

Advocacy and Policy Institute

Report of the Consultative Forum on "Draft Access to Information Law"

Date: 06th October 2016

Venue: Orchid Restaurant

I. Introduction

In 2015, API and CSO Partners, with support from UNESCO and SIDA, conducted 7 thematic consultative forums to generate voices, needs of information and recommendations for A2I law with focus on human right, health, education, natural resource management and agricultural, youth, women and media. The results of all these consultations, especially the needs of information, challenges to access information, and recommendations of each consultative forum was compiled and publicized by API as well as presented to A2I TWG meeting for considerations during the drafting and debate process.

In second quarter of 2016, the drafting committee of the Ministry of Information released a full draft of A2I law to CSOs for making comments. The law contains 9 chapters and 36 articles that aimed to ensure the public's right to and freedom of access to information. For consultations to be effective, API will continue to work closely with UNESCO to increase public participation, especially policy and legal experts of all levels through the conducts of 7 thematic consultative forums on the current draft of A2I law. API will also work with thematic CSO groups/networks to use all the information raised in 2015 thematic discussions for the sake of policy review as well as to collect specific concerns and recommendations particularly for proposing to A2I TWG for integrating into A2I law.

For supporting the development of the draft A2I law and strengthening the effectiveness of project implementation under the UNESCO and SWEDEN funded project, API in cooperation with YUCUD and PDP-Center organised a half-day consultative forum on "Draft Access to Information Law" for all network members that working to promote youth's participation. The forum was conducted on 06th October 2016 at Orchid Restaurant.

II. Objective of the Consultative Forum

API, YUCD and PDP-Center was conducted a forum that aimed to provide opportunity to senior and middle officials of the government, NGOs, media and other public institutions to review full draft of Access to Information Law together and draw out recommendations and substantial inputs for special considerations for the draft law.

III. Forum Program

- The consultative forum was organized half day only and the structure of the forum is as follows:
 1. Opening session: Welcome remark will be delivered by Mr. Opening by Mr. Yong Kim Eng, Executive Director of PDP-Center. Opening remark will be delivered by UNESCO Representative
 2. Introduction to access to information and key findings of sectorial forums on A2I with youth groups in 2015 and briefing the draft A2I law. This session aims to provide better understanding of what are being discussed and further progressed.
 3. 4 to 5 groups will work on particular chapters/articles of the draft law to provide specific inputs for integrating into draft law. The results of the groups worked will be presented and responded by the representative of the Ministry of Information before closing forum.
 4. Closing will be delivered by the Government's senior officials and UNESCO representative.

IV. Forum Participants

There were 43 people (12 females) participated in the consultative forum. They are coming from NGO, Government Institutions and sub-national authority who working to promote youth participation.

V. Observations

All participants aware of Cambodia need Access to Information law while some of them are members of Access to Information Working Group and some had been

attended last year forum regarding kind of information needed and recommendation to the Ministry of Information for developing A2I law.

Mr. Neb Sinthay, Director of API, welcome all forum participants and he mentioned about opportunity of CSO in providing inputs to this draft A2I law. He indicated that CSO never has good experience working officially on policy discussion such this draft law. That's why he encouraged all participants carefully attention to provide inputs.

Mr. Yong Kim Eng, Executive Director of PDP-Center, mentioned about the important of A2I in increasing transparency and accountability. He indicated that rights to information is narrow if the numerous secrecy information increased. He also shared bad experiences of some people suffered by hidden information, journalists received unofficial information, less information for sub-national to make decision, and the difficulty of social workers/researchers in requesting public information regarding policies, development plan and budget reports, investment agreements. He requested the law should be very specifying the types of secrecy information otherwise it may have huge challenges during implementation.

Ms. Jamie Lee, UNESCO Communication Officer, reminded the last year forum with youth group that focusing on kind of information needed that is a fundamental for developing a draft A2I law. This forum will share the whole draft A2I law for direct comments. She also mentioned that this law will be finish within 3 years under the support of SWEDEN and everyone also able to make any comments on this law through sectorial forums, sub-national/local forums, and website: www.a2i.info.gov.kh. This is the first law that allow CSO involve officially in the development process and the space for the discussion is more open if compare to other law/policies. She raised about providing capacity of public official on A2I and laws of other countries to make sure they able to review those law as fundamental to make it own version.

