

ARTICLE 19

Cambodia: Draft Law on Access to Information

September 2011

Legal analysis

Executive summary

The Cambodian Draft Law on Access to Information (the “Draft Law”) marks a positive step towards the comprehensive protection of the right to freedom of information in Cambodia.

ARTICLE 19 welcomes what is clearly a serious attempt to meet international and comparative standards, with a number of provisions offering the region a fine model of how Right to Information (RTI) legislation can be effectively formulated: a public interest test, for example, and provisions on proactive disclosure and the protection of whistleblowers.

The Draft Law contains all the main features that are expected from an effective RTI law: an independent oversight body, for example, and an Information Disclosure Tribunal. It should therefore be emphasised that our recommendations are minor suggestions for improving the law.

The following are our key recommendations:

1. The Draft Law should emphasise the status of freedom of information as a human right, and state the presumption that all information held by public bodies will be subjected to disclosure.
2. The Draft Law should clearly indicate that it covers *all* branches and levels of government.
3. The Draft Law should simplify procedures for accessing information and should not allow information to be classified for more than 10 years.
4. Fees for accessing information should be reasonable, and the media, NGOs and individuals on a low income should not be charged.

ARTICLE 19 suggests that by adopting these provisions Cambodia can bring full transparency to its governance, comply with its international obligations as a signatory of the ICCPR and the UN Convention Against Corruption, and join the fast-growing international community of more than 90 states that have adopted RTI legislation.

ARTICLE 19 therefore urges the Royal Government of Cambodia and all political parties to support the Draft Law and to ensure that it is enacted. ARTICLE 19 further calls for the Government and all stakeholders to promote public understanding of the provisions before and after they have been enacted.

This analysis is a collaboration between ARTICLE 19 and the Advocacy and Policy Institute (API) in Cambodia.



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About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year: analysis of legislative proposals as well as of existing laws that affect the right to freedom of expression. Our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

Summary of Recommendations

ARTICLE 19 proposes that the Draft Law can be improved through the following changes:

- The title of the Draft Law should be amended to the “Proposed Law on the Right of Access to Information”.
- The preamble should indicate that the Draft Law shall be interpreted in accordance with the Constitution, the international legal obligations, including those under the UDHR, the ICCPR and the UNCAC.
- The Draft Law should include the establishment of an independent institutional framework for the implementation as an objective of the legislation.
- The Draft Law should state the *presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances.
- The Draft Law should indicate that it covers all branches and levels of government, including the judiciary, as well as private bodies carrying out public functions or receiving public funds.
- The Draft Law should indicate that it covers the all branches of government including the executive, the legislature and the judiciary; Commissions of Inquiry; all administrative bodies; municipal bodies and authorities; autonomous public bodies/quangos; administrative courts; public broadcasters and state owned media; intelligence agencies; the armed forces; the police; public universities and institutions of higher education; state owned corporations; corporations and companies partially owned by the state; political parties; any private organisation that receives public funds; any private organisation that conducts public functions; any private organisation when information is needed to protect another right; monopolies; privatised organisations; regulated public utilities (such as electricity services); health insurance companies; labour unions when they receive public funds.
- The Draft Law should be amended to state that everyone has the right to information without distinction of any kind such as sex, race, ethnic origin, colour, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.
- The Draft Law should state that bodies should affirmatively release information on the Internet.
- The Draft Law should state that bodies are required to use language that is clear, accessible and comprehensible for users. Bodies should ensure that the information is regularly updated, indicates the date of the update, the administrative body responsible for the update, the official responsible for generating the information for each item, the provision of information in indigenous languages.
- The Draft Law should also provide for specific types of information for different groups such as pregnant women, persons with disabilities and minorities.
- The Draft Law should state that adequate resources should be set aside for the promotion of transparency and affirmative publication.
- The Draft Law should state that information or records may only be classified for as long as the reason for their exemption exists and for no longer than 10 years.



- The Draft Law should state that fees should be reasonable and should not be charged for individuals on a low income.
- The Draft Law should clarify that fees should only apply to reproduction and if necessary postage costs. Fees should also not be charged for the cost of submitting a request for information.
- The Draft Law should ensure that the media and non-governmental organisations are given public interest waivers from paying fees.

Introduction

This Memorandum examines the Draft Law on Access to Information (the “Draft Law”) that was submitted by the opposition Sam Rainsy Party, to the National Assembly on 23 December 2010.¹ The purpose of this Memorandum is to examine this Draft Law from an international and comparative law perspective in order to assess whether the Draft Law is a progressive piece of legislation that will enhance free flow of information and democratic governance in Cambodia. In doing so, the Memorandum draws upon international law, standards² as well as best practices of other states on RTI.³

ARTICLE 19 has undertaken the work of analysing the Draft Law in collaboration with the Advocacy and Policy Institute (API) in Cambodia. API has provided assistance throughout the process of this work and has also provided the Khmer translation of this document.

The Draft Law is proposed against the backdrop of growing momentum in Cambodia towards the adoption of a law on the right to information (RTI) in Cambodia. A key driver for this has been the drafting in August 2007 and continued advocacy of the *Access to Information: A Clear Policy Framework for Cambodia*. Over the past year, civil society organisations – notably the Advocacy and Policy Institute of Cambodia (API Institute), The Access to Information Working Group and UN agencies (UNESCO, UNDP, the OHCHR office in Cambodia) – have increased pressure for an RTI law by, amongst other things, conducting a major legal and assessment of the protection of the current protection of RTI in Cambodia and stakeholder workshops focussing on access to information which have brought together the parliamentarians, government representatives, international organisations, development partners and media organisations.⁴ ARTICLE 19 is aware that earlier proposals for RTI legislation have been criticised from within Cambodia for two principal reasons: first, because the role of Information Commissioner is not restricted to Cambodian nationals only (i.e. anyone can become, including foreigners, the Information Commissioner); and second, because the Draft Law is allegedly too expensive to implement.

ARTICLE 19 considers the Draft Law as an extremely positive step towards the effective protection of RTI in Cambodia. Indeed, in ARTICLE 19’s view, the Draft Law appears to afford a comprehensive level of protection for the RTI in Cambodia and appears to draw upon international and comparative standards. We welcome many specific features of the Draft Law, in particular the fact that exemptions must meet a public interest test (Article 40), the provisions on proactive disclosure (Article 6-16), the detailed provisions on the institutional framework to support the individual right to information (Articles 41-67) and the protection of whistleblowers (Article 68-69). Although we make some recommendations for improving the Draft Law, we emphasise that these recommendations are minor in nature. We seldom recommend that draft RTI legislation may be adopted as it is. Yet, in our opinion, if the Draft Law were to be adopted as it is, it would give Cambodia a good level of protection of RTI and present the rest of the South East Asian region with a fine model of RTI legislation.

In the run-up to discussions of the Draft Law in the Cambodian National Assembly, ARTICLE 19 therefore urges the government and all political parties to support the Draft Law and ensure that it is enacted. ARTICLE 19 also urges the Cambodian Government and all stakeholders, including civil society organisations, to rally around this draft and promote broader public understanding of its provisions before and after it has been enacted.

Legal Background

The Constitution of Cambodia of 21 September 1993 protects freedom of expression, press and publication (as well as assembly) of Khmer citizens, but does not expressly protect the right to information.⁵ Nor does Cambodia currently have any legislation implementing RTI. ARTICLE 19 strongly recommends the adoption of legislation that properly guarantees and implements RTI in Cambodia for several overlapping reasons.

First, RTI is a fundamental human right that is crucial to the protection of other rights. As the UN General Assembly indicated at its first session in 1946: “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated”.⁶

Second, the rule of law and meaningful democracy in Cambodia, like elsewhere, are dependent on governmental transparency and the protection of RTI. At the same time, an individual right to request information and a legal framework for proactive disclosure also promote anti-corruption efforts; Cambodia has a very poor record when it comes to corruption, standing at 154 out of 178 countries assessed in a recent corruption index.⁷ These features of an RTI law would also serve to counter the current lack of transparency in relation to legal information in particular. Although Cambodian law provides that all laws should be published in the Official Gazette, the publication of laws in Cambodia has been previously criticised as “intermittent, incomplete and un-indexed”.⁸ Court judgments and other important legal documents (including draft laws, policy papers and administrative decisions) are also not published in any regular way, and requests for such legal information are rebuffed unless the requestor has connections with the court system.⁹

Third, the adoption of effective RTI law by Cambodia would also address the gap between Cambodia’s domestic legal protection and practice, on the one hand, and international legal obligations on the right to information, on the other. Cambodia has both signed and acceded to the International Covenant on Civil and Political Rights (ICCPR), Article 19 of which protects freedom of expression and the right to information: it signed on 17 October 1980 and acceded on 26 May 1992. We note that Cambodia also acceded to the UN Convention Against Corruption on 5 September 2007 (UNCAC).¹⁰

Fourth, the adoption of a progressive RTI law is also supported by the comparative *regional* human rights standards of the Inter-American, European and African systems of human rights protection. In the absence of a fully-fledged system for the effective implementation of human rights in the Asian region, it is instructive to look at such comparative RTI approaches, including the jurisprudence of regional human rights courts. In 2006, the Inter-American Court of Human Rights held that the general guarantee of freedom of expression contained in Article 13 of the American Convention on Human Rights protects the right to information held by public bodies.¹¹ In 2009, in a case concerning the Hungarian Civil Liberties Union, the European Court of Human Rights recognised that when public bodies already hold information that is needed for public debate, the refusal to provide it to those who are seeking it is a violation of the right to freedom of expression and information as protected by Article 10 of the ECHR.¹² The Council of Europe also adopted the Convention on Access to Official Documents in June 2009.¹³ The African Charter on Human and Peoples’ Rights¹⁴ (ACHPR) and the African Declaration of Principles on Freedom of Expression in Africa endorses freedom of information.¹⁵

Fifth and finally, the adoption of such legal protection would allow Cambodia to join the international community of more than 90 states who have adopted legislation or national regulation on RTI to date, with over 80 states recognising the right to information as a constitutional right.¹⁶ The collection of states that has adopted RTI legislation encompasses states as diverse as Angola (2002),¹⁷ Chile (2008),¹⁸ Sweden (1766)¹⁹ and Jordan (2007).²⁰ It also includes numerous Asian states including South Korea (1996),²¹ Thailand (1997),²² Japan (1999),²³ India (2005),²⁴ Taiwan (2005),²⁵ Nepal (2007),²⁶ Indonesia (2008)²⁷ and Bangladesh (2009).²⁸ Furthermore, China has a regulation on the



disclosure of government information (2007)²⁹ and one Malaysian state has a RTI law. In addition, states such as Vietnam are seriously considering the adoption of RTI legislation. Moreover, a growing number of inter-governmental bodies, such as the World Bank³⁰ and the Asian Development Bank,³¹ have also adopted RTI policies.

Analysis

1. General Provisions

The Draft Law demonstrates that there are very serious efforts to enact RTI legislation in Cambodia. This is evidenced through the content and detail of the provisions, as well as their apparent drawing from established international standards on RTI. We note that ARTICLE 19's *Principles on Freedom of Information Legislation* and the provisions of ARTICLE 19's *A Model Freedom of Information Law*³² are significantly reflected in the provisions of the Draft Law. (These standards were also previously included as part of the *Access to Information: A Clear Policy Framework for Cambodia* which was referred to earlier.) The Draft Law appears as a serious attempt to meet such international standards.

