legal privilege

The issue of legally privileged information is fairly clear-cut.

In all legal systems, some information is privileged, in that it cannot be revealed except to those who have a right to that information within the rules and practice of the system. Most notably this includes information exchanged between lawyer and client.

There are also limits during legal proceedings on the release of information that may influence the outcome. In many systems this is known as the sub judice rule. There is a limit to how far anyone can release information or comment on legal proceedings, such as trials, until they are over.

Legal privilege - especially the sub judice rule - is often abused as a way of limiting public comment, including criticism of the judiciary. However, the right of everyone to a fair trial means that legal privilege, properly interpreted, and has an important role in the judicial system.

For example, discussions and communications between lawyers and clients are confidential. Such information should certainly be excluded from maximum disclosure.

### Public economic interests

Commercial secrecy means protecting private interest, for example the interest of a company and its owners. Public economic interest is different. They can sometimes be the same, but sometimes not.

There are certain types of public economic information that could cause damage if they were released at the wrong time. These should be protected in order to allow the government to manage the economy.

For example, advance information about a change in interest rates or currency exchange rates could be used by speculators to cause damage to the currency. For these limited cases, it would seem reasonable to limit or restrict public access to this information.

In addition, those public commercial bodies that are covered by an access to information law should have the same protection as their private counterparts against the release of information that would damage their competitiveness.

### National security

This is undoubtedly the most controversial area relating to the release of information.

Is this because national security is the most important priority for governments? Or is it simply because 'national security' is often the excuse to justify keeping information secret?

The international human rights NGO ARTICLE 19 believed that this issue of national security and access to information was so important that it convened a meeting of international experts, along with the Centre for Applied Legal Studies at the University of the Witwatersrand, South Africa, in 1995.

These experts produced the 'Johannesburg Principles' on access to information and national security, which have been endorsed by the United Nations Special Rapporteur on Freedom of Expression.

The Johannesburg Principles draws the definition of national security very narrowly:

- (a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. According to this definition, if a government wanted to justify restricting access to information on national security grounds they would have to be able to show that this was needed to stop the country being invaded, or undermined to the point where it would collapse.

## HANDOUT 11: PROPOSED EXEMPTIONS FOR CAMBODIA

SESSION

6

Such threats do sometimes exist, of course, but not in many of the instances where national security is invoked.

The second part of the Johannesburg Principles definition is, in a sense, even more to the point. This says what national security is not:

(b) *In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.*

This may sound familiar to you. A journalist tries to probe corruption or other wrongdoing by a senior politician and is prevented from doing so - and sometimes arrested and charged - because it would be a threat to 'national security'.

We now have a good and useful definition of national security. But does this mean that all information relating to national security should be kept secret? No.

The question is not whether the information is about national security, but whether or not it will cause damage to national security.

The same applies to all the other possible grounds for accepting information about criminal investigations, commercial interests, etc. from being published. The exception only applies if releasing the information will damage that interest, not simply if it relates to it.

This is important because it means that each piece of information must be judged on its own merit. It should not be possible for a government to say: 'This information is about national security, therefore we cannot release it.'

Under some access to information acts - not models to be copied - this can mean that all information held by certain agencies is excluded from the scope of the law. These might include the police, intelligence agencies, military and similar bodies.

Access to Information legislation is designed to maximize the disclosure of information. However, as explained before, there are exemptions, with limits that must be clearly and narrowly drawn on a case-by-case basis, proving that secrecy outweighs the public interest.

Disclosure exemptions in Cambodia's A2I law could cover the following:

- Where disclosure would be likely to cause serious harm to national security, defense, international relations, and the national economy
- Where disclosure would be reasonably likely to cause serious prejudice to the effective formulation, development, or delivery of government policy
- Where disclosure would be reasonably likely to cause serious prejudice to the investigation or prosecution of a crime or the ability to conduct a fair trial, would constitute a contempt of court, is forbidden to be published by a court or tribunal or would facilitate an escape from legal custody
- Where disclosure would constitute a breach of any relationship recognized by law
- Where disclosure would endanger the health or safety of any natural person
- Where disclosure would seriously prejudice the legitimate commercial or competitive position of the public institution or a third party or cause unfair gain or loss to any person or the information was obtained in confidence from a third party and it contains a trade secret protected by law; and
- Where disclosure would constitute an unreasonable invasion of privacy of a person who is not a government official or where the information is about a government official but has no relation whatsoever to their official position or duties
- The Three-Part Test would then be applied to determine whether non-disclosure is justified

In other words, the subject matter must fall within the above exemptions, but there must also be a showing of substantial harm, plus a showing that non-disclosure would outweigh the overall public interest in disclosure

