

REGULATORY APPROACHES OF THE RIGHT TO INFORMATION ACCESS IN THE ARAB STATES

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Abstract

Purpose – However, the Right to Access to Information (RTI)¹ is guaranteed by article 91 of the Universal Declaration of Human Rights and more than 120 have adopted such a right, fewer Arab countries; mainly in Tunisia, Egypt, Morocco and Algeria, whose constitutions included the right of people to access information. Hence, the purpose of this research is to assess and provide an in-depth study of the status quo of the right to access to public information in the Arab region as well as to highlight whether the adopted laws have met people need of information.

Methodology/Approach/Design – In order to achieve the purpose of this research project, a ‘non-doctrinal’ empirical socio-legal research type of qualitative method has been undertaken to examine the right to access and request information in Arab States.

Findings – The paper findings shows that Arab countries are not keeping the pace on adopting and implementing the Right to Access to Information laws where culture of secrecy prevails and overcomes the openness in the Arab World.

Keywords: Right to Access to Information, Open-governance, Accountability, Arab Region.

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¹ The term “Right to Access to Information” RTI will be used in this article interchangeably as the right to information RTI, Freedom of Information FOI, and Right to Know RTK. Calland 2010 refers to the terminology point by stating that civil society activists, advocates and authors do not prefer using the ‘Freedom of Information’ terminology of choice in this field; instead, ‘the right of access to information’ (ATI) or ‘the right to know’ RTK have gained a kind of ascendancy in the past years.

INTRODUCTION

The past three decades have shown a rapid growth in the number of countries with RTI law. Whereas around dozen RTI legislations enacted by the end of the Cold War, currently more than 120 countries, extending from developed; developing; and underdeveloped states, with diverse political; legal; and cultural regimes, adopted RTI laws on the national level. According to Article 19 Organization assessment in 2015, the right of people to access information has been granted to over 80 percent of the world's population².

To have a wider understanding of the international growth of RTI, we need to find the influences that contributed to its extraordinary uptake in the 1990s and 2000s. This evolution has been clarified by several incentives, such as: normative means of internal reforms (Lidberg, 2016) ; implementing universal human rights standards; contributory goals (economic growth and good open governance (Shepherd; Stevenson; Flinn, 2010), and anti-corruption tool (Escaleras; Register, 2010); and empowering functional and technological developments such as supporting record archiving (Sætra, 2019).³

In practical terms, the spread of RTI legislations; recently, is described by a variation of external and internal burdens on governments to implement RTI law. In many circumstances, the internal pressure such as civil society and non-governmental organizations including anti-corruption; environmental; and human rights groups, have played a role on pressuring on governments to ensure the right of people to access information held by public agencies. On the external level, some countries have implemented RTI legislations as a technique to satisfy accountability and transparency commitments; both financially and politically, that imposed by regional or/and international organizations. In rarely scenarios, RTI laws originated from governments as the administrations recognize the RTI benefits for good governance.

Such a growth in the number of RTI legislations implemented, have perceived substantial changes in both administrations' and people's considerate of the right of people to access information. In reverse, access to public information had been viewed; before, as an instrument for combating corruption, advancing accountability and better governance (Islam, 2006). Gradually, along with these dynamic implications, RTI; worldwide, became an essential right given to people. In some states as well as international organizations, access to information is being seen as the system for the people to inspect its power to see the progress of governments and the public administration institutes.

² Article 19. (2015). *Asia Disclosed: A Review of the Right to Information across Asia 2015*.

PUSH MODEL VS. PULL MODEL

Comprehending the RTI systems worldwide reveals two different approaches by which public information becomes available to people. The first approach is where people; individually or in groups, demand information from public institutes that preserve the information in order to receive the information needed. The second approach is when public institutes share information with the public and hence the information become accessible for public proactively. RTI systems with robust RTI provisions on proactive sharing of information are known as the ‘push model’, whereas RTI regimes that place more burden on the right to demand information are considered as the ‘pull model’ (Solomon , 2008).

