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ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## TOWARDS BETTER ACCESS TO INFORMATION ON LAND AND EXTRACTIVE INDUSTRY CONCESSIONS IN CAMBODIA

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## ABSTRACT

For almost three decades, huge tracts of Cambodian land have been exploited through large-scale land concessions, transforming forest and traditional agricultural areas into large, export-oriented agro-industrial enterprises. Most of these concessions were awarded in opaque circumstances, leading to land tenure and social crises involving thousands of displaced people. There has also been a diversion of wealth as a part of these undisclosed concessions, with the benefits of concessions flowing to political and economic elites.

This paper discusses accessibility for the public in Cambodia to information on concessions and the use of land held by public authorities. It also explores the means at their disposal to access such information, both within the current legal framework and from the perspective of anticipated future legislative developments. This accessibility is essential in the era in which the dissemination of information can be instantaneous. Open data initiatives are being developed to provide a real counterweight to public decisions taken against the collective interest.

## KEYWORDS

Access to information, Extractive industry, Land concessions, Land use transparency, Open data

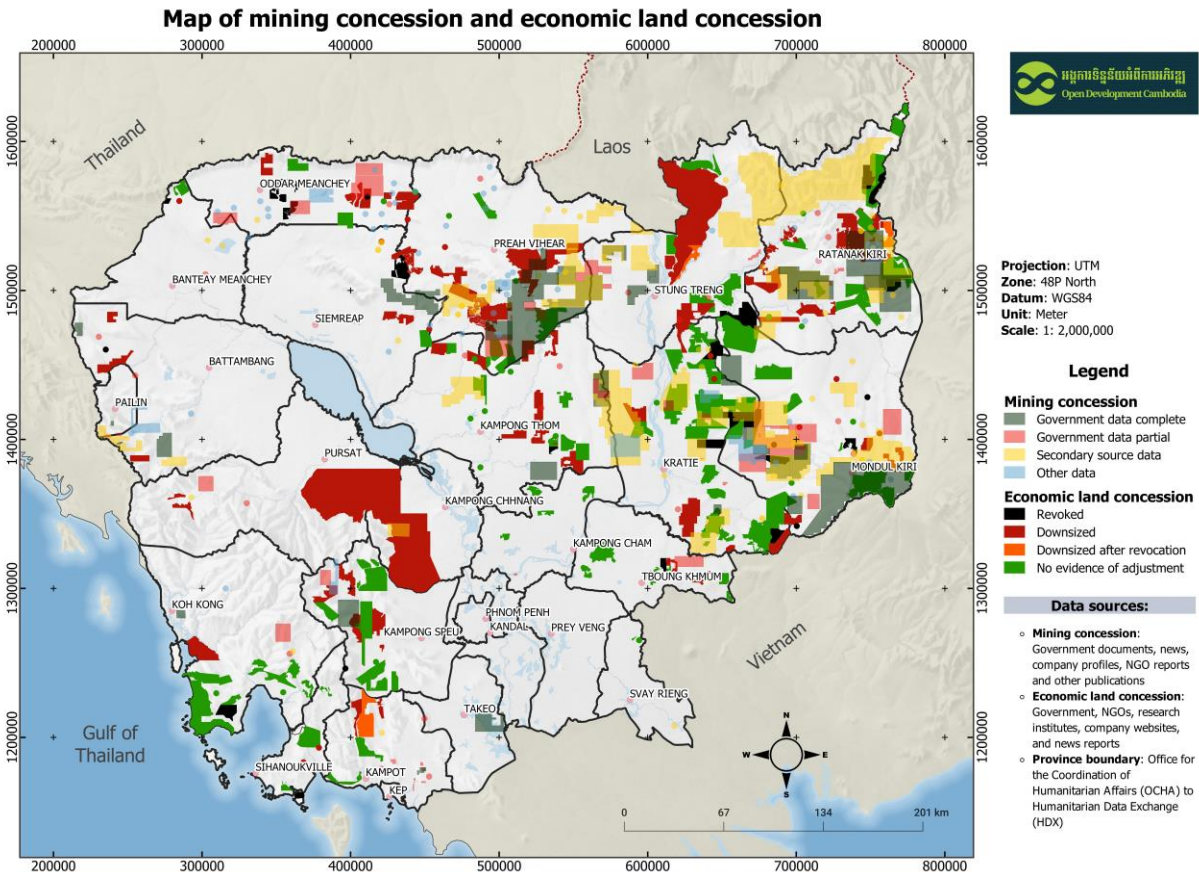


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## INTRODUCTION



*Map of mining concession from 1995 to 2020 and economic land concession from 1996 to 2014 in Cambodia, Open Development Cambodia, [www.opendevdevelopmentcambodia.net](http://www.opendevdevelopmentcambodia.net)*