## HANDOUT 12: RESTRICTED INFORMATION CASE STUDIES

- Case 1:** The Cambodian police are engaged in an extensive undercover operation against human trafficking during the investigation stage. A member of the public has requested information about the number of wiretaps used by the police in this operation and whom they are against. Should the information be released?
- Case 2:** Cambodian government laboratories have been carrying out research on a new and potentially deadly virus carried by air travelers and is spreading rapidly worldwide. They are close to making a breakthrough that could lead to the production of a vaccine. But their research has also revealed that the impact of the virus is much more serious than originally supposed. A member of the public has requested detailed information on the progress of the research. Should the information be released?
- Case 3:** The research and development division of the Cambodia State Manufacturing Corporation has developed a revolutionary new production technique well in advance of anything developed by the company's international competitors. It will dramatically reduce the number of workers required. An environmental group has made a request for information about the process. It is concerned about the danger of liquid waste from the new technique seeping into water wells. Should the information be released?
- Case 4:** Vanna is a woman living in Battambang province, and has a legally registered marriage in Battambang. 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 the information be released to her?
- Case 5:** 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 to him.

## HANDOUT 13: THE THREE-PART TEST

In order to justify a refusal to disclose information, a government body must demonstrate all of the following:

1. The information is related to a legitimate protected interest listed in the law
2. Disclosure of the information would threaten to cause substantial harm
3. This substantial harm outweighs the public interest in disclosing the information

The purpose of this three-part test is to guarantee that any withholding of government information must only occur when it is in the overall public interest.

Correct application of the test will help prevent broad exclusions and exceptions, eliminate provisions that protect governmental bodies from public criticism or embarrassment, protect against governmental malfeasance and prevent the concealment of information that might be detrimental to an existing government policy or political ideology.

# HANDOUT 14: LAW IMPLEMENTATION



**Definition:** A law is a rule of behavior or conduct established and enforced by the government for the benefit of its citizens

**General concept:** Laws help people interact with each other, set standards, resolve conflicts, and protect people from harm

**Good laws:**

- Uphold basic principles of human rights and the Constitution
- Equally apply to everyone
- Apply to all similar situations
- Universal behavior
- Clearly defined and do not contradict other laws
- Easy to understand and enforce

## MAKING ACCESS TO INFORMATION A REALITY

**Public bodies have a duty to publish information, even if not asked or requested by the public**

This would include information about the public body - what it does, how to contact it and so on. It would also include the most important information that members of the public might want to know, saving everyone the trouble of going through a request process. Many access to information laws contain a provision requiring public bodies to publish information in some form.

The access to information law of Mexico may go the furthest. Not only does it say that certain types of information must be published electronically, but the public body must provide a computer and printer so that members of the public can have access to this information.

The US Freedom of Information Act requires public bodies to publish any information released in response to a request if it is likely that it will be the subject of other requests.

The Access to Public Information Act in Bulgaria provides a good model of how publishing information can work. The law makes a distinction between reporting and publishing.

Reporting can be in any form, written or oral. Publishing is always written.

**The Bulgarian law says that a public body must report information that:**

- Can avert a threat to life, health and safety of the citizens or their property
- Disproves inaccurate information that has already been disseminated
- Is of public interest

**In addition, each public body must publish:**

- A description of its responsibilities and activities
- Information about the way it is organized

- A description of the information resources available
- The contact information of the department responsible for receiving written requests for information.

The UK system offers another good example. Each body covered by the access to information law must come up with a publication scheme, which must be approved by the Information Commissioner who has overall responsibility for implementing the law.

### Staff responsibility and training

Simply passing a law on access to information and expecting all public officials to comply with it is clearly not going to work. What is needed - preferably within the law itself - is for specific officials to be picked as being responsible for access to information within each body.

Some laws create the post of “information officer” - a good name since it clearly describes what they do. The only misleading thing about the term is that they might easily be confused with a press officer or a public relations officer.

The press or public information officer is in the business of making the public body look good. Their job is to release information that reflects favorably and try to hide information that doesn't look so good. The information officer, by contrast, is there to make sure that all information reaches the public, whether it reflects well or badly on the body releasing it.

In some countries, like Albania, press officers have been given responsibility for implementing the access to information law. Whether this is a deliberate effort to stop the flow of information or it simply means that the authorities don't understand the role of the information officer is not the main point. The effect of this has generally been to prevent information from reaching the public.

### The information officer will have two sets of responsibilities:

- Interacting with the public and making sure that their information needs are satisfied.
- Internally educating and training officials and making sure that they respond to the public, meet their obligations under the access to information law, and have efficient and suitable systems for keeping their records.

### In Mexico the access to information law has a liaison section and an information committee within each public body. The liaison section:

- Collects and publishes information
- Receives and processes information requests
- Helps individuals to prepare requests
- Develops procedures to help deal with requests
- Trains officials in handling requests
- Keeps a record of information requests.

### While the information committee:

- Establishes procedures for handling information requests
- Oversees the classification of information

- Generates information for an annual report on its activities.

Training is important to ensure that public officials implement the provisions of the new law and abide by its spirit. All relevant officials need to be trained in the procedures for receiving requests and releasing information. They also need to learn why this is important, and how access to information will help them in their work. NGOs can help in this aspect.

