ARTICLE 19

Morocco: Comments on Draft Law No 31.13 on the Right of Access to Information

November 2014

Legal analysis

Executive Summary

The revised Draft Law No 31.13 on the Right of Access to Information represents a serious setback in the progress towards the recognition of the right to information in the Kingdom of Morocco. As it is, the current draft of the bill would be ineffective in ensuring that all persons in Morocco would have a right to information as guaranteed by Article 27 of the Constitution and may even be counter-productive in ensuring that the public has access to information. The purpose of the law appears to ensure secrecy rather than the promotion of openness and transparency.

Furthermore, the provisions on the criminalisation of information releases and use represent a serious threat to freedom of expression which violate international law, and do not belong in a right to information law.

The bill has such a multitude of problems that in its current draft it should be rejected and the previous version should be reintroduced for consideration by the Parliament.

Recommendations (in brief):

1. Remove the requirement in Article 14 that all persons must show a direct interest before they are able to demand information;
2. State in Article 3 that all persons, natural and legal, have a right of access to information;
3. Delete Articles 26, 27 and 28, which provide for criminal sanctions for requestors and reuse;
4. Create an independent information commission;
5. Clarify and limit exemptions, and include harm and public interest tests for all exemptions;
6. Reinstate sanctions on all officials;
7. Delete Article 25 and include protections for the release of information in good faith by public officials;
8. Ensure that all information held by public bodies is subject to the law under Article 2;
9. Ensure that all information can be freely reused.

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About the Article 19 Right to Information Programme

The ARTICLE 19 Right to Information Programme advocates for the development of progressive standards on access to information at the international and regional levels, and their implementation in domestic legal systems. The Right to Information Programme has produced a number of standard-setting publications, which outline international and comparative law and best practice in areas such as national security and privacy.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Right to Information Programme publishes a number of legal analyses each year, commenting on legislative proposals, as well as existing laws that affect the right to information. This analytical work frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at http://www.article19.org/resources.php?tagid=464&lang=en

If you would like to discuss this analysis further, please contact David Banisar, Senior Legal Counsel of ARTICLE 19 at Banisar@article19.org +44 207 324 2500

I. Introduction

In this analysis, ARTICLE 19 reviews the Draft Law No 31-13 on the Right of Access to Information, which is currently being reviewed by the Government.

This analysis is based on an unofficial translation of the Draft Law. It should be read in conjunction with previous analyses produced by ARTICLE 19 relating to the Draft Law.

The comments and recommendations below are intended to help improve the provisions of the Draft Law, based on ARTICLE 19's experience over the past two decades in providing assistance in countries around the world on the adoption and implementation of the right to information and related legislation.

II. Importance of the Right to Information

The right to access information held by public authorities is a fundamental human right recognised in international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Arab Charter on Human Rights[1], and the African Charter on Human and Peoples' Rights.[2]

In General Comment No 34 adopted in 2011, the UN Human Rights Committee offered authoritative interpretation on the scope and limits of the right to information under Article 19 of the International Covenant on Civil and Political Rights. The Comment affirmed that Article 19 of the ICCPR protects the right to information held by public bodies and requires the proactive dissemination of information in the public interest. The Comment also states that Article 19 of the ICCPR requires the enactment of the "necessary procedures" such as legislation to give effect to the right to information.

[1] Article 32, Arab Charter on Human Rights, Text adopted by the Arab Standing Committee for Human Rights 5-14 January 2004 (approved May 2004.)

[2] Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

> 18. Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this general comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. Elements of the right of access to information are also addressed elsewhere in the Covenant. ...
>
> 19. To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.

At a regional level, the Declaration of Principles on Freedom of Expression in Africa sets out more detailed recommendations to further elaborate on the rights found in the African Charter on Human and Peoples' Rights:

> **IV Freedom of Information**
>
> 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.

