MEMORANDUM

on

THE DRAFT INFORMATION LAW OF YEMEN

May 2009

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation. These publications are available on the ARTICLE 19 website: http://www.article19.org/publications/law/standard-setting.html.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme operates the Media Law Analysis Unit which publishes a number of legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive law reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at http://www.article19.org/publications/law/legal-analyses.html.

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SUMMARY OF RECOMMENDATIONS

Recommendations:

- Article 7 of the draft Law should be amended to clearly indicate that there should be no legal liability on any applicant for making a request for information.
- Article 1(1) should state that the draft Law should be known as the "Right of Access to Information Law" once adopted.
- Article 4 should be amended to state that "everyone shall have the right of access to information subject only to the provisions of this Act".
- The definition of "source of access to information" should be replaced with a broader definition that covers all bodies undertaking public functions.
- The National Centre for Information (NCI) should not be entitled to receive requests for information. Requests should be submitted to a public or private body exercising a public function which may identify, with reasonable effort, whether or not the body holds a record of that information.
- Article 9 should be amended to simply state that a request for information is a request in writing or orally to any official of a public or private body and is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds a record of that information.
- The draft Law should indicate that, where a request for information relates to information which reasonably appears to be necessary to safeguard the rights to life or liberty, a response must be provided within 48 hours.
- Article 12 should be amended to indicate that a body is not required to comply with vexatious or unreasonable requests for information.
- Article 14 should be amended to require the relevant official to render such reasonable assistance as may be necessary.
- Article 16 should indicate that the approval or rejection of a request for information should be made "as soon as possible".
- Article 18 should be amended to allow the source to whom the request was originally submitted to transfer the request directly to the body which holds the relevant information and also to inform the person making the request of such a transfer and of which body holds the relevant information.
- Fees should be set centrally by a designated minister, should not exceed the cost of copying and communicating the information, should be waived for personal information and requests in the public interest, and should not be levied where the cost of collection would exceed the amount of the fee.
- Articles 22 – 25 should be replaced with a provision indicating that every public body and private body exercising a public function should, in the public interest, publish and disseminate in an accessible form key information as well as a guide containing adequate information about the types of information it holds.
- Section 5 should begin with a provision stating that "a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure".
- Article 32(c) should indicate that a body "may refuse to communicate information

where to do so would be likely to, cause serious prejudice to the defence of national security".

- Article 32(d) should be amended to indicate that: a body may refuse to indicate whether it holds information or refuse to communication information where to do so would, or would be likely to, cause serious prejudice to: (a) the prevention or detection of crime; (b) the apprehension of prosecution of offenders; (c) the administration of justice; (d) the assessment or collection of any tax or duty; (e) the operation of immigration controls; or (f) the assessment of a public body of whether civil or criminal proceedings or regulatory action pursuant to any enactment would justified.
- Article 32(g) should be amended to state that a body may refuse to communicate information if it was obtained in confidence from a third party and it contains a trade secret and to communicate it would or would be likely to seriously prejudice the commercial or financial interests of that third party.
- Article 32(h) should state that a body may refuse to indicate whether or not it holds a record or refuse to communicate information, where to do so would, or would be likely to cause serious prejudice to: the ability of government to manage the economy of Yemen; or the legitimate commercial or financial interests of a public body.
- Article 32(i) should state that a body may refuse to communicate information if the information was obtained from a third party and it would constitute an actionable breach of confidence.
- Exceptions should be added which indicate that a body may refuse to indicate whether or not it holds a record or refuse to communicate information where: to do so would, or would be likely to, endanger the life, health or safety of any individual; to do so would involve the unreasonable disclosure of personal information about a natural third party; or where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.
- Article 32 should be amended to ensure that the law provides for a comprehensive, precise and narrowly-drawn list of exceptions which should protect interests such as defence and security, but also other legitimate interests such as personal information and health and safety related information.
- The draft Law should clearly provide for a right to appeal to an independent administrative authority, such as an Information Commissioner, a decision that a body has failed to comply with an obligation of the draft Law.
- The draft Law should provide that the Information Commissioner shall decide an application for an appeal as soon as reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing. It should indicate that the Commissioner may summarily reject applications which are frivolous or vexatious, or where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant body. It should also indicate that the Commissioner may: (1) reject the application; (2) require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations; (3) require the public body to compensate the

complainant for any loss or other detriment suffered; or (4) impose a fine on the body. It should state that the Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or private body.

- The draft Law should provide that the Commissioner may, after giving a public body an opportunity to provide their views in writing, decide that a body has failed to comply with an obligation under the draft Law.
- The draft Law should state that a complainant or relevant body may, within 45 days, appeal to the court for a full review of a decision of the Commissioner. It should stipulate that the burden on the body to show that it acted in accordance with its obligations.
- The draft Law should indicate that, after the expiry of the 45 day period for appeals, the Commissioner may certify in writing to the court any failure to comply with a decision and the court shall consider such failure under the rules relating to contempt of court.
- Articles 34-68 should be replaced with a provision establishing the institution of an Information Commissioner. The provision should state inter alia that the office shall: enjoy operational and administrative autonomy from any other person or entity, including the government and its agencies; shall be appointed by the President after nomination by two-thirds majority vote of the Parliament and after a open, participatory and transparent nomination process; and that no-one may be appointed Information Commissioner if he or she holds an official office or is an employee of a political party or holds an elected position in the central or local government.
- Articles 69-78 should be deleted and be replaced with a provision which should establish that it is a criminal offence to: (1) wilfully obstruct access to information contrary to the draft Law; (2) wilfully obstruct the performance by a public body of a duty under the draft Law; (3) interfere with the work of the oversight body (Information Commissioner); (4) or destroy records without lawful authority.
- The draft Law should set the maximum punishment possible for any of these offences. This should be a period not exceeding two years or a fine not exceeding an appropriate amount.
- A further provision should be added indicating that no-one shall be subjected to civil or criminal action, or any employment detriment for anything done in good faith in the exercise, performance or purported performance of any power or duty under the law as long as they acted reasonably and in good faith.
- A provision should be added to the draft Law to protect individuals against any legal, administrative or employment-related sanctions for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.
- The draft Law should obligate public bodies to provide training programmes for their employees.
- Articles 10, 15, 31, 32(b) and (f), 33, 79-81 should also be deleted.

1. INTRODUCTION

ARTICLE 19 welcomes the proposal by the government of Yemen of a draft law concerning access to information.[1] The Yemeni government's draft "Information Law" (the "draft Law") follows several drafts of a draft law on the right to access information proposed by Yemeni Journalists Against Corruption ("YPAC"), which ARTICLE 19 analysed in November 2008.

The right to access information is a fundamental human right that is crucial to the functioning of a democracy and key to the protection of other rights. Any legislation that properly guarantees and implements that right in Yemen would serve to expose violations of human rights in Yemen, enhance the flow of information in the country and help to ensure good governance, openness and transparency within the Yemeni public administration. It would increase a sense of trust amongst the people about the governmental and public authorities. Such legislation would also follow the example of legislation on the right to access information in Jordan, the first Arab country to enact a right to information law in 2007. Finally, it would address the gap between Yemen's domestic legal protection and practice on the issue of access to information and the state's international legal obligations. The right to access information has been codified both in international human rights law and in anti-corruption conventions signed and ratified by Yemen.[2] The government of Yemen has a positive duty under international law to enact effective domestic legislation to protect the right of access to information in Yemen.

So far, however, Yemen has failed to enact and implement such legislation. Existing legislation on other related matters exposes the gap in terms of implementation. Article 3 of the Press and Publications Law, for instance, proclaims that access to information is one of the rights of Yemeni citizens. The principle is reaffirmed by Article 16 of the same law which states that a journalist "has the right to peruse official reports, facts, information and data and authorities possessing such items shall make it possible for him/her to have cognisance of to have use from them". Despite these legal protections, there is no implementation of them in practice. The absence of implementing legislation has so far meant that there is no recognised procedure for requesting access to official records and no deadline for replying to such a request. Furthermore, currently there are no legally defined criteria for deciding whether or not to comply with a request, while requesters do not benefit from a right of appeal in case their requests are not dealt with adequately.[3]

This analysis examines whether and the extent to which the draft Law proposed by the Yemeni government actually enhances the right of access to information in Yemen. It does so on the basis of international law and best practice in the field of access to

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[1] This analysis examines the draft Law that was acknowledged by the government by Cabinet decree No. 431 of 2008. This was translated from Arabic into English by ARTICLE 19 in April 2009.
[2] See Appendix 1.
[3] ARTICLE 19, *Yemen: Freedom of Expression in Peril* (January, 2008) at 2.3.3.

information, as crystallised in two key ARTICLE 19 documents: *The Public's Right to Know: Principles on Freedom of Information Legislation* (ARTICLE 19 FOI Principles)[4] and *A Model Freedom of Information Law* (ARTICLE 19 Model FOI Law).[5] Both publications represent broad international consensus on best practice in this area. Part 2 contains the substantive analysis of the draft Law, while the Appendix provides an overview of international law on access to information.

In summary, as a government initiative protecting the right to information as well as strengthening transparency and openness in Yemen, the draft Law is a positive step. At the same time, the draft Law suffers from a number of very significant weaknesses. The draft Law protects only the *citizen*'s right of access to information (rather than protecting the right as a human right), provides a very extensive range of exceptions, provides very limited possibilities for appeal and accords a great deal of discretion to so-called "sources of access to information". We find it especially troubling that the draft Law accords so much power to the National Centre for Information (NCI). This Memorandum sets out our main concerns with the draft Law.

