

# ACCESS TO INFORMATION IN THE MIDDLE EAST AND NORTH AFRICA

A study of Tunisia, Morocco, Lebanon and Jordan

---

**“I WATCH” Organisation is a Tunisian non-profit, independent, watchdog organisation that aims to combat financial and administrative corruption and enhance transparency. I WATCH became the official contact point for Transparency International in Tunisia in 2013, a chapter under establishment in 2017 and since 2019 is the accredited National Chapter in Tunisia.**

**www.iwatch.tn**

## **Access to information in the Middle East and North Africa**

A study of Tunisia, Morocco, Lebanon and Jordan

Author: Ismaïl Ben Khalifa

Reviewers: Adam Foldes, Mariana Ghawaly

Cover: Mmaxer/Shutterstock.com

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 2021. Nevertheless, I WATCH Organisation cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

ISBN: 978-3-96076-186-0

2021 I WATCH Organisation. Except where otherwise noted, this work is licensed under CC BY-ND 4.0 DE. Quotation permitted. Please contact I WATCH Organisation - [contact@iwatch.tn](mailto:contact@iwatch.tn) - regarding derivatives requests.



This report has been published within the context of the grant EMPOWERING CIVIL SOCIETY AND CITIZEN ENGAGEMENT FOR TRANSPARENCY AND ACCOUNTABILITY, funded by the German Foreign Office.

# TABLE OF CONTENTS

---

<b>INTRODUCTION .....</b>	<b>4</b>	<b>ENDNOTES.....</b>	<b>25</b>
<b>OVERVIEW OF THE LEGAL SYSTEMS .....</b>	<b>6</b>		
<b>ANALYSIS OF THE LEGAL FRAMEWORKS .....</b>	<b>8</b>		
<b>EXTENT OF RESPECT OF RTI IN THE COUNTRIES</b> <b>SUBJECT OF THE STUDY.....</b> <small>ERROR! BOOKMARK NOT DEFINED.</small>			
<b>RECOMMENDATIONS .....</b>	<b>18</b>		
<b>BIBLIOGRAPHY .....</b>	<b>22</b>		

# INTRODUCTION

The right to information (RTI) is an essential pillar for accountability<sup>1</sup> and anti-corruption<sup>2</sup> because it gives citizens access to information from public institutions. This means that citizens will be able to make informed decisions and grant their basic rights including education and basic health services.<sup>3</sup>

This importance has been enshrined by the inclusion of this right in several international legal instruments, such as Article 19<sup>4</sup> of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.<sup>5</sup> The link between access to information and the fight against corruption has also become an indicator of the governance of a State.<sup>6</sup>

The RTI goes beyond international texts, it was also recognized in regional conventions such as the European Convention on Human Rights in its article 10, the American Convention on Human Rights in its article 13 and the African Charter on Human and Peoples rights in its article 9.<sup>7</sup> Although there are no similar texts issued by the Arab League to proclaim this right, the Arab Convention on Anti-Corruption have named corruption a crime and called not only on governments, but also individuals and civil society organisations to fight it, pointing out to the need of a transnational cooperative approach in tackling the issue.<sup>8</sup>

In various national laws the RTI has a constitutional status.<sup>9</sup> However, in this study, it will be treated in four Arab countries: Tunisia, Morocco, Lebanon, and Jordan. The study will tackle the reach of the RTI in

these countries in terms of legal framework and effective implementation.

As for access to information officers, their mission to facilitate the access to information is a clear implementation of the fifth principle of Article 19. This position is provided in both Moroccan and Lebanese law, contrary to the Jordanian law. Although in 2019, the Jordanian government has suggested amendments<sup>10</sup> to article 8 of the law to bind the department with publishing many documents such as the public funds and the international and regional conventions.

Following the Arab Spring, all sampled countries except Jordan have recognized this right in their legal systems. Jordan is the only country that had this kind of law back in 2007. The comparative analysis of each country has also shown different aspects related to the implementation of the right of access to information and thus a different rank.

For Tunisia, and just after Jordan, its law was the oldest (2016) and was ranked 13<sup>th</sup> worldwide according to Global RTI Rating developed mainly by Access Info Europe and the Centre of Law and Democracy. The right of access to information in Tunisia was provided in the 2014 Constitution and the law provided that an independent authority with various powers has the role of protecting this right by ensuring that its limitations are clear and well defined. Some challenges are still to be noted such as the impact of the appeal by the administrative bodies against INAI decisions on the respect of reasonable time limit and the gratuity of the information. There are also some non-compliant

administrative bodies as far as the duty of proactive disclosure is concerned.

Even recently adopted in 2018, the Moroccan law was ranked 88<sup>th</sup> worldwide, the text is criticized mainly for the lack of independence of the Right of access to information Commission as it is considered as subordinate to the government and its members are appointed by the latter. The Commission role is not quite clear in terms of the nature of its decisions (judicial or consultative). There is another gap to point out which is related to the ambiguity of the elements that constitute a crime of information misuse.

The rank of Lebanon is 98<sup>th</sup> since the Anti-Corruption Commission is not yet established, this authority will be also vested with protecting the right of access to information, but the law had provided vague terms for this right' exceptions.

Jordan' rank is 119<sup>th</sup> as there are various challenges in its law: the non-independence of the Information Council from the Executive, the absence of the legal duty of proactive disclosure, exclusion of entities and foreigners from using the right. Some modifications are intended to be adopted, and to some extent, the law can be improved.

While both Tunisia<sup>11</sup> and Morocco<sup>12</sup> do consider RTI a constitutional right, the Lebanese and Jordanian Laws do not, which, among other factors, had an impact on their world rank in the Global RTI Rating.<sup>13</sup>

## KEY FINDINGS

- All four countries have a legislative framework regulating the right of access to information
- Only two countries out of four had provided for a constitutional status for RTI: Morocco and Tunisia
- Three countries out of four had legally provided the duty of proactive disclosure: Tunisia, Morocco, and Lebanon
- Only one country out of four did not establish the authority commissioned to protect RTI: Lebanon
- Only one authority is independent from the Executive structurally and functionally: Tunisia

## GENERAL RECOMMENDATIONS

To improve the implementation of RTI, we recommend that all the countries:

- + work on promotion of access to information culture with focus on public servants' awareness
- + raise awareness of citizens toward the importance of the right to information in accountability and fighting corruption
- + improve the logistical and knowledge base that guarantee this right
- + ensure that the personal data of applicants is removed from decisions and recommendations published by the authority vested in protection of RTI

# OVERVIEW OF THE LEGAL SYSTEMS

## Tunisia

The Tunisian Constitution provides in its article 32<sup>14</sup> that “the State guarantees the right to information and the right of access to information...”, by which the RTI became a constitutional right. But it was not the first legal text recognizing this right. In fact, the Decree-Law n°41-2011 on access to administrative documents of public bodies<sup>15</sup> was the first legal text to consecrate the RTI as it stemmed from the values of the Tunisian revolution which founded the pillars of democracy, notably accountability. The Organic Law n°22-2016 sought to guarantee the constitutional right of access to information.<sup>16</sup>

The Law provided that an authority called Access to Information Authority (INAI)<sup>17</sup> has several missions to guarantee the protection of this right<sup>18</sup> apart from its judicial role, including an administrative role for monitoring and promoting RTI, as well as ruling on RTI related disputes. The legal framework in Tunisia is quite sufficient<sup>19</sup> in this sense. Even the internal administrative circular n°19 of 18 May 2018 on RTI contained explanatory provisions to public servants to understand better the law and its objectives.

Among key advantages of the 2016 organic law, are the absence of the requirement that the requestor has to give reasons for their requests, although some administrations tend to assess the intentions of citizens and ask for reasons of their requests before replying on them.<sup>20</sup>

## Morocco

In Morocco, the RTI was provided in the Constitution reviewed in 2011<sup>21</sup>. It guarantees in its article 27 to each citizen “the right of access to information held by the public administration, the elected institutions and the organs invested with missions of public service.

“The right to information may only be limited by the law, with the objective of assuring the protection of all which concerns national defence, the internal and external security of the State, and the private life of persons, of preventing infringement to the fundamental freedoms and rights enounced in this Constitution and of protecting the sources and the domains determined with specificity by the law.”