> 3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.[3]

The African Special Rapporteur has commented on freedom of information on multiple occasions, making the adoption of bills on access to information one of the key priorities for the continent. In particular, she stated with reference to the role of freedom of information vis a vis accountability that "[w]hile Freedom of Information derives its origins from and is interrelated with Freedom of Expression, it occupies a special place in the human rights family, in that without the transparency and accountability of public institutions which constitute a fundamental part of its core elements, the right to express and disseminate opinions for the purpose of ensuring good governance and strengthening democracy cannot be enjoyed in its totality."[4] In 2013, the Commission adopted a Model Law on the Right to Information.[5]

The importance of access to information is growing worldwide. As of 2014, over 100 countries have adopted laws or binding national regulations. As noted by the African Commission on People's and Human Rights in 2013, there are many benefits to adopting and implementing a law on access to information:

> Properly implemented access to information legislation holds the promise of fostering good governance by improving information management, and by enhancing transparency, accountability and greater participation of the populace in public affairs. By exposing corruption, maladministration and mismanagement of resources, increased transparency and accountability is likely to lead to better management of public resources, improvements in the enjoyment of socio-economic rights and to contribute to the eradication of under-development on the continent.[6]

[3] Adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002.

[4] African Special Rapporteur on Freedom of Expression, Activity report, presented to the 44th Ordinary Session of the African Commission on Human and Peoples' Rights.

[5] Model Law on Access to Information for Africa. http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

[6] Model Law on Access to Information for Africa, Prepared by the African Commission on Human and Peoples' Rights, 2013.

III. Analysis of the Draft Law

A. General Comments on the Draft Law

In its current form, the Draft Law would be ineffective in ensuring the right to information provided for in Article 27 of the Constitution is successfully realised in Morocco. Many of its provisions are poorly drafted and seem to have little regard to the baseline standards set out by international bodies as well as the good practices adopted in other jurisdictions. The definitions are vague and contradictory; the exemptions are broad and have no examination of the public interest; the oversight mechanism has been severely weakened; and the sanctions will provide little deterrence against officials, especially higher level ones, who refuse to provide information in violation of the law.

Of particular concern are the five new criminal offences created by the Draft Law. They are unprecedented both regionally and globally. These provisions are likely to both chill the disclosure of public information by officials as well as reduce the number of requests made by users out of fear of violating the vague provisions of the law.

Due to the extent of the issues ARTICLE 19 has identified, this analysis is limited to examining some of the most significant problems of the draft law, and does not purport to be comprehensive analyse of every section. It should not be assumed that the sections not analysed in this document are in fact adequate. If the more significant problems highlighted by this analysis are resolved in future drafts of the bill, ARTICLE 19 would welcome the opportunity to assist the government and parliament of Morocco to further improve the Draft Law.

B. Requirement of Direct Interest

Article 14 of the Draft Law provides that only those with a "direct interest" may access information and they must specify the purpose of the request "in a clear manner". This is the most problematic provision of the law as it seriously undermines the right of access to information and the purpose of the law itself, which is to make more information available to the public. If this provision is included in the final version of the bill, the right to access information would be made meaningless and the purpose of the bill, ineffectual.

Under the "direct interest" requirement, most of the primary users of the law, including journalists, environmental, anti-corruption and other civil society groups, would be barred from using it. . The provision effectively changes the purpose of the law to that of an Administrative Procedures Act, where an individual demands information relating to a particular service that he or she has been denied rather than

a law which purports to implement a fundamental human right, namely the right to access information.

This requirement has been rightly rejected worldwide in over 100 countries. International standards prohibit this demand. The African Union Model Law states specifically, "a requester does not have to provide a justification or reason for requesting any information."[7]

Further, many laws specifically prevent public bodies from asking the requester the purpose of the request. For example, the Tunisian Draft Law specifically states that "The applicant is not required to state in his request for access to information the reasons of his application, or to justify it by any particular interest." The South African Promotion of Access to Information Act states, "(3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by (a) any reasons the requester gives for requesting access; or (b) the information officer's belief as to what the requester's reasons are for requesting access."[8]

The provisions under Article 14 of the draft law is made even more problematic by the criminal sanctions in Article 26, which can be imposed against any person who makes an incorrect or false statement in order to obtain the information, and in Article 27 on the use or reuse of the information for any other purpose. These articles are addressed below.