The importance of the Draft Law within the domestic law of Cambodia is appropriately reflected through a number of its provisions. The position of the Draft Law in relation to other legislation is made clear: the Draft Law “shall override other laws that prohibit or prevent the disclosure of the public (or private) body’s records and become a supreme law on disclosure of information” but “shall not prohibit or prevent the information disclosure under other laws, regulations, policies or practices” (Article 5). In addition, “any provisions that are contrary to this Law shall be revoked” (Article 80). The urgency of the Draft Law’s enactment is shown through the final provision which states “that this law shall be declared urgent” (Article 81).

ARTICLE 19 also welcomes a number of other general provisions, such as Article 3 that states “All discretions provided by this law shall be used as much as possible to facilitate and promote the access to information in a timely manner and at a very low cost.” We have recommendations for the improvement of the general provisions of the Draft Law.

First, ARTICLE 19 recommends that the title of the Draft Law, currently the “Proposed Law on Access to Information”, be amended to the “Proposed Law on the Right of Access to Information” to more clearly identify the legislation as one which protects a human right. *Second*, we recommend that the Draft Law should contain such a preamble that refers to relevant sources in particular international, regional and national legal sources, such as the UDHR, the ICCPR, UNCAC as well as Article 41 of the Cambodian Constitution. *Third*, although the objectives of the Draft Law as they exist are laudable (the promotion of “transparency, accountability and effective governance” (Article 1)), they would be further improved if the aim of establishing an independent institutional framework for the implementation of the individual right to information were expressly recognised.³³ *Fourth*, within its first few provisions, the Draft Law should include *a clear presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances. This would be consistent with the approach of the Indian Right to Information Act which specifically provides that the onus in a case of a complaint shall be on the public body to justify any refusal to provide information.³⁴

ARTICLE 19’s recommendations:

- The title of the Draft Law should be amended to the “Proposed Law on the Right of Access to Information”.
- The preamble should indicate that the Draft Law shall be interpreted in accordance with the Constitution, the international legal obligations, including those under the UDHR, the ICCPR and the UNCAC.
- The Draft Law should include the establishment of an independent institutional framework for the implementation as an objective of the legislation.
- The Draft Law should state the *presumption* that all information held by public bodies is subject to disclosure and that this presumption may be overcome only in very limited circumstances.

2. Scope

Although the Draft Law does not define “information”, “record” is defined as “any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified”. This is an appropriate conception of information to give the Draft Law a broad application.

The scope of the Draft Law is also appropriately broad. The term “public body” is defined in Article 2 as any “entity or authority or company that: (a) is established by or under the Constitution; (b) is created by law for public purpose; (c) is a ministry; (d) forms part of level or institution of the government; (e) is held, controlled or sustainably financed by the government at different levels; or (f) carries out a statutory and public function; (g) contracted by public body to undertake statutory duty or public function in lieu of that body (on its behalf) [sic]”.

However, Article 4 excludes “individuals holding judicial positions (judges, prosecutors, arbitrators or members of a tribunal)” and “courts or tribunals’ records unless they are related to administrative issues or judgments of the courts or tribunals” from the scope of the Draft Law. Yet there is no reason in principle why all three branches of government including the judiciary should not be covered by the legislation provided that the regime of exemptions protects legitimate public interests. Furthermore, limiting the scope of the law to certain branches of government runs contrary to the idea of the RTI as a human right; something that requires obligations to be imposed on *all* public bodies. The Draft Law should therefore apply to the judiciary and those exercising a judicial function.

Furthermore, the Draft Law should more clearly indicate that it covers information held by private bodies. (We note that public body means “entity or authority or *company*”, under Article 2.) The Indian Right to Information Act applies to information held by private bodies as well as bodies which are owned, controlled or substantially financed by the government. The South Africa RTI law covers all bodies exercising a public power or performing a public function pursuant to any legislation.³⁵ The South African legislation also imposes obligations on private bodies, defined as commercial entities, to disclose information needed for the exercise or protection of any right.³⁶

More generally, the Draft Law may be improved through the specification of the bodies covered. The Draft Law should indicate that it covers all branches and levels of government, including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or quasi non-governmental organisations and judicial bodies, as well as private bodies carrying out public functions or receiving public funds.

In terms of the personal scope of the Draft Law, Article 17 states “Everyone shall have the right of access to information, including the right to obtain information owned by public bodies, subject only to the provisions of this Law.” This is positive: as a human right, the RTI should be a right available to all within the jurisdiction of a state. This provision may be enhanced through the inclusion of a non-discrimination clause relating to the individual right to information.

ARTICLE 19’s recommendations:

- The Draft Law should indicate that it covers all branches and levels of government, including the judiciary, as well as private bodies carrying out public functions or receiving public funds.
- It should indicate that it covers the all branches of government including the executive, the legislature and the judiciary; Commissions of Inquiry; all administrative bodies; municipal bodies and authorities; autonomous public bodies/quangos; administrative courts; public broadcasters and state owned media; intelligence agencies; the armed forces; the police; public universities and institutions of higher education; state owned corporations; corporations and companies partially owned by the state; political parties; any private organisation that receives public funds; any private organisation that conducts public functions; any private organisation when information is needed to protect another right; monopolies; privatised

organisations; regulated public utilities (such as electricity services); health insurance companies; labour unions when they receive public funds.

- The Draft Law should be amended to state that everyone has the right to information without distinction of any kind such as sex, race, ethnic origin, colour, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Affirmative Publication and Promoting Openness

Following the approach of many RTI laws, Chapter 2 of the Draft Law requires “every public body” to “in the public interest, publish and disseminate in an accessible form, at least annually, key information” (Article 6(1)). The list that follows encompasses a range of types of information including: a description of the structure, functions, duties and finances of the public body; relevant details concerning any services it provides directly to members of the public; a description of the powers and duties of its senior officers and the procedures it follows in making decisions. Article 6 indicates the types of information that public bodies ought to provide at their offices, such as decisions which have direct effects on a private individual, workplans and annual expenditure estimates. Article 8 provides that courts should “make available all decisions they have made in the past five years for the public members to inspect and copy at their registered offices”, while Article 9 provides that the government should immediately publish information about draft laws, regulations, policies and other documents of public interest. Importantly, Article 10 provides any individual the right to complain to the Information Commissioner for any failure to publish the information indicated in Chapter 2.

The Draft Law might be improved through the inclusion of a provision recognising the important and growing role that the Internet can play in facilitating public access to information. We note that the Indian Right to Information Act states that every public authority shall “ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated” (Article 4(1)(a)). Furthermore, “it shall be a constant endeavour of every public authority to take steps ... to provide as much information ... through various means of communications, *including internet...*” (emphasis added) (Article 4(2)).

Furthermore, there should be a provision emphasising that public bodies should use clear and comprehensible language in providing key information, which also should be made accessible in indigenous languages. Specific types of information that are relevant to different groups, including vulnerable groups, should also be made available. The Draft Law should also provide that the state should support affirmative publication by allocating appropriate resources, however.

In Chapter 3, the Draft Law helpfully provides that the Information Commissioner shall provide a “clear and simple guide ... to facilitate the effective exercise of the rights under this law”. This should be in Khmer and English and updated on a regular basis (Article 12). There are also provisions on the proper maintenance of records (Article 13) and the requirement that the Information Officers of every public body should report to the Information Commissioner and Minister of the activities of that public body (Article 14). The Draft Law also establishes an Information Officer as an essential mechanism to promote openness within every body (Article 15). Significantly, the Draft Law acknowledges the importance of training for the officials of public bodies on the RTI and the effective implementation of the Draft Law (Article 15). Information Officers are required to maintain records of all information requests and responses, as well as written records of investigations carried out and dates of those investigations, copies of receipts for payment and confirmation letters acknowledging receipt (Article 79).

ARTICLE 19’s recommendations:

- The Draft Law should state that bodies should affirmatively release information on the Internet.
- The Draft Law should state that bodies are required to use language that is clear, accessible and comprehensible for users. Bodies should ensure that the information is regularly updated,

indicates the date of the update, the administrative body responsible for the update, the official responsible for generating the information for each item, the provision of information in indigenous languages.

- The Draft Law should also provide for specific types of information for different groups such as pregnant women, persons with disabilities and minorities.
- The Draft Law should state that adequate resources should be set aside for the promotion of transparency and affirmative publication.

4. Procedures

Chapter 4 concerns the procedures for accessing records. These provisions concern the right of access (Article 18), the processes for making requests for information (Article 19), the timeframe for responding to requests (Article 20), the response by the public body (Article 21), severability of exceptions (Article 22), the maintenance of a record until final decision is made on the request (Article 23), fees (Article 24), the means of communicating or receiving information (Article 25), if a record is not held or not available (Article 26), vexatious, repetitive or unreasonable requests (Article 27), the Information Office which ought to be established in each city or town (Article 28). These provisions on the procedures are generally positive.

However, the procedures for submitting requests for information may be improved in various ways. The Draft Law should provide that requests may be submitted in writing, but also verbally (including by phone and whether or not they are illiterate or disabled) or electronically, by post (or mail) or through a lay or legal representative. The Draft Law should also clarify that it is not necessary to demonstrate the identity of the requester to submit a request for information. Furthermore, the public body should respond to a request for information within fifteen working days, rather than thirty working days as currently stated in Article 20(1).

ARTICLE 19's recommendations:

- The Draft Law should be amended to provide that requests may be made in person, submitted in writing, verbally or electronically, by post (or mail) or through a lay or legal representative.
- The Draft Law should clearly state that it is not necessary to demonstrate the identity of the requester to submit a request for information and that the requester need not justify the request.
- The Draft Law should clearly state that bodies are required to provide applicants with reasonable assistance where they cannot make a written request either because of illiteracy or disability.
- The Draft Law should be amended to state public authorities should respond within 15 days after the request has been made.

5. Exceptions to the Principle of Disclosure

Information that is exempt from the principle of disclosure is contained in Chapter 5 of the Draft Law. One of the most positive features of the Draft Law is Article 40 on the “public interest override”, which is a key characteristic of RTI legislation in such states as India and Japan (and in a more limited way, Thailand). Article 40 of the Draft Law states: “Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protect interest outweighs the public interest in disclosure”. In other words, all types of information should be subject to the fundamental principle of maximum disclosure unless it can be shown that disclosure of information would: (1) cause substantial harm to a legitimate aim; and (2) that harm outweighs the public interest in having the information made public. This section also provides that a public body may not refuse to communicate information simply because it is publicly available (Article 29). Moreover, it allows for information which is not subject to an exception to be reasonably severed and communicated to the requestor (Article 30).

The list of generally exempted documents encompasses information concerning: national security, defence or international relations (Article 31); health and safety (Article 32); legal privilege (Article 33); law enforcement (Article 34); public economic interests (Article 35); policy and internal operations of government (Article 36); protection of secret information and commercial information (Article 37); the protection of records that affects privacy of individuals (Article 38). In ARTICLE 19's opinion, these provisions contain "sufficiently narrow, carefully-tailored" categories of information which may justify non-disclosure.³⁷

Article 39(2) states that "Article 31-36 do not apply to a record which is more than 25 years old". This provision suggests that information may be classified for up to 25 years. This is too long a period for some kinds of information to be exempted. Under the Indian Right to Information Act, "any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made ... shall be provided to any person making a request under that section".³⁸ In our view, however, the list of exceptions should not apply to any record which is more than 10 years old. This would follow the approach of the US' Executive Order on Classification which sets a default that information can only be classified for ten years.³⁹

ARTICLE 19's recommendations:

- The Draft Law should state that information or records may only be classified for as long as the reason for their exemption exists and for no longer than 10 years.

