

Access to Information in the Arab World

“Focusing on Jordan, Tunisia and Yemen”

Policy Paper

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INTRODUCTION

The public's right to knowledge and information is an important pillar in the democratic construction of any country.² Access to information is a prerequisite for citizens to participate in public life and to make wise decisions weighing alternatives in matters including elections, public affairs of the state, debates on policies and draft laws, monitoring of governments, detection of human rights violations, detection of corruption and weakness in government agencies, and setting up commercial and economic projects.³

Information fuels dialogue among citizens, helping to bring about the most desirable agreement on political, economic and social issues.

The right of access to information is expressed in various forms such as "Freedom of Information", "Access to Information", or "Right to Information". All these mean "the right of an individual living in a society to obtain sufficient information from the administration or authority regulating such society on matters that he wishes to know", including "access to information held by public bodies and entities upon request."⁴ Guarantee of the active free flow of information and ideas is based on the principle that public bodies keep information on behalf of the public. So, access to such information should be facilitated unless there is a reason for non-disclosure.⁶

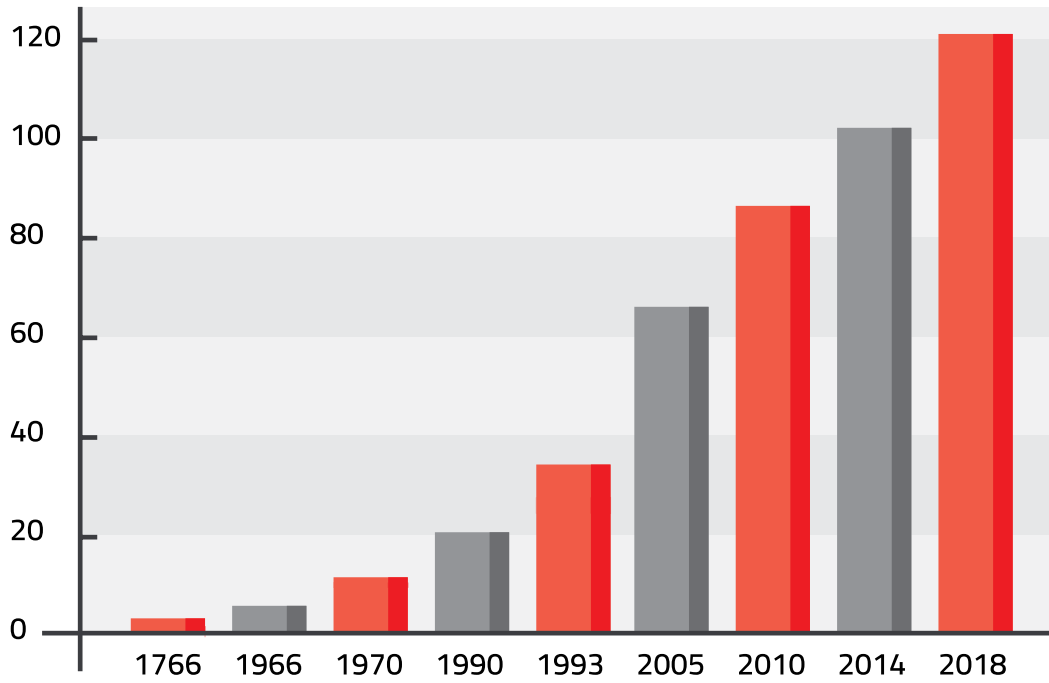
Sweden was the first country to develop a Freedom of Information Act (FOIA) in 1766 (Finland was part of the Kingdom of Sweden. Hence, UNESCO celebrated World Press Freedom Day in Finland in 1966). After 200 years (in 1966), only four countries had developed such law. In 1990, 18 countries had similar laws.

Since then, access laws have proliferated. Information acts have been adopted by 119 countries⁷, although Arab and African countries are not well represented. The right to information has been included in constitutions of about 74 countries⁸, including Morocco in 2011, Tunisia 2014, Egypt 2014, and Algeria in 2016.

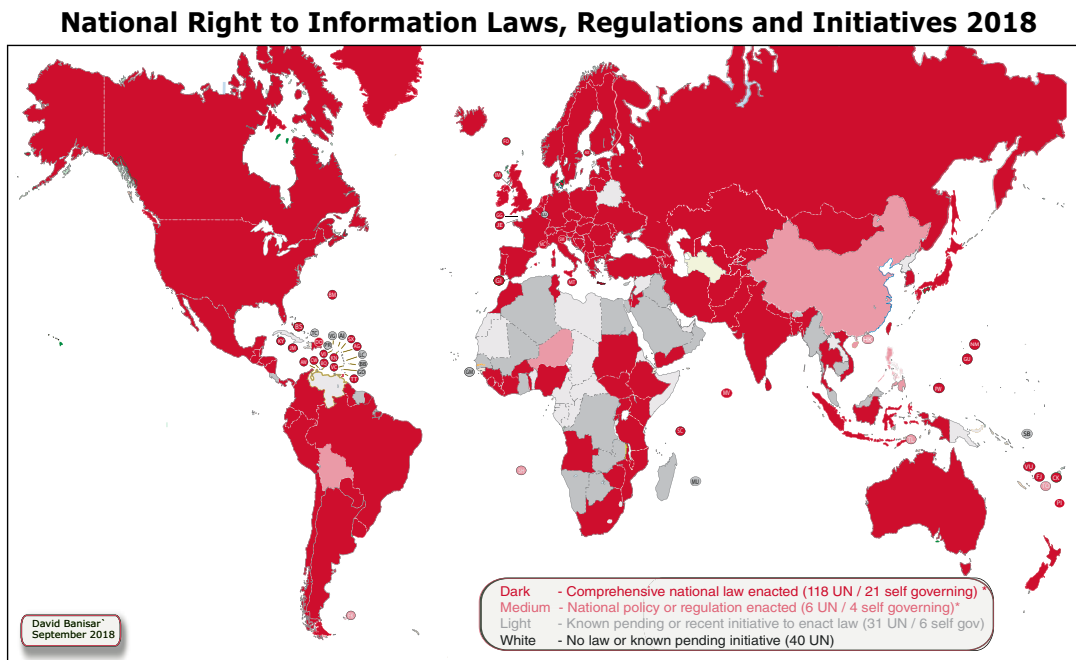
The table below show the historical development of adoption of access to

- 2 Daruwala, M. & Nayak, V. (2009). Our Rights Our Information. Empowering people to demand rights through knowledge, Commonwealth Human Rights Initiative. p 10
- 3 Novel, A. S. (2006). Press Freedom and Poverty. An analysis of the correlations between the freedom of the press and various aspects of human security, poverty and governance, UNESCO-CPHS Research Project released in July 2006 by UNESCO and the Center for Peace and Human Security, Sciences Po, Paris. p10
- 4 Barghouthi, Belal (2004), Right to Knowledge or Freedom of Information, Ramallah, Palestine,
- 5 Mandel Toby (2003), Freedom of Information, Comparative legal Survey, UNESCO, 2003,
- 6 Article 19, freedom of information training Manual for public Officials in article 19, a model freedom of information law, app. 2, At 94-110, available at <http://www.Article19.Org/pdfs/tools/foitrainersmanual.Pdf>
- 7 Finnish parliamentary, Anders Chydenius, is one of the most important advocates of press freedom in 1766
- 8 Sudhir Naib (2011). The Right to Information Act 2005: A Handbook. Oxford University Press

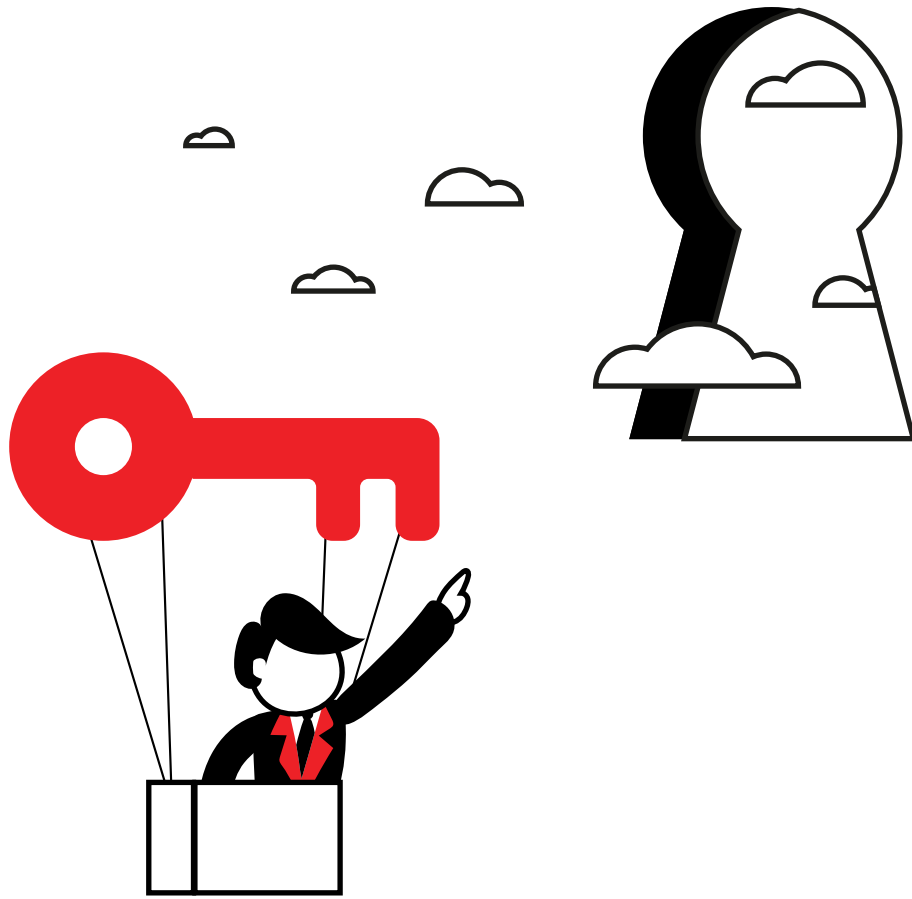
information acts in the world



World Map of Access to Information Acts⁹



⁹ <https://www.right2info.org/resources/publications/foi-map-by-david-banisar/view>



Chapter I

**Description of Challenges
and Problems Facing the Right
to Information in the Arab World**

Description of Challenges and Problems Facing the Right to Information in the Arab World

Ruling authorities in Arab countries lack legitimacy to varying degrees.¹⁰ It is not easy for ruling elites that control through heredity or by the legitimacy of revolution or coups to recognize the right of people to control their political work or economic benefits. Hence, the laws on confidentiality of information have been increasingly developed in Arab countries. Laws that penalize criticism of governments and their governmental figures have been pressed under pretext of national security and the preservation of state prestige. It is not easy in this un-enabling environment to convince a majority of governments to adopt access to information acts that would place them under popular control and allow for open criticism of its employees' failures.