Recommendations

- *Delete Article 14 and replace it with statement that "The applicant is not required to state in his request for access to information the reasons of his application, nor to justify it by any particular interest"*

C. Clarification of who has the right to access information

Articles 3 and 4 of the Draft Law set out who has the right to information. Article 3 states that "all citizens, men and women have a right of access" while Article 4 provides that, in line with international treaties, each foreign person, who resides legally in Morocco, has a right of access to information. As international conventions apply to all persons, not just foreign residents, it is unclear what the purpose of Article 4 is. The provision is likely to cause confusion about non-citizens' right of access.

[7] AU Model Law, §13(5)

[8] South African Promotion of Access to Information Act, § 11(2)

Articles 3 and 4 also create confusion regarding the rights of legal persons, including companies, media and non-governmental organisations, as well as unincorporated community and citizens groups, which often request information as entities, rather than as individuals. This is important in an organisational setting where the demand for information should not be lost in cases where the employee departs.

International law also states that access to information should be open to all legal persons. Under Article 19 of the ICCPR, which Morocco ratified in May 1979, all persons have an equal right of information. Under Article 13 of the Convention on the Rights of the Child, ratified by Morocco in 1993, the right to information also extends to all children. In addition, under the UN Convention Against Corruption, ratified by Morocco in May 2007, Article 13 provides that all state parties must take measures "Ensuring that the public has effective access to information" (emphasis added). In particular, the Convention specifically promotes the importance of civil society having access to information. As noted above, the Declaration of Principles on Freedom of Expression in Africa states that, "everyone has the right to access information held by public bodies".

The provisions are also weaker than other regional right to information laws. The French Law on Information states that it applies to "the right of all persons to information".[9] The Draft Organic Law on the Right to Information currently being considered by the National Assembly of Tunisia states, "This law aims to guarantee the right of any person or legal person to access to information" and provides that "Every natural person or legal person can submit a written request to access information". The Yemen Law (13) for the Year 2012 regarding the right of access to information states, "All natural and legal persons have the right to apply for access to information".[10]

Recommendations

- *Delete Article 4;*
- *Revise Article 3 to provide that "all persons, natural and legal, have a right of access to information."*

[9] Loi n°78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal, §1

[10] Yemen Law (13) for the Year 2012 regarding the right of access to information, §7

D. Criminal Penalties

Articles 26, 27 and 28 of the draft law are as problematic as Article 14. Article 26 creates a new criminal offense for any person who incorrectly or falsely states the reason for their information request; Article 27 creates a new criminal penalty for those who use or reuse the information for other purposes than those stated in the original request; and Article 28 creates a criminal penalty for "tampering" with the information, or for using or misusing it in a way which causes "harm or negatively harms the public interest". These provisions are unprecedented in the field of the right to information. To our knowledge, only Zimbabwe has created a criminal offense in their right to information law, however they are not related to access to information but to unrelated freedom of expression violations and have been strongly criticised.

These threatened penalties seriously undermine the intended purposes of the law. They will cause fear and confusion among users and it is likely that they will deter many persons from making requests. Further, they also raise concerns about the provisions being used by officials to threaten requestors if they criticise those officials after obtaining information from them.

Articles 26 and 27 show a fundamental misunderstanding of the right of information. In many, if not most, circumstances, individuals or groups make a request for information not fully knowing what information is held by the public body. It is only after they obtain the information, that they can fully assess it and decide what uses to make of it, Thus, it is impossible to state with certainty what the information will be used and reused for at the time of making the request.

For example: a civic group requests information from a ministry about a project, which will destroy local community parkland, so they can legally challenge it; upon inspecting the information the group discovers the project would pollute a neighbouring community's water supply; the group tells the community, the media and the environmental ministry, going beyond the terms of the original request; under the Draft Law, they would be subject to criminal prosecution.

