Morocco

Note on Draft Law No. 31.13 on the Right of Access to Information

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Introduction

The Government of Morocco has been working on an access to information or right to information (RTI) law for some time. A new draft was released in August 2014, Draft Law No. 31.13 on the Right of Access to Information (draft Law), which we understand is the outcome of internal consultations within government and, in particular, of consultations among different ministries. This Note provides an assessment of the draft Law, taking into account international standards and better comparative practice.

The draft Law is a relatively weak piece of legislation, far weaker than another draft released by the government for discussion a year ago, in August 2013. It does particularly poorly in terms of sanctions and protections, promotional measures, exceptions and procedures. It also suffers from its failure to establish an independent oversight body – along the lines of an information commission – to entertain complaints from individuals who feel that their requests for information have not been processed in accordance with the rules, something which had been provided for in the 2013 draft. There is no area where the draft Law does really well, but it is strongest in terms of scope of application.

This Note is based on international standards regarding the right to information, as reflected in the *RTI Legislation Rating Methodology*, prepared by the Centre for Law and Democracy (CLD) and Access Info Europe (RTI Rating).[1] They also take into account better legislative practice from other democracies around the world.[2] A quick assessment of the draft Law based on the RTI Rating has been prepared and should be read in conjunction with this Note (the relevant sections of this assessment are pasted into the text of this Note at the appropriate places). The overall score of the Law, based on the RTI Rating, is as follows:

Section	Max Points	Score August 2013	Score August 2014
1. Right of Access	6	5	3
2. Scope	30	28	19
3. Requesting Procedures	30	20	11

[1] This document, first published in September 2010, is based on a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Human Rights Committee and Special Rapporteur on Freedom of Opinion and Expression, and by regional courts and other regional mechanisms. The Rating is continuously updated and now covers 98 national laws from around the world. Information about the RTI Rating is available at: http://www.RTI-Rating.org.

[2] See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey, 2nd Edition* (2008, Paris, UNESCO), available in English, Arabic and several other languages at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html.

4. Exceptions and Refusals	30	16	10
5. Appeals	30	19	17
6. Sanctions and Protections	8	2	1
7. Promotional Measures	16	10	4
Total score	**150**	**100**	**65**

This score places the draft Law in a tie position for 83rd place out of the 98 laws from countries around the world which have been rated, or just 15 places from bottom. The August 2013 draft, in contrast, earned 100 points, which would have put it in 27th place globally.

The drop in score between August 2013 and August 2014 is obvious and dramatic. It is our understanding that these changes were made in response to concerns raised by various ministries. It is clear that RTI laws need to provide for exceptions to protect legitimate interests and to be designed to take into account administrative capacity. We believe that the August 2013 draft achieved an appropriate balance between the various competing interests and, in particular, that it would not have placed an undue burden on government or allowed for the release of sensitive information.

We urge the Government of Morocco to reconsider the draft Law and to instead adopt an RTI law which is more fully in line with international standards in this area. The current draft is insufficiently strong to provide the people of Morocco with effective access to government-held information, despite the constitutional guarantee for this right.

1. Right of Access and Scope

The right to access information held by public authorities is protected in Article 27 of the 2011 Constitution of Morocco. However, the draft Law does not provide for a proper presumption in favour of access to all information held by public authorities. Article 1 describes the purpose of the law as being to implement the constitutional guarantee, while Article 3 states that all citizens have a right to access information subject to the exceptions. However, Article 14, which is a key operational provision contained in Chapter Four of the draft Law, titled Procedures to Access Information, limits access to those who have a direct interest in the requested information. This is an unfortunate and unjustifiable limitation, not found in better practice laws, which not only do not limit access in this way, but even rule out asking requesters for the reasons for their requests.

The Introduction to the draft Law refers to various benefits of RTI legislation, but this is not an operative part of the law, or even part of the preamble. As a result, no part of the draft Law as such sets out its purposes or aims. Furthermore, the draft Law does not provide for its rules to be interpreted in the manner that best gives effect to the right to information.