Secrecy laws: Arab countries have numerous secrecy laws, since secrecy is an exceptional tool that bureaucratic management wields to protect against outside control and to maintain power in the face of other authorities.

Examples of the secrecy laws include: Protection of the State's Secrets and Documents Law No. 50 of 1970¹¹ in Jordan, and in Egypt, the Law on Maintenance and Organization of Publication Method of Official Documents No. 121 of 1975, as amended by the Law No. 22 of 1983, where Article 2 (bis) provides that " A person who has knowledge, due to his job or responsibility, of confidential information about the highest policies of the state or national security, may not publish or disclose such information if such disclosure endangers the country's security, or military, political, diplomatic or economic status, where such information is about actions performed by such person or anyone else who serve in the public authority or public prosecution or obtained by him due to his work in the said jobs, unless after a lapse of 20 years or under a special authorization issued by the Council of Ministers upon recommendation of the competent minister."¹²

Further, some laws impose penalties on employees who disclose secrets, and in many

10 See: Hasssan Aswad, Legitimacy in Arab Regimes, an article in Al-Arabi Al-Jadid Newspaper, dated 19.08.2018.

11 Published in the Official Gazette, volume 2315, dated 01.08.1971.

12 See: Freedom of flow of information, (2013), Huriat Alfekr Establishment, Cairo, prepared and edited by Ahmad Ezat, 3rd edition, p.37. <http://bit.ly/2vTNkk7>

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cases a minister declares himself as the sole source who can give information to journalists.

National Security: most Arab countries use “national security” and “protection of social peace” to justify laws restricting freedoms, especially freedom of opinion and expression.

Balancing between the right to information and preservation of the national security is difficult these days, when the fight against terrorism overlaps with requirements for protecting national security. Tshwane Principles on the national security and the right to information¹³ seek to achieve such a balance and ensure the public’s access to information without endangering national security.

Further, the weakness of civil society organizations in some Arab countries has left them less than efficient in knowing about and lobbying for laws on transparency and access to information. Such organizations have been key drivers in lobbying for adoption of access to information acts in Eastern Europe and Latin America. Some countries have adopted these acts in response to policies of the World Bank on combating corruption.¹⁴ The undermining of civil society organizations, especially in the Gulf States, where they have been increasingly accused of (espionage or destruction),¹⁵ has been done by connecting them to influence from foreign or donor countries. Obstacles facing these organizations include licensing, financing restrictions and limitations on activities.

In Jordan, for example, foreign financing

is prohibited without prior consent of the government.

In Egypt, courts have been examining the so-called case “173 Foreign Financing” since 2012, on dissolution of branches of The “Republican Institute”, the “Democratic Institute”, “Freedom House”, the “American International Center for Corruption” and the Independence of the Judiciary”, the “Democratic States’ Office for Journalists”, and the German “Konrad Adenauer Foundation” and closure of their country offices in Egypt.¹⁶

In May 2017, a Republican Decree was issued on a new law that organizes activities of associations in the country¹⁷, where financing is governed by the National Agency on Regulating Activities of Foreign and Non-Governmental Organizations.

The association of access to information with transparency, accountability and combating corruption could be a disincentive in adoption of access laws for the powerful and for those suspected of corruption who like working without parliamentary, media or legal control.

Adoption of the Access to Information Act in Morocco was intended to help Morocco’s accession to the open government partnership, according to the Ministry of the reform of the Administration and the Civil Service.¹⁸

The idea of adopting the Access to Information Act in Jordan is attributed to “the desire of the decision makers in Jordan to develop an

13 Tshwane Principles on the national security and the right to information. <http://www.opensocietyfoundations.org/sites/default/files/tshwane-principles-15-points-09182013.pdf>. draft principles were developed by 22 civil society organizations and academic centers in cooperation with the Open Initiative of Justice Society, and in consultation with four UN agencies on freedom of expression, the African Committee on Human and Peoples Rights, American Countries Organization, the Organization for Security and Cooperation in Europe, over more than two years of consultations worldwide with several governmental agencies and representatives of civil society.

14 John M. Ackerman & Irma E. Sandoval-Ballesteros. (2006) p 121-122

15 <https://www.sarayanews.com/article/378313>

16 See: Egypt, postponement of conducting a trial of 16 accused in “foreign financing” for human rights organizations, published in the “Middle East Newspaper” on 09.07.2018.

17 See: <https://sites.google.com/site/egyptefw/home/mktbte-thmyl-almwad-alqanwnynte/ns-qanwn-70-lsnte-2017-aljmyat-alahlyte>.

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information law in order to improve the image of the country in the freedom of expression area"¹⁹ as well as to sign financing agreements with Western countries.

It is noticeable that information access laws are often an attempt to present a good political image to foreign countries and to the public or intended to please donor countries, rather than to engage citizens in decision-making and control over the activities of official servants.

¹⁹ <https://www.mmmp.gov.ma/ar/decline.aspx?r=320&m=9>



Chapter II

**Current Situation of the Right to Information
and the Legal Framework Regulating
this Right in the Arab World**

Current Situation of the Right to Information and the Legal Framework Regulating this Right in the Arab World

Publication of information by governments was until very recently a grant or a way to communicate with citizens rather than a right established for them.

This chapter discusses the current circumstances of right to information in Jordan, Tunisia, Yemen, Sudan, Lebanon, and Morocco, according to the chronological precedence of these countries in adopting their laws. The situation in Palestine and Egypt will be briefly examined.

It seems that Gulf Cooperation Countries GCC (Saudi Arabia, Kuwait, UAE, Oman, Qatar and Bahrain) are far from starting to adopt this law.

Section I: Jordan

The "National Charter"²⁰ of 1991 was the first document in Jordan to indicate a citizen's right to information under Media and Communication and their Role in Reinforcing the Democratic Approach.

The right to access to information and news was exclusively granted to journalists in the Arab press laws including the Jordanian Press and Publication Law.²¹

²⁰ Article 11 of the Charter provides that "The circulation of news and data must be regarded as an indivisible part of the freedom of the press and information. The state must guarantee free access to information to the extent that it does not jeopardize national security or the national interest. See: <http://www.kinghussein.gov.jo/charter-national.html>

²¹ See Article 8 of the Press and Publication Act No. 8 of 1998.

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The Access to Information Act No. 47 of 2007 was the first of its kind in the Arab world.²² The rationale for the draft law states "Freedom of access to information has become the cornerstone of press and public freedoms. It goes without saying that most of the information is held by the executive power and its institutions. In order to translate the principle of transparency and participation in decision-making, it is necessary to take legislative and executive steps that will facilitate access to information by journalists and citizens."

The Act distinguished between the right to information and exceptions for information that may not be disclosed, such as information guarding national security, privacy, preservation of the rights of others, intellectual property rights, and preservation of the public morals and public health.²³

The Act provides for formation of an Information Council to insure provision of information to requesters and to receive complaints from those whose requests are refused. The council is perceived as disadvantaged because it lacks independence and any representation from the private sector or civil society. The Minister of Culture chairs it, and members are the Secretary General of the Ministry of Interior, Director of National Guidance in the Armed Forces, and others.²⁴

Weaknesses of the Act include the absence of a mechanism for classifying government documents that may be excluded from coverage. Further, it gives preference to other applicable laws over the Access to Information Act, whether such laws were issued before or after adoption of the Access to Information Act. That includes the Protection of the State's Secrets and Documents Law No. 50 of 1971.²⁵

One example of protecting documents that are not sensitive to national security is Article (8/e) of the Protection of the State's Secrets and Documents Law, which defines secret as "any protected information or document that may defame an official figure or abuse status of the state."

In this context, it should be asserted that without fundamental amendment of the Protection of the State's Secrets and Documents Law, the Access to Information Act will not have sufficient efficiency, since the Protection of the State's Secrets and Documents Law forms a completely secret system in contradiction to the principle of "Maximum Disclosure". The organizer of Article (19) was right when he described the State's Secrets Law as an octopus in a study on freedom of press in Jordan.²⁶

In its annual reports, the National Center for Human Rights (NCHR) mentions this Law as the biggest obstacle to application of the Access to Information Act. NCHR has instructed the government to amend the Law to make it consistent with the Access to Information Act and the Press and Publication Act.²⁷

22 The Jordanian Act was published in the Official Gazette on 27.06.2007, volume 4831, p.4142.

23 Article 13 of the Act.

24 The Council consists of the Information Commissioner who serves as deputy chairman, the Secretary General of the Ministry of Justice, Secretary General of the Ministry of Interior, Secretary General of the Supreme Council of Information (revoked in 2008), Director General of the Department of Statistics, Director General of the National Information Technology Center, Director of Moral Guidance In the armed forces and the Commissioner-General for Human Rights.

25 Published in the Official Gazette 2315, dated 01.08.1971.

26 See: Blaming the press- Crisis of Democracy in Jordan, Article 19, London, 1997, where it states that "this Law is like octopus, where it transforms all information under control of the State to confidential information unless its publication is permitted" p. 107.