2. ANALYSIS OF THE DRAFT LAW

2.1. Purpose and Principles

Part I of the draft Law explains the "Definitions and Purpose of the Law" (Articles 1-3). Section 1 of Part II of the draft Law (Articles 4-7) goes on to set out the "Principles of the Right of Access to Information".

Article 3 states that the purpose of the draft Law is to "strengthen the elements of transparency and to expand the opportunities for informed and responsible participation" (Article 3(b)) and "to enable society to develop its capacity to benefit from information" (Article 3(c)). Obviously, these are important goals for any law on the right of access to information. It is significant that Article 1 states that this "Act will be known as the Information Law" which suggests a reluctance to identify the law as a law guaranteeing the *right* of access to information.

A key problem with section 1 is Article 7 which states that "[e]very citizen has the right to request access to information and such a request should not result in any legal accountability". There is a certain lack of clarity with the notion of "legal accountability" in this provision which informs all other provisions as it is in the Principles section of the draft Law. It is unclear whether the provision means that any applicant of information would not be subject to any sanctions for simply making a request, or whether it implies that any information or procedural irregularity that might be the result of request should not lead to any legal liability. If the intended meaning is the former, it is acceptable. If

[4] (London: June 1999).
[5] (London: July 2001).

the intended meaning is the latter, however, this provision would serve to fundamentally undermine the purposes and the implementation of the entire draft Law, notwithstanding its other weaknesses. The draft Law should not be used to insulate those bodies covered by its scope from legal accountability, simply because that accountability might be the consequence of a request for information. There would be little point in the draft Law otherwise.

Recommendations:

- Article 7 should be amended to clearly indicate that there should be no legal liability on any applicant for making a request for information.

2.2. Scope of the Draft Law

Scope of the right of access to information

Article 3(a) indicates that the aim of the draft Law is "to ensure a *citizen*'s right to access to information and to *expand rules* to allow a citizen to exercise such rights and freedoms". Article 4 then emphasises that "[a]ccess to information is a fundamental right of a *citizen* and enables the *citizen* to exercise this right *within the boundaries of the law*" (emphasis added). Yet, as a fundamental human right, the right of access to information should necessarily extend to all persons, whether or not they are citizens.[6] Moreover, "the boundaries of the law" should be properly indicated in this draft Law on the right of access to information itself. In particular, exceptions to the right to access information may only be permitted if: (1) the information relates to a legitimate aim listed in the law; (2) disclosure threatens to cause substantial harm to that aim; and (3) the harm to the aim is greater than the public interest in having the information.[7] (The regime of exceptions will be explored in more detail below.)

It is interesting to note that while the draft Law grants the right of access to information to citizens within its section on "principles", in the subsequent section on "requests for access to information", there is a provision stating that a "foreigner or an official foreign body is permitted to request access to information in accordance with the procedures of the source organisation in the spirit of co-operation or to facilitate work with public interest" (Article 15). The rights of foreigners and *official* foreign bodies, while they appear to be recognised, are therefore actually of lower quality than the rights of Yemeni citizens. The most important observation here is that the draft Law therefore appears not to extend to the right of access to information to foreign *non-governmental* organisations and thus prevents non-Yemen based human rights organisations defenders from requesting information from relevant bodies.

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[6] Article 3, *Model FOI Law*, Article 3.
[7] Principle 4, *FOI Principles*, Principle 4.

Bodies covered

The draft Law covers entities coming within the definition of the "source of information": the NCI and the "concerned parties" (Article 2(f)). The term "concerned parties" is defined as "legislative, representative and judicial bodies, government ministries, institutions, central and local interests, public and mixed sector bodies" (Article 2(d)). Although this seems to encompass a broad range of bodies within the scope of the draft Law, the draft Law should focus on the *function* performed by the body, rather than its formal designation. To this end, it should include all branches and levels of government, including local government, elected bodies, bodies which operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies or quangos and judicial bodies, as well as private bodies carrying out public functions. In other words, if the function performed is a public one, the body should be included within the scope of the draft Law to ensure uniform coverage over all bodies that perform public functions.

National Centre for Information

From an early stage in the draft Law it is clear that the NCI, a government body, plays a pivotal role in the implementation of its provisions – and to the detriment of securing the right to access to information in Yemen. Article 5 states that requests for information "should be submitted to the centre *or* submitted directly to the information department at the concerned party". The role of the NCI envisaged by this provision is, at best, highly inefficient in terms of processing requests. The NCI appears as an additional and unnecessary level of bureaucracy that applicants may well be required to deal with – especially because the "concerned parties" may not necessarily have established an "information department" or one that is willing to accept requests. At worst, given that the NCI is a government-established body and will have members of the government on its board (Article 34), it will certainly lack independence and impartiality to decide requests for information that might be submitted to it. (The role of the NCI in the system of appeals and as the oversight body is examined in detail below.)

Recommendations:

- Article 1(1) should be amended to affirm the right of access to information. It should state that the draft Law should be known as the "Right of Access to Information Law" once adopted.
- Article 4 should be amended to state that "everyone shall have the right of access to information subject only to the provisions of this Act".
- Article 15 should be deleted.
- The definition of "source of access to information" should be replaced with a broader definition that covers all bodies undertaking public functions, including legislative and judicial bodies, as well as public corporations and private bodies that perform public functions.
- The NCI should not be a body entitled to receive requests. Requests should be submitted to a public or private body exercising a public function which may identify, with reasonable effort, whether or not the body holds a record of that information.

2.3. Procedural Rules

Criteria for requests
The criteria for making requests for access to information are included in section 2 of Part II of the draft Law. This section is particularly problematic from the point of international legal standards. A request for information "must be accepted" if all six of the following conditions indicated in Article 9 are met: (a) that it is made to "body legally empowered to provide the required information" and "under the name of the beneficiary"; (b) that it "complies with in house procedures at the source authorized to receive the request"; (c) that "the request information is not subject to the exceptions or confidentiality under the law" ; (d) the required information is available to the source of access to information"; (e) the requested information is "accurate and accessible with sufficient details to facilitate its retrieval by the beneficiary with reasonable effort"; and (f) that the request information "does not concern a third party that could prevent its publication or transfer to another party and that request information is not subject to any exceptions under this Act". Yet, according ARTICLE 19's Model Law, the only criteria for a request for information should be that it is a request in writing or orally to any official of a public or private body and is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds a record of that information.[8] The criteria included in Article 9 of the draft Law set too high a burden on the applicant for a number of reasons.

First, in relation to (a), there should be no requirement on the applicant to have already identified the body legally empowered to provide the required information as that body may well be unknown to him or her at the time of making the request. Furthermore, there should be no requirement to make the request under the name of the beneficiary because an individual or organisation making a request for information need not be the beneficiary of the information. It should be sufficient for the request to indicate the identity of the applicant. *Second*, there should be no need for an applicant of information to comply with the in-house procedures as indicated in (b), unless those procedures provide a form for requests for information which do not unreasonably delay requests or place an undue burden upon those making requests. *Third*, criteria (c) and (d) suggest that a request for information may be refused "on the grounds of confidentiality" or on the grounds that it "concerns a third party" as distinguished from the list of exceptions under the draft Law. However, all legitimate exceptions to the right of access to information should be provided for within the draft law and these might include legally privileged information or personal information about a third party. Such exceptions should not be distinguished from others. Furthermore, notwithstanding any exceptions, a body should not indicate whether or not it holds a record, or refuse to communicate information unless the harm to the protect interest outweighs the public interest in disclosure. *Fourth*, contrary to criterion (d), a request for information should be accepted by a body even if it does not have the information. That body should simply indicate that

[8] Article 8(1).

it does hold that information and transfer expeditiously the request to another public which does hold the relevant record.[9]

Article 10 states that the request for information "shall include the specified purpose of the request" which "should be legitimate reasons as well as a real need for the information". This provision requires applicants to justify their requests and according to an unknown, and therefore probably variable, standard of what is considered a "legitimate reason" and a "real need". It is likely that any "source of information" with discretion to decide what constitutes a "legitimate reason" and a "real need" would be likely to making inconsistent and even politically-motivated decisions depending on whether it deemed the information requested to be in its own interests. The provision should therefore be removed completely. Article 12 also hands a significant degree of discretion to the source of information which "is not obliged to accept requests for information if …the request for information is too large to process and disruptive to their work". It is argued that, at minimum, the standard of reasonableness is incorporated into this provision so that a body is not required to comply with a request for information where to do so would unreasonably divert its resources.[10]

It is noted that the draft Law fails to consider situations where it is necessary to gain access to information within a much shorter period of time in order to protect individuals from coming to harm. Such a provision ought to be included in the draft Law.