6. Institutional Framework

The Draft Law establishes both an independent oversight body and information tribunal to oversee the effective implementation of RTI. In this way, it follows the examples of Thailand and the UK, which also establish both mechanisms in their RTI legislation.⁴⁰

Oversight Body: Information Commissioner

We note that over sixty other states – including India, Japan, and Indonesia – provide for an independent, administrative oversight body to review refusals to provide access to information and oversee the implementation of the law. Such oversight bodies are crucial to the effective functioning of right to information systems in countries, particularly when direct appeals to the court process are too time-consuming and expensive for most applicants, as campaigns in the US and South Africa for the establishment of an oversight body have highlighted.⁴¹

Chapter 6 provides for the establishment of an Information Commissioner who shall be appointed by the National Assembly on the basis of a two-thirds majority vote and an open and transparent process involving civil society. The Draft Law provides that the Commissioner should be independent of any political party or government and shall hold office for a period of seven years (Article 41). The Commissioner is independent and autonomous and the position's powers are suitably broad (Article 42). The Draft Law includes provisions on the Commissioner's duties in relation to the inspection, complaints and finances and, significantly, on the reporting obligations. The Commissioner is supposed to submit to the National Assembly and Senate an annual report on compliance of public bodies during that financial year (Article 48).

The Commissioner has extensive powers of enforcement under Chapter 7. The Commissioner may receive complaints in relation to requests for information and accusing a public body for "refusing to indicate whether or not it holds a record, or to communicate information; failing to respond to a request for information within the time limits; failing to provide a notice in writing of its response to a request for information; failing to communicate information in a timely manner; charging an excessive fee; or failing to communicate information in the form requested (Article 51). The Commissioner is required to decide the application within 30 days (Article 52). The Commissioner also has the powers to investigate, including by issuing orders requiring the production of evidence and compelling witnesses to testify (Article 54). The Commissioner's decisions are binding (Article 57).

Information Disclosure Tribunal

Chapter 8 of the Draft Law sets out detailed provisions on the Information Disclosure Tribunal. The Tribunal decides appeals against the Commissioner's decisions (Article 61). The Tribunal – which is elected by the Minister of Information and comprises of lower judges, specialised lawyers (Article 59) – enjoys the powers of a tribunal to review the Commissioner's decisions, reopen hearings, summon witnesses and require a public body to publish information (Article 61). The Draft Law contains a number of provisions on the pre-trial procedures and procedures during the hearing (Article 63 and 64). Parties in a case before the Information Tribunal may lodge an appeal against the Tribunal's decision with the Supreme Court (Article 66).

The provisions on the institutional framework for the implementation of RTI are appropriate and are to be welcomed.

7. Protections and Sanctions

Article 68 of the Draft Law protects whistleblowers from any “legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment”. Wrongdoing is defined to including “the commitment of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body”.

Whistleblower protections are an important complement to access to information laws by facilitating the disclosure of information in the public interest. ARTICLE 19 notes that a number of international and regional instruments require the adoption of these protections to fight corruption. The UNCAC recommends that countries adopt “appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”.⁴²

The Draft Law protects those (such as Information Officers) who give access to or reveal access to records from legal actions for defamation, libel, slander, breach of confidentiality and violation of copyright laws (Article 69). At the same time, the Draft Law protects individuals from civil liability or criminal sanctions for good faith disclosures (Article 70), whilst providing for sanctions for individuals who wilfully obstruct access to records, obstruct the performance of a public body, interfere with the work of the Commissioner or destroy records without lawful authority (Article 71). Nearly every RTI law includes such provisions.

8. Fees

The fees for the communication of information are set out in the Fee Table of the Draft Law which appears between Articles 79 and 80. The Draft Law indicates that only information of less than 10 pages should be free of charge. 10-20 pages would cost 4,000 Riels (approximately 0.66 Euro), 21-100 pages 10,000 Riels (approximately 1.66 Euro), 100-500 pages 20,000 Riels (approximately 3.32 Euro), 500-1000 pages 40,000 Riels (approximately 6.64 Euro) and over 1000 pages not exceeding 60,000 Riels (approximately 10 Euro). The fee for the communication of information in electronic form for each complete record is 2,000 Riels (approximately 0.33 Euro). The fee for sound or video information should not exceed 60,000 Riels (approximately 10 Euro). Although these amounts seem low from a European perspective, in a country where the GDP per capita for 2010 was approximately

535 Euro, the amounts of fees are excessive and should be reduced. Instead the Draft Law should state that fees should also not be charged for individuals with an income below a certain level, as in the Indian Right to Information Act.⁴³

The Draft Law should also indicate that fees only apply to the costs of copying and if necessary posting the copy to the requestor, and not the submission of requests. Finally, the media and non-governmental organisations should be exempted from the payment of fees on the grounds of the public interest work they do.

ARTICLE 19's recommendations:

- The Draft Law should state that fees should be reasonable and should not be charged for individuals on a low income.
- The Draft Law should clarify that fees should only apply to reproduction and if necessary postage costs. Fees should also not be charged for the cost of submitting a request for information.
- The Draft Law should ensure that the media and non-governmental organisations are given public interest waivers from paying fees.

Appendix: Draft Law on Access to Information of Cambodia

KINGDOM OF CAMBODIA

NATION RELIGION KING

Proposed LAW ON ACCESS TO INFORMATION

Chapter 1

General Provisions

ARTICLE 1- OBJECTIVES

This law aims to:

- a. Provide access to information held by the government and public institutions in accord with a principle that provision of the information is in the public interests.
- b. Create obligations of the public institutions to publish some important information, especially the one that affects the public.
- c. Create a right that brings about amendments to any records carrying the information about individuals and the one that is not full, inaccurate, not-update or conducive to confusion.
- d. Promote transparency, accountability and effective governance in public and private institutions by empowering and educating all people to:
 - Understand their rights related to this law and exercise these rights to contact with the public and private institutions.
 - Understand about the roles and operations of the public institutions.
 - Make effective consideration and participate in decision-making process of the public institutions affecting their rights.

ARTICLE 2- DEFINITION

If not otherwise stipulated the terms in this law:

- 'Body' means public or private bodies as defined.
- 'Government' means the Royal Government of Cambodia
- 'Information Officer' means an individual with specific responsibility under this law and appointed by each public body.
- 'Officials' mean individuals employed by relevant body whether permanent or casual and full-time or part-time employees.
- 'Minister' means Minister of Information.
- 'Individuals' mean physical persons of any race or nationality or entities of legal natures.
- 'Personal information' means pieces of information including information that forms part of a data list or a comment whether or not it is true and recorded in the form of documents or others regarding individuals that can be identified through that information or comment.
- 'Public bodies' mean entity or authority or company that:
 - a) Is established by or under the Constitution.
 - b) Is created by law for public purpose.
 - c) Is ministry.
 - d) Forms part of level or institution of the government.
 - e) Is held, controlled or sustainably financed by the government at different levels or
 - f) Carries out a statutory and public function.

- g) Contracted by public body to undertake statutory duty or public function in lieu of that body (on its behalf).

If the body or authority listed in items (f) and (g) is public body whose scope of roles defined by law or their public function.

- **“Publish”** means make available in a form generally accessible to public including printing, broadcasting and electronic forms of dissemination.
- 'Record' includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the body that holds it and whether or not it is classified.
- 'Record of public body' means a record belonging to a body whether it was created by that body or other bodies.
- 'Requester' means individual making requests for information.
- 'Minister in charge' means:
 - a. Related to the Ministry - the Minister in charged of relevant ministry or
 - b. Related to a public body, the Minister who manages aspects of law that or pursuant to the provisions that create that public body.

ARTICLE 3- INTERPRETATION

When interpreting this law every individual or body (including courts) shall use a reasonable interpretation to promote the purpose stated in Article 2. All discretions provided by this law shall be used as much as possible to facilitate and promote the access to information in a timely manner and at a very low cost.

ARTICLE 4- THE LAW APPLYING TO COURTS AND OTHER TRIBUNALS

- a. All courts and tribunals are public institutions.
- b. Individuals holding judicial positions (judges, prosecutors, arbitrators or members of a tribunal) are not public body, and as such, cannot be considered public body.
- c. Courts' Registration Office or other offices and staff of the courts' registration office or other offices are considered parts of the courts (including courts' clerks) while performing functions of those offices.

However, this law shall not apply to any request for the courts' or tribunals' records unless they are related to administrative issues or judgments of the courts or tribunals.

ARTICLE 5- RELATIONSHIP WITH OTHER LAWS

This law shall override other laws that prohibit or prevent the disclosure of the public (or private) body's records and become a supreme law on disclosure of information. However, no provision of this law shall prohibit or prevent the information disclosure under other laws, regulations, policies or practices.

CHAPTER 2

DUTY TO PUBLISH CERTAIN RECORDS

ARTICLE 6- DUTY TO PUBLISH

1. Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information including but not limited to: –
 - a. a description of its structure, functions, duties and finances
 - b. relevant details concerning any services it provides directly to members of the public
 - c. a description of the powers and duties of its senior officers, and the procedure it follows in making decisions
 - d. annual budget with information about each expenditure item in the current fiscal year
 - e. Accounts audited on the previous fiscal years
 - f. any regulations, policies, laws, guides or manuals regarding the discharge by that body of its functions

- g. any direct request or complaints procedures available to members of the public regarding acts or failures to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response
- h. a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information or requesting for correcting the information
- i. the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material
- j. any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

2. The Ministry of Information shall guarantee to publish in a directory released for common use of the public members the post office and address, street, fax number and phone number and e-mail (if available) of the chief of the information disclosure office of all public bodies at its own costs.

ARTICLE 7- OBLIGATION TO PUBLISH

- 1- All public bodies shall provide the following information for public information at their offices.
 - a. All decisions which have direct effects on a private individual, including a dissenting opinion and an order relating thereto;
 - b. A work-plan, project and annual expenditure estimate of the year of its preparation (once a report is made thereafter)
 - c. Publications with summary or references under article 6 (a), (b) or (c).
 - d. A concession contract, agreement of a monopolistic nature or joint venture agreement with a private individual for the provision of public services
 - e. All resolutions by the Ministry of Information related to public bodies.
 - f. Other information of this kind defined by the Ministry of Information.
- 2- Each person shall have the right to inspect or receive copies of information mentioned in item 1 whether or not he/she is interested in the relevant issues. The Law may define that the fee will be charged for provision of the copy of information listed in item 1, but that such service fee must not exceed the actual expense made by the public body that provides the copy.

ARTICLE 8- OBLIGATION OF THE COURTS TO PUBLISH

1. The courts shall make available all decisions they have made in the past five years for the public members to inspect and copy at their registered offices. Whether they are interested or not, individuals have the right either to inspect or receive copies of the decisions. The Law may define that the fee will be charged for provision of the copy of information listed in item 1, but that such service fee must not exceed the actual expenses made by the courts that provide the copies.
2. All decisions and orders made by the courts of Cambodia after the Law comes into force shall be made available for public inspection.

ARTICLE 9- OBLIGATION TO PUBLISH OF THE GOVERNMENT

The Government of Cambodia shall immediately publish to the public members the information about draft laws, regulations, policies and other documents of public interests as soon as those documents reach the Office of the Council of Ministers.

ARTICLE 10- FAILURES TO PUBLISH OR GIVE

Individuals, who think that the public bodies do not publish or make available their necessary information under articles 6, 7, 8, 9 or 10 for public inspection, shall have the rights to complain with the information Commissioner.

ARTICLE 11- GUIDANCE ABOUT OBLIGATION TO PUBLISH

The Commissioner shall publish a guide on minimum standards and best practices regarding the obligation of public bodies to publish pursuant to articles 7, 8 and 9. Upon request, the Commissioner shall also provide advice to a public body regarding the obligation to publish.