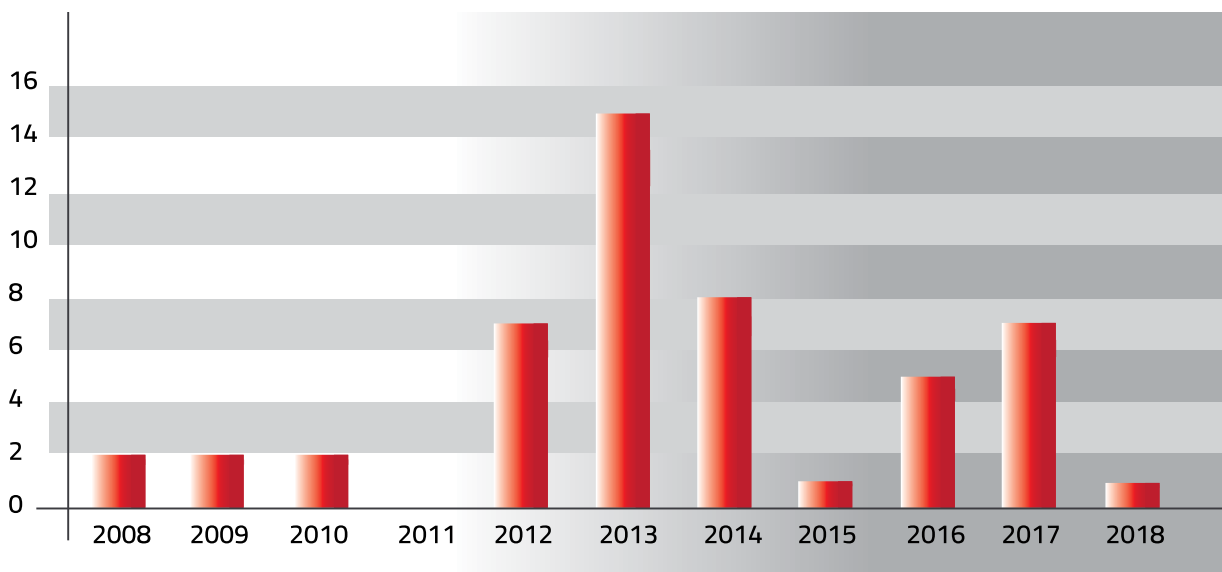
27 National Center for Human Rights, 2010, Annual Report, p.50.

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A complaint about being refused information may be lodged with the Information Council and an objection to such refusal may be submitted to the Administrative Court.

The Council has received about 50 complaints since 2008, where the Council supported arguments of requesters and succeeded in convincing government agencies to turn over information to requesters, save fewer than five cases in which there was no response to the council, since its members are official officers and its decisions are not binding. This is a weakness of the Act, which in turn discourages those whose requests are refused from resorting to the Information Council.

Number of Complaints Lodged with Information Council



Though resort to the administrative court to challenge denial of access to information is possible, the high cost of litigation and lost work time discourage use of this choice. Only three cases have been challenged before the administrative court since 2007, the year the Act was adopted.

Investigative reporting on Access to Information in 2019 by Majdolin Allan supported by Arab Reporters for Investigative Journalism (ARIJ), showed that the government's reluctance to deal with the law, and lack of desire to facilitate the flow of information to citizens are the main reasons journalists have neglected the Act.²⁸

The journalist found that only 5 percent of 130 journalists surveyed had used the Access to Information law, and that 15 percent of 124 government institutions had not completed indexing their documents.

In 2010, Allan submitted the first challenge to the High Court of Justice (now the Administrative

²⁸ See: Fragility of Access to Information Act and the Government's Recklessness in Dealing with it. <https://tinyurl.com/y8hc5b6g>

Court) charging the Department of Land and Survey with refusing to disclose the selling price and buyer of public land. After a number of hearings, the court found that she as the petitioner lacked legitimate interest in the request (contrary to Article 7 of the Act which requires that a requester should have a legitimate interest or reason).

Journalist Musab Shawabkeh's quest for access to information

Musab Shawabkeh is a journalist who spares no effort in verifying his reports. He has patiently worked on some reports for as long as four months in order to produce utterly accurate information.

He worked in the Investigative Journalism Unit in the Community Media Network in Amman, and then for ARIJ.

While looking into the financial integrity of a number of senior Jordanian officials, he sought access to information about ownership of companies outside Jordan in cooperation with the Organized Crime and Corruption Reporting Center in Sarajevo. He discovered that the Mawared Group owns a company registered in Luxembourg, a tax haven in Europe, and that this company had branches in the Virgin Islands, Dubai and Morocco.

Shawabkeh has lodged about one-third of the 17 complaints that have come to the Information Council. He has also brought three cases before the Administrative Court, but they were rejected.

Over time, it seems that the response to requests has improved. The World Bank studied applications of the Jordanian Access to Information Act and concluded that " Information and Communication Technology is not used in addressing the information requests."²⁹

The total number of information requests was 2,200 in 2013 and 2,286 in 2012. Eighty percent of these were addressed to the Department of Statistics (1,893 requests in 2013 and 1,798 in 2012).

The Carter Center³⁰ evaluated access to information acts in 11 countries including Jordan. The study examined application of the Act by five ministries and one department (The Customs Department

²⁹ Meknassi, S. 2014. Implementing Right to Information, p. 374.

³⁰ Pilot finding in Selected Agencies: Jordan. The Carter Center's Access to Information Legislation Implementation Assessment tool. November 2014 Page 34, 36

<https://www.cartercenter.org/resources/pdfs/peace/ati/IAT-country-report-Jordan.pdf>

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was excluded due to lack of cooperation). It found that there usually was no officer assigned solely to handle requests. Ministries that did have an access officer, used someone, often in public relations, who performed that duty in addition to his job. The study praised the efficient and effective application of the Access to Information Act by the Department of Statistics.

The Carter Center uses the Spotlight Method of evaluation. Green means that an institution does a good job in complying with the Act, yellow means it makes insufficient effort and can improve, and red means that an institution makes no effort to abide by the Act.



Requesters must pay for photocopying or reproduction of the information they want. They are informed if the information they seek is stored in a manner that cannot be reproduced or photocopied. If part of the information sought is classified, while other parts are unclassified, then the request is dealt with within the limits under this Act. If the information is classified, such classification should be made before the date of request.³¹

While the Act provides that³² the Information Council must issue periodical reports, such reports may not be disclosed to the public, just forwarded to the Council of Ministers. In general, annual reports should be disclosed to the public to show the response of government bodies, the number of and reasons for refusals, and the efforts of the Information Council to promote the Act.

Upon recommendation of the Information Council, The Council of Ministers approved fees for providing information as allowed under the Act. The decision mentioned that the fees are not for the information itself, just for the work of providing and send it. The first 10 pages are free, but every page after is 25 fils. Subject to the Copyright Act, requesters using information given must reference to the source of the material.³³

³¹ Article 12 of the Act.

³² Article 4/e

³³ Article 18: any fees collected by a department for photocopying or reproduction of the required information should be determined by a decision of the Council of Ministers upon recommendation of the Council. Resolution of the Council of Ministers No. 502, dated 23.01.2008.

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The National Information Strategy (2011-2015) called for amendment of the Access to Information Act to comply with international standards.³⁴

Eleven years after it was enacted, the Act has not facilitated the flow of information to the journalists, who are its biggest users, and to citizens. The Act also does not comply with the international standards.

“Assessment of Media Development in Jordan” Study³⁵ recommended that the Access to Information Act be reviewed to bring it in line with international standards and the best practices, and that Jordanian public agencies take steps to properly implement it.

In the wake of criticism, the Council of Ministers approved a draft law making minor and insufficient amendments.

The rationale was that “The law aims to facilitate the right to information and to permit to a non-Jordanian to access the information under the conventions to which the Kingdom is a party that provide for providing a non-Jordanian with information..... and to reinforce representation of the civil society organizations in the Information Council.”

- Civil society organisations and other concerned parties welcomed the amendments, though they believed them insufficient. Kholoud Khatatbeh, the journalist who chaired The National Guidance Committee in the 17th House of Representatives, said that the submitted amendments were not ratified because the draft law was referred to a joint committee composed of the National Guidance Committee and the Legal Committee. This led to disagreement inside the joint committee which meant the draft law could not be referred to the full house for a discussion. And the government refused to withdraw the draft law, a step that is needed in order to resubmit a new and improved draft law.
- The Minister of Culture, who joined the government of Prime Minister Omar Al-Razzaz – formed after wide-spread protests against the draft tax law end of May 2018, has indicated that the government is willing to withdraw the draft law and to resend a better draft version.

Upon the foregoing, it is recommended that:

- The Law on the Protection of the State’s Secrets and Documents No. 50 of 1970, which is considered the biggest obstacle to application of the Access to Information Act, should be amended. The amendment should set up a clear mechanism for the classification of information instead of leaving that to the absolute discretion of the party that is in charge of managing the classification of documents process.
- The Act should be amended in order to allow for submission of requests in electronic form not paper form as provided under the current Act.

³⁴ Minister of State for Information, Mohammad Momani, in a workshop on the Jordanian comprehensive periodic review, 7th meeting, 24/10/2013. See: <http://goo.gl/xcEcyw>

³⁵ Assessment of Media Development in Jordan, UNESCO, p.84. <http://unesdoc.unesco.org/images/0023/002344/234425A.pdf>

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- The scope of application the Act should be widened to include non-governmental organizations that receive governmental or foreign financing, in whole or in part.
- The Act should be amended to include (financial and disciplinary) penalties for the official who unreasonably refuses to provide information to requesters.
- A separate and sufficient budget should be allocated to the Information Council so that it is able to raise awareness of the Act.
- The content of ministries and institutions, covered by the Act, websites should be improved, and the published information should be updated promptly.
- Officials implementing the Act should be trained so that they are familiar with its provisions and able to facilitate provision of information to requesters, and the government documents should be archived and classified so that they can be easily referenced. Fees for challenging the decision denying access to information should be reduced since they are high and with high attorney's fees discourage people from resorting to the courts.
- Media institutions and civil society organizations should be encouraged to increase information requests, and response of the government agencies to the information requests should be monitored.

