Tanzania: Note on the Draft Access to Information Act, 2015

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Introduction

The Government of Tanzania made a commitment to adopt a right to information (access to information) law giving individuals a right to access information held by public authorities in a very public way through an announcement to that effect at the London Summit of the Open Government Partnership in October 2013. It has now followed up on that commitment by preparing an actual draft Access to Information Act, 2015 (draft Act). This Note provides an assessment of the draft Act, taking into account international standards and better comparative practice.

The draft Act has a number of positive features, including its relatively broad scope, fairly narrow regime of exceptions and the fact that it allocates an oversight role to the independent Commission for Human Rights and Good Governance. At the same time, it has a number of weaknesses and fails to come up to the standard of many of the newer generation of right to information laws. Among other problems, it suffers from a lack of detail in relation to requesting and appeals procedures and it includes only a small number of promotional measures.

This Note is based on international standards regarding the right to information, as reflected in the *RTI Rating* prepared by the Centre for Law and Democracy (CLD) and Access Info Europe.[1] It also takes into account better legislative practice from other democracies around the world.[2] A quick assessment of the draft Act based on the RTI

[1] Available at: http://www.RTI-Rating.org.
[2] See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey, 2nd Edition* (2008, Paris, UNESCO), available in English and several other languages at:

Rating has been prepared and should be read in conjunction with this Note (the relevant sections of this assessment are pasted into the text of this Note at the appropriate places). The overall score of the draft Law, based on the RTI Rating, is as follows:

Category	Max Points	Score
1. Right of Access	6	4
2. Scope	30	23
3. Requesting Procedures	30	14
4. Exceptions and Refusals	30	21
5. Appeals	30	19
6. Sanctions and Protections	8	6
7. Promotional Measures	16	4
Total score	**150**	**91**

This score would place the draft Act in 42nd position globally out of the 102 countries which currently feature on the RTI Rating website.

1. Right of Access and Scope

Article 18(d) of the Tanzanian Constitution provides that everyone "has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society". While this could be interpreted as a basic rule on the right to information, it is limited inasmuch as it only applies to important events and issues, and it seems to refers only to the idea of proactive disclosure and not the right to request and receive information from public authorities.

Article 5(1) of the draft Act provides: "Every person shall have the right of access to information which is under the control of information holders." This is a clear statement of the right of access.

The preamble to the draft Act refers to the idea of access to information serving the wider social goal of accountability of public authorities ("information holders" in the language of the draft Act), while section 4(d) adds the idea of public participation to this. Taken together, this is a reasonable package of wider benefits, although it might also be useful to refer to other benefits such as promoting good governance, combating corruption and promoting good business practices. Better practice is to require decision makers – such as information officers, the Commission for Human Rights and Good Governance (CHRAGG) and judges – to interpret right to information laws so as to give effect to their benefits. The draft Act sets out some of the benefits but does not link them to interpretation of its provisions.

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http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html.

Although the Constitution and certain provisions of the draft Act refer to the idea that every person shall benefit from the right to information, section 5(3) of the draft Act makes it clear that its scope only extends to citizens. This is both unfortunate and unnecessary. It is unfortunate because both international law and better national practice extend a right of access to everyone. And it is unnecessary because there is no reason not to do this. Governments sometimes claim that this might undermine national security, but all right to information laws include exceptions to protect sensitive national security information and, in any case, it is simply not reasonable to assume that non-citizens may pose a threat to security while citizens would not. There are also sometimes concerns about the costs associated with responding to requests from non-citizens but the experience of other countries shows that this is rarely significant and that the benefits of providing information to non-citizens, for example in terms of public interest research, far outweigh these costs. Section 5(3) of the draft Act also suggests that it does not cover legal entities (companies, civil society organisations and so on), which is again problematical given that important benefits flow from making information available to these entities.