CHAPTER 3

MEASURES TO PROMOTE OPENESS

ARTICLE 12- GUIDE FOR USING THIS LAW

- 1- Twelve months after this law come into force, the Commissioner shall compile a clear and simple guide, in an accessible form, containing practical information to facilitate the effective exercise of rights under this Law.
- 2- The guide shall be written in both Khmer and English.
- 3- The guide shall be updated on a regular basis, as necessary

ARTICLE 13- RECORD-KEEPING

- 1- Every public body is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Law, and in accordance with the Code of Practice stipulated in item 2.
- 2- The Commissioner shall, after appropriate consultation with the Minister and interested parties, issue a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the National Archives. The Code of Practice shall be from time to time updated as the Commissioner considers as necessary.
- 3- The Minister shall issue ministerial orders on a yearly basis to have the public bodies respect and comply with the Code of Practice.

ARTICLE 14- REPORTS TO INFORMATION MINISTER AND COMMISSIONER

- 1- The Information Officer of every public body shall annually submit to the Information Minister and Commissioner a report on the activities of the public body on December 31st (Annual report) to promote compliance with this law. The annual report shall include information about:
 - a. the number of requests for information received, granted in full or in part, and refused
 - b. how often and which section of the Law were relied upon to refuse, in part or in full, requests for information
 - c. number and status of appeals from refusals to communicate information
 - d. fees charged for requests for information
 - e. its activities pursuant to article 6 (duty to publish)
 - f. its activities pursuant to article 13 (maintenance of records)
 - g. its activities pursuant to section 16 (training of officials).
- 2- The Commissioner shall sequentially arrange annual information obtained from each public body and annually submit a summary report to the parliament in two years after acknowledging the receipt of report from each public body.
- 3- Each public body shall publish annual report directly on its website after the annual report was submitted to parliament as per item 2 above. Copy of annual report of every public body shall be made publicly available at their offices free of charge.

ARTICLE 15- INFORMATION OFFICER

- 1- Every public body shall appoint an Information Officer. The public body shall ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details.

- 2- The Information Officer shall have the following responsibilities to:
 - a. promote within the public body the best possible practices in relation to record maintenance, archiving and disposal
 - b. serve as a central contact within the public body for receiving requests for information
 - c. assist individuals seeking to obtain information, including assistance in preparing information request in accordance with this law
 - d. Have comprehensive knowledge of types of available information held by a public body
 - e. Take main responsibility within public bodies for researching information, issuing decisions on provision of information, response to requests for information and making information available
 - f. Assist other officials of public bodies in researching for records containing information, which serves as a subject of requests
 - g. Together with chiefs of other relevant information of public bodies, decide which information or record should or should not take exemptions
- 3- In his or her duties, the Information Officer of public bodies may receive assistance from several deputy information officers as necessary.
- 4- Office chiefs of public bodies shall provide assistance for the Information Officer in researching for information, which forms a subject of requests of the Information Officer.

ARTICLE 16- TRAINING OF OFFICIALS

Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Law.

CHAPTER 4 ACCESS TO RECORDS

ARTICLE 17- ACCESS TO INFORMATION

Everyone shall have the right of access to information, including the right to obtain information owned by public bodies, subject only to the provisions of this Law.

ARTICLE 18- RIGHT OF ACCESS

- 1- Any person can make a request for available information held by a public body. Any person making a request for information to a public body shall be entitled, subject only to the provisions of this Law:
 - a. To be informed whether or not the public body holds a record containing that information or from which that information may be derived, and
 - b. To inform that source provide such information or record to that person. If the public body does hold such record shall provide to public without limitation in twenty five years after the record has been created. Twenty five years after the record has been created such record shall be transferred to the National Archives, where documents can be made available freely for individuals to inspect.
- 2- For the purpose of this Law, a public or private body holds record if:
 - a. the body has physical management over that record (rather than in place of other person) or
 - b. Another person maintains the record in place of a public or private body
- 3- Subject to this Law, the right of the person access to information stated in item 1 above is not affected by:
 - a. the reasons that the requester gives for requesting information or
 - b. belief of the information officer in what constitutes reasons of the person requesting for information.

ARTICLE 19- REQUEST FOR INFORMATION

- 1- A request for information is a request in writing to any official of a public or private body that is in sufficient detail to enable an experienced official to identify, with reasonable

- effort, whether or not the body holds a record with that information. The request for information shall include:
- a. Name of the requester
 - b. Address, telephone number or email (or a combination of these) so that the public body can contact the individual requester.
 - c. Nature of information being requested and
 - d. Mail or delivery by hands to the public body.
- 2- Subject to item 1 above, the Minister may encourage the requester to use a normal legal standard for making a request for information and shall send that legal standard to the Information Officer of the relevant public body to process the information request in a sequential and timely manner.
 - 3- A request for information may show a requirement for a form for giving and a form for delivery of information. All forms shall include this question. A request for information shall be valid whether or not the requester answers the question.
 - 4- Officials of public bodies who receive a request for information may transfer that request to the Information Officer within 24 hours after acknowledging the receipt of the request.
 - 5- Where a request for information pursuant to Article 7 does not comply with the provisions of items 1 and 6, the official who receives the request shall render such reasonable assistance, free of charge, to enable the request to comply with item 1 above.
 - 6- An individual who is unable, because of illiteracy or disability, to make a written request for information pursuant to item 1 may make an oral request, and the official who receives an oral request shall, subject to article 4, reduce it to writing, including their name and position within the body, and give a copy thereof to the person who made the request.
 - 7- An official who receives the request for information may transfer the request to the Information Officer of the public body for the purpose to comply with articles 5 and 6.
 - 8- Officials of the public bodies, including the Information Officer, who receive requests for information, shall provide the requester with a receipt documenting the request.

ARTICLE 20- TIMEFRAME FOR RESPONDING TO REQUESTS

- 1- Subject to item 3, a public body must respond to a request for information as soon as reasonably possible and in any event within thirty working days of receipt of the request. The Information Officer shall be mainly responsible for responding the request within this timeframe.
- 2- Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.
- 3- where the request is for a large number of records or requires a search through a large number of records, and where compliance within thirty working days would unreasonably interfere with the activities of the body, a public body shall:
 - a. Provide as many documents as reasonably possible within 30 days.
 - b. Extend the period in item 1 to the extent strictly necessary, and in any case to not more than twenty one days by notice in writing (or via phone if the requester does not give mail address or email within the initial thirty day period
 - c. Provide all additional records during the extension period
- 4- Failure to comply with provisions of this article is deemed to be a refusal of the request.

ARTICLE 21- RESPONSE BY PUBLIC BODY

- 1- The response under article 16 shall be made in writing to be signed by the Information Officer of the public body concerned and be provided for the requestor through mail, fax, email or delivery by hands following the procedures suggested by the requestor.
- 2- The response shall show the decisions of the public body about:
 - a. Reception of the request
 - b. Refusal of the request based on exception
 - c. Refusal of the request based on the fact that records with the requested information were not found or

- d. Request is partially accepted and partially rejected.
- 3- The response must state:
 - a. the fee to be charged (if any) in accordance with article 22 relating to any part of the request to be accepted or the form of information provided if that information cannot be included in the response.
 - b. Adequate and detailed reasons for the refusal if any part of the request is not granted.
 - c. That the public body: "cannot say whether or not it holds a record containing the relevant information" and gives adequate and detailed reasons for it if there is a refusal to say whether the public body holds or does not hold the record containing the relevant information.
 - d. The right to appeal of the requestor
- 4- Relating to the request or part of the request that is accepted:
 - a. Provide information with a response if possible (e.g. if a record containing written information and if the record containing less than 20 pages or if the information can be held in electronic form or
 - b. If the information granted and the response can not apply, the response must describe how the requestor may receive information and the information must be granted soon.
- 5- If the record containing the information is left out and replaced with a copy the public body can allow the requestor to inspect the record and fill it out again.

ARTICLE 22- SEVERABILITY OF EXCEPTIONS

- 1- If a record contains some information which is subject to an exception and other information, which is not subject to an exception, any information in the record which is subject to an exception shall be communicated.
- 2- The Information Officer of a public body shall make photocopy of a record and leave out any part of the record in compliance with item 1 above.
- 3- Only Information Officer or Minister in charge shall decide to communicate a record in part.
- 4- In case a photocopy of the record as per item 2 above, the requestor shall be informed:
 - a. That the record is a copy.
 - b. About the reasons of the removal and
 - c. About the provisions of this law, which consider any removed part an exception.

ARTICLE 23- MAINTAINENCE OF A RECORD UNTIL FINAL DECISION IS MADE ON THE REQUEST

If the Information Officer of a public body receives a request for a record of a public body the Information Officer shall reasonably take all necessary steps to maintain that record without leaving out any information containing in the record until the requestor receives a response and:

- a. A time limit for complaining with the Information Commissioner, appealing to a tribunal or making an appeal to the tribunal's decision is set or
- b. Complaint, appeal to a tribunal or an appeal against the tribunal's decision or lawsuit proceedings in accordance with legal processes are finally determined subject to the longest point.

ARTICLE 24- FEES

- 1- A request for information shall be free of charge pursuant to Article 12.
- 2- The communication or disclosure of information pursuant to a request under article 19 may be made conditional upon payment pursuant to items 6 and 7. The fee is listed in the fee table.
- 3- If the information is not prepared in writing, the fee shall be reasonable and not exceed the actual cost of searching for, preparing and communicating the information.
- 4- If the information is communicated in an electronic form the fee shall match with the number of records granted using the fee table 1.
- 5- It is not imperative that payment be made before the information is communicated. If an private company or NGO requests the information shall be made available pursuant to

- article 15 (3) and the private company or NGO shall transfer the fee into the public body's account within seven days upon acknowledgement of the receipt of the information.
- 6- All fees shall be paid to the Ministry of Information, not any public body. The Ministry of Information shall issue a receipt of payment for each requestor.
 - 7- If the requestor has not paid the fee the public body may refuse to process a subsequent request for information of that requestor.
 - 8- Payment of a fee shall not be required for requests for personal information.
 - 9- The Minister may, after consultation with the Commissioner, make regulations providing:
 - a. for the manner in which fees are to be adjusted in the fee table 1
 - b. that no fee is to be charged in cases of which statute of limitation is ended, and
 - c. that any fee cannot exceed a certain maximum.

ARTICLE 25- MEANS OF COMMUNICATING OR RECEIVING INFORMATION

- 1- Where a request indicates a preference as to the form of communication of information, a public or private body communicating information pursuant to a request for information under item 3 shall, subject to do so in accordance with that preference.
- 2- A request may indicate the following preferences as to the form of communication of information containing in a record:
 - a. a true copy of the record in permanent or other form
 - b. an opportunity to inspect the record available at the body
 - c. an opportunity to copy the record, using his or her own equipment
 - d. a written transcript of the words contained in a sound or visual form
 - e. a transcript of the content of a record, in print, sound or visual form where such transcript is capable of being produced using equipment normally available to the body; or
 - f. a transcript of the record from shorthand or other codified form.
- 3- A public or private body shall not be required to communicate information in the form indicated by the person making the request where to do so would unreasonably interfere with the effective operation of the body or be detrimental to the preservation of the record.
- 4- Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.