Despite the constitutional recognition, the access to information was regulated by law<sup>22</sup> 7 years after. The law covered various aspects such as the Commission<sup>23</sup> vested with protecting this right and the procedures<sup>24</sup> for getting information. The law entered into effect in March 2019 which faces several challenges such as (i) the weak awareness by the citizens especially those living in regions other than the capital, (ii) the absence of clear provisions for the role of access to information officer in regard to replying to access to information requests, (iii) the possible contradiction with the law on personal data protection and (iv) the ambiguous definition of good and bad faith.<sup>25</sup> All in all, the Moroccan law is still deficient and the limitations of its implementation include that the applicant must be Moroccan or resident.<sup>26</sup> Another limitation is the fact that the law incriminates the bad use of information<sup>27,28</sup> which

goes against Article 19 of ICCPR that guarantees the three components of the right to information: seek, receive and impart.<sup>29</sup>

## Jordan

Jordan was the first Arab State<sup>30</sup> to enact such law in 2007<sup>31</sup> despite RTI not being provided in its constitution.<sup>32</sup> The law has regulated RTI and created a new institution called The Information Council which role is to implement the law. However, the law contains gaps especially in relation to the role of the Council.<sup>33</sup> The latter plays an intermediary role between the administration and the citizen and issues non-enforceable decisions. Although the department of national library speaks about complaints in its official website, the information Council's role is still ineffective.<sup>34</sup>

The appointment of the Information Council members does not guarantee any independency of the institution as they are all appointed by the government. Therefore, its decisions cannot be

considered impartial<sup>35</sup>. The proceedings before the Council may allow the defendant public body to attend and participate in the Council's decision if this body is represented in the Council, which poses a conflict of interest and contravenes the principle of equality of arms.

## Lebanon

In Lebanon, the law on RTI has seen the light in 2017,<sup>36</sup> the first law related to RTI and to the jurisdiction to rule on the litigations that may be presented before the National Anti-Corruption Authority.<sup>37</sup> Nonetheless, no procedural steps followed to put it into actual implementation. In fact, public administrations ruling are still ignoring it, not to mention that it has not yet been incorporated into the work mechanisms of journalists and civil society organisations. At the same time, public administrations' website ignore what is stipulated in the law regarding the necessity of publishing their data.<sup>38</sup>

# ANALYSIS OF THE LEGAL FRAMEWORKS

## Methodology

This study is a comparative research on the right of access to information in four countries from the MENA Region: Tunisia, Morocco, Lebanon, and Jordan, aiming to assess the progress made in the region regarding the implementation of this right.

To achieve such aims, the analysis focuses on the degree of compliance of national laws (of each country) with international standards, it also includes a comparison between these texts through their commonalities and their points of difference.

Analysis of RTI legislations different countries requires a comparison between the compliance of these rules with principles provided by the non-governmental organisation Article 19 - the International Centre against Censorship and endorsed by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 1999.<sup>39</sup>

And to verify the compliance of these legislations with international standards, the study was based on freedom of information principles of the non-governmental organisation Article 19 - the International Centre against Censorship which principles the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression endorsed in 1999 and included in his report submitted to the UN Commission on Human Rights in 2000. The analysis was also referring to RTI ranking developed by Access Info Europe and the Centre of Law and Democracy which was used to assess the regulating laws of access to information.

Aside from analytical method, the study contained empirical-based findings on the reality of access to information with the collection of different views from different stakeholders such as the authorities commissioned to protect the RTI, CSO working in this field, journalists, and experts. These views were shared both through interviews and desk review.

RTI may either be fulfilled by proactive publication or by disclosing information on request (1). The issue of requesting information must also see whether the information in question is covered or not by the RTI exceptions (2) and the competent authority to rule on such matters (3). The possible appeal on the mentioned authority decisions will be also discussed (4).

## Accessibility of information

Information can be accessible either when pieces of information are made available in accessible digital platform, printed documents or via access to information request. The proactive publication of information is the duty of the concerned public bodies as well as private companies to publish all kinds of documents specified in the law. The proactive publication implements the second principle of The Public's Right to Know: Principles on freedom of Information Legislation .



## Tunisia

According to INAI caselaw principles and its interpretation to articles 6, 7, and 8 of the RTI law, it is mandatory for the administration to respect the duty of proactive publication. Moreover, there are three categories of information concerned with this duty:

- + The first category is related to the information that must be available in a usable format such as the list of provided services, the list of ongoing programs and projects, the information related to the budget of the public body, etc. (Article 6)
- + The second is related to the information that should be available in the public bodies' websites (Article 7)
- + The third category is related to the information subject to two consecutive access to information requests that the administration must automatically make it public (Article 8)

The public bodies subject to the law are defined in the RTI law which cites a wide range of public institutions such as the presidency of the republic, the government, the ministries, the independent authorities, and the local councils. Private law subjects who manage a public service and all organisations and associations which benefit from public funds are also included in this list.

INAI has developed in its caselaw a set of criteria to determine whether a structure is subject or no to the RTI law as the latter was not sufficiently clear on some matters. These criteria are:

### A) Public form of the structure

INAI has confirmed that the organic law applies to all public bodies including the High Authority of Human Rights and Fundamental Liberties.

### B) Management of a public service

INAI used this criterion to recognize that the Tunisian Bar Association is subject to the law<sup>40</sup>.

### C) Public financing<sup>41</sup>

The criterion was used in multiple INAI decisions to hold a body subject to the law. For example, INAI considered that the law applies on associations which benefitted from public funds<sup>42</sup> and on professional unions.<sup>43</sup> In relation to political parties,<sup>44</sup> INAI made the difference between candidates and the party itself to conclude that only candidates benefit from public indemnities for their electoral campaigns. INAI has also recognized that public funds can be either in cash or in kind.<sup>45</sup>

The definition of information to be published proactively was also ambiguous in the Tunisian law. The proactive publication is provided in articles 6 to 8 of the Tunisian Law. They are all documents which allow a citizen to benefit from the services of the public body in question, such as "the detailed list of services provided at public, the certificates it issues to citizens and documents necessary for their obtaining, the conditions, time limits, procedures, parties and stages of their services"<sup>46</sup>, and "the legal, regulatory, and explanatory texts governing its activities"<sup>47</sup>.

The proactive publication is also a guarantee to enhance the administration accountability as it includes the publication of policies and programmes that concerns the public and reports of audit authorities in conformity to the international professional standards. They must also publish information related to the access to information procedures which are the "forms for access to information, the grievance procedure, the competent department for receiving it from the body in question"<sup>48</sup>, and a "nominative list of access to information officers"<sup>49</sup>.

INAI caselaw has elaborated more to define the term information and its specificity. It must be available, definitive, and not subject of the services provided by the administration. For example, an administration that provides land titles information for the citizens must not consider this document as part of the definition of information in the eye of RTI law. Otherwise, it would not be a service anymore given that a request for an information is free whereas getting a land title information is granted in return of fees.

## Morocco

The proactive publication was not exclusively provided in Tunisian law, it was also respected by the Moroccan law in its second article. It appears that the provisions of the article are generic and can include any structure which manage public services.

## Jordan

The 2007 Jordanian law briefly mentioned the institutions subject to the law and did not provide at all the duty of proactive publication which makes this legal text incomplete in fulfilling its objectives of implementing RTI and improving accountability. The same law allows only people with Jordanian nationality to demand access to information and excludes foreigners and legal entities. There is an

amendment proposal that can overcome these gaps to enable them but with requirements to be respected in the access to information request.<sup>50</sup>

## Lebanon

Concerning Lebanon, the 2017 law mentioned in its article 2 the administrations subject to access to information and thus subject to proactive publication. The list of administrations appears comprehensive and includes the institutions of public interest, companies owned by both private and public shareholders, and the institutions and private companies assigned to manage a public service or a public domain.

## Access to information exceptions

The study of access to information exceptions is crucial, as these provisions may undermine the principles of the law or prioritize other interests such as the state's interests to protect its national security, or individuals' privacy.

Before tackling the content of these exceptions in the different laws, it should be noted that approaches in adopting these exceptions were varied between the countries. In Tunisia, exceptions were made definite and narrow<sup>51</sup>, contrary to the legislations of other countries in which exceptions are formulated in vague terms.

## Tunisia

The Tunisian approach was the most open one as it distinguished between the absolute<sup>52</sup> and relative<sup>53</sup> exceptions, each of which had its own legal rules.

The relative exceptions are laid down in article 24 of the organic law n°22-2016, they are related to harmful access to information in the scope of:

- + National security
- + National defence
- + International relations
- + Rights of individuals in relation to their privacy, their personal data, and their intellectual property

These exceptions are time-limited<sup>54</sup>, they cease to exist once their motives are gone and they are assessed through a harm test (principle 4 of Article 19)<sup>55</sup>. The harm must be severe, instantly, or eventually. There is also a public interest test foreseen in line with principle 4 of Article 19 This

principle prioritizes revealing information and that was the case for INAI case law by which INAI tended to adopt a narrow interpretation of these exceptions and make the administration prove that the instant or eventual damage<sup>56</sup> to be prevented once the information is not given is greater than the interest of the applicant in accessing to that same information.