Topic II: Access to Information Act in Tunisia

After the revolution of Tunisia in 2011, Decree No. 41 of 2011, concerning access to administrative documents of public agencies, as revised by Decree No. 54-2011 dated 11 June 2011, was issued on May 26.

Chapter 32 of the new Constitution issued on 27 January 2014 provides for state guarantee of the right to access to information.

After that, the Organic Law on the Right to Information No. 22 of 2016, dated March 24, 2016, was issued.³⁶

Tunisian law differs from the Jordanian Act in that it provides that information should be proactively published, not just when requested. And, information requesters are not required to state why they are interested in the information they seek.

Chapter 17 provides that "If the access to information request would affect a person's life or freedom, then the concerned agency will refuse the request in writing within not more than forty-eight (48) hours of the request date."

Exemptions:

Chapter 24 provides that "The concerned agency may not refuse the access to information request unless such access would endanger the public security, national defense, or international relations, or rights of others to protect their life, personal data and intellectual property."

Chapter 25 provides that "access to information does not include data related to identities of person who have provided information with the aim of reporting violations or events of corruptions."

Under the Law, an "Access to Information Commission" was formed, composed of nine members picked by the Parliament for six-year terms. They include an administrative judge, civil judge, deputy to the chairman of the commission, and members consisting of a member of the National Statistics Council, an IT professor, a specialist in administrative documents and archives, a lawyer, a journalist, whose seniority must not be less than 10 years of actual work on the date of nomination, a representative of The National Authority for the Protection of Personal Data with responsibility for at least two years, and a representative of associations active in the fields related to the right of access to information.

Commission members were elected in July 2017, and four of the nine were women "which is deemed to be a good indicator for representation of women."³⁷

The Commission's decisions and annual report are published on its website. Its decisions are binding

³⁶ See text of the Law http://www.legislation.tn/detailtexte/Loi-num-2016-22-du-24-03-2016-jort-2016-026__2016026000221

³⁷ <https://tinyurl.com/ybnzk6q3>

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and appealable to an administrative court.

Judge Emad Hazqi, chairman of the Access to Information Commission in Tunisia, said it has received 228 cases since its establishment, of which 95 have been determined.³⁸

The cases were brought by citizens, associations and all legal persons. Surprisingly, he said, no journalist has brought a case. This is surprising, since it reveals that the Law is not important for journalists. In contrast, some Spanish officials have informed me lately that more than 75 percent of the access to information requests are submitted by journalists in Spain. I ask journalists to deal more with the commission and use their right to information. Convincing journalists is part of our role in reinforcing the access to information culture.

The commission's first case was a challenge submitted by the National Society for the Protection of the Transport Sector (taxis) against the governor of Mahdia who held back from it the copy of minutes of a meeting of the Committee of the Community on standards for setting priorities in recommending taxi licenses. The commission found that the information should be provided and the governor complied. In March 2018, the Commission issued six decisions in cases related to access to public transaction documents executed by the regional councils of four states. Some civil society organizations raised awareness of the existence and use of the law, including informini.org platform that sends access to information requests to agencies covered by the law and receives related responses and publishes them on its website.³⁹

Chapter 57 of the Law provides that "whoever intentionally hinders access to information held by the agencies governed by the provisions of this Law shall be fined 500-5,000 dinars. Whoever intentionally and illegally destroys a piece of information or causes someone else to do so shall be subject to the penalty set out in Chapter 163 of the Penal Code.

In addition to penalties provided under Chapter 75, a public official who does not comply with the law's provisions shall be subject to disciplinary actions under the applicable legislation.

In the latest assessment of the world's access to information laws prepared by RTI-rating⁴⁰, Tunis ranked 13 out of 123 countries. It was selected to organize UNESCO's main celebration this year for the first time outside UNESCO headquarters in Paris.⁴¹ Further, Tunisia enhanced its anti-corruption legislation by the Law on Disclosure of Gains and Interests, combating illegal enrichment, and conflict of interest in the public sector⁴² which parliament ratified on July 17, 2018.

The National Authority for Combating Corruption is monitoring application of the Law until the Commission on Good Governance and Combating Corruption, set out under Chapter 103 of the Constitution, is established.

Some 50,000 public officials are governed by the law.

38 See: press interview with Amal Maki in July and August 2018, published in volume 12 August 2018, of Legal Notepad Journal. <http://legal-agenda.com/article.php?id=4803>

39 <https://www.tuniscope.com/article/140240/arabe/actu/instance-524508>

40 <http://informini.org/ar>

41 <https://www.rti-rating.org/country-data/>

42 <https://en.unesco.org/news/ipdctalks-held-tunis-celebrate-third-international-day-universal-access-information>

Chapter II

They include the President of the Republic, the prime minister and government members, the speaker of the House of Representatives, members and heads of independent constitutional bodies, their members, heads of local communities and members of their councils, the president of the Supreme Council of the Judiciary and its members, the president of the Constitutional Court and its members, judges and anyone with the rank and privileges of a state secretary or minister.

All person governed by the Law may not receive gifts for themselves or relatives that would affect their objective, fair and impartial performance of their professional duties. However, gifts of nominal value whose value does not exceed the limit determined in a governmental decree after consultation with the commission, are allowable as are gifts presented to high officials on official occasions in accordance with current norms and considerations of courtesy.

As to the role of access to information in combating corruption, Judge Hazqi, said "We cannot talk about combating corruption in the absence of regulations that permit flow of information and accessibility. Hence, the relation between our work and combating corruption is clear and firm, where awareness of the management and the public agencies that all documents produced by them are accessible makes them avoid failure, which in turn reduces the amount of corruption."⁴³

⁴³ <https://legislation-securite.tn/ar/node/56471>

Topic III: Access to Information Act in Yemen

The Yemeni Right of Access to Information Law of 2012⁴⁴ (effective as of July 1, 2012) aims to promote transparency and to broaden opportunities for informed and responsible participation. Access to information is a fundamental right of citizens. Foreigners may obtain information on the condition of reciprocity. Information is obtained directly by the requester or indirectly through publication, or both. The law requires the administrative body governed by its provisions to provide the National Information Center with information by paper or electronic means, either free or at prices not exceeding the cost of providing access to it.

The Law excludes the following information from disclosure:

- details of weapons and defensive tactics and strategies, and military forces or secret military operations aimed at protecting the homeland;
- Information exchanged with other countries on condition it be kept confidential.
- information related to prevention or detection of crimes and justice administration.
- Electronic information which, if disclosed, could cause penetration of protected networks and equipment and may expose them to deletion or theft.

Whoever intentionally violates the provisions of Article 11 of this Law shall be imprisoned for not less than two years and shall be fined not less than 500,000 riyals.

Article 11 provides that the government put out information and publish annual reports containing at least the following:

- Management information on the mechanism of action including objectives, activities and programs and the final accounts, along with information on official activities and the results of the performance of its constitutional and legal duties.
- Determinations of how and where the citizens get information and make requests and learn about the documents, receive and abstract copies and get a decision.
- Index of all types of information that legally oblige the party in charge to execute conservation and maintenance.
- A report on requests for access to information that have been received and that have been operated upon and those that have been rejected and the reasons for rejection and motions that have been submitted, along with the actions relating thereto, and the average number of days during which there has been responses to requests for information.
- Directory lists of the topics along with the dates and methods of their dissemination.

⁴⁴ <http://www.ypwatch.org/page.php?id=1045>

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–Additional information the Commissioner finds necessary to comply with the Act.

The rapporteur of the Committee on Information in the Yemeni House of Representatives, Executive Director of the Yemeni Parliamentarians Against Corruption Organization, Abdel Moez Debwan, said, “Yemen benefited from the experience of Jordan in the development of the right to information law, and avoided the shortcomings contained in Jordanian law.”

In the thesis of the writer of this paper⁴⁵, Debwan added that many legislative and practical challenges impede implementation of the Right of Access to Information Law in Yemen.

For one thing, the Constitution provides no protection of the right to information, and the Act contradicts other laws allowing for secrecy. Clear text in the Right of Access to Information Law protects the right to know from any disqualification, as stated in Article (64) (provisions contrary to the provisions of this law shall be repealed).

A potential obstacle is that the implementing regulations of the Law have not been issued yet, which should support this right and compensate for any deficiency and ambiguities in the Law.

Debwan summarizes the challenges as follows:

- Fundamental change is required in the prevailing culture on confidentiality and retention of information, including changing the behavior of public officials and their ways of thinking and their handling of the right of access to information. Further, the structures of public bodies do not help in facilitating access to information by citizens.
- The public is not highly aware of the right to information or of the mechanisms to achieving it.
- Most of the Yemeni laws and practices on freedom of information are borrowed from the Egyptian law. However, poor practical practices will make Yemen as a testing ground. If there are international experiences under which the Law is applied, this will help in shortening spaces.
- Exchange of experience with other countries will help to reach to the best practices in connection with enforcement of the Right of Access to Information Law.

Overall, Debwan says the greatest challenge and problem that Yemen faces is one that stands in the way of all rights in the country. The state and its institutions must be restored.

Given the conflict in Yemen application of the access to Information Law is not a priority.

Yemeni journalist Khaled Harouji⁴⁶ says provisions of the law are good and will enable Yemeni people to access information. However, it's not been applied now because no one is demanding it be applied or making court challenges. He says bodies that have information and refuse to provide to journalists give the justification it is not available. This is true in many cases, since their information and data documentation systems are defective.

As to the opposition parties, Harouji says, “Those who oppose the Access to Information Law

⁴⁵ Thesis of writer of the Study, dated 22.08.2018.

⁴⁶ Correspondence with the writer of this study, dated Sept. 17, 2018.

in any country have concerns about the exposure of their practices and corruption or failure in the performance of their duties and responsibilities, whether an individual or a system of government.”