Pursuant to Articles 3 and 4 of the draft Law, only citizens and foreign legal residents of Morocco have the right to make requests for information. There is no mention of legal entities having a right of access. Better practice is to allow anyone to make a request for information. The arguments against allowing anyone to make a request – that this might somehow undermine the country's security or place a burden on public authorities – do not hold water. It is simple enough for a foreigner to find a Moroccan citizen to make a request for them, while extensive experience in countries that allow anyone to make a request demonstrates that this will not place a burden on public authorities.

Article 2(a) defines information broadly to include documents and information, regardless of the form in which they are held. At the same time, it would be useful for the law to state explicitly that one may lodge requests for either information or documents. It is important that, in practice, requesters may lodge both requests for specific documents and for types of information, which can then be compiled from documents.

Article 2(b) contains a broad definition of public authorities, which includes all "public administrations". While this would appear to cover all types and levels of public authorities, it would be useful to make it explicit that it covers bodies which are created or controlled by other public authorities. The definition also includes a range of elected bodies, including local assemblies, but it does not cover the judiciary. It is also not entirely clear that State owned corporations are covered, although they may fall within the category of legal 'persons' of the 'general law'. Finally, while the draft Law covers bodies that undertake public functions, it is not clear whether or not it covers bodies which are funded by other public authorities.

Recommendations:

- The part of Article 14 limiting access to those who have a direct interest in the requested information should be removed.
- The law should refer more generally to the wider benefits the right to information brings, and should require its provisions to be interpreted so as best to give effect to those benefits.
- Everyone, including legal entities, rather than just citizens and legally resident foreigners, should have the right to make requests for information.

- The law should make it clear that one may make requests for both documents and information.
- The law should be explicit in its coverage of bodies which are created or controlled by other public authorities, as well as State owned corporations.
- The law should cover the judicial branch of government, as well as bodies that are funded by other public authorities.

Right of Access

Indicator		Max	Points	Article
1	The legal framework (including jurisprudence) recognises a fundamental right of access to information.	2	2	27, of Constitution
2	The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.	2	1	1, 3, 14
3	The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law. The legal framework emphasises the benefits of the right to information.	2	0	
	TOTAL	**6**	**3**	

Scope

Indicator		Max	Points	Article
4	Everyone (including non-citizens and legal entities) has the right to file requests for information.	2	0	3, 4
5	The right of access applies to all material held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.	4	2	2
6	Requesters have a right to access both information and records/documents (i.e. a right both to ask for information and to apply for specific documents).	2	2	2
7	The right of access applies to the executive branch with no bodies or classes of information excluded. This includes executive (cabinet) and administration including all ministries, departments, local government, public schools, public health care bodies, the police, the armed forces, security services, and bodies owned or controlled by the above.	8	7	2
8	The right of access applies to the legislature, including both administrative and other information, with no bodies excluded.	4	4	2
9	The right of access applies to the judicial branch, including both administrative and other information, with no bodies excluded.	4	0	2
10	The right of access applies to State-owned enterprises (commercial entities that are owned or controlled by the State).	2	1	2

11	The right of access applies to other public authorities, including constitutional, statutory and oversight bodies (such as an election commission or information commission/er).	2	2	2
12	The right of access applies to a) private bodies that perform a public function and b) private bodies that receive significant public funding.	2	1	2
	TOTAL	**30**	**19**	

2. Duty to Publish

Article 10 of the draft Law provides for the system of proactive publication. That article contains a list of categories of information that all institutions must publish, as long as they are not covered by the regime of exceptions, via "all available media of publication". While the items included on the list are important, there are some important gaps, most seriously in relation to financial information, which has been significantly cut back from the August 2013 version of the law.

Recommendation:

- The list of the types of information subject to proactive publication should be substantially expanded, in line with better practice in other laws.

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

3. Requesting Procedures

This is an area where, in general, the draft Law does poorly, in part because of its brevity and the fact that several key procedural rules are missing despite the facts that they are required to ensure appropriate processing of requests and that they are found in better practice RTI laws. There is no requirement to provide assistance to requesters who need it, for example because they are disabled or illiterate, or need help in formulating their requests. The draft Law also fails to establish rules governing cases where the public authority does not hold the information, including to transfer the request where the authority is aware of another public authority which holds the information.