Section 3 of the draft Act defines "information" as being all material which communicates matter "relating to the management, administration, operations or decisions" of a public authority. This is an unfortunate qualification on the scope of the draft Act in terms of information. It requires public authorities to go through the unnecessary and additional step of considering whether or not requested information falls within the scope of this definition, and it may be abused to refuse access to relevant information. The test should simply be whether or not the public authority holds the information (and, of course, whether or not it falls within the scope of the regime of exceptions). The right of access, as set out in section 5(3) of the draft Act, applies to "information" and this is the same for the procedural rules for making a request (see section 10(1) of the draft Act). However, it is worth noting that section 3 also qualifies the definition of a "record" as being recorded information "created, received and maintained by any information holder in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business". In other words, the problematical qualification of "information" also applies, albeit in a slightly different form, to "records".

Better practice is to allow requesters to ask for either a specific document or for certain deined types of information, which may be contained in more than one document. The draft Act does not make it clear that this is the case, either through its definitions of "information" or a "record", or through section 5(3) establishing the right of access.

Section 3 of the draft Act defines a "public authority" as any entity which is part of any level of government or any body which is established by the Constitution or a law, or which is recognised by law as a public office. This is a broad definition but it is not entirely clear that it would cover bodies created by entities which formed part of government otherwise than through a legal enactment. Such bodies are increasingly common in many countries and take on important public functions. Similarly, by virtue of the same provision, along with section 2(2)(b)(i), State enterprises would only be covered

if they either utilised public funds or were created by law, but not necessarily just because they were owned by government.

Recommendations:

- In due course, the Constitution of Tanzania should be amended to provide for an unambiguous and strong guarantee of the right to information.
- Consideration should be given to referring to a wider range of external benefits of the right to information, such as promoting good governance, combating corruption and promoting good business practices.
- Consideration should be given to requiring decision makers to interpret the right to information law in the manner that best gives effect to these external benefits.
- The right to request information should extend to non-citizens and to legal entities.
- The right to information law should apply to all information held by a public authority, without this being qualified by a requirement that the information relate to the management, administration or operations of the authority.
- It should be clear – either in the definition of information or in the rules establishing the right of access – that requesters may ask for either specific documents or for types of information.
- The definition of a "public authority" should cover all bodies which are created or controlled by entities which form part of government, as well as any commercial bodies which are owned by entities which form part of government.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	1	18(d) of the Const.
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	2	5
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information?	2	1	preamble, 4
	TOTAL	**6**	**4**	

Scope

Indicator	Max	Points	Article

4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	0	5(3)
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	2	3
6	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).	2	1	3, 5
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	7	2(2), 3
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	3
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	4	3
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	1	3
11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	3
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	2	2(2)
	TOTAL	**30**	**23**	

2. Duty to Publish

The only provision of the draft Act which addresses the issue of proactive publication of information is section 9. It includes a list of only three types of information that are subject to proactive publication. This is extremely limited in scope and fails to measure up to the standards in other modern right to information laws. Among other things, it fails to include any information about the budget or finances of public authorities, the services they provide to the public, the contracts and other financial arrangements they have concluded with third parties, or the beneficiaries of the services they provide.

In many countries with more extensive proactive publication requirements, public authorities regularly fail to meet these obligations, which undermines respect for the law. One option might be to give public authorities a period of time – say five to seven years – to meet these obligations (the draft Act gives them 36 months to do this). Another might be to allocate the power to the CHRAGG to require public authorities to publish additional categories of information. This would allow the scope of proactive publication to be expanded over time as public authorities build their capacity in this area.

Recommendations:

- The list of categories of information subject to proactive publication obligations should be substantially expanded.
- Consideration should be given to providing for a mechanism for meeting these obligations over a period of time and for extending the scope of information required to be published on a proactive basis over time, perhaps by giving the CHRAGG the power to add to the list in section 9.

Note: The RTI Rating did not assess the duty to publish and so no excerpt from it is provided here.