Since the birth of the Khmer civilization, all land has symbolically belonged to the King, who authorized its occupation by his subjects who farmed it. At the end of the 19th century, France, which colonized Cambodia for almost a century, introduced the concept of private land ownership in order to allow both the appropriation and exchange of resources and the collection of taxes. The French Protectorate also relied on a concessionary system to extract Cambodia's natural resources for export, thereby excluding a part of the Khmer population from accessing the land, especially forests.

This all disappeared in the vortex of the Khmer Rouge regime. All private land ownership was abolished and all documents allowing ownership to be traced were destroyed by the Khmer Rouge. Concessions



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reappeared with the restoration of a democratic regime in 1993, and with the support of the international community. The 1992 Land Law stipulated that all land belongs to the State, while allowing its occupation by citizens. Concessions were seen as the best tenure system for resource management in Cambodia, to restore order in forests and fisheries through transparent awarding of contracts and to generate revenue for reconstruction of the economy of the country. However, given the political context, the land concession system resulted in widespread privatization of state natural resources, with benefits grabbed by the political and military interests to support their struggle for power.

Over the next two decades, political elites granted concessions on huge parts of the national territory to major national and international investors for agro-industrial and extractive activities. These concessions occupy nearly 12% of the surface of the national territory (2015). Public resentment has been engendered by these immoderate grants of land, which have led to the eviction of hundreds of thousands of people, most of them vulnerable farmers. It has also resulted in migrations to cities, other agricultural regions, and across borders to neighboring countries. Land, and especially arable land, has become scarcer, while access to agricultural soil remains essential for the three-fifths of the population that still works in the primary sector and for the 78% of the population still living in rural areas.

The 1990's forest and fisheries concessions failed, and economic land concessions were developed in the early 2000's to pursue the objective of economic growth through large-scale agro-industrial investments. These concessions were again granted through opaque procedures, which do not correspond to the expectations of transparency provided by national laws and by the principles advocated by international organizations. An economic land concession (ELC) is a long-term lease (up to 99 years) that allows a concessionaire to clear land in order to develop industrial-scale agriculture. ELCs can be granted for various activities, including large-scale plantations, raising animals and building factories to process agricultural products. The exponential development of concessions has been heavily criticized by citizens and civil society, as well as the international community, to the point that in 2012, the Prime Minister imposed a moratorium on the granting of new concessions, as well as an audit on existing concessions.

Cambodia remains a country marked by institutionalized corruption, ranking among the lowest in international rankings (162<sup>nd</sup> out of 180 countries according to Transparency International Corruption Perception Index in 2019). Despite the gradual adoption of laws governing the granting of concessions (i.e., the 2001 Land Law and 2005 Sub-decree No.146 on Economic Land Concessions), and providing the



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obligation to conduct Environmental Impact Assessment, including public participation (1996 Environment Law), in practice, access to information on these public contracts is difficult or non-existent. The Royal Government of Cambodia jealously seeks to protect its control over the national economy, while cultivating a culture of secrecy around public decisions, in particular the awarding of some concessions that enhance the wealth of Cambodian tycoons. In addition, the concessionaires have also sometimes used informal negotiation to obtain contracts and land tenure authorizations without having to comply with the main consultation and public participation procedures.

Thus, access to even the most basic information about ELCs is a challenge. The websites of the Ministries of Environment sporadically publish contract award decrees, revealing the name of the concessionaire and the area concerned, but these publications are often incomplete and outdated.

The most comprehensive sources of information come from online platforms operated by civil society organizations (CSOs). CSOs have collected and aggregated the data from both official publications and informal sources. As such, Open Development Cambodia (ODC) has collected data on almost all ELCs, based on concession contracts and award decrees, making it possible to inform the public with geospatial representation of the land use by the concessions and to briefly identify the concessionaires (name of the company, nationality of the company, duration of the contract, main products). However, despite its very general nature, the dissemination of this information to the public has led to adverse reactions from public authorities and concessionaires, who consider it a violation of their intellectual property and business secrecy rights.

