



Palestine

Recommendations for the Draft Law on the Right of Access to Information

December 2013

The Arab world is among the world's worst performing regions for the right to information (RTI). Only three of the twenty-two Arab States – namely Jordan, Tunisia and Yemen – have so far passed RTI legislation. Given the noted connection between transparency and good governance, it is not surprising that the Middle East also ranks high among corruption indices. According to Transparency International's 2013 Corruption Perceptions Index, five of the ten most corrupt States in the world are in the Arab region.¹

But despite this poor record, there is hope for improvement on the horizon. Several Arab States are currently considering RTI legislation. Among them is Palestine, where a recent draft Law on the Right of Access to Information (draft Law) was developed by the Palestinian Center for Development and Media Freedoms (MADA). MADA delivered the draft to the legal department of the Council of Ministers, who recently released their own version which is, according to information we received from MADA, substantially the same as the original draft.

Although the Palestinian government's interest in passing RTI legislation is a welcome development, an assessment carried out by the Centre for Law and Democracy using the RTI Rating suggests the draft Law requires substantial improvement in order to bring it into line with international standards. The RTI Rating is an internationally renowned analytical tool that involves 61 Indicators to assess the strength of right to information laws.²

¹ The full report is available at: <http://cpi.transparency.org/cpi2013/>.

² See www.rti-rating.org. The RTI Rating was developed by the Centre for Law and Democracy and its partner organisation, Access Info Europe, and has been applied to every national RTI law around the world.

The RTI Rating found that the draft Law scored 92 points out of a possible total of 150. This would place Palestine 36th in the world according to the most recent results of the RTI Rating, tied with Ireland and Sweden, and just behind Chile. The RTI Rating of the draft Law is available at: <http://www.law-democracy.org/live/palestinian-right-to-information-law-would-rank-36th-globally>.

In addition to offering a sense of how the Palestinian draft measures up against other RTI legislation, the RTI Rating pinpoints the specific aspects of the law which should be reviewed, allowing for the development of a set of comprehensive recommendations for bringing the law into line with international human rights standards. This Note sets out the recommendations which flow from the RTI Rating we conducted on the draft Law. They have been prioritised into primary recommendations which reflect major problems, and secondary recommendations, which, while still important, are less fundamental to the eventual success of the law.

Primary Recommendations

- The law should specifically provide that requesters do not have to provide reasons for their requests.
- Public officials should be required to provide assistance where this is needed to help requesters formulate their requests clearly, or due to illiteracy or disability, and to contact and assist requesters who have lodged requests which are vague or otherwise need clarification.
- It should be free to file requests for information.
- The exception for internal affairs of institutions (Article 25) should be narrowed to protect specific interests, such as harm to the free and frank provision of advice or a policy, and the exception for foreign confidences (Article 20) should be harm tested.
- All exceptions should be subject to a public interest override, whereby information must be disclosed where, on balance, this is in the overall public interest, even if this may harm a protected interest.
- The law should include a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.
- The independence of the oversight body, the Commissioner General of Information, should be strengthened, including through prohibitions on individuals with strong political connections from being appointed and an independent budget allocation, and its powers should clearly include ordering the release of information to requesters.
- Immunity should be extended to the staff of the Commissioner General of Information and officials of public authorities for acts undertaken in good faith in implementing the RTI Law.

- Public authorities should be required to publish lists of the information, or at least the categories of information, they hold.

Secondary Recommendations

- The law should require those tasked with interpreting its provisions to do so in a broad manner which gives best effect to its purposes.
- The law should make it clear that everyone, including non-citizens and legal entities, has the right to file requests for information.
- The law should specify that requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).
- It should be clear in the law that it applies to State-owned enterprises.
- The law should make it clear that requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).
- Public authorities should be required to respond to requests as soon as possible and public authorities should be required to notify requesters in the event of a timeline extension, and to provide an explanation for the delay.
- Copying fees should be waived in the case of requests that are 20 pages or less and there should be fee waivers for impecunious requesters.
- The law should make it clear that exceptions apply only where the harm envisaged would be likely to result if the information were released at the time of the request and the 20-year sunset clause should apply to all exceptions to protect public interests, rather than just those listed in Articles 19 and 20.
- The law should establish clear and appropriate procedures for consulting with third parties where information which was provided by them on a confidential basis is the subject of a request.
- Public authorities should be required to notify requesters about their right to appeal when denying a request.
- The law should include a simple mechanism for internal appeals.
- In deciding an appeal, the Commissioner General of Information should be empowered to impose a range of binding orders on public authorities, including to release information, to reduce fees and to undertake structural measures to address ongoing problems of compliance.
- Appeals to the Commissioner General of Information should not require a lawyer.
- In an appeal against refusals or other breaches of the right to information the law should state that the government bears the burden of proving that it acted in compliance with the law.

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- The rule requiring public authorities to maintain their records properly should be upgraded to a fully record management system.

The draft Law is scheduled to be considered at a workshop in December before it can be approved by the Council of Ministers and forwarded to the President. The Centre for Law and Democracy urges the Council of Ministers to accept these recommendations and work to amend the draft Law to bring it more fully into line with international standards before it is passed.