Topic IV: Access to Information in Sudan, Lebanon, Morocco, Palestine and Egypt

In 2015, Sudan suddenly ratified the Access to Information Law without the participation of any stakeholders. This happened because of the influence of the Southern Sudan State which ratified its law in 2013 (the law ranked 12 out of 123 laws on RTI-rating).⁴⁷

It seems that the Sudanese Law was inconsistent with international standards and criticized by journalists and civil society organizations. The Law requires that requests for information be in writing.

Under the law, a right to information commission is established. The commissioner is appointed by the competent minister assigned by the president of the republic and the minister oversees the commission. It ensures the provision of information to requesters within the limits of the law, and examines and settles complaints about lack of compliance. It also is supposed to spread the culture of obtaining information and carry out activities to explain and promote that. It submits an annual report to the ministry.

It seems that the Sudanese government copied the exemptions in Article 12 of its law from the Jordanians.

Journalist Nada Ameen says that “The real challenge lies in how to apply it in reality. I have always said that our main problem in Sudan is not the existence or non-existence of laws, rather in application of such laws without favoritism, manipulation or exploitation of influence. Our laws on paper are “perfect” but... in practice” they are applied selectively and temperamentally. There is no institutionalization.”⁴⁸

Lebanon

Lebanon, after a difficult period, was the last Arab country to issue a law on access to information⁴⁹. A proposal for such a law dates to 2009, when the National Network for the Promotion of the Right to Access Information, composed of 17 governmental and non-governmental bodies and institutions, took up the effort.

The Lebanese Access to Information Law No. 28 of 2017 permits any natural or legal body, whether

⁴⁷ The Law was published on Feb. 22, 2015, <https://moj.gov.sd/sudanlaws/#/reader/chapter/362/0.0.79.0>

⁴⁸ <http://www.rti-rating.org/country-data>

⁴⁹ <http://sudaneseonline.com/cgi-bin/sdb/2bb.cgi?seq=print&board=7&msg=1441468472&rn=>

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Lebanese or non-Lebanese, to access the information and documents kept by the administration.

Secrets about national defense and security, public security, management of the State's external relations, financial and economic interests of the State and integrity of the national currency are excluded from disclosure.

The Law obliges the administration to publish decisions, circulars, and memos that contain interpretation of the laws and regulations on its websites within 15 days of their being issued.

Proceedings of investigations may not be accessed unless they are announced in a public session. Secret trials and those related to personal events or status may not be disclosed. Minutes of parliament and parliamentary committee sessions, deliberations of the Cabinet and secret resolutions, incomplete preparatory and administrative documents, and opinions from the State Consultative Council may not be disclosed but by the concerned bodies under judicial review.

The National Anti-Corruption Authority is assigned to receive complaints from those whose requests are ignored. The Lebanese Law provides for disclosure of any payment of public money over 5 million lira and the reasons for such payment in the Official Gazette, except for employees' salaries and remunerations.

Journalists and media workers welcomed adoption of the law, considering it one step toward asserting their right to get the news from the source, and increasing the transparency of government departments⁵⁰. They expressed hope that "the adoption of this law will contribute to the recovery of Lebanon's dying press by improving the content to win the public's trust and avoiding rumors about government departments and institutions, since access to information is now available and the journalist is no longer obliged to obtain information from unreliable sources. "

Maharat, an active institution in press freedoms in Lebanon⁵¹ asserted that, "This law will increase the independence of the media and encourage journalists to raise public issues about which original data are open and available to all, based on the pivotal role of the media in uncovering facts and circulating information for the public interest."

Tony McChaile, the legal counsel of Maharat⁵², says, "Despite the adoption of the law on access to information, until now, the executive decree has not been issued by the government, which was prepared by the Ministry of Justice. Although the law is in force regardless of the issuance of the executive decree. Information requests may be submitted to the public administrations governed by the Law, but the requests submitted are limited because most of the public administrations have not appointed a staff member to receive and respond to requests, and the body charged with reviewing the decisions denying requests has not been formed yet."

" There is no public opposition to the law, he says, "but there is no doubt that the authority is not serious in the application of provisions of the Law in view of what may result in the disclosure of files related to corruption and abuse of power and influence and favoritism at the expense of the public

⁵⁰ The law was published in the Official Gazette, issue 8, dated Feb. 16, 2017, see text of the Law: lebanon.org/Ar/NewsDetails/38/85

⁵¹ <https://tinyurl.com/y9mqpk7u>

⁵² <http://maharatfoundation.org/news/law-information-rights>

interest.”

He added that, “ The strengths lie in combating corruption by most of parties participated in the recent parliamentary election. However, there are many weaknesses: citizens do not trust the state and its agencies, parties and the influential bodies. The same people always get elected. This will weaken the accountability and undermine anti-corruption systems.” It also does not help that corrupt people are seldom prosecuted or punished which does not increase public trust.

Kingdom of Morocco

In mid-2011, extensive amendments were made to the Moroccan Constitution. Chapter 27 on access to information was added, which provides that:

“Citizens have the right to access the information held by the public departments, elected institutions and the bodies to which duties of public facilities are assigned. The right to information may be restricted but under the law, with the aim of protecting the national defense, internal and external security of the state and the private life of people, and the basic freedoms and rights under the law, and protecting the source of information and the areas determined accurately by the law.”

The Right to Information Law⁵³, issued on March 12, 2018, and put into effect a year later, was adopted to facilitate Morocco’s accession to the open government partnership, according to the Ministry of Management Reform and Public Service.⁵⁴

Adoption of the Law enabled Morocco to gain 12/16 score which is a prerequisite to accession to the open government partnership.

The law determines the right to information held by public departments, elected institutions and the bodies to which duties of public facilities are assigned. Right to information is granted to citizens and persons legally residing in Morocco, in accordance with the relevant international conventions to which Morocco is a party. The information requester has to pay costs such as photocopying, processing and sending of information.

The Law contains wide exemptions as to the monetary, economic or financial policies the country, in addition to industrial property rights, copyright or neighboring rights, and the rights and interests of victims, witnesses, experts and whistle-blowers. Information on the crimes of bribery, embezzlement, exploitation of influence, etc., the confidentiality of the deliberations of the Ministerial Council and the Council of Government, and the secret of research and administrative investigations were also excluded, unless authorized by the competent administrative authorities.

The information is obtained at the request of the concerned person by direct deposit in exchange for a receipt, or by regular or electronic mail in return for a receipt, when possible. The concerned institution or body must respond to requests within 20 working days of receiving them. This term may be extended for a similar period in specific cases. As to the urgent cases, the information must be provided within three days. Such cases include protection of lives, safety and freedom.

⁵³ https://www.mmsp.gov.ma/uploads/documents/Loi_1331_22022018.pdf

⁵⁴ <https://www.mmsp.gov.ma/ar/decline.aspx?r=320&m=9>

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Unhappy requesters may lodge a complaint at three levels:

Level 1: to the head of the concerned institution within no more than 20 working days of the legal date assigned for response to the request.

Level 2: to the Right to Information Committee.

Level 3: to a court to challenge the decision issued by the head of the concerned institution within 60 days of the refusal or after lapse of the established period without response.

The Law set up a Right to Information Committee empowered to oversee the process, receive and settle complaints, train on the importance of providing information , and prepare an annual report on its activities.

The Right to Information Committee is chaired by the chairperson of the National Commission for the Control of Personal Data Protection and its members include:

- Two representatives from public departments appointed by the prime minister
- A member appointed by the speaker of the House of Representatives;
- A member appointed by the president of the Council of Advisers;
- A representative of the National Commission for Integrity and the Prevention and Combating of Bribery;
- A representative of the Morocco Archive;
- A representative of the National Council for Human Rights;
- A representative of the mediator;
- A representative of civil society, recognized for his competence and expertise on the right to information, to be appointed by the prime minister.

The Law provides for penalties against persons who fail to provide required information. It also allows for criminal penalties in cases of misrepresentation of the content of the information obtained or causing harm to the Authority or whose use or reuse has damaged the public interest.

Since the law is not effective, judgment of its application is unreasonable.

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Comparison among access to information laws in Jordan, Yemen, Tunisia, Sudan, Lebanon and Morocco

	Jordan	Yemen	Tunisia	Sudan	Lebanon	Morocco
Constitutional provision	No	No	Chapter 32	No	No	Chapter 27
Proactive or automatic publication	No	Yes	Yes	Limited	Yes	Yes
Right for a citizen of a human	Citizen	Citizens and residing people	Everyone	Everyone	Everyone	Citizens and residing people
Paper or electronic request	Paper	Paper	Paper and electronic	Paper	Paper	Paper and electronic
Requirement of existence of a reasons or an interest for the information requester	Yes	No	No	No	No	For legal purposes
An independent body to receive complaints	All members are employees	Information commissioner	Varied under chairmanship of a judge	Under supervision of the minister	Anti-Corruption commission	A commission with multiple representatives
Binding decision of the body receiving complaints	Not binding	Not binding	Binding	Not binding	Binding	

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Limited or restrictive exceptions or matters that grant discretionary power of a department	Wide and discretionary		Limited	Wide and discretionary	Discretionary power for a department	Wide and discretionary
Period for response to request	30 days	15 days	20 days	Two weeks	15 days	20 days
Penalties on an employee who intentionally does not respond to the legal request	None	Imprisonment or fine	Fine and disciplinary penalty	Imprisonment	None	Disciplinary
Reasonable cost for access to information	Yes	Yes	Yes	Yes	Yes	Yes
Challenging the refusal decision before courts	Administrative court	Civil court	Administrative court	Administrative court	Administrative court	Administrative court
The law supervisory authority publishes reports on its activities	No	Yes	Yes	Yes	Yes	Yes
Rank out of 123 countries under RTI-rating (the lowest number is better)	115	35	13	N/A	93	90

Palestine

There has been an active movement in Palestine since at least 2005 to ratify an access to information law. The Center for Media Development at Birzeit University is leading the National Media Development Initiative in Palestine, which includes 80 national institutions in the West Bank and Gaza Strip, including the adoption of the access to information law.

