

# Towards Transparency Newsletter

July 2019

## Vietnam increases its score in the *Right to Information Rating*

*There is a broad consensus that the right to information (RTI) is crucial for the prevention and fighting of corruption by making information accessible to the public, thereby promoting transparency and accountability. In Vietnam, the Law on Access to Information was approved by the National Assembly in 2016 and entered into force as of July 2018. According to the 2016 RTI Rating, a globally recognized methodology for assessing the strength of RTI legal frameworks, the Vietnamese law earned 68 points out of a possible total of 150, ranking 86 globally from among 112 countries that had enacted an RTI law at that time. Following the issuance in April 2019 of the Government Decree (Decree No. 13) to guide the law implementation, Centre for Law and Democracy and Towards Transparency cooperated to conduct a re-evaluation of Vietnam RTI's legal framework. This resulted in an increase of Vietnam's score from 68 to 76 points, which brings Vietnam at the 78th place out of the 124 countries currently being rated. Despite this improvement, Vietnam's RTI legal framework still shows shortcomings in three key areas, which could weaken its implementation: (i) ambiguous exceptions and refusals, (ii) absence of an independent oversight body, and (iii) insufficient sanctions for violations of the RTI.*

### 124 countries onboard the *Right to Information Rating*

The Right to Information (RTI) Rating is the leading tool for comparatively assessing the strength of legal frameworks for the RTI across the world. Its methodology was developed by Centre for Law and Democracy (CLD - Canada) and Access Info Europe (AIE - Spain). Any country which has adopted a national RTI law is assessed and ranked on the RTI Rating in due course. It is important to note that the Rating evaluates the quality of an RTI legal

framework rather than how it is implemented. Currently, the RTI Rating is widely used by inter-governmental organizations, RTI advocates, reformers, legislators and others.

The application of RTI rating is based on 61 indicators, taking into account a wide range of international RTI standards and analysis of the best practice RTI laws worldwide. Each of them indicates a specific feature of a good RTI legal framework. Depending on how the RTI legal framework reflects indicators, the assessed country may earn points within the range of scores for each indicator (in most

cases ranging from 0 to 2 points) while the aggregate score is a maximum 150 points. The indicators are divided into seven different categories, namely: *Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures.*

The first RTI Rating results and detailed analysis of RTI laws in 89 countries were released on the *Right to Know Day*, September 28th, 2011. Since then, CLD and AIE have continually updated the Rating and added new countries as new RTI legislations were passed. To date, a total of 124 countries have their RTI legal framework assessed and ranked on the RTI rating. The performance of these countries shows a significant spread with several countries scoring 126 points or more points out of a possible total of 150, while several others score below 50 points. However, most countries fall in between these extremes, with a roughly equal number of countries in each of the score ranges of 51-75, 76-100 and 101-125 (please see detailed methodology [here](#)).

## Its 2019 improved RTI Rating score brings Vietnam up into the performers' middle-group

In Vietnam, the Law on Access to Information (LAI) was approved by the National Assembly in 2016 and entered into force as of July 2018. According to the RTI Rating in 2016, the LAI earned 68 points out of a possible total of 150, bringing Vietnam in 86th place globally from among 112 countries which had already enacted an RTI law (please see details [here](#)). This score remained unchanged in 2017. When it was re-evaluated in 2018, the LAI received only 69 points, ranking 89 out of 112 countries globally on the RTI Rating. It is

RTI Rating's features	Max score	VN's score		
		2016-2017	2018	2019
Right of access to information	6	3	3	3
Scope	30	16	17	17
Requesting procedures	30	16	16	16
Exceptions & refusal	30	14	14	14
Appeals	30	9	9	9
Sanctions & protections	8	2	2	6
Promotional measures	16	8	8	11
<b>Total</b>	<b>150</b>	<b>68</b>	<b>69</b>	<b>76</b>

Vietnam's RTI rating score improved in 2019

important to note that these evaluations were conducted with regards to the LAI only.

In January 2018, Vietnam's Government enacted Decree No. 13 which entered into force in July that year and served as guidance for implementation of the LAI. In April 2019, CLD and Towards Transparency (TT) cooperated to conduct a review of Vietnam's RTI legal framework, including the mentioned decree and a number of other relevant laws. This resulted in an increase of Vietnam's score from 69 to **76/150** points on the RTI Rating, putting it in **78th** place out of the 124 countries whose RTI legal frameworks being currently assessed on the Rating. Thanks to this review, Vietnam has moved from the second lowest-score group (ranging from 51 to 75 points) to the middle group of the Rating (ranging from 76 to 100 points). Amongst the four countries having RTI legal frameworks in the South East Asian region, Vietnam, tied with Thailand, ranks higher than the Philippines (46 points, 121st) but behind Indonesia (101 points, 38th). On a global scale, it is also worth noting that Vietnam's RTI legal framework is superior to those of a number of countries and territories, e.g. China, Spain (both 73 points, 85th), France (64 points, 103rd), and Taiwan (57 points, 115th). Again, one should keep in mind that the Rating only

*“One of the objectives of the Law on Access to Information in Vietnam is to ensure greater transparency and accountability of public agencies, helping to reduce corruption. This is an important step in the right direction. However, will this law change the current practices? Will public officials make it easier for citizens when requesting for information?”*  
 – Nguyen Thi Kieu Vien, Executive Director of Towards Transparency.



A consultation workshop held by Towards Transparency (TT) and Institute of Public Policy and Law (IPL) to provide inputs to the draft Law on Access to Information in Vietnam.