The organic law had also provided the possibility to relatively access information related to "eminent threat to health, security, environment or to committing a criminal act"<sup>57</sup> or "to revealing fatal human rights violations, war crimes or investigating and pursuing their perpetrators, unless it does not prejudice the greater interest of the State"<sup>58</sup>.

As for the absolute exceptions, they are basically related to whistleblowers personal data<sup>59</sup>, there is no harm test nor a public interest test. Their protection is not determined in time and their revealing by a public servant could induce criminal prosecution, which was confirmed in INAI case law. These provisions reflect the respect of Tunisian law the ninth principle of UN report when it comes to whistleblowers protection.

Apart from the absolute exceptions, the legal framework of RTI exceptions gave INAI and the subjected bodies the power to assess whether exceptions are applicable or not. It is the key role<sup>60</sup> to be played by access to information officers to guarantee the RTI. Their role is to distinguish between accessible information and information that could be subject to exceptions, but in general they have an important role in implementing the law.

## Morocco

In Morocco, the exceptions of RTI were regulated in article 7 of the law which Listed many exceptions<sup>61</sup>.

These exceptions are multiple and vague<sup>62</sup> which undermines the RTI by excluding documents which disclosure do not cause any harm. Those documents are related for example to monetary, economic and financial State policy or the deliberation of ministerial council'.

## Jordan

The Jordanian approach was far more extensive as it multiplied exceptions and their scope of application. The administration can deliberately classify documents<sup>63</sup>, which is a role vested by the law itself<sup>64</sup>, to make them secrets. The classification of

documents is immune to any judicial control, which makes it arbitrary.

Furthermore, article 13 of 2007 law refers to secrets and protected documents under other legislations<sup>65</sup>, which are regulated in the law on protection of State's secrets and documents<sup>66</sup>, considered as repressive and outdated (enacted in 1971). This law prohibits for example in its article 8 "the revelation of reports which content may cause bad effects on moral spirit of citizens.

The review of 2007 law is deemed necessary among government's side<sup>67</sup>, civil society, and journalists. The proposals to amend this law contained some solutions such as the harm test and the balance of interests. However, these amendments should consider international standards related to access to information inter alia the provisions that does not respect these standards Although the Jordanian government consider these amendments are sufficient, it appears that it is incapable of introducing improvements to the law<sup>68</sup>.

## Lebanon

Contrary to the extensive nature of the exceptions in Moroccan law, the Lebanese one was more detailed. In fact, Article 4 of the law defined the administrative documents which contain information of personal nature: "Limits of personal status, files containing all kinds of direct or indirect information of a natural person including IP address, and by comparing and crosschecking information from multiple sources".

The Lebanese law did distinguish<sup>69</sup> between:

- + non accessible information like "secrets of national defence, national security, and public safety" and "the management of secret foreign relations of the State", and "any kind of information that harm financial and economic interests of the State and the currency safety" which means they are non-accessible by the nature of their content. This is assessed by the administration and then by the anti-corruption commission
- + and non-accessible documents specifically mentioned in the law such as opinions issued by State shura board unless made accessible by stakeholders in the context of judicial review and secret meeting minutes of the house of representatives and its committees unless decided to publish them.

Similarly, the exceptions in the Lebanese law are excessive and include blocking access to information that could jeopardize financial and economic interests of the State and currency safety, such exceptions are not at all clear and gives the administration the free discretion to reject any access to information request based on its economic nature.

## Authority commissioned to protect RTI

The authorities in charge with access to information are the main guarantee to protect citizens, civil society, and journalists from the administration excess of power and blocking information without legal grounds. However, the composition and the mode of appointment of each authority's staff is different from one state to another.

## Tunisia

For the Tunisian legislator, the appointment is guided by three principles: efficiency, legitimacy and representativity of all stakeholders.

The first principle was enshrined in requiring a minimum proficiency in the relevant fields. These fields were specified in article 41 of the organic law n° 22-2016, the board of INAI is composed of an administrative judge, a judiciary judge, a member of national board of statistics, a professor in IT, a specialist in administrative documents and archives, a journalist, and a lawyer, with a minimum of 10 year-experience. The composition of INAI includes all types of specialties related to access to information: law, archive, IT, and statistics.

As for the principle of representation, the board must contain a representative of associations active in this field and of national authority of personal data protection which made the composition of INAI diverse and balanced.

The principle of legitimacy is guaranteed by electing members of the board<sup>70</sup> by the parliament out of shortlisted 3 candidates from each category. This mode of appointment had a positive impact on protecting RTI<sup>71</sup>.

The INAI members were elected on 18 July 2018, the presence of women was significant as 4 women were elected out of total of 9 seats.

INAI has a judicial role in adjudicating litigations in the field of access to information and it applies the same procedure of an administrative court.

Its decisions are first instance decisions; they are appealable before the Administrative Tribunal. Finally, these decisions are informed to parties to a litigation, and they are published in INAI official website.

INAI is vested with other roles such as the promotion of access to information culture, periodic assessment on RTI implementation and giving its legal opinions on bills of laws and decrees that falls within the scope of access to information.

These missions confirm not only its independency but also a comprehensive role in the access to information field.

## Morocco

As for Moroccan law, the role of adjudicating disputes related to access to information is given to RTI Commission<sup>72</sup>, which receives complaints from access to information applicants, rules on them and issues recommendations in relation to these complaints.

The judicial role of the Commission is problematic; it is not an authority but a Commission. Its independency can be questioned, as can the enforcement of its decisions since the law gave it a consultative role rather than a judicial one. The commission decisions can be appealed before the Administrative Tribunal, as it has a judicial role in specific cases (Article 22)<sup>73</sup>. But at the same time, the same law recognizes ordinary jurisdictions (the Administrative Tribunal) to examine cases of access to information. The Commission has no exclusive subject-matter jurisdiction on this type of cases. The RTI Commission has other roles like those assigned by INAI such as the legal opinions on bills of law<sup>74</sup> and raising citizens awareness of this right.

The Commission is headed by the president of the national Commission of controlling personal data protection. Its members are two representatives of the administration appointed by the prime minister, two members appointed by the speaker of the house and the head of the councils' house (upper chamber of the Parliament), a representative of national committee of integrity and anti-bribery, a representative of the Archives of Morocco, a representative of the national board of human rights, a representative of, the conciliator and a representative of one of the associations active in this field appointed by the Prime Minister.

The committee's composition and mode of appointment can raise the question of its independency as it is placed under the control of the government administratively and financially. It is composed by members appointed not elected. The nature of composition of this committee excludes its judicial role as no judges are provided to be members, especially the administrative justice.

## Lebanon

Contrary to Tunisia and Morocco, the Lebanese law has given the powers of adjudicating access to information disputes to the National Anti-Corruption Committee which also has other duties provided in the law on whistleblowers protection, which was difficultly approved<sup>75</sup> on 8 May 2020<sup>76</sup>.

The dualism in the mission of the Lebanese Committee can negatively impact the access to information as it lacks the proficiency which is the strength of such bodies. Even related, the two fields should be kept separate as access to information contributes more to preventing corruption and promoting transparency than anti-corruption.

The Committee is composed of two retired judges appointed honorarily, a lawyer, a human rights activist, an accountant, an expert in banking and economic, an expert in public administration management or public finance or anti-corruption. These members are appointed by the ministerial council by choosing one of the suggested names except for the judges who are elected among other judges<sup>77</sup>.

The National Anti-Corruption Committee has a role in the field of access to information in advising the concerned authorities and in contributing to citizens awareness<sup>78</sup>.

The Committee rules on complaints no later than two months from receiving them, it informs the administration of its decisions. The latter are presumably compelling despite that the law did not expressly provide so. Its decisions are also appealable before the Council of State<sup>79</sup>. However, and due to the absence of an established National Anti-Corruption Committee, these complaints are examined by judicial bodies<sup>80</sup> which may slow the access to information and its gratuity. It can affect the efficiency of the law and its ability to realize its objectives.

## Jordan

The Jordanian law created an authority called the Council of Information. Aside from its principal role in adjudicating access to information disputes, the Council is also vested with “guaranteeing the availability of information to its applicants in the scope of this law” and “issuing publications and organizing necessary activities to explain and reinforce the culture of right of knowledge and obtaining information.”<sup>81</sup>

The Council of Information is presided by the Minister of Culture. It comprises the Information commissioner, the General Secretary of Justice Ministry, the General Secretary of Ministry of Interior, the General Secretary of the High Council of Media, the General Director of Public Statistics, the General Director of National IT Center, the Director of Counselling in the Armed Forces, the General Commissioner of Human Rights.

It can be concluded from this composition that the executive branch appoints the members. There is no representation of other sectors that can affect the field of access to information such as independent experts and journalists<sup>82</sup>. It is also noted that both the ministries of interior and defence are represented while there is no justification for their membership.