Mr. Phan Phorp Barmey, API Senior Program Manager, presented about the timeframe of demanding of A2I law, results of last year forum with women group, numbers of country adopted this law, and current situation of the draft law and its

contents. He also mentioned that the draft law used 9 principles of A2I to develop this law.

The forum has been divided participants into five groups to discuss 38 questions relevant to definition, roles of public institution to disclose information, requesting information procedure, confidential interval, whistle-blower protection, complaint mechanism, and punishment.

The local authorities seem ready to discuss then others because they try to understand this draft A2I law prior before the forum start.

After discussion the participants want:

- Article 3:
 - o The law should cover information of political parties.
 - o Proposed to delete the phrase "except confidential information defined in the Act"
- Article 4:
 - o Definitions of confidential information is too broad therefore we request to be more specific.
 - o Definition of Public Institutions have to include the Senate, Court, the National Assembly, Council of Ministers and private companies responsible for state affairs
- Article 6: Propose for additional point
 - o G) Public institutions must put maximum information on the organization's website and be updated regularly.
- Article 9: point F- Propose to amplify the word “អង្គប្រឹក្សា”
- Article 14: Point 2: propose to add word “appropriate”
 - o 2. In the event that the provision of information cannot be done within the duration as described in the above item 1, public institutions may continue such delay for a period of no longer than 40 (forty) working

days, by giving the appropriate reasons in writing of such delay back to the applicant.

- Article 17: Point 2: propose to add word "specific"
 - o 2. Notifying applicant about the fact of cutting out information deemed as confidential information by providing specific reasons of doing so and other reasons related to prohibitive provisions.

- Article 19: Point 2: should be exceptions for the poor, the vulnerable, the disabled, and rural students in requesting public information.
- Chapter 4: This chapter should have an article state on the duration of disclosing secret information and its procedures.
- Article 20: This article should be more specific on what are the national security and what are public order.
- Article 21: What everyone refers to it's focus only public officials or including the citizens ?
- Article 23: Request for additional mechanism
 - o A commission on resolve disputes before they reach to the court.
 - o Consider existing mechanisms such councils of communes, districts, or municipalities.
 - o The poor will not consider any complaints while the complaint direct to head of institutions or courts.
- Article 28: Propose a high consideration of intentionally unrighteous to avoid any accusation.
 - o Change the word "useless" to "fake" and draw out any criminal penalty.
 - o This article should be deleted because people do not dare to complain. This Article may keep unless we have an independent information commissioner, if not, head of the institution does not resolve any complaint, and citizen also afraid of any appeal from public institution.

In the closing session H.E. Meas Sophorn, undersecretary of the Ministry of Information, attended the forum to listen any inputs through group presentations. He

welcomes all inputs of CSO and also mentioned about other inputs from other sector consultative forums organize by API. He also clarified some points and questions from participants. He described the important of the A2I and process of the A2I law development including members of A2ITWG, review A2I law from other countries, and sectorial consultation forum as well as website development for public inputs.

VI. Group Discussion Results

Facilitator divided all participants into five groups to answer the series of question totally 38 questions to assess the drafted law support the principles of access to information.

1. Group I

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
1	Does the draft A2I law recognize human fundamental rights to information ?	Yes	1, 5, & 10	
2	Does the draft law provide easy access to information and openness ?	Yes	6,7, 28	
3	To what extent does the draft law provide exception ? Will too less or too many exceptions affect the process of access to information ?	Yes	4	Should specify the meaning of confidential information
4	Does the draft law emphasize the benefits	Yes	2, 6	

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
	of access to information ?			
5	Does the draft law state the right to request information in all forms from public institutions ?	Yes	12	
6	In the draft law, which institutions defined as public institutions that require to disclose information ? (the National Assembly, the Senate, the Court, joint venture state - private enterprises (semi-autonomous), autonomous institutions, businesses owned or controlled by state, institutions received task from the state), it ?	Yes	4, 5	The public institution should include more on the Court and joint venture state - private enterprises.
7	Does the draft state the asset declaration by public official ?	No		Should has an article for declaration the asset of the public official.

