Note on the draft Right to Information Act of Pakistan

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Pakistan adopted a Freedom of Information Ordinance in 2002 which formally provides for the right of citizens to access information held by public bodies (the right to information or RTI). However, the Ordinance was a weak RTI law, garnering only 66 points out of a possible total of 150 on the RTI Rating, an internationally recognised methodology for assessing the strength of the legal framework for RTI, putting it in the bottom 20 percent of all RTI laws.[1] Furthermore, implementation of the Ordinance was weak in terms of both demand and supply, with a low volume of requests and with few public bodies putting in place the necessary systems for receiving and processing requests.

In 2013, the Pakistani provinces of Khyber Pakhtunkhwa and Punjab both showed important leadership in this area by adopting very strong right to information laws, scoring 137 and 109 points, respectively, on the RTI Rating. The federal government of Pakistan has been talking about adopting a stronger RTI law for some time and a number of drafts have been prepared. The government now appears to be moving forward with this process and recently released a new draft Right to Information Act, 2014 (draft Act).[2]

A quick assessment of the draft Act based on the RTI Rating has been prepared, and the results are provided in the table below. The draft Act received a remarkable 146 points

[1] The RTI Rating was prepared by the Centre for Law and Democracy (CLD) and Access Info Europe and has been applied to all national RTI laws. See: http://www.RTI-Rating.org.
[2] CLD obtained a copy of the draft from a partner NGO based in Pakistan. Although the draft formally retains the year 2014 in its title, we have been told that this is the latest draft.

out of the possible total of 150 points, putting it a clear 11 points ahead of the best law actually in force, that of Serbia, which earns 135 points. If the draft Act were passed as is, it would easily lay claim to being the best legal framework for the right to information in the world, which would be a very significant achievement. There would, of course, remain the difficult task of implementing the Act.

Section	Max Points	Score
1. Right of Access	6	6
2. Scope	30	30
3. Requesting Procedures	30	29
4. Exceptions and Refusals	30	30
5. Appeals	30	27
6. Sanctions and Protections	8	8
7. Promotional Measures	16	16
Total score	**150**	**146**

It will be clear that only limited improvements can be recommended for such a high-scoring draft Act. This Note sets out CLD's assessment of the draft Act, along with a few recommendations for possible further improvement.

Definitions

Section 2(iii) of the draft Act defines a "complaint", which is the first stage of review of a request for information, namely an internal review by the head of the public body with which the complaint was originally lodged. No definition of an appeal, namely the second stage review, before the Information Commission, is provided for.

Section 2(vii) of the draft Act defines "national security" as a matter pertaining to the "integrity, security or defence of Pakistan" but the term is not actually used in the operative part of the draft Act. It does appear as the title of the relevant exception to the right of access, but the body of the exception refers to the idea of "serious prejudice to the defence or security of Pakistan" rather than "national security" *per se*.

Section 2(ix) defines a "public body" for purposes of the law. Sections 2(ix)(d) and (f) contain substantial overlap, albeit using slightly different wording, which could possibly lead to some confusion. Specifically, both refer to the idea of bodies which are owned, controlled or funded by another public body. Section 2(ix)(h) then goes on to include NGOs which are funded, either directly or indirectly, by other public bodies within the scope of the definition of a public body. It is not clear whether this is intended to be broader than the notion of funding referred to in sections 2(ix)(d) and (f) and, if so, why NGOs should be targeted for special treatment in this regard.

Requesting Procedures

Section 9(6) of the draft Act provides for a receipt acknowledging a request to be provided "as soon as possible" via the same means as the request was made. This is useful but it does not establish a precise overall time limit within which such a receipt must be provided. Absent a fixed limit, it is possible that public bodies may delay in providing such receipts.

Section 12(2)(a) provides that where a request has been accepted, an applicant is entitled to receive the information subject to the payment of any fee. Better practice is to make it clear that the information must be provided 'immediately' or 'forthwith' upon payment of such a fee.

Exceptions

Section 26(2) provides that the exceptions in favour of the development of a policy and frustrating a policy through premature disclosure do not apply to certain types of information, such as facts, data and analysis of facts. Better practice is also to apply this 'exception to an exception' to the exception protecting the free and frank exchange of advice or views (i.e. to section 26(1)(c)).

The Information Commission

An independent oversight body such as the Information Commission provided for in the draft Act is essentially to the success of an RTI law. As with its other features, the provisions in the draft Act relating to the Information Commission are generally very strong. They could, however, be further strengthened in relation to the manner in which the independence of this body is protected.

Section 29(3) provides that Commissioners are to be appointed by the government. This leaves scope for interpretation and better practice is to stipulate exactly who, preferably the President, is to appoint Commissioners. Section 29(3)(a) provides for either a person who qualifies to be a judge or a senior civil servant to be appointed as one of the Commissioners. It is preferable to avoid having civil servants on such a commission, especially when there are only three members. While they do have the advantage of understanding the civil service well, experience in other countries suggests that civil servants as Commissioners are often unduly sympathetic to claims by civil servants that information is secret, which is often what appeals revolve around.

Sections 29(3)(b) and (c) require the civil society representatives on the Commission to be "respected" but there is otherwise no requirement of expertise for Commissioners. Better practice is to require individuals to have expertise which is relevant to the position before they may be appointed as Commissioners. Section 29(7) prohibits individuals from having a connection with a political party at the time of or during their tenure as Commissioners. This is useful but better practice is to include stronger prohibitions, for example on elected officials or even civil servants being appointed as Commissioners.

Section 29(8) provides for the removal of a Commissioner by a three-member panel appointed by the Chairman of the Senate (one member) and the Speaker of the National Assembly (two members). To provide protection against any possibility of this power being misused for political purposes, Commissioners who have been removed should have the right to appeal against this before the courts.

Section 32 sets out the rules relating to funding for the Commission, providing that the government shall make an adequate allocation to it, and that the Commission shall provide a budget proposal to the government. Better practice in this area is to have the Parliament, as a multi-party body, approve the budget for the Commission.

Recommendations:

- If the term "complaint" is defined in the draft Act then the term "appeal" should also be defined.
- The term "national security" should only be defined if it is used in an operative manner in the main body of the law.
- The definition of the types of entities which are to be treated as public bodies for purposes of the law should be rationalised, specifically in relation to bodies which are owned, controlled or funded by another public body. NGOs should be treated in a similar manner to other bodies for this purpose.
- An overall time limit, for example of three or five working days, should be established for providing a receipt acknowledging a request.
- Consideration should be given to requiring information to be provided immediately upon payment of any fee where a request has been accepted.
- Consideration should be given to extending the application of the section 26(2) 'exception to an exception' to section 26(1)(c), which protects the free and frank exchange of views.
- The formal appointment of Commissioners should be done by the President.
- There should be stronger both requirements of expertise for Commissioners and prohibitions to prevent those with strong political or official links from being appointed. The latter should include a prohibition on civil servants from being appointed as Commissioners.
- Individuals who have been removed from the position of Commissioner should have the right to appeal against this before the courts.
- The budget of the Commission should be approved by the Parliament.