
# MEMORANDUM

on

# The Draft Law of Abkhazia on the Right of Access to Information

September 2006

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# 1. INTRODUCTION

This Memorandum contains an analysis by ARTICLE 19 of the draft law of Abkhazia on the right of access to information (draft Law), prepared under the leadership of a group of Abkhazian NGOs.[1] A key aim of the draft Law is to promote greater debate in Abkhazia around the right to access information held by public bodies and to promote a campaign for the adoption of a law guaranteeing this key right.

ARTICLE 19 welcomes efforts by civil society to promote the adoption of legislation on the right to information in Abkhazia. Access to information is a fundamental human right, crucial to the functioning of democracy and key to the enforcement of other rights. The right to access information has been codified both in international human rights law as well as in anti-corruption conventions.

Given that international human rights standards have universal validity, any person has a right to access information, irrespective of whether the government under which they live is or is not recognised. In view of this fact, although Abkhazia's proclaimed independence and its government are not internationally recognised, we agreed to provide a commentary to the draft Law, comparing it against internationally codified human rights standards.

The draft Law contains a number of positive elements, including good process guarantees, broad obligations of proactive disclosure and the right to access public meetings. At the same time, the draft suffers from a number of weaknesses. The most serious is the regime of exceptions, which presently relies on external laws, such as the Law on State Secrets rather than defining exceptions itself. This Memorandum sets out our main concerns with the draft Law.

Our analysis of the draft Law is based on international law and best practice in the field of access to information, as crystallised in two key ARTICLE 19 documents: *The Public's Right to Know: Principles on Freedom of Information Legislation* (ARTICLE 19 Principles)[2] and *A Model Freedom of Information Law* (ARTICLE 19 Model Law).[3] Both publications represent broad international consensus on best practice in this area and have been used to analyse freedom of information legislation from countries around the world. Section II of this Memorandum provides an overview of international standards on access to information, while Section III contains the substantive analysis of the draft laws.

[1] Our comments are based on an unofficial English translation of the draft Law, which can be accessed at http://www.article19.org/pdfs/laws/Abkhazia.FOI.Aug06.doc. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation.
[2] (London: June 1999). Available at: www.article19.org,
[3] (London: July 2001). Available at: www.article19.org,

# 2. INTERNATIONAL STANDARDS

## 2.1. The Guarantee of Freedom of Expression

Article 19 of the *Universal Declaration of Human Rights* (UDHR),[4] a UN General Assembly resolution, binding on all States as a matter of customary international law, sets out the fundamental right to freedom of expression in the following terms:

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

The *International Covenant on Civil and Political Rights* (ICCPR),[5] a formally binding legal treaty, guarantees the right to freedom of opinion and expression also at Article 19, in terms very similar to the UDHR. The ICCPR prohibits States Parties from interfering with the rights protected therein, including the right to freedom of expression. However, the ICCPR also places an obligation on States Parties to take positive steps to ensure that rights, including freedom of expression and information, are respected. Pursuant to Article 2 of the ICCPR, States must "adopt such legislative or other measures as may be necessary to give effect to the rights recognized by the Covenant." This means that States must create an environment in which a diverse, vigorous and independent media can flourish, and provide effective guarantees for freedom of information, thereby satisfying the public's right to know.

Freedom of expression is also guaranteed by the three regional human rights treaties, the *European Convention on Human Rights*,[6] the *African Charter on Human and Peoples' Rights*[7] and the *American Convention on Human Rights* (ACHR).[8]

Abkhazia, whose proclaimed and *de facto* independence has not been internationally recognised, is not a State party to any of these documents, but in Article 11 of Abkhazia's constitution the authorities have declared the binding force of these documents in Abkhazia:

> "The Republic of Abkhazia shall recognize and guarantee the human rights and freedoms fixed in the Universal Declaration of Human Rights, the International covenants of economic, social, cultural, civil and political rights, or in other universally recognized international legal acts."

## 2.2. Freedom of Information

International human rights law has, over the years, developed detailed guidance on the content of the right to information. In the earlier international human rights instruments, freedom of information was not set out separately but included as part of the fundamental right to freedom of expression. Freedom of expression, as noted above, includes the right to seek, receive and impart information. Freedom of information, including the right to access

[4] UN General Assembly Resolution 217A(III) of 10 December 1948.
[5] UN General Assembly Resolution 2200A(XXI) of 16 December 1966, entered into force 23 March 1976.
[6] Adopted 4 November 1950, E.T.S. No. 5, entered into force 3 September 1953.
[7] Adopted at Nairobi, Kenya, 26 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.
[8] Adopted at San José, Costa Rica, 22 November 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 18 July 1978.

information held by public authorities, is increasingly recognised as a core element of this right.

