

# **EGYPT: FREEDOM OF INFORMATION**

## **A PROPOSED CONSTITUTIONAL ARTICLE AND BILL**

**September 28, 2011**

**By the United Group**

**Supported by CIPE**

---

**For feedback kindly send an email to:**

[hussein@ug-law.com](mailto:hussein@ug-law.com) and [rzoghbi@cipe-egypt.org](mailto:rzoghbi@cipe-egypt.org)

## Contents

Part I: The Proposed Constitutional Article .....	3
The Proposed Article.....	3
Explanatory Notes for the Constitutional Article .....	3
Part II: Proposed Bill for Obtaining and Giving Access to Information.....	5
Section I: General provisions .....	5
Section II: Commitment to Publication and the Protection of Whistleblowers.....	7
Section III: Obtaining Information.....	8
Section IV: Exceptions .....	10
Section V: The High Commission for Information .....	13
Section VI: Fees and Appeals.....	18
Section VII: Penalties .....	19
Section VIII: Final Provisions .....	20
Part III: Explanatory Notes for the Proposed Bill on Freedom of Information.....	21
Annex One: Proposed constitutional articles .....	27
Annex two: Conference on “Combating Corruption through Freedom of Information” .....	30
Annex Three: Freedom of Information in Constitutions of Other Countries .....	38

## **Part I: The Proposed Constitutional Article**

### **The Proposed Article**

“Freedom of information and knowledge includes the freedom to access data, statistics, and documents; and it is a right guaranteed to all Egyptians. The state is obliged to enable its citizens to exercise this right. The executive authority and other public institutions, and private institutions receiving public funds are obliged to publish and make information, records, and documents available to the public.

If the entity that holds the information thinks that making it available in whole or in part may adversely affect the vital interests of the state, the entity may file a petition in the constitutional court and ask for permission not to release the information. The court will decide the matter within 60 calendar days from the date of application. The court can decide that the information should be made public or that it should stay protected for a specified period. The court’s decision will have a general binding effect.

It is prohibited to release any information that may have a serious demonstrable adverse effect on the state, its borders, the integrity of its territory, or if it makes it susceptible to war or weakens its ability to face this danger, or infringes on the right of privacy.

The law will regulate the mechanisms for using this right.”

### **Explanatory Notes for the Constitutional Article**

1. The Article makes the right of access exclusive to Egyptians. Foreigners do not enjoy this same right, although they may utilize information that is made publicly available.
2. The Article protects citizens’ rights to access information. Corresponding to this right is the state’s duty to enable its citizens to enjoy this right.
3. The Article makes it a constitutional duty to publish information and documents in the possession of public and mixed sectors, as well as private sectors when receiving public funds,
4. The Article gives the holders of information recourse to the Supreme Constitutional Court; the holders of information may come to the court to request permission not to publish information that demonstrably poses a threat to the vital interests of the state. The Supreme Constitutional Court has the limited authority of granting permission to withhold information, but can make such a grant for a limited period only.

5. The Article does not use expressions such as “national security” or “public order”, but clarifies specifically and exhaustively the information that the entity holding the information may withhold from the person requesting it.
6. The Article requires legislators to limit any legislation to regulating the right of access of information.

Draft for final feedback

## Part II: Proposed Bill for Obtaining and Giving Access to Information

### Section I: General provisions

**Article 1:** For the purposes of this law, the following words shall be given the definitions corresponding to them:

**High Commission:** the High Commission for the Freedom and Circulation of Information.

**Public entities:** are ministries, municipalities, agencies, or organizations, including the legislative and the judiciary, or any entities that the High Commission considers to be subject to this law.

**Other entities:** are civil society institutions, private agencies when receiving public funds, or private agencies associated with the state what its legal standing may be, or any other agency or entity subject to the Egyptian law.

**Relevant entities:** are entities addressed by the rules of this law, whether they are public entities, private entities when receiving public funds, or private entities associated with the state or any other entity.

**Private agencies:** are natural or legal persons that neither the government nor any of its institutions supply with capital, or enjoy any special privileges from the state due to the nature of its activities.

**Public agencies:** are agencies created by the constitution or according to it, or by the law and/or constitutes a part or branch of the legislative, executive, and judiciary, or any other government agency.

**Private agencies associated with the state:** are agencies owned or controlled by, or financed to a large extent by funds from the executive branch, either directly or indirectly. And/or any other entities that perform a function specified by law, or perform a public function but only to the extent required by the law or necessitated by the public function.

**Designated employee or agency:** the employee or agency appointed by the relevant entity to look into requests for information, or add to his or its functions the role of looking into requests for information.

**Information:** the data or information in any of the records and documents that are written, or stored electronically, and any graphs or charts, tables, images, movies, microfilm, sound recordings, videos, diagrams, any data read on special hardware, or any

other forms that High Commission for Freedom and Circulation of Information considers to count as information in accordance with this law.

**Alternative format:** the format that enables people with special needs to access the requested information.

**Restricted Information:** information restricted from the right of access in compliance with the law and the Constitution.

**Holder of information:** any public or private agency associated with the state, or private agency in case of receiving public funds, **Publication:** making information available in a format and manner that is easily accessible to the public. This includes print, radio and electronic means of communication and any other format that is known or will be known in the future.

**Information extraction fee:** the fee that must be paid by the person requesting the information to the holder of the information in order to provide this information. The fee is determined by the holder of the information.

**Third party:** any party other than the holder of the information and the party requesting it.

**Specific information relating to a third party:** private, or trade and personal information belonging to a third party.

**Article 2:** Access to information is a right entitled to every Egyptian citizen. The State commits itself to enable its citizens to use this right and facilitate their ability to enjoy it.

All information held by the holders of information is readily available for viewing and circulation, except for those parts restricted by this law.

Release of information is a duty incumbent upon all those who are subject to the provisions of this law. Withholding information is only permissible within the scope of the information restricted by the constitution or the law.

No person should be penalized for releasing information so long as the person believes on reasonable grounds that the release was sanctioned by law.

**Article 3:** This law aims to enable citizens' access to information held by any public or private entity, or any private entity associated with the state or any other entity to help protect or enhance any of the rights guaranteed in the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, any other international multilateral treaty that the Egyptian government has ratified, the Egyptian constitution, and the laws in force in Egypt.

**Article 4:** Relevant entities that hold information must keep the information at their disposal in an orderly and accessible manner to make it easier for the officer in charge to obtain and disseminate. Entities must save the information electronically whenever possible. They should appoint one or more qualified officers to consider requests

for access to information, and should give the officer(s) the authority required to enable them to search and access the required information and submit it to the requesting party.

**Article 5:** Relevant entities that hold information must work on promoting a culture of freedom of information among their employees, organize training courses on the importance of the right to access, and enable citizens to exercise this right. Training courses must include efficient mechanisms for saving and extracting information. The entities must also organize a system that promotes publication of the information and making it available, similar to freedom of information commissions in other countries.

**Article 6:** The provisions of this law should not be interpreted in any way that may lead to the withholding of information or narrowing the scope of their availability. Interpretation of this law's articles must be in the light of articles (2) and (3) of this law, the Constitution and international conventions.

## **Section II: Commitment to Publication and the Protection of Whistleblowers**

**Article 7:** Classified information and documents that are prohibited from publication according to any other law must be released as follows (a) after 15 years for top secret information; (b) after 10 years for secret information; and (c) after 5 years for restricted information. The High Commission is responsible for setting the criteria for classification and must notify the relevant entities. The High Commission monitors the entities' adherence to the above rules.

The High Commission may grant a onetime extension for the above-mentioned periods upon the request of the holder of the information. It must include in its decision a written justification for granting the extension. The extension decision is appealable by an action to revoke submitted to the administrative court according to conditions set by the State Council Law.

### **Article 8:**

The rules of disclosure issued by The Egyptian Financial Supervisory Authority, Egypt Stock Exchange, Egyptian Capital Market Authority, and the General Authority for Investment, apply to public listed companies. All state and government agencies disclose information about dealing with the private sector in cases where private sector receives public funds.

Relevant public entities must publish annual reports to facilitate the goals of a project. The reports must include at a minimum the public policies, goals, projects, costs, accomplishments and a list of information the entities hold. It must include as well the decisions that affect those who deal with the entities, the reasons for taking them, the

desired goals from the decisions, and any other information that the High Commission finds necessary.

**Article 9:** When the relevant entities hold a public meeting, they must announce the date, place, and purpose of the meeting. The public must not be prevented from attending such meetings except with a permit that includes justifications from the High Commission for information. Stakeholders may appeal the permit by an action to revoke it before the administrative court according to the rules set forth by the State Council Law. In all cases, the entities must publish the minutes of such meetings.

**Article 10:** Whistleblowers who report violations or breaches of this law shall not be held accountable, interrogated, or subject to any kind of penalty or disciplinary action.

**Article 11:** If a relevant entity wrongly withholds information that should have been provided under Article (8) of this law, the entity must compensate persons for any resultant damages that could have been avoided had the information reached the person as a result of being published in an appropriate time and in accordance with this law.

### **Section III: Obtaining Information**

**Article 12:** Requests to obtain information must be submitted in writing to the entity that holds the information. Requests must include sufficient details to enable the administration or the designated employee to identify and extract the information.

In special circumstances, requests may be made verbally to the designated employee. In this situation, the employee must write down the request and re-read it to the person making the request to ensure that it matches the person's wishes, and hand the person a copy.

**Article 13:** As soon as a request is made, the designated employee must give a receipt to the person making the request. The receipt must include the date of the request, type of information requested, and the period necessary for responding to the request. If it is possible to submit the information momentarily, the designated employee must do so with the highest degree of good faith.