Article 11 allows for information to be severed if only part of the requested information meets the conditions of the draft Law. Provisions on severability are appropriate in a law on the right of access to information – but only if the other provisions concerning the request for information are compliant with international standards.[11] Article 13 provides that requests for access to information can be submitted in writing or in person. Article 14 indicates that the "illiterate and those with special needs" must be considered by the source and should be provided with "additional and appropriate assistance". This provision should include "persons with disability" specifically. Furthermore the provision should be more specific as to the obligations owed to persons who are illiterate or with disabilities. An information officer who receives such an oral request should then reduce that request to writing, to include their name and position, and give a copy to the requester. The law should also provide that a request for information should be made in sufficient detail to identify, with reasonable effort, whether or not the body holds a record with that information. If the request does not meet this standard, the official receiving the request should provide such reasonable assistance, free of charge, as may be necessary to enable it to comply.[12]

Responding to requests

Article 16 provides that the applicant should be given notification of his/her request for information, and also notification of the approval or rejection of the request within ten

[9] Article 13, *Model FOI Law*.
[10] Article 14(2), *Model FOI Law*.
[11] Article 24, *Model FOI Law*.
[12] Article 8, *Model FOI Law*.

working days of the date of notification of the receipt. This provision should also include that the approval or rejection should be made "as soon as possible" to encourage bodies to deliver their decisions speedily. Under Article 17, the "source of access to information must provide the applicant with the requested information within twenty working days of the notification of approval of the request or completion of payment". The deadline could be extended if necessary for a further sixty days if "provision of all or part of the information requires referral to a third party or to a different source."

If the requested information is not held by "the source", the applicant "should be assisted and advised to re-submit their request to a source that possesses the requested information" (Article 18). In order to facilitate the processing of the request, it would be preferable for such a source to transfer the request directly to the body which holds the relevant information and also to inform the person making the request of such a transfer and of which body holds the relevant information.[13]

Recommendations:

- Article 9 should be amended to simply state that a request for information is a request in writing or orally to any official of a public or private body and is in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds a record of that information.
- Article 10 should be deleted.
- The draft Law should indicate that, where a request for information relates to information which reasonably appears to be necessary to safeguard the rights to life or liberty, a response must be provided within 48 hours.
- Article 12 should be amended to state that a body is "not required to comply with a request for information which is vexatious or where it has recently complied with a substantially similar request from the same person", nor is required to comply with such a request "where to do so would unreasonably divert its resources".
- Article 14 should be amended to require the relevant official to render such reasonable assistance as may be necessary to an applicant wishing to make a request.
- Article 16 should indicate that the approval or rejection of a request for information should be made "as soon as possible".
- Article 18 should be amended to allow the source to whom the request was originally submitted to transfer the request directly to the body which holds the relevant information and also to inform the person making the request of such a transfer and of which body holds the relevant information.

2.4. Costs

Section 4 of Part II of the draft Law deals with the "Cost of Access to Information". The broad principle that "information should be provided to the beneficiary free of charge" is

[13] Article 13(2) *Model FOI Law*.

indicated in Article 29. However, a "reasonable price commensurate with the cost of processing and providing the request information as well *as the purpose of its use*" (emphasis added) may be applied. Yet fees should not exceed the cost of searching for, preparing and communicating the information. The purpose of the information requested is irrelevant to and should not be a factor in determining the level of fee charged to the applicant of information. Whilst Article 29 states that the regulations and procedures adopted by the source of access to information should set the levels of costs and methods of payment, it is argued that fees should be set centrally by a designated minister, in consultation with an information commissioner.

Article 39 states that if a "beneficiary is late in collecting the requested information on the specified date for receipt of the information, the information is stored for an additional period of fifteen days." It goes on: "[i]f the beneficiary misses this deadline, the request for information becomes null and void" and he/she "is not entitled to ask for reimbursement of costs." It is argued that this is an unduly harsh provision which would serve to penalise individuals who have had their requests for information approved, but who may be unable to attend a particular venue to collect the requested information. It would also be a waste of resources to declare null and void a request for information – which might have taken months to process – simply because the resulting information was not collected within a specified period of time. The principle that the information ought to be in the public realm should stand despite any time limit imposed upon it.

Recommendations:

- Fees should be set centrally by a designated minister, should not exceed the cost of copying and communicating the information, should be waived for personal information and requests in the public interest, and should not be levied where the cost of collection would exceed the amount of the fee.
- Article 31 should be deleted.

2.5. Duty to publish

Article 8 indicates that every "source of access to information should develop procedures and forms to facilitate access to information" which "should be published in a way that is most accessible to the beneficiaries of such information". This is a positive inclusion and supports some of the later provisions contained in section 3 of Part II on the publication of information (Article 22 – 28) which serve to promote openness and transparency amongst relevant bodies.[14] Indeed, any such law on the right of access to information should be informed by the principle of "maximum disclosure" which establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.

However, there are two interrelated problems with section 3.

[14] Article 17, *Model FOI Law*.

First, it appears that different entities owe different obligations. "*Concerned parties*" (the NCI and sources of information) are required to publish information related to their official activities (Article 22); "*public, private and mixed sector bodies* are required to publish information related to productivity and service related activities" and "*foreign companies* are required to publish information on their activities and the results of these activities" (Article 23); "*all political parties, major organisations, institutions and civil society bodies* … are required to declare their operations, policies and internal regulations … publish information related to their activities" (Article 24); "*all parties held responsible for publication of information under this Act* are required to prepare a manual containing a list of the topics published by the organisation" (Article 25). Rather than indicating varying obligations on different categories of bodies subject to the draft Law, this section should clearly establish the principle that *every* public body and private body exercising a public function should, in the public interest, publish and disseminate in an accessible form, at least annually, key information such as: a description of its structure functions, duties and finances; relevant details concerning any services it provides directly to members of the public; a simple guide containing adequate information about the types and forms of information it holds, the categories it publishes and the procedure to be followed in making a request for information; a description of the powers and duties of its senior officers and the procedure it follows in making decisions; any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions.

Second, even though the NCI is included within the definition of a "source of access to information" and may consequently be caught by Article 8, it is unclear whether any of the provisions of section 3 except for Article 23 apply to it.

Recommendations:

- Articles 22 – 25 should be replaced with a provision indicating that every public body and private body exercising a public function should, in the public interest, publish and disseminate in an accessible form key information including details of its structure, functions, finances, services its provides, regulations and policies as well as a guide containing adequate information about its record keeping systems and the types of information it holds.

2.6. The Regime of Exceptions

Section 5 of Part II concerns exceptions to the principle of disclosure. Article 32 begins by emphasising that the right to access to information is "awarded with the boundaries of the law and to those the law gives right of access". It is concerning that the right to access to information is also "awarded in accordance with the systems and procedures in place at the source of access to information". This sentence implies that the systems and procedures of the bodies covered by the draft law may subject the right of access to information to an even more severe set of restrictions which go beyond the permissible exceptions identified in the draft Law itself. Article 32(f) which allows "official

documents which the law prevents from being published or made accessible" also suggests that this draft Law, once adopted, would be subject to other laws governing official secrets, rather than the other way around. Through such provisions the fundamental purpose of this law as protecting the right of access to information is critically undermined (Article 4).

In its entirety, Article 32 states that "[a]ny information related to the following exceptions may not be published or disclosed: (a) information whose disclosure could damage national security; (b) information held by the President of the Republic; (c) information related to military affairs, the conditions of the armed forces and defences secrets; (d) information whose disclosure could damage internal security, social harmony or national unity; (e) information whose disclosure could damage Yemen's interests and external relationships with foreign states and official organisations; (f) information where the source is an official document which the law prevents from being published or made accessible; (g) information related to the professional secrets of security systems at any of the concerned parties; (h) information whose disclosure could damage the national economy or damage public and private financial, commercial and economic interests; information obtained through an external source and under a confidentiality agreement by one or both parties."

There a number problems with this list of exceptions from the perspective of international legal standards. Under international law, the regime of exceptions should to adhere to a three-part test as follows:

- the information must relate to a legitimate aim listed in the law;
- disclosure must threaten to cause substantial harm to that aim; and
- the harm to the aim must be greater than the public interest in having the information.[15]

Hence, the draft Law falls short to these requirements for several reasons. *First*, the exceptions indicated are remarkably broad in their scope, rather than being narrowly drawn to avoid including information which does not actually harm one of the interests indicated. Notably, information held by the President of the Republic – which could conceivably encompass all public information – is on the list of exceptions. It is particularly alarming that Article 32(d) indicates that information "whose disclosure could damage internal security, social harmony or national unity" may not be published or disclosed. This provision might be abused to prevent a broad range of information which may be deemed to be a threat to one of these interests by the source of information. Constraints on such information would hamper political scrutiny as well as openness and transparent governance. Article 32(d) should instead be focussed on the precise aim of law enforcement and provide that a body may refuse to indicate whether it holds information or refuse to communication information where to do so would, or would be likely to, cause serious prejudice to: "(a) the prevention or detection of crime; (b) the apprehension of prosecution of offenders; (c) the administration of justice; (d) the assessment or collection of any tax or duty; (e) the operation of immigration controls; or

[15] Principle 4, *FOI Principles*.

(f) the assessment of a public body of whether civil or criminal proceedings or regulatory action pursuant to any enactment would justified".[16]

Some of the provisions are based on the *type* rather than the *content* of information concerned – and therefore restrictions based on such information cannot be seen as legitimate. These include those making exceptions for information "held by the President" or information related to "military affairs, the conditions of the armed forces and defence secrets" or information "where the source is an official document which the law prevents from being published or made accessible" (Article 32(b), (c) and (d)). Moreover, there is also no indication that any of the exceptions are time limited. The justifications for classifying information whose disclosure "could damage internal security", "Yemen's interests and external relationships with foreign states" or even the "national economy" (Articles 32(d), (e) and (h)) may well disappear after a specific threat to those interests subsides or disappears.