The right to freedom of information as an aspect of freedom of expression has repeatedly been recognised by United Nations bodies. The UN Special Rapporteur on Freedom of Opinion and Expression, in particular, has provided extensive commentary on this right in his annual reports to the UN Commission on Human Rights. In 1997, he stated: "The Special Rapporteur, therefore, underscores once again that the tendency of many Governments to withhold information from the people at large … is to be strongly checked."[9] His commentary on this subject was welcomed by the UN Commission on Human Rights, which called on the Special Rapporteur to "develop further his commentary on the right to seek and receive information and to expand on his observations and recommendations arising from communications."[10] In his 1998 Annual Report, the Special Rapporteur declared that freedom of information includes the right to access information held by the State:

> [T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems…."[11]

In 2000, the Special Rapporteur provided extensive commentary on the content of the right to information as follows:

- Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; "information" includes all records held by a public body, regardless of the form in which it is stored;
- Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
- As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
- A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
- All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
- The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- The law should establish a presumption that all meetings of governing bodies are open to the public;
- The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;

[9] Report of the Special Rapporteur, 4 February 1997, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1997/31.
[10] Resolution 1997/27, 11 April 1997, para. 12(d).
[11] Report of the Special Rapporteur, 28 January 1998, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, para. 14.

- Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.[12]

Once again, his views were welcomed by the Commission on Human Rights.[13]

In November 1999, the three special mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organisation of American States – came together for the first time, under the auspices of ARTICLE 19. They adopted a Joint Declaration which included the following statement:

> Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.[14]

The three were even more explicit in another Joint Declaration of 6 December 2004 when they stated:

> The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.[15]

The right to freedom of information has also been explicitly recognised in all three regional systems for the protection of human rights. Within Europe, the Committee of Ministers of the Council of Europe adopted a Recommendation on Access to Official Documents in 2002.[16] Principle III provides generally:

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

The rest of the Recommendation goes on to elaborate in some detail the principles which should apply to this right. Of particular interest is Principle IV, which states:

> **IV. Possible limitations to access to official documents**
>
> 1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
>
> i. national security, defence and international relations;
> ii. public safety;
> iii. the prevention, investigation and prosecution of criminal activities;

[12] Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.
[13] Resolution 2000/38, 20 April 2000, para. 2.
[14] 26 November 1999: http://www.cidh.org/Relatoria/showarticle.asp?artID=141&lID=1.
[15] See http://www.cidh.org/Relatoria/showarticle.asp?artID=319&lID=1.
[16] Recommendation No. R(2002)2, adopted 21 February 2002.

> iv. privacy and other legitimate private interests;
> v. commercial and other economic interests, be they private or public;
> vi. the equality of parties concerning court proceedings;
> vii. nature;
> viii. inspection, control and supervision by public authorities;
> ix. the economic, monetary and exchange rate policies of the state;
> x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.
>
> 2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.[17]

The Council of Europe has also committed itself to developing a binding legal treaty on access to information, which is currently being developed by its Group of Specialists on Access to Official Documents.

Within the Inter-American system, the Inter-American Commission on Human Rights approved the *Inter-American Declaration of Principles on Freedom of Expression* in October 2000.[18] The Principles unequivocally recognise freedom of information, including the right to access information held by the State, as both an aspect of freedom of expression and a fundamental right on its own:

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

In 2003, the African Commission on Human and Peoples' Rights adopted a *Declaration of Principles on Freedom of Expression in Africa*,[19] Principle IV of which states, in part:

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

[17] *Ibid.*
[18] 108th Regular Session, 19 October 2000.
[19] Adopted at the 32nd Session, 17-23 October 2002.

Outside of human rights law, other areas of international law, place obligations on States to guarantee access to information. This obligation is included explicitly in the 2003 UN Convention against Corruption,[20] for example.