REACTIVE DISCLOSURE AS RTI ‘PULL MODEL’

According to the ‘pull model’ system, administrations are only obliged; upon demand, to provide information. This means that in order to obtain information, it must be pulled out from public agencies and no proactive disclosure of information (Breit; Henman; Lidberg; Snell, 2012). Hence, this model requires submitting information requests to the public agencies as governments provide information only in a responsive method.

Liberal democracies have adopted a RTI pull model to overcome the accountability issue rising from a perceived growing in government power (Roberts, 2006). The pull model system was the outcome of an adjustment between the demands of the key information players such as civil society actors, media outlets, the legislatures, and governments (Schartum 2004). International foundations, on the other hand, such as the World Bank (WB), played a role in promoting RTI adopters approving a pull model system (Xiao 2010). Accordingly, the ‘pull model’ is associated to superior control by government on information release, and to be found in states; more likely, where RTI originated from governments rather public involvements. For instance, three decades after the Australian RTI first adopted, in 2009 the RTI was changed from a ‘pull model’ to a ‘push model’ (McMillan, 2010).

PROACTIVE DISCLOSURE AS RTI ‘PUSH MODEL’

Push Model system refers to a RTI regime that involve bigger proactive and repetitive information disclosure by public agencies. In a RTI regime that implementing a ‘push model’, government; through proactive disclosure, is the core basis of the individuals to access information whereas submitting information through a request for information is considered a complementary part

in additional information access. Hence, Push Model regimes would eventually provide equal, inexpensive, and rapid access to information (Solomon, 2008).

According to such a system, the request for information is a last option that individual practices to obtain information and therefore a worldwide adoption to a proactive disclosure RTI regimes become a trend as for its clear requirements. For instance, the US; UK; Australian; Mexican; Indian; and other RTI laws adopted a proactive publication of information 'push model' regimes, which require public agencies to foresee the information demanded and to offer variety of information categories available for people, along with the responsibility of these agencies to make information available when requested (Breit; Henman; Lidberg; Snell, 2012). In order for public agencies to promote push model regime through 'proactive disclosure, it is their duty operate internet technologies to guarantee the availability of information through several formats, whether through publications or/and other typical media styles.

The 'push model' significant advantages would be the growth internet usage in communication between the public agencies and stakeholders these agencies could disseminate and circulate information at a low cost and on large scale the same time. Other important advantages of the 'push model' regime is that all community members would have somehow equal opportunity to obtain information and such affords anonymous and confidential access as people does have to submit a official request for information. Finally, the push model; for a long term, would facilitate making an active information system where information could be reused.

On other hand, the proactive push model regime for might also be challenging if misused by public agencies. The problematic issue of push model could either occur when public agencies distribute not interested information to public, or by providing big loads of information to the people, as opposite to delivering targeted or demanded information that more possible are elicited by the 'pull model' system. Moreover, push model regime might require an enormous capacity for public agency to install, monitor, and sustain as fore examining information and publishing. Therefore, push model most probably requires high cost, mainly during the initial phase (Puddephatt; Zausmer, 2011). Nevertheless, the proactive disclosure regime could play a major role in promoting the flow of information through the assistance of information technology, as well as such a flow would become frequent and easier to access.

The disadvantages of 'pull model' may be the key reasons that it was unsuccessful in several countries. For instance, the performance of RTI law in Jordan, was poor in general, as statistics show the successful requests were very low and were caused by technical procedures of processing requests (Shukeir, 2013) On the other hand, due to highly disappointment over the Bangladesh RTI

over reactive disclosure system, civil society and activist began the call on government to proactively release information rather to wait for information demands (Goswami, 2013). Yet, the developing tendency to adopt the ‘push model’ might be hindered by governments prefer secrecy rather disseminating information, hence, many states would prefer a ‘pull model’ that involves individuals initiating an access request and a more control of information disclose by government.