ARTICLE 26- IF A RECORD IS NOT HELD OR NOT AVAILABLE

- 1- If steps are taken and completed in search of a record being requested or there is credible evidence that:
 - a. Owned by the public body, but not found or
 - b. Unavailable
 The Information Officer shall notify the requestor (by means of response under article 19) that the record cannot be communicated.
- 2- The notification under item 1 above shall contain complete information about all steps taken to research for the record needed or to determine whether or not the record is available as soon as practicable, including communication with individuals involving in researching for the record in place of the Information Officer.
- 3- For the purpose of this law, a necessary response shall be considered a decision refusing the request for the record.
- 4- If, after notification is given, the required record is found the requestor shall receive that record, except the access is refused under another article of this law.
- 5- As soon as all relevant researches are completed, where an Information Officer believes that that request relates to information that is not contained in any record held by the public body, but is likely contained in any record held by another public body, the official may transfer the request to the Information Officer of that public body as soon as possible and notify the requestor accordingly.
- 6- Where a request is transferred pursuant to item 5, the time limit for responding to requests under article 16 shall begin to run from the date of transfer. The transfer shall be made between the initial 30 days of the response period.

ARTICLE 27- VEXATIOUS, REPETITIVE OR UNREASONABLE REQUESTS

- 1- A public or private body is not required to comply with a request for information, which is vexatious or where it has recently complied with a substantially similar request from the same person.
- 2- A public or private body is not required to comply with a request for information where to do so would unreasonably divert its resources. In this case, the public body shall comply with a request for information only in a situation where the information can be communicated easily and does not unreasonably divert its resources.
- 3- In response under article 17, if a public body relies upon item 2 thereof the requestor may file a complaint with the Information Commissioner pursuant to article 46.

ARTICLE 28- INFORMATION OFFICE

- 1- As soon as practicable, after the commencing of this law, but not later than three months after this date, the Minister shall publish a report about the addresses of the Royal Government of Cambodia's offices nationwide that serve information for the purpose of this chapter. There shall be at least one information office in each province/city.
- 2- The person who is granted the to examine the original records or has access to records that are not in written forms as per article 21 shall inspect or access the records available at the information office (with reasonable equipment for communicating information in any form requested) that is nearest to his/her normal residence.
- 3- The Information Office shall be served by people from the Ministry of Information (or Information Commissioner).
- 4- Not any of the following articles are applied to prevent the public body or Minister that receives a request from a requestor accessing in a special form from communicating that document in any form other than the requested one pursuant to article 21 (3).
- 5- The person who accesses a document at the Information Office shall not be required to pay the fee he/she has to pay in case he/she accesses the document in any place nearest to the place where records are normally kept.

CHAPTER 5 EXCEPTIONS

ARTICLE 29- INFORMATION ALREADY PUBLICLY AVAILABLE

Notwithstanding any provision in this section, a public body may not refuse to communicate information where the information is already publicly available.

ARTICLE 30- SEVERABILITY

If a request for information relates to a record containing information which, subject to this section, falls within the scope of an exception, any information in the record which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the requestor.

ARTICLE 31- INFORMATION THAT AFFECTS THE NATIONAL SECURITY, DEFENSE OR INTERNATIONAL RELATIONS

- 1- A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defense or national security of Cambodia.
- 2- A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, jeopardize the international relations of the Kingdom of Cambodia or leak any information or issues communicated by the foreign governments or their representatives and authorities of the foreign governments or international organizations for the public body.

ARTICLE 32- HEALTH AND SAFETY

A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any individual.

ARTICLE 33- LEGAL PRIVILEGE

A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

ARTICLE 34- LAW ENFORCEMENT

A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information or records, where to do so would, or would be likely to, cause serious prejudice to:

- 1- the prevention or detection of crime
- 2- the apprehension or prosecution of offenders
- 3- the administration of justice
- 4- the assessment or collection of any tax or duty
- 5- the operation of immigration controls or
- 6- the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

Or in case may:

- 1- Reveal existence or identity of secret source of information relating to the implementation or management of the law.
- 2- Endanger the life or physical security of individuals.

ARTICLE 35- PUBLIC ECONOMIC INTERESTS

- 1- A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to:
 - a. the ability of the Royal Government to manage the economy of Cambodia
 - b. legitimate financial or commercial interests of the public body
- 2- Item 1 does not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

ARTICLE 36- POLICY AND INTERNAL OPERATIONS

- 1- A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to:
 - a. cause serious prejudice to the effective formulation or development of government policy
 - b. significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views
 - c. seriously frustrate the success of a policy, by premature disclosure of that policy or
 - d. significantly undermine the effectiveness of a testing or auditing procedure used by a public body.
- 2- Item 1 does not apply to facts, technical data or statistical information.

ARTICLE 37- PROTECTION OF SECRET INFORMATION AND COMMERCIAL INFORMATION

- 1- A public body may refuse to communicate information or reveal records if:
 - a. The information is obtained from a third party and the communication of such information can be used for accusation of breach of trust.
 - b. The information is obtained secretly from a third party and:
 - The information is of commercial confidentiality.
 - Communication of that information may or is likely cause serious prejudices to financial or commercial interests of that third party.

ARTICLE 38- PROTECTION OF RECORDS THAT AFFECTS PRIVACY OF INDIVIDUALS

- 1- A public body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a natural third party.
- 2- The refusal under item 1 may not be made based on only reasons of inclusion of issues related to a natural third party in the document.
- 3- The refusal under item 1 does not apply if the personal information reveals or confirms the commitment of criminal offenses the third party has not been convicted.
- 4- Item 1 does not apply if:
 - a. The third party effectively consented to the disclosure of the information
 - b. The person making the request is the guardian of the third party or the next of kin of a deceased third party
 - c. The third party has been deceased for more than 10 years or
 - d. The individual is or was an official of a public body and the information relates to his or her function as a public official.
- 5- If any part of the record containing personal information unreasonable for disclosure can be severed or removed from the remaining part of the document the public body will cut off the personal information and will communicate the remaining part of the record to the requestor.
- 6- Under this article, “unreasonable” includes financial information, health and medical records, criminal and arrest records and tax records of a natural third party.

ARTICLE 39- TIME LIMITS

- 1- The provisions of articles 31-36 apply only inasmuch as the harm they envisage would, or would be likely to, occur at or after the time at which the request is considered.
- 2- Provisions of articles 31-36 do not apply to a record which is more than 25 years old.

ARTICLE 40- PUBLIC INTERESTS OVERRIDE

Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

CHAPTER 6

INFORMATION COMMISSIONER

ARTICLE 41- NOMINATION OF THE INFORMATION COMMISSIONER

- 1- The Commissioner shall be elected based on a two-third majority vote of the National Assembly and after a process in accordance with the following principles:
 - a. participation by the public and civil society in the nomination process
 - b. transparency and openness, and
 - c. the publication of a shortlist of candidates.
- 2- No-one may be appointed Commissioner if he or she:
 - a. holds an official office in, or is an employee of a political party, or holds an elected or appointed position in national, provincial or local government or
 - b. has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned.
- 3- The Commissioner shall hold office for a term of seven years, and may be reappointed to serve a maximum of two terms, but may be removed only if he/she is convicted of a criminal offense or consecutively fails to fulfill his/her duties under this law. Removal of the Commissioner shall require a two-thirds majority vote of the National Assembly.

ARTICLE 42- INDEPENDENCE AND POWERS OF THE COMMISSIONER

1. The Commissioner shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except as specifically provided for by law.

2. The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for in this law, including full legal personality, and the power to acquire, hold and dispose of property.

ARTICLE 43- OFFICE OF THE INFORMATION COMMISSIONER

- 1- The Commissioner may appoint such officers and employees as are necessary to enable him or her to perform his or her duties and functions.
- 2- The Commissioner and his staff shall set up an information commissioner office ("Office"). The Office shall be divided into two parts: "Inspection Unit" and "Executive Unit". These two units perform their duties separately and recruit employees respectively. The Commissioner shall order and oversee the two units.

ARTICLE 44- **THE COMMISSIONER'S DUTIES RELATED TO INSPECTION**

- 1- In addition to any other powers and responsibilities provided for in this Law, the Commissioner's duties related to monitoring:
 - a. monitor and report on the compliance by public bodies with their obligations under this law
 - b. make recommendations for reform both of a general nature and directed at specific public bodies
 - c. provide training for public officials on the right to information and effective implementation of this law and co-operate with training activities provided by public bodies
 - d. refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this law and
 - e. publicize the requirements of this Act and the rights of individuals under it.

ARTICLE 45- **COMMISSIONER'S DUTIES RELATED TO COMPLAINTS**

- 1- In addition to any other powers and responsibilities provided for in this Law, the Commissioner's duties related to the implementation of this law include:
 - a. Investigating any official and unofficial complaints submitted to the Commissioner by members of the public against a public body relating to the publication and free flow of information in Cambodia
 - b. Deciding on complaints submitted by members of the public concerning the non-disclosure of information or records by the public body.
 - c. Deciding on complaints submitted by members of the public concerning the refusal to disclose the existence of information or records by the public body
- 2- In performing his/her functions under this law, the Commissioner shall try to attain the purpose of rendering a fair, just, cost-effective, informal and quick decision-making process.

ARTICLE 4- TRANSFER OF DUTIES

The Commissioner may transfer his/her duties and responsibilities to any person in his/her office, except the final decisions on complaints. The Commissioner shall personally make all final decisions on complaints in accordance with laws and using his/her discretions. Especially, the Commissioner may transfer all of his/her duties under articles 40 and 41 (1) while, at the same time, may reserve his/her overall management roles on activities carried out by the Office staff according to those duties.

ARTICLE 47- FINANCES OF THE OFFICE AND COMMISSIONER

- 1- The Office of the Information Commissioner shall prepare its annual budget and receive this budget from the Royal Government every year in an amount enough for performing its fundamental duties and roles under this law.
- 2- The Commissioner shall be paid a salary equal to the salary of a judge of the Supreme Court. This salary shall constitute part of the annual budget of the Information Commissioner's Office.
- 3- The Commissioner and his staff shall be entitled to be paid reasonable travel and living expenses incurred in the performance of his or her duties if travel is necessary. The

Commissioner shall publish its expenditure table, which is accessible, and specific amount of money spent on the Commissioner's Office website.

ARTICLE 48- REPORTS OF THE COMMISSIONER

- 1- The Commissioner shall, within three months after the termination of each financial year, submit to the National Assembly and Senate an annual report on compliance by public bodies with this Law, the activities of his or her office and audited accounts of the office during that financial year.
- 2- The Commissioner may from time to time send such other reports to the National Assembly and Senate as he or she deems appropriate.

ARTICLE 49- PROTECTION OF THE COMMISSIONER

- 1- No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Law.
- 2- For the purposes of the law of defamation, libel or slander, anything said or any information supplied pursuant to an investigation under this Law is privileged, unless that information is shown to have been said or supplied with malice.

CHAPTER 7

ENFORCEMENT BY THE COMMISSIONER

ARTICLE 50- COMPLAINTS TO THE COMMISSIONER

- 1- Individual may file a complaint in writing with the Commissioner about decisions, actions and inactive phenomenon of a public body relating to their roles and responsibilities under this law. In this section, individual filing a complaint is called **"complainant"**.
- 2- A complaint shall include:
 - a. Complainant's name
 - b. Address in a mail system, telephone number or email address (or all of these combined) so that the Commissioner Officer can contact the complainant.
 - c. Name of the public body to be complained
 - d. Description of actions or inactive phenomenon under complaint and the complaint must be sent by mail or delivered by hands to the Commissioner Office
- 3- An individual who is unable, because of illiteracy or disability, to make a complaint as per Items 1 and 2 may make an oral complaint, and the Information commissioner office that receives an oral complaint shall prepare it in writing and give a copy thereof to the person who made the complaint.
- 4- The Office shall render assistance as requested or in preparing a complaint for another person, who asked for help.
- 5- The Office shall provide a complainant with a letter documenting the receipt thereof when it is presented by hands or mails or emails (as provided by the complainant).