The proposed amendments to the Jordanian law can improve the composition of Information Council by providing the membership of the head journalists union, the head of bar association and 2 organizations of civil society.

Nonetheless, the law is technically void as it provides no actual and exclusive role to the information council in order to examine RTI cases given that this role is shared by other jurisdictions and courts<sup>83, 84, 85</sup>.

### Appealing decisions of the authority commissioned with protecting RTI

The possibility to appeal decisions related to access to information has a substantial impact in enabling the applicant or not from the demanded information. The absence of this possibility or its indefinite time limit could undermine the effectiveness of RTI and make mere word on paper.

The difference between legislations in this theme depends on the nature of acts issued by the respective body as it implicates a difference in the compelling nature<sup>86</sup> of these acts.

## Tunisia

The Tunisian law provides that INAI decisions are enforceable and appealable by the applicant or the administration pursuant to Article 108 of the Constitution<sup>87</sup>. The appeal can be made within the delay of 30 days from the date of decision notification<sup>88</sup>. However, the Appeal can be used as a tool to limit the access to information as it precludes the three characteristics of access to information disputes:

- + The free nature of the suit submitted to INAI: The Appeal before the Administrative Tribunal requires to hire a lawyer despite the possibility to resort to judicial aid<sup>89</sup>, but it is exclusively given to litigators capable of proving that they do “not have resources or that their annual revenue does not allow him to recover his rights without substantially changing his vital needs, and that the right that he is claiming is based on serious grounds.”

These requirements limit greatly the gratuity of access to information which may transform to an expensive right especially in the case the Tribunal burdens the costs of the lawsuit to the losing party.

- + Competence: The Administrative Tribunal has a general competence in relation to administrative litigations unless provided otherwise by a specific law
- + Speed of proceedings: As the Administrative Tribunal is general and large, the time limits are longer than those provided for INAI.

Tunisian law prevents disclosure of the requested information following INAI positive decision as long as a court appeal is pending. It could be suggested that only the applicant could appeal and the authority didn't have this opportunity<sup>90</sup>, but this choice may be contrary to the right to a second hearing (appeal) provided in article 108 of the Constitution.

The statistics provided by INAI show that 36 decisions out of 247 were appealed in 2018, which represents 15% of the decisions. This percentage has decreased in 2019 to 10% (out of 887 cases there are 87 cases that were appealed). In 2020, there are 82 decisions<sup>91</sup> that were appealed out of 604 (almost 14%).

There is another challenge in relation to the enforceability of INAI decisions<sup>92</sup> which is the non-execution of its decisions by the bodies subject to the law. Civil enforcement by bailiffs is only available

in civil procedure, but not for the decisions of the Administrative Tribunal. In 2019, there were 31 non-executed decisions, while this number has decreased to 25 decisions in 2020<sup>93</sup>. The consecutive governments since the Revolution do not appear willing to execute the judgments issued against the administration, the latter profited from a legal gap not to be bound with the duty to execute them<sup>94</sup>.

## **Morocco**

The applicant can submit an appeal to the Administrative Tribunal within 60 days from the reply of the Commission.

In this regard, it was not possible to conduct a detailed research on appealing the decisions of the committee, since most of its decisions were issued only recently<sup>95</sup>. It can therefore be said that the committee's recommendation is only a condition that authorises the administrative court to consider the case and cannot be considered a first instance of litigation<sup>96</sup>.

## **Jordan**

The Supreme Court of Jordan has the role of receiving appeals within 30 days from the issuance of recommendations by the Information Council.

Submitting a complaint to the Information Council can be considered a procedure of grievance by the Council. This procedure is not mandatory in view of enabling the applicant to go directly to the court.<sup>97</sup> However, obtaining a recommendation in favour of the applicant from the Information Council may positively affect the court's decision.

## **Lebanon**

The Lebanese law provided expressly that the National Anti-Corruption Committee issues decisions "appealable before the Shura Council<sup>98</sup>". Since this anti-corruption committee did not see the light, it was impossible to work on its activities in this study. The Shura Council adjudicates the access to information disputes and issues summary judgments.

# EXTENT OF RESPECT OF RTI IN THE COUNTRIES SUBJECT OF THE STUDY

To see how far the countries respect RTI, it is important to study the extent of the implementation of proactive publication and the degree of interaction towards access to information requests.

## Proactive disclosure

As mentioned above, the approach in providing proactive publication is not shared by all the studied legislations.

### Tunisia

In Tunisia, the data published by INAI pointed out that most of ministries made half of documents available (most of them published 9 documents out of 18<sup>99</sup>) which reflects the progress made in access to information. INAI monitored that policies and programs are the most published information, the least ones are the reports about access to information<sup>100</sup>. 70% of local municipalities have websites. As for proactive disclosure by municipalities, a recent report published by the Tunisian NGO Al Bawsala<sup>101</sup> show that among 350, there are 226 municipalities that have websites (almost 65%). Out of 226 websites, there are 171 websites (almost 76%) that are regularly updated with 3 types of documents that the municipality should publish.

In this same context, I Watch Organisation, Transparency International's Tunisian chapter, found in 2018 that 80% of ministries did not publish

all documents imposed by the Organic Law n°22-2016<sup>102</sup>. The organization presented the most interactive institutions and the most ignoring ones. The report showed civil society and INAI diligence in monitoring the implementation of the law by the public bodies which is a step forward to engage more the government and the heads of public bodies in applying the law.

### Morocco

As for Morocco, the administrations had a one-year deadline from the date of enactment of the law to publish all information subject to proactive publication, pursuantly to article 30 of the law. The proactive publication would have been effective starting March 2020 but coincided with the COVID-19 pandemic, which did not allow for a clear assessment of its implementation by the administration. There are some initiatives to apply these rules such as the decision of the education, professional training, and scientific research minister to create a central committee of the right to obtain information<sup>103</sup>, and the decision of the agriculture and fishing Minister. At the end of 2020, the Tafra Association published a statistical report on the implementation of the proactive dissemination procedure at the community level<sup>104</sup>. This report focused on the minimum required information to be published. It furthermore showed that 54 percent off the sampled communities (with a population of more than 50,000 residents (own a website. Despite these efforts, the implementation

of the law witnesses slow pace and incomplete grounds. There is also a huge difference between the text and the reality especially in proactive publication<sup>105</sup>.

## Jordan

While Jordanian law did not mention proactive publication and thus did not consider it as a legal duty, the Jordanian media revealed that the proposed amendment<sup>106</sup> includes rules of proactive publication<sup>107</sup>. The absence of this duty did not prevent monitoring the publication of information by government institutions<sup>108</sup> which constitutes important to the citizen. The monitoring results shows difference from a piece of information to another. The information related to legislation are the most published with 96% and the information related to budget are the least available with a percentage of 36%<sup>109</sup>.

## Lebanon

The Lebanese law did not oblige the publication of many documents and stopped at "decisions, instructions, laws, organigrams and notes...", "all transactions by which payment of public funds is made above 5 million Lebanese pounds during one month from the date of the carrying out of the payment or one of its instalments"<sup>110</sup> and "the annual reports"<sup>111</sup>.

The Lebanese Maharat Foundation issued a report on the right of access to information in Lebanon, in which it highlighted that out of 22 ministries, only one ministry published its operations involving payment of public funds in excess of five million Lebanese pounds and that only five ministries reported on their activities. This reflects the effect of the absence of an anti-corruption committee to monitor the proactive dissemination of information<sup>112</sup>.

## Public bodies' treatment of RTI requests

Laws do not necessarily reflect the respect administrations show for access to information requests as it can be a certain gap between the law and the reality which was observed in our study of the four countries.

## Tunisia

In Tunisia, the efforts of RTI stakeholders (the State, civil society, journalists) had given results in relation to the evolution of RTI as shown by INAI 2018 report<sup>113</sup>. There are almost 12,000 requests of access to information in 2017<sup>114</sup>. The same report denounced the public bodies against which grievance or suits were made. The government presidency was the top of them with 30 cases and then the education ministry with 23 cases<sup>115</sup>. It was also reported that INAI received almost 600 cases which are increasing continuously from the first quarter of the year (76) to the fourth (214)<sup>116</sup>.

However, it is important to note that there is a minimum legal knowledge required to submit a request or a case. Despite the simple procedures of access information, there is a certain level of knowledge that needs to be acquired in relation to the answer of the administration and how the applicant should reply. Otherwise, INAI could be submerged with cases that will be eventually dismissed.