### Information management systems

We have said that one of the ways that government and officials themselves benefit from access to information is that it will encourage them to create a more efficient system of managing information and records. How does this work?

For example, a person requesting information can look at the manual in order to identify the records that they may want to request. The manual will contain information about the organization, the index of records held by the public body and the process to be followed in order to make a request for information.

In order to produce such a manual, of course, the body producing it will first have to categorize all the records in its possession.

### Publicize the access to information law

Many governments seem to regard the existence of an access to information law itself an official secret. This is often because such a law was passed reluctantly, under pressure from a multilateral donor. The donor is not usually very concerned about implementation, so everyone is happy if the law lies dormant on the statute book. Everyone, that is, except the public whose information it is.

In time, an access to information law will gain credence and public profile by word of mouth.

Everyone will know that it is there and a useful way of getting information. However, its existence will need to be publicized. The public needs to know that it is there and gives them the right of access to information. And they need to know how to exercise that right.

This is an area where civil society organizations can be extremely important. But it is also one where the government and public bodies themselves must be prepared to take the lead.

### Reporting on access to information activities

One way to ensure that the access to information system is working is to require public bodies to report on what they are doing to make it work. Some of the best access to information laws place this requirement on public bodies. This all sounds fine, but as with so much else, the real test lies in the implementation.

South African bodies covered by the access to information law must report to the Human Rights Commission each year on the requests for information that they have received and how they have dealt with them.

After the first year of operation, only 20 out of 800 public bodies reported to the Human Rights Commission, and less the year after. The problem is that there are no sanctions under the law to punish public bodies that fail

# HANDOUT 15: THE ROLE OF NGOS

SESSION

7

to report. The Human Rights Commission warned that to frustrate the work of the commission was a criminal offence. Will that have the necessary effect?

There are a whole series of ways in which public bodies and officials can obstruct the new access to information system: through excessive delays, failing to respond to a request or provide information, charging excessive fees, refusing to communicate by the form requested, failing to appoint an information officer or manage records properly. For each of these there will have to be penalties, as a way of making sure officials comply with the new law.

## Appoint information commissioner

Finally, there needs to be some independent body that oversees the implementation of the access to information law. Civil society organizations that have campaigned for the law will undoubtedly keep a check on how effectively it is working, but they have no formal powers to do anything if there is a problem.

**The information commissioner is an independent administrative body - rather like an ombudsperson - who is required to do two main things:**

- Receive complaints or appeals over requests for information that has been denied
- Provide oversight over how well affected bodies are implementing access to information

Sometimes this responsibility will be given to an existing body, such as an ombudsperson or a human rights commission. There is no problem with this in principle, so long as they are then given sufficient additional resources to monitor the access to information law. Another advantage of having a specialized information commissioner is the institution will build up specific expertise on information issues.

It is important that the commission is independent of the government. Many countries have established mechanisms for ensuring independence when it comes to ombudspersons or other human rights institutions, having them answer to parliament or appointed by a judicial services commission.

Most access to information laws also gives a final right of appeal to the courts. This is an important final safety net. It is right in principle that people should be able to use the courts if they feel that their rights are not being respected.

### WHAT THE GOVERNMENT OF CAMBODIA CAN DO MAKE A2I A REALITY:

- *Publish information*
- *Staff responsibility and training*
- *Information management systems*
- *Publicize the A2I law*
- *Report on A2I activities*
- *Appoint an Information Commission or Commissioner*

Once an access to information law has been passed, NGO and civil society work on the issue can generally be divided into five categories:

## 1. PROMOTING ACCESS TO INFORMATION

NGOs and civil society organizations can promote access to information by making the public aware of the existence of the law and the rights that it creates. They can also tell the public how and where to find information.

## 2. PUBLIC GAINING ACCESS TO INFORMATION

There is clearly an overlap between telling the public about their information rights and helping them to exercise them.

NGOs have a very important role in providing guidance for requesters. This include informing them which body is likely to hold the information that they want, providing them with copies of the request forms and helping them complete the forms. If a request is refused, it also includes helping requesters filing an appeal.

## 3. TRAINING OFFICIALS TO IMPLEMENT THE LAW

NGOs can play a very important role in training information officers and other officials to understand the access to information law. They can also help them to develop and follow procedures in information management and responding to requests.

In Central and Eastern Europe ARTICLE 19 has done this, in collaboration with national NGOs. They have trained information officers and other public officials to be trainers who can spread this expertise throughout their organizations. They have produced a manual to train public officials to process information requests.

In South Africa, training of information officers and deputy information officers has been carried out by various organizations including the South African Human Rights Commission, the Justice College and the Open Democracy Advice Centre (ODAC).

ODAC has conducted numerous training sessions for NGOs, the private sector and public institutions. These focus not only on the technical aspects of the law but also address organizational change and transformation issues related to implementation of the law.

# HANDOUT 16: THE ACCESS TO INFORMATION CAMPAIGN

SESSION

8

## 4. MONITORING THE IMPLEMENTATION OF THE LAW

If you have a good access to information law it will make a provision for an information commissioner, or someone similar, to play this role.