The director of the Center for Media Development at Birzeit University, Nabal Thawabta, said that “The adoption of the law by the Council of Ministers is costly, since a study⁵⁵ showed the lack of readiness of Palestinian institutions to implement the law if approved.”⁵⁶

This Law aims (Article 2) to:

1. enable citizens and residents of Palestine to exercise the right to information held by public institutions in accordance with the provisions of this law.
2. Spread the spirit of transparency and accountability in the Palestinian public institutions and encourage openness to the people.

All information held by the public institutions shall be accessible (Article 3), except for information falling under listed exemptions. Article (8) of the Law obliges the industrial public or private institutions to make public semi-annual reports showing sites, nature and risks of toxic substances, the amount of emissions from industrialization, and how waste is disposed of.

Article (9) provides that a public institution wishing to hold a public meeting should announce date, place and purpose of such meeting, and people should not be prevented from attending such meeting unless otherwise provided under the exceptions.

Article 10 protects whistleblowers by banning punishment of employees who disclose information on violations of the law.

The law contains many exemptions. These might aim to protect some special interests like the public security and public order. Article 19 provides that:

The competent employee shall not disclose any information if it is proven that such disclosure endanger the state’s defense abilities and national security.

Further, under Article 20, the competent employee shall refuse disclosing any information that relates to a foreign country or organization with which an agreement is made to keep such information confidential.

The maximum period for confidentiality of information is 20 years, unless the Commissioner-

55 See: Mohamad Hussein Abu Arqoub (2016) Readiness of Palestinian Media Institutions for use of the Access to Information Law. Center for Media Development at Birzeit University. <https://tinyurl.com/yazylcdx>

56 Correspondence with the writer of this study on Sept. 23, 2018.

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General instructs that such information should be confidential for another renewed period (Article 20).

Under Article 20, the competent employee at the institutions that investigate offenses and perform police actions shall refuse disclosing information, if such disclosure may endanger investigations and required tasks, or may defame persons not yet convicted.

Article 23 permits to the competent employee to refuse disclosing any information that contains:

1. Professional or commercial secrets of the institution.
2. Secrets disclosure of which may cause material damage to the economic interests of the State, or its ability to manage the national economy, or result in special gains for a person or body, including:
3. Exchange rates in Palestine.
4. Expected changes in customs duties, taxes, fees and any other sources of revenue.
5. Expected changes in interest rates on government loans.
6. Expected changes in prices of government property of shares, and movables and immovables.
7. Deals that the public institution is planning in respect of a commodity, the disclosure of which may affect the prices of this commodity in the market.

A information commissioner-general is appointed by the prime minister and ratified by the Palestinian Legislative Council for four-year terms that can be renewed once. The information commissioner-general is an appeal body for those whose information requests are refused.

Recommendations of the information commissioner-general are binding upon all public institutions, and he may enter any public institution and inspect its records, documents or instruments related to the required information. He may also investigate with any employee in order to access required information. He may also prosecute those responsible for concealing, destroying or amending information.

"I think one of the main strengths is the presence of solidarity and a broad coalition of media organizations led by the Palestinian Journalists Syndicate," said Montaser Hamdan, a member of the Syndicate of Journalists⁵⁷. The weaknesses are in the organization and management of the campaigns demanding approval of the law. There are also "concerns about the applicability of the law in some centers of economic, social, political and security forces from the adoption of law fear for their interests."

The Legislative Council approved the draft law in a first reading that year, "but the conditions of the Palestinian division in 2007, which led to the disruption of the Legislative Council, delayed the

⁵⁷ Correspondence with the writer of this study on Sept. 17, 2018.

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passage of the draft law in other stages, and remained on paper.”⁵⁸

One of the best laws in Palestine is the General Statistics Law No. 4 of 2000⁵⁹, which provides in Article 4 that : All members of the society have the right to obtain official statistics collected, prepared and published by the body in accordance with the applicable regulations, subject to the confidentiality of data and the privacy of individuals.

Article (3/b) of the Environment Law No. 7 of 1999 provides that “Every person may access the official information necessary to identify the environmental effects of any industrial, agricultural, urban or other development programs in accordance with the law.

Though the 2014 Constitution provides for the right of citizens to access information, adoption of a law about that in Egypt has been ignored in light of the security challenges the state faces.

Article 68 of the Egyptian Constitution provides that: information, data, statistics, and official documents are the property of the people and the disclosure thereof from their various sources is a right guaranteed for all. The law shall organize access to and confidentiality of information controls and its deposit and maintenance rules, and complaint for lack of provision, and the law shall determine the penalty for withholding of information and the intentional provision of false information.”

Several attempts have been made to come up with a draft law on access to information, but not a single version has been agreed upon because of the large number of players. The Higher Council of Media⁶⁰ has previously submitted to the media a draft bill without coordinating with relevant civil society organizations.

58 Abu Arqoub, Mohammad an et al (2014) “ Assessment of Media Development in Palestine”, Ramallah - Center for Media Development, Birzeit University and UNESCO. Page 28”<http://www.unesco.org/new/ar/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-palestine>

59 http://www.pcbs.gov.ps/site/lang__ar/539/default.aspx?lang=ar

60 <https://tinyurl.com/y9xmwes2>

Topic V: Prospects of Access to Information in the Arab Gulf States, Iraq, Syria and Algeria

There are no indications that the six Gulf states (Saudi Arabia, Kuwait, UAE, Bahrain, Qatar and Oman) will be shortly influenced by the global wave to adopt the laws that guarantee their citizens' right to information.

In Kuwait, the Kuwait Transparency Society has promoted the right of access bill⁶¹ as a real translation of Article 10 of the United Nations Convention against Corruption, which the Kuwaiti Parliament ratified in November 2006.

In Qatar, the Doha 2016 Center for Media Freedom launched an initiative to prepare a bill to ensure journalists' right to information⁶², in cooperation with the Qatar Bar Association, the National Human Rights Commission and other bodies.

In the Sultanate of Oman, there is a reference to the Sultanate's Media Charter of Honor⁶³, signed at the end of October 2017, which states that "the right to access to information and news, and access to non-prohibited official documents from their sources."

In a Nov. 17, 2009 session, the Bahrain Parliament ratified a right to Information Draft Law, and referred it to the Shura Council, which in a May 3, 2010 postponed consideration until a law was passed on protecting state information and documents.⁶⁴

It is to be noted that the king ratified such a law on June 22, 2014, and is now in effect. This means that it is the time to develop the right to information law.

In April 2014, the Saudi Arabian Shura Council approved a preliminary reading on the draft "Freedom of Information Regulations"⁶⁵ presented by a member of the Council, which "aims to give citizens in Saudi Arabia the right of access to information held by public institutions, and to support integrity and free circulation of information." A proposal to add protection of personal data to the freedom of information regulations was discussed in 2015. It seems that nothing has changed since.

In Iraq, three draft laws on access to information⁶⁶ were submitted in 2011-2013, but none was accepted. The instability in Iraq appears to be a major obstacle to adoption of this law.

The Kurdistan Region was a pioneer in the adoption of a right to information law (No. 13 of 2013).⁶⁷ The law provides for the right of every natural or legal person to obtain information outside of stated exemptions. The law is relatively progressive, with 98 points out of 150 on (www.RTI-Rating.org)

61 <http://www.alraimedia.com/Home/Details?Id=85353ea1-c84b-4602-aad6-b66299f8b5d8>

62 <https://www.al-sharq.com/news/details/423665>

63 <https://shuoon.om/?p=5756>

64 <http://www.albiladpress.com/article320633-1.html>

65 <https://aawsat.com/home/article/78006>

66 <http://icsfs.org/ar/article?id=9&cid=3>

67 See text of the law: <http://metroo.org/image2/arabic/Information%20law.pdf>

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where it ranks 28 out of 95.⁶⁸

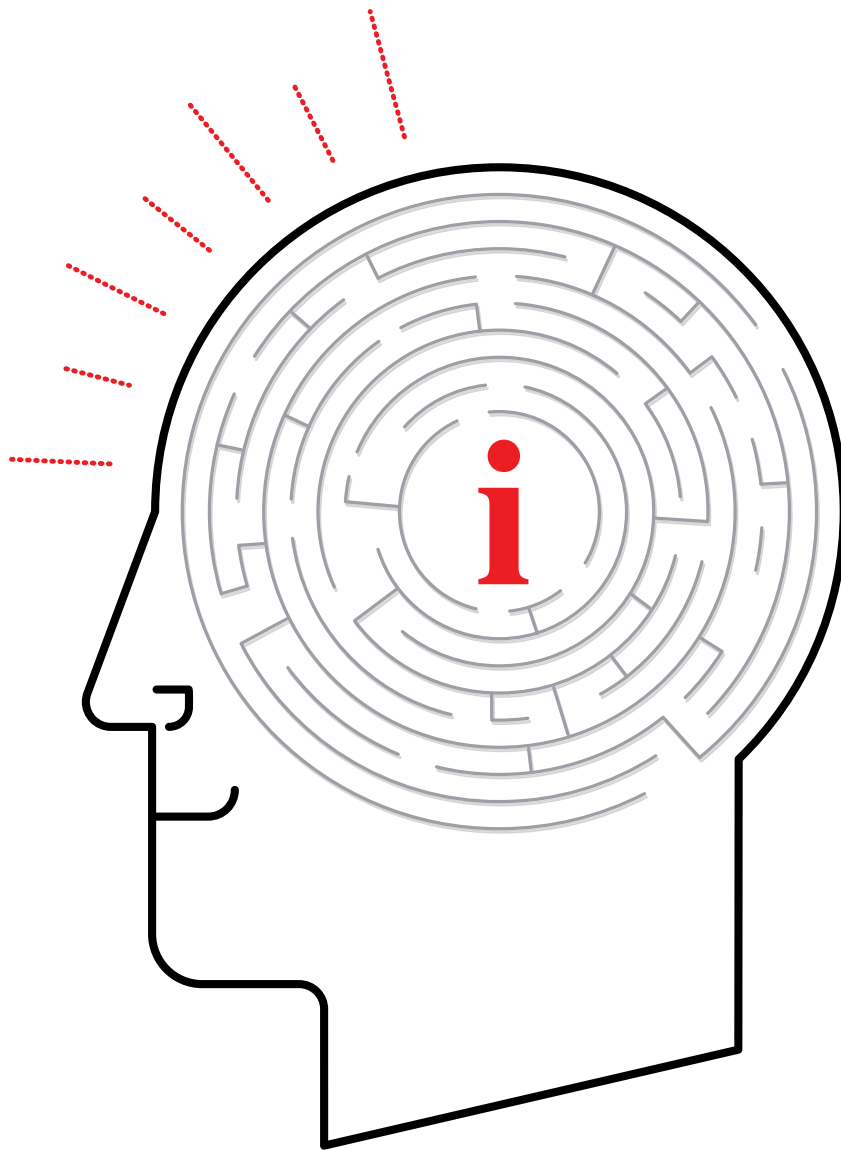
Since Syria is experiencing exceptional circumstances, it seems that adoption of an access to information law is not under serious consideration these days.