The report demonstrated the role of civil society which submitted more than 200 cases out of a total of 600 cases, the report pointed out the lack of participation of journalists in using their RTI with only 13 cases. The journalist Amel Mekki exercised her RTI to shed the light on the S17 case<sup>117</sup>, which is a border measure by which people can be subject to travel restriction. The journalist submitted a case to INAI after her request was rejected by the Ministry of Interior. The request of information was related to statistics on the number of people subject to S17 measure and their geographic distribution. INAI response was that the Ministry failed to prove that there is "an instant or eventual damage"<sup>118</sup> in revealing the requested information in relation to public safety. INAI ruled in favour of the journalist but its decision was appealed by the Ministry and no outcome from the Administrative Tribunal<sup>119</sup> to be documented. Such facts were monitored by the Tunisian Journalists Union – SNJT as 64 cases had the same result denying<sup>120</sup> the right to information by journalists.

The challenges are not only related to appealing decisions but also not informing administrations of the decision rendered by INAI<sup>121</sup>, which discourages the applicant to exercise his/her right and sometimes increases procrastination<sup>122</sup> by the bodies in question.

Recently, a new challenge was risen in relation to the balance between RTI and protecting personal



data<sup>123</sup> in the parliament. The bill of law on personal data protection<sup>124</sup> was deemed dangerous to access to information especially that it did not consider RTI as an exception to personal data protection<sup>125</sup>. The same text incriminates the wrongful public servants<sup>126</sup> who grant access to information requests if the information may contain personal data.

In the same context, INAI opinion was based on the harm test. It considered that if the information contains personal data, the damage resulted from revealing this information is not severe in comparison to the general interest of giving the information<sup>127</sup>. Such decisions can create a sort of balance between these two rights.<sup>128</sup>

The cases adjudicated by INAI were diversified as it concerned different bodies. For example, INAI ruled that the Central Bank must comply to High Independent Authority of Audio-visual Communication (HAICA) request to access information related to transactions of associations and companies working in the audio-visual sector<sup>129</sup>. In its decision, INAI considered that the only limit not to make information accessible is that it would be included in the exceptions which was not the case as the defendant did not evoke bank and professional secrecy. On these grounds, INAI rejected the defences of the Central Bank. There is also a case submitted by the Association of Tunisian judges after the president of the Supreme Judicial Council refused to render a piece of information accessible.

In the same context, we can cite the case of I Watch Organisation versus the Assembly of Representatives of People (ARP) in which the applicant requested the list of MPs who were subject to requests of immunity removal from the judicial authorities. INAI held this case acceptable, but the ARP appealed<sup>130</sup> INAI decision before the Administrative Tribunal<sup>131</sup>.

The percentage of cases ruling in favour of the applicants (55%) and the increasing number of cases submitted to INAI is a proof that this authority strictly applies exceptions.

## Morocco

In Morocco, the Committee of RTI presented in June 2019 the form of access to information request. The Moroccan government created an open platform called [www.chafafiya.ma](http://www.chafafiya.ma) to submit online requests of access to information<sup>132</sup> which can increase the number of applications to exercise this right by

filling the template<sup>133</sup>. However, the citizen's trust in electronic means of communication is still challenging as the administrations do not reply to these requests, according to the association SimSim for Citizen Participation<sup>134</sup>. Only 21% of the requests were replied by the bodies in the legal time limitations which prove the non-responsiveness of many public servants and their indifference to the law provisions. The same association monitored 63 out of 80 unanswered requests that went to the RTI Commission. The requests remained unanswered and it appears that the administration is not willing to use effectively this platform<sup>135</sup>.

## Lebanon

The non-establishment of the National Anti-Corruption Committee in Lebanon is a tremendous obstacle for implementing the RTI.<sup>136</sup> Ghorbel - Sieve Initiative<sup>137</sup> argued that the absence of such committee made administrations indifferent to access to information requests as only 33 bodies responded sufficiently to these requests<sup>138</sup> in total of 140, i.e., only 24% which is a weak rate reflecting the lack of respect the authorities have towards this law and the nonchalance to implement it, especially that 20 administrations rejected the receipt of requests for a reason or another which is in itself a violation of the law and a lack of awareness by public servants.

This can be explained by the absence of implementing mechanisms<sup>139</sup> of this law<sup>140</sup> which includes not only institutional mechanisms (an authority adjudicating the cases of access to information and an information officer<sup>141</sup>) but also legal mechanisms like the decrees referred in Article 25 of the law.

RTI in Lebanon is still evolving mostly with the adoption of the implementing decree on 8 September 2020.<sup>142</sup>

## Jordan

In Jordan, the statistics provided by the Information Council indicated that requests numbered more than 13,000 between 2017 and 2018<sup>143</sup>, only 35 of them were rejected. However, these numbers do not reflect necessarily the facilitation of the use of RTI because of the long procedures and the non-enforceability of the Council' decisions, which drives citizens to look for other sources of information and the journalism of information is still the classical source to get information.<sup>144</sup>

# RECOMMENDATIONS

Some recommendations are related to each country. Others are targeting all of them.

## General Recommendations

To improve the implementation of RTI, we recommend that all the countries:

- + work on promotion of access to information culture with focus on public servants' awareness
- + raise awareness of citizens toward the importance of the right to information in accountability and fighting corruption
- + improve the logistical and knowledge base that guarantee this right
- + ensure that the personal data of applicants is removed from decisions and recommendations published by the authority vested in protection of RTI

## Recommendations for Tunisia

- + reduce the non-execution of INAI decisions by the bodies subject to the law through awareness of public servants of the danger of these practices and apply disciplinary and criminal punishments.
- + provide enforcement mechanisms similar to civil procedure mechanisms
- + work on building capacities of access to information officers to objectively examine access to information requests

- + ensure that INAI respects the time limit to rule on a dispute
- + provide financial, human, and technical support to INAI to better carry out its missions
- + limit the possibilities of appeal to prevent delaying intentions to appeal decisions or provide a time limit to rule on the appeal by the Administrative Tribunal<sup>145</sup>

## Recommendations for Lebanon

- + set up the National Anti-Corruption Committee to facilitate the procedures for access to information applicants and to build case law of the RTI law
- + add effective sanctions to guarantee responsive behaviour of the public servants towards the access to information requests
- + extend the scope of public bodies under RTI law
- + widen the concept of obtainable documents to include any piece of information not excluded explicitly from the scope of the law

## Recommendations for Jordan

- + provide mandatory proactive publication to lower the number of access to information requests and to enable the Council to optimize its work and be more available to rule on controversial requests
- + narrow as much as possible the scope of exceptions and limit them on a very tight sense

- + avoid reference to other laws that can provide other exceptions and enable the Council with the power to assess the damage of revealing information and the other interests to protect
- + consider the proposals of experts, journalists, and civil society working in the field of access to information while reviewing the law
- + involve civil society and all stakeholders in the Information Council
- + ensure that the Council decisions are enforceable on all parties to guarantee RTI
- + To ensure narrow exceptions to RTI, it is important to adopt criteria to distinguish between information which are subject to exceptions and those which are presumed to be available.
- + It is also recommended to review the law on protection of State's secrets and documents because it is not compliant with international standards of access to information and protection of classified information<sup>146</sup>, and it gives the administration full discretion in classifying documents.

## **Recommendations for Morocco**

- + Engage the civil society and the state to work on the legal challenges mentioned above<sup>147</sup>
- + Provide logistical and human resources related to RTI and especially in relation to proactive publication of information: privilege electronic formats and hire access to information officers in the administrations
- + Publish recommendations of RTI Committee to guarantee more transparency on concepts and definitions to all stakeholders
- + Review the composition of the Committee to ensure its independency from the Executive
- + Work on removing Article 29 or reformulating it (in relation to the misuse of information obtained from the administration) in line with international law standards
- + narrow the scope of exceptions provided in the law

# ACKNOWLEDGEMENTS

I Watch Organisation and the author of this research, Ismail Ben Khalifa, would like to express special thanks and gratitude to each one contributed to this study, notably:

## **The following institutions:**

- + Tunisian Authority of Access to Information (INAI).
- + Jordanian Information Council.

## **The following organisations and associations**

- + Transparency Morocco
- + Rasheed (TI – Jordan)
- + Lebanese Transparency Association (TI-Lebanon)
- + Article 19
- + Access Now
- + Arab Reporters for Investigative Journalism (ARJ)
- + Barr al Aman Research & Media
- + TAFRA – Morocco
- + Moroccan Center for Access to Information
- + Moroccan Network for the Right to Access to Information

## **From Tunisia:**

Mr. Imed Hazgui, former president of INAI (July 2017-February 2020)

Ms. Hajer Trabelsi, representative of civil society in INAI Board

Ms. Dima Samaro, MENA Policy Analyst, Access Now

Ms. Emna Sayadi, MENA Campaigner, Access Now

Mr. Karim Bel Haj Aissa, MENA Transparency Program Coordinator, Article 19

Mr. Mohamed Haddad, Editor-in-chief of Barr al Aman Research & Media

Ms. Amel Mekki, journalist and trainer in investigative journalism

## **From Morocco:**

Mr. Fouad Zrari, CEO of NGO TAFRA

Mr. El Mahdi Hamrouch, Access to Information Project Director, SIMSIM-Citizen Participation

Pr. Azeddine Aksabi, Access to Information expert

## **From Jordan**

Dr. Nidhal Ahmad Ayasra, Information Council VP and Information Commissioner

Dr. Nahla Mourni, Access to information expert.