In addition, Article 27 is fundamentally inconsistent with the provisions of Article 6, which permits reuse, making Article 6 irrelevant if not impossible. Reuse by its definition is the taking of information and finding new and unanticipated ways of using it for the public benefit. We examine this issue in detail later in the analysis.

Article 28, as well as Articles 26 and 27, violate international standards on free expression, which require that any limitations are legitimate, provided by law and meet the strict tests of necessity and proportionality. This provision fails all of these requirements. A provision to prevent "harm or negatively affect the public interest" is not acceptable under international law as a legitimate exemption. The only legitimate exemptions are for the protection of the rights or reputations of others or for national

security, public order (*ordre public*), or public health or morals. As noted by the UN Human Rights Committee in General Comment 34. "It is not compatible with paragraph 3…to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information."

Further, the crime that it purports to prevent is overly vague and could be applied arbitrarily. International law requires that the law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly." Under Article 28, any change in the information, including reformatting and fixing inadvertent or purposeful errors in a data table, could be considered tampering.

Finally, it is disproportionate to create a criminal offense for "tampering" with public information that is available to all persons in the public domain. A more proportionate approach would be to make the original data easily available in a public register so that any attempts to manipulate it for malicious purposes would be easily identified and discredited.

Recommendations:

- *Delete articles 26, 27, 28 in full.*

E. Exemptions

Another significantly problematic aspect of the law is the broad exemptions to access to information in Article 7. All of the categories are overly broad and will apply to extensive areas of information.

The first section of Article 7 refers to Article 27 of the Constitution and provides that all information relating to national defence, international or external state security, and related to the private life of individuals is exempted completely from the right of access. There is no harm or public interest test available. Merely being related to one of those areas, no matter what it may be about, or how old it is, is sufficient to keep it secret.

For example, information proving toxic waste was leaking from an abandoned military base into the local water supply and poisoning the local community's wells would not be released, even if it had no impact on national security and had a high public interest. Similarly, information about senior officials receiving illegal benefits or misallocating funds to family members could be considered relating to their personal lives and be exempt from release.

The second section of Article 7 sets out four exemptions where the release of information is limited if it "would inflict damage". No public interest test is provided for in this section either. While this is an improvement on the previous section where no harm test is provided, it is a disproportionately low threshold of harm for all of the categories. Such a low standard means nearly anything could be assessed to be damaging. Most of the exemptions in the African Union Model law require that the release of the information "would cause substantial prejudice" or "would cause substantial harm" to the interest to be protected.

Finally, the third section of Article 7 creates a further five exemptions. There is only a weak harm test to judge if the release "would lead to compromise and breach" the interests. This test is unlikely to provide any guidance for officials who will probably exempt all information in full. Again, there is no public interest test so any criminal or civil proceedings can be closed and hidden from public view, violating basic precepts of open and fair justice; all the deliberations of the Ministerial Council can be obscured, leading to secret decision making, regardless of public interest.

Further, Article 19 of the previous draft, which limited the time frame for the exemptions to apply to 15 years has been deleted in full so information can be kept secret indefinitely, despite the lack of harm or public interest.

Recommendations:

- *Further clarify each exemption and ensure that a specific harm test is attached to each one;*
- *Provide for a public interest test for all exemptions.*

F. Elimination of Information Commission

A significant omission in the current Draft Law is the elimination of the National Commission to Ensure the Right of Information and the nomination of the Mediator (Ombudsman) in its place.

This is problematic for both structural and practical reasons.

The elimination of the National Commission will make it harder for public bodies to implement the law and for the public to understand and use the law effectively. Most of the functions of the National Commission found in Article 24 of the previous draft, including ensuring good practice, providing advice and expertise to public bodies, raising public awareness and assessing implementation, are not given to the Mediator. Under Article 21, the Mediator only has the authority to receive complaints and make decisions on those complaints. It is not clear if bodies are legally bound to follow his decisions.