In Cambodia the law on access to information, expected for a nearly a decade, should soon finally be adopted. In this context, this paper intends to discuss the Cambodian legal status of information related to ELCs and extractive industries concessions. This paper aims to demonstrate the need for disclosure to the public of all concession-related non-confidential information from the awarding procedure to the monitoring during the implementation the contracts and the condition for its dissemination to the Cambodian people. The current legal framework allows us to question the validity of claims about the private and protected nature of this information under intellectual property regulations, as claimed by the public contractors and authorities. However, in practice there is no mechanism to force the public authorities to provide the public with the information.



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From the viewpoint of a Cambodian civil society organization advocating for open data, opening access to information on public contracts is needed to ensure that everyone's rights are respected and to know how the government manages the distribution of public resources and land. In view of the drafts of the future law on access to information, this paper emphasizes the need to raise the awareness of Cambodian citizens so that they can grasp the new legal mechanisms to come in order to help society evolve towards open government and open contracting.

- The adoption of the new Law on Access to Information, a step forward for the rights of Cambodian citizens

The adoption of this law, now under discussion by the Cambodian Government and Parliament, which has been awaited for almost a decade, should create a new legal framework and a new relationship between Cambodia's public institutions and its citizens. Indeed, to this day, access to information in Cambodia is complex and expensive. The vast majority of documents are still produced, exchanged and stored in physical format. They are only recognized as authentic by the authorities and citizens alike if they bear the recognized seals of authentication, which are in current usage as unwritten rules (e.g., the presence of seals and signatures on an original paper copy is required). Generally speaking, access to public information was not promoted in a society where it is not culturally appropriate to hold politicians or the administration accountable during the exercise of public responsibilities.

- o The culture of secrecy of Cambodian public authorities

Even a brief glance at all the relevant e-government portals quickly shows that very little information is directly available online. Yet Cambodian law provides for cases where public participation or information is required, for example in the case of preliminary studies for large land concessions. The purpose is to understand and anticipate the impact of the project on the environment, the population and the local economy. The final Environmental Impact Assessment (EIA) reports about proposed concessions are not widely disseminated to the public. In fact, there are available EIA reports but having no access to these reports means that they remain, in practice, invisible at the national and local level.



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With the purpose of supporting the movement towards public disclosure of EIAs by the government, ODC launched the Environmental Impact Assessment profile page in a workshop on "Promoting Environmental Impact Assessment (EIA) and Sustainable Development in Cambodia" on 26 February 2019. The content and functionality of ODC's EIA page contains tabular information, digitized EIA reports, and map visualization. Each EIA report is accompanied by summary information, which makes the content more accessible and useful to a wide range of actors spanning the general public, government, NGOs, businesses, academia and the media. However, this initiative remains limited given the lack of means at the disposal of organizations such as ODC or members of civil society to compel government administrators to further disseminate information that is of crucial importance since its processing, storage and interpretation are of general interest.

Another example of this lack of transparency despite the existence of a regulatory framework encouraging transparency can be seen in Cambodian public procurement and contract law. It should be pointed out that the concept of transparency and accountability is enshrined in national law, since in the 1995 and 2012 Laws on Public Procurement, transparency is one of the main principles put forward in the text and information is part of the rules established by law. The legal articulation of these two concepts originated based on the strong influence of international organizations and their experts, in particular the World Bank and the Asian Development Bank, in order to curb the significant corruption that still strongly afflicts procedures for awarding public contracts in Cambodia.

Thus, official guidance on public procurement, and more recently on the awarding of public-private partnerships, remind public authorities and their co-contractors of the importance of these principles and the need to implement various information sharing procedures during the awarding and execution of these contracts. Thus, as regards public contracts, authorities initiating bidding for such contracts must make public both the opportunity at the time of its creation and annually if it has not yet been awarded. The public notice requirements vary according to the characteristics of the contract, i.e. whether it is open internationally (International Competitive Bidding Goods and Works, all consulting services, etc.), nationally above the threshold (above USD 1 million) or nationally below these thresholds. Thus, in the first case, the public procurement opportunity will have to be announced both at national and international level through the portals of various international organizations such as UN Development Business (UNDB online) and World Bank's and ADB's website -- [www.adb.org](http://www.adb.org)-- as well as in one English language and



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one Khmer language newspaper. For large national public contracts, they must be advertised in at least one Khmer language newspaper of national circulation and for the third category in one Khmer language newspaper national or provincial circulation. Within 14 calendar days after the necessary approvals for the award of contracts have been received, the project shall post the Summary of Evaluation on the Project and/or the awarding public authority's website (when the project or awarding public body has one) and in a prominent public place within the public authority. In addition to compiling and publishing the results of each evaluation the project shall also compile a Register of Contracts, i.e. a list of all contracts placed since the start of the project.