Article 15 of the draft Law requires requesters to provide reasons for their requests and even conditions the right to make requests on these reasons disclosing a direct

interest in the requested information, both of which are directly contrary to international standards, as well as unnecessary to protect any legitimate public or private interest. Requesters are also required to provide their names and addresses, and to make requests on official forms. Both of these conditions are not necessary for the processing of requests. It should be sufficient if the requester provides an address for delivery of the information, which might be an email address, along with a description of the information sought, whether or not this information is provided via an official form.

Article 16 refers to a limited number of means of accessing information – namely by inspection at the public authority or by email – but not other forms of access. It also fails to make it clear that public authorities should comply with requesters' preferences in terms of the means of access.

Article 17 sets out the rules on time limits for responding to requests. There is no requirement to provide information as soon as possible, although the draft Law does impose a general time limit of 30 days (without specifying whether these are calendar or working days). Even 30 calendar days is quite a long time to process requests and better practice laws provide for shorter time limits. The time limit may be extended by another 30 days where the information officer is unable to respond within the original time limit (apparently regardless of the reasons for this) or for a number of other listed reasons. The first is an unduly discretionary reason for extending the time limits.

It is free to file requests and only the costs of copying and sending information may be charged. However, there is no provision for fees to be set centrally, so as to avoid a patchwork of fees across different public authorities. There is also no requirement to waive fees in appropriate cases, including for requesters who are poor.

Article 6 allows for reuse of information, as long as no changes are made to it and it is not used for purposes other than those specified in the request. These provisions are backed up by criminal sanctions in case of breach (Articles 27 and 28). In many cases, making changes, for example to convert datasets into commercially useful applications, is precisely why third parties want the information and this can make an important contribution to the economy. As noted above, it is not even legitimate to inquire as to a requester's purpose, and it makes no sense at all to limit use to those purposes. If a third party discovers a new way to use information productively, there is no reason at all to limit him or her from using it to that end.

Recommendations:

- The law should require public authorities to provide assistance to requesters

where this is needed, either because they cannot describe the information sought or because they cannot fill out a form, for example due to disability or illiteracy.

- Where the public authority does not hold the information being sought, it should be required to transfer the request to another public authority which does hold that information, if they are aware of such an authority.
- The rules on lodging requests should be improved by removing the requirements to provide reasons for the request and the name and address of the requester, and to use an official form. Instead, any request which includes a clear description of the information sought and an address for delivery of that information should be accepted, regardless of how that request is submitted (i.e. on an official form or not).
- The law should make it clear that requesters' preferences in terms of means of accessing information should normally be respected.
- The rules on time limits should be strengthened by requiring public authorities to provide information as soon as possible and by placing more onerous conditions on time limit extensions. Consideration should also be given to reducing the time limit, for example to ten working days.
- Fees for satisfying requests should be set centrally and there should be fee waivers for poor requesters.
- The limitations on reuse of information in Article 6 should be removed and it should be clear that third parties may use information as they please, including by making changes to it.

Indicator		Max	Points	Article
13	Requesters are not required to provide reasons for their requests.	2	0	14, 27
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2	1	15
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2	1	15
16	Public officials are required provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2	0	
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2	0	
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2	2	15

19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2	0	
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2	1	16
21	Public authorities are required to respond to requests as soon as possible.	2	0	
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2	1	17
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2	1	17
24	It is free to file requests.	2	2	5
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2	1	5
26	There are fee waivers for impecunious requesters	2	0	
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally protected copyright over the information.	2	1	6, 27, 28
	TOTAL	**30**	**11**	

4. Exceptions and Refusals

The regime of exception is another area where the draft Law does poorly, garnering only 10 of a possible 30 points on the RTI Rating. Article 7 is the key provision dealing with exceptions, supplemented by Articles 9 and 19. The draft Law is not very clear in terms of its relation with other (secrecy) laws, but it would appear to preserve secrecy provisions in other laws and it certainly does not explicitly override them. Better practice in this area is for RTI laws to override other laws, given that the former give effect to a human and, in the case of Morocco, a constitutionally protected right.