Reflecting the growing international consensus on this matter, access to information laws have been adopted in record numbers over the past ten years in a number of countries, some of which include India, Israel, Jamaica, Japan, Mexico, Pakistan, Peru, South Africa, South Korea, Thailand, Trinidad and Tobago, and the United Kingdom, as well as most of East and Central Europe. These countries join a number of other countries which enacted access laws some time ago, such as Sweden, the United States, Finland, the Netherlands, Australia and Canada, bringing the total number of States with freedom of information laws to more than 65. A growing number of inter-governmental bodies, such as the European Union, the UNDP and the World Bank, have also adopted policies on the right to information.

## 3. ANALYSIS OF THE DRAFT

### 3.1. Scope

Article 2 of the draft Law defines information as "data on facts, events, phenomena, processes" under the jurisdiction of State bodies. 'Documented information' is defined as "information put on a material carrier", while 'official document' is defined as a document created by a State body. The right of access relates to information (see, for example, Article 5), while the obligation to disclose information proactively relates to official documents. However, Article 3 appears to limit the right of access to information held by public bodies which is "related to the realisation of the authority entrusted to them through laws and other normative legal acts; as well as the responsibilities of state bodies and organisations, local self-government bodies and officials aimed at ensuring the exercise of the right of access to information." The term 'documented information' is not used in the law outside of the definition.

The draft Law does not define the term 'public bodies' but it normally refers to "state bodies and organisations, local self-government bodies, their officials".

All citizens and organisations have the right of access, as well as foreigners and stateless persons present on the territory of Abkhazia (Articles 3(1) and (2)).

Article 3(4) exempts information in the archives from the ambit of the law, providing instead that it shall be governed by the "Law on the Archival Fund and Archives of the Republic of Abkhazia".

The principle of maximum disclosure suggests that the right of access should, subject to the regime of exceptions, apply as broadly as possible to all public bodies and to all the information they hold. The various limitations on the scope of information subject to disclosure under the draft Law, to the extent that they have any impact on the scope of the right, limit it. It is not clear what "data on facts, events, phenomena, processes" means but it is

[20] UN Convention against Corruption, adopted by UN General Assembly resolution 58/4 of 31 October 2003. Article 13 provides that States should "[ensure] that the public has effective access to information".

unhelpful to qualify the definition of information in this way, and this might be interpreted by officials in a manner that limits the right of access.

Article 3, limiting access to information to activities within the legal mandate of the body, is clearly contrary to the principle of maximum disclosure. This may be interpreted, for example, so as to deny access to information relating to illegal acts committed by a State body, or to otherwise limit access. The right of access should apply to all information held by a State body, regardless of its purpose. If the body holds information not related to its mandate – which it probably should not – then individuals have a right to know this.

Best practice access to information laws provide a clear definition of the bodies to which the obligation of disclosure applies. Simply referring to State bodies and organisations and local self-government bodies is not enough. It is not clear, for example, whether this would cover all bodies created by statute and all administrative bodies undertaking public functions, as it should. It probably would not cover private bodies undertaking public functions, for example under a public contract.

The application of the draft Law to non-citizens present in Abkhazia is welcome. However, many access to information laws apply to everyone, regardless of where they reside or are present. Although requests from outside a State's borders can be expected to be rare, they may be of some public interest to citizens, for example where an external researcher was looking into corruption in Abkhazia. Thus, extension of the application of the law to everyone can be expected to place modest demands on the local civil service and yet potentially deliver some benefit to citizens.

Care must be taken to avoid inconsistency between the Law on the Archival Fund and Archives and the draft Law. At the same time, unless the former was drafted with the same progressive approach to disclosure as the latter, exempting information in the archives from the application of the draft Law will be counterproductive.

**Recommendations:**

- The definition of information should not be qualified and the right of access should apply to all information held by public bodies, regardless of its use.
- The draft Law should include a clear and broad definition of public bodies.
- Consideration should be given to extending the application of the draft Law to everyone.
- Information in the archives should be subject to the same disclosures rules as all information. Normally, this implies that the archives are covered by the access to information law.

## 3.2. Exceptions

The main provision on exceptions in the draft Law is Article 6, although the matter is also referred to in Article 21(1), paragraph 2, which states that information shall not be provided where it is deemed to be "restricted access". Article 6 provides for two categories of exempt information: State secrets, in accordance with the Law on State Secrets, and information classified as confidential in accordance with the procedure for classification as set out in law. It then provides a list of types of information which may not be classified, such as certain

legislative acts, and information on breaches of rights and on the health condition of senior officials.