At the end of each quarter the project shall issue a notice to the general public through a Khmer language newspaper of national circulation. It is required that the notice invite any interested party to review and inspect all Summaries of Evaluation and Register of Contracts published by the project.

Despite the establishment of such notice requirements, it has not yet been possible to prove that they have had a real impact in reducing corruption and improving public information. Indeed, Cambodia continues to occupy the bottom positions in international rankings of countries most affected by corruption and all contracts awarded by public authorities are particularly exposed to the risk of corruption. Moreover, as early as 2007, the inability of public institutions charged with acting as gatekeepers, such as the Department of Public Works of the Ministry of Public Works and Transport and the National Audit Authority, to fulfil their role effectively has been raised, and there is no indication that this situation has changed significantly in the last decade.

Thus, the handling of information even when a specific framework, explained by guidelines compiled in a manual, is in place is symptomatic of the culture of secrecy prevalent within the Cambodian administration.

- The new regime of access to information favors the exercise by citizens of their constitutional rights.

As proclaimed in article 35 of the 1993 Constitution of the Kingdom of Cambodia:

“Khmer citizens of both sexes have the right to participate actively in the political, economic, social and cultural life of the nation. All requests from citizens shall be given full consideration and resolution by the State's organizations.”





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The new Law on Access to Information should be the tool to ensure the implementation of this right, enshrined in Cambodia's most fundamental legal text. It does so to the extent that it ensures the effectiveness of requests for information made to the Cambodian administration since, on the one hand, the Law has a universal scope and, on the other hand, it is accompanied by sanctions (hereby called “Penalties”).

Thus, article 3 of this law provides that: “(t)his law is applicable to all pieces of information, which shall be provided by public institutions both at national administration and subnational administration across the Kingdom of Cambodia, with the exception of confidential information as stipulated in the prohibition provisions.” Similarly, the final provisions of the Law state that:

“Article 37 –

This law shall prevail in case of the provision of other laws contradict any provision of this law.

Article 38 –

Any provisions that contradict this law shall be deemed as null and void.”

Due to the existence of complex procedural rules specific to public procurement, access to information has ultimately depended on the willingness and, above all, the knowledge and training of the staff of the contracting public authority to ensure that the information is properly made available to the public in accordance with the formal requirements imposed by the guidelines. By contrast, the Law on Access to Information allows for more flexible communication between the administration and the citizens in the form of a direct response through the communication of a specific document that the administration already holds in one form or another, since Article 4 of the Law states that “**Information** refers to all pieces and all formats of official documents under the possession of the public institutions”. This represents a major transformation of Cambodian rule of law by reversing the terms of information access for the Cambodian citizen. It allows him to move from a passive role as a recipient of the information that the administration occasionally discloses to the public on a specific subject to an active role as a requester of a specific piece of information on all public matters. This was not previously possible within the legal framework, but only through political activism or a game of interpersonal connections allowing the leakage of information from civil servants working in the administration who agreed to communicate certain documents to activists, members of civil society or simply individuals, which could lead to further dissemination through private or semi-public channels such as social media.



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At the same time, an additional provision of the new access to information law regarding sanctions for non-compliance is, at least in theory, a guarantee of the effectiveness of these new terms of access to information. Classically, ineffectiveness of law refers to the idea that it is not applied by the authorities responsible for its control and/or by the judge who has jurisdiction to sanction violations of it. The effectiveness of a norm is therefore based either on the conformity of the behavior followed by its addressees or by the authorities responsible for its implementation, or on the sanction pronounced against those who do not respect the rule. This is how legal dictionaries containing this term define effectiveness as the “character of a rule of law that is actually applied”.

