



CAIRO INSTITUTE
FOR HUMAN RIGHTS STUDIES
Institut du Caire pour les études des droits de l'homme
مركز القاهرة لدراسات حقوق الإنسان

Human Rights Council
Twenty-fourth session
Agenda item 3

Right to access to information in the Middle East and North Africa

The Cairo Institute for Human Rights Studies draws attention to key challenges facing the right of access to information in the Middle East and North Africa. The right of access to information is guaranteed under the right to freedom of expression as laid out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, article 19 of which provides the right to seek and receive as well as to impart information. Few countries in the Arab region have laws regarding citizens' right to access information. Yemen, Tunisia and Jordan are to be commended for having passed such legislation, though in all cases these laws should be reformed and strengthened. Moreover, while the Tunisian and Yemeni laws are strong enough as to constitute positive steps towards greater access to information, the Jordanian law is so full of exceptions as to do little to advance the right.

The Cairo Institute has previously called attention to other challenges related to freedom of opinion and expression in the Arab region, including illegitimate restrictions on speech challenging those in power or prevailing social and religious norms. The ability to speak freely is only one component of this right, however. To fully exercise the right to freedom of opinion and expression, individuals must be able to seek and receive information, particularly from and concerning their governments, in order to form their own views in an independent and informed manner. As such, access to information is a key component of a democratic society, as only informed citizens are able to actively and effectively take part in the political life of their country, to check abuses by those in power, to fight corruption, and to take meaningful action to improve the economic, political, and social welfare of the whole community.

It is therefore crucial that countries which do not currently provide a legal basis for the right of access to information pass laws to do so and that all such laws

be in compliance with international human rights standards. An effective access to information law should include the following components:

First, the law should not impose restrictions on who can file a request for information. The law should cover all public bodies, private bodies totally or partially owned or controlled by the state or financed by public funds, to the extent of control or financing, as well as private bodies carrying out a statutory or public function or service, to the extent of such activity. The law should define “information” in the broadest terms possible and include a clause stipulating that the law is to be interpreted in accordance with international human rights law and in terms providing for maximum disclosure, to combat the tendency to interpret such laws restrictively.

Second, requests for information should be permitted in any form, and no reason for making the request should be required, in contrast to article 7 of the Jordanian law (Law 47/2007), which requires a legitimate reason. The law should only require the requester to provide such detail concerning the information requested as is reasonably necessary to enable identification of the information in question. The law should require the authorities to assist applicants where they require such assistance, including in the case of requests by persons with disabilities, and that information be provided, where possible, in the form requested. Any fees required must be minimal and not such as to impede requests for information in practice.

Third, the law should require that authorities respond to requests within a brief time period, and should provide for accelerated replies where the life or liberty of a person is concerned. Should the authorities refuse to provide the requested information, they must inform the applicant of this decision and provide justification for it, and the law should provide the applicant with the ability to challenge such a decision, including through an ultimate appeal to an independent court.

Fourth, the law should provide for exceptions to the obligation to provide information only in a limited and clearly defined set of circumstances, rather than protecting all information that is ‘classified,’ ‘secret’ or ‘protected by other legislation’ – all of which terms appear in article 13 of the Jordanian law. Broad prohibitions on accessing information related to national defense, security, foreign policy, or negotiations with foreign countries are also illegitimate if not more specifically limited, as are other overly broad or vague grounds for exceptions. International standards should be consulted for further details on the precise formulation of exceptions. The law should also provide for a public interest override, whereby information that would otherwise be excluded from release may not be if the public interest in disclosure is greater than the interest protected by exempting the information from release. The burden of proof relative to such a determination should lie with the information holder. The regime of exceptions laid out by articles 16-18 of the Tunisian law

(Decree No. 2011-41) does not comply with international standards, as several of the categories listed in the law as grounds for exceptions are described in overly broad terms, the standard for infringement of these grounds required to prevent the release of information is loose, and a general public interest override is not provided for.

Fifth, the law should stipulate the appointment of an information specialist for each government body charged with facilitating access to information, responding to requests, and undertaking proactive disclosure. The law should also establish an independent oversight body with a mandate to promote access to information – while the Jordanian law establishes such a body, for instance, it does not give it independence. This body should be charged, among other powers and duties, with receiving appeals of decisions to withhold information (prior to appeals to a court), conducting inspections where improper behavior relative to access to information is suspected, and issuing monetary sanctions for infringements of government duties under the access to information law where appropriate. The oversight body should also be required to report regularly to parliament and the public as to the effective implementation of the right of access to information,

Sixth, the law should provide for proactive disclosure of extensive categories of information within a short time frame following the generation of said information and in a manner that is easily accessible and presented in a way that facilitates comprehension.

Seventh, the law should impose penalties on those who restrict access to information. Among other penalties, countries should introduce criminal penalties to their penal codes for the deliberate concealment or destruction of information, the presentation of misleading information, or attempts to intimidate information requesters.

Eighth, the law should stipulate that the release of information in violation of the access to information law will never be punished in cases where the releaser of information acted in good faith, with punishment defined to include harassment, the filing of lawsuits and the like, where motivated by the release of information. The Yemeni law should be improved in this regard, as, following a last minute amendment prior to passage to article 13, it only protects those who release information from punishment when that information is released to an official investigation.

Finally, laws on access to information should be complemented by a law on whistleblower protection. Access to information systems are rarely perfect; as such, fulfillment of rights in this area is enhanced by providing a strong legal framework under which individuals who witness wrongdoing are able to share information about that wrongdoing without suffering punishment or retaliation. States should comply with the Global Principles on National Security and the Right to Information (known as the ‘Tshwane Principles’) in this regard,

including, crucially, by protecting those who make disclosures in the public interest and recognizing an enhanced ability to present information publicly where internal reporting mechanisms are inadequate, according to the guidelines laid out by these principles. Excessive punitive measures against whistleblowers, including charges of espionage or sedition, should be recognized as a rights violation.

As countries in the Arab world struggle to define a more democratic future, the ability of their citizens to have real and meaningful access to information from their governments takes on fundamental importance. It is as such crucial that countries in the region move to implement legislation addressing this right, as well as complementary whistleblower protection; and it is further crucial that such legislation be in accordance with international standards, and not merely window dressing that does not substantively advance the underlying right. By doing so, they will help to enhance the rights of their citizens, to guard against corruption, to promote more efficient and effective governance on the whole, and to create the conditions for a more participatory and informed democratic system.