A number of exceptions are illegitimate or too broad, while two lack harm tests, as follows:

- Protection for the rights and freedoms of others, over and above protection for privacy, is unduly vague and unnecessary, since information held by public authorities should not undermine the rights of others and such an exception is not found in other RTI laws.
- Protection for the 'economic policies' of the State is too broad, and could be used to provide for the secret development of such policies. Better practice is to protect only the ability of the government to manage the economy.
- The draft Law protects the secrecy of government and Ministerial Council deliberations, which is again unduly broad. Better practice is not to exclude classes of information in this way but, instead, to protect key interests against harm, such as the free and frank provision of advice and the success of policies against premature disclosure.
- The draft Law also protects the secrecy of "administrative research and investigations", whereas better practice is simply to protect public economic interests and specific investigation interests, such as the success of investigations.
- The draft Law protects "sources of information", whereas better practice is simply to protect confidential sources where disclosure would pose a risk of harm to them or to the future provision of information from similar sources.
- The draft Law renders information "being set up or prepared" secret. As noted above, better practice is simply to protect the free and frank provision of advice and the success of policies.
- Article 7 exempts all information relating to national defence and State security, without subjecting this exception to a harm test.
- Pursuant to Article 9, instead of providing for a harm test, third parties are given a veto over the disclosure of information which they have provided to a public authority.

The draft Law does not provide for a public interest override, whereby information shall be released even if this may cause harm to a protected interest, where the overall public interest in disclosure outweighs that harm. Such a rule, which is found in better practice RTI laws, is important to ensure that information is disclosed in the public interest, reflecting the human rights status of the right to information.

There is no requirement in the draft Law to consult with third parties when information provided by them is requested, although there is, as noted above, a requirement that third parties provide consent before such information is made public. Such consultations can be useful either to obtain third parties' consent if they do not object to the release of the information or to obtain their reasons for wishing to keep the information secret. In the latter case, these reasons should be taken into account by the institution, but the final test should be the list of exceptions set out in the Law.

The draft Law fails either to provide for an overall time limit, for example of 20 years, for exceptions protecting public interests or to require information to be released as soon as an exception ceases to apply. An explicit rule along these lines can help make it clear that the risk of harm should be assessed at the time of a request, and that a refusal to provide information should not be based on a preset period that may have been put on the document when it was created, as part of a system of classification. Overall time limits are found in better practice RTI laws and reflect the idea that the sensitivity of information decreases over time. At the same time, most laws provide for extensions of secrecy beyond this overall time limit in exceptional cases where the information remains sensitive.

Public authorities are required to provide written reasons when refusing to disclose information, which must include specific references to the provision in the law which is being relied upon to withhold the information. The draft Law does not, however, require public authorities to inform those whose requests have been refused about their right to lodge an appeal against this decision.

Recommendations:

- The RTI law should override other laws in case of conflict.
- The problematical exceptions listed above should be removed or narrowed in scope, or made subject to a harm test.
- The law should include a public interest override.
- Public authorities should be required to consult with third parties whenever a request is made for information provided to them by those third parties.
- Information should be required to be released as soon as an exception ceases to apply (as opposed, for example, to when a preset period of classification expires).
- An overall time limit on confidentiality, for example of 20 years, should be provided for in the law, which may be subject to an exceptional override or waiver in those rare cases where the sensitivity of a document persists beyond that time period.
- Public authorities should be required to inform requesters of their right to lodge an appeal where their requests have been refused.

Indicator		Max	Points	Article
28	The standards in the RTI Law trump restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict.	4	1	7
29	The exceptions to the right of access are consistent with international standards. Permissible exceptions are: national security; international relations; public health and safety; the	10	5	7, 9, 19

	prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and other economic interests; management of the economy; fair administration of justice and legal advice privilege; conservation of the environment; and legitimate policy making and other operations of public authorities. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form.			
30	A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.	4	1	7, 9
31	There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are 'hard' overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity.	4	0	
32	Information must be released as soon as an exception ceases to apply (for example, for after a contract tender process decision has been taken). The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.	2	0	
33	Clear and appropriate procedures are in place for consulting with third parties who provided information which is the subject of a request on a confidential basis. Public authorities shall take into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information.	2	0	
34	There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.	2	2	8
35	When refusing to provide access to information, public authorities must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.	2	1	19
	TOTAL	**30**	**10**	

5. Appeals

This is one area where there have been massive changes from the August 2013 draft, even though this is not necessarily reflected in the RTI Rating scores. The 2013 draft would have created a dedicated independent oversight body – the National Commission to Ensure the Right of Access to Information – to deal with complaints from individuals about how their requests had been processed and with a general mandate to promote RTI. The draft Law has done away with this approach and instead directs complaints to the mediator (ombudsman).