In Algeria, the amended law of 2016 added a new article on the right to information⁶⁹. Article 51 provides that " access to and reproduction of information, documents and statistics are guaranteed for every citizen. Exercise of this right shall not cause damage to the private life and rights of others or to the legal interests of institutions. Exercise of this right shall be determined under requirements of national security.

Though this came out more than two years ago, the access to information law was not issued, as a right recognized in the constitution.

68 <http://www.ifj-arabic.org/page-ifj-382.html>

69 Algerian constitution of 2016 <https://www.joradp.dz/har/consti.htm>



Chapter III

**Freedom of Expression and the Right to
Information in the International
Conventions**

Freedom of Expression and the Right to Information in the International Conventions

Freedom of expression is one of the most fundamental of rights, and legal rule reveals but does not create it. It is considered one of the most important freedoms in protecting individuals from state authorities.

The United Nations called early for the protection of human rights in several resolutions and conventions. The first was: "Freedom of information is a basic human right and the cornerstone of all freedoms advocated by the United Nations."⁷⁰

The issuance of the Universal Declaration of Human Rights (UDHR) in 1948 was the starting point in influencing the development of human rights legislation globally, nationally and regionally. The Declaration⁷¹ was the first international document to provide for "the right of everyone to receive and obtain news and ideas."⁷²

Article 19 of UDHR provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. "

It is noticed that the words " seek, receive and impart" recur in all conventions and covenants on the freedom of opinion and expression. ⁷³

The table below shows comparison between articles 19 in UDHR, International Covenant on Civil and Political Rights (ICCPR), and Article 32 of the Arab Charter on Human Rights:

⁷⁰ Resolution 59/1 issued in the first session held by the UN General Assembly on 14.12.1946.

⁷¹ Resolution 217a/3, December 1948, <http://www.un.org/ar/documents/udhr/>

⁷² Article 19 of the Declaration

⁷³ See Article 13 of the Convention on the Rights of the Child, article 13 of the Inter-American Convention on Human Rights and article 10 of the European Convention on Human Rights

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UDHR	ICCPR	Arab Charter on Human Rights
<p>Article 19-</p> <p>Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers</p>	<p>Article 19-</p> <p>1. Everyone shall have the right to hold opinions without interference.</p> <p>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.</p> <p>3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <p>(a) For respect of the rights or reputations of others;</p> <p>(b) For the protection of national security or of public order...or of public health or morals.</p>	<p>Article 19-</p> <p>1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.</p> <p>2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.</p>

ICCPR⁷⁴ is an international binding treaty, which means that in case of contradiction with the national laws ICCPR shall prevail.

All Arab countries (except Somalia) accede to the UN Convention on the Rights of the Child. Article 13 of the said convention provides that The child 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 the child's choice.

Article 9 of the African Charter on Human Rights⁷⁵ of 1981 (as to the Arab countries in North

⁷⁴ The United Nations General Assembly adopted the Covenant on 16 January 1966 to enter into force in 1976. 167 States became parties to the Covenant.

⁷⁵ <http://hrlibrary.umn.edu/arab/a005.html>

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Africa) provides that:

- 1- Every individual shall have the right to receive information.
- 2- Every individual shall have the right to express and disseminate his opinions within the law.

Under the above conventions, all countries, especially the Arab ones, are required to take positive obligations to respect entry into force of the Charter and to amend the laws that are inconsistent with its provisions.

It is noticed that the Arab countries take prompt steps to sign, ratify and accede to international and regional treaties and conventions but fail to put them into practice.

General Comment 34

In September 2011, United Nations Commission on Human Rights adopted the General Comment 34. It is the longest comment that interprets Article 19 of ICCPR.⁷⁶

The Comment mentions that " Freedom of opinion and expression includes the right of access to information held by public

bodies. To enforce this right, the state parties should provide information to the public in an easy, immediate, efficient and practical manner. They should also issue necessary actions that enable an individual access to information, such as enacting laws that guarantee the right to information."

It is well known that international covenants permit limitation of the freedom of expression to protect the security of the state. However, these standards impose a so-called tripartite examination when the restriction is imposed, that the restriction is under the provisions of the law in order to protect the best interest of the community.

An international document, the Johannesburg Principles⁷⁷, provides the best guidance for achieving a balance between freedom of expression and the protection of national security. Under the Johannesburg Principles, for the restriction to be legitimately in the interest of national security, the real purpose of which is to protect the state or its territorial integrity against the use or threat of force, or the ability of the state to respond to such a threat of force, whether from an external source, like a military threat, or an internal source, such as inciting violence to overthrow the regime ... In particular, the required restriction that is justified for national security requirements will not

⁷⁶ The General Comment 34 is published on: www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.GC.34_ar.doc

⁷⁷ See the Johannesburg Principles on National Security, Freedom of Expression and Right of Knowledge- www.article19.org/pdfs/standards/joburgprinciples.pdfThe Johannesburg Principles were adopted on 1 October 1995 by a group of experts on international law, national security and human rights, organized by the International Center for Anti-censorship in cooperation with the Center for Applied Legal Studies of the University of Witwatersrand in Johannesburg. The Principles endorsed the United Nations Special Rapporteur on freedom of opinion and expression and referred them to the Committee for its review of the annual reports on freedom of expression held annually since 1996. See text of these principles: <http://www.unhcr.org/refworld/docid/4672bc122.html>
<https://www1.umn.edu/humanrts/instreet/johannesburg.html>

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become legal if its basic purpose is to protect interests irrelevant to the national security, such as, for example, protecting the government from embarrassment or disclosure of errors.

Tshwane Principles⁷⁸, on national security and access to information, provide, in accordance with the international and local laws and practices, detailed guidelines on appropriately limiting secrecy.

There are 10 principles on the access to information laws. Formulated by the London-based Article 19 Organization and based on regional and international laws and regulations, they have become the dominant international standard in this area.⁷⁹

These principles are:

1. Maximum disclosure
2. Promoting culture of open government, proactive duty to publish and the duty to assist requestors.
3. Limited scope of exceptions,
4. Overriding right,
5. Appropriate timelines for responding to requests,
6. Right to appeal the refusal application,
7. Independent body to insure the right of access to information,
8. Overall historical time limit,
9. Fair cost,
10. Leak and whistleblowers protection.

United Nations Convention against Corruption

Freedom of information is a key tool in combating corruption and mistakes in government. Journalists working in investigative and non-governmental organizations can use the right to information to detect and help eradicate errors. The media can be a powerful anti-corruption tool, provided access to information and communication is easily facilitated and freedom of expression is protected as a fundamental right.

⁷⁸ Tshwane Principles on national security and access to information. The draft principles were drafted by 22 institutions of civil society and academic centers, with the assistance of the Open Initiative of the Justice Community and in consultation with the four special bodies of the United Nations, the African Commission on Human and Peoples' Rights, the Organization of American States, the Organization for Security and Cooperation in Europe, in more than two years of consultations around the world with multiple government actors and representatives of civil society

⁷⁹ ARTICLE 19, (1999) The Public's Right to Know: Principles on Freedom of Information Legislation. available at: www.article19.org/work/regions/latin-america/FOI/english/elements/index.html

Chapter III

Even in naming their laws, several countries have linked the name of the law to combating corruption and transparency, including Chile, Ecuador, and Mexico. In Finland, for example, the law is called "Decree on the Openness of Government Activities and on Good Practice in Information Management

The United Nations Convention against Corruption⁸⁰, ratified by all Arab States (save Somalia)⁸¹, points to the importance of enhancing transparency and ensuring effective access to information and respect, promotion and protection of the freedom to seek information (art. 10). Article 13 of the Convention requires the participation of society in promoting transparency and the involvement of citizens in decision-making, ensuring effective access to information, conducting information activities that contribute to zero tolerance of corruption, as well as public awareness programs, including school and university curricula.

Article 32 of the Convention provides that the each state party should take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

Pursuant to this Article, Jordan⁸², Tunisia⁸³, Morocco⁸⁴, and Palestine⁸⁵ adopted laws that ensure protection of whistleblowers and witnesses in the corruption cases (to the date of this study, there have been 78 protection cases provided by Integrity and Anti - Corruption Commission), while laws of Lebanon, Yemen and Sudan do not provide for this protection.⁸⁶

Access to Environmental Information

The world has moved from access to general information to specialized information, such as environmental information, to ensure citizens' participation in influencing decisions on natural resources, and realizing sustainable development and the interests of the poor. An informed citizen is more capable of making wise decisions either in elections or in participation in the dialogue on public issues or accountability of the government for its previous promises and mistakes. This is called environmental democracy.