**Article 14:** The designated employee must release the requested information within 15 business days from the request date. A single seven-day extension is permitted if (a) the request includes a large number of information, or (b) if the information necessitates communication with other parties. Failure to respond during the specified periods will mean that the request is accepted.

Notwithstanding the previous paragraph, where the information is necessary to protect the life or freedom of a person the period for releasing the information is reduced to three business days from the request date. A single three-day extension is permitted if (a) the request includes a large number of information, or (b) if the information necessitates communication with other parties. Failure to respond during the specified periods will mean that the request is accepted.

**Article 15:** If the information request was granted, the designated employee has to enable the person making the request to receive such information, and must specify the costs for making the information available, subject it does not exceed LE 500 except in cases mentioned in article 52 of this law. The costs are limited to the direct costs that the holder of information incurs plus a 10% fee for administrative expenses dedicated to the High Commission.

**Article 16:** After acceptance, the administration or designated employee must submit the information in a written format. The information must include an authentication from the entity and a copy of the original form of the requested information. If giving copy is not feasible, the entity must provide a suitable place for the person making the request to read and extract suitable information from the information it makes available.

**Article 17:** Notwithstanding the previous article, whenever possible, the designated employee must provide a suitable format if the person making the request is a person with special needs.

**Article 18:** If the designated employee finds that the information requested is with another entity and it being the source of information, the entity that the information was requested from must refer the request to the right entity and notify the person making the request for the transfer. The request will be considered as if it had originally been submitted to the correct entity.

**Article 19:** Decisions declining access to information must be explained. The designated employee must notify the person making the request of the reasons for declining. It is only permissible to decline when (a) the information cannot be found or does not exist or (b) is part of the information restricted by this law. The decline must include a thorough explanation of the steps for appeal. Any deficiency or inadequacy in explanation or infraction of this law invalidates the decision.

**Article 20:** If the reason for declining the request is because the information does not exist/cannot be found, the designated employee must attach with the declining decision an explanatory note that explains all the steps taken to find the information, or to verify its existence; all the locations that were searched; the persons that participated in this

search; the details of any correspondences that were made searching for this information or verifying their existence; and if the information was destroyed, then the note must include the decision ordering the destruction, and proof that it has been actually destroyed.

**Article 21:** If information request is declined because the information does not exist or could not be found; and the information was found after its declination, the requesting party must be notified in writing within one week. The request should be reconsidered and a decision to provide or deny the information should be made in accordance with the provisions of this law.

**Article 22:** The designated employee must notify the person requesting the information of a delay in making it available under the following conditions:

- (a) If the information was prepared for presenting to parliament. However, the information may not be withheld after 45 calendar days of the convening of parliament or of making the request - whichever is sooner; or
- (b) If the information requested is in itself a report or included in a report prepared for presentation to an official entity, or a person in his/her official capacity, or a relevant entity. The delay is only permissible until the report is presented to the entity or person. In all cases the information may not be withheld after the presentation of the information to the person or entity or the passage of 45 calendar days from the request date - whichever is sooner.

The designated employee must notify in writing the person making the request about the decision for delay for the period specified in Article (14) of this law.

**Article 23:** Excluding the above-mentioned ways of appeal, if the holder of the information finds that making the information available may adversely affect the vital interests of the state, then the holder of information must present this question to the relevant minister or his/her representative.

If the minister or representative approves, the matter must be presented to the constitutional court to issue a decision whether to publish or withhold the information. The court has 60 calendar days to decide whether to publish or withhold for a specified period. The decision will be binding on all.

## **Section IV: Exceptions**

**Article 24:** Information is not considered restricted from availability except if it was deemed classified as in article (7) of this law, and for the periods specified therein.

**Article 25:** The designated employee must decline releasing any information if it was proven that it will have a serious adverse effect on the state, its borders, the integrity of its territory, or if it may expose it to danger of war or weaken its ability to face this danger. This especially includes information related to:

- a) War strategies, plans and tactics, weapons and combat missions, organizations of the armed forces, and military operations and maneuvers in all their forms and manifestations; and
- b) Intelligence information relating to the internal and external security of the state according to the present laws;
- c) International correspondences that relate to issues of defense and military alliances or coalitions;
- d) Any information that relates to a foreign state or organization where it was agreed to keep the information secret;
- e) Information that relates to racial or ethnic issues or anything that adversely affects national unity.

**Article 26:** In entities that engage in criminal investigation, gathering of evidence, and detecting violations, the designated employee may choose to withhold the information if releasing it would hinder the completion of tasks or affect the reputations of individuals not yet convicted.

**Article 27:** The administration or designated employee may decline to release information that contains:

- a) Trade and business secrets that relate to the holder of information or other parties protected by other legislations; or
- b) Information related to future events where releasing them may cause clear and specific financial losses to the state's economy, or its ability to administer the national economy, or that result in private gains for a person or entity, and this includes:
  - Decisions relating to change in the value of the currency used in the Arab Republic of Egypt;
  - Expected changes in custom duties, taxes, fees, and any other source of revenue;
  - Expected changes in interest rates;
  - Expected changes in the prices of government property, this includes stocks, real and personal property;
  - Deals and tenders that the holder of information plans to hold relating to a commodity, where releasing such information may affect the price of the commodity in the market;

- Information that relates to predictions of natural disasters or contagious diseases;
  - Information that if released may compromise the safety of the people or incur harm upon them; or
  - Any information that may adversely affect intellectual property or rules or fair business dealing or commercial competition.
- c) In all cases, the entity must immediately release the information once the reason for withholding has been removed, and provide justification for such withholding of information.

Regulations issued by Egypt Stock Exchange, Capital Market Authority, General Authority for Investments, and other agencies regulating disclosure of information of the private sector, must be taken into consideration.

**Article 28:** The designated employee must decline to release information relating to the privacy of a third party except where:

- a) The consent of the owner of the information, representative, or agent was granted;
- b) The information was already made public;
- c) The request was based on a judicial injunction; or
- d) The passage of a minimum of 30 years after the death of a person, with the consent of the heirs.

**Article 29:** If a part of the information is within the exceptions restricted by this law and the other part is available for release, then the designated employee must examine the document and remove the restricted parts, then make the rest available and submit it to the person making the request.

**Article 30:** Withholding information for any reason is not permissible if the purpose of releasing it is to reveal material violations of the constitution, the law, or occurrences of financial corruption or human rights violations.

**Article 31:** The burden of proof is on the designated employee that the requested information is within the restrictions set forth in the constitution and in this law.

**Article 32:** If the designated employee receives a request relating to personal information of a natural third person; or commercial or classified information relating to a legal third person, the employee must take the necessary steps to notify in writing the third party or their legal representatives of the request, the name of the person making the

request, and the details of the requested information. Within five business days, the third party must provide his/her acceptance or denial to the employee, and the reasons thereof.

Within five business days of receiving the response from the third party or the expiration of the period specified in the previous paragraph without receiving a response, the employee must decide whether to provide the information or withhold it.

Any stakeholder may appeal the decision in an action to revoke before the administrative court in accordance with the usual procedures specified in the law of the State Council.

## **Section V: The High Commission for Information**

**Article 33:** This article calls for the creation of a commission called the High Commission for Freedom and Circulation of Information, for the purpose of strengthening and improving the freedom and circulation of information and promoting awareness thereof, and guaranteeing that access to information is given to whomever desires it according to the rules set forth in this law.

The Commission has a legal entity and is to be headquartered in Greater Cairo with branches in governorates. It has the right to create other branches in municipalities or create other offices according to work necessities. The High Commission enjoys complete independence in performing its tasks, activities, and specialties.

**Article 34:** The High Commission will consist of 15 members. The bureau of the People's Assembly issues the decision for the Commission's formations. It selects the members through voting by name in a plenary session convened for this purpose only. The term of the Commission is five years.

**Article 35:** Members of the High Commission must:

- a) Have obtained Master's degree at minimum in any branch of law, political science, journalism, economy, etc. or a minimum of 10 years of experience in the field of national security, legal affairs, journalism, or judiciary; and
- b) Have a credible record in defending human rights, freedom of expression, right of access to information, or any other aspect of human rights and public freedoms;
- c) Not occupy or have occupied in the past five years of the time of their candidacy any political position or position in a political party;
- d) Have a good reputation. They must not have been convicted of any crimes related to honor or been connected to any violations of human rights and public liberties or defended such violations.

**Article 36:** The executive office of the People’s Assembly declares in two daily widely published journals the start and close of the date for running for membership in the Commission. It specifies a date for receiving the applications for candidacy from individuals who satisfy the conditions set forth in Article (35). The applicant is to send the application with a detailed resume and supporting documents.

After the end of the nomination period, the executive office of the People’s Assembly sifts through the applications and removes the ones that do not satisfy the stipulated conditions and presents the rest of applications to the members of parliament to vote on.

The president of the People’s Assembly appoints the members in accordance with nomination results. Selected candidates must be notified within 15 business days from the decision date.

Any stakeholder may appeal the appointment decision in an action to revoke before the administrative court, within 15 business days from the decision date.

The court must issue a verdict within 15 business days from the date of its knowledge of the appeal. This decision is in turn appealable to the supreme administrative court within seven business days from the date of the verdict. The supreme administrative court issues its verdict within 15 business days from the date of appeal.

No person can occupy a membership position in the High Commission for more than two consecutive periods.

**Article 37:** The eldest member of the Commission presides at the first meeting, and in this meeting the president and his/ her deputy are selected. The president holds the title of Commissioner General, and the deputy holds the title of the Deputy Commissioner General.