Second, as well as being very overbroad, some exceptions do not suggest they would result in a substantial harm. For example, information simply *related* to "military affairs" and "the conditions of the armed forces" (Article 32(c)) would not necessarily serve to weaken the military. Indeed, the exposure of such matters would more likely be in the public interest and serve to strengthen the effectiveness and morale of the armed forces, rather than undermine them.

Third, and perhaps most significantly, the draft Law makes no mention at all of a "public interest override". This means that even if it can be shown that disclosure of information would cause substantial harm to a legitimate and narrowly drawn objective, the information should still be disclosed if the benefits of disclosure outweigh the harm. For example, certain information may be contained in "an official document which the law prevents from being published or made accessible" but may well expose high-level corruption or maladministration within government. The harm to the legitimate aim should be weighed against the public interest in having the information made public. Where the latter is greater, the law should provide for disclosure of the information. To this end, we strongly encourage the inclusion of an overarching provision indicating the public interest override to give effect to the fundamental principle of maximum disclosure. More specifically, we recommend a clear formulation of the public interest override as such:

> Notwithstanding any provision in this Part, a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.[17]

The draft Law also fails to acknowledge a number of other interests which might justify a refusal to provide information including personal information, health and safety related information and legally privileged information.[18]

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[16] Article 29, *FOI Model Law*.
[17] Article 22, *Model FOI Law*.
[18] Articles 22 – 32, *Model FOI Law*.

In addition, Article 33 indicates that the source of information can refuse the disclosure of such information without being required to give reasons in a number of cases: if that is "information exchanged between public authorities and their affiliated bodies on decision making specific to the responsibilities and directive of the public authorities and affiliated organisations; (b) information on state policies and measures in the context of the state preparing to take economic and financial measures; (c) information related to investigations, prosecutions and judicial matters connected with public safety and social security; (d) information that leads to the disclosure of details on discussions in formal meetings as well as the views of participants; (e) information that cannot be verified by its source and that is subject to review, investigation and amendment". This provision is extremely problematic because it means that any refusals to disclose certain types of information do not require any justification at all. In essence, the provision completely sidesteps the requirements of the three-part test indicated above.

To address the problems indicated with the regime for exceptions, ARTICLE 19 recommends the adoption of the relevant provisions of ARTICLE 19's *Model FOI Law*.

Recommendations:

- A provision should be included at the beginning of section 5 stating that "a body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure".
- Article 32(b) deleted.
- Article 32(c) should indicate that a body "may refuse to communicate information where to do so would be likely to, cause serious prejudice to the defence of national security".
- Article 32(d) should be amended to state that: a body may refuse to indicate whether it holds information or refuse to communication information where to do so would, or would be likely to, cause serious prejudice to: (a) the prevention or detection of crime; (b) the apprehension of prosecution of offenders; (c) the administration of justice; (d) the assessment or collection of any tax or duty; (e) the operation of immigration controls; or (f) the assessment of a public body of whether civil or criminal proceedings or regulatory action pursuant to any enactment would justified.
- Article 32(f) should be deleted.
- Article 32(g) should be amended to state that a body may refuse to communicate information if it was obtained in confidence from a third party and it contains a trade secret and to communicate it would or would be likely to seriously prejudice the commercial or financial interests of that third party.
- Article 32(h) should state that a body may refuse to indicate whether or not it holds a record or refuse to communicate information, where to do so would, or would be likely to cause serious prejudice to: the ability of government to manage the economy of Yemen; or the legitimate commercial or financial interests of a public body.

- Article 32(i) should state that a body may refuse to communicate information if the information was obtained from a third party and it would constitute an actionable breach of confidence.
- Furthermore, exceptions should be added which indicate that a body may refuse to indicate whether or not it holds a record or refuse to communicate information where: to do so would, or would be likely to, endanger the life, health or safety of any individual; to do so would involve the unreasonable disclosure of personal information about a natural third party; or where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.
- Article 33 should be deleted.
- Article 32 should be amended to ensure that the law provides for a comprehensive list of exceptions, set out in precise and narrowly-drawn terms. The exceptions should protect interests such as defence and security, but also other legitimate interests such as personal information and health and safety related information.

2.7. Appeals

ARTICLE 19 has significant concerns about the system for appealing refusals of disclosure. Article 20 provides that if the request for information is "rejected totally or in part, the source of information must inform the applicant of the reasons for the rejection". The applicant has a right to file a complaint to the chairman of the NCI or the chairman of the concerned party. If the "applicant remains unconvinced by the decisions, they are entitled to appeal before the Board of Trustees before turning to the judiciary if they are not persuaded by the decision of the Board of Trustees." This system is grossly lacking principally because the NCI is far from being an independent and impartial administrative body (eg an Information Commissioner) which is required under international standards as the appropriate appeals body for access to information legislation. Indeed, the individuals who are represented on the Board of Trustees of the NCI derive mostly from the government.

Beyond this huge deficiency, in terms of setting up a system of appeals, the draft Law falls short. In particular, the draft Law does not establish "a right to appeal" as such. Furthermore, there is a complete absence of provisions elaborating on such matters as: the grounds on which a complaint or an appeal may be brought; the period within which an application for appeal should be decided; the grounds on which an appeal may be summarily rejected; the burden of proof in appeals; the remedies that may be granted (eg compensation); direct implementation of the decision of the independent administrative body; and the time period for filing an application for appealing a decision of the independent administrative body to the courts' system.

ARTICLE 19 recommends that a proper appeals' system be established by the draft law in compliance with the relevant provisions of ARTICLE 19's *Model FOI Law*.[19]

Recommendations:

- The draft Law should clearly provide for a right to appeal to an independent administrative authority, such as an Information Commissioner, a decision that a body has failed to comply with an obligation of the draft Law.
- The draft Law should provide that the Information Commissioner shall decide an application for an appeal as soon as reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing. It should indicate that the Commissioner may summarily reject applications which are frivolous or vexatious, or where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant body. It should also indicate that the Commissioner may: (1) reject the application; (2) require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations; (3) require the public body to compensate the complainant for any loss or other detriment suffered; or (4) impose a fine on the body. It should state that the Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or private body.
- The draft Law should provide that the Commissioner may, after giving a public body an opportunity to provide their views in writing, decide that a body has failed to comply with an obligation under the draft Law.
- The draft Law should state that a complainant or relevant body may, within 45 days, appeal to the court for a full review of a decision of the Commissioner. It should stipulate that the burden on the body to show that it acted in accordance with its obligations.
- Finally, the draft Law should indicate that, after the expiry of the 45 day period for appeals, the Commissioner may certify in writing to the court any failure to comply with a decision and the court shall consider such failure under the rules relating to contempt of court.

2.8. Oversight Body

Part III concerns the "Management of Information" and Part IV deals with "Information Security". These highly detailed provisions essentially set out the structure and functions of the NCI. However, instead of establishing the NCI as an independent organ with the role of promoting the right of access to information, these provisions indicate it to be a government body, the hub of a national system for controlling information, a depositary of information and an intrusive regulator for the means and mechanisms of storing information at concerned parties.

[19] Articles 41 to 46.

Article 34 indicates that the Board of Trustees shall include such individuals as: the Minister of Planning and International Cooperation; the Minister of Information; the Minister of Legal Affairs; the Minister of Finance; the Minister of Communications; and the Minister of the Interior. As a result, it is clear that the NCI will have an overriding political interest in protecting the government. Its independence and autonomy will be absolutely compromised. Article 35 then sets out the very significant role of the NCI's Board of Trustees to "supervise, direct, design and approve policies and measures in the field of information". The role of the NCI is to "build, manage and develop" a "national integrated system of information" which will operate through a national network of information linking the centre to the information unites at concerned parties and to different sectors". Section 2 then deals with the particular role of the NCI, the information units and concerned parties. Part III provisions establish that, for example: the "state apparatus, public, private and mixed sector bodies and foreign companies within the Republic must provide the Centre with the necessary data and information that allows it to perform its duties and functions and must not withhold, impede or delay the delivery of information to the Centre" (Article 43); or "all scientific and research bodies must give the Centre a copy of any work they carry out and any studies, scientific research or intellectual publications they oversee" (Article 46) .

Similar functions are presented by Part IV on "Information Security". Section 1 on the "Protection of Information" indicates the role of the NCI and the concerned parties in "protecting information security" (Article 49). This provides among other things that the NCI "shall maintain national strategic storage of essential information including all that is kept as backup storage at concerned parties". Such a collecting of material would presumably be a mammoth task, and it is not clear to what ends. Section 2 on the "Protection of Information Systems" contains unnecessary provisions on how information is stored by concerned parties. Section 3 on "Protecting Privacy" is also unnecessary as the protection of privacy as a fundamental right should be dealt with through the constitution or through separate legislation on, for example, data protection. It is inappropriate to have a section on essentially data protection within this draft Law.

ARTICLE 19 recommends the complete removal of Parts III and IV and their replacement with a part establishing an Information Commissioner as the oversight body. The Information Commissioner should enjoy operational and administrative autonomy from any other person or entity, including the government and its agencies. The Information Commissioner should be appointed by the President after nomination by two-thirds majority vote of the Parliament and after an open, participatory and transparent nomination process. It should be made clear that no-one may be appointed Information Commissioner if he or she holds an official office or is an employee of a political party or holds an elected position in the central or local government.[20]

Recommendations:
- Articles 34-68 should be deleted.