Ms. Imen Mohamed Assi, Senior Researcher in ARJ.

## **From Lebanon**

Pr. Mohamed Ali Maghbet, Legal advisor in the Lebanese Association of Transparency.  
Transparency.

Mr. Daoud Ibrahim, journalist and trainer in investigative journalism.

# BIBLIOGRAPHY

## RESOURCES IN ENGLISH

---

- + Yahiya Shuqeir, ARIJ, Access to information in the Arab world: focusing on Jordan, Tunisia and Yemen, available in this link: [https://arij.net/wp-content/uploads/2019/02/Freedom-of-Information-in-the-Arab-World\\_ENG.pdf](https://arij.net/wp-content/uploads/2019/02/Freedom-of-Information-in-the-Arab-World_ENG.pdf)
- + The Carter Center, Access to information a key to democracy, available in this link: <https://www.cartercenter.org/documents/1272.pdf>

## WEBSITES

- + Global right to information rating: <https://www.rti-rating.org>
- + Tunisian Authority of Access to Information (INAI): <http://www.inai.tn/en/>
- + Jordanian Information Council: <http://www.nl.gov.jo/En/InfoCouncilSecretariat.aspx>
- + Moroccan Right to Access to information Committee: <https://www.cdai.ma/>

## RESOURCES IN ARABIC

---

### STUDIES AND PUBLICATIONS

-حرية المعلومات مسح قانوني مقارنة، توبي مندل، يونسكو، دراسة متوفرة على هذا الرابط-

<https://www.article19.org/data/files/pdfs/publications/foi-legal-framework-unesco-book-arabic-.pdf>

-حق الجمهور في المعرفة: مبادئ التشريعات المتعلقة بالحق في المعلومات، منظمة المادة 19، دراسة متوفرة على هذا الرابط-

[article19-FOI\\_principles\\_AR.pdf](https://www.article19.org/data/files/pdfs/publications/foi-legal-framework-unesco-book-arabic-.pdf)

- يحي الشقير، الحصول على المعلومات في العالم العربي، ورقة سياسات، أريج، دراسة متوفرة على هذا الرابط-

<https://cutt.ly/AhTNTqX>

سعيد المدهون ،الحقّ في الحصول على المعلومات في الشرق الأوسط وشمال إفريقيا، دراسة متوفرة على هذا الرابط-

<https://cutt.ly/WhTNYla>

حرية تداول المعلومات دراسة قانونية مقارنة، مؤسسة حرية الفكر والتعبير، هذه الدراسة متوفرة على هذا الرابط-

[https://www.transparency.org/files/content/activity/2011\\_AFTE\\_LegalStudyFreedomThought\\_AR.pdf](https://www.transparency.org/files/content/activity/2011_AFTE_LegalStudyFreedomThought_AR.pdf)

النفاذ إلى المعلومة :مفتاح للديموقراطية، نوفمبر 2002، هذه الدراسة متوفرة على هذا الرابط-

<https://www.cartercenter.org/documents/1272.pdf>

قراءة في قرارات هيئة النفاذ إلى المعلومة لسنتي 2018 و2019، هيئة النفاذ إلى المعلومة، دراسة متوفرة على هذا الرابط-

<https://cutt.ly/dhTNIAB>

الحق في النفاذ إلى المعلومات مخاض التشريع وتحديات التطبيق مصر - ليبيا - تونس، مركز دعم التحول الديمقراطي وحقوق الانسان، دراسة متوفرة على هذا الرابط-

<https://daamdh.org/wp-content/uploads/2019/10/data-access-1.pdf>

## REPORTS

تقرير مقرّر الأمم المتحدة الخاص بحرية الرأي والتعبير في التقرير الخاص للجنة حقوق الإنسان سنة 2000-

<https://undocs.org/ar/E/CN.4/2000/63>

الحقّ في الحصول على المعلومات 2019-2020، منظمة رشيد الشفافية الدولية الأردن تقرير متوفر على هذا الرابط-

<https://cutt.ly/rhTNAJg>

الشفافية في الإدارات العامة اللبنانية، مبادرة غربال، أوت 2018، تقرير متوفر على هذا الرابط-

<https://drive.google.com/file/d/1P2yDH3DjuP-KZ2SazT7U2Yl3cisad-S/view>

تقرير جمعية سمس مشاركة مواطنة حول بوابة شفافية، متوفر على هذا الرابط-

<https://bit.ly/3fcFKGi>

تقرير جمعية سمس مشاركة مواطنة حول بوابة شفافية الجزء الثاني، متوفر على هذا الرابط-

<https://cutt.ly/3hTNLb6>

تقرير النفاذ إلى المعلومة :بين القانون وتحديات التطبيق، تقرير متوفر على هذا الرابط-

<https://www.iwatch.tn/ar/article/623>

تقرير تقييم المواقع الإلكترونية الرسمية لمركز حياة راصد يمكن الإطلاع على الملخص التنفيذي على هذا الرابط-

<http://www.hayatcenter.org/uploads/2018/09/20180917150252ar.pdf>

تقرير هيئة النفاذ إلى المعلومة متوفر على هذا الرابط-

<https://bit.ly/3cTSDDz>

## TUNISIAN INAI DECISIONS

قرار عدد 41/2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2018/12/0041-2018-nb1.pdf>

قرار عدد 77/2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/01/0077-2018-nb.pdf>

قرار عدد 79/2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/01/0079-2018-nb.pdf>

قرار عدد 92 صادر بتاريخ 26 جويلية 2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2018/03/0092-2018-nb2.pdf>

قرار عدد 120 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2018/09/0120-2018-nb2.pdf>

قرار عدد 137/2018 يمكن الإطلاع على القرار على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2018/03/0137-2018-nb2.pdf>

قرار عدد 193 صادر بتاريخ 25 أكتوبر 2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/01/0193-2018-nb.pdf>

قرار عدد 25٠1 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2018/11/0251-2018-nb1.pdf>

قرار عدد 350/2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/07/0350-2018-nb1.pdf>

قرار عدد 933 صادر بتاريخ 01 أوت 2019 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/08/0933-2019-nb.pdf>

قرار عدد 1123/2018 متوفر على هذا الرابط-

<http://www.inai.tn/wp-content/uploads/2019/12/1123-2019-nb1-1.pdf>

## ARTICLES

نسخة من التعديلات المقترحة على قانون الحصول على المعلومات الأردني وقد نشرتها صحيفة الدستور وهي متوفرة على هذا الرابط

<https://cutt.ly/lhTNOGi>

مقال لعماد صائغ: مغامرات قانون مكافحة الفساد في القطاع العام بين المجلس والقصر: طريق وعرة لا بد من عبورها-

<https://cutt.ly/thTNGjY>

مؤتمر صحفي لجمعية "المفكرة القانونية" و "كلنا إرادة" في 3 سبتمبر 2019: تعطيل حق الوصول للمعلومات هو تحصيل للفساد-

<https://cutt.ly/ShTVJLf>

ضحايا مزاج الداخلية، تحقيق نشره موقع إنكفاضة، من إنجاز الصحفية أمل المكي، تحت عنوان S17-

<https://bit.ly/3e1V34o>

الحق في النفاذ إلى المعلومة ومكافحة الفساد، مقال في جريدة المغرب بقلم محمد العبادي متوفر على هذا الرابط-

<https://cutt.ly/fhTGgmm>

ترتقي للممارسات الدولية الفضلى، مقال في صحيفة الغد متوفر على هذا الرابط "الطوبسي: تعديلات" الحصول على المعلومات-

<https://cutt.ly/ehTNDf5>

انتقادات تعديلات قانون "حقّ في الحصول على المعلومات" مقال في صحيفة الغد متوفر على هذا الرابط-

<https://cutt.ly/qhTND71>



# ENDNOTES

<sup>1</sup> Freedom of the flow of information, a legal comparative study by Association of Freedom of Thoughts and Expression (Egypt), p.8-9. Available in Arabic: [https://www.transparency.org/files/content/activity/2011\\_AFTE\\_LegalStudyFreedomThought\\_AR.pdf](https://www.transparency.org/files/content/activity/2011_AFTE_LegalStudyFreedomThought_AR.pdf)