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
8	Does the law cover the information of the political parties ?	No		The law should cover the information of the political parties.
9	Does the draft law cover the jurisdiction of Disclosure ? (E.g. the border, land concession conflict that occur at sub-national but information is not available at sub-national).	No		The law should cover the jurisdiction of Disclosure.

2. Group II

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
1	Does the draft law state the duty of public institution in disclosing information?	Yes	6	Point D: add word "duty"
2	Does the draft law require public institution to put in place guidelines/principles or sub-decree on maximum disclosure?	Yes	7	

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
3	Does the draft law indicate the kinds of information for public institution to disclose?	Yes	7	
4	Does the draft law state the means for information disclosure?	Yes	8	
5	In case that the public institution doesn't have the needed information, does the draft law mention the duty of that concerned institution to guide a requester to another institution that possess such information?		8	
6	Does the draft law mention duty of information officer in keeping information?		9	
7	Does the draft law provide for public institutions that appoint officer in charge of disclosing information?		8	
8	Does the draft law mention required		8	

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
	information the public information must disclose? Duration of disclosure?			
9	Does the draft law mention the condition for recruiting information officer?		8	

3. Group III

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
1	Does the draft law motivate the public institutions to provide easier access to information?	No		It's a duty of public official
2	Does the draft law provide the request form?	Yes	11	Point 1
3	Does the draft law require the requester to give reason when making a request?	Yes	11	It's clear
4	Does the draft law provide clear & simple procedures?	Yes	11, 13	Enough

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
5	Does the draft law provide that the assistance should be granted when completing the form?	Yes	11	Point 2
6	Does the draft law mention the duration to response to requester?	Yes	13, 14	Time acceptable
7	Does the draft law require the requester to pay when making an application?	Yes	11, 19	Already indicated
8	Does the draft law require pay when requesting the information? Are there any exceptions for the poor/marginalize group?	Yes	19	Request for exception to vulnerable group (student, disability and poor)

4. Group IV

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
1	What is the exceptional information (confidential information) in the draft law that affect the right to	Yes	20	Request to specify each terms such National

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
	information? Please provide specific examples if any.			Security, public order and so on.
2	Do the draft law mention necessary conditions to have the confidential information disclosed? (Conditions that ensure that information can be disclosed. E.g. the information supporting the anti-corruption campaign or crimes against humanity)	No		Request to have an article on condition to disclose confidential information and its procedure.
3	Does the draft law provide for the duration of releasing confidential information?	No		Request to have an article on time to disclose confidential information.
4	Does the draft law provide for the legal basis and reasons for denying information?	Yes	1, 2, 20	
5	Does the draft is written about protecting information officer disclose information within their duty?	Yes	21, 22	
6	Does the draft provides for the protection of citizens who disclose information related to any negative any impact to life or disaster?	Yes	21	

5. Group V

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
1	Does the draft law provide for complaint mechanisms, both inside and outside institutions, in the case of public officials declined to provide information that is not in the form of secret information?	Yes	23	Request for additional mechanism such: <ul style="list-style-type: none"> - A commission on resolve disputes before they reach to the court. - Consider existing mechanisms such councils of communes, districts, or municipalities.
2	Does the draft law indicate clear and easy procedures for access to the complaint mechanism?	Yes	23	
3	Does the draft law provide for the duration of response to the complaint?	Yes	23	
4	Does the draft law indicate rights of complainants in following up their own complaint?	Yes	18	
5	Does the the complainant have the	Yes	24	

No	Questions	Yes/No	Articles	More proposals/Some questions should exclude
	right to lodge their appeal with the court?			
6	Does the draft law provide for appropriate penalties to be imposed on both requester and public official?	Yes	28	Propose a high consideration of intentionally unrighteous to avoid any wrong decision made.