But whether or not there is official monitoring built into the law, NGOs promoting the law are very well placed to know what is working well and what is not.

Just as NGOs will come together to campaign for the law in the first place, so they can pool their experience of different issues to see whether access to information is working and benefiting those who are supposed to benefit.

## 5. USING THE ACCESS TO INFORMATION LAW

You, as an organization, can use the law to gather information about the issues of concern. You can do this either through materials that public bodies will now be obliged to publish or file information requests.

In some countries organizations have grown up whose central role is to file information requests. The best known of these is the National Security Archive in Washington DC. Despite its name, this is a non-governmental organization, attached to George Washington University, which has compiled massive amounts of information on US government policy through using the Freedom of Information Act.

### What are the objectives of an A2I campaign?

Here is a set of five objectives for an A2I or open government campaign:

#### 1. CREATE GENERAL PUBLIC AWARENESS OF THE BENEFITS OF 'OPEN GOVERNMENT'

A good starting point is not to use abstract concepts such as 'open government' or 'access to information', but the everyday concerns of the people in a country. Important objectives of a campaign are:

- Identify the most relevant ways in which A2I would improve people's lives
- Show people who are concerned about social issues that A2I can make a significant contribution.
- Mobilize a broad constituency to take action on the issue of access to information

For change to take place, a campaign must do more than simply persuade people that access to information is a good idea. People's commitment to the issue - and the pressure that they can put on those in power - will come from them taking action on the issue.

One of the important things here will be to reach people through organizations that matter to them. General public information is likely to have little effect on the way that people think about this, or any other issue.

Much more important will be the position taken by organizations that matter to them in their everyday life - trade unions, residents' associations, women's clubs, nurseries or whatever. So much of any campaign for access to information will be organized through these sorts of bodies.

The activities that could be effective in the campaign for access to information will include:

- Organizing petitions
- Holding public meetings
- Writing to newspapers
- Meeting member of parliaments
- Organizing street theatre
- Holding marches or demonstrations
- Passing resolutions through organizations
- Organizing A2I conferences or workshops
- Put pressure on government to recognize the importance of A2I

Broadly speaking, there are two ways of making the government take serious notice of a campaign for access to information:

- Making access to information a tempting issue for the government to adopt
- Making access to information an issue that is too costly for the government to ignore

The choice of the approach will depend very much on the political situation in the country. Generally, campaigns will focus on the benefits a government will gain if it adopts an access to information law.

## 2. SUCCESSFUL INTRODUCTION OF AN A2I LAW

Successful introduction of an A2I law might seem like a simple goal for the campaign. However, what is really important is to make sure that the law will really work to increase open government and public access to information.

If the government indicates that it wants to draft a law, it will be important for the campaigners to be able to provide experts who can consult and advice on what should go in the law.

## 3. PRESSURE TO REVERSE A CULTURE OF SECRECY AND MAKE THE NEW LAW WORK EFFECTIVELY

It is extremely important that passing an A2I law is not seen as the end point of the campaign.

All those who have been active on A2I should continue to be active promoting public access to information and helping the public to file information requests.

## 4. STEPS FOR NGOS IN PLANNING A CAMPAIGN FOR ACCESS TO INFORMATION:

### • Identifying a constituency

A 'constituency' means all those who are concerned or interested in an A2I. It is true that A2I potentially benefits everyone and helps people to enjoy other rights. But a campaign aimed at 'everyone' is unlikely to succeed. It will be unfocused and its message will be too general to have immediate appeal to most people

### • Building a coalition

A2I is an issue that affects many different organizations and interests. It will be important to identify the groups and organizations that reflect the aspirations of people who are concerned about particular issues

Since you are probably in for a long campaign, you will almost certainly want to build a formal alliance of groups working on the access to information issue. The advantages of doing this are obvious: you can draw upon the membership, the expertise and the resources of all the groups working together.

But there are also potential pitfalls: there may be policy differences or squabbles over funds, different groups may have different organizational styles or clash of personalities.

Coalitions are most likely to face problems if they are imposed from outside (for example, by donors) or if there is no common agreement on what they are for. They are most likely to succeed if they grow naturally out of a shared perception of the issue and agreement on what needs to be done.

**Setting up a formal coalition will require some clear ground rules right from the start:**

- Establishing a democratic decision-making process
- Making sure that there is transparency about financial matters
- Establishing clear channels of communication so everyone knows what is happening

It is sensible for the coalition not to have the same goal as its member groups. This means that the mandate of the coalition should not be the same as that of any of its members. The danger is that you might threaten the livelihood and independence of coalition members. They should join because being in the coalition adds something to their work.

You also need to create a clear understanding of what being in the coalition means. What are members expected to do? Are they receiving any extra funding to do this extra work? If you are successful and well funded, you may need to set up a secretariat. In other words, the coalition or campaign will have to employ people separately of the member organizations.

