



Yemen

Note on Amendments to the Right of Access to Information Law

July 2012

On 24 April 2012, Yemen's Parliament passed the Law on the Right of Access to Information (the April draft), a move that was praised as a critical step forward in that country's democratic transition. However, Yemen's President, Abd Rabbu Mansour Hadi, refused to sign the legislation, instead asking Parliament to reconsider several articles. An amended version of the Law on the Right of Access to Information (the Law), was then passed by Parliament on 16 June and signed into law by the President on 1 July, making it the third right to information law in the Arab world, following Jordan (2007) and Tunisia (2011).

In May 2012, the Centre for Law and Democracy (CLD) published an interim Analysis of the April draft, welcoming its passage by Parliament and urging the President to sign it into law.¹ This Note updates the April analysis by outlining the impact of the amendments on the strength of the Law in terms of international standards on the right to information. CLD welcomes the fact that Yemen has now adopted a right to information law, a momentous step forward in Yemen's democratic development. At the same time, unfortunately the amendments made in response to the request by the President have weakened rather than strengthened the Law.

Problematic Changes

The most notable change is found in the Law's approach towards whistleblowers. Article (13) of the April draft stated:

¹ Available at: <http://www.law-democracy.org/?p=1991>.

It is not permitted to inflict any punishment on any employee who has given information about violations or infringements of this law or who has assisted in any investigation about any violation or infringement of this law. Also, he may not be punished in his job by any legal proceedings or otherwise.²

However, the President specifically complained about this clause in his refusal to sign the April draft. As a result, that article was changed to read:

It is not permitted to inflict any punishment on any employee who has given information **to an authorized investigation entity** about violations or infringements of this law or who has assisted in any investigation about any violation or infringement of this law. Also, he may not be **subject to disciplinary accountability by the administration to which he is affiliated**. [emphasis added]³

Whereas the April draft allowed public employees to release information about violations of the law without fear of reprisals, the Law now only protects these employees if they release information to an authorised investigation entity. In addition, rather than providing blanket immunity from any reprisals, the Law now only provides protection for employees against administrative sanctions imposed by the agency for which they work. Other sanctions may still be imposed.

Both of these changes fly in the face of international standards. In the first place, proper whistleblower protection must extend beyond the provision of information to authorised investigative bodies. Reports of official wrongdoing can often fall on deaf ears when presented to internal mechanisms of accountability, for example where these agencies are subject to the same corrupting influences which gave rise to the original problem, or where they are ineffective as enforcement bodies. In many cases, the only way to ensure that problems are properly addressed is for public employees to release damning information into the public realm, such as via the media. To facilitate such public interest whistleblowing, those involved must be adequately protected from retaliatory action or they will not be prepared to blow the whistle in the first place.

Similarly, administrative sanction is just one of the ways in which whistleblowers can be attacked. The Law which was finally adopted offers no protection against police harassment, for example, or the launching of other official proceedings, including lawsuits, against an employee in retaliation for their whistleblowing actions to expose official misdeeds.

In short, the Law now offers only limited protection for whistleblowers. As a country emerging from decades of dictatorship, it is vital that Yemen's new government take firm action to distinguish itself from the nepotism and oppression that marked the

² This is based on an unofficial translation.

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previous administration. One of the main drivers of this change will have to come from public employees, who are in the best position to see where official wrongdoing is taking place. This can only happen if employees feel confident that they will not face reprisals for acting for the public good. It is always difficult to foster this confidence, but particularly so in a country with Yemen's history. While the April draft contained strong positive measures to help establish this kind of atmosphere, the current Law offers far less.

Better practice right to information laws include a public interest override for all exceptions, whereby information will be released even though this is likely to cause harm to a protected interest – such as national security, the deliberative process or privacy – where this is in the larger public interest. A public interest override is very important to ensure that an appropriate balance is maintained between promoting openness and the protection of certain public and private interests.

The lack of a public interest override for exceptions was one of the major weaknesses of the April draft. However, it did at least include a public interest override for the privacy exception. This has been removed in the current Law, which does not, as a result, include any public interest override at all. This is clearly a step in the wrong direction.

A Strong Law

Despite these problems, the Law remains a relatively strong framework for the right to information. Our analysis of the Law using the Global RTI Rating indicates that it scores 105 out of a possible 150 points, putting Yemen in a tie for 17th place in the world, alongside Finland and Nepal.⁴ This score is even more impressive when one takes into account the regional context. Thus, the Law did significantly better than its counterparts in Jordan (56) and Tunisia (89), making it the strongest right to information law in the Arab world by a significant margin.

Although it would clearly have been preferable if the amendments noted above had not been introduced into the Law, the fact remains that even after the amendments the Law provides a robust legal basis for a strong right to information system in Yemen. Whether it does this or not depends on whether the law is implemented properly and in good faith. CLD thus calls on the Yemeni authorities to engage in a positive way with implementation of the Law, so as to ensure that their citizens really benefit in practice from the right to information. CLD also hopes that the

⁴ Our interim analysis of the April draft resulted in a score of 102. However, that score changed based on feedback from regional experts clarifying certain elements in the wider legal framework, as well as some clarification of translation issues, both of which are a standard part of a full RTI Rating process. As a result, our updated analysis of the April draft results in a score of 108.

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passage of a strong RTI law by Yemen spurs similar positive action in other Arab countries, particularly Egypt and Morocco, both of which are considering passage of their own right to information laws.