**Article 38:** In reaching its goals, the High Commission has the competency to:

- a) Develop a national action plan to strengthen and develop freedom of information and circulation in Egypt, and to propose ways to facilitate the implementation of the plan;
- b) Pass judgments on appeals related to entities’ withholding information and delaying making them available;
- c) Promote a culture of freedom and circulation of information, raise awareness, and enlist the aid of entities such as educational institutions and the media;
- d) Convene conferences, symposia, and seminars for discussions related to the freedom and circulation of information, or incidents that occur in relation thereof;
- e) Submit proposals that are necessary to support institutional and technical capabilities in the field of freedom and circulation of information; and contribute to training the administration or employees

and people with authority in the relevant entities on the importance and mechanism of enabling people to obtain the information;

- f) Issue publications and journals relating to the objectives of the High Commission and its terms of reference;
- g) Issue reports that monitor the level of Egypt's commitment and advancement in the freedom of information field on the governmental and civil level. Reports must include violations and hurdles in this field;
- h) Cooperate with international and national organizations interested in the freedom and circulation of information to better promote the goals of the Commission and work on strengthening its relationship with them; and
- i) Participate with Egyptian delegations in forums and meetings of international and regional organizations interested in freedom and circulation of information.

**Article 39:** State agencies must cooperate with the Commission and facilitate its fulfillment of its duties, and provide it with any information or data that it requests in relation to such issues.

The Commission may invite any state representative to participate in its works and meetings. The representative will not have voting rights.

**Article 40:** The Commission must have a secretary general. The secretary general's duties include a: executing the decisions, b: general supervision of the employees and the financial and administrative affairs of the Commission.

The High Commission appoints the secretary general. The secretary general must not be a member of the Commission, and his or her term in office is the same term as that of the Commission.

The Commission must consult a sufficient number of experts, specialists, and qualified employees to better help it perform its duties.

**Article 41:** The Commission meets:

- (a) When the president calls a meeting at least once every month;
- (b) Whenever necessary;
- (c) Upon the request of 1/3 of the members.

The quorum is 2/3 of the members. Decisions are made by a majority. In case of a tie the side with the president presides.

The president of the Commission may invite to attend whomsoever he/she deems necessary to consult in an issue relating to research or deliberation. The invitee will have no voting rights.

**Article 42:** The High Commissioner represents the Commission before the judiciary and other parties.

**Article 43:** The Commission has an independent budget that is included as a single number in the general budget for the state. The fiscal year begins and ends with the beginning and end of the state's fiscal year.

The Commission's resources consist of the following:

- (a) Appropriations from the general budget of the state; and
- (b) The fees that the Commission charges for the services it provides;
- (c) Money collected as administrative expenses provided that it is paid by monthly checks;
- (d) Donations, grants, and subsidies that the Commission decides to accept with a two thirds majority;
- (e) Whatever the state specifies for the Commission from grants and subsidies according to international conventions;

A special bank account must be established for the proceeds from these resources. The bank must be under the supervision of the Central Bank of Egypt. Any surplus will be transferred to the following year's budget. The Commission's money counts as public money and the persons responsible for it are considered those responsible for public money.

**Article 44:** The Commission issues a manual that organizes its work and the relation between the main Commission and its branches in the governorates. It issues another manual for organizing the technical secretariat, employee affairs, and financial and administrative affairs. The Commission is not required to conform its procedures manual to those of the government.

**Article 45:** The general commissioner receives the same salary and privileges as the prime minister, the deputy receives the same salary and privileges as the deputy prime minister and all other members receive the same salary and privileges of ministers.

**Article 46:** Members of the Commission are not subject to removal. Except for the cases of flagrante delicto, no criminal procedures may be taken against them except with the Commission's prior consent and in accordance with the regulations it sets forth.

Members must take an oath before a special session for parliament to perform their duties with honesty and integrity, and to respect the constitution and the law.

**Article 47:** Members of the Commission are accountable to it, and must act in accordance with a policies and procedures manual that the Commission sets forth. A special committee looks into violations and submits reports to the Commission, and makes a final judgment. If the final judgment was to remove the member, the General Commissioner for Information delivers the decision to the President of the People's Assembly, who must present it to the assembly in the first meeting to announce the vacancy of a position. The Commission requests from the People's Assembly to take the necessary legal procedures to choose the replacement. The same procedures are taken in the case of death or resignation of a member, or the removal of membership for a non-disciplinary measure.

**Article 48:** Membership in the High Commission terminates by default where:

- (a) The member resigns;
- (b) The member is convicted of a felony or misdemeanor related to honor;
- (c) The member is placed under conservatorship;
- (d) The member stops meeting one of the appointment prerequisites; or
- (e) The committee decides to terminate the membership due to an investigation it carried.

**Article 49:** To facilitate the fulfillment of their duties, members may:

- (a) Enter any public institution and search its records and any sources that relate to the requested information;
- (b) Investigate any violations in order to reach the requested information; and
- (c) Report any concealment or destruction of information, or modification in a manner that contravenes the truth for the sake of evading full submission of information.

**The relevant minister issues a decree providing the members of the High Commission an authority of judicial impoundment once they take the oath.**

**Article 50:** The Commission creates special committees to look into appeals from the holders of information's (a) refusal, (b) abstention, (c) or delay in making available the information. The Commission makes decisions related to the founding of the special committee and designates the geographical scope and the methodology for reaching decisions, etc. Such matters are decided by a majority.

**Article 51:** The High Commission must provide semi-annual periodic reports to the president of the republic; the prime minister; and the president of the People’s Assembly.

The reports must include:

- (a) Cases of unjustified withholding of information;
- (b) Executive problems that the Commission faces; and
- (c) Any other recommendations the Commission finds suitable.

## **Section VI: Fees and Appeals**

**Article 52:** The High Commission looks into the convenience of fees requested by providers of information stated in article 15 of this law, to make sure it is not exaggerated, and it specifies the fees for receiving the information. The fee must not exceed 500 L.E. except in the following cases:

- (a) To cover the cost of copies according to market prices;
- (b) To cover the cost of alternative formats according to market prices; and
- (c) If the request includes a large number of information.

**Any stakeholder may appeal the fees requested to release information according to cases specified in article 53, and in all cases 10% of the fees are allocated to the High Commission.**

**Article 53:** Any stakeholder may appeal the judgment of the holders of information to the principal or local appeals committee, and especially in cases of:

- (a) Declining the information request,
- (b) Asking for high fees for the request;
- (c) Declining the request to receive the information in alternative format, although an alternative format is feasible;
- (d) Delaying answering the request in violation of Article (14) of this statute; and
- (e) Transferring or referring the request to various entities without granting the request;

Appeals must be made within 15 business days from the date of refusal to release the information or the decision that the applicant wishes to appeal. The committee specifies the appeals fees, provided that it does not exceed 100 L.E.

Stakeholders may also appeal directly to the administrative court in the State Council in the procedures specified in an action to revoke.

**Article 54:** In performing its duties, the appeals committee has the powers and duties to:

- (a) Summon witnesses and presidents of state agencies or any necessary persons;
- (b) Summon expert witnesses when necessary;
- (c) Permit stakeholders to join as adversaries in the appeals before it;
- (d) Offer legal advice when necessary;
- (e) Require any witness to present evidence that the Commission finds necessary to pass judgments in the appeal before it;
- (f) Require witnesses and experts to take an oath, and require affidavits or that evidence be presented under oath when necessary;
- (g) View all kinds of information regardless of its confidentiality, when such information constitutes the basis of a legal claim or official review in order to make a final judgment in an appeal before it;
- (h) Issue written orders requiring the release information;
- (i) Reissue information, select parts if for release, or retain the information as long as is necessary;
- (j) Limit the release of information;
- (k) Enter to any place, search, and seize if necessary; and
- (l) Take any other measure or issue any order that is necessary to reach a judgment in an appeal before it.

**Article 55:** The appeals committee issues a judgment within 15 business days from the date of appeal, and after hearing stakeholder's statements. If the set period ends and no judgment is passed, the appeal is considered declined.

The appeals committee's judgments must be published in the official gazette and in two daily newspapers at a minimum.

**Article 56:** Any stakeholder may appeal the committee's judgments within 15 business days from the date of his/her knowledge of the decision, or the ending of 15 business days from the date of appeal and non-passing of a judgment.

Such appeals must be made directly to the supreme administrative court. The court must decide the matter promptly.

## **Section VII: Penalties**

**Article 57:** Notwithstanding more severe penalties in any other law, whoever,

- (a) Receives an official notification, and has the competence to submit information, and after 8 business days from receiving such notification still fails to submit the requested information, or submits it incomplete; or
- (b) Releases information that infringes on the privacy of third party in situations other than the one provided in this law:

Shall be removed from his/her position and fined between 1,000 L.E. and 10,000 L.E., or one of the two penalties.

**Article 58:** Notwithstanding more severe penalties in any other law, whoever,

- (a) Intentionally submits false information;
- (b) Intentionally destroys records or notebooks that information is kept in; or
- (c) Releases in bad faith the restricted information specified in the constitution and the law:

shall be subject to imprisonment.

**Article 59:** Notwithstanding more severe penalties in any other law, whoever violates any other rule from this law shall be detained for no more than a month, or fined no less than 200 L.E. and no more than 1,000 LE, or both.

## **Section VIII: Final Provisions**

**Article 60:** Any rule or law that contradicts the provisions of this law becomes invalid, regardless of its source.

**Article 61:** The High Commission issues an executive decree for this law within 6 months from the date of the first meeting it convenes.

**Article 62:** This law must be published in the official gazette, and it takes effect from the day following its publication.