As noted above, and in accordance with the Council of Europe Recommendation on Access to Official Documents, access to information should be able to be refused only in accordance with a three-part test:

1. The information falls within the scope of an exception specifically listed in the access to information law.
2. Disclosure of the information would cause harm to the legitimate interest protected by the exception.
3. The harm to the legitimate interest would outweigh the public benefit of disclosing the information (the public interest override).

The dominant approach in democratic access to information laws is to provide a comprehensive list of exceptions to the right of access, for example to protect national security, privacy, commercial confidentiality and so on. The draft Law, in contrast, entrusts this task to other laws.

There are serious problems with this approach. We are not familiar with the Abkhaz Law on State Secrets but, in our experience, such laws almost never a) limit secrecy to legitimate interests; b) limit secrecy to instances where disclosure would cause harm to the interests protected; and c) provide for a public interest override. The vast majority of secrecy laws are vastly overbroad and tend to be characterised by an obsession with secrecy. Indeed, a key role of access to information laws in many cases is precisely to reverse the culture of secrecy engendered by longstanding secrecy laws and practices. Leaving the definition of secrecy to the secrecy law signally fails to do this. We therefore strongly recommend that, instead of leaving the definition of secrecy to the Law on State Secrets, the draft Law instead undertake this task itself.

The other type of exception in the draft Law, classification in accordance with legal procedures, is even more problematical. This appears to mean that, as long as the procedural rules for classification have been complied with, the substantive question of whether the information should actually be classified may not be questioned. While most State secrets laws at least define the categories of secrecy, classification laws tend to leave this matter in the hands of officials. Best practice access to information laws operate quite differently. Pursuant to these laws, classification must be judged on the standards set out in the access law. If the classification fails to meet those standards, it may not be relied upon to refuse disclosure. Under this approach, classification is merely an internal system to guide civil servants, rather than an independent ground to refuse an external requester access to information.

We recognise that Article 6 attempts to mitigate these problems by providing for certain categories of information to which access may not be refused. This approach, however, is insufficient. In the first place, it may give the impression that information not covered by this list may be withheld. Second, the list itself is rather limited. For example, all legislation should be disclosed, not just the types of legislation listed. Third, no list can accommodate all of the types of information that should be subject to disclosure, or counteract official tendencies towards secrecy.

Furthermore, it is not clear how Article 25(2) of the draft Law, which provides that other laws are, to the extent of any inconsistency, overridden by the access to information law, affects this system for exceptions.

Finally, it is unclear what Article 21(1), paragraph 2 adds to Article 6. If, by restricted access, is meant simply that the information is defined as exempt under Article 6, this is probably unnecessary and may be confusing. If something else is meant, this needs to be clarified.

**Recommendations:**

- The system of exceptions in the draft Law should be fundamentally revised. Instead of relying on systems established by other laws – the Law on State Secrets and legislation relating to classification – the draft Law should set out its own, comprehensive regime of exceptions, based on the three-part test noted above. It should then limit exceptions to this regime, providing that, in case of conflict, its provisions shall prevail over other laws (such as the Law on State Secrets).
- Paragraph 2 of Article 21(1) should either be removed or amended to make its effect clear.

## 3.3. Process Questions

In general, the procedural rules set out in the draft Law are progressive and comprehensive. There are, however, a few areas where these might be further improved.

The draft Law includes three sets of provisions on the nature of the notice to be provided where access to information is refused. Article 6(4) sets out in some detail the required information, including the date of the decision, the legislative provisions relied upon and the name of the official making the decision. Articles 19(6) and (7), which apply, respectively, to State secrets and to classified information, suggest the response shall only include a reference to the primary legislation upon which the decision is based, but not the specific provision therein. Article 21(2) stipulates that the refusal shall provide grounds, including specific references to legislative norms.

These provisions are confusing, repetitive and contradictory. At a minimum, they should be brought together in one place. Furthermore, the detail in Article 6(4) is preferable to the other provisions, particularly those in Article 19, which would not give requesters enough information to mount a proper appeal where they had been refused information. To know that the refusal is based on the Law on State Secrets, but not which provision therein, is hardly helpful in the context of an appeal.

Articles 6(3) and 19(8) both provide for partial disclosure of documents containing exempt information.