VII. Lessons Learned

- The present of representative from relevant ministries is very important to inform them early about the A2I law and they might able to prepare themselves in developing new policies/laws or ament existing old policies/laws.
- The present of local authority is very crucial that is a good time to improve their capacity on policy discussion while their roles responsible for policy development and implementation. They might be a good leading in developing their local policy on access to information after the law passed.
- Youth group seem pay high attention to the draft law but the forum gave very short time to them to review the draft A2I law that why they need more time to understand the whole draft law during event.
- The present of the Ministry of Information during closing remark is very useful particularly they can catch up any inputs from the group discussion.

VIII. Challenges

- Half-day consultation is too short period for participants to better understand the whole law and it's also need more time to discuss especially on confidential information and complain mechanism.

- The presence of representatives of the Ministry of Information during group discussion seems to have made less contribution ideas from other participants because they tried to explain about their experiences in this draft A2I law.
- The co-organizer found it difficult to ensure all participants are senior leaders or legal persons even though the invitation letter mentioned specifically.

IX. Recommendations

- The period of the forum should expand to one day for better understanding of the draft A2I law and key elements of A2I to ensure the law guarantees the rights to access public information.
- The list of questions should be reviewed and finalized by inputs from CSO A2I WG members.
- The co-organizer should invite representatives of the Ministry of Information to attend the consultative forum during closing remarks only to ensure they can collect additional inputs from the sectorial forum to update the drafted A2I law.

X. Conclusion

A half-day consultative forum on "Draft Access to Information Law" was finished as scheduled with various participants from government ministry, CSO, UNESCO and sub-national authority that work to promote youth participation. They have better understanding of A2I, policy dialogue, and the contents and process of the A2I law development. The workshop provided space for youth and sub-national authority to explore their experiences on A2I and inputs for the draft A2I law. They have strong concerns on the unspecified confidential information and complaint mechanism even though they accepted some parts of the draft A2I law. The list of questions mostly focusing on chapters 1, 2, 3, 4, 5, and 6 of the draft A2I law can help participants to evaluate and provide input specifically to the draft A2I law. The co-chair UNESCO and the Ministry of Information received fresh inputs from the forum that enable them to consider to update a version of the draft A2I law.

XI. Annexes

1. List of Participants

No	Name	Sex	Position	Oganization	Contact No	E-mail
1	Sing Bunthoeun	M	District Councilor	Phnom Srouch	015 48 00 58	
2	Houy Sithoeun	M	District Councilor	Somrong Tong	016 39 14 18	
3	Chhon Bunhan	M	District Councilor	Santouk	017 92 71 85	
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5	Mean San	M	District Councilor	Chit Borei	071 82 77 627	
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23	Tim Solina	F	Deputy General	Ministry of Information	012 89 33 11	solina.tim@gmail.com
24	Yong Kimeng	M	PDP-Center	President	016 82 82 11	president@pdpcenter.org
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30	Ann Mouy	F	Youth	YCC	096 81 96 508	annmuoy28@mail.com

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34	chhey Sophal	M	Officer	UNESCO	017 53 55 35	
35	Mey Smphas	F	Geneneral search	YCUD	012 32 46 91	
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37	Neb Sinthay	M	Director	API		
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2. Forum Program

Draft Access to Information Law

06 October 2016

Orchid Restaurant

Time	Program	Responsible Person
08:00 - 08:30	Registration	Mr. Chea Sovannarith
08:00 - 08:40	Welcome Remark	Mr. Yong Kim Eng PDP-Center Director
08:40-08:50	Opening Remark	Ms. Jamie Lee
08:50-09:00	Consultative Forum Results in 2015	Phan Phorp Barmey
09:00-09:00	Group Discussion	Group Discussion
09:00-09:05	Break	
09:05-09:45	Continue discussion and presentation	Group Discussion and Presentation
09:45-10:00	Closing Remarks	Representative from the Ministry of Information
10:00-10:00	Lunch will be provided	

Reserves the right to modify the program if necessary.

3. Photos