RTI SYSTEMS IN THE ARAB STATES

Studying the RTI within the Arab states would demonstrate that citizen face a number of challenges to obtain access to information, perhaps the most prominent of which is the high number of rules that ensure the preservation of confidentiality of information under the pretext of national security. In other words, achieving a state of alignment between the right to information and the preservation of national security is difficult in the Arab states, especially after the fight against terrorism and the emergence of the Arab spring. Therefore, regulations on confidentiality of information have been progressively established in among the Arab countries Laws⁴ that penalize governments’ criticism as well as public figures. Moreover, to have an enabling environment of access to information; within the Arab world, would face a “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.” (Shukeir, 2019) .

On the other hand, the weakness of civil society organizations within the Arab countries; due to the nature of the ruling authorities have contributed to the poor awareness of the principle of transparency and access to information. While the civil society organizations’ actors have proven the significant role in urging for implementation of RTI law in Asia; Africa and South and Latin America as

⁴ For example, 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.” Please see: Shukeir, Y. (2019). Access to Information in the Arab World “Focusing on Jordan, Tunisia and Yemen” Policy Paper: The Friedrich Naumann Foundation for Freedom & Arab Reporters for Investigative Journalism ARIJ. Please see the paper at <https://arij.net/wp-content/uploads/2019/02/Freedom-of-Information-in-the-Arab-World> ENG.pdf.

well as in reaction to the World Bank policies on fighting corruption (Michener; Worthy, 2018).

The status of the right to access to information differs from one Arab country to another, as indicated in the following table which examines the only 6 Arab countries⁵; among the 22 Arab countries, that enacted a law that guaranteed the right to access information⁶.

| | Jordan | Yemen | Tunis | Sudan | Lebanon | Morocco |
|--|--------------------|---------|--------------|-----------------------|-----------------------|---------------------------|
| Constitutional Provision on the RTI | No | No | Yes, Art.3 2 | No | No | Yes, Art.27 |
| Year of Passing RTI Law | 2007 | 2012 | 2011 | 2015 | 2017 | 2018 |
| Disclosure Precedence | No | Yes | Yes | Limited | Yes | Yes |
| Purpose to Request Information (Reasons or an Interest) | Yes | No | No | No | No | Reason able reason |
| Period to Respond to the Request | 30 | 15 | 20 | 2 weeks | 15 | 20 |
| Scope of Exceptions | Listed and open to | Limited | Limited | Open to discretion by | Open to discretion by | Open to discretion by the |

⁵ Jordan passed the first Access to Information Law ‘2007’ in the Arab world, followed by Tunisia to pass a decree No. 2011-41 in 2011 on Access to Administrative Documents of Public Authorities. Yemen has also passed Law No.3 on the Right of Access to Information in 2012, followed by Sudan to pass a freedom of information law in 2015. Lebanon has passed the Access to Information Law in 2017 and Morocco was the last Arab country to enact the Access to Information Act in 2018. For more information, please see: <https://www.right2info.org/resources/publications/countries-with-ati-laws-1/view>. (Last accessed 27/11/2019)

⁶ Source: information was obtained from the RTI laws of the above-mentioned countries, please see also Global Right to Information Rating available at: <https://www.rti-rating.org/country-data/>, and Shukeir, Y. (2019). Access to Information in the Arab World “Focusing on Jordan, Tunisia and Yemen” Policy Paper: The Friedrich Naumann Foundation for Freedom & Arab Reporters for Investigative Journalism ARIJ. Please see the paper at https://arij.net/wp-content/uploads/2019/02/Freedom-of-Information-in-the-Arab-World_ENG.pdf.