## Part III: Explanatory Notes for the Proposed Bill on Freedom of Information

As access to information is a basic human right and a cornerstone of public freedom, the international community has adopted it as a standard for guaranteeing the freedoms called for by all international conventions protecting human rights. During the first session of the General Assembly of the United Nations in 1946, the Assembly adopted Resolution No. 59/1 which states that **"freedom of information is a fundamental human right and is a touchstone of all the freedoms to which the United Nations is consecrated."**

Following the adoption of this resolution, international instruments began to regard the right to freedom of information as a part of the set of basic inalienable human rights, and a necessary component of the right to freedom of expression. This was reflected in Article 19 of the International Covenant on Civil and Political Rights, which states that **"1) Everyone shall have the right to hold opinions without interference, 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."**

In Egypt, the widespread withholding of information led to a state of unprecedented political corruption, culminating in the sweeping civil protests that occurred in January 2011 that led to the resignation of the president. In the wake of these events, national investigations have uncovered the most extensive cases of corruption revealed in the history of modern Egypt.

Secrecy is the basis upon which the Egyptian legislative structure was established, as can be inferred from the text of Article X of the Presidential Decree No. 2915 of 1964, which states that "No ministry or department or individual(s) in the government or the private sector may publish using any means of publication any publications or statistical information except from the Statistics Central Agency for Public Mobilization and Statistics. Whoever contravenes this is considered to have violated the law."

Worse still, the Egyptian legal system contains many articles that run counter to the principle of freedom of access to information. For example, Article No. 57 of 1937 of the Egyptian Penal Code punishes disseminating information that may threaten the fundamental order of the state. It also penalizes revealing 'secrets' without providing a clear definition of what constitutes a 'secret'. It also prohibits publishing what occurs during sessions that are convened to examine crimes of press and crimes related to libel and slander. It also prohibits publishing litigations as well as some judicial decisions, and penalizes publishing information relating to strikes, regardless of the truth of the publication.

In addition, Statute No. 121 of 1975, as amended by Statute No. 22 of 1983, and Presidential Decree No. 472 of 1979 on the preservation of official state documents and the organization of the methods of their dissemination, unconstitutionally restricts the circulation of state documents in a way that impedes public debate.

The following statutes are other examples of restriction of circulation and disclosure of information:

- (1) Law No. 356 of 1954, the National Archives Decree, and Law No. 35 of 1960 on Statistics and the Census;
- (2) Law No. 47 of 1978, regarding civilian employees in the state; and
- (3) Law No. 313 of 1956 amended by Law 14 of 1967, banning the publication of any news about the armed forces;
- (4) Intelligence Law 100 of 1971;
- (5) Law No. 87 of 1960 on general mobilization.

The bill proposed in this document is for combating corruption on a fundamental level and supporting human rights. The philosophy of the law is as follows:

1. The natural state of being is access and circulation of information.
2. Preventing circulation is an exception that should not be expanded upon or analogized to. Hence, the bill has adopted the following principles:
  - a. The proposal has limited the scope of the information prohibited from circulation in that it restricted it to matters pertaining to a violation of the right of privacy, national security of political or military nature.
  - b. The right to prohibit circulation relates to the nature of the information, not the nature of the holding entity.
3. Entities bound by the provisions of the law are required to designate an employee who makes information freely available and provides this employee with sufficient authority to do so.
4. The proposal gives the addressed entities a reasonable period of 15 business days to respond to information requests, extendable to a maximum of an additional seven-day period.
5. The proposal takes into consideration persons with special needs, as it requests from entities to give the information in alternative formats that suit their specific needs.
6. The proposal requires entities to publish periodic reports concerning specific information such as information of an environmental nature.
7. The proposal requires the creation of a High Commission for information that specializes in providing information. This High Commission is to be an independent unit, operating under its own mandate and separate authority. The proposal considered it to be an appeals committee that looks into decisions against holders of information if they decline to make information publicly available. The proposal permits appealing judgments before the judiciary as well.

8. The proposal takes interest in training and spreading awareness and requires this to be one of the most important specialties of the High Commission for information.
9. The proposal sets criminal penalties, reaching imprisonment in some cases, for violating its rules in order to deter anyone who wishes to conceal information that should be released or release information that should be withheld.

**The proposal consists of 8 sections and 62 articles.**

**Section I** is titled “general provisions” and contains six articles. Article 1 defines expressions used in this law. Articles 2 and 3 specify the goals and principles of this law, the most important being that access to information is a right for citizens and a duty of the state, and that the natural order is to release information, and not to penalize those who release restricted information in good faith. Article 3 stipulates expressly that Egyptians have the right to access any information that would strengthen their rights as stipulated in the law, the constitution, and international conventions. Article 6 is one of the most important articles. It prevents constructing this law in a manner that hinders access to information. It requires interpreting the law in light of the principles of other laws, the constitution, and international conventions.

**Section II** is titled “Commitment to Publication and the Protection of Whistleblowers” and contains five articles. Article 7 divides the levels of confidentiality to three degrees according to their importance. The degrees are: top secret, secret, and restricted. A different restriction period was given to each degree, according to each degree’s importance. The proposal gives the Commission the right to extend these periods once. To ensure that there is no untruthful or exaggerated degree of confidentiality conferred on information, the proposal makes entities’ decisions for specifying the confidentiality subject to review from the High Commission.

Article 8 better facilitates the implementation of the goals of the project by requiring relevant public entities to publish annual reports. The reports must include at a minimum the public policies, goals, projects, costs, accomplishments and a list of information the entities hold. It must include as well the decisions that affect those who deal with the entities, the reasons for taking them, the desired goals from the decisions, and any other information that the High Commission finds necessary.

Article 9 protects the right of people to attend public meetings. It requires the relevant entities to announce the date, place, and purpose of the public meeting they convene, and then publish the minutes of such meetings. Article 10 protects whistleblowers and prohibits penalizing anyone who provides information about violations or breaches of this law.

Article 11 gives the right of any person harmed by the withholding of information to receive proportionate damages from the entity that caused damage by withholding information.

**Section III** is titled “Obtaining Information” and includes 12 articles. Article 12 specifies the department that information requests are given to, and the information that the application must include. It permits making an oral request and requires the designated employee to write it down and give the person making the request a copy of the information. This is to make it easier for people who have challenges in writing and reading.

Article 14 requires entities to respond to the information request within a short 15 business day-period from the request date. It permits extending the deadline once for no more than seven additional business days. The article considers failure to respond to mean an acceptance of the request. Thus, when the request is considered accepted as such, the person making the request becomes able to continue the procedures for obtaining the information. The same article reduces the specified period to three business days in case of a pressing need to protect the life or liberty of persons.

Article 16 specifies that where the designated employee accepts the request, the employee must give the information to the person making the request in writing. It does not suffice to enable the person making the request to view the information source. The article delegates setting procedures for providing the persons making information requests with copies from the original forms to the High Commission.

Article 17 facilitates access to people with special needs. It provides that entities give people with special needs suitable alternative formats, whenever possible. Article 18 realizes that information is branched out and may be in several places making it hard for people to identify its source. Thus, the article makes it easier to track the source of information. It permits the designated employee to clarify that the requested information belongs to another entity, and to transfer the request to the correct one, and notify the person making the request of such transfer. The article provides that when the transfer occurs, the transfer counts as if the information had been submitted directly to the correct entity in the first place.

Article 19 addresses the case of denial of information requests. The article requires the designated employee to notify the person making the request of the reasons for denial. The article restricts acceptable reasons for denial to two main ones (a) that the entity does not possess the information (b) that the information is restricted by this law.

Article 20 ensures transparency. Where an entity denies the request because it does not possess the information, the article requires the designated employee to show the person making the request the steps taken to find the information. The article includes other similar protective measures.

Article 22 permits delay in submitting the information where the information is being presented to parliament or an official person. However, it limits the delay period to 45 calendar days, whether the information was presented to the parliament or official person or not.

Article 23 provides that, where the holder of information finds that its release may endanger the vital interests of the state, the holder of information may submit the matter

to the Constitutional Court. The Court has the discretion to prohibit the release of the information for good cause and for a limited period only.

**Section IV** is titled “Exceptions” and contains nine articles. Article 25 enumerates the restricted information. Exceptions are geared at protecting the state from the dangers of wars and preservations of its unity, integrity, and borders. Article 26 protects information gathered for investigating crimes if its release would endanger the process or the reputation of people not yet convicted. Article 27 protects business competition and economic interests. Article 29 permits partial release of information where parts of it are restricted and other parts are not. It requires the employee to revise the documents and release the parts that are not restricted. Article 30 is significant because it does not permit withholding information for any reason if the purpose of releasing it is to reveal (a) significant violations for the constitution or the law, (b) incidents of financial corruption or (c) human rights violations. Article 32 protects privacy and provides special procedures to protect third parties.

**Section V** is titled “The High Commission for Information” and contains 19 articles. Article 33 makes the Commission independent and gives it a legal character. Articles 34 and 35 specify the number of members of the committee, and their manner of appointment. Article 34 requires advertisement for positions. Candidates nominate themselves according to conditions set forth in the same article. Article 35 mentions that the parliament chooses members through ballots. It restricts the term of membership to two consecutive 5-year terms.

Article 38 enumerates the specialties of the High Commission. Examples are: (a) setting a national plan for strengthening and developing the freedom and circulation of information in Egypt; (b) making suggestions for methods for implementing the plan; c) issuing regulations and rules that organize the degrees of confidentiality, the basis and methods of using them, the manner of monitoring their abuse; d) passing judgments on issues related to the release of information; e) spreading a culture and awareness of freedom and circulation of information by utilizing educational and media facilities. This provides the Commission with a role in spreading awareness about the importance of circulation, dissemination of information, and enabling access to it. It also provides the Commission with the role of ensuring timely reception of information to the people requesting it. Article 39 requires state agencies to cooperate with the Commission and facilitate its fulfillment of its obligations. The article gives the Commission the right to invite any state representative to participate in the Commission and its meetings. It does not grant such representative voting rights.