Article 18(1) provides that a request should be prepared by the person seeking the information and not exceed one page. Article 18(5) appears to contradict this directly, providing that requesters may act through a representative. In any case, the purpose of Article 18(1) is not clear. Anyone may request information 'for themselves' and then provide it to someone else. In some countries, such as Canada, companies have developed whose business consists of making information requests for other people. Because of their expertise, they can facilitate access to information, often for relatively low overheads. There is no reason to rule out this

approach. Finally, limiting requests to one page is unnecessary. It may not be possible to describe the information sought in such a short document.

Article 18(4) provides for forms for requesting information. It provides that these should be made available at the premises of public bodies. They should also be required to be made available over the Internet. It also sets out detailed rules for such forms, such as that instructions for completing the form may be included on the back of the form. This level of detail is quite unnecessary and may unduly limit the way in which these forms are developed (for example, it may well make more sense to include instructions under each question on the form).

Article 19(9) provides that public bodies shall transfer requests to other public bodies when they do not hold the information sought, and shall inform requesters within 7 days. This is rather lengthy, given that the draft Law establishes a 10-day timeframe for complying with information requests.

Article 22 sets out the rules relating to fees. Article 22(2) requires each public body to set photocopying fees, which shall not exceed the actual cost. This would avoid a patchwork of fee structures among different public bodies and also reward public bodies which operated more efficiently. Article 22(3) provides for free access for socially and economically vulnerable groups. It might be preferable for the photocopying costs to be set centrally. Consideration should also be given to providing for reduced cost or free access for requests in the public interest, for example from the media or NGOs.

**Recommendations:**

- The provisions on what information must be provided to those whose requests for information have been refused should be brought together in one place and should require officials to provide sufficiently detailed information, including the specific legislative provision relied upon, to facilitate the lodging of an appeal by the requester.
- One of Articles 6(3) and 19(8) should be removed to avoid any possibility of confusion.
- The rules requiring requesters to prepare their own requests and to limit them to one page, found in Article 18(1), should be removed from the draft Law.
- Forms for requesting information should be available over the Internet and the draft Law should not be overly prescriptive as to the nature of these forms.
- Consideration should be given to reducing the time limit for informing requesters about the transfer of requests to other public bodies.
- Consideration should be given to providing for a centrally set schedule of fees for photocopying and for reduced fees for requests in the public interest.

## 3.4. Proactive or Routine Disclosure

The rules relating to proactive or routine disclosure are set out in Articles 11-13 of the draft Law. While these appear, collectively, to provide for a substantial amount of information to be routinely disclosed, the provisions are confusing and would benefit from some reorganisation. Consideration should be given to also providing for the routine disclosure of

any information that has been disclosed pursuant to a request, where there is any likelihood of further interest in that information.

With new technologies, it is possible to make ever more information available on a routine basis, and for very little cost. The dynamic nature of these technologies, and government use of them, means that there is some value in building into the regime of routine disclosure some system for levering up the amount of information disclosed over time. For example, in the United Kingdom, the Freedom on Information Act 2000 requires each public body to adopt a publication scheme, setting out the information it proposes to make available on a routine basis. These publication schemes must be approved by the Information Commissioner, who may give his or her approval on a time limited basis (for example, for one year). This allows for the schemes to be improved over time, covering more information as the capacity of the public body to make information available increases.

**Recommendations:**

- Consideration should be given to streamlining the provisions on routine disclosure and to adding documents that have been disclosed to a requester where there is a likelihood of further interest in them.
- Consideration should be given to incorporating a system for levering up the scope of information subject to routine disclosure over time.

## 3.5. Access to Public Meetings

The draft Law includes progressive provisions on access to public meetings in Articles 14-15. This is welcome in an access to information law. At the same time, these provisions probably need to be further developed. For example, they provide for access to meetings with the exception of cases foreseen by the law. As with exceptions, it would be preferable for the draft Law to set out the cases where access to meetings may be denied.

The provisions relating to registration to attend public meetings are rather complex and bureaucratic. Outside of a few meetings of high public interest, these systems of control – for example specifying for the number of seats to be provided – are probably unnecessary. At a minimum, it should be clear that no one may be refused access to an otherwise public meeting, save for reasons of limited space (or where they are disruptive).

**Recommendation:**

- The rules relating to access to meetings need to be further developed, in particular as they relate to the question of which meetings should be open. At the same time, the rules relating to registering to attend public meetings should be simplified.