## 5. IDENTIFYING PRESSURE POINTS

The most successful campaigns are not only the ones that win the widest support. They are also the ones that succeed in identifying the weaknesses of the opponents they are campaigning against or the authorities that they seek to influence.

**To plan a campaign, one needs to consider what the points where pressure will be most effective are. For example:**

- The government may have a slender parliamentary majority, giving some of the more independent-minded members of parliament a disproportionate influence. You can use them as a lever to push the government towards introducing an A2I law.
- The government may be negotiating a loan with the World Bank. Try to persuade it that introducing access to information will strengthen its hand in negotiations
- The government has close ties with the main trade union confederation. Try to win the unions to the cause of open government and you will be half way to persuading the government to adopt an A2I law

Pressure at the level of local government has often been effective in introducing an access to information law at the national level or making its implementation more effective.

**A useful tool for planning a campaigning strategy is a SWOT analysis. SWOT stands for:**

- Strengths
- Weaknesses

- Opportunities
- Threats

The first two of these are internal: the strengths and weaknesses of your organization or campaign. The other two are external: the opportunities or threats presented by other organizations, structures or outside factors.

### Using the mass media

The mass media are a useful tool in any campaign. In a campaign for A2I there is the additional advantage that the media are more than a tool - they are also an ally. The media will be one of the main beneficiaries of an A2I law. Make sure that you are able to win them round to the idea early in your campaign.

If the media are on your side, you should have no difficulty getting space - maybe even free advertising - to get your ideas across. But think hard about how you want to use the media.

Just because you are likely to have easy access to the media, this doesn't mean that you should stop thinking about what audiences you want to reach and what messages you need to get across.

**As well as planning your overall campaign, you also need to plan for your media strategy:**

- What is the aim of your campaign?
- What are the objectives of your communications work?
- What are you trying to achieve with all your communications - not just through the mass media, but other techniques too.
- Who are your target audiences?
- Think specifically and prioritize who you are speaking to.

### Using mass action

Possible forms of action include demonstrations, petitions, rallies and street theatre.

It is also worth considering what exactly the objectives of mass action will be. Most of the tactics listed will be aimed at influencing the government to change its policy, as well as increasing public awareness of the issue.

### Drafting a model A2I law

At a certain point, you will find it extremely useful to produce a draft of the kind of A2I law that you want to see become law. There are a number of reasons why this will be helpful.

The most obvious one is that will give a clear focus to your campaign. But there are other useful aspects to drafting a model law:

- First, and perhaps most importantly, it can be a way of increasing involvement in your campaign. Hold consultation meetings with groups that support your aim. Ask them what they expect from a law. Hold

a national conference with representatives of many different groups in society and have them draw up the law. If they have been involved in writing it, they are much more likely to be committed to campaigning for it.

- Second, having a draft law will make it much easier to deal with all the objections to access to information. If you have drafted a good law, all those arguments about cost, bureaucracy, national security, crime and the rest will be answered in a very practical way.
- Third, if your campaign does succeed in getting to the point where the government submits a bill to parliament, this will be the best way of seeing whether it measures up to the best standards on access to information.

At best, producing a draft law may actually prompt the government to take action. Second best would be to have it taken up by the opposition and introduced into parliament that way.

### Regional campaigning

The move towards open government is a global trend, although it is one that is advancing very unevenly. The reason why you are considering campaigning on A2I is because similar campaigns have already succeeded in many other countries.

So, don't limit your horizons to your own country. Make sure that you build links between your organizations. Share information and experiences so that you can find out what works and what doesn't. You can share campaign materials - that will save time and energy too.

# HANDOUT 17: TRAINING REVIEW

SESSION

9

Please check only one correct answer:

## 1. What is access to information?

- Access to information means public access to official information, and perhaps also to information held by some private bodies
- Access to information means only the media can access to official information hold by public institutions
- Access to information means public access to all information from public institutions

## 2. Who can access information?

- Everybody regardless of nationality, color, religion, knowledge, gender, and social status
- Only citizens in their own country
- Only the media

Please tick the all the correct answers:

## 3. What are the 9 principles of access to information?

- |   |  |
|---|--|
| <input type="checkbox"/> Principle of maximum disclosure    | <input type="checkbox"/> Clear and narrow exemption    |
| <input type="checkbox"/> Effective and efficiency           | <input type="checkbox"/> Promoting open Government     |
| <input type="checkbox"/> Obligation to publish              | <input type="checkbox"/> Accountability                |
| <input type="checkbox"/> Participation                      | <input type="checkbox"/> Cost of making request        |
| <input type="checkbox"/> Processing request for information | <input type="checkbox"/> Open meeting of public bodies |
| <input type="checkbox"/> Protecting of whistleblower        | <input type="checkbox"/> Law with maximum disclosure   |

## 4. What kinds of information can be kept secret?

- |  |  |
|--|--|
| <input type="checkbox"/> National security                   | <input type="checkbox"/> Law enforcement             |
| <input type="checkbox"/> Commercial secrecy                  | <input type="checkbox"/> Public or individual safety |
| <input type="checkbox"/> Confidential government discussions | <input type="checkbox"/> Public economic interests   |
| <input type="checkbox"/> Legally privileged information      | <input type="checkbox"/> Personal privacy            |

# HANDOUT 18: TRAINING EVALUATION

SESSION

9

Please list the answers:

**5. What are the national and international legal frameworks supporting the access to information?**

.....