*“It is encouraging to see Vietnam improving its legal framework for RTI. Hopefully now some effort can be put into implementing the law and then it could perhaps be reviewed in a few years to fill in some gaps and address some weaknesses.”*  
 - Toby Mendel, Executive Director of Centre for Law and Democracy.

evaluates the quality of an RTI legal framework, not how it is implemented.

In the process of reviewing the RTI legal framework, CLD and TT found that several of the improvements on Vietnam’s RTI Rating score were based on gaps that were addressed through the adoption of the January 2018 Decree No. 13 (guiding the implementation of the LAI). For example: Vietnam’s RTI legal framework initially received only 1 point for Indicator No. 55, since the LAI did not clarify which central body is given overall responsibility for promoting RTI. This issue was addressed by Article 12.3 of Decree 13, which clearly states that the Ministry of Justice shall have a reasonably broad promotional role, hence allowing Vietnam to receive the full 2 points for this indicator. Additionally, Article 13 of the Decree helped Vietnam’s RTI legal framework to get full scores (2 points) for Indicators No. 60 and No. 61 by clarifying the responsibility of government agencies for reporting on their implementation of the LAI.

In some countries, it is sufficient to review only the RTI law to have a full picture of the RTI legal framework, since all the features are covered in that law. However, this is not the case in Vietnam, where some issues are regulated in different legislations. Given that, TT brought to

CLD’s attention a number of laws that had not been taken into account in the original rating that also touch on RTI, such as *Law on Complaints, Law on Denunciation, Penal Code, Law on Administrative Procedure*. The evaluation of provisions relevant to RTI under these laws led to the increase in Vietnam’s score in two important categories, i.e. Sanctions & Protections and Promotional measures.

## Vietnam’s RTI Rating results show some room for further improvement

It is widely recognized that the RTI is crucial for the prevention and fighting of corruption by making information accessible to the public, thereby promoting transparency and accountability. For the RTI to be fully exercised in practice, a solid RTI Law must be in place together with effective mechanisms for implementation. The Rating demonstrates that Vietnam has a fair RTI legal framework, with scores of 50% or more for five out of seven categories, i.e. Right of Access (3/6 points), Scope (17/30 points), Requesting Procedures (16/30 points), Sanctions & Protections (6/8 points), Promotional measures (8/11 points). *Despite this positive achievement, Vietnam’s RTI legal framework includes flaws in three key areas which may weaken its implementation, namely (i) ambiguous exceptions and refusals, (ii) absence of an independent oversight body, and (iii) insufficient sanctions for violations of the RTI.*

First, a sound RTI Law should provide a list of exceptions but only as long as it clearly defines the instances in which requests can be denied, based on a risk of harm and an overriding public interest justifying non-disclosure. In case of refusals, the reasons for withholding information must be specifically stated by public bodies. This is an area where the Law on Access to Information (LAI) is

*Article 28 of the LAI allows public officials to refuse a request if the amount of requested information exceeds their ability or affects their normal operation. Due to the vague language and the lack of interpretational guidance, this rule may give public bodies an easy excuse to dismiss requests which are unwanted or where they fear negative consequences.*

weak since its ambiguous regime of exceptions and refusals creates the potential of abuse of power by public officials. For example, Article 6 of the LAI broadly prohibits access to information considered to harm national interests, to adversely influence national defense and security, international relations, social order and security, social ethics or community health, or information classified as a working secret. Also, according to Article 28 of the LAI, public officials shall refuse a request if the amount of requested information exceeds their ability or affects their normal operation. Due to the vague language and the lack of interpretational guidance, these rules may give public bodies an easy excuse to dismiss requests which are unwanted or where they fear negative consequences.

Second, individuals who have their RTI requests denied or processed improperly by public bodies should have the right to challenge the decision. In this respect, clear rules regarding an external appeal mechanism to an independent oversight body is of great importance. In Vietnam, the RTI legal framework only provides an internal appeal mechanism (i.e. Law on Complaints and Law on Denunciation) and a judicial review (i.e. Law on Administrative Procedure). On the one hand, while these mechanisms are not independent, the fact that different laws regulate the same issue without clear guidance on coherent application could cause confusion for citizens in terms of exercising their right of appeal. On the other hand, due to the lack of an independent information oversight body in Vietnam, it would be more challenging for requesters in case the aforementioned appeal mechanisms fail to protect their rights. This is also the reason why Vietnam scores the least points (9 out of a possible total of 30) for this feature (*Appeals*) under the RTI rating.

Third, sanctions are also significant in ensuring the effective implementation of

any RTI legal framework. If public bodies or the head of departments and public officials fail to respond to information requests in the terms of the law, they should be punished. Vietnam's LAI only mentions a list of prohibited acts by public officials (Article 11.1) together with a generic principle of referring to other relevant legislations for settlement of such acts (Article 15.1): *"Persons who commit acts of violation against the LAI shall, depending on the nature and severity of their violations, be disciplined or face administrative penalties or criminal prosecution as regulated by laws"*. Although the Penal Code of Vietnam does specify the criminal penalty to deal with RTI-related crimes (Article 167), such cases are not normally brought in practice. Meanwhile, there is no clear administrative or civil sanctions in place to tackle violations that are less serious and more commonly committed by institutions or public officials. A lack of sufficient sanctions to address RTI-related violations will thus constitute a real obstacle for RTI to be fully exercised and protected in Vietnam.

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*Nguyen Thi Kieu Vien (TT) and Toby Mendel (CLD) after discussion on mutual cooperation to promote the rights to information and media's role for effective anti-corruption in Vietnam.*