3. Requesting Procedures

The procedures for making and processing requests is one of the areas where the draft Act does less well on the RTI Rating. This is in part because of the relatively brief nature of these rules in the draft Act, with many important procedural provisions simply not being mentioned. It is possible to address such shortcomings through regulations. However, this is not better practice for two main reasons. First, it is simple enough to include more developed procedural rules in the primary legislation, and this is what better practice right to information laws do. Second, if procedures are established by regulation, they can relatively easily be changed by administrative action, potentially in ways which undermine the right of access. Fixing them in the primary legislation avoids this risk.

The following better practice procedural rules are simply not mentioned in the draft Act:

- There is no rule stipulating that requesters do not need to provide reasons for their requests. In the absence of such a rule, it is possible that some public authorities may demand such reasons, which should not happen and which may lead to differential treatment of requests based on those reasons.
- There is no requirement that requesters be given a receipt upon lodging a request. This is important to establish the date on which their request was made and to provide a basis for appeal, for example in case they simply receive no response from a public authority to their request (an unfortunately common occurrence in many countries).
- Although there are maximum time limits for responding to requests, there is no requirement for public authorities to respond to requests "as soon as possible". In the absence of such a rule, public authorities may treat the maximum time limits as the standard period for responding to requests, which may lead to unnecessary delays in the provision of information.
- There is no mention of the idea of fee waivers for impecunious requesters. Given that access to information is a human right, such fee waivers are necessary to ensure non-discrimination in the protection of rights.

Section 10(2) of the draft Act requires requesters to provide their name and address (i.e. the physical address where they live). Better practice is simply to require requesters to provide an address for delivery of the information, which might be an email address.

Section 7(2) of the draft Act places a very general obligation on information officers to "render assistance to a person seeking such information", while section 11(2) provides that, where more detailed information is needed to locate the requested information, the information holder shall inform the requester of this fact. Better practice in this area is to make it clear that, in such cases, the information officer shall provide assistance to the requester to help him or her formulate the request more precisely and clearly.

Section 11(1) of the draft Act requires a response to be provided to a request within thirty days. It is not clear whether this is thirty working or calendar days but, assuming the latter, this is still a relatively long period of time. While many right to information laws do include such time limits, better practice laws include shorter limits, for example of just ten working days.

The rule on fees in section 21 of the draft Act is very brief and vague, providing simply that public authorities may "charge a prescribed fee for the provision of the information". This seems to suggest, but does not make it clear, that there is no charge simply for making a request. Otherwise, however, it fails to establish any specifics regarding what fees may be charged. Better practice in this area is to limit fees to the costs of reproducing and sending the information to the requester, so that the provision of information electronically would normally be free. It is also preferable to stipulate that fees are to be set centrally, to avoid a patchwork of fees across the civil service. Section 21 does require fees to be "prescribed", but this could presumably be done by each individual public authority. Finally, better practice is to require a certain number of pages of information – say 15 or 20 – to be provided for free.

Section 18 of the draft Act sets out a most unfortunate and unreasonable rule, providing that information received from a public authority "shall not be for public use" and that breach of this rule is an offence, punishable by imprisonment of not less than five years (with no maximum). This is the precise opposite of what should be provided for, which is open reuse of information, except where that information is covered by copyright owned by a third (non-public authority) party. This is the established trend globally and for very good reason, including that the reuse of open data and other types of information generates important economic benefits in countries around the world. In many countries, the government has developed an open licence stipulating limited basic conditions for the reuse of public information.

Recommendations:

- The law should provide that requesters may not be asked for the reasons behind making their requests.
- Public authorities should be required to provide receipts to requesters, normally through the same means of communication as was used to make the request (such

as by email or directly in person).
- Public authorities should be required to respond to requests as soon as possible.
- The law should establish fee waivers for impecunious requesters.
- Requesters should not be required to provide their name and home address but simply an address for delivery of the information.
- The law should place a clear obligation on information officers to help requesters where the latter need such help to render their requests more precise.
- The law should make it clear that the 30 days referred to in section 11(1) are calendar days and not working days and consideration should be given to reducing this to 15 calendar or ten working days.
- The law should make it clear that it is free to make a request for information. It should also limit any charges to the costs of copying and sending the information to the requester, based on a centrally set schedule of fees. Finally, consideration should be give to providing for a certain number of pages of information to be provided to requesters for free.
- Section 18 should be replaced by a provision indicating that requesters are free to reuse information subject to an open licence, which the government will develop within a set period of time.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	1	10(2)
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	2	10(3)
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	1	7(2), 11(2)
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	2	7(2), 10(4)
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	0	
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	2	11(3), 13