[20] Part V, *Model FOI Law*.

- These provisions should be replaced with a provision establishing the institution of an Information Commissioner. The provision should state inter alia that the office shall: enjoy operational and administrative autonomy from any other person or entity, including the government and its agencies; shall be appointed by the President after nomination by two-thirds majority vote of the Parliament and after a open, participatory and transparent nomination process; and that no-one may be appointed Information Commissioner if he or she holds an official office or is an employee of a political party or holds an elected position in the central or local government.[21]

2.9. Penalties

Part V deals with "Violations and Penalties". Article 69 sets out the principle that the punishment for a violation of the provisions of the Act shall incur a punishment that "will not be less than the extent of the damage caused by the violation". There are a number of significant problems with this part.

This part elaborates upon a whole series of very broadly offences. Different offences, some of which do not even directly relate to the law, attract different penalties. The length of sentences is extremely harsh in terms of their length, which is set at minimum rather than the maximum levels, and, given the other major problems with this draft Law, may be open to abuse by the Yemeni authorities. For example: retrieving information in a fraudulent way or in breach of the regulations for public and provision of information, committing identity fraud or giving false information to obtain information is punishable by imprisonment for no less than two years and a fine (Article 70); obtaining information not permitted for publication or disclosure is punishable by no less than six years imprisonment and a fine (Article 71); obtaining information to "damage private, public, financial, commercial and economic interests that can jeopardise social stability and security" is punishable by imprisonment of no less than four years or a fine (Article 72); refusing or obstructing the disclosure of information that can disclosed, exchanged or published is punishable by imprisonment for a period of no less than six months (Article 73); destroying, deleting, cancelling or altering information at any of the concerned parties is punishable by imprisonment of no less than three years or a fine (Article 74); wilfully disclosing false information in order to impede and obstruct undertaking of legitimate work, or changing official information in order to withhold or obstruct the truth or achieve an unlawful goal is punishable by imprisonment of no less than two years (Article 75); and completely or partially destroying information systems, violating, destroying or immobilising tools and applications for information security systems or completely or partially destroying, disabling or obstructing any components of information systems is punishable by imprisonment of no less than four years or with a fine. Furthermore, under this provision the upper limit of fines is not known. Provisions

[21] Part V, *Model FOI Law*.

state that a punishment of imprisonment or a "fine that befits the extent of material or moral damage caused by the crime of both imprisonment and a fine shall be awarded" in the case of a number of offences. An upper limit for fines should be set.

The draft Law should simply indicate that it is only a criminal offence to wilfully obstruct access to information contrary to the draft Law or the performance by a public body of a duty under the draft Law, interfere with the work of the oversight body (Information Commissioner) or destroy records without lawful authority. The draft Law should set a maximum sentence of a period not exceeding two years or a fine not exceeding an appropriate amount for any of these offences.[22] The draft Law should also include a provision indicating that disclosures made in good faith shall not be subject to any legal action.

It is worth noting that Part VI on "General Provisions" contain a number of relevant provisions on penalties. Article 79 states "any act or attempt to destroy or disable the administration of information systems at civil or military concerned parties shall be considered a crime and an act of aggression against the national security of Yemeni society. Perpetrators of these crimes shall be legally pursued inside and outside the Republic of Yemen". Article 80 states that "without prejudice to other laws in effect, sufficient preventive measures may be taken against any persons who repeatedly attempt to damage information systems, networks or equipment used by concerned parties". These two provisions are extremely far reaching, in determining that the destruction of information systems is "an act of aggression" and in empowering government to take preventive measures, and should be removed.

Recommendations:

- Articles 69-78 should be deleted.
- In their place there should be a provision which should establish that it is a criminal offence to: (1) wilfully obstruct access to information contrary to the draft Law; (2) wilfully obstruct the performance by a public body of a duty under the draft Law; (3) interfere with the work of the oversight body (Information Commissioner); (4) or destroy records without lawful authority.
- The draft Law should set the maximum punishment possible for any of these offences. This should be a period not exceeding two years or a fine not exceeding an appropriate amount.[23]
- A further provision should be added indicating that no-one shall be subjected to civil or criminal action, or any employment detriment for anything done in good faith in the exercise, performance or purported performance of any power or duty under the law as long as they acted reasonably and in good faith.
- Articles 79-81 should be removed.

[22] Article 49, *Model FOI Law*.
[23] Article 49, *Model FOI Law*.

2.10. Miscellaneous

The draft Law does not deal with the protection of whistleblowers – persons who release information on wrongdoing ("blow the whistle"). It should provide for protection against any legal, administrative or employment related sanctions for individuals who release information on wrongdoing, or which would disclose a serious threat to health, safety or the environment. This protection should apply where the individual acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment. Wrongdoing should be defined to include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious maladministration regarding a public body.[24] Public bodies should also be required to provide training programmes for their employees that address the scope of whistleblower protection and what sort of information a body is required to publish.[25]

Recommendations:

- A provision should be added to the draft Law to protect individuals against any legal, administrative or employment-related sanctions for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.
- The draft Law should obligate public bodies to provide training programmes for their employees.

[24] See Principle 9, *Principles on FOI legislation* and Part VII, *A Model FOI* Law.
[25] See Principle 3, *Principles on FOI legislation*.

APPENDIX 1: YEMEN'S OBLIGATIONS UNDER INTERNATIONAL LAW AND INTERNATIONAL STANDARDS ON THE RIGHT TO FREEDOM OF EXPRESSION

1. The importance of access to information

The right of access to information held by public bodies – often referred to as "freedom of information" or the "right to information" – is a fundamental human right recognised in international law.[26] It is crucial as a right in its own regard as well as central to the functioning of democracy and the enforcement of other rights. Without a right to information, state authorities can control the flow of information, "hiding" material that is damaging to the government and selectively releasing "good news" only. In such a climate, corruption thrives and human rights violations can remain unchecked.

In the early international human rights instruments, the right to information was not set out separately but included as part of the fundamental right to freedom of expression, which includes the right to seek, receive and impart information. Article 19 of the *Universal Declaration on Human Rights* (UDHR), adopted as a United Nations General Assembly resolution in 1948,[27] states:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

While the UDHR is not directly binding on States, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law.[28] Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), a legally binding instrument ratified to which Yemen acceded on 9 February 1987,[29] ensures the right to freedom of expression and information in terms similar to the UDHR.

Yemen is also a member of the Arab League which adopted the Arab Charter on Human Rights on 22 May 2004.[30] Although the Arab Charter has been criticised for its

[26] Toby Mendel, *Freedom of Information: A Comparative Legal Study* (UNESCO, Paris: 2008).
[27] UN General Assembly Resolution 217A (III), adopted 10 December 1948.
[28] For judicial opinions on human rights guarantees in customary international law, see *Barcelona Traction, Light and Power Company Limited Case* (Belgium v. Spain) (Second Phase), ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit). For an academic critique, see M.S. McDougal, H.D. Lasswell and L.C. Chen, *Human Rights and World Public Order*, (Yale University Press: 1980), pp. 273-74, 325-27. See also United Nations General Assembly Resolution 59 (1), 1946.
[29] UN General Assembly Resolution 2200A (XXI), adopted 16 December 1966, in force 23 March 1976.
[30] Arab Charter on Human Rights reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force 15 March 2008.

significant deficiencies as a human rights instrument,[31] it does contain an express guarantee of the right to information.[32]

There is now little doubt that there is growing international recognition of a general right of access to information as well as of the importance of adopting the legislative and other measures necessary to make this right effective. The United Nations Special Rapporteur on Freedom of Opinion and Expression,[33] for example, has repeatedly called on all States to adopt and implement right to information legislation.[34] In 1995, the UN Special Rapporteur stated:

> The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large … is to be strongly checked.[35]

His comments were welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to "develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications".[36] In his 1998 Annual Report, the Special Rapporteur reaffirmed that the right to information includes the right to access information held by the State:

> [T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems….[37]

The UN Special Rapporteur was joined in his call for legal recognition of the right to information by his regional counterparts – the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organisation of American States – in a Joint Declaration issued in November 1999. The three reiterated their call in December 2004, stating:

> The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure,

[31] These deficiencies include the death penalty for children and the rights of women and non-citizens. See the comments of the UN High Commissioner of Human Rights, Louise Arbour, upon entry into force of the Arab Charter on Human Rights, 30 January 2008.
[32] Article 32, Arab Charter of Human Rights.
[33] The Office of the Special Rapporteur on of Opinion and Expression was established by the UN Commission on Human Rights, the most authoritative UN human rights body, in 1993: Resolution 1993/45, 5 March 1993.
[34] See, for example, the Concluding Observations of the Human Rights Committee in relation to Trinidad and Tobago, UN Doc. No. CCPR/CO/70/TTO/Add.1, 15 January 2001. 14. The comments of the UN Special Rapporteur on freedom of Opinion and Expression are discussed at length below.
[35] Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31.
[36] Resolution 1997/27, 11 April 1997. 12(d).
[37] Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40. 14.