Article 40 requires the Commission to appoint a secretary general, a nonmember. The same article permits the Commission to utilize the help of specialists, experts, and qualified employees.

Article 49 gives members of the Commission the right to enter the premises of any public entity and search its records and documents and the sources of any documents connected with requested information. It also gives it the right to interview individually any

employee to be better able to obtain the information. It makes accountable anyone who conceals, destroys, or tinkers with the information to avoid its release. This demonstrates that the proposal seriously supports the independence of the Commission, and strives to enable it to do its work with competence and ease.

**Section VI** is titled “Fees and Appeals” and contains five articles. Article 52 gives the Commission the right to set information request fees provided that they are no more than 500 L.E., except if the costs are increased for reasons that the article specifies.

Article 52 permits any stakeholder to appeal to the Commission from decisions that information holders make. Appeals are directed to the Commission’s appeals committee. They must be made within 15 business days from the date of declining the request, or the decision that the appellant seeks to appeal. The article permits appeal from the committee’s decision directly to the administrative court to ensure a swift process. Article 55 requires the Commission to look into the appeal within 15 business days from the date of appeal. After hearing the statements of the stakeholders, the committee will pass a judgment. The article considers the ending of the period without having a reached judgment to mean that the appeal was declined. After the passage of the 15 business days, the appellant may have recourse to the administrative court. Article 54 gives ample discretion for the appeals committee, such as calling witnesses and experts, taking their oath, and examining documents regardless of their confidentiality. The article also permits the committee to provide legal services for those in need.

**Section VII** is titled “penalties” and includes three articles. Articles 57 and 58 include penalties that range from detention, prison, removal from office, and a fee that reaches 10,000 L.E. for whoever withholds requested information, invades the privacy of a third party, in bad faith provides false information, destroys documents or records, or releases restricted information. These penalties do not supersede any harsher penalties in any other law.

**Section VIII** is titled “Final Provisions” and includes three articles. Article 60 repeals any rule in any law that contradicts the provisions of this law. Article 61 requires the High Commission to issue the executive decree for the law within 6 months from its formation.

## Annex One: Proposed constitutional articles

Twelve participants in the workshop presented proposed constitutional articles from which an agreement on a single article was to be reached:

**Ahmed Abou Baraka, Ph.D., Professor of Law and member of the higher committee for the Justice and Freedom Party, and Member of Parliament (2006) for the Moslem Brotherhood**

*“Access to information is a right guaranteed by the government, it works particularly to avail information, data and official meetings easily and consistently. The law governs the mechanism of exercising this right.”*

**Councilor, Hisham Raouf, Chairman of the Criminal Court**

*“Each citizen has the right of access to information which guarantees effective monitoring of the political and economic performance of the government or other government institutions or the private sector, this includes the right to follow up on the meetings of the elected councils totally without conflicting with the national security and the right to privacy. The law dictates the means of obtaining the information and the authority where grievances can be raised when information is denied or insufficient.”*

**Raafat Radwan, PhD., Former Deputy Chairman of the Information Decision and Support Center**

*“Freedom of information and knowledge is a given right of Egyptians. All public and private authorities are to publish their information, data, and archives; they are required to answer any requests in the least time if this does not conflict with the general wellbeing and according to the rules set by the law.”*

**Gaber Gad Nassar, Ph.D., Professor of Constitutional law, Faculty of Law, Cairo University**

*“The government abides by freedom of official information, data, statistics and archives, while the law will dictate the means of publishing information in official papers. Everyone has the right to the following, a) Any information in possession of the government, b) Any information possessed by any person that may be required to exercise or protect any right, a basic law organizes implementation of this right in a way that does not bind it or prevent it from being implemented. The government reserves the right if it sees that publishing any of the above harms national security or its higher interests, to address the Supreme Constitutional Court to prevent publishing this information, within 90 days until the court decides whether to publish or not and the period should not exceed 3 years.”*

**Gamal Zahran, Ph.D., Professor of Political Science in Suez Canal University and a former Member of 2006 Parliament**

*“Each citizen has the right of access to information regardless of its origin or location, this to effect decent monitoring of the political and economic performance of the government and the rest of the government authorities, public, private and mixed sectors, for the purpose of development. A law should be issued to affect this right preventing infringement on privacy or military security of the country and its borders. It will regulate methods of obtaining information and grievances as a result of their decline, as well as a rigid penalty for abstaining from releasing it.”*

**Adel El Ezaby, Businessman and the Chairman of the Labor Committee at the Federation of Egyptian Industries**

*“Freedom of Information and knowledge including all data, statistics and documents is a right granted to all Egyptians and all public and private entities are committed to publish such information and make it available. Every citizen has the right anytime to have access to any information without obstacles in the shortest period of time if it is not a threat to the military security and does not violate privacy. The law shall regulate how to freely access information and how to appeal against any action that violates such right.”*

**Fathy Fekry, Ph.D., Constitutional Law Professor, Cairo University**

*“The Citizen has the right to access all data, information, statistics from all governmental entities which does not threaten the state domestically and internationally and does not violate the privacy of others. The law regulates the procedures for accessing information.”*

**Mona Zulfikar, Member of the Egyptian Human Rights National Council**

*“The state guarantees freedom of information and the right of every citizen to access information available at the state of any private or public entity; and the law regulates process of obtaining this information.”*

**Laila Abdel Meguid, Ph.D., Former Dean of the Faculty of Mass Communication, Cairo University**

*“The right of access to information and freedom in sharing or exchanging it is a basic human right, the government abides by availing full correct information pertaining to public policies and performance of its establishments with complete transparency to ensure democracy and public monitoring. The natural state of being is access to information, excluding from that information that may harm the political, economic and military interests of the government, it should not be expand upon without justification within the legal framework, and information which may violate privacy rights. The law decrees the methods for access to information freely through a procedure that organizes it and encourages grievance in case it is denied.”*

**Mahmoud Alam El Din, Ph.D., Professor at the Faculty of Information, Cairo University**

*“Each citizen or resident has a right of access to information and freedom of its exchange as a basic core of economic and social human rights, as well as his civil and political rights. These include the right to knowledge, education, communication, litigation, fair trial, and monitoring the executive entities and participation in politics with respect to his/her private and family life as a basic requirement for freedom of communication, media and research. The government should provide guarantees such as legislations and executive mechanisms, officials and infrastructure to affect this right; while taking into consideration particular specific logical requirements related to not harming the national security, secrecy of investigations and trials, privacy of individuals and the financial statures of economic organizations and individuals.*”

**Hoda Metkees, Ph.D., Director of the Center for Political Research and Studies, Faculty of Economics and Political Sciences, Cairo University**

*“Each citizen has the right of access to information which ensures effective monitoring of government performance and other government establishments, public, private and combined sectors; avoiding information which can lead to harming national security in terms of the country’s borders, unity, existence and information which can infringe on a person’s privacy. The law stipulates ways of obtaining the information and the authority where grievances can be sent in case information is denied or incomplete.”*

*The State shall guarantee freedom of information and the right of every citizen to access public and private information. The law regulates the procedures for obtaining this information.”*

**Negad El Borai, the United Group**

*“Every citizen or resident has the right to access information held by the state or the private sector or both. This is necessary to ensure effective monitoring over the political and economic performance of the government and other state institutions as well as the private sector that is influencing the development process. This includes the right to fully follow elected councils’ meetings. It is prohibited to get information that can negatively affect the state borders, the unity of its soil or can lead to exposing the state to a threat of a war, or violate privacy. The law establishes regulations to facilitate access of information and where to appeal if could not have access to certain information.”*

## Annex two: Conference on “Combating Corruption through Freedom of Information”

*Cairo Wednesday June 1<sup>st</sup>, 2011*

### **Summary of the conference and the opening session**

The United Group and CIPE organized a one-day conference on “Combating Corruption through Freedom of Information.” The conference aimed at building a national consensus on the constitutional text and a draft law that would regulate freedom and access of information in order to present it to the Egyptian legislature to be considered in the process of rebuilding the Egyptian constitutional and legal foundation. Hence, the United Group and CIPE were keen to organize this conference gathering more than 350 participants representing constitutional experts, lawyers, civil society actors, journalists, government officials, businessmen and political activists.

In addition to the opening session the conference was divided into four thematic break-out sessions as follows:

1. The Principles and Objective of Freedom of Information Law and Exceptions for Accessing Information
2. Access to Information in the Public and Private Sectors
3. The Law Enforcement Supervision Committee: Its Accountability Measures and Internal Audit
4. Archiving and Information Protection

**Ahmed Kamal Abul Magd**, Professor of Law, and the former Vice Chairman of the Egyptian Human Rights National Council, chaired the opening session under the title of “Constitutional Protection of the Right of Access to Information”. He stated that one of the main sources of grievances in Egypt is that the mass of laws serve authoritarian rule; indeed, authoritarianism feeds corruption and inflates it. Authoritarianism either threatens citizens or leads to passivity among them. Truth is lost in the process, which explains why Information is so important. He also stressed that the function of information is mainly to help individuals to form and build their own opinions. Moreover, the enforcement of emergency law for thirty years facilitated the imposition of restrictions on the flow of information.

**Karima Kamal**, the Head of Investigation Section, Al Masry Al Youm newspaper, discussed the problems facing journalists with regard to freedom of information; she described how journalists manage to access information through junior employees and not through an institutional process. She added that in Egypt, a great deal of the flow of information is inaccurate. The difficulties in validating information are squarely the result of a corrupt political will.

