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The non-recognition of the Right to Information in the MENA region

Submission of the UNCAC Coalition's MENA Regional Network to the 13th Session of the UNCAC Implementation Review Group

May 26, 2022

The UNCAC Coalition and its member civil society organizations from the Middle East and North Africa (MENA) region submit this statement to the 13th session of the Implementation Review Group (IRG). This statement was developed through an open consultation process with civil society organizations (CSOs) in our regional network. A group of UNCAC Coalition members from the MENA region have prepared the following statement further to that submitted to the 9th CoSP held in Egypt last December.¹

This submission highlights one of the major problems in relation to combating corruption in the region: the lack of transparency and the non-recognition of the Right to Information (RTI).

The MENA region suffers from several ills, including corruption. But this scourge does not only find its source in the causes recognized by experts, as bureaucracy and discretionary power of the administration, but also in another problem deeply rooted in the region: the lack of transparency and the non-recognition of the RTI. This is despite the fact that the UNCAC itself explicitly highlights the importance of access to information, as a means of combating corruption, in at least four articles, including Article 10, which calls on States Parties to take measures to improve the transparency of their public administration, which may include the adoption of procedures allowing members of the general public “to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration.”²

The lack of recognition and protection of the right of access to information has challenged and limited not only the fight against corruption but also citizen participation, accountability, and the governance of public institutions. This situation also contributed to the failure of any attempt at effective reform of public policies. It is unfortunately not surprising for a largely undemocratic region where freedom of expression is not even guaranteed, that the RTI is also not granted.

The non-recognition of RTI is illustrated among other things by the absence of constitutional provisions of most countries in the region: in fact, only seven countries from the region have adopted laws on access to information. According to ARTICLE 19,³ less than 50% of the region's population lives in countries which recognize RTI, in comparison with 98% of the European population, or the world average of 90%.

¹ Anti-Corruption Priorities in the MENA Region: UNCAC Coalition Statement to the 9th Session of the UNCAC Conference of the States Parties, 26 November 2021, <https://uncaccoalition.org/wp-content/uploads/CoSP9-Submission-MENA-UNCAC-Coalition-membership-Anti-corruption-priorities.pdf>.

² See Article 10a of the United Nations Convention against Corruption (UNCAC), <https://uncaccoalition.org/the-uncac/united-nations-convention-against-corruption/>.

³ <https://www.article19.org/right-to-information-around-the-world/>.

Even among the seven countries that have adopted ATI laws, the situation has not improved, since legislative texts often fail to meet international standards.⁴ Despite the existence of the legal framework, some countries have done nothing to effectively implement these laws, by actively delaying the adoption of regulatory texts or by voiding the texts of laws of any real power. Notably, almost all of the seven countries have not made attempts to harmonize other pieces of legislation that may indirectly limit the access to information, such as laws regulating the public service, the right of professional secrecy, national archives and statistical systems.

Furthermore, procedures which have been defined by law can be circumvented to limit access to information. Procedures that are partly non-compliant with international standards, for instance, the way of filing valid requests, restrict rights to local populations. Moreover, in places where ATI officers have not been nominated and their details have not been shared as required by the law, the effectiveness of existing laws is further undermined.

The exceptions that can justify secrecy in specific cases, which international standards recommend limiting as much as possible, have remained very broad both in the laws of the region as well as in their application by public administrations when implementing these laws, in particular concerning concepts such as 'national security' and 'personal data', thus unnecessarily and often arbitrarily impeding citizens' access to information.

As for the institutional guarantees which are supposed to protect the right to and the requesters of information, they too suffer from shortcomings, both at the level of legislation and implementation. Certain laws in the MENA region have limited the possibility of recourse to administrative appeals, which cannot be independent and cannot in any case be considered as a real guarantee. Judicial appeals, through the creation of independent access to information oversight bodies, have been obstructed by limiting the independence of these bodies, where they exist, through budgetary or administrative restrictions (with limited possibility of recruiting staff, no power to investigate cases, no mandate to decide on the release of information, etc.). In some countries, judicial appeals are no longer possible in practice.

The lack of democracy in the region also affects government transparency and the right to information: The absence of official communications campaigns to publicize the right of access to information and raise awareness about the importance of a culture of transparency is a shared characteristic among almost all countries in the region, at least in terms of official campaigns launched by the country's public administration or independent oversight bodies, where they exist. Communication campaigns are crucial to the effective implementation of access to information laws, which depend to a large extent on changing the culture of the administration and the relationship to the citizens, and not only on the adopting of laws and training of civil servants.

The MENA region is further limited by restrictions on civic space and particularly, on freedom of association. Where associations do exist, they are either limited in their actions or limited and constrained by the powers in place which narrow their scope of work.

⁴ See: Access Info Europe, Centre for Law and Democracy: Global Right to Information Rating, <https://www.rti-rating.org/rating/>.

UNCAC Coalition

Association for the Implementation of the
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Civil society's role in the practice of the rule of law is limited by the restrictions imposed on them. Their contributions in the defence and promotion of the right of access to information remain very weak in several countries in the region. Such challenges have certainly harmed the right itself and worked against it being embraced by governments.

In addition, the role of the press and the media in the promotion of RTI and its use has unfortunately suffered from these same restrictions imposed in several countries within the region on freedom of expression. The press and the media are among the principal defenders and promoters of RTI as direct users of the press, through investigative journalism or data journalism efforts, which contribute to the fight against corruption.

Given this context, the UNCAC Coalition's MENA membership calls on States Parties from the region to:

- Protect the public's right to obtain information by **enacting right to information laws** in countries that have not yet done so, and through **improving existing legislation** in other countries, **in accordance with international standards**.
- Enhance freedom of expression, **create an enabling environment for media and civil society to operate in** and provide legal support frameworks for them to effectively defend and promote the RTI.
- Enrol effectively in **open and participatory initiatives to allow media and CSO's to contribute** to the creation and monitoring of public policies in a way that enhances transparency and the implementation of the UNCAC.