ARTICLE 51- RESPONSE TO THE COMPLAINT

- 1- The Commissioner responds to any complaints in relation to requests for information and accusing a public body of:
 - a. refusing to indicate whether or not it holds a record, or to communicate information
 - b. failing to respond to a request for information within the time limits
 - c. failing to provide a notice in writing of its response to a request for information
 - d. failing to communicate information in a timely manner
 - e. charging an excessive fee or
 - f. failing to communicate information in the form requested

By making a decision on the complaint ("Decision in Chapter 3") as provided for in article 48.
- 2- The Commissioner responds to complaints about other issues under this law other than issues mentioned in item 1 in a manner that is provided for in Article 49.

- 3- The Commissioner may summarily reject applications, which are frivolous, vexatious or clearly unwarranted

ARTICLE 52- DECISIONS

- 1- The Commissioner shall be required to, subject to item 3, decide an application under article 47 as soon as is reasonably possible, and in any case within 30 days.
- 2- Before making a decision, the Commissioner shall first conduct an investigation into the complaint. At the same time, the Commissioner shall:
 - a. Provide detailed information about the complaint to the public body, but not identify its name or contact details of the complainant within five working days upon the acknowledgement of the receipt
 - b. Give the public body five working days to provide its views for the Commissioner
 - c. Provide additional comments on the information he/she has received from the public body for the complainant within 2 working days after receiving those views and
 - d. Give the complainant five working days to respond to those views in writing. The time limits for this referral shall be specified in each communication by the Commissioner.
- 3- If the public body or complainant has not provided their views in writing within the time limits the Commissioner shall carry out his/her decision-making process based on the evidence he/she has. If the public body or complainant is late in providing their views as mentioned in item 1 above, but still within the 30-day period and gives proper reasons for such delay the Commissioner may use his/her discretions to decide whether or not the delayed submission of the views is accepted using the principle of fairness for the parties and the overriding aspects.
- 4- If the complainant is unable, because of illiteracy or disability, to give a response in writing to the views of the public body the Information Commissioner's office has to listen to the complainant's views and prepare them in writing, giving a copy to the complainant.
- 5- In coming to a decision pursuant to item 3, the Commissioner may:
 - a. reject the application
 - b. require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations under this law
 - c. require the public body to compensate the complainant for any loss or other detriment suffered and/or
 - d. in cases of egregious or willful failures to comply with an obligation under Chapter 3, impose a fine on the public body
- 6- In making a decision on any application under article 45, the burden of proof shall be on the private body to show that it acted in accordance with its obligations under Chapters 3 and 4 of this law
- 7- The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public body within thirty working days for making decision under article 38 (1).

ARTICLE 53- OTHER DECISIONS

- 1- If the Commissioner is required to respond to the complaint under article 38 (2) he/she shall decide on such application under as soon as is reasonably possible, and in any case within 30 days.
- 2- Before making a decision, the Commissioner shall first conduct an investigation into the complaint. At the same time, the Commissioner shall:
 - a. Give a notice on detailed information about the complaint to the public body, but not identify its name or contact details of the complainant within five working days upon the acknowledgement of the receipt of the complaint
 - b. Give the public body 10 working days (from the day of notice) to provide its views in writing for the Commissioner
- 3- If the public body has not provided their views in writing within the time limits the Commissioner shall carry out his/her decision-making process based on the evidence

he/she has. If the public body provides their views later than the time limits under item 2, but before the Commissioner makes his/her decision the submission of the views can not be accepted.

- 4- In his or her decision pursuant to sub-section (1), the Commissioner may require the public body to take such steps as may be necessary to bring it into compliance with its obligations under Chapter 2, including by: –
 - a. appointing or changing an information officer
 - b. publishing certain information and/or classifying categories of information
 - c. making certain changes to its practices in relation to the keeping, management and destruction of records, and/or the transfer of records to the National Archives
 - d. enhancing the provision of training on the right to information for its officials
 - e. providing him or her with an annual report
 - f. in cases of egregious or willful failures to comply with an obligation under Chapter 2, paying a fine.
- 5- The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public body with a copy of the original version for the complainant within thirty days for making decision under item 1.

ARTICLE 54- **COMMISSIONER'S POWERS TO INVESTIGATE**

- 1- In coming to a decision pursuant to article 52 or 53, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify.
- 2- The Commissioner may, during an investigation pursuant to item 1, examine any record to which this Law applies, and no such record may be withheld from the Commissioner on any grounds.

ARTICLE 55- **COMMISSIONER'S INABILITY TO RESPECT THE TIME LIMITS**

- 1- If the commissioner cannot make a decision he/she has to necessarily make under article 52 or 53 within 30 days, because the records to be debated are plentiful or because the investigation is extensive he/she may delay the 30-day period to any period he/she finds necessary. However, the delay shall, in any rate, not exceed 15 days. Both the complainant and public body shall be notified of such delay under this article before the end of the 30-day period.
- 2- The Commissioner shall decide, after 45 days, based on evidence he/she has in hands then.

ARTICLE 56- **REVIEW OF COMMISSIONER'S DECISIONS AND ORDERS**

The complainant, or the relevant public body, may appeal to the court for a full review of a decision of the Commissioner under article 52 or 53 that is submitted for review of the Information Disclosure Tribunal within 28 days after the date on which the decision was made.

ARTICLE 57- **BINDING NATURE OF COMMISSIONER'S DECISIONS**

- 1- If there is no application for review within a time limit the Commissioner's decision shall be respected and followed.
- 2- When the time limit for application for review is gone:
 - a. Any fine ordered pursuant to article 52 (5) (d) or article 53 (4) (f) shall be paid by the public body to the Commissioner, who shall transfer this money into the public revenue or to the Information Commissioner Office's budget, providing that it has not yet received its budget in full amount for the current financial year from the Royal Government.
 - b. Any compensation ordered pursuant to article 52 (5) (c) shall be paid to the complainant immediately.

ARTICLE 58- FAILURES TO RESPECT AND FOLLOW

Upon expiry of the 28-day period for application for review pursuant to article 56, if a public body continues failing to comply with a decision pursuant to article 52 or 53, or has failed to execute an order pursuant to article 62, the Commissioner may certify that in writing to the Supreme Court. The Supreme Court shall issue an order for respect and execution of the decision by a necessary means, including a fine up to 20 million Riels on the public body and/or officers of that body.

CHAPTER 8 INFORMATION DISCLOSURE TRIBUNAL

ARTICLE 59- STRUCTURE AND COMPOSITION OF THE INFORMATION TRIBUNAL

- 1- An Information Disclosure Tribunal ("Tribunal") shall be established with at least 15 members, including the President of the Tribunal, who is nominated pursuant to item 2.
- 2- Members of the Tribunal shall be elected by the Minister of Information in equal number:
 - a. Lower judges
 - b. Lawyers specialized and experienced in human rights laws and especially accessible for information
 - c. Usually from among individuals having high profiles in communities regarding their morality, capacity and the fields of information and public administration.
 After:
 - a. Widely announcing about the vacancies across Cambodia and calls for expression of interests and
 - b. Allowing qualified candidates from public bodies and civil society organizations to stand for the elections and
 - c. Transparency and openness in the election process as well as
 - d. Publication of a shortlist of candidates
- 3- No-one may be appointed a member if he or she:
 - a. holds an official office in, or is a member or an employee of a political party, or holds an elected or appointed position in national, provincial or local government or
 - b. has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned.
- 4- Members of the Tribunal shall be elected without discrimination against race or other reasons as stipulated In Article 31, paragraph 2, of the Cambodian Constitution.
- 5- All members of the Tribunal shall have the following qualifications:
 - a. Aged 30 years old at least, but not older than 60 years old
 - b. Have high morale
 - c. Hold Bachelor Degree in Law awarded by any country or other equivalent law certificates recognized by the Bars Association Of Cambodia
- 6- The President of the Tribunal shall be elected by the votes of its members. The members, who stand for candidates as presidents of the Tribunal shall be judges of the lower courts.
- 7- A member shall hold office for the term of three years and may be re-appointed using the same election process as mentioned in item 1.
- 8- A qualified foreigner elected a member of the Tribunal shall act as a member from time to time to replace the permanent member.
- 9- A member of foreign nationality may hold a short term office if members and the Minister consent.
- 10- The member of the Tribunal may be removed only if he/she is convicted of a criminal offense or consecutively fails to fulfill his/her duties under this law. Removal of a Tribunal's member shall require a majority vote of the other members of the Tribunal.
- 11- A qualified member of the Tribunal vacates office upon death or incapability or resignation or being removed from the position pursuant to item 9 or holding office mentioned in item 3 (a) or other events resulting in the resignation of that member. A new member shall be elected in accordance with procedures provided for in this law to ensure the new member come from the same group pursuant to item 2: resignation of a member.

ARTICLE 60- ADMINISTRATIVE MANAGEMENT OF THE TRIBUNAL

- 1- The Tribunal Chairman shall take overall responsibility for administration of the tribunal and ensures timely and orderly management of the tribunal.
- 2- The tribunal shall have a register and may employ people to keep the register and other physical persons as needed to assist its members in performing their obligations, duties and responsibilities.
- 3- The tribunal shall be based in Phnom Penh. However, the tribunal team can sit anywhere else in Cambodia to conduct appeal hearings when appropriate based on the locations of parties, witnesses and quantity of documents as well as financial resources of parties.
- 4- Each member shall be paid a salary equal to the salary of a judge of the Supreme Court.
- 5- The member shall be entitled to be paid reasonable travel expenses if he/she is required to outside Phnom Penh based on the receipt or determination prepared by the member and launched in its website.
- 6- The tribunal shall have a website. All decisions and other relevant information of the tribunal, its practices and procedures shall be posted on that website.
- 7- The tribunal shall prepare its annual budget with approval of its members before submitting it the government. The tribunal shall receive this budget from the Royal Government every year in an amount enough for performing its fundamental duties and roles under this law.

ARTICLE 61- ROLES AND POWERS OF THE TRIBUNAL

- 1- The tribunal's role is to decide an appeal against the Commissioner's decision. In making this decision, the Tribunal interprets and applies this law in the same manner as the courts do.
- 2- Members of the tribunal shall perform their roles independently. No one shall instruct the tribunal or its members about its roles or its members' roles.
- 3- Instead, the Tribunal shall have powers to formulate its rules and procedures. In making its decisions, the Tribunal:
 - a. Shall not bind to comply with technical aspects, law or evidence, and
 - b. Shall follow a strong legal formalities and complaint's substance
4. The tribunal shall have powers to review the Commissioner's decisions and re-open hearings about the whole dispute from the beginning. The tribunal may:
 - a. Summon any person to give evidence
 - b. Listen to the experts of related aspects
 - c. Require a public body to publish information or record of disputes or related to the appeal
- 5- During the conduct of the appeal hearings on the Commissioner's decision, the tribunal may:
 - a. State that the decision was correct or
 - b. Revise the decision or
 - c. Reject the previous decision and replace it with a new decision.
- 6- The tribunal shall have all powers of the Commissioner pursuant to article 52 (6) and 53 (4) in requiring a public body to implement in a way its finds necessary to comply with this law.
- 7- A member of the tribunal shall keep confidential any records and information it has received from a public body for examination, except and until there is an approval for these records to be touched.
- 8- A request submitted to the tribunal and procedures resulting from the request shall be free of charge.