On the other hand, **Fathy Fekry**, a Professor of Constitutional Law, Cairo University, said that most Egyptians live below information poverty line, which is in direct violation of the constitution which proclaims that people rule. Public monitoring cannot execute its role without availability of information. The next parliament should issue a package of laws to promote transparency. However, the Egyptian Parliament is not presently considering promoting transparency, and in practice it does the opposite. For example, the bylaws of the Egyptian parliament say that no one can monitor the parliamentary expenditures. Moreover, citizens are not allowed to attend the meetings without security permissions. The law also states that the meeting minutes should be documented and published in the official newspaper; however, in practice nothing is disclosed. He also proposed the following text to be included in the constitution: “The Citizen has the right to access all data, information, statistics from all government entities which does not threaten the state domestically and internationally and does not violate the privacy of others. The law regulates the procedures for accessing information”. He also mentioned that we should avoid using the term National Security because it is misused.

**Asem Abd ElGabar**, the Vice President of the Court of Appeals, pointed out the important role that civil society organizations play in defending the case of the independence of the judiciary. The issue of judiciary independence is not only important for judges but for the entire community to ensure a well-functioning democratic process. The independence of the judiciary is the rule of law, which is the basis of any democracy. He added that accusing judges of involvement in political life is raised only by the executive authority in seeking to obstruct the important role played by the judges and to deny them their rights. In this context, he referred to law No. 46 drafted under the government of the Wafd Party, and specifically in Article 72 which contains two paragraphs. The first paragraph prohibits the courts from expressing their views on political matters while the second paragraph prohibited the judge from exercising policy, at the time. Legal Expert Saber Abou Allam interpreted this law as prohibiting the judges from joining political parties and from practicing politics in the public domain.

Assem Abdel Gabar also mentioned the issue of National Security being misused to limit the right of access to information. The term has wide parameters which negatively affect freedom of information and does not specifically define its meaning. In many instances, hiding information might be more dangerous for National Security than its disclosure, as in the case of the 25th of January Revolution. Information is a national resource which citizens have shares in; thus, it is essential to codify the right to freedom of information in the constitution. He pointed out that article 210 of the 1971 constitution protects this right for journalists only. In the new constitution this should be changed to reflect equality among citizens. Information is an important tool for participation in the political life and protects various important citizenship rights such as the right to education. In addition, the right to freedom of information is important for monitoring the government and hence limiting corruption.

**Mona Zulfikar**, Member of the Egyptian Human Rights National Council asserted that the right to access to information is a fundamental human right similar to education and freedom of speech. She also stated the Egyptian Human Rights National Council could not fulfill its duties and respond to citizen's complaints and grievances due to lack of information, which shows that information is an essential prerequisite for justice. Therefore, it is urgent to defend the right to freedom of information starting from the constitution, and there should be clear regulations that facilitate access to information. Furthermore, the United Nations Anti Corruption Treaty stated that granting access to information is one of the state's major duties and obligations. Egypt has joined the treaty in 2003 and ratified it in 2004; however, it was not enforced until 2007 and only after pressure from Civil Society Organizations, showing the extent of corruption in Egypt. The articles of the treaty facilitate the right of citizens to have access to information, their participation in media, and cultural practices that aim at curbing corruption. The articles also point out the importance to include information on fighting corruption in the education curricula. She also proposed the following constitutional article "The State shall guarantee freedom of information and every citizen's right to have access to public and private information. The law regulates the procedures for obtaining this information". She suggested the exceptions should be mentioned in the law according to the following: 1 - Protecting state land, unity and security; 2 - Public health; 3 - Personal privacy; 4 - Work confidentialities; 5 - Property rights. Such exceptions should be defined clearly in the law to avoid any misinterpretation and the law should differentiate between national security and regime security. The supreme constitutional court should play a role in this regard.

**Dr. Gaber Gad Nassar**, Professor of Constitutional law, stated that the issue of freedom of information should be dealt with in the framework of promoting democracy; moreover, it has a cultural dimension that should be rooted in the society. Under such circumstances, public servants will not act as a barrier towards the flow of information. In addition, there should be a safety net composed of constitutional articles and regulatory laws that protect the right of freedom of information. Dr. Nassar also emphasized the importance of differentiating between the state and the regime. In authoritarian regimes the concept of the state deteriorates; where there are no institutions, all powers are concentrated in a single ruler who holds sway over nearly everything, adversely affecting the ability to enforce laws. Therefore, it is essential to deny the government or the regime the right to hide information, the state is obliged to facilitate access to information. Exceptions should also be dealt with carefully because the term national security is unclear and can pave the way for violations to the right of freedom of information. In any democracy, the government should not have the absolute right to hide information because this will turn it into an authoritarian regime. There should be an independent authority that the government must request permission from in order to hide information. The government in this respect is the executive power, the legislation power, and the judiciary. It is also important to highlight the debate about the size of the constitutional article; some prefer it to be short, while others say it is important to be long to reduce violations against it by laws. In both cases, it is important to say that this article should include limitations on the government's ability to misuse exceptions and the constitution should name an authority to decide the exceptions.

In addition, **Mr. Gamal Ghittas**, the Chief Editor of “Loghat Al Asr” magazine submitted a written comment where he emphasized the idea of not limiting the constitutional foundation of freedom of information to a narrow sense of the term, but to expand this notion to include essential digital freedoms such as accessing the internet, communications, and property rights which requires the following:

1. Reviewing all laws that were drafted before endorsing such rights like the criminal law.
2. Benefiting from a range of laws that have already been issued such as the telecommunications law, the law of electronic signature, and the intellectual property rights law.
3. Working on a set of laws that should have been issued but thus far have not been issued, such as the Security of Information Act and the Freedom of information Law.
4. Preparing for future laws that are supposed to cover the rest of digital rights such as privacy and anti-spam laws.

### **Recommendations of the Working Groups**

Participants were divided into four thematic breakout sessions that were formed on the periphery of the partial discussions of the proposed Freedom of Information bill:

#### **Working Group 1: The Principles and Objectives of the Freedom of Information Law and Exceptions in Accessing Information**

Moderated by Hamdy Hassan, Vice President, Egypt International University, the working group discussed the drafted law articles on Freedom of Information and the exceptions of accessing information. Rafaat Radwan, Advisor to the Ministry of Education, Gamal Ghittas, the Chief Editor of “Loghat Al Asr” magazine, Ahmed Abd elHalim, Strategic Expert in Military Affairs, Mohamed Kadry Abd ElAzim, the Head of Security Studies Unit, Ahram Center for Political and Strategic Studies, and Mohamed Abd ElSalam, Ahram Center for Political and Strategic Studies, were the main participants in this session’s discussions.

The working group arrived at a number of recommendations regarding the Principles and Objectives of the Freedom of Information Law and Exceptions in Accessing Information which are as follows:

- Disclosing the information is the basic principle and hiding it is the exception. Exceptions should be limited to a specific purpose and not be permanent. All government entities should disclose their information
- There is a need to create a legal environment conducive to promoting Freedom of Information, and to work in parallel to build cultural awareness regarding this issue.

- Disclosing what happens in all public institution meetings and broadcasting the parliamentary sessions, as well as dealing with the sensitivity of some institutions to disclose information.
- Setting a maximum period after which restricted information is to be disclosed, and mentioning who has the right to access such hidden information

## **Working group 2: Freedom of Information in international and private authorities**

The second working group chaired by Dr. Mahmoud Sherif, former Minister of Local Development, discussed the proposed articles for the freedom of access to information bill concerning international and private bodies. Participants in these discussions included Dr. Ahmed Darwish, the former Minister of Local development, Dr. Taha Abdel Alim, an expert at the Al Ahram Center for Political and Strategic Studies, Mr. Maher Asham, CEO of Egypt for Information Dissemination (EGID) and Mr. Osama Mourad, Executive director of Arab Finance Group, and member of CIPE's advisory council for "Combating Corruption and Promoting Transparency" program.

Discussions revolved around responding to specific questions to reach a deeper understanding of access to information of public and private authorities and the necessary guarantees to protect this right. The second working group yielded the following recommendations:

- The concerned entities have to be bound to publish the information they possess, particularly that which concerns the allocated budget, expenses and revenues, both actual and forecasted. The desired state is that the information should not only be available but also be published automatically without need for submitting requests.
- Adopting a specific, clear, and transparent mechanism for obtaining information that is in the possession of various authorities, in addition to specifying a certain position within each entity to regulate the release of information within that entity.
- A careful definition of private life is needed because of its dynamic nature, such as health issues which are related to a person's private life but which sometimes extend beyond the scope of privacy in cases such as applying for a job or military recruitment. Thus, it is important to offer a cautious definition of the concepts that are to be exempted, as most of them are varied and intricate.
- Regulations need to agree with the laws, particularly since regulations can occasionally shield information without any legal validation.
- Justifying exceptions to clarify the types of classified information and to specify the reason for withholding it. It is essential to set a certain time limit after which this classified information may be published, particularly in matters where it harms national security, since some such information may be used as research material later on. This has been a stumbling block for researchers in Egypt, where information exists that has been withheld as classified from as far back as 1952.

- No information should be withheld, particularly where the general benefits of disclosure outweigh those of concealment, even if it falls within the scope of exceptions such as “national security”. Some suggest issuing a secrecy protection law in parallel to this one which should reduce exceptions.
- The decrees issued by the concerned authorities for information sharing are binding on all parties. Activating a transparency indicator will encourage competition among various authorities and evaluate their capabilities for publishing information.
- Adopting a clear mechanism of punishment in case of any digressions. The law dictates penalties to be imposed on those withholding information, particularly since Egyptian bureaucracy is deeply ingrained and employees tend to fear disclosing information.