The norm is said to be observed - and therefore, according to this reasoning, effective - either when its recipients comply with it, i.e. when they fulfil the obligation to which the rule subjects them, or when the authorities responsible for its implementation, including the courts, enforce it, in other words when they monitor and punish its violations. Thus, notwithstanding the observation shared by national associations and international organizations of shortcomings in the Cambodian judicial system, particularly in disputes related to the interests of political and economic elites, in the case of requests for communication of information, the judge may hear and decide on refusals to communicate. Even if the judicial decision is ultimately unfavourable, the citizen will be able to better understand the reasons for the refusal and to establish a more precise case-law framework. Moreover, the Act provides for disciplinary and criminal penalties for civil servants who fail to comply with the provisions of the Law, in its articles 28 to 35. It is important to note that heavy penalties are established for the improper communication of confidential public information. While this can be easily justified for information that is a State secret, i.e. information relating to the conduct of its sovereign activities (military, diplomatic and monetary), there remains a grey area in the characterization of what falls within the category of confidential public information. This difficulty of appreciation entails a significant risk for public officials and citizens, since, according to the definition given for certain types of information, heavy criminal penalties may be imposed. As the Law on Access to Information has not clarified this, contracts of public authorities dealing with public land and the various documents relating to it are part of this set of documents whose status is to be discussed.

- The need for access to information on Cambodian land concession contracts
  - o The application of the Law on Access to Information to Land Concessions



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As set out in the first articles of the Law, the principle is that all information held by the national and local administration must be disclosed at the request of the citizen without any discrimination, subject to the exceptions provided for in the same Law. Thus, in order to demonstrate that a document is discloseable, it must both meet the definition and not fall under the exceptions that prevent requests for disclosure.

Because of their crucial importance in Cambodia due to their weight in the national economy, the absolute surface area of the national territory devoted to them and the lack of transparency in their awarding and management, economic land concession contracts and forest concessions must be recognized in the field of public information under the Law on Access to Information, i.e. compelling the administration to widely disseminate information about them. This is necessary because they have a decisive impact on the environment and the livelihood of large population groups. Better knowledge of the documents should lead to improved public participation, as postulated by the International Open Data Charter: “Open data can empower governments, citizens, and civil society and private sector organizations to work toward better outcomes for public services in areas such as health, education, public safety, environmental protection, human rights, and natural disasters”.

This need will not necessarily be met even though it is now supported by law. Indeed, the public authorities that delegate and oversee the exploitation of large parts of the national territory to private individuals, often foreigners, through public land contracts, seem generally unaware of these principles of transparency and public information reflected in the Access to Information Law. Fortunately, because land concessions are governed by contract, the various laws and decrees organizing these contracts make it possible to settle without any difficulty their legal nature, making a compelling case for disclosure.

A concession is a contract by which the administration has recourse to private sector companies, usually investors. There are at least three types of concessions. The first type is instituted by the Land Law of 2001 under the name of land concession. The Land Law creates two sub-categories of land concessions: social land concessions and economic land concessions. A social land concession is a contract between the administration and an individual representing a poor family to whom the State offers land for housing and family culture. The State gives the land title to the family on a permanent basis if the family fulfils the conditions of the contract. An economic land concession is a contract between the administration and a commercial enterprise to which the State rents a plot of land for the development of any agro-industrial



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plantation in order to create jobs for the local population, but especially for the production of crops for exportation such as rubber or sugar cane.

The second type of concession is established by the Forest Law under the name of forest concession. It allows a private company to harvest timber from a particular forest area and, in return, to fulfil certain obligations imposed by the forest administration.

The third type of concession is one created by the 2008 Law on Concessions, which designates a contract between the administration and a commercial company authorised to develop, on behalf of the administration, infrastructure on public lands for public use. While the law provides for ten different forms of concession, the Build Operate Transfer (BOT) concession appears to be the most commonly used contract.

Thus, in all cases, these contracts are carried out by public authorities who generate documents that can be disclosed relating to various operations, from the signing of the contract to its periodic evaluation and, ultimately, its termination. Since concession holders depend on public authorities during the course of their regular administrative activities, this is undoubtedly information that can be requested and obtained by citizens.

In order to promote the idea of free access to this information, it is important to ask what legal obstacles the State and local administrations could raise in order to qualify this information as confidential and therefore exempt from the obligations of free dissemination or even disclosure on request. Since the Law on Access to Information replaces any other previously applicable law in this arena, the source of any such prohibition must necessarily be found in the exceptions provided for in the text of that new law.

The new law opens access to "information" to all Cambodian citizens, i.e., all information held by public authorities, including government bodies such as ministries and their administrations, as well as decentralized bodies such as provincial and local governments. Thus, by definition, the principle of the law is that public authorities are required to provide public information requested by the citizen and may refuse to do so only by way of exception in the limited cases provided for by law.