ARTICLE 62- REQUEST FOR REVIEW

- 1- Individual or a public body affected by the Commissioner's decision made under article 52 or article 53 may submit their request for review "request" to the tribunal within 28 days after the date on which the decision was made. The individual or public body filing a request is called "requestor".
- 2- A request shall include:
 - a. The requestor's name
 - b. Address in a mail system, telephone number or email address (or all of these combined) so that the Tribunal can contact the requestor.
 - c. Reasons the requestor believes the Commissioner's decision was not correct
 - d. A copy of the Commissioner's decision

And the requestor shall send the request by mail or deliver it by hands to the registered office of the Tribunal
- 3- If the member has applied the law of procedures related to the request (especially the request sent in a standard form) the request shall be sent in compliance with such law.
- 4- An individual who is unable, because of illiteracy or disability, to make a request as per Items 2 and 3 the registered office of the Tribunal shall help him/her prepare it properly.
- 5- The registered office of the Tribunal shall render assistance as requested for every individual and party regarding the procedures for completing the request form, legal aspects of the hearing and information of the Tribunal and problems happened as a result of this law or rules of the Tribunal, if they need help.
- 6- In making reviews by the Tribunal of the decision made by the Commissioner pursuant to article 38, the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Chapters 3 and 4 of this law.

ARTICLE 63- PRE-TRIAL PROCEDURES

- 1- Upon receipt of an application form, the registered office of the Tribunal shall:
 - a. Request and receive copies of documents of the Commissioner on the decision, which is subject of the application within five working days.
 - b. Record the date of hearing about the application. This date shall not be less than 6 weeks and not exceeding three months after the date of request.
 - c. Give facts the request has received to the individual or public bodies affected by the Commissioner's decision under the review ("Appeal defendant") by phone, fax, email and/or deliver by hands the information based on the detailed information containing in the initial notice of the the first complaint lodged with the Commissioner within 2 working days upon the receipt of the copy of the Commissioner's document pursuant to (a).
 - d. State detailed contact information of the Appeal Defendant.
 - e. Provide through mail a copy of the application form to the Appeal Defendant together with a letter notifying about actions that the Appeal Defendant has to or is allowed to take and the deadline for those actions such as date and time of hearing.
 - f. Give the Appeal Defendant 21 days starting from the notification date (e) to respond the request and send this response in writing to the Tribunal. The response must have detailed contact information of the Appeal Defendant.
 - g. Provide a copy of the response of the Appeal defendant to the Requestor within two working days after the receipt thereof.
 - h. Send the Commissioner's documents, requests and responses to the Tribunal's Chairman within two working days upon the receipt of response or date of response if no response has been sent,

The Office shall do everything necessary to ensure that the schedule above is carried out and the review process has been conducted efficiently from the date of request till the hearing comes.
- 2- Three members represent the Tribunal to investigate and hear the request. The Tribunal's Chairman select three members to conduct hearing of each request and manage resource allocation. At least one of the jury members shall become a judge of lower court.

- 3- The Tribunal's Chairman selects three members to conduct hearing of the request within two working days after receiving the documents from the registered office. The selected members shall immediately notify the Chairman if there are legal reasons they cannot conduct hearing of the request such as conflict of interests. If there are legal and valid reasons on issues that might render the members unable to conduct hearing of the request the Chairman shall select other chairman.
- 4- The Tribunal shall meet at least two weeks before the scheduled hearing date and shall:
 - a. Review the Commissioner's documents, requests and responses.
 - b. Request for arrangement of records it is going to review.
 - c. Summon witnesses or experts it requires to submit evidence in the hearing and
 - d. Carry out investigation activities it decides as necessary.
- 5- Any information communication between the Tribunal and Parties prior to the hearing shall be conducted through the Registrar Office. The Registrar Office shall take all reasonable measures to ensure that the information is communicated to the receiver.

ARTICLE 64- PROCEDURES DURING THE HEARING

- 1- All three members of the Tribunal shall be present in the hearing. However, if any member is absent the other member attending it may replace him/her or if the other member is not present, either, the hearing shall be put off between seven days after the date of the first hearing.
- 2- The hearing shall be held in public at all times pursuant to item 4.
- 3- Parties may be represented by lawyers or other individuals they explicitly give a written authorization to represent them.
- 4- During the hearing, the Tribunal shall allow for claims and then the Appeal Defendant (or his/her representative) swear to follow the decision of the arbitrator. Then, the Tribunal may ask the parties questions they need to ask. If the Tribunal need to ask:
 - a. About the public body.
 - b. About information containing in the records not communicated by the public body claiming that it is their exception and a subject of the courtcase proceedings ("the records to be debated"), and
 - c. The response to questions may reveal information containing in the records to be debated.

The Tribunal may close hearings for all individuals, except the public body and the representative of the public body, but only for the most necessary period to be implemented to enable the public body to respond to those questions. Then, the Tribunal shall re-open the hearing.

- 5- Parties have the rights to inspect proofs and evidence presented to the Tribunal, except the records to be debated. Parties have the rights to examine witnesses testifying in the tribunal. Nonetheless, parties are not required to answer questions that disclose the information records to be debated, except that the Tribunal closes the hearing following the same procedures as the ones provided for in item 4.
- 6- If the request for review involves with the Commissioner's decision made pursuant to article 52 of this Law the Tribunal shall notify the parties in the hearing that the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Chapters 3 and 4 of this law.
- 7- After the hearing, the Tribunal shall recess to consider its decision.

ARTICLE 65- DECISION OF THE TRIBUNAL

- 1- The Tribunal shall make a decision as soon as is reasonably possible, and in any case within 30 days after the hearing.
- 2- The decision shall be made in writing and include:
 - a. Names of the three members.
 - b. Names and addresses of the parties.
 - c. Summary of the proceedings
 - d. Description of facts

- e. Substantiated reasons for making decision, if any and references to provisions of this laws, regulations and policies
 - f. Decisions and orders of the Tribunal
 - g. The date on which the decision was made
 - h. Comments of disagreement, if any
 - i. Signature of each member.
- 3- Once the Tribunal has made its decision it shall give notice to the parties and invite them to the Tribunal to read the decision.
 - 4- Only one of the Tribunal's members shall be asked to be present while the decision is being read. This very member shall read the decision and reasons to the parties. The member shall also read the disagreement. Then, the member shall hand out a copy stating the accuracy of the decision (including reasons and disagreement) to each party.
 - 5- If any party does not attend to read the decision the Registrar Office shall send that party a copy of the decision according to the address appearing on the request or response.

ARTICLE 66- APPEALS

- 1- Parties may lodge an appeal against the Tribunal's decision with the Supreme Court within 28 days after the date of decision.
- 2- Appeals may be made for one or more reasons out of the following reasons:
 - a. The Tribunal has points that it should not follow procedures under this law or any Prakas.
 - b. The Tribunal decides a decision using powers outside this law.

ARTICLE 67- ENFORCEMENT

Upon expiry of the 28-day period for appeal under article 66, the Tribunal's decision shall become obligatory and enforced immediately.

Upon expiry of the 28-day period for appeal, if the Tribunal's decision is not enforced, the Tribunal may certify that in writing to the Supreme Court, which shall issue an order for respect and execution of the decision by a necessary means, including a fine up to 20 million Riels on the public body and/or officers of that body.

CHAPTER 9

PROTECTION OF WHISTLEBLOWERS

ARTICLE 68- WHISTLEBLOWERS

- 1- No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.
- 2- For purposes of item 1, wrongdoing includes the commitment of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body

ARTICLE 69- OTHER PROTECTION

In case a record is provided and this law requires communicating information or that the Minister or Information Officer issue an order for communicating information with a sincere belief that the law requires the information to be communicated:

- 1- No legal action for defamation, libel slander, breach of confidentiality or violation of copyrights against the government, public body, Minister, Information Officer or any official for reasons of giving access or revealing records and
- 2- No legal action for defamation, libel slander, breach of confidentiality in relation to publication related to or resulting from communicating a record against the writers or

other individuals on the grounds that the writers and individuals provided the documents for the agency or Minister.

CHAPTER 10 CRIMINAL RESPONSIBILITIES

ARTICLE 70- GOODFAITH DISCLOSURE

No one shall be subject to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Law, as long as they acted reasonably and in good faith. Especially, no one who provides records as requested shall be subject to civil or criminal action for their good faith performance.

ARTICLE 71- CRIMINAL OFFENSES

1. It is a criminal offence to willfully:
 - a. obstruct access to any record contrary to Chapter 3 of this Law
 - b. obstruct the performance by a public body of a duty under Chapter 3 of this Law
 - c. interfere with the work of the Commissioner or the work of the Commissioner's Office
 - d. destroy records without lawful authority, except it is involved with the National Archives.
 - e. In spite of (d) destruction of documents containing information related to the latest request for information pursuant to Chapter 3 or containing information that (can be reasonably seen in advance to be) (likely) to be subject of a request for information.
2. Anyone who commits an offence under item 1 shall be liable on summary conviction to a fine not exceeding 10 million riels and/or to imprisonment for a period not exceeding two years.

CHAPTER 11 COMPENSATION

ARTICLE 72- COMPENSATION OF THE PUBLIC BODY

- 1- If a binding decision made by the Commissioner, the Tribunal or Supreme Court ordering the public body to disclose records and it is rejected by that public body in its first response to the request, the person requesting the information and acting as a party in the case proceedings may claim for compensation for damages incurred as a result of the **public body's failure to disclose records at the first request.**
- 2- The damages claim may be made only if no order is issued by the Commissioner, the Tribunal or Supreme Court.
- 3- The damages claim may be lodged with a provincial/city court and follow normal procedures of the court thereof.
- 4- The claimant shall demonstrate his/her losses in cash. The losses include: fees for counselor, loss of income, costs of travels to attend the hearing and loss of benefit and opportunity he/she might have had if he/she had received the information. The cash amount of loss of benefits or opportunity may be estimated, but the loss in the estimated amount of money shall be based on reliable evidence.

CHAPTER 12 CORRECTION OF PERSONAL INFORMATION

ARTICLE 73- REQUEST FOR CORRECTION

- 1- In case an individual complains that the public body's records released to him/her, whether or not pursuant provided for under this law, and with the following characteristics:
 - a. Incomplete, out-of-date or misleading
 - b. Have been used, are being used or available for the public body to use for administrative purpose,

Such individual may make a request to the public body for correction of those information records it has held.

- 2- The request for correction shall:
 - a. Be made in writing and
 - b. Be made as soon as possible by clearly stating:
 - The record being requested for correction and
 - The information claimed to be incomplete, inaccurate, out-of-date or misleading and
 - Whether the information being requested for correction is incomplete, inaccurate, out-of-date or misleading and
 - The reasons given by the requestor for this request and
 - The correction that requestor has sought
 - c. State the contact address that can be used to send the notice to the requestor and
 - d. Be sent via mail or delivered by hands to the public body the requestor believes has held the records.
- 3- Any request received by a public body shall be assigned to the Information Officers of such public body within two days of the receipt of the request.

ARTICLE 74- INFORMATION OFFICERS MAY CORRECT

- 1- In a case where the information officer of a public body that receives a request for information finds:
 - a. The personal records containing information relevant to the request are available in the body's files.
 - b. The information is incomplete, inaccurate, out-of-date or misleading.
 - c. The information was used or is being used or the public body or another public body can use for the administrative purpose.
- 2- Then, the information officer shall give a written notice to the requestor to inform him/her about the corrections.