20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	2	17
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	1	11(1), 16
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	2	
24	It is free to file requests.	2	1	21
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	0	21
26	There are fee waivers for impecunious requesters	2	0	
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	0	18
	TOTAL	**30**	**14**	

4. Exceptions and Refusals

In general, the exceptions spelt out in the draft Law, found mainly in section 6, are broadly in line with international standards, including through requirements of harm for all exceptions and a strong public interest override. However, there is a significant weakness inasmuch as the draft Act fails to indicate how it relates to secrecy laws. On the one hand, section 6 only provides for secrecy in line with the exceptions it outlines, which do not refer to other laws. On the other hand, it fails to state that it overrides other laws, thereby presumptively leaving them in place. Better practice in this area is to make it clear that the right to information law overrides other laws to the extent of any conflict. Thus, other laws can elaborate on exceptions in the right to information law – as privacy laws in many countries do – but not create additional or broader exceptions.

In terms of the specific exceptions contained in section 6, three are problematical. First, national security, as defined in section 6(3), is unduly broad, including, among other things, foreign relations and foreign activities, and scientific, technological and economic matters relating to national security. Although these are subject to a requirement that disclosure of the information would be likely to "undermine" national security, these descriptions are still likely to be interpreted in a significantly overbroad fashion.

Second, section 6(2)(f) protects the intellectual property rights of public authorities, as well as of third parties. While the latter is legitimate, strict protection of the intellectual property rights of public authorities would seriously undermine the right to information and also prevent reuse of that information, which is against the public interest, as noted above. Third, section 6(2)(i) renders secret information which would "infringe professional privilege". It is legitimate to protect information covered by legal privilege but the wider notion of professional privilege could, depending on how it is interpreted, cover an enormously broad range of information. It may also be noted that section 6(2)(j), protecting the operations of the Tanzania Broadcasting Corporation, is arguably too broad and should probably only apply to the journalistic endeavours of TBC.

The draft Act fails to set out a rule of severability whereby if only part of a document is covered by the regime of exceptions the rest of the document should still be disclosed. Such rules are common in almost all right to information laws and provide a simple and practical way to ensure an appropriate balance between openness and confidentiality.

Recommendations:

- The right to information law should make it clear that, in case of conflict, its provisions override other laws.
- The definition of national security in section 6(3) of the draft Act should be narrowed in scope.
- Section 6(2)(f) should be amended so as to protect the intellectual property rights only of third parties.
- Section 6(2)(i) should be amended to protect only information covered by legal privilege and not other types of so-called "professional privilege".
- Section 6(2)(j) should be limited to the journalistic endeavours of the Tanzania Broadcasting Corporation.
- A rule on severability should be added to the right to information law.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	0	
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.	10	7	6

30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	4	6
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	4	6(1)(b)
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	2	6(5)
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	2	15
1534	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	0	
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	2	14
	TOTAL	**30**	**21**	

5. Appeals

The draft Act does only tolerably well in terms of appeals. It allocates the task of deciding information appeals to the Commission for Human Rights and Good Governance (CHRAGG). This has the virtue of incorporating the relatively strong rules on independence which the CHRAGG benefits from, but the disadvantage of failing to provide the CHRAGG with the appropriately tailored powers which are needed to deal properly with information appeals, a common problem with this approach (i.e. of giving a pre-existing body the power to hear information appeals).

Better practice laws provide for three levels of appeal, namely an internal appeal, an administrative level of appeal and an appeal to the courts, while the draft Law only envisages the latter two. An internal appeal can give public authorities a chance to sort out problems internally, before they go to an external decision maker. Furthermore, junior staff are often reluctant to disclose information, especially in the early days of an new right to information law, and providing for an internal appeal can help redress this problem.

