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Power to the People? The Right to Information Law in Morocco

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Morocco's recently enacted Right to Information Law is a potentially powerful tool in the hands of its citizens, but their ability to use it is still largely dependent on the government's commitment to transparency and political will to enforce it.

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With the ratification of the Right to Information Law (31.13) in February 2018, Morocco has officially joined the Open Government Partnership (OGP).¹ This is a major step for the monarchy as it vows to commit to the four key principles of the OGP: public access to information, asset declarations by public officials, fiscal transparency, and citizen participation. On March 12, 2020, Law 31.13 came into force two years after its promulgation. According to the new law—and pursuant to Article 27 of the 2011 constitution—citizens have the right to request information held by the public administration, elected institutions, and public service provision organizations. Whereas the Right to Information Law promises to promote transparency and responsiveness as well as to restore public trust in state institutions, it is still unclear as to how it will benefit disadvantaged groups in marginalized regions and improve local governance. Law 31.13 has the potential to improve the quality of public services and empower citizens, but there are also major obstacles and gaps that require immediate attention—including the lack of political commitment to transparency, the prevailing institutional culture of retaining information, and, most importantly, the increasing closure of the civic space and crackdown on opposing voices.

Discussions on a Right to Information Law were initiated as early as 2007, following Morocco's ratification of the UN Convention against Corruption (Resolution 58/4). However, it was not until the Arab uprisings and the February 20th movement when government officials and civil society actors embarked on an initiative to promote accountable, responsive, and inclusive governance.² As a result, Article 27 was drafted and included in the 2011 amended constitution, and, therefore, access to information became a fundamental right to all citizens and legal residents of Morocco. A specialized commission composed of members of ministerial departments, government agencies, private sector companies, and civil society organizations was later established to work out the details of the law. Law 31.13 was the product of these collective efforts. It was ratified in February 2018 after years of debate and legislative battles. The law was originally scheduled to come into effect a year after its publication in the official gazette in March 2019. However, Law 31.13 was only officially enacted in March 2020, following a one-year delay due to logistical hiccups and implementation-related issues.

In a nutshell, Law 31.13 grants citizens the right to access information retained by government entities. Individuals can submit a free application to the relevant institution and request information on items such as laws, data, and reports. However, there are exceptions that apply to the type of information requested, such as those relating to homeland security and citizens' private data. The law, under Article 29, also outlines penalties for citizens' misuse of the requested information. Government agencies must respond to requests within twenty working days of their receipt. In some urgent cases (e.g. protection of lives or public safety), information must be provided within three days. Information officers' failure to respond to requests is penalized under Article 19 of the law.³ Consequently, the implementation of law 31.13 relies on two main pillars: the appointment of well-trained civil servants who can adequately respond to public requests for information, as well as the proactive and timely publication of data that is accessible to the public.

Law 31.13 has the potential to be an effective tool for empowering citizens, especially those in marginalized regions, such as those in the rural margins of the monarchy. Most of these regions have witnessed intense popular unrest over the past few years, as citizens demand improved availability of basic services, such as healthcare, electricity and clean drinking water. The recent regionalization reforms introduced in Morocco's 2011 constitution⁴ and the ensuing Organic Laws⁵ provided a significant boost toward strengthening the role of local governance and citizen participation in the decisionmaking process. However, the realization of these goals was unlikely without citizen access to relevant information. The municipal councils are now obliged to comply with Law 31.13, which will enable citizens to scrutinize their local representatives and hold them accountable. Karim El Hajjaji, co-founder of Tafra Association⁶, says "So far, it is extremely difficult to know what the communes [municipalities] are doing with the public resources they have in hand. Law 31.13 makes it mandatory to publish not only their budgets, but their public procurement calls and processes, spending programs, and all information related to local governance."⁷

Thus far, the diminished availability of financial resources and qualified human capital are often cited as the biggest obstacles toward the successful implementation of the law. But in practice, altering societal and institutional culture is the real challenge. The law requires the Moroccan territorial collectivities (regions and municipalities) to nominate new information officers tasked with responding to citizens' requests. These territorial collectivities are generally showing willingness to engage and are sending their newly nominated information officers to trainings. However, Ahmed Jazouli, a Moroccan policy expert involved in the training programs of civil service agents, maintains, "The main obstacle is the culture of retaining information by civil servants. They should be trained on releasing information and on the proactive publication of data. It is essential to focus on changing the dominant culture among public servants."⁸

Apart from changing bureaucratic culture, it is key to foster a political culture of transparency, which is currently lacking. Most public institutions still hold back information that may show evidence of mismanagement or misuse of public resources to avoid legal scrutiny. According to the new law, it is mandatory for municipalities to make their financial data and development plans available online, yet few municipal budgets are currently accessible online. For instance, the city council of Casablanca has made significant efforts to promote dematerialized services and to keep its website updated. This example stands in contrast to other major well-endowed cities such as Rabat, which currently lacks a website. According to Karim El Hajjaji, "It is definitely not a matter of financial resources, but rather of political will."⁹

Far-reaching campaigns are also crucial for raising public awareness of the law and its impact on their everyday lives. The law offers an opportunity, but it is up to citizens to exercise their rights to ensure equitable service delivery policies. Civil society organizations have a strong role to play in this regard. For example, Transparency Maroc, together with several national and international partners, organized a group of civil society organizations to lobby for a transparent and participatory budget. Similarly, referring to the Right to Information Law, Transparency Maroc is demanding more consistent information about the special COVID-19 fund, which was set up by the Moroccan government in March 2020 to compensate those who lost income due to the lockdowns.¹⁰ Indeed, the government's management of this fund—which supports over five million households—has received widespread criticism from activists and NGOs. Oxfam Maroc, for example, is advocating for the fund to come under parliamentary oversight and be subject to checks by the Court of Audit. Others, including Tafra, called on the government to disclose the data used to develop the scenarios for the evolution of the pandemic in Morocco. However, the Haut Commissariat au Plan refused to do so, citing personal data protection constraints. This means that researchers and experts—such as those at Tafra—are not able to quality check the scenarios put forth by the government and thus cannot be part of the decisionmaking process in terms of lockdown policy and how the special fund is spent.

Finally, the potential of the Right to Information Law cannot be assessed without taking into account the closing civic space, including the restriction of media freedom in Morocco. More recently, the government used the COVID-19 crisis to pass a new emergency law, No. 2.220.292, declaring a health emergency and setting penalties of a up to three-month prison sentence and a fine of up to 1,300 Dirham (around 134 USD), for anyone breaching “orders and decisions taken by public authorities” or for