> establishing a presumption that all information is accessible subject only to a narrow system of exceptions.[38]

The right to information has also been explicitly recognised in all three regional systems for the protection of human rights. Within the Inter-American system, the Inter-American Commission on Human Rights approved the *Inter-American Declaration of Principles on Freedom of Expression* in October 2000.[39] The Principles unequivocally recognise a right to access information held by the State, as both an aspect of freedom of expression and a fundamental right on its own:

> 3. Every person has the right to access information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.
>
> 4. Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

Shortly after the adoption of these Principles, a group of experts met in Lima, Peru and adopted the *Lima Principles*.[40] These Principles elaborate in greater detail on the content of the right to freedom of information in the context of the Americas. Two years later, in November 2003, a major international conference on freedom of information was again held in Peru, bringing together a wide range of civil society experts, as well as officials and politicians. The conference adopted the *Declaration of the SOCIUS Peru 2003: Access to Information Seminar*, which states, among other things:

> We recommend that Governments Adopt and implement access to information laws based on the underlying principle of openness, as elaborated in the attached "Guidelines on Access to Information Legislation".[41]

The Guidelines set out in some detail the standards to which freedom of information legislation should conform.[42]

These standards are confirmed by a Resolution of the General Assembly of the Organisation of American States adopted in 2003, stating:

> 2. To reiterate that states are obliged to respect and promote respect for everyone's access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.[43]

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[38] 6 December 2004. Available at: http://www.cidh.org/Relatoria/showarticle.asp?artID=319&lID=1.
[39] 108th Regular Session, 19 October 2000.
[40] Adopted in Lima, 16 November 2000.
[41] 28 November 2003.
[42] Available at: http://www.britishcouncil.org/socius/english/declaration.pdf.
[43] AG/RES. 1932 (XXXIII-O/03), of 10 June 2003.

The General Assembly followed this up in 2004 with a Resolution calling on Member States to adopt and implement legislation ensuring "broad access to public information".[44] In 2005, reaffirming the previous two resolutions, the General Assembly urged States to provide for civil society participation in the drafting of access to information laws, and also urged States to include in their laws "clear and transparency exception criteria."[45]

Regional human rights bodies in other parts of the world have also recognised access to information as a human right. The African Commission on Human and Peoples' Rights recently adopted a *Declaration of Principles on Freedom of Expression in Africa*,[46] Principle IV of which states, in part:

> 1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
> 2. The right to information shall be guaranteed by law in accordance with the following principles:
>   - everyone has the right to access information held by public bodies;
>   - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
>   - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
>   - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
>   - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
>   - secrecy laws shall be amended as necessary to comply with freedom of information principles.

Within Europe, on 27 November 2009, the Council of Europe adopted the Convention on Access to Official Documents which will be open for signature on 17 June 2009. Even more recently, in its recent decision concerning the Hungarian Civil Liberties Union, the European Court of Human Rights recognised that when public bodies already hold information that is needed for public debate, the refusal to provide it to those who are seeking it is a violation of the right to freedom of expression and information.[47] These recent developments stand against the backdrop of the Committee of Ministers of the Council of Europe Recommendation on Access to Official Documents of 2002.[48] Principle III provides generally:

> Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

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[44] AG/RES. 2058 (XXXIV-O/04), of 8 June 2004.
[45] AG/RES. 2121 (XXXV-O/05), of 26 May 2005.
[46] Adopted at the 32nd Session, 17-23 October 2002.
[47] *Társaság a Szabadságjogokért v. Hungary*, Application no. 37374/05 14 April 2009.
[48] Recommendation No. R(2002)2, adopted 21 February 2002.

The rest of the Recommendation goes on to elaborate in some detail the principles which should apply to this right.

The Commonwealth has also recognised the fundamental importance of the right to information, and has taken a number of significant steps to elaborate on the content of that right.[49]

Implementation of the right to access to information is also a key requirement imposed on States parties to the UN Convention against Corruption. Yemen ratified this Convention on 7 November 2005.[50] Article 13 of the Convention requires that States should "[ensure] that the public has effective access to information".

The right of access to information is not guaranteed by the Constitution in Yemen.[51] However, Article 41 "protects freedom of thought and expression of opinion in speech, writing and photography within the limits of the law".[52]

National right to information laws have been adopted in record numbers over the past ten years, in countries as diverse as India, Israel, Jamaica, Japan, Mexico, Pakistan, Peru, South Africa, South Korea, Thailand, Trinidad and Tobago, and the United Kingdom, as well as most of East and Central Europe. These nations join a number of other countries which enacted such laws some time ago, such as Sweden, the United States, Finland, the Netherlands, Australia and Canada, bringing the total number of States with right to information laws to over 80. A growing number of inter-governmental bodies, such as the European Union, the UNDP, the World Bank and the Asian Development Bank, have also adopted policies on the right to information. With the adoption of a strong right to information law, Yemen would join a long list of nations which have already taken this important step towards guaranteeing this fundamental right.

2. The content of the right of access to information

A survey of international law and best practice shows that, to be effective, right to information legislation should be based on a number of general principles. Most important is the principle of *maximum disclosure*: any information held by a public body should in principle be openly accessible, in recognition of the fact that public bodies hold information not for themselves but for the public good. Furthermore, access to information may be refused only in narrowly defined circumstances, when necessary to protect a legitimate interest. Finally, access procedures should be simple and easily

[49] See the *Communiqué*, Meeting of Commonwealth Law Ministers (Port of Spain: 10 May 1999).
[50] See http://www.unodc.org/pdf/crime/convention_corruption/cosp/session1/V0658021e.pdf.
[51] As amended on 29 September 1994. One of the most controversial changes brought it by this amended Constitution was to Article 3 which made Islamic Shari'ah law *the* source of all legislation. Previously it had been "the main source". See Yemen Gateway site for Constitution: http://www.al-bab.com/yemen/gov/con94.htm
[52] Constitution of the Republic Yemen as amended on 29 September 1994.

accessible, and persons who are refused access should have a means of challenging the refusal before an independent body.

In his 2000 Annual Report to the UN Human Rights Commission, the UN Special Rapporteur endorsed ARTICLE 19's overview of the state of international law on the right to information as set out in the ARTICLE 19 Principles and called on Governments to revise their domestic laws to give effect to this right. He particularly directed States' attention to nine areas of importance:

> [T]he Special Rapporteur directs the attention of Governments to a number of areas and urges them either to review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles. Among the considerations of importance are:
>
> - Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; "information" includes all records held by a public body, regardless of the form in which it is stored;
>
> - Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
>
> - As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
>
> - A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
>
> - All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
>
> - The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
>
> - The law should establish a presumption that all meetings of governing bodies are open to the public;
>
> - The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;
>
> - Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of

> justice, corruption or dishonesty or serious failures in the administration of a public body.[53]

This constitutes strong and persuasive guidance to States on the content of right to information legislation.

3. Limits to the right to information

One of the key issues in a right to information law is defining when a public body can refuse to disclose information. Under international law, restrictions on the right to information must meet the requirements stipulated in Article 19(3) of the ICCPR:

> The exercise of the rights [to freedom of expression and information] may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The requirements of Article 19(3) translate into a three-part test, whereby a public body must disclose any information which it holds and is asked for, unless:

1. The information concerns a legitimate protected interest listed in the law;
2. Disclosure threatens substantial harm to that interest; and
3. The harm to the protected interest is greater than the public interest in having the information.[54]

The same approach is reflected in Principle IV of the Council of Europe Recommendation on this issue, which states:

> **IV. Possible limitations to access to official documents**
>
> 1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
> i. national security, defence and international relations;
> ii. public safety;
> iii. the prevention, investigation and prosecution of criminal activities;
> iv. privacy and other legitimate private interests;
> v. commercial and other economic interests, be they private or public;
> vi. the equality of parties concerning court proceedings;
> vii. nature;
> viii. inspection, control and supervision by public authorities;
> ix. the economic, monetary and exchange rate policies of the state;
> x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

[53] *Ibid*., para. 44.
[54] Principle 4, *FOI Principles*.

> 2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

This incorporates a clear list of legitimate protected interests, and permits information to be withheld only where disclosure would harm the interest and where this harm is greater than the public interest in disclosure.

Cumulatively, the three-part test is designed to guarantee that information is only withheld when it is in the overall public interest. If applied properly, this test would rule out all blanket exclusions and class exceptions as well as any provisions whose real aim is to protect the government from harassment, to prevent the exposure of wrongdoing, to avoid the concealment information from the public or to preclude entrenching a particular ideology.

APPENDIX 2: DRAFT GOVERNMENT ACCESS TO INFORMATION LAW

(As translated by ARTICLE 19)

In the name of the people of Yemen and the President of the Republic of Yemen:-

On reviewing the constitution of the Republic of Yemen and following approval from the Council of Ministers and the House of Representatives, we hereby issue the following law:-

PART I: DEFINITIONS and PURPOSE

1. Definitions

Article (1): This Act will be known as the Information law.
Article (2): For the purposes of the application of this Act, the following words have been assigned these meanings unless the context otherwise requires:-

(a) "The Republic" is the republic of Yemen;
(b) "The board of trustees" is the board of trustees in the National Centre for Information;
(c) "The centre" is the National Centre for Information;
(d) The " concerned parties" are legislative, representative and judicial bodies, government ministries, institutions, central and local interests, public and mixed sector bodies;
(e) "The Information Unit" is a regulatory framework focused on the management of information, the operation of information systems and handling requests for information at "concerned parties;"
(f) "Source of access to information" is the "the centre" and "the concerned parties;"
(g) "Information" means well established facts in peoples' consciousness found in moral and material values and applied knowledge. 'Information' exists in the form of numbers, letters, illustrations, pictures and sounds collected, processed, stored and exchanged both electronically and on paper;
(h) "Information system" means a set of human, material, technical and organizational elements interacting together to collect data and to protect, process and analyze information for exchange in order to meet the needs of its beneficiaries;
(i) "The beneficiary" means all those who have the right to access to information or those who obtain information under this Act;

(j) "The national system of information" is a network of systems which merge to form one unified national system of information to collect, process, store and exchange information so that it is available to decision makers, researchers, scholars, investors and all interested parties. The "national system of information also ensures the participation in the exchange of information of diverse sources as well as internal and external networks of information;
(k) " Information technology" is the design, development, use, and maintenance of information processing systems and related applications and their effects;
(l) "Personal data" is all personal data related to a person except data already circulated such as the name, age, place of birth, address, telephone number, qualification and occupation.
(m)"Regulations" are the implementing regulations of this Act.