<sup>2</sup> Access to Information: A key to Democracy. Carter Center, November 2002, p. 5. Available via this link: <https://www.cartercenter.org/documents/1272.pdf>

<sup>3</sup> Transparency International, 2013, It belongs to you: Public Information in the Middle East and North Africa, <https://www.transparency.org/en/publications/it-belongs-to-you-public-information-in-the-middle-east-and-north-africa>

<sup>4</sup> The Universal Declaration of Human Rights: <https://www.un.org/en/universal-declaration-human-rights/>

<sup>5</sup> ICCPR : <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>6</sup> Ibid

<sup>7</sup> <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>8</sup> League of Arab States General Secretariat, Arab Anti-Corruption Convention, <https://star.worldbank.org/sites/star/files/Arab-Convention-Against-Corruption.pdf>

<sup>9</sup> Right2info, 2012, <https://www.right2info.org/constitutional-protections>

<sup>10</sup> Published in journal « Dostour » available in Arabic: <https://cutt.ly/2hE7F0I>

<sup>11</sup> Article 32 of the Tunisian Constitution (available in French) <http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>

<sup>12</sup> Article 27 of the Moroccan Constitution

<sup>13</sup> RTI ranking: <https://www.rti-rating.org/>

<sup>14</sup> Official French version of the Tunisian Constitution: <http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>

<sup>15</sup> Official French version of the decree-law: <https://cutt.ly/YhEMnyn>

<sup>16</sup> Organic Law n°22-2016 enacted 24 March 2016

<sup>17</sup> Article 37 and onwards of the Organic Law n°22-2016

<sup>18</sup> An interview with Imed Hazgui, former president of INAI, 31 January 2020

<sup>19</sup> The Tunisian legal system lacks some texts related to facilitate the missions of INAI and to improve the performance of the administration in its response on access to information requests, which was asserted by the minister of public service, modernization of the administration and public policies on 26 September 2019 during the universal celebration of access to information: <https://cutt.ly/qhE1dgW>

<sup>20</sup> An interview with Mr. Mohamed Haddad, Editor-in-chief of Barr al Aman Research & Media, 17 February 2020.

<sup>21</sup> Constitution of Kingdom of Morocco: <https://cutt.ly/ohE17IM>

<sup>22</sup> The law on the right to obtain information

<sup>23</sup> Article 22 and onwards of the Law

<sup>24</sup> Article 14 and onwards

<sup>25</sup> Interview with Fouad Zirari, CEO of NGO TAFRA, and El Mahdi Hamrouch, Program manager in association SIMSIM-Citizen Participation, 29 November 2019

<sup>26</sup> Interview with Karim Belhaj Aissa, MENA Transparency Program Coordinator in the organization Article 19, 06 December 2019

<sup>27</sup> Article 29 of the Moroccan Law

<sup>28</sup> Interview with Azzedine Akasbi, Expert in Access to Information, 29 November 2019

<sup>29</sup> International Covenant on Civil and Political Rights, 2011, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>30</sup> Yahya Shuqeir, Freedom of Information in the Arab World: Focusing on Jordan, Tunisia, and Yemen, Policy paper, ARIJ, p.15: <https://cutt.ly/uhE9OBz>

<sup>31</sup> The Law n°47-2007 on the right to obtain information, available only in Arabic: <https://cutt.ly/PhE3PYU>  
Before this text, there was the National Charter mentioned by Yahya Shuqeir, ibid, p.14.

<sup>32</sup> Despite the civil society demands to provide RAI in the Constitution review in 2011, which was reported by Said Almadhoun in Right of Access to Information in MENA, p.3, available only in Arabic: <https://cutt.ly/dhE8ujF>

<sup>33</sup> Interview with Karim Belhaj Aissa, MENA Transparency Program Coordinator in the organization Article 19, 06 December 2019

<sup>34</sup> <https://cutt.ly/DhE8Z9E>

<sup>35</sup> Interview with Dr. Nahla Moumni, Expert in the law of access to information, 19 December 2019.

<sup>36</sup> Available in Arabic: <https://cutt.ly/WhE4jXk>

<sup>37</sup> Article 22 and onwards of the Lebanese law on access to information

<sup>38</sup> Maharat Foundation, Right to information law: An evaluation study of its application and uses, [file:///C:/Users/mghawaly/Downloads/Maharat\\_UPR37\\_LBN\\_E\\_Annexe4.pdf](file:///C:/Users/mghawaly/Downloads/Maharat_UPR37_LBN_E_Annexe4.pdf)

<sup>39</sup> Full report : <https://cutt.ly/UhE4QXS>

<sup>40</sup> Ibid, p.11 and 53.

<sup>41</sup> Ibid, p.13.

<sup>42</sup> Decisions n°350 and n°41 Ibid, p.13, p.52.

<sup>43</sup> Decision n°1123. Ibid p.14.

<sup>44</sup> Decisions n°77 and n°79. Available in Arabic: <https://cutt.ly/BhE7krz> and <https://cutt.ly/WhE7IUM>

<sup>45</sup> INAI caselaw analysis, supra, p.13.

<sup>46</sup> Article 6 of the Tunisian RTI law.

<sup>47</sup> Ibidem

<sup>48</sup> Article 7 of the Tunisian RTI law.

<sup>49</sup> Article 6 of the Tunisian RTI law.

<sup>50</sup> Article 17 of the Jordanian law.

<sup>51</sup> Pursuant to fourth principle of the UN report: <https://cutt.ly/UhE4QXS>

<sup>52</sup> Article 25 of the Tunisian law n°22-2016

<sup>53</sup> Article 24 of the same law

<sup>54</sup> Article 28

<sup>55</sup> <https://www.right2info.org/exceptions-to-access/harm-and-public-interest-test>

<sup>56</sup> Analysis of INAI Caselaw, supra p.30 and onwards.

<sup>57</sup> Article 26 of Tunisian Law No.22 of 2016

<sup>58</sup> Ibid.

<sup>59</sup> Organic law n°10-2017 promulgated on 07 March 2017. Available in Arabic: <https://cutt.ly/xhE5IPM>

<sup>60</sup> Interview with Hajer Trabelsi, member of INAI board representing CSO, 19 November 2019

<sup>61</sup>The exceptions in the Moroccan law are: national defence, internal and external security, information related to people's privacy and their personal data, the information that can infringe freedoms and rights provided in the constitution, the relations with states, the monetary, economic or financial policy of the State, the industrial property rights, copyrights and similar rights, rights and interests of victims, witnesses and whistleblowers of crimes related to bribery, embezzlement and abuse of power etc., secrecy of ministerial councils deliberations and those of government councils, secrecy of inquiries and administrative investigations unless warranted by competent authorities, the functioning of judicial authorities and their preliminary acts unless warranted by competent judicial authorities, and principles of free, legitimate and honest competition and private initiative.

<sup>62</sup> Y.Shuqeir, supra p.28.

<sup>63</sup> Said Al Madhoun, supra p.11

<sup>64</sup> Article 14 of the Jordanian law on access to information

<sup>65</sup> Y.Shuqeir, supra p.19.

<sup>66</sup> Law on the Protection of the State's Secrets and Documents No. 50 of 1971, available in Arabic: <https://cutt.ly/dhRqRot>

<sup>67</sup> Interview with Dr. Nidhal Ahmed Ayasra, information commissioner in the Jordanian Information council, 18 December 2019.

<sup>68</sup> Critics to the proposed amendments, article in "Al Ghad" journal: <https://cutt.ly/jhReqss>

<sup>69</sup> Article 5 of the Lebanese law on access to information

<sup>70</sup> Elections of INAI board members: <https://bit.ly/2UvLyD2>

<sup>71</sup> Right of access to information, stage of legislation and obstacles to implementation: Egypt, Libya, Tunisia, DAAM 2019. Available in English: <https://cutt.ly/LhRec5j>

<sup>72</sup> CDAI website: <https://www.cdai.ma/?lang=ar&author=1>

<sup>73</sup> Article 31 of the Tunisian Organic law n°22-2016.

<sup>74</sup> Article 38 of the same law

<sup>75</sup> More details: <https://cutt.ly/yhRe00O>

<sup>76</sup> Available in Arabic: <https://cutt.ly/ZhReH40>

<sup>77</sup> Article 6 of the Lebanese law on anti-corruption.

<sup>78</sup> Article 22 of the Lebanese law on access to information

<sup>79</sup> Article 23 of the same law

<sup>80</sup> Interview with Mohamed Ali Moghbat, legal advisor in the Lebanese Transparency Association, 03 April 2020

<sup>81</sup> Article 6 of the Jordanian Law

<sup>82</sup> S.Madhoun, supra p.7

<sup>83</sup> The law counts only 20 articles

<sup>84</sup> S.Madhoun, supra p.7

<sup>85</sup> Article 17 of the Jordanian law.