Further, it is not clear whether the Mediator will be functionally able to handle the complex and specific demands of enforcing the right to information. There are no provisions in the law for the additional staff or resources necessary to handle the demand for opinions by individuals who have been denied access to information. It is problematic when public bodies are not given adequate or additional funding to carry out their functions, thereby reducing their ability to effectively carry out FOI enforcement and their other activities. In South Africa, the Human Rights Commission was severely hampered in its efforts to promote the law because of its limited resources. In the UK, there are substantial delays before the Office of the Information Commissioner is able to respond to appeals due to a lack of adequate resources.

To address this problem, most countries which have adopted new laws have specifically not appointed their national ombudsman as the designated body. Instead, they have either created a new body, or combined it with the functions of another body but kept it functionally independent. In Ireland, the Ombudsman has also been appointed as the Information Commissioner, but has two separate offices with separate staff and resources to ensure that both duties are fulfilled adequately. In South Africa, a new information commission was recently created to remedy these issues.

International law also requires that human rights bodies are functionally and administratively independent from all public authorities. The Paris Principles, endorsed by the UN General Assembly, set minimum standards for such bodies.[11] The African Commission on Human and Peoples' Rights Model Law on Access to Information for Africa builds on the requirement to clearly set out the roles of an information commission.

Recommendations

- *Create an independent national commission with full authority to monitor and enforce the law with adequate resources.*

G. Application of law to all information held by public bodies

Under Article 2, the definition of information is likely to cause confusion. It appears to be limited to only facts, data and statistics which are in documents, reports, studies, publications, "and other documents of public nature" "or used for

[11] UNGA Resolution, 48/134, National institutions for the promotion and protection of human rights, A/RES/48/134, 20 December 1993.

correspondence between" or "within the public framework within". This is a highly convoluted description of information and is simultaneously complex and limiting. For example, it is not clear whether information held in an electronic database created by a public body would be covered by the act. This is a potentially significant oversight, given the importance of electronic information in the modern administrative system.

A better and less confusing approach would be to simply state that all information, in whatever form, created, held or received by a public body, or those acting on behalf of a public body, including contractors and consultants, is covered by the law. For example, the Tunisia Draft law defines information as "any written information produced or received by the Bodies governed by the provisions of this law while exercising their activities, whatever the date, form or the medium of such information". The African Union Model law defines information as: "any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the information holder to whom a request has been made under this Act".

Recommendations:

- *Amend the provision to apply to all information held by public bodies, no matter the form.*

H. Sanctions

Sanctions are an important function of a right to information law in order to deter negative conduct by officials who may not comply with the principles of openness and transparency. The sanctions in the revised Draft Law are too weak to act as a deterrent and are unlikely to have the intended effect. In comparison, as noted above in sub-section D, the criminal penalties on those who make information requests are severe.

In the current draft, nearly all specific penalties have been eliminated. In replacement of the previous system of financial sanctions, all provisions relating to penalties have been replaced in Article 24 with an unclear reference to existing legislative provisions on disciplinary action. This only applies to the information officer and not any other officials who may be violating the law.

This is not adequate. The law should clearly state that all officials who deliberately withhold information in violation of the law are subject to clear administrative penalties, including dismissal and to administrative and criminal sanctions, including fines. Further, the penalties should apply not just to lower level officials but also to senior officials who order the illegal withholding of information.

We also note that there are no penalties for the destruction of information. Illegal destruction of information should result in criminal penalties.

In comparison, the African Union Model bill provides for an extensive regime of sanctions:

88 Offences

(1) A person who with intent to deny a right of access to information under this Act

(a) destroys, damages or alters information;

(b) conceals information;

(c) falsifies information or makes a false record;

(d) obstructs the performance by an information holder of a duty under this Act;

(e) interferes or obstructs the work of the oversight mechanism; or

(f) directs, proposes, counsels or causes any person in any manner to do any of the above, commits a criminal offence and is liable to a fine or imprisonment or both

(2) Where a person, without reasonable cause

(a) refuses to receive a request;

(b) has not responded to a request within the time specified in section 15 or where that time period has been extended in accordance with section 16 within any extended period of time;

(c) has vexatiously denied the request;

(d) has given incorrect, incomplete or misleading information; or

(e) obstructs in any manner the release of information

the oversight mechanism or an appropriate court may impose a financial penalty each day until the request is received or determined.