| | | | | | | |
|---|--|-----------------------|-----------------------|--------------------------------|--------------------------------|----------------------------|
| | discretion by the agency holding information | | | the agency holding information | the agency holding information | agency holding information |
| Request Fees | Yes | Yes | Yes | Yes | Yes | Yes |
| Right to Citizen or Everyone | Citizens only | Citizen and residents | Everyone | Everyone | Everyone | Citizen and residents |
| Oversight Agency to Publish Annual Reports | No | Yes | Yes | Yes | Yes | Yes |
| Appeal to Deny the Request Before a Court | Administrative courts | General courts | Administrative courts | Administrative courts | Administrative courts | Administrative courts |
| Global Right to Information Rating | 119 | 35 | 13 | 110 | 97 | 88 |

Table 1 – RTI Systems in the Arab States

FIRST: ACCESS TO INFORMATION ACT IN JORDAN

Jordan was the first country in the Arab world to pass the Access to Information Act No. 47 of 2007. The law has listed the exceptions that may not be disclosed, such as information related to national security, preservation of the rights of others, intellectual property rights, privacy, and preservation of public health and public morals. The Act also requires to establish an Information Council to oversee the implementation of the act and to accept any complaints regarding denying requests, yet its decisions are not binding. Within this regard,

around 50 complaints regarding denying of providing information were submitted to the Information Council between 2008-2018, where the Information Council has upheld requesters and succeeded in urging public agencies to hand in the requested information to requesters. (Shukeir, 2019).

On the other hand, the Act includes certain weakness; particularly, with respect to the lack of a test for classifying the governmental documents that may be exempted from exposure. In addition to that, the Act gives a privilege to other valid laws; such as the Protection of the State's Secrets and Documents Law No. 50 of 1971, to prevail over the Act, whether these laws were enacted before or after issuing of the Information Act (Shukeir, 2019). Article 13 of Jordanian Law on the Right to Access to Information stipulated a list of exemptions. The article states that 'Subject to the provisions of the applicable legislation, the official shall refrain from disclosing information relating to the following:

- Secrets and documents protected under any other legislation;
- Classified as confidential and protected documents obtained in agreement with another State;
- The secrets of the national defense or the security of the State, or its foreign policy.
- Information containing analyzes, recommendations, suggestions or consultations submitted to an official before a decision is taken, including correspondence and exchanged information between the various government departments.
- Information and personal files relating to the records of educational or medical persons, functional records, accounts, bank transfers or professional secrets.
- Communications of a personal and confidential nature, whether postal, telegram, telephone, or through any other technical means with the governmental departments and the responses thereof.
- Information whose disclosure affects the negotiations between the Kingdom and any other State or entity.
- Investigations conducted by the Public Prosecution, the Criminal Police or the security services in respect of any crime or case within its jurisdiction, as well as investigations by the competent authorities for the detection of financial, customs or bank violations unless authorized by the competent authority.
- Information of a commercial, industrial, financial or economic nature and information about tenders or scientific or technical research, of which its disclosure would result in a violation of copyright and

intellectual property or of fair and legitimate competition or which would result in an unlawful gain or loss of any person.

In other words, Article 13 of Jordanian Access to Information law, has clearly given the priority other legislations in a case of a conflict between a national legislation and the access to information provisions. Hence, the Jordanian law on access to information stands aside and other laws prevails.

Within this regard, the National Center for Human Rights (NCHR) in its 2010 annual report, that the Protection of the State's Secrets and Documents Law is considered as the major impediment to the proper implementation of the Access to Information Act in Jordan and recommended the government to amend the Law in consistent with the Access to Information Act.

An investigative report on the implementation of Access to Information in 2010 was conducted by the journalist 'Majdolin Allan' revealed that the government's unwillingness to properly implement with the law as well as deficiency of willing to enable the information flow to citizens are the key reasons led media correspondents to neglect the Act. However, other report conducted by Carter Center in 2014 shows that the response to the requested demands have improved in Jordan since Ministries started appointing an access officer to deal with the requests.