Pursuant to Article 129 of the Constitution and sections 7-9 of the CHRAGG Act, members of the CHRAGG are required to have relevant expertise for the position and to

give up any political post they may hold. Better practice, however, is to prohibit individuals with strong political connections from being appointed as members at all.

In accordance with sections 15(2) and 17(1) of the CHRAGG Act, the CHRAGG can only mediate between parties and make recommendations to public authorities to bring themselves into conformity with the law. While this is common for human rights commissions, it is a significant weakness in the case of information appeals, and experience in other countries suggests that such recommendations are often simply ignored. It is thus significantly better practice for administrative oversight bodies to have the power to issue binding orders to public authorities to disclose information and to take other measures needed to comply with the law (such as lowering fees or providing the information in the form sought by the requester).

The CHRAGG Act does not specify what particular remedial orders the CHRAGG may make in the context of an information appeal where it finds that a public authority to be in breach of the rules. While the CHRAGG has general powers to make recommendations, it would be useful for the law to provide for greater clarity in this area. The CHRAGG Act also does not make it entirely clear whether or not lodging an appeal is free and does not require the assistance of a lawyer.

The CHRAGG Act also does not address the issue of burden of proof in information appeals. Better practice in this area is to place the burden of proof clearly on public authorities. There are two main reasons for this. First, the right to information is a human right and the burden should always lie on public authorities to justify a *prima facie* breach of this right. Second, as a practical matter, it is often very difficult for requesters to be able to mount a strong appeal because they are at the decided disadvantage of not having had access to the contested information. It is thus only fair to require public authorities to show that it is legitimate to withhold the information.

Finally, better practice in the context of information appeals is to allocate the power to the administrative oversight body not only to make remedial orders for the benefit of the requester but also to require, where necessary, public authorities to put in place broader structural measures to ensure future compliance with the law. Such measures might, for example, require a public authority to appoint an information officer, to provide its staff with appropriate training and/or to put in place better record management systems. This power is intended to address systematic problems at a public authority in terms of compliance with the right to information law, so as to avoid in future the types of problems that arose in the context of the particular appeal.

Recommendations:

- Consideration should be given to providing for an internal appeal, in addition to the appeals to the CHRAGG and the courts, for information requesters.
- Consideration should be given to amending the relevant Constitutional and legislative rules so as to prohibit individuals with strong political connections from being appointed to the CHRAGG.

- Sections 15(2) and 17(1) of the CHRAGG Act should be amended to make orders of the CHRAGG in relation to information appeals binding.
- The CHRAGG Act should be amended to make it clear what types of remedial measures the CHRAGG can order in the context of information appeals.
- To the extent that this is not already clear, the CHRAGG Act should clarify that lodging appeals with it is free and does not require the assistance of a lawyer.
- The CHRAGG Act should make it clear that, in the context of information appeals, the public authority bears the burden of proof of showing that it acted in accordance with the law.
- The CHRAGG should have the power to impose structural measures on public authorities which are systematically failing to respect the right to information.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	0	
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	19(1)
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	2	129 (Const), 7-8, 10 of CHRAGG Act
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	2	29, 30, 31 CHRAGG Act
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	129 (Const), 7-9 of CHRAGG Act
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	2	25, 27 CHRAGG Act
42	The decisions of the independent oversight body are binding.	2	0	15(2), 17(1) CHRAGG Act
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	1	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	19(3)
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	1	

46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and other breach of timelines, charging excessive fees, etc.).	4	4	19(1)
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	2	19(2)
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
	TOTAL	**30**	**19**	

6. Sanctions and Protections

The draft Act does relatively well in terms of sanctions and protections, scoring six out of a possible eight points, or 75 percent of the total. This is based on its relatively comprehensive offences for wilful breach of the law, and its protections of both good faith disclosures under the law and whistleblowers.