## 3.6. Appeals

Article 21(2) provides that appeals from a refusal to provide information may be lodged in accordance with the procedure foreseen in existing legislation. Article 23 further provides that breaches of the right to information may be appealed to authorised officials, organisations, local government bodies or courts. It also provides that there may be a pre-judicial procedure for appeals.

We are not familiar with the existing procedures for appealing administrative matters in Abkhazia so cannot comment in detail on these provisions. We note, however, that access to a quick and low-cost administrative appeal procedure, with the power to order public bodies to disclose information, is central to a successful access to information regime. Absent an accessible appeals system, the decision as to whether or not to disclose information is essentially at the discretion of officials, since no one is in a position to review their decisions. While the courts can play a role as final arbiters of information disputes, they tend to be costly and slow and very few of those requesting access to information will wish to lodge appeals in court. As a result, a 'light' administrative system for appeals is very important.

**Recommendation:**

- The provisions on appeals should be reviewed to determine whether or not they provide for an administrative appeal which meets the criteria set out above. If not, one should be added.

## 3.7. Other

Article 5 sets out the basic principles relating to disclosure of information. These include a presumption of openness, the provision of comprehensive information and protection of the right of access. Consideration might be given to adding a few more principles, such as quick and easy access in practice, and the right to appeal refusals to provide access.

Article 17, paragraph 3, sets out the types of information that may be provided in response to an oral request. In principle, there is no reason to limit responses to oral requests; any information should be provided in response to such requests.

**Recommendations:**

- Consideration should be given to expanding the list of principles on the right of information, in accordance with the above.
- The limitations on the type of information that may be provided in response to an oral request should be removed.

## 3.8. Omissions

Promoting Openness

In most countries, a new access to information law faces a number of challenges, including a lack of public awareness about the right to information and an official culture of secrecy. To help overcome these challenges, best practice access laws include a number of promotional measures. For example, it is common to require public bodies to publish guides for the public on how to exercise the right and to request information. Provision needs to be made for both public education programmes and training for officials on how to discharge their obligations under the new law and this may be set out directly in the access to information law. Frequently, public bodies are required to report annually to a central body on measures they have taken to discharge their obligations under the new law, including how many requests for

information they have received, how they were dealt with, which exceptions they have relied upon to refuse to disclose information and so on.

Many laws allocate responsibility for overseeing promotional measures to an independent administrative body. The role of the UK Information Commissioner in approving publication schemes has already been mentioned. In different countries, these bodies are given a range of promotional roles, such as receiving the annual reports noted just above, providing an annual report to parliament on progress in and obstacles to implementation of the law, developing training programmes for public officials and so on.

Record Maintenance

It is fairly obvious that unless information records are kept in good condition, public bodies will not be able to discharge their obligations under an access to information law. If officials cannot locate the information requested, they cannot provide it to the requester. If they have to spend long periods of time locating information, this will delay implementation and create resentment as resources are spent on this task, rather than other job demands.

At the same time, the importance of managing information efficiently goes far beyond implementing the right to information. Indeed, a key function of modern government is to manage information. This contributes to the overall effective management of the public sector, delivery or services, policy development and so on.

Many access to information laws put in place record management systems. These may involve the central setting of record management standards, along with a system for monitoring implementation. Often, specific training on record management is required. Here, as well, the independent administrative body can play a role in setting standards, monitoring their implementation and developing training programmes.

Whistleblowers/Good Faith Disclosures

The draft Law does not protect individuals who release information considered to be confidential, with a view to exposing wrongdoing (so-called whistleblowers) or civil servants who disclose restricted information by mistake but in good faith. These protections are an important information safety-valve, helping ensure that information is disclosed in the public interest and to address the culture of secrecy within government.

Individuals who release information about wrongdoing, or which exposes a serious threat to health, safety or the environment should be protected from any legal, administrative or employment-related sanctions for releasing information. They should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. This same protection from sanction should cover individuals who disclose information pursuant to a request.

**Recommendations:**

- Consideration should be given to including promotional measures, such as those detailed above, in the draft Law.
- Consideration should be given to allocating responsibility for overseeing promotion of the new law to an independent administrative body.
- The draft Law should put in place a record maintenance system for public bodies.
- The draft Law should provide protection from sanction for whistleblowers and

those who release information pursuant to a request, as long as they acted reasonably and in good faith.