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These various exceptions include the following types of information:

## “Article 20 –

Public institutions may refuse to provide information to the public if disclosure of the information would cause damage to national defense and security matters, relations with foreign countries, national economy and finance, and internal meetings of public institutions, appointment and examination processes, would constitute a violation of privacy of an individual or obstruct law enforcement officers in the course of their duty, namely as follows:

1. Information harmful to the national security and defense matters:
  - a. National strategic plans pertaining to the national security and defense matters, plans to safeguard the territory against foreign threats, the importation, production, storage and use all kinds of weapons systems;
  - b. Information concerning strategy, intelligence, operation, tactic and technique related to the operation of national defense;
  - c. Figures, deployment of strength and national defense capacity, implementation of national defense systems, weapons development plans and military equipment for national defense;
  - d. Images data and maps relating to military base and/or military installation situation and condition, weapons production or storage locations, and military science research buildings;
  - e. Secret military data or information on national defense capacity of foreign countries that can endanger the sovereignty of the Kingdom of Cambodia;
  - f. Data related to military cooperation with other countries that has been agreed as state secret;
  - g. State encoding system and/or state intelligence system.
2. Information causing damage to foreign or international relations:
  - a. Secret position, bargaining power, and strategy that will be and has been taken by the state in relation with foreign countries or the international community;
  - b. Secret diplomatic communication or correspondence with foreign countries or the international community;
  - c. All communication and encoding systems used for connecting with foreign countries or the international community;
  - d. Protection and security of Cambodian military base and strategic infrastructure overseas.



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3. Information causing harm to the national economy and finance:
  - a. Preliminary plans of sale or purchase of national or foreign currency, shares and vital assets of the state;
  - b. Preliminary plans of exchange rate adjustments of foreign currency, government loans, tax reform, tariff, or state revenues;
  - c. Preliminary plans of sales or purchases of state property or foreign investment;
  - d. Secret statements, facts, letters, figures, or contents of accounting or administrative documents as set forth in the law on Banking and Financial Institutions.
  - e. Confidential data or confidential information that deprives the state of economic benefits
4. Any disclosed information prejudicing the criminal investigation process, law enforcement and the court confidentiality limited to, when applicable:
  - a. Obstructing law enforcement officers in investigating a criminal offense;
  - b. Revealing the identity of protected informants, witnesses, and/or victims having knowledge of a criminal act;
  - c. Damaging equipment, facilities, and/or infrastructures of law enforcement agencies;
  - d. Endangering the security and/or lives of law enforcement officers or their families;
  - e. Prejudicing criminal investigations related to the prevention of transnational crimes.
5. Information constituting a violation of privacy of a private person:
  - a. Medical history and psycho-physical therapy of a private person;
  - b. Information pertaining to evaluation in relation to capacity, intelligence, educational or psychological records of a private person;
  - c. Statutory and testamentary successions;
  - d. Information revealing the identity or name of either party in a civil case in relation to fatherhood, motherhood, marriage, divorce or parental authority;
  - e. Information revealing the identity of minor in a civil case or accident, and other criminal cases;
  - f. Information revealing the identity of victim in rape case;
  - g. Information about financial situation, property, income, and bank accounts of a private person unless otherwise stipulated by laws;
  - h. Information concerning secrecy in intellectual property and trade secret;"



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Thus, in the light of the specific nature of exceptions set out in the law, it is clear that documents related to acts and information relating to the awarding and performance of public contracts are not excluded. A citizen should be able, as soon as this law is adopted, to freely request public information related to public procurement operations, with the limited exception of documents related to the internal deliberations of the contracting bodies. It is important that this exception not be interpreted too broadly. In a context where major investments and major infrastructure projects often have significant impacts on the population (e.g., expropriation, population migration, land disputes), access to concession-related information is necessary to ensure that citizens have information needed to meet all the elements required for the establishment of a case before a court or an ombudsman. Thus, one of the most significant public benefits of the new Access to Information Law is that all contracts relating to large land holdings established under the 2001 Land Act, including Economic Land Concessions (ELCs) set up under terms specified by Sub-Decree No. 146 on economic land concessions, as well as concession contracts drawn up within the legal framework established by the 2008 Law on Concessions, will now be subject to these new principles of transparency and be accessible for the first time by the public.

With regard to the exceptions laid down in the law that may be used to limit this new transparency, exceptions for national security, defense, international relations, legal proceedings and even national economy and finance should be dismissed as irrelevant or of limited applicability for land concession document disclosure. Indeed, except in the very specific cases of a contract concluded by the State for the construction or maintenance of sensitive sites such as military bases, prisons or related applications, the administration's contracts do not fall within the scope of the State's sovereign activities and should therefore not be classified as such.