2. Purpose

Article (3): The purpose of this Act is:-
(a) to ensure a citizen's right to access to information and to expand rules to allow a citizen to exercise such rights and freedoms;
(b) to strengthen the elements of transparency and to expand the opportunities for informed and responsible participation;
(c) to enable society to develop its capacity to benefit from information

PART II: FREEDOM OF ACCESS TO INFORMATION

1. The Principles of the Right to Access to Information

Article (4): Access to information is a fundamental right of a citizen and enables the citizen to exercise this right within the boundaries of the law.

Article (5): Requests for information should be submitted to the centre or submitted directly to the information department at the concerned party.

Article (6): Access to information can be obtained directly by the applicant or indirectly by way of publication or by both ways.

Article (7): Every citizen has the right to request access to information and such a request should not result in any legal accountability.

2. Requests for Access to Information

Article (8): Every source of access to information should develop procedures and forms to facilitate access to information. These procedures and forms should be published in a way that is most accessible to the beneficiaries of such information.

Article (9): A request for information must be accepted under this Act if it meets the following conditions: -

(a) the request for access to information is made to the body legally empowered to provide the required information and should be made under the name of the beneficiary;
(b) the request for information complies with in house procedures at the source authorized to receive the request for access to information;
(c) the requested information is not subject to exceptions or confidentiality under the law;
(d) that the required information is available to the source of access to information;
(e) that the requested information is accurate and accessible with sufficient details, to facilitate its retrieval by the beneficiary with reasonable effort;
(f) that requested information does not concern a third party that could prevent its publication or transfer to another party and that requested information is not subject to any exceptions under this Act;

Article (10): A request for access to information shall include the specified purpose of the request. The purpose should be for legitimate reasons as well as a real need for the information.

Article (11): If a small part of the request for information meets the conditions specified in this Act, the request is accepted within the limits of the section which meets the conditions of this Act. The remainder of the request which does not comply with this Act is rejected.

Article (12): The source of access to information is not obliged to accept requests for information if they have previously made the information available to the applicant or if the request for information is too large to process and disruptive to their work.

Article (13): Requests for access to information can be submitted by email, letter or in person at the source of access to information. In all cases the applicant must submit their request for access to information by following the procedures and completing the forms adopted by the source organisation.

Article (14): The source organisation of requests for access to information must consider in its procedures and forms the illiterate and those with special needs by providing additional and appropriate assistance.

Article (15): A foreigner or an official foreign body is permitted to request access to information in accordance with the procedures of the source organisation in the spirit of co-operation or to facilitate work with public interest.

Article (16): The applicant should be notified of receipt of their request for access to information by the source party. The source should also notify the applicant of the approval or rejection of the request within ten working days of the date of notification of receipt of the request.

Article (17): The source of access to information must provide the applicant with the requested information within twenty working days of notification of approval of the request or the completion of payment by the applicant. This deadline can be extended for an additional twenty working days if the size, nature and processing of the information requires so. This deadline can be extended for a further sixty working days if provision of all or part of the information requires referral to a third party or to a different source.

Article (18): If the requested information does not exist, the applicant of the request for access to information should be assisted and advised to re-submit their request to a source that possesses the requested information.

Article (19): If the beneficiary submits a request for information available at the source in a language or format different from that requested, it is sufficient to deliver the requested information to the applicant in its available language or format provided that the language or format incorporates the requested information.

Article (20): In the event that the request for access to information is rejected totally or in part the source of access to information must inform the applicant of the reasons for the rejection. If the applicant is unconvinced of the justifications for the rejection they have the right to file a complaint to the chairman of the centre or the chairman of the concerned party. If the applicant remains unconvinced by the decisions, they are entitled to appeal before the Board of Trustees before turning to the judiciary if they are not persuaded by the decision of the Board of Trustees.

Article (21): The source of access to information is not obliged to process the request for access to information if the requested information is previously published in any of the available means of publication.

3. The Publication of Information

Article (22): All concerned parties are required to publish information related to their official activities as well as results of their performance of constitutional and legal duties.

Article (23): All public, private and mixed sector bodies are required to publish information related to productivity and service related activities as well as the results of this activity. Foreign companies working in the Republic are also required to publish information on their activities and the results of these activities without contravening laws in effect and signed agreements.

Article (24): All political parties, major organizations, institutions and civil society bodies established according to the constitution and laws in effect, are required to declare their operations, policies and internal regulations without breaching legal obligations present in current laws. They should also publish information related to their activities.

Article (25): All parties held responsible for the publication of information under this Act are required to prepare a manual containing a list of the topics published by the organisation including dates and modes of publication.

Article (26): Information should be published by any mode of publication accessible to a diverse group of beneficiaries. The mode of publication should also be within the capacity of the party responsible for the dissemination of the information.

Article (27): Information disseminated under this Act is free of charge but concerned parties are permitted to charge a reasonable fee if the information needs to be published electronically or on paper.

Article (28): The beneficiary has the right to make a justified request to concerned parties to expand the list of subjects approved for publication. In the event that the request is rejected, the beneficiary has the right to appeal to the Board of Trustees and the Board's decision is final in this regard.

4. The Cost of Access to Information

Article (29): Information should be provided to the beneficiary free of charge. In cases where this is not possible information should be provided at a reasonable price commensurate with the cost of processing and providing the requested information as well as the purpose of its use. The regulations and procedures adopted at the source of access to information stipulate the levels of costs and the methods of payment.

Article (30): In the event that the provision of information requires a fee, costs must be settled before the procedures for the disclosure of the information can commence. The time period between notification of acceptance of the request for information and the date of due payment of the costs is not taken into account.

Article (31): In the event that the beneficiary is late in collecting the requested information on the specified date for receipt of the information, information is stored for an additional period of fifteen days. If the beneficiary misses this deadline, the request for

information becomes null and void. In this case, the beneficiary is not entitled to ask for reimbursement of costs.

5. Exceptions

Article (32): The right to access to information is awarded within the boundaries of the law and to those the law gives right of access. Right to access to information is also awarded in accordance with the systems and procedures in place at the source of access to information. Any information related to the following exceptions may not be published or disclosed:-

(a) information whose disclosure could damage national security;
(b) information held by the President of the Republic;
(c) information related to military affairs, the conditions of the armed forces and defence secrets;
(d) information whose disclosure could damage internal security, social harmony or national unity;
(e) information whose disclosure could damage Yemen's interests and external relationships with foreign states and official international organisation;
(f) information where the source is an official document which the law prevents from being published or made accessible;
(g) information related to the professional secrets of internal systems at any of the concerned parties;
(h) information whose disclosure could damage the national economy or damage public and private financial, commercial and economic interests;
(i) information obtained through an external source and under a confidentiality agreement by one or both parties.

Article (33): The source of access to information can refuse the disclosure of information without being required to give reasons in the following cases:-

(a) information exchanged between public authorities and their affiliated bodies on decision making specific to the responsibilities and directive of the public authorities and affiliated organisations;
(b) information on state policies and measures in the context of the state preparing to take economic and financial measures;
(c) information related to investigations, prosecutions and judicial matters connected with public safety and social security;
(d) information that leads to the disclosure of details on discussions in formal meetings as well as the views of participants;
(e) information that cannot be verified by its source and that is subject to review, investigation and amendment.

PART III: THE MANAGEMENT OF INFORMATION

1. Institutional Organisation

Article (34): The Board of Trustees at the National Centre for Information is the highest administrative body in the make-up of the institutional organisation which is structured as follows:-

- Chairman of the Council of Ministers - Chairman of the Board
- Minister of Planning and International Cooperation - Member
- Minister of Information - Member
- Minister of Legal Affairs - Member
- Minister of Higher Education and Scientific Research -Member
- Minister of Finance - Member
- Minister of Communications and Information Technology - Member
- Minister of Civil Service and Insurance - Member
- Minister of the Interior - Member
- Deputy Director of the Office of the Presidency of the Republic - Member
- Chairman of the National Centre for Documentation - Member
- Secretary General of the Council of Ministers - Member
- Chairman of the National Centre for Information - Member

Article (35): the Board of Trustees supervises, directs, designs and approves policies and measures in the field of information and monitors their execution. The board also has the following specific functions and powers:-

(a) approval of national policies and strategies for information;

(b) ensuring coordination and integration in the expansion and implementation of developmental plans and programs in the field of information among all concerned parties at a national level;

(c) approval of information technology projects financed by foreign loans prior to their submission to the concerned parties for final approval;

(d) adoption of fundamental standards for information security and the discussion of periodic reports produced by the Centre on the safety of the application of these standards.