<sup>86</sup> For example, the Tunisian law use the term "decisions" (Article 38) whereas the Moroccan law speaks of "recommendations" (Article 22)

<sup>87</sup> Article 108 of the Tunisian Constitution: "Every individual is entitled to a fair trial within a reasonable period.

Litigants are equal before the law.

The right to litigation and the right to defense are guaranteed. The law facilitates access to justice and assures legal assistance to those without financial means. The law guarantees right to a second hearing.

Court sessions shall be public unless the law provides for a closed hearing. Judgement must be pronounced in a public session". (unofficial English version)

<sup>88</sup> Article 31 of the Organic Law n°22-2016

<sup>89</sup> Article 2 of the Law n°3-2011 dated on 03 January 2011 and related jurisdictional support before the Administrative Tribunal: <https://cutt.ly/bhTFzi2>

<sup>90</sup> Interview with Imed Hazgui, former president of INAI

<sup>91</sup> Letter from INAI dated 23 November 2020 to I Watch Organization.

<sup>92</sup> Such as two decisions not executed by the Tunisian Federation of Football: <https://www.iwatch.tn/ar/article/701>

<sup>93</sup> Until 23 November 2020

<sup>94</sup> Imed Ghabri, Execution of judgments and decisions of the administrative justice, in Legal Agenda. Available in Arabic: <https://www.legal-agenda.com/article.php?id=5121>

<sup>95</sup> The form was submitted on July 12<sup>th</sup>, 2019.

<sup>96</sup> Article 21 of the Moroccan law on the right to information

<sup>97</sup> Article 17 of the Jordanian law on the right to information

<sup>98</sup> Article 23 of the Lebanese law on access to information

<sup>99</sup> INAI annual report, 2018, p.60. Available in Arabic: <https://cutt.ly/LhTJM3q>

<sup>100</sup> Ibid, p.61

<sup>101</sup> 5 years after the RTI law, the municipalities websites are still below expectations, Report available in Arabic : <https://baladia.marsad.tn/uploads/documents/mcp-siteweb-20210324.pdf>

<sup>102</sup> Report on access to information; the law and the challenges of the implementation, p.8. Available in Arabic: <https://www.iwatch.tn/ar/article/623>

<sup>103</sup> Decision of the Education Minister n°20.25, available in Arabic: <https://cutt.ly/dhTKxpp>

<sup>104</sup> Available in Arabic at the following link: [:http://tafra.ma/ar/%d8%aa%d8%b7%d8%a8%d9%8a%d9%82-%d8%a7%d9%84%d8%ad%d9%82-%d9%81%d9%8a-%d8%a7%d9%84%d8%ad%d8%b5%d9%88%d9%84-%d8%b9%d9%84%d9%89-%d8%a7%d9%84%d9%85%d8%b9%d9%84%d9%88%d9%85%d8%a9-%d9%85%d8%a4%d8%b4%d8%b1/4/](http://tafra.ma/ar/%d8%aa%d8%b7%d8%a8%d9%8a%d9%82-%d8%a7%d9%84%d8%ad%d9%82-%d9%81%d9%8a-%d8%a7%d9%84%d8%ad%d8%b5%d9%88%d9%84-%d8%b9%d9%84%d9%89-%d8%a7%d9%84%d9%85%d8%b9%d9%84%d9%88%d9%85%d8%a9-%d9%85%d8%a4%d8%b4%d8%b1/4/)

<sup>105</sup> Declaration of Fouad Zrari, CEO of ONG TAFRA in a meeting on access to information, organized by SIMSIM-Citizen Participation: <https://www.facebook.com/SimSimPC/videos/260195278493021/>

<sup>106</sup> Article 17 of the Jordanian law.

<sup>107</sup> Article published in Jordan News Agency. Available in Arabic: <http://bit.ly/39k3Sox>

<sup>108</sup> Executive summary of the Assessment report of the official websites of government institutions. Available in Arabic: <http://www.hayatcenter.org/uploads/2018/09/20180917150252ar.pdf>

<sup>109</sup> Ibid. p.21

<sup>110</sup> Article 7 of the Lebanese Law on access to information

<sup>111</sup> Article 8 of the same law

<sup>112</sup> Maharat Foundation, 2020, The Law of Access to Information: An Evaluation Study on its application and use, available online: <http://www.maharatfoundation.org/media/1783/access-study-2020.pdf>, p.11

<sup>113</sup> Supra in 95

<sup>114</sup> Ibid, p.56

<sup>115</sup> Ibid, p.31

<sup>116</sup> Ibid p.27

<sup>117</sup> S17, victims of ministry of interior' temper, investigation published by Inkyfada and prepared by Amel Mekki. Available in Arabic: <https://cutt.ly/qhTLR5Q>

<sup>118</sup> Decision published in INAI website. Available in Arabic:

<http://www.inai.tn/wp-content/uploads/2018/11/0251-2018-nb1.pdf>

<sup>119</sup> Interview with Amel Mekki, 19 February 2020

<sup>120</sup> Interview with the head of SNJT, 10 May 2019 published in legal Agenda. Available in Arabic: <https://cutt.ly/uhTZrDk>

<sup>121</sup> Interview with Dima Samaro and Emna Sayadi, representatives of NGO Access Now, 30 January 2020

<sup>122</sup> Ibid

<sup>123</sup> During a study day organized by NGO Access Now: <https://bit.ly/30FOMb9>

<sup>124</sup> Statements published by several CSOs: <http://acharaa.com/ar/324483> and the INAI: <https://bit.ly/3f7xEyT>  
Text submitted to the parliament. Available in Arabic: <https://bit.ly/2XPecRB>

<sup>125</sup> Interview with Karim Belhaj Aissa, NGO Article 19.

<sup>126</sup> Law on personal data protection: <https://media2.mofo.com/documents/The+Organic+Act+2004-63.pdf>

<sup>127</sup> Decision n°92 rendered 26 July 2018. Available in Arabic:

<http://www.inai.tn/wp-content/uploads/2018/03/0092-2018-nb2.pdf>

<sup>128</sup> As far as public servants or personalities are concerned, the Tunisian bill of law does not distinguish personal data from privacy as they are considered the same. That's why it is important to distinguish between the personal information that could be protected by the right to privacy and other pieces of information who does not infringe it, this fine line is not quite clear in the bill of law.

<sup>129</sup> Decision n°933 rendered on 01 august 2019. Available in Arabic:

<http://www.inai.tn/wp-content/uploads/2019/08/0933-2019-nb.pdf>

<sup>130</sup> Decision n°193 rendered 25 october 2018. Available in Arabic:

<http://www.inai.tn/wp-content/uploads/2019/01/0193-2018-nb.pdf>

<sup>131</sup> Article on this appeal. Available in Arabic: <https://www.iwatch.tn/ar/article/678>

<sup>132</sup> <https://www.cdai.ma/?p=6681&lang=ar>

<sup>133</sup> Article 14 of the Moroccan Law

<sup>134</sup> Available in Arabic: <https://bit.ly/3fcFKGi>

<sup>135</sup> Available in Arabic: <https://cutt.ly/3hTNLb6>

<sup>136</sup> The government of Lebanon has been promising to set it up since at least 2014

[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016\\_03\\_08\\_Lebanon\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_03_08_Lebanon_Final_Country_Report.pdf)  
(page 128)

<sup>137</sup> Transparency in Lebanese public administrations, august 2018. Available in Arabic:

<https://drive.google.com/file/d/1P2yDH3DjuP-KZ2SazT7U2Yl3cisad-S/view>

<sup>138</sup> Ibid, p.9

<sup>139</sup> Interview with Daoud Ibrahim, journalist and trainer in investigative journalism, 29 May 2020

<sup>140</sup> No mention of transitional provisions in the law that allow citizens to follow-up the request refusal in a particular method. The requester can file a lawsuit before a court but this means that it would not be free anymore.

<sup>141</sup> Interview with Mohamed Ali Moghbat, Legal advisor in the Lebanese Association of Transparency.

<sup>142</sup> Decree-Law available in Arabic: <https://cutt.ly/WhTVSF3>

<sup>143</sup> Statistics on Right of access to information. See appendix n°2.

<sup>144</sup> Interview with Imen Mohamed Assi, senior researcher in ARIJ, 19 december 2019.

<sup>145</sup> Mohamed Ayadi, right of access to information and anti-Corruption in Al Maghreb journal. Available in Arabic:

<https://cutt.ly/fhTGggm>

<sup>146</sup> <https://ti-defence.org/publications/classified-information-a-review-of-current-legislation-across-15-countries-the-eu-2/>

<sup>147</sup> Interview with a representative of Access to Information Committee, 30 November 2019