Finally, the only category of exception that can arguably be invoked by the administration to justify a refusal to disclose concession contract documents is that this would be a violation of privacy and the confidentiality of certain business information. Indeed, this echoes the arguments of the administration and its co-contracting companies, which until now have refused to communicate any information on the grounds of business secrecy and the protection of their intellectual property. This privacy protection in the new law has eight sub-categories, and most of these clearly refer to a natural person and the protection of his personal data and privacy. The eighth category refers to the protection of intellectual property and business secrecy, and the question is now broadly this exception will be applying to concession-related documents that



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otherwise must be disclosed on demand under the new access to information law. In addition, the sixth category of exceptions provided for in the same law treats internal meetings and deliberations of public persons as confidential, so there is no guarantee that citizens can know precisely the considerations that allowed the administration to choose its co-contractor from among all the candidates.

In order to settle this issue of scope of business privacy, at least legally, it is necessary to refer to the framework of intellectual property protection in Cambodia. Cambodia has no specific law related to trade secret and undisclosed information, though a draft is under consideration. Nevertheless, provisions in a number of laws impose duties of confidentiality and penalties for divulgence of commercial secrets. The government on the official website of the Department of Intellectual Property of the Ministry of Commerce of Cambodia defines trade secrets as: « any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. The subject matter of trade secrets is usually defined in broad terms and includes sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes. While a final determination of what information constitutes a trade secret will depend on the circumstances of each individual case, clearly unfair practices in respect of secret information include industrial or commercial espionage, breach of contract and breach of confidence. »

It is possible to see a link between this definition given by the Ministry and French law. As a reminder, Cambodian law, although being influenced by the Common Law tradition, is largely inspired by French law and presents great similarities with it. Since the law no 2018-670 of July 30, 2018 related to the protection of business secrecy, which transposed into French domestic law the European Union directive no 2016-943 of June 8, 2016 related to the protection of know-how and undisclosed commercial information (trade secrets) against unlawful obtaining, use and disclosure.

Business secrecy covers "know-how, commercial information and technological information where there is both a legitimate interest in keeping it confidential and a legitimate expectation of protection of that confidentiality. Furthermore, such know-how or information should have actual or potential commercial value. »





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Thus, the rule on business secrecy in Cambodia can be similarly interpreted as tending to recognize as confidential only information with a commercial value, whether in terms of the commercial strategy of the enterprise or the secrecy of its technical processes, or any other information that would break the normal conditions of competition between private enterprises.

Thus, business secrecy in no way prohibits the dissemination and communication of a contract concluded by the administration as well as the related documents which may also directly concern the public, such as environmental assessments or other studies carried out upstream of the project. It is critical that this narrow exception be followed in order to advance the overall purpose of the Law on Access to Information, as described in its second Article: « To encourage public institutions to fulfill their duties with good quality, effectiveness, transparency, and accountability; To reduce the confidential information as much as possible.»

Another legal obstacle that may be put forward by the Cambodian State regarding economic land concessions, which remain the most important in the economy and in the occupied surface of the national territory, is that in this context, the State has a legal identity analogous to a private person. According to the Land Law of 2001, Article 58, these concessions are to be granted only on land that is privately owned by the State. In fact, Cambodian law, once again due to French legal influence, includes in its national law the distinction between public property of the State, which is the totality of the surfaces assigned to public use or to a public service, the totality of the areas of archaeological, historical and religious interest, and natural areas that have not been declassified. Declassified areas are private property of the State which may then be exchanged, sold, leased or transferred within the framework of the regime provided for by the texts. Thus, by declassifying land, the State acquires the prerogatives of a private person and can be seen as behaving like a private person in the management of that land. Thus, it would not be behaving as a public authority but as a private person freely entering into contracts with persons other than itself. Thus, the information in such a contract could be protected, for example, by the rules on privacy, as provided for in the seventh sub-category of exceptions of the fifth category of exceptions on the protection of privacy (« Information about financial situation, property, income, and bank accounts of a private person unless otherwise stipulated by laws »).