Experience in countries around the world demonstrates that the success of an RTI law depends in important ways on having a dedicated administrative oversight body – such as an information commission – to deal with complaints/appeals and to undertake promotional measures. Where this function is allocated to a body with a more general oversight function, such as an ombudsman or human rights commission, RTI tends to get lost among the other issues that the body has to deal with and, as a result, fails to get the degree of attention it needs. It is also unlikely that a general oversight body will develop the specialised expertise required to deal with information requests. We therefore strongly recommend that Morocco go back to the position under the 2013 draft, and create a dedicated information commission.

Article 20 of the draft Law provides for an internal appeal where a requester has not received a response to his or her request or where the request is refused. Where a requester is dissatisfied with the response to his or her internal appeal, he or she may lodge an external appeal with the ombudsman. This is useful, but better practice is to provide for much wider grounds for appeal, including where a request has not been dealt with in accordance with the time limits set out in the law, where excessive fees have been levied for responding to a request or where the means of access asked for by the requester has not been respected.

We have not been able to review the legislation creating the ombudsman, but any body which reviews refusals to provide information should have its independence protected. It also needs to have certain powers to investigate complaints and then to order remedies, as appropriate, upon completing its investigation. There are a number of important features which the body therefore needs to have, as follows:

- Members should be appointed in a manner that protects their independence.
- The body should report to and have its budget approved by parliament (or in ways that protect its independence effectively).
- There should be prohibitions on individuals with strong political connections from being appointed as members of the body.
- The body should have the necessary mandate and power to investigate complaints, including by being able to review classified documents, to require witnesses to appear before it and to inspect the premises of institutions. Pursuant to Article 23 of the draft Law, the ombudsman appears to have the power to review classified documents, but the other powers are not listed there.
- Appeals before the body should be free and not require a lawyer.
- The body should have the power to order appropriate remedies for the requester, including to disclose information.
- Decisions of the body should be binding. Experience in countries around the world demonstrates very clearly that, to be effective, at least in the context of information appeals, decisions of the oversight body need to be binding since

otherwise public authorities will tend simply to ignore them. Article 23 of the draft Law does provide for binding decisions.

- Public authorities should bear the burden of proving that they have operated in compliance with the law in appeals before the oversight body. This is very rarely the case for ombudsmen.

To the extent that the Moroccan ombudsman lacks any of these attributes, this needs to be addressed, at least in relation to its power to process appeals relating to information (i.e. not necessarily in relation to its other powers).

Article 21 imposes a time limit of 30 days on the ombudsman for processing appeals. This is useful but the law should also provide at least a framework of rules regarding the processing of appeals, including that the requester should have the right to make representations in his or her case.

In addition to providing redress for individuals whose right to information has not been respected, the oversight body should have the power to order public authorities to put in place structural reforms to ensure that they meet their obligations under the Law. This may, for example, require the authority to provide better training to their staff or to manage their records better.

Recommendations:

- A dedicated body – such as an information commission – should be established to process appeals regarding requests for information and to undertake promotional measures rather than allocating these functions to the ombudsman.
- The Law should make it clear that requesters have a right to appeal to the oversight body in light of any failure to process requests for information in accordance with the rules set out in the Law, not just where requests have been ignored or refused.
- To the extent that the independence of the oversight body is not protected in any of the following ways, this should be addressed in the law:
  - The process of appointing members is designed to promote their independence.
  - There are prohibitions on individuals with strong political connections from being appointed.
  - The body reports to and has its budget approved by parliament or in some other manner that protects its independence.
- To the extent that the oversight body lacks any of the following powers, this should be addressed in the law:
  - The power to investigate complaints properly, including by reviewing

relevant information, even if it is claimed to be confidential, by ordering witnesses to appear before it and by inspecting the premises of public authorities.
    - The power to order appropriate remedies for requesters, including to be provided with the information they seek.
    - The power to impose structural remedies on public authorities, such as to undertake training or to establish systems for processing requests.
- Appeals before the oversight body should be free and not require the assistance of a lawyer.
- A set of clear rules should be put in place regarding the manner in which information appeals shall be processed.
- In cases before the oversight body, the public authority should bear the burden of proving that they have acted in accordance with the law.