.....

.....

.....

**6. What are the arguments for access to information?**

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**7. What are the arguments against access to information?**

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.....

**8. What are key elements to enforce an access to information law?**

.....

.....

.....

.....

Please take a minute to provide us with feedback on the access to information workshop. Please be specific with examples.

Course name:	Date:
Facilitator:	Location:

**1. How well did the course meet your expectations?**

.....

.....

**2. How useful were the presentations and group discussions?**

.....

.....

**3. How useful did you find the case studies?**

.....

.....

**4. How much better is your understanding of access to information?**

.....

.....

**5. How would you rate the facilitator's presentation?**

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.....  
.....

**6. How well were your questions answered?**

.....  
.....  
.....

**7. What was your favorite part of the training?**

.....  
.....  
.....

**8. What was your least favorite part of the training?**

.....  
.....  
.....

**9. How will you use the training skills from the workshop?**

.....  
.....  
.....

**10. Do you have trainings planned for the future, and if so, where and when?**

.....  
.....  
.....

# APPENDIX



## APPENDIX: KEY TERMS

### Access to Information:

Public access to official information, and in some cases, information held by private bodies.

### Freedom of Expression:

Used to illustrate freedom of verbal speech (speaking and writing), as well as any act of seeking, receiving and disseminating information or ideas, such as through writing or pictures.

### Freedom of Information:

A concept closely related to freedom of speech - a person's fundamental right to receive and share information held by public bodies, remove existing barriers and prevent the creation of new ones. This freedom applies to everyone, not just the media.

### Freedom of Speech:

The freedom to express statements, ideas, thoughts, opinions, and beliefs, both verbally and non verbally, without restriction or censorship.

### Official Information:

Information owned or had by, produced for or by, or subject to the control of the government.

### Open Government:

Idea that states that all work of government and state administration should be transparent at all levels (national and local) for effective public examination and citizen oversight.

### Press Freedom:

Freedom and right of the media (newspapers, radio, TV, and Internet) to access and disseminate information and opinions to the public without restriction or censorship by the government. It is part of the Freedom of Expression and Freedom of Information definitions, which more broadly apply to everyone.

### Privatization:

The process of transferring ownership of a business, enterprise, agency or public service from the public sector (government) to the private sector (business). This includes government functions like tax collection, garbage collection, utilities, and education. (For example, security guards and bodyguards instead of police).

### Public Information:

Any information that would benefit, educate, or serve the public or society. The public has the legal right to access public information held by the government or private bodies that undertake governmental functions.

However, NGOs, or entities like the World Bank and UNDP may have information that could educate and educate the public or society, and usually release this information to the public. However, they do have their own internal policies about releasing information, and are not legally obligated to do so.

### Public Institution:

Usually an entity or body which is controlled and funded by the state. It can be a government ministry, council, commission, committee, hospital, school, or university. In some cases a public institution can be a mixture of private and public. For example, some universities in Cambodia, such as the National University of Management (NUM) have both private and public characteristics.

### Record:

Form or format in which information is collected, such as paper documents, Emails, memos, notes, accounting ledgers, sound recordings, videos, DVDs, photographs, etc.

### Right to Information:

Similar in meaning to Freedom of Information and Access to Information, pertaining to the public right to obtain information from public bodies.

### Right to Know:

Often used in labor safety, health, or environmental laws to describe a person's right to know the materials or substances it is using (such as food, medicines, drinks, etc.) or materials and substances present in the environment where they are living or working.

### Three-Part Test:

To support a refusal to disclose, a government body must demonstrate the following three conditions:

- The information falls under 'protected information' in access to information law;
- Disclosing the information would threaten to cause a 'substantial harm', which legally means general serious harm to a person or body. People have different interpretations of 'substantial harm', and this term is often argued in court.
- This harm must outweigh the public interest in disclosing the information.

If all three conditions are not met, then the information must be disclosed to the public. These conditions guarantee the government can only withhold information if it is for the public interest.

### Whistle Blower:

Usually an internal person who reveals wrongdoing in their organization or group, both in the public and private sector. These can be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest such as fraud, health/safety violations, and corruption.