However, this type of reasoning is not conclusive. On the one hand, the Law on Access to Information explicitly designates the scope of the law as extending to all documents held by the administration, in its



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Article 4, without prejudice to the way in which the administration may consider itself to have behaved in the making of these documents. Thus, as long as the administration holds a document and it is not confidential, it must be communicated. Moreover, a broad interpretation of the “privacy” of the state is at odds with recent direction in French law. French law no. 2016-1321 of 7 October 2016 for a Digital Republic marked a new stage in the opening up of public data in France. It created an obligation to publish certain public information online free of charge and also enshrined the principle of free re-use of public data. In addition, it adds the rule that documents related to operations on the private property belonging to public persons may be communicated to citizens in the same way as administrative documents related to the public properties or to other activities of the administration. The addition of this new rule did not give rise to any debate among French lawmakers and was justified by the opinion of the Committee on Access to Administrative Documents (CAAD). The CAAD is the French independent public authority settling the dispute between the citizen and the administration related to the request for disclosure of an administrative document. The CAAD considered on this matter that the communication of such information was of general interest to the citizens. Thus, in the same way that the principles of the law on access to information, in its Article 2, sets out the principle of freedom of information to "ensure public participations in political, economic, social, and cultural affairs of the nation" on the one hand and to reduce the number of confidential information on the other hand, then it is necessary for us to conclude that the distinction in Cambodian law between public property and private property of the State is operative only on the capacity of the administration to dispose of the said property and not on the communication of the documents that concern it. Such an interpretation will guard against over-broad application of privacy exceptions to information access.

In conclusion, the law on access to information, when finally adopted, should bring about a major change in the way the administration discloses information relating to its land concessions, since it will no longer be able to hide behind so-called legal arguments for non-disclosure of documents that should be made public. Only political will that goes against the explicit objectives of the new access to information law could still block the dissemination of this information.

- The post-adoption role of the stakeholders

The Law on Access to Information represents a significant step forward for the rights of Cambodian citizens. It can be a major opportunity to open up the State and all administrations, in order to ensure greater



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transparency and accountability of the actions of civil servants and the administration in general. It could be one of the essential elements in reducing the corruption that undermines the country's development by preventing those who generate it from hiding in the "traditional" silence of the administration.

However, this opportunity could also be a missed one. Indeed, the profound transformation of practices and the generalization of openness presupposes that, as soon as it is adopted, this law should be known not only by the civil servants of the administration but also by the citizens so that they can seize it and appropriate it. In this way, this Law will be truly applied to provide public access to information.

The removal of the barrier to access to primary information is an important step towards enabling Cambodian citizens and civil society to become fully involved in the political and economic life of the country, as provided for in the Constitution. Cambodians are undergoing a galloping digital revolution, and a large part of the population is equipped with mobile phones, has access to the Internet and makes extensive use of social networks. As a result, information can be disseminated very quickly among the population thanks to the penetration of digital technology. Experience has shown that when Cambodian citizens are widely informed about a problem, they do not hesitate to make their dissatisfaction known to the Royal Government of Cambodia. The Royal Government of Cambodia, mindful of its political legitimacy, reacts favorably when faced with a fait accompli. The most notable example is the publication by ODC of its databases and cartographic representations of ELC data showing that a number of ELCs exceeded the legal limit of 10,000 hectares. It is still used by researchers and civil society activists as an information base to alert on the country's transformations. This is how the Prime Minister decided to declare a moratorium on the allocation of ELCs in 2012 and cancelled or reduced concessions that violated the provisions of the Land Law. At that time and still today, gathering such basic information on ELCs was a challenge. With the new law, this work can be done in a systematic way to prevent abuses from the outset and guarantee equality of information, such as limiting the dissemination of false information. As an example, when ODC published forest cover data in 2013, the Forestry Administration (a Department of the Ministry of Agriculture, Forestry, and Fisheries) refuted the ODC data that showed a significant decrease in forest cover, from 72 percent in 1973 to 46 percent in 2013, and the methodology on forest classification used by ODC. With the new law, this situation could not happen again since the administration could be asked to produce its own documents, even if it did not wish to publicly display facts that would harm its image.



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Further legal and civil society development is needed to fully realize the objectives of the access to information law discussed in this paper. For example, associations such as ODC as well as similar civil society organizations need to seize an increased role in a Cambodia in transition to Open Data. Indeed, open access to information is a first step, but ways to store information securely and sustainably must also be considered, which the Law on access to information does not guarantee. It is also necessary to have people to process data and information, to interpret, represent and transform it into information that is understandable and accessible to the entire Cambodian population, which still has very wide educational disparities.

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