80 The text of the agreement is available on the Jordanian Anti-Corruption Commission website: <http://www.jacc.gov.jo>

81 Ratified by Jordan under Law No. 28 of 2004 and published in the Official Gazette No. 4669 dated Aug. 1, 2004 Page 3719,

82 See: Whistle-blowers and Witnesses Protection Act No. 62 of 2014 based on the Integrity and Anti-Corruption Act. <http://www.jiacc.gov.jo/documents/26de4457-4694-4ba4-a78c-e38c82a329ac.pdf>

83 See: Basic Law No. 10 of 2017, dated March 7, 2017, relating to the reporting of corruption and the protection of whistleblowers http://www.legislation.tn/detailtexte/Loi-num-2017-10-du-07-03-2017-jort-2017-020_2017020000101?shorten=gHj9

84 See: Order Dahir No. 164/11/1 on the change and complement of Law 01/22 on the Criminal Code for the Protection of Victims, Witnesses and Experts in relation to Bribery, Embezzlement and the Use of Influence and Other Crimes, issued in the latest issue of the Official Gazette (5988 on Oct. 20, 2011). <https://www.hespress.com/societe/40106.html>

85 See: Anti-Corruption Law (Amendment) No. (1) for the year 2005 in Palestine. Article (18/2): The Commission shall ensure legal, functional and personal protection of witnesses, experts and whistle blowers in connection with the corruption crimes. The protection measures and actions shall be determined under regulations prepared by the Commission and issued by the Council of Ministers. <http://www.pacc.pna.ps/ar/index.php?p=main&id=181>

86 For more information on the protection of whistleblowers in the Arab countries, the Information Section of the ARIJ Network for Investigative Journalism prepared a study on the subject

The Earth Summit⁸⁷, held in Rio de Janeiro, Brazil, in June 1992, with the participation of 187 states, constituted a major turning point in the recognition of environmental information as a right rather than due to the tolerance of governments.

Article 10 of the Rio Declaration provides that:

“ Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

The above Article shows the relation between the right to know and the right to participate.

In September 2015, the United Nations Summit on Sustainable Development adopted the 2030 Plan of Action, where goal (16-10) provides for insuring public access to information.⁸⁸

Open Government Participation (OGP)

There has been growing recognition of the importance of access to information in development. For example, it is one of four key principles of the Open Government Partnership (OGP), which deals with good governance, the rule of law, transparency and combating corruption.⁸⁹

In 2011, Jordan joined OGP, the right to information is one of its four main components.⁹⁰ Under this plan, Jordan committed to “improving access to information through the adoption of amendments to the existing law to ensure access to information with a view to improving it and ensuring its consistency with international best practice.”⁹¹ The Ministry of Planning and International Cooperation is the competent governmental authority to follow up the implementation of Jordan’s commitments in the Initiative and the government’s liaison officer with the Initiative.

Since 2018, the Ministry of Planning has, through the Open Government Unit, participated and followed up commitments of the Kingdom in the Initiative, as well as coordinated efforts of the open government in the public sector in general.⁹²

87 <http://www.un-documents.net/rio-dec.htm>

88 <https://sustainabledevelopment.un.org/post2015/transformingourworld>

89 The Government Partnership officially opened on 20 September 2011 when the eight Governments (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States) agreed to the declaration of the open government partnership. Since 2011, the number of participating countries has increased from 8 to 75.

90 Jordan presented its first national action plan in 2012: http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/Jordan%20Draft%20Action%20Plan.pdf

91 Jordan National Action Plan, p.3, <http://www.opengovpartnership.org/country/jordan>

92 See: Open Government Partnership Initiative on the website of the Ministry of Planning and International Cooperation <http://www.mop.gov.jo/pages/viewpage.aspx?pageID=25>

Chapter III

The third national plan (2016-2018) includes 10 commitments, including access to information, promotion of public participation, public accountability and the development of a framework regulating freedom of information. As part of the preparations for the fourth national action plan (2018-2022), the open government unit released a stakeholder survey on fourth national open government partnership plan. In a consultation organized by the open government unit on Aug. 12, 2018, with civil society organizations, the participating organizations called for amending the right to information law, withdrawing the amended draft law in parliament, introducing a new draft law that complies with international standards, removing exceptions that do not conform to International standards, canceling the article requiring the requester to have an interest, and ensuring the independence of the information council.⁹³

On July 11, 2018, the Director General of the Media Commission addressed a circular to civil society organizations in Jordan requesting their recommendations and suggestions on improving media freedoms in Jordan in implementation of the Commission's commitment within the open government initiative.

Tunisia joined the initiative in 2014 and submitted its second work plan (2016-2018).⁹⁴

It seems that Morocco's entry into the open government partnership in 2018 has contributed to accelerating approval of the Access to Information Act. Morocco has not yet submitted its work plan, according to the organization's website.

The above conventions show that two obligations are to be performed by the state party:

1. Negative obligation: which means the state party refrains from carrying out any action or from issuing laws or keeping laws with the aim of withholding information and preventing access to it.
2. Positive obligation: which means that the state should take actions and issue laws that would obligate its institutions to publish and facilitate access to information.

⁹³ <http://www.mop.gov.jo/EchoBusV3.0/SystemAssets/pdf/ogp/Report-Ar.pdf>

⁹⁴ <https://tinyurl.com/ybo49s2t>



Chapter IV

Review of Required Reforms





Review of Required Reforms

There is hope that the Arab countries that have not approved laws on access to information, which are necessary in democratic transformation, economic growth, and combating unemployment and corruption, will follow the global trend.

With the acceleration of information technology, especially the Internet, it is in the interest of states to use these means to communicate with their citizens.

Without the freedom of information, state authorities can control the flow of information and materials that harm the government and selectively release good news. In such a climate, corruption spreads and human rights abuses go undeterred.

Information has become one of the sources of power in the modern era, where it enables making decisions from several alternatives, uncovers corruption, encourages investment and attracts foreign investments.

Several studies have shown a positive correlation between indicators of corruption and welfare in countries and transparency. States that do not allow the circulation of information are the most corrupt.⁹⁵

Civil society organizations and academics play a key role in promoting access to information, particularly in expanding the demand for information on the public interest. In many countries, it can be an important ally in public awareness, as well as in the training of public officials. It can also undertake a range of activities that help develop the power of access to information, including legal challenges (litigation) and research, including international best practices to test the limits of government openness. Private companies can also apply for information for their decision-making efficiency. In the United States and Canada, for example, the private sector is one of the main groups seeking information.

⁹⁵ https://www.article19.org/wp-content/uploads/2017/12/UNCAC_Information_Leaflet_ENG.pdf

Chapter IV

Training remains the wider area of cooperation between officials and civil society, in particular non-governmental organizations and academic institutions.

The best examples of the role of civil society organizations in promoting the culture of access to information are the experiences of Bulgaria and India. In Bulgaria, a civil society organization (AIP) initiated an annual celebration on the right to know on 28 September (the first celebration was in 2003), and in 2015 UNESCO decided to make this date World Information Day. On this day, events are organized to raise awareness about the importance of access to information by citizens and a gold key is presented to the best institution in the information disclosure area.

The celebration was held this year in Tunisia for the first time outside UNESCO headquarters in Paris in recognition of Tunisia's efforts to adopt its law, which is the best ranked in the Arab laws (13 out of 123 countries in the world).

World Information Day

In 2015 UNESCO made Sept. 28 of every year World Information Day. On this day, events are organized to raise awareness of importance of access to information by citizens and a gold key is presented to the best institution in information disclosure area



Experience has shown that a law on access to information is not an immediate prescription for ensuring the flow of information by the administration to the public. The public must be familiarized with the law and its uses and the concerned staff must be properly trained.

Summary

Upon the foregoing, it seems that Arab countries have not kept pace with the global trend in adoption of the right to information laws.

Freedom of opinion and expression is not complete without guaranteeing the right to information, and there is a close relationship among the right to information, the right to know and transparency, combating corruption and unemployment, increasing economic growth and promoting human rights.

Recommendations

1. Arab countries that have not adopted laws that guarantee access to information by citizens, should call for adoption of these laws, taking into account that this obligation has been agreed upon at the United Nations Summit on Sustainable Development within the objectives of the 2030 Action Plan, where goal (16-10) provides for ensuring public access to information.
2. Arab countries, that have adopted the access to information laws, should be urged to amend their laws where needed to bring them in line with the international standards and the best practices.
3. Governments and parliaments should build real partnerships with civil society organizations when such laws are approved and amended, and such organizations should be encouraged to train and monitor programs to raise public awareness about the existence and use of such laws. Experiences in several countries, particularly in Bulgaria⁹⁶ and India⁹⁷, show the role of civil society organizations⁹⁸.
4. International conventions are binding. The Arab countries must respect these obligations, including amendment of laws, to comply with such conventions, which in turn will increase the confidence of countries and international organizations in the honesty and promises of the Arab countries.
5. Arab countries should give preference to international conventions over their national laws in cases of discrepancy.
6. Whistleblowers need to be protected. It has been proven empirically that if there is corruption or other misconduct, official channels are mostly ineffective. An example of this includes what happened in Egypt when Hisham Genina, the former head of the Central Auditing Organization, talked about the amount of corruption, and he was prosecuted for spreading false news.⁹⁹
7. Civil society should be fairly represented in the authorities monitoring application of access to information laws.
8. Electronic and not just written requests for information should be acceptable.

96 Andrew Puddephatt (2009). Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws. The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom. <https://siteresources.worldbank.org/EXTGOVACC/Resources/atlCivSocietyFinalWeb.pdf>

97 P K Grover (2015). Role of Non Government Organisations and the Rti Act 2005

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99 <https://tinyurl.com/y8mhknqn>

9. Officials who intentionally refuses to provide information should be fined.
10. Civil society organizations should establish an alliance to support those who wish to prosecute persons withholding information. Regional organizations interested in the freedom of media or human rights should establish hotline to receive complaints from citizens and journalists unsuccessful in getting access to information.
11. Studies on visiting ministries and the information archiving institutions in the countries that have adopted the law should be funded and it should be ensured that the public sector applies the law.
12. A reward should be granted to the information institutions that request their journalists to apply for access to information.
13. The ministries and public departments that established clear mechanism for access to information should be granted medals for excellence.

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