### **Working group 3: Committee for overseeing freedom of information circulation and legal reference**

This group chaired by Mr. Esam Shiha, Attorney to the Court of Cessation and member of the High Authority of El Wafd Party discussed articles of the proposed bill, related to the committee responsible for overseeing freedom of information circulation and legal reference. Participants in the discussions included Councilor, Hisham Raouf, Chairman of the Criminal Court of Shobra El Khema, and Councilor, Hisham Genena, Chairman of the Court of appeals, and Councilor, Aly Abou Bakr, Chairman of the South Cairo court, Dr. Ahmed Abou Baraka, Professor of Law and legal advisor for El Adala and Horreya Party, and a former Member of Parliament for the Moslem Brotherhood in 2006, and Mr. Taher El Masry, Attorney to the Court of Cessation and former member of the Shoura Council, and Mr. Abdel Gaffar Shokr, Vice President of the Center for Arab and African Studies.

The group discussed proposed articles for the bill which are responsible for supervising freedom of information and legal references. Discussions focused on two main angles, the first one being the importance of forming a committee and the second one being related to its nature. The following are the recommendations of the working group:

- Some of the participants viewed the committee a necessary mechanism to organize the process of obtaining information easily, through bills which will organize its flow and categorize it. Others viewed that the committee itself, if formed, would present an obstacle and a hindrance to receiving information.
- Others saw that the committee should limit its membership to judges and maybe a few other persons who are interested in public affairs such as journalist syndicates, lawyers and political parties, and that it should be formulated based on elections by the Parliament for a period which does not exceed 5 years. The committee should enjoy immunity and complete independence; its decisions are binding under all circumstances to the authority from which information is required. They stressed the necessity of this committee to retain a similar type of independence to that of the judges, especially since its members will be from the judiciary. Another view proposed that the role of this committee be limited to that

of an administrative nature because judges are currently preoccupied and need to be free to perform their judiciary jobs.

- It is important to benefit from the draft Africa Model Law for Freedom of Access to Information to support Egypt proposed Freedom of Information bill drafted by the United Group, and build upon them since they encompass the efforts of specialists and experts, taking in mind the rewording of several of the paragraphs and articles which regulate the laws.
- The committee has to be affiliated to and under the supervision of the Parliament which will elect its members.

#### **Working group 4: Proposed bill for the national library and the archives to preserve the documents**

This group was chaired by Dr. Mohamed Saber Arab, Chairman of the National Library and Archives, and discussed the proposed articles of the National library and Archives bill to preserve documents. Active participants were Dr. Khaled Fahmy, Professor and Chair of the History department at the AUC and Dr. Abdel Wahed El Nabawy, Head of the Central Department of the National Library and Archives and Councilor, Mohamed Lotfy, Vice president of the State Council, and Mr. Abdel Gelil El Sharnouby, Journalist and Editor in Chief of Ekhwan Online, and Mr. Saad Hagra, Journalist and Editor in Chief of Al Alam Al Youm and member of the advisory council of the CIPE transparency program.

The discussions mainly focused on the following points raised by the proposed bill, including the types of documents that are in the library and the authorities of the library and the types of exceptions and procedures for renewing the archives in the library. The discussion reached the following recommendations:

- The project should aim for additional democracy within the unfolding events in the country, particularly since the rationale behind the proposal leans towards arguments that are currently changed.
- It is essential to collaborate with the concerned authorities to prepare recommendations for other draft bills which are related to the issue, such as the Freedom of Information law and Communication law.
- The National Library and Archives will be a member of the Higher Council for Information which is to be formed.
- The draft bill is to include protection of archives and support the library's right of access to them, and further allow specific exemptions to the Freedom of Information bill.
- Some suggested forming a higher council for protection of the archives, while others suggested establishing branches for the National Library and Archives in various governorates.
- Some suggested that the bill include granting the employees of the Library the right to judicial seizure upon encountering discrepancies related to leaking

information or its misuse in any way. The law has to stipulate that the National Library has an effective role in dealing with various entities, setting archiving mechanisms in the library and in the other entities as well as tabulating information related to the archives.

- It was suggested that the library retain the power to collect and store archives from informal entities owned by people or political, religious or social groups. In addition to the archives available in the private sector, the library should encourage mechanisms that would motivate these entities to provide these documents to the library, ensuring the balance between the owner of the document and the right to keep it or receiving a compensation for it in order to submit it to the library.
- In the drafting of the proposed bill it was suggested that some documents may remain secret lasting up to 50 years, however most of the opinions supported the importance of minimizing this period to between 10 and 30 years as minimum and maximum estimates.

Draft for final feedback

## المرفق الثالث: نماذج لحرية المعلومات في دساتير العالم

### Annex Three: Freedom of Information in Constitutions of Other Countries

يضم هذا المرفق تعريب لنصوص من مختلف دساتير العالم حول حرية وتبادل المعلومات مزودة في هامش المرفق بالنصوص الاصلية (الانجليزية) التي تم تعريبها.

#### حرية المعلومات في دساتير بعض دول أوروبا

##### *Freedom of Information in Constitutions of Countries in Europe*

**ألبانيا:** تنص المادة (23) من دستور البانيا لسنة 1998 على "ضمان حق الحصول على المعلومات، للجميع الحق مع الامتثال للقانون الحصول على معلومات عن نشاط أجهزة الدولة، كما لهم الحق في الحصول على معلومات عن الأشخاص الذين يمارسون وظائف الدولة، للجميع إمكانية متابعة اجتماعات الأجهزة المنتخبة بشكل جماعي.<sup>1</sup>

**بلجيكا:** عدلت المادة (32) من الدستور في سنة 1993 لتشمل حق الوصول للسجلات المحجوزة لدى الحكومة "لجميع الحق في استشارة أي وثيقة إدارية وعمل صورة منها ماعدا في الحالات و الشروط التي ذكرها القانون، المراسيم أو القواعد المشار إليها في المادة (134)<sup>2</sup>

**بلغاريا:** تنص المادة (41) من الدستور البلغاري لسنة 1991 على (1) للجميع الحق في مطالعة و استقبال و نقل المعلومات. هذا الحق لا يجوز ممارسته فيما يسبب ضرر لحقوق و سمعة الأفراد، أو الأمن القومي،

<sup>1</sup> ALBANIA: The 1998 Constitution, article 23: 1) The right to information is guaranteed; 2) Everyone has the right, in compliance with law, to get information about the activity of state organs, as well as of persons who exercise state functions; 3) Everybody is given the possibility to follow the meetings of collectively elected organs." ; Constitution of Albania, 1998

<sup>2</sup> BELGIUM: Article 32 of the Constitution was amended in 1993 to include a right of access to records held by the government: "Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees, or rulings referred to in Article 134."; Constitution of Belgium, 1994

النظام العام، الصحة العامة والأخلاق، و(2) للمواطنين الحصول على المعلومات عن أجهزة الدولة و الهيئات في اي أمر يمثل مصلحة مشروعة لأي منهم و وهي ليست سرا من أسرار الدولة أو غيرها من التي ينص عليها القانون ولا يؤثر على حقوق الآخرين.<sup>3</sup>

**جورجيا:** مادة 37 (5): "لكل فرد الحق في الحصول على معلومات كاملة وفي الوقت المناسب عن ظروف عمله ومعيشتة". مادة 41: (1) لكل مواطن وفقا للقانون الحق في معرفة معلومات عنه و الموجودة في هيئات الدولة طالما لا تتضمن أسرار عمل أو التجارة الخاصة بالدولة وكذلك السجلات الرسمية الموجودة في تلك الهيئات و (2) المعلومات الموجودة بالأوراق الرسمية المتعلقة بالصحة، أو بالحالة المالية، أو أي شئون خاصة بفرد ما لا تتاح لباقي الأفراد إلا بموافقة مسبقة من الشخص المعني باستثناء الحالات المحددة في القانون حيث تمثل ضرورة للدولة، الأمن العام، الحفاظ على الصحة، حقوق و حريات الآخرين."<sup>4</sup>

**اليونان:** تنص المادة (10) فقرة (3) من الدستور علي حق محدود للوصول إلى المعلومات "في حالة طلب معلومات تلتزم السلطة المختصة بالإجابة، على النحو الذي ينص عليه القانون"<sup>5</sup>

**البرتغال:** منذ عام 1976 تضمن الدستور حق الوصول إلى المعلومات. تنص المادة (268) من دستور سنة 1989 على: (1) للمواطنين الحق -عند طلبهم- في معرفة مدى تقدم الإجراءات والتي لهم فيها مصلحة مباشرة كما لهم الحق في معرفة القرارات النهائية المتخذة في حقهم و ذلك من خلال الخدمة

<sup>3</sup> BULGARIA: The Constitution of 1991, Article 41 states: (1) everyone shall be entitled to seek, receive and impart information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality; (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or other secret prescribed by law and does not affect the rights of others; Constitution of the Republic of Bulgaria of 13 July 1991

<sup>4</sup> GEORGIA: The Constitution of Georgia includes two provisions specifying a right of access to information. Article 37 (5): "Individuals have the right to complete, objective and timely information on their working and living conditions.". Article 41:"1) Every citizen has the right according to the law to know information about himself which exists in state institutions as long as they do not contain state, professional or commercial secrets, as well as with official records existing there. 2) Information existing in official papers connected with health, finances or other private matters of an individual are not available to other individuals without the prior consent of the affected individual, except in cases determined by law, when it is necessary for the state and public security, defense of health, rights and freedoms of others."; Constitution of the Republic of Georgia

<sup>5</sup> GREECE: Article 10(3) of the Constitution provides for a limited right of access: "A request for information shall oblige the competent authority to reply, provided the law thus stipulates."; Constitution of Greece.