In addition, two of the sanctions are likely to deter openness rather than promote it. Under Article 24, the second bullet point makes providing information without permission of the other public body in violation of Article 9 a criminal offense. This is likely to deter officials from releasing information. If for example, the other body refuses to respond to requests or to release information that is not exempt, the requesting official has little recourse.

Article 25 states that it is a criminal violation of professional secrecy to release information exempted under Article 7. This is likely to create a strong chilling effect on the release of information. Few officials will want to release information either in response to requests or through the public registers without the permission of senior officials, which is also likely to be a time consuming process.

Most right to information laws protect civil servants who release information in good faith in the course of their employment.. For example, the Tunisia Draft Law provides "Every person who exercises in good faith the prerogatives and duties vested in him

under this Law does not assume administrative, civil or penal responsibility." The African Union Model bill states:

> (1) No person is criminally or civilly liable for the disclosure or authorisation of the disclosure in good faith of any information under this Act.
>
> (2) No person may be subjected to any detriment in the course of their employment by reason of the disclosure or authorisation of the disclosure in good faith of any information under this Act.[12]

Recommendations:

- *Create a system of sanctions including financial, administrative and criminal penalties on all officials who unlawfully withhold, modify or destroy information.*
- *Eliminate the criminal penalty in Article 24 for relating information without permission of other body*
- *Eliminate the criminal penalty in Article 25 and provide for good faith protections for officials.*

I. Limits on Reuse

Article 6 of the Draft Law provides that information published by public bodies may be reused. However, this reuse is limited to the purposes that were authorised as a prerequisite for release. This is disparagingly limiting to the point that it makes the provision largely ineffective.

The problem is further compounded by Article 27 which make it a criminal offense to reuse information for purposes other than those declared by the requestor.

The many economic and social benefits of the reuse of information, especially data, is growing. A key factor of free reuse is that it is not always obvious what other uses the information may have until it is out there and other people or groups see its possible benefits. For example, environmental organisations could reuse information about population density and traffic released by different ministries to combine with air pollution data to evaluate the effectiveness of measures to reduce pollution or promote public transportation; anti-poverty organisations could use budget information combined with information on crime, and health and education spending

[12] AU Model Bill, §87

to identify areas where further resources should be made available and use it to advocate for targeted spending; researchers and authors could reproduce them in books or on websites to shed light on policies or historical events. [13]

There are also substantial economic benefits from reuse. Companies can combine public data with their own information to analyse the market and identify where it would be most beneficial to establish new businesses, such as factories, restaurants, hotels or shops. Similarly, reuse enables companies and service providers to better expand into new markets and effectively bid for new contracts.

None of examples are possible under the current draft law, which would make them all criminal offenses unless they were spelled out in detail in the original request or as authorised by the relevant bodies.

The Draft Law should make it clear that there are no limitations on the reuse of information for any non-commercial or commercial purposes. It should allow any person to publish documents or information obtained from public bodies on websites, social media platforms or by any other means of dissemination. By way of example, the UK has created "Open Government License"[14] which allows any person to:

- copy, publish, distribute and transmit the Information;
- adapt the Information;
- exploit the Information commercially and non-commercially for example, by combining it with other Information, or by including it in your own product or application.

As long as the person using the information "acknowledge[s] the source of the Information by including any attribution statement specified by the Information Provider(s) and, where possible, provide a link to this license".

Recommendations

- *Revise the provision to allow for reuse of information for any purpose under an open license.*

- *Eliminate the criminal offense for the reuse of information in Article 27.*

[13] The European Union's ePSIplatform keeps an extensive archive of case studies on the reuse of public data at their website at http://www.epsiplatform.eu/list/case

[14] See http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/