Whistleblowers can make their allegations internally (to other people within the accused organization) or [1766 Sweden](#), constitutional right



## APPENDIX: MEMBERSHIP OF THE FOI WORKING GROUP

Advocacy and Policy Institute (API): [www.apiinstitute.org](http://www.apiinstitute.org)

Cambodia Enterprise Development Organization (CEDO)

Cambodia Human Rights Action Committee (CHRAC): [www.chrac.org](http://www.chrac.org)

Cambodian Human Rights and Development Association (ADHOC): [www.adhoc-chra.org.kh](http://www.adhoc-chra.org.kh)

Cambodian Human Rights Task Force

Centre for Social Development (CSD): [www.csdcambodia.org](http://www.csdcambodia.org)

Committee for Free and Fair Elections in Cambodia (COMFREL): [www.comfrel.org](http://www.comfrel.org)

Community Legal Education Centre (CLEC): [www.clec.org.kh](http://www.clec.org.kh)

Conservation and Development on Cambodia (CDCAM)

Equal Access: [www.equalaccess.org](http://www.equalaccess.org)

Khmer Institute for Democracy (KID): [www.bigpond.com.kh/users/kid](http://www.bigpond.com.kh/users/kid)

Khmer Women Voice Center (KWVC)

Khmer Youth Association: [www.kya-cambodia.org](http://www.kya-cambodia.org)

Neutral and Impartial Committee for Free and Fair Elections in Cambodia: [www.nicfec.org](http://www.nicfec.org)

Open Forum of Cambodia

Pact Cambodia: [www.pactcambodia.org](http://www.pactcambodia.org)

People for Development and Peace Centre: [www.unodc.org/ngo/](http://www.unodc.org/ngo/)

Star Kampuchea: [www.starkampuchea.org.kh](http://www.starkampuchea.org.kh)

Voice of Democracy: [www.vodradio.org](http://www.vodradio.org)

Women's Media Centre: [www.wmc.org.kh](http://www.wmc.org.kh)



## APPENDIX: ACCESS TO INFORMATION WORLDWIDE

### TABLE OF NATIONAL ACCESS TO INFORMATION LAWS AROUND THE WORLD

COUNTRY	YEAR	TITLE OF THE INFORMATION ACCESS LAW
ALBANIA	1999	Law on the Right to Information for Official Documents
ANGOLA	2002	Law on Access to Administrative Documents
ANTIGUA & BARBUDA	2004	Freedom of Information Act
ARMENIA	2003	Law of the Republic of Armenia on Freedom of Information
ARGENTINA	2003	Access to Public Information Regulation
AUSTRALIA	1982	Freedom of Information Act
AUSTRIA	1987	Federal Law on the Duty to Furnish Information
AZERBAIJAN	2005	The Law on Right to Obtain Information
BELGIUM	1994	Law on Access to Administrative Documents held by Federal Public Authorities
BELIZE	1994	The Freedom of Information Act
BOSNIA AND HERZEGOVINA	2001	The Freedom of Access to Information Act
BULGARIA	2000	Access to Public Information Act
CANADA	1983	The Access to Information Act
CHINA	2007	(to come into effect in May '08) Ordinance on Openness of Government Information
COLOMBIA	1985	Law Ordering the Publicity of Official Acts and Documents
CROATIA	2003	Act on the Right of Access to Information
CZECH REPUBLIC	1999	Law on Free Access to Information
DENMARK	1985	Access to Public Administration Files Act
DOMINICAN REPUBLIC	2004	Law on Access to Information
ECUADOR	2004	Organic Law on Transparency and Access to Public Information
ESTONIA	2000	Public Information Act
FINLAND	1999	Act on Openness of Government Activities
FRANCE	1978	Law on Access to Administrative Documents
GEORGIA	1999	General Administrative Code of Georgia
GERMANY	2005	Act to Regulate Access to Federal Government Information
GREECE	1999	Code of Administrative Procedure
HONDURAS	2006	The Law on Transparency and Access to Public information
HUNGARY	1992	Act on Protection of Personal Data and Disclosure of Data of Public Interest
ICELAND	1996	Information Act
INDIA	2005	The Right to Information Act
INDONESIA	2008	Freedom of Information Act
IRELAND	1997	Freedom of Information Act
ISRAEL	1998	Freedom of Information Law
ITALY	1990	Law on Administrative Procedure and Access to Administrative Documents
JAMAICA	2002	Access to Information Act
JAPAN	1999	Law Concerning Access to information Held by Administrative Organs