Indicator		Max	Points	Article
36	The law offers an internal appeal which is simple, free of charge and completed within clear timelines (20 working days or less).	2	2	20
37	Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman).	2	2	21
38	The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so they are protected against arbitrary dismissal (procedurally/substantively) once appointed.	2	1	
39	The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms are in place to protect its financial independence.	2	0	
40	There are prohibitions on individuals with strong political connections from being appointed to this body and requirements of professional expertise.	2	1	
41	The independent oversight body has the necessary mandate and power to perform its functions, including to review classified documents and inspect the premises of public bodies.	2	1	23
42	The decisions of the independent oversight body are binding.	2	2	23
43	In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.	2	1	
44	Requesters have a right to lodge a judicial appeal in addition to an appeal to an (independent) oversight body.	2	2	22
45	Appeals (both internal and external) are free of charge and do not require legal assistance.	2	2	
46	The grounds for the external appeal are broad (including not only refusals to provide information but also refusals to provide information in the form requested, administrative silence and	4	2	20

	other breach of timelines, charging excessive fees, etc.).			
47	Clear procedures, including timelines, are in place for dealing with external appeals.	2	1	21
48	In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.	2	0	
49	The external appellate body has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better record management)	2	0	
	TOTAL	**30**	**17**	

6. Sanctions and Protections

This is the area where the draft Law performs most poorly, scoring just one out of a possible eight points, or 12.5 percent. The draft Law does provide for limited (disciplinary) sanctions for information officers for failing to process requests in accordance with the law (Article 24). However, officials who provide access to information which is covered by the exceptions are subject to harsher criminal sanctions (Article 25). This sends a very clear and unfortunate message to officials to the effect that protecting secrets is far more important than fulfilling citizens' right to information. Furthermore, it is completely unnecessary given that Moroccan law already provides for extensive sanctions for those who provide access to information which is protected by law as a secret.

The draft Law imposes criminal sanctions on anyone who uses or reuses information for purposes other than those set out on the request form or who makes any changes to requested information (Articles 27-28). The problems with these rules have already been noted.

The draft Law fails to provide for penalties to be imposed on public authorities which are systematically failing to disclose information. This is important to ensure that authorities as a whole cannot get away with this sort of behaviour. In many cases, problems with disclosure are rooted in the organisational culture and it is not legitimate to place the blame for failures on individuals.

The Law also fails to provide protection for individuals who release information in good faith pursuant to the Law. Such protection is important to give officials, who are historically used to a system whereby nearly all information has been kept secret, the confidence to release information pursuant to the Law. As it stands, officials risk serious penalties for disclosing confidential information and have no protection at all when they act in good faith to implement the law.

Better practice is to provide protection for individuals who release information in good faith with a view to exposing wrongdoing or serious problems within the administration (whistleblowers). This is an important information safety valve, ensuring that information of high public importance is more likely to be released. In many countries, whistleblowing is protected through a dedicated (i.e. separate) law, but, in the absence of such a law, it is useful to include at least basic protections for whistleblowers in the RTI law.

Recommendations:

- The law should provide for both disciplinary and criminal sanctions in cases where officials wilfully obstruct access to information.
- The provisions in the law imposing criminal sanctions on officials who wrongly disclose information and on requesters who use information for purposes other than those stated on the request or who make changes to information should be removed.
- A system for imposing sanctions on public authorities which systematically fail to respect the right to information should be developed.
- Protection should be provided to those who release information in good faith pursuant to the law.
- Protection should also be provided to those who release information on wrongdoing.