ARTICLE 75- FAILURE TO ENFORCE THE DECISION

- 1- After carrying out relevant searches, Information Officer of the public body receiving the request is of the opinion that the public body does not hold the records stated in the request, the Information Officer shall:
 - a. If he knows that another body holds such records, refer the request to that body or
 - b. Give the requestor a written notice that the public body does not have such records and therefore cannot make corrections.
- 2- If the Information Officer of a public body that receives the request is of the opinion that:
 - a. The information containing in the records is incomplete, inaccurate, out-of-date or misleading.
 - b. The information containing in the records was not used or is not being used or is not available for that public body or another public body

He/she may decide not to amend the records. In this case, the Information Officer shall not attach the request to the records and give the requestor a written notice that no amendment has been made on the records, but the request was well-recorded.

ARTICLE 76- TIMING FOR DECISION AND NOTICE

All decisions and notices in this section are required to be made as soon as reasonably possible, and in any case within 30 days after the receipt of the request.

CHAPTER 13 OTHER PROVISIONS

ARTICLE 77- MINISTERIAL REGULATIONS

- 1- The Minister may, by notice in the *Royal Gazette* and after consultation and agreement with the Commissioner, issue a ministerial order regarding:
 - a. additional forms of communication of information under article 21

- b. training of officials and the Information Officer under article 16
 - c. Fees for communication of information allowed under this law
 - d. reports to the Commissioner
 - e. any notice required by this Law or
 - f. Any administrative or procedural matter necessary to give effect to this Act.
- 2- Ministerial regulations under item 1 must, before publication in the Royal Gazette, be laid before the parliament.

ARTICLE 78- SERVICE

In the case where documents or records or notices required to be sent or delivered to any person under this law the person or party that is required to send or deliver documents, records or notices shall be able to ensure that services or delivery are carried out. The acceptable methods for services or delivery of documents, records or notices include:

- a. Mailing a copy via fax and maintaining a copy acknowledging the receipt
- b. Sending through a messenger and maintaining the receipt thereof
- c. Delivery by hands and maintaining the receipt thereof

ARTICLE 79- MAINTAINENCE OF RECORDS OF DOCUMENTS RELATED TO FREEDOM OF INFORMATION (FOI)

Records of all information requests shall be maintained by the Information Officer of a public body. For the purpose of Chapter, records include:

- a. Copies of requests
- b. Copies of responses
- c. Written records of investigations carried out and dates of those investigations
- d. Copies of receipts for payments of service fees made by the information requestors if applicable
- e. Copies of confirmation letters acknowledging the receipts via fax, confirmation via emails or the acknowledgement of the receipt of the records.

FEE TABLE 1- SERVICE FEES

- 1- The fees for communication of information under article 24 for information in writing and non-electronic forms are as follows:
 - a. Less than 10 pages – free of charge
 - b. 10-20 pages – 4,000 Riels
 - c. 21-100 pages – 10,000 Riels
 - d. 100-500 pages – 20,000 Riels
 - e. 500-1000 pages – 40,000 Riels
 - f. Over 1000 pages – not exceeding 60,000 Riels
- 2- Fee for communication of information under article 20 for information in the electronic form and the requestor asks to be communicated in the electronic form for each complete record disclosed in the form of electronic (whether via email, in PDF file) or disc or in other forms of electronic – 2000 Riels.
- 3- Fee for communication of information under article 20 for information in the electronic form, but the requestor asks to be communicated in writing is the same as paragraph 1 above.
- 4- No fee is fixed for inspection of the original records or records not in writing form in the Information Communication Office. After inspection, if the requestor wants to make a photocopy of the records the service fee is the same as paragraph (1), (2) and (5) of this table.
- 5- Fee for communication of information not in the form of writing or electronics (such as in the form of sound or video) shall be considered actual costs against the public body that communicates that information, but would not exceed 60,000 Riels.

CHAPTER 14 FINAL PROVISIONS

ARTICLE 80-

Any provisions that are contrary to this Law shall be revoked.

ARTICLE 81-

This law shall be declared urgent.

¹ For the text of the proposed Law on Access to Information, see the Annex to this Memorandum.

² The Lima Principles <http://www.cidh.org/Relatoria/showarticle.asp?artID=158&IID=1>; the Declaration of SOCIUS Peru http://www.britishcouncil.org/az/socius_peru_declaration.pdf; the Johannesburg Principles on National Security Freedom of Expression and Access to Information <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>; Ten Principles on the Right to Know http://portal.unesco.org/ci/en/ev.php-URL_ID=29655&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html; the Declaration of Chapultepec http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm; and the Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information http://www.cartercenter.org/news/pr/ati_declaration.html; ARTICLE 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* ("ARTICLE 19 FOI Principles") (London: June 1999); ARTICLE 19, *A Model Freedom of Information Law* ("ARTICLE 19 Model FOI Law") (London: July 2001).

³ See ARTICLE 19, *Global Right to Information Index* <http://www.article19.org/pdfs/press/rti-index.pdf> (released 21 September 2010).

⁴ See, for example, the consultative workshop on "Access to Information: The Need for Legal Framework and Public Information Disclosure" which was held on Friday 8 April 2011. This brought together UN agencies (UNESCO, UNDP, the OHCHR office in Cambodia). The objective of this workshop was three-fold. It was to: (1) raise awareness and share the importance of Access to Information in contributing to the MDGs in Cambodia; (2) share the findings of the research on the provisions of Access to Information in Cambodian law and policy and (3) carry out a review of the draft policy framework and facilitate discussions on the possible content on the draft law.

⁵ Article 41 of the Cambodia Constitution states: (1) Khmer citizens have freedom of expression, press, publication, and assembly. No one may exercise this right to infringe upon the rights of others, to affect the good traditions of the society, or to violate public law and order and national security; (2) The regime of the media is determined by law.

⁶ UN GA Res 59/1 14 December 1946.

⁷ The only Asian countries to rank below it were Laos, Papua New Guinea, Tajikistan, Kyrgyzstan, Turkmenistan, Uzbekistan, Afghanistan and Myanmar. Transparency International, Corruption Perceptions Index 2010 http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail

⁸ Daniel Adler, "Access to Legal Information in Cambodia: Initial Steps, Future Possibilities" (2005) 2 *The Journal of Information, Law and Technology* (JILT).

⁹ Ibid.

¹⁰ The UN Convention Against Corruption, which entered into force on 14 December 2005, has 151 States parties including many Asian states.

¹¹ In *Claude Reyes et al v Chile*, the court stated that Article 13 of the ACHR “encompasses the right of individuals to receive ... information and the positive obligation of the State to provide it, in such form that the person can have access in order to know the information or receive a motivated answer when for a reason recognised in the Convention, the State may limit the access to it in the particular case.”¹¹ This remains an extremely important decision and showed the Inter-American Court leading the way for other regional human rights courts on the recognition of the right to information. *Claude Reyes et al v Chile* Judgement of the Inter-American Court of Human Rights of 19 September 2006 Series C. At the same time, there were earlier developments recognising the right to information in the region, including the *Inter-American Declaration of Principles on Freedom of Expression*, 108th Regular Session, 19 October 2000, the *Lima Principles*, adopted in Lima, 16 November 2000, the *Declaration of the SOCIUS Peru Access to Information Seminar*, 28 November 2003, as well as the Resolution of the General Assembly of the Organisation of American States AG/RES. 1932 (XXXIII-O/03), of 10 June 2003. In terms of regional standards, the *Model Inter-American Law on Access to Information* which was presented on 29 April 2010 provides an important guide for the implementation of the right to information within the domestic laws of states parties to the ACHR. *Model Inter-American Law on Access to Information*, 29 April 2010 OEA/Ser.g CPI/CAJP-2940/10 Corr.1 presented by the Group of Experts on Access to Information coordinated by the Department of International Law of the Secretariat for Legal Affairs, pursuant to General Assembly Resolution AG/RES. 2514 (XXXIX-O/09).

¹² *Társaság a Szabadságjogokért v. Hungary*, Application no. 37374/05 14 April 2009.

¹³ As of 9 May 2011, the Convention on Access to Official Documents has been ratified by 3 states (Norway, Sweden and Hungary). It requires 10 ratifications to come into legal effect.

¹⁴ Adopted by the eighteenth Assembly of Heads of State and Government in Nairobi, Kenya, 26 June 1981, entered into force 21 October 1986.

¹⁵ Adopted at the 32nd Ordinary Session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia 17 to 23 October 2002. Principle IV on the Freedom of Information states: 1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. 2. The right to information shall be guaranteed by law in accordance with the following principles:

- everyone has the right to access information held by public bodies;
- everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
- no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
- secrecy laws shall be amended as necessary to comply with freedom of information principles.

3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

¹⁶ See Privacy International, *National Freedom of Information Laws, Regulations and Bills 2010* <http://www.privacyinternational.org/foi/foi-laws.jpg>

¹⁷ Law on Access to Administrative Documents, No. 11/02, 2002.

¹⁸ Law No 20.285 on Access to Information published in Official Gazette on 20 August 2008.

¹⁹ The principle of public access to information has been established in Sweden since the 1766 Freedom of Press Act.

²⁰ See Law 47 of 2007 on Access to Information.

²¹ See Act on Disclosure of Information by Public Agencies 1996.

²² See Official Information Act, 1997, BE 2540.

²³ See Law Concerning Access to Information held by Administrative Organs 1999; see also Act on the Protection of Personal Information 2003.

²⁴ See Right to Information Act, 2005

²⁵ See Freedom of Government Information Law, 2005.

²⁶ See Right to Information Act 2064 BS, 2007, and Right to Information Rules, 2065 BS, 2009.

²⁷ See the Openness of Public Information Act of 3 April 2008.

²⁸ See the Right to Information Act 2009.

²⁹ Adopted by the State Council 17 January 2007, effective May 1, 2008

³⁰ World Bank, Information Disclosure Policy, 1 July 2010 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/06/03/000112742_20100603084843/Rendered/PDF/548730Access011y0Statement01Final1.pdf

³¹ See the Public Communications Policy of the Asian Development Bank: Disclosure and Exchange of Information <http://www.adb.org/Documents/Policies/PCP/default.asp?p=disclose> March 2005.

³² June 1999.

³³ Para 2 ARTICLE 19 Model FOI Law.

³⁴ Para 19(5) Right to Information Act, 2005.

³⁵ Section 1, Promotion of Access to Information Act 2000 of South Africa. However, pursuant to section 12, the law does not cover cabinet or its committees, the judicial functions of courts and the judiciary or individual members of parliament.

³⁶ Ibid.

³⁷ International Mechanisms for Promoting Freedom of Expression, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004

<http://www.article19.org/pdfs/igo-documents/three-mandates-dec-2004.pdf> The Mexican federal right to information law contains a reasonable set of specific exceptions to the principle of disclosure, namely in cases where disclosure would: compromise national or public security of defence; impair ongoing negotiations or international relations, harm the country's financial or economic stability; pose a risk to the life, security or health of an individual; or severely prejudice law enforcement, including the prevention or prosecution of crime and the administration of justice, amongst other things. The Transparency and Access to Public Government Information Law of June 2002, Article 13.

³⁸ Section 15.

³⁹ Executive Order 12958, 25 March 2003.

⁴⁰ Official Information Act of Thailand, 1997; Freedom of Information Act of the UK, 2000.

⁴¹ T Mendel, *The Right to Information in Latin America: A Comparative Legal Survey* (UNESCO: 2009) at 168.

⁴² Article 14, UN Convention on Anti-Corruption s 33
http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁴³ Under the Indian Right to Information Act, “no such fee shall be charged from the persons who are of below poverty line”, Section 7(5) of the Right to Information Act of India.