At the same time, these rules are seriously undermined by section 6(6), which provides for imprisonment of not less than 15 years (with no maximum stipulated) for anyone who wrongly discloses exempt information. This may be contrasted with the rather mild penalty of up to five million shillings (approximately USD2,500) and/or 12 months' imprisonment for wilfully obstructing access (section 22). There is absolutely no need for additional penalties for wrongful disclosure of information and this sends precisely the wrong signal to officials (i.e. that wrongful disclosure is seen as a far more serious offence than obstructing access). Tanzanian law already provides ample penalties in this area and better practice laws do not include such penalties.

Experience in other countries shows that while it is important to have in place criminal penalties for obstruction of access, these are very difficult to apply in practice. A more practical approach is also to provide for administrative penalties for obstruction, such as fines or disciplinary measures, which might be imposed by the administrative oversight body or another body.

The draft Act also fails to provide for the possibility of public authorities being sanctioned where they signally fail to respect the law. In better practice cases, courts have the power to impose such sanctions, which might, for example, include fines or other measures.

Recommendations:

- Section 6(6) of the draft Act should be repealed and no additional penalties beyond those already found in existing laws should be established for wrongful disclosure of information.

- Consideration should be given to establishing a system for administrative penalties for obstruction of access.
- Consideration should be given to adding a provision to the law which would allow for sanctions to be imposed on public authorities for serious failures to implement the law.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	2	6(6), 22
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	2	24
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	2	23
	TOTAL	**8**	**6**	

7. Promotional Measures

The area of promotional measures is the category of the RTI Rating where the draft Act does least well, scoring only four out of a possible 16 points, or 25 percent of the total. The draft Act does require public authorities to appoint information officers, but does not score full points on any of the other seven indicators in this category.

There is no provision at all for the following promotional measures:

- No central body – such as the CHRAGG or a lead ministry – is given overall responsibility for promoting implementation of the right to information law. This is very important to ensure that momentum in terms of implementation is maintained and that the law does not simply remain a paper law.
- There is no obligation on either public authorities or any central body to undertake public awareness raising efforts in relation to the new law. Such efforts are essential to ensure that members of the public and civil society actors learn about the right to information and to stimulate demand for information from these external actors.
- Public authorities are under no obligation to provide training to their staff. Such training, in particular for information officers, is essential to ensure proper implementation of right to information legislation.

- There is no obligation on public authorities to report annually on what they have done to implement the law, absent which it is almost impossible to ascertain where the strengths and weaknesses are in this respect. There is also no obligation on any central body to prepare a central, overall report on implementation efforts.

Section 8 of the draft Act places a very general obligation on public authorities to "maintain complete records of information that are under the control of such information holder". This is useful but it does not constitute a proper system for records management. That would involve allocating the power and responsibility to a central body, perhaps the Prime Minister's office or a central archival body, to set minimum standards for records management which all public authorities would be required to comply with over time (say after a period of six months or a year). The central body could then increase the standards, and set another period of time for compliance, thereby increasing the standards over time.

Pursuant to section 9(1)(b) of the draft Act, all public authorities are required to produce a "general description of categories of information" they hold. Once again, this is useful but better practice in this area is to prepare a full list of the documents held, so as to provide guidance to requesters about exactly where the information they are looking for is located.

Recommendations:

- A central body should be given overall responsibility for promoting the right to information.
- Public authorities and also a central body should be required to raise public awareness about the right to information.
- Public authorities should be required to provide adequate training on the right to information to their employees.
- Public authorities should be required to report annually on their progress in implementing the law and a central body should be required to prepare a central report, based on these reports, summarising overall implementation efforts.
- Consideration should be given to incorporating a proper system for records management into the law.
- Consideration should also be given to requiring public authorities to publish a full list of the documents they hold.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	7
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	0	

56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	0	
57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	1	8
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	9(1)(b)
59	Training programmes for officials are required to be put in place.	2	0	
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	0	
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	0	
	TOTAL	**16**	**4**	