## APPENDIX: ACCESS TO INFORMATION ON THE WEB



COUNTRY	YEAR	TITLE OF THE INFORMATION ACCESS LAW
SOUTH KOREA	1996	Act on Disclosure of Information by Public Agencies
LATVIA	1998	Law on Freedom of Information
LIECHTENSTEIN	1999	Information Act
LITHUANIA	1996	Law on the Provision of Information to the Public
MACEDONIA	2006	Law on Free Access to Information of Public Character
MEXICO	2002	Federal Law of Transparency and Access to Public Government Information
MOLDOVA	2000	The Law on Access to Information
MONTENEGRO	2005	Law on Free Access to Information
NETHERLANDS	1991	Government Information (Public Access) Act
NEW ZEALAND	1982	Official Information Act
NORWAY	1970	The Freedom of information Act
PAKISTAN	2002	Freedom of information Ordinance
PANAMA	2002	Law on Transparency in Public Administration
PERU	2003	Law of Transparency and Access to Public Information
POLAND	2001	Law on Access to Public Information
PORTUGAL	1993	Law of Access to Administrative Documents
ROMANIA	2001	Law Regarding Free Access to Information of Public Interest
SAINT VINCENT AND THE GRENADINES	2003	Freedom of Information Act
SERBIA	2004	Law on Free Access to Information of Public Importance
SLOVAKIA	2000	Act on Free Access to Information
SLOVENIA	2003	Act on Access to Information of Public Character
SOUTH AFRICA	2000	Promotion of Access to Information Act
SPAIN	1992	Law on Rules for Public Administration
SWEDEN	1766	Freedom of the Press Act
SWITZERLAND	2004	Federal Law on the Principle of Administrative Transparency
TAJIKISTAN	2002	Law of the Republic of Tajikistan on Information
THAILAND	1997	Official Information Act
TRINIDAD AND TOBAGO	1999	Freedom of Information Act
TURKEY	2003	Law on the Right to Information
UGANDA	2005	The Access to Information Act
UKRAINE	1992	Law on Information
UNITED KINGDOM	2000	Freedom of Information Act
UNITED STATES OF AMERICA	1966	Freedom of Information Act
UZBEKISTAN	2002	Law on the Principles and Guarantees of Freedom of Information
ZIMBABWE	2002	Access to Information and Privacy Protection Act

**Note:** This table lists only those countries with a specific national law or national subordinate legislation such as Pakistan's FOI Ordinance or China's information access regulations. The list excludes territories, states or regions which have their own substantive right to information law, for example Hong Kong, the Cayman Islands, Kosovo, Scotland or the states and provinces of Australia, Canada and the United States of America.

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### THE OFFICE OF THE SPECIAL RAPPOREUR FOR FREEDOM OF EXPRESSION

The Office of the Special Rapporteur for Freedom of Expression is a permanent office within the Organization of American States, created by the Inter-American Commission on Human Rights. The Office provides a broad selection on reports, press releases and other documents on freedom of expression and Access to Information within the Americas.

<http://www.cidh.org/relatoria>

The United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression.

[http://www.frontlinedefenders.org/manual/ar/rfoe\\_m.htm](http://www.frontlinedefenders.org/manual/ar/rfoe_m.htm)

### ARTICLE 19

ARTICLE 19, the Global Campaign for Free Expression, takes its name from the corresponding article of the Universal Declaration of Human Rights, which guarantees the right to freedom of expression and to seek, receive and impart information and ideas.

<http://www.article19.org>

### THE CARTER CENTER

The Carter Center, in partnership with Emory University, is guided by a fundamental commitment to human rights and the alleviation of human suffering. It works to prevent and resolve conflicts, and enhance freedom and democracy.

<http://www.cartercenter.org>

### THE COMMONWEALTH HUMAN RIGHTS INITIATIVE

CHRI is an international NGO with its headquarters in New Delhi, India. It offers a South-based approach to right to information issues based on comparative experience throughout the Commonwealth.

<http://www.humanrightsinitiative.org>

### THE OPEN SOCIETY JUSTICE INITIATIVE

The Open Society Justice Initiative is an operational program of the Open Society Institute, and works to promote rights-based law reform, build knowledge and strengthen legal capacity worldwide.

<http://www.justiceinitiative.org>

## TRANSPARENCY INTERNATIONAL

Transparency International is the only international NGO solely devoted to combating corruption. It brings civil society, business, and governments together in a powerful global coalition.

<http://www.transparency.org>

## INDONESIAN CENTER FOR ENVIRONMENTAL LAW (ICEL)

The Indonesian Center for Environmental Law (ICEL) is an independent NGO that specializes in research, capacity building, advocacy and community empowerment through legal and policy reform, including access to information.

<http://www.icel.or.id/eng>

## MEDIA INSTITUTE OF SOUTHERN AFRICA

The Media Institute of Southern Africa (MISA) is a non-governmental organization with members in eleven of the Southern Africa Development Community (SADC) countries. MISA seeks ways in which to promote the free flow of information and cooperation between media workers, as a principal means of nurturing democracy and human rights in Africa.

<http://www.misa.org>

## FREEDOMINFO.ORG

This website managed by the U.S. National Security Archive is a valuable resource compiling news of recent developments in the field of access to information and case studies of successful campaigns from all over the world.

<http://www.freedominfo.org>

## THE GLOBAL ACCESS TO INFORMATION ADVOCATES NETWORK

The Access to Information Advocates Network has a global membership, and was established in Bulgaria in 2001. [http://www.foiadvocates.net/index\\_eng.html](http://www.foiadvocates.net/index_eng.html)

## THE ELECTRONIC PRIVACY INFORMATION CENTER

Open government pages. <http://www.epic.org>

## THE AMERICAN CIVIL LIBERTIES UNION

The ACLU provides an online guide to using the US Freedom of Information Act.

<http://www.aclu.org>

Access to Information in Asia: <http://foi-asia.org>