العامّة. (2) للمواطنين حق التمتع بحقهم في الوصول إلى الملفات و السجلات الإدارية. يخضع هذا الحق لأحكام القانون مع الوضع في الاعتبار الأمن الداخلي و الخارجي، التحقيق في الجرائم و الخصوصية للأفراد. (3) يجب إخطار أي طرف ذو مصلحة بأي عمل إداري علي النحو المبين في القانون كما يجب أن يكون مستندا على أسباب سائغة و يمكن الوصول إليها في حالة تأثيرها على أي من المصالح أو الحقوق المحمية قانونا.

يضمن القانون حق أي طرف ذو مصلحة في ; الحماية القضائية الفعالة لحقوقه و مصالحه المحمية قانونا، بما في ذلك الاعتراف بتلك الحقوق و المصالح، الحق في الطعن في أي عمل إداري بغض النظر عن شكل هذا العمل، وضع الأحكام الإدارية المقررة تحت التنفيذ واتخاذ التدابير الوقائية اللازمة.

للمواطنين الحق في الاعتراض على أي لائحة إدارية لها صلاحية خارجية ممكن أن تقضي على أي من حقوقهم و مصالحهم المحمية قانونا.

لإعمال الفقرة الأولى والثانية يتحتم أن يعدل القانون الحد الأقصى التي تلتزم الإدارة بالرد خلالها.<sup>6</sup>

**تركيا:** تنص المادة 26 من الدستور على: "للجميع الحق في نشر أفكاره و آرائه و التعبير عنها بالقول أو بالكتابة أو بالصور أو أي وسيلة أخرى فردية كانت أو جماعية. هذا الحق يتضمن حرية استقبال ونقل المعلومات والأفكار دون أي تدخل من السلطات الرسمية. هذا النص لا يحول دون التزام الترخيص في حالة انتقال المعلومات عبر الراديو، التلفزيون، السينما. تنقيد ممارسة هذه الحريات في سبيل حماية الأمن القومي والنظام العام والسلامة العامة والخصائص الأساسية للجمهورية والحفاظ على تماسك الدولة فيما يخص شعبها وأراضيها، ومنع الجريمة، ومعاقبة المجرمين، وحجب المعلومات السرية المصنفة من أسرار الدولة،

<sup>6</sup> PORTUGAL: The Constitution has included a right of access to information since 1976. Article 268 of the 1989 Constitution states: 1) Citizens are entitled to be informed by the Public Service, when they so require, about the progress of proceedings in which they are directly interested and to know the final decisions that are taken with respect to them; 2) Citizens shall also enjoy the right to have access to administrative records and files, subject to the legal provisions with respect to internal and external security, investigation of crime and personal privacy; 3) Administrative action shall be notified to interested parties in the manner prescribed by law; it shall be based on stated and accessible substantial grounds when it affects legally protected rights or interests; 4) Interested parties are guaranteed effective protection of the courts for their legally protected rights or interests, including recognition of these rights or interests, challenging any administrative action, regardless of its form, that affects these, enforcing administrative acts that are legally due and adopting appropriate protective measures; 5) Citizens are also entitled to object against administrative regulations that have external validity and that are damaging to their legally protected rights or interests; 6) For the purposes of paragraphs 1 and 2, the law shall fix the maximum period within which the Public Service must respond. Constitution of the Portuguese Republic, 1997

وحماية اعتبار وحقوق وخصوصية الحياة العائلية للأفراد أو لحماية الأسرار المهنية المنصوص عليها في القانون أو لتدعيم دور القضاء. يخضع ممارسة حق التعبير ونشر الأفكار إلى الشروط والإجراءات المذكورة في القانون.<sup>7</sup>

## حرية المعلومات في دساتير بعض دول آسيا

### *Freedom of Information in Constitutions of Countries in Asia*

**الفلبين:** كان حق الحصول على المعلومات متضمنا في دستور سنة 1973 و تم التوسع فيه في دستور سنة 1987. تنص المادة الثالثة من القسم السابع من الدستور على: "الاعتراف بحق الشعب في المعلومات المتعلقة بالشأن العام. مكفول للمواطن حق الوصول إلى السجلات والوثائق الرسمية والأوراق المتصلة بالعمل، المعاملات أو القرارات الرسمية كذلك بيانات البحث الحكومي المستخدم كأساس لسياسة التنمية، باستثناء الحالات المنصوص عليها في القانون.<sup>8</sup>

<sup>7</sup> TURKEY: The article 26 (As amended on October 17, 2001) of the constitution states: 1) Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing; 2) The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting, professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary; 3) The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law. The constitution of Turkey>

<sup>8</sup> PHILIPPINES: The right to information was first included in the 1973 Constitution and was expanded in the current 1987 Constitution. Article III, Section 7, states: "The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."; Constitution of Philippines amended 1987

تايلاند: ينص القسم 48 من الدستور علي "للأشخاص حق استقبال المعلومات أو الأخبار من جهاز الحكومة أو جهاز الدولة أو الهيئات العامة بهدف تفقد أداء العمل الحكومي أو عمل الدولة في حالة تأثيره علي بعض الأشخاص كما ينص القانون."<sup>9</sup>

باكستان: دستور باكستان لا يعطي صراحة الحق في الوصول إلي المعلومات. تنص المادة 19 علي "لكل مواطن الحق في حرية الكلام والتعبير، وحرية الصحافة. يخضع هذا الحق إلى أي قيد معقول يفرضه القانون في سبيل مجد الإسلام أو النزاهة أو الأمن أو الدفاع عن دولة باكستان أو العلاقات الودية مع الدول الأجنبية، النظام العام، الآداب والأخلاق، أو فيما يتعلق بانتهاك حرمة المحكمة، ارتكاب أو التحريض علي ارتكاب الجرائم."<sup>10</sup>

## حرية المعلومات في دساتير بضع دول أفريقيا

### *Freedom of Information in Constitutions of Countries in Africa*

جنوب إفريقيا: ينص القسم 32 من دستور جنوب إفريقيا لسنة 1996 علي: (1) للجميع الحق في الوصول إلي أي معلومة تحت يد الدولة وأي معلومة تحت يد أي شخص تكون مطلوبة من اجل ممارسة أو حماية أي حق. (2) يجب أن يسن التشريع الوطني بحيث يسمح بتفعيل هذا الحق، كما يجب أن ينص علي تدابير معقولة لتخفيف العبء الإداري والمالي علي الدولة"<sup>11</sup>

<sup>9</sup> THAILAND: Section 48 (bis) of the Constitution states: "Persons shall have the right to receive information or news from the government agency or state agency or public enterprise in order to check the performance of the government official or state official when such matter have or may have effects on the life of such persons as the law provided."; Constitution of the Kingdom of Thailand, B.E. 2534 (1991),

<sup>10</sup> PAKISTAN: The Constitution of Pakistan does not expressly give a right of access to information. Article 19 States: "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence."; Constitution of the Islamic Republic of Pakistan.

<sup>11</sup> SOUTH AFRICA: Section 32 of the South African Constitution of 1996 states: 1) Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights; 2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the

أوغندا: تنص المادة 41 من الدستور على: (1) لكل مواطن الحق في الوصول للمعلومات الموجودة في حيازة الدولة أو أي جهاز أو هيئة للدولة باستثناء إذا كان نشرت تلك المعلومات ممكن أن تسبب ضرر بأمن أو سيادة الدولة أو التدخل في أي حق خاص لأي شخص.<sup>12</sup>

## حرية المعلومات في دساتير بعض دول أمريكا الجنوبية

### *Freedom of Information in Constitutions of Countries in South America*

**كولومبيا:** يعطي الدستور الحق في الوصول للسجلات الحكومية. تنص المادة 47 على "لكل فرد الحق في الوصول للوثائق العامة في ما عدا الحالات التي ذكرها القانون". وتنص المادة 15 على حق "البيانات أمام المحكمة" والتي تسمح للأفراد الوصول على معلومات عنهم محجوزة لدى الأجهزة العامة أو الخاصة. المادة 78 تنظم معلومات المنتجات الاستهلاكية، والمادة 112 تعطي الحق للأطراف السياسية في الوصول للمعلومات و الوثائق الرسمية". المادة 23 تنص على آلية لطلب المعلومات "لكل شخص الحق في تقديم الالتماسات إلى السلطات لمصلحة عامة أو خاصة وتأمين قرار على وجه السرعة".<sup>13</sup>

---

administrative and financial burden on the state."; The Constitution of the Republic of South Africa, Act 108 of 1996,

<sup>12</sup> UGANDA: Article 41 Constitution states 1) every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person; 2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information."; See Image Consult, The State of the Right of Access to Information in Uganda, March 2004.

<sup>13</sup> COLOMBIA: The Constitution provides for a right of access to government records. Article 74 states "Every person has a right to access to public documents except in cases established by law." Article 15 provides a right of "habeas data" that allows individuals to access information about themselves held by public and private bodies. Article 78 regulates consumer product information, and Article 112 allows political parties the right of "access to official information and documentation". Article 23 provides for the mechanism to demand information, "Every person has the right to present petitions to the authorities for the general or private interest and to secure their prompt resolution."; Constitution of Colombia, 1991.

المكسيك: تم تعديل الدستور عام 1977 ليشمل حق الوصول إلى المعلومات. حيث تنص المادة (6) في جزء منها على "تلتزم الدولة بضمان حق المعلومات". وقد أصدرت المحكمة العليا عدة أحكام لتعزيز هذا الحق.<sup>14</sup>

---

<sup>14</sup> MEXICO: The Constitution was amended in 1977 to include a right of freedom of information. Article 6 says in part, "the right of information shall be guaranteed by the state". The Supreme Court made a number of decisions further enhancing that right; *Constitucion Politica de los Estados Unidos Mexicanos*.