Indicator		Max	Points	Article
50	Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.	2	1	24-28
51	There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform (either through imposing sanctions on them or requiring remedial actions of them).	2	0	
52	The independent oversight body and its staff are granted legal immunity for acts undertaken in good faith in the exercise or performance of any power, duty or function under the RTI Law. Others are granted similar immunity for the good faith release of information pursuant to the RTI Law.	2	0	
53	There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing (i.e. whistleblowers).	2	0	
	TOTAL	**8**	**1**	

7. Promotional Measures

This is the category where the draft Law has dropped the most from the August 2013 version, falling from ten to just four points on the RTI Rating, a drop of 60 percent.

The draft Law only scores points in three areas in this category, for providing for the appointment of specialised officials or information officers to deal with requests for information (Article 12), by providing for a basic system of record management (Article 11) and by requiring public authorities to publish on a proactive basis a list of the documents which it makes available electronically (Article 10).

Article 11 places an obligation on public authorities to "take sufficient measures" to manage their information in a manner that facilitates the right to information. Good management of records is essential to the success of an RTI law, because if institutions cannot find information, they cannot provide it to requesters. While general requirements like those found in Article 11 are helpful, experience shows that this is insufficient in practice to improve record management. Better practice is to allocate the power and responsibility to a central body to set binding standards regarding record management. After setting standards, the body should give all institutions a certain period of time to bring themselves into conformity with those standards. Once that time has passed, the central body might then establish new (higher) standards, thereby forcing standards up over time. This is a realistic approach to improving record management standards in practice.

It is useful to require, as Article 10 does, public authorities to produce lists of the documents they make available electronically. But better practice is to require them to publish lists of all of the documents or at least a list of the categories of documents that they hold. This is important to provide requesters with a sort of information mapping, which makes lodging requests for information much easier.

A number of promotional measures are entirely missing from the draft Law. No body is given central responsibility for promoting the right to information and there are no measures to ensure that programmes of public awareness raising are undertaken. Without this, many members of the public are unlikely to be aware of their new rights under the RTI law and so will be unable to take advantage of them (i.e. will not be able to make requests for information). Both of these provisions were present in the August 2013 draft law.

There is no requirement for public authorities to ensure that their officials are trained to implement the law. With a new and relatively complex law like this, training is essential for proper implementation. Ultimately, public authorities need

to be responsible for ensuring that their staff receive training, although central efforts to support training are also very important.

The draft Law also fails to create any obligations for public authorities to report regularly, normally annually, on what they have done to implement the law. Such reports are a crucial source of information about what has been achieved in terms of implementation and what still needs to be done. Absent such obligations, it will be very difficult to identify problem areas and to address them, and so progress in terms of implementation will be much more *ad hoc*. To supplement this, better practice is to require a central body – normally the information commission but it could also be an official body – to publish a consolidated annual report providing an overview of what is being done across the public sector to implement the law. Once again, this is a crucial source of information about the successes and challenges of implementation.

Recommendations:

- The law should establish a full system for record management along the lines noted above, with a view to levering up the quality of record management practices over time.
- The law should require public authorities to publish lists of the records they hold or, at a minimum, a list of the categories or types of records they hold, in addition to a list of the documents that are available electronically.
- A central body should be given overall responsibility for promoting implementation of the law, including by raising awareness among the general public about the law.
- Public authorities should be required to ensure that their staff receive appropriate training on implementation of the law.
- A system of reporting should be put in place involving annual reports from all public authorities and then the publication of a central report providing an overview of implementation efforts across the public service.

Indicator		Max	Points	Article
54	Public authorities are required to appoint dedicated officials (information officers) or units with a responsibility for ensuring that they comply with their information disclosure obligations.	2	2	12, 13
55	A central body, such as an information commission(er) or government department, is given overall responsibility for promoting the right to information.	2	0	
56	Public awareness-raising efforts (e.g. producing a guide for the public or introducing RTI awareness into schools) are required to be undertaken by law.	2	0	

57	A system is in place whereby minimum standards regarding the management of records are set and applied.	2	1	11
58	Public authorities are required to create and update lists or registers of the documents in their possession, and to make these public.	2	1	10
59	Training programmes for officials are required to be put in place.	2	0	
60	Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations. This includes statistics on requests received and how they were dealt with.	2	0	
61	A central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.	2	0	
	TOTAL	**16**	**4**	