(e) proposing draft laws and regulations which regulate and protect public and private rights in the field of information;

(f) taking necessary decisions with regards to complaints to the Board on the breach of rights guaranteed in this Act.

Article (36): The board of trustees will hold regular meetings and its members will have shared responsibility towards the duties and functions of the board.

Article (37): The National Centre of Information is considered the executive apparatus for the Board of Trustees. The chairman of the Centre is fully responsible for all its activities before the Board of Trustees and its chairman.

Article (38): The structure of the information will be organised through a national integrated system of information. The Centre will build, manage and develop this system which will operate through a national network of information linking the Centre to information units at concerned parties and to different sectors.

Article (39): An information unit should be established at all concerned parties to form part of the make-up of the national system of information. It should be administratively and functionally linked to the concerned parties. The regulations shall determine the formation and structure of the information units.

2. The Processing of Data and Information

Article (40): The Centre shall lay down agreed foundations and standards for the organization and evaluation of information work and for the implementation of technical operations that process and exchange information at a national level.

Article (41): The Centre and information units at the concerned parties are permitted to introduce, use and construct the necessary systems and software for the processing of data and information. They are also allowed to operate the national network of information according to the standards and systems specified and approved by the Centre.

Article (42): The information units at concerned parties must adhere to the systems and controls that govern the work of the national network of information to ensure that the flow and exchange of information is within the framework of the national system of information.

Article (43): The state apparatus, public, private and mixed sector bodies and foreign companies operating within the Republic must provide the Centre with the necessary data and information that allows it to perform its duties and functions and must not withhold, impede or delay the delivery of the information to the Centre.

Article (44): All data and information provided to the Centre that is exchanged between concerned parties is free of charge.

Article (45): The Centre and information units at concerned parties represent essential windows for the exchange of information between a range of concerned parties.

Article (46): All scientific and research bodies must give the Centre a copy of any work they carry out and any studies, scientific research or intellectual publications that they oversee.

Article (47): All concerned parties must provide the Centre with copies of any development studies related to their activities and competencies on request.

Article (48): Concerned parties cannot refuse information or impede the delivery of information to other concerned parties that have the right to access the information under this Act

PART IV: INFORMATION SECURITY

1. The Protection of Information

Article (49): The centre shall propose the fundamental standards that need to be in place for information security and will oversee the implementation of these standards at concerned parties following approval by the board of trustees**.**

Article (50): Each source of access to information must possess and apply adequate security measures and regulations that will protect information in its possession and that are sufficient to protect all activities such the collection, processing, storage and retrieval of information.

Article (51): All concerned parties should maintain secure backup storage of all essential information related to its official activities and functions.

Article (52): The centre shall maintain national strategic storage of essential information including all that is kept as backup storage at concerned parties.

Article (53): Any information obtained under this Act should not, under any circumstances, be used to contravene existing laws or to harm the interests of Yemeni society and national security

Article (54): The failure or absence of information security regulations should not justify the carrying out of illegal acts that could damage information.

Article (55): An appropriate administrative set up specialized in the supervision and implementation of standards of information security should be established in the information unit at all concerned parties.

2. The Protection of Information Systems

Article (56): Every information system used by concerned parties must have the capacity to verify and demonstrate responsibility for actions such as the input, process, and retrieval of information as well as accessing the system.

Article (57): All systems and application software installed and used by concerned parties must have security standards that guarantee the reliability and safety of operations.

Article (58): All concerned parties must implement adequate technical and administrative procedures to protect their information systems and networks to ensure continuous and straightforward operations.

3. Protecting Privacy

Article (59): A citizen's personal information is one of the fundamental rights of an individual and should not be collected, processed, stored or used contrary to the constitution and laws in effect.

Article (60): The collection of information on the conduct and lifestyle of an individual that intends to harm or can lead to damage in the quality of life, personal dignity, social standing, job and financial status of a person is prohibited.

Article (61): The collection, process, storage and use of personal data and information should be carried out within the remit of the official functions of the concerned parties authorised to perform such actions and should be essential to the work of the concerned party.

Article (62): Concerned parties that store personal information are not permitted to publish or impart this information to a third party except if the subject of the personal data belongs gives their written permission.

Article (63): Personal data or information cannot be provided to a foreign state or any other external body that does not have equivalent legal safeguards for the protection of privacy.

Article (64): Without breaching Article (63) of this Act, it is permissible to exchange personal information with a foreign state or body in cases of urgent public interest or when it is in the interests of the subject of the personal information, provided it complies with the constitution and laws in effect.

Article (65): Personal data and information shall not be used for purposes other than those for which it was gathered.

Article (66): All concerned parties which gather and maintain personal information and data should follow regulations and procedures that ensure the updating of personal data systems. Subjects of personal data should provide the necessary data for the update of their data.

Article (67): All concerned parties that store personal data or information are fully responsible for the protection of this data and information. Concerned parties should have a privacy statement that is available to view, detailing the procedures and systems in place to protect confidential data and personal information.

Article (68): All those who provide personal data or information to a concerned party have the right to ask to inspect or verify the information provided at any time and can also submit additional information for updates.

PART V: VIOLATIONS AND PENALTIES

Article (69): Every wilful violation of the provisions of this Act shall incur legal responsibility and those who commit the violation will be reprimanded. The punishment will not be less than the extent of the damage caused by the violation.

Article (70): A punishment of imprisonment for a period of no less than two years or a fine that befits the extent of material and moral damage caused by the crime or both imprisonment and a fine,shall be awarded to anyone who wilfully commits the following crimes:-

> (a) Retrieves information in a fraudulent way or in breach of the regulations for the publication and provision of information at the source of access to information;
>
> (b) Commits identity fraud or gives false information to obtain information that their real identity does not have the capacity to access.

Article (71): Without infringement of any heavier penalty provided for in any other laws in effect, all those who seek to obtain or have actually obtained information not permitted for publication or disclosure under this Act are punishable by no less than six years imprisonment or by a fine that befits the material and moral damage caused or by both imprisonment and a fine. Any person who facilitates the retrieval of such information shall receive the same punishment.

Article (72): Without infringement of more severe sanctions stipulated in any other laws in effect; any person who obtains information under this Act in order to damage private, public, financial, commercial, and economic interests that can jeopardize social stability and security shall be punished by imprisonment for a period of no less than four years or with a fine that befits the extent of material and moral damage caused or with both imprisonment and a fine.

Article (73): Any person who refuses or obstructs the disclosure of information that can be disclosed, exchanged or published under this Act, shall be punished with imprisonment for a period of no less than six months, or with a fine that befits the extent of the material and moral damage caused or with both imprisonment and a fine.

Article (74): Any person who wilfully acts in way that leads to the destruction, deletion, cancellation or alteration of information at any of the concerned parties, shall be punished with imprisonment for a period of no less than three years, or with a fine that befits the extent of the material and moral damage caused or with both imprisonment and a fine.

Article (75): Any person who commits the following crimes shall be punished with imprisonment for a period of no less than two years, or with a fine that befits the extent of the material and moral damage caused or with both imprisonment and a fine:-

(a) Wilful disclosure of false information in order to impede and obstruct the undertaking of legitimate work;
(b) Changing official information in order to withhold the truth, obstruct its discovery or in order to achieve an unlawful goal.

Article (76): Any person who commits any of the following crimes shall be punished by imprisonment for a period of no less than four years or with a fine that befits the extent of the material and moral damage caused or with both imprisonment and a fine:-

(a) The complete or partial destruction and disruption of systems for the gathering, processing, storing, exchanging and publishing of information.

(b) The violation, destruction or immobilization of tools and applications for information security systems.
(c) The complete of partial destruction, disablement or obstruction of any components of information networks systems..

[Article (77): Missing from Arabic text]

Article (78): Any person who breaches the provisions of section 3 of part 1V of this Act shall be punished by imprisonment for a period of no less than one year or with a fine that befits the extent of the material and moral damage caused or with both imprisonment and a fine. The victim shall receive full compensation.

PART VI

General Provisions

Article (79): Any act or attempt to destroy or disable the administration of information systems at civil or military concerned parties shall be considered a crime and an act of aggression against the national security of Yemeni Society. Perpetrators of these crimes shall be legally pursued inside and outside the Republic of Yemen.

Article (80): Without prejudice to other laws in effect, sufficient preventive measures may be taken against any persons who repeatedly attempt to damage information, systems, networks or equipment used by concerned parties.

Article (81): Any tools or devices used to commit or used in attempts to commit an act incriminated under this Act shall be confiscated. Those subsequently affected who have no link to the incriminating act are entitled to appropriate compensation.

Article (82): The Board of Trustees with its duties mentioned in article (34, 35, 36, 37) of this Act shall replace the Board of Trustees mentioned in articles (6/a, 7, 8, 9, 10, 11, 12) of the Presidential Decree No. (55) of 1995 concerning the creation of a National Centre of Information.

Article (83): The concerned parties included in the provisions of this Act shall take the necessary regulatory and technical measures for the execution of this Act.

Article (84): The implementing regulation of this Act shall be issued by Presidential Decree following its proposal at the Centre and approval by the Board of Trustees.

Article (85): The provisions of this Act do not apply to what is governed by the Press and Publications laws, Intellectual Rights, the Census and records.

Article (86): This Act comes into affect from the date this law is issued and published in the official newspaper

Issued by the President of the Republic in Sanaa on / / 1430 AH / /2009 AD

Ali Abdallah Saleh

The President of the Republic of Yemen