SECOND: ACCESS TO INFORMATION ACT IN TUNISIA

Right after the fall of the previous regime in a Tunisia; as a result of the uprising in 2011, a new Constitution was issued on in 2014 which guarantees the right to access to information. Later in 2016, the parliament issued 'the Organic Law on the Right to Information No. 22 of 2016. The Tunisian act on access to information requires that public information should be proactively released; differs from the Jordanian Act which requires that not only if requested. Also, Chapter 17 of the law requires the concerned agency to respond within 48 hours if it would refuse the request in case the access to information might affect someone's life or/and freedom. Moreover, the law does not require the information seekers to state they reason or purpose of the information they request.

On the other hand, the law has given the right to the concerned agency to refuse the access to information if such a release would risk the, national defense, international relations, public security, life of others, intellectual property and personal data. However, not to release information related to the identities of 'whistleblowers' if they provided information with the intention of revealing corruptions or violations. The Law has also required to establish an "Access to Information Commission" which its decisions are binding to the concerned

agency and also appealable before the administrative court. The Access to Information Commission has received about 228 cases since its formation and have determined 95 of these cases (Shukeir, 2019).

The law has also set penalties on the public official who deliberately impede the process to access information held by the public agencies. Moreover, the law set a criminal penalty on anyone deliberately unlawfully destroys any public document or was a reason beyond such a destruction. Chapter 57 of the Law stated 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. And 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.

THIRD: ACCESS TO INFORMATION ACT IN LEBANON

Lebanon passed the Access to Information Law No. 28 in 2017 to allow all Lebanese and non-Lebanese to access documents held by the public administration. However, the law came out after years of demand by the civil society organizations of which introduced the draft law through the National Network to Promote the Right of Access to Information in 2009. The National Network to Promote the Right of Access to Information proposed and submitted the draft law on the right of access to information to the House of Representatives several times to be studied and ultimately passed by the parliament in 2017.

The law set a list of excluded information from disclosure; particularly related to information about national security and defense, the State’s international relations, the State’s economic and financial interests and the national currency integrity. Also, secret tribunals and those concerning personal status and incidents may not be disclosed. Moreover, the parliament and parliamentary committee sessions minutes, the Cabinet deliberations and secret decisions, and the State Consultative Council opinions may not be released only by the concerned institutes and under a judicial review. On the other hand, the Law requires the public administrations to publish all the decisions, memos, and circulars with respect to the interpretation of regulations within 15 days of the issuance date, on its websites. The law has assigned the National Anti-Corruption Authority to hear complaints regarding the rejected and ignored requests.

Notwithstanding the enactment of a law on access to information in Lebanon media and civil society activist; such as Tony McChaile, believes that the however, there are many requests are being submitted to the government administrations to obtain information, yet the responses are limited due to a lack of access officers in the public administrations to treat and respond to requests, as well as no public body has been formed to review the decisions of public

administration in case of rejecting the requests. He assumes that the government is not fully serious in the implementation of provisions of the Law; particularly with respect to the duty of the administration to disclose information related to corruption and mismanagement (Shukeir, 2019).

CONCLUSION AND RECOMMENDATIONS

The paper has tackled RTI around the Arab Region to examine the role of the RTI in promoting transparency and accountability. Addressing the concept of access to information in the Arab States shows that the full disclosure is not a concept that governments fully believe. Having only six countries among the twenty-eight Arab States that have adopted RTI laws shows that the Arab countries are not keeping the pace with the worldwide trend in addressing the Right to Access to Information laws. The culture of secrecy is a norm that prevails and overcomes the culture of openness in the Arab World (Butenschøn, 2015). However, this situation can be changed through a long-term process of legal and institutional reforms; changes the established beliefs of secrecy within the public institutes through appropriate incentives; review legal provisions that impede free access to information; and governments should develop a clear guidance on the classification of documents to prevent personal assessment.

Therefore, it is essential that access to information be adopted in the Arab world as well as a thorough reform to the current RTI system in the Arab countries be undertaken. Hence, Access to information campaigns should be held to identify priorities and advance efforts to obtain information. these campaigns can demand the right to access information on health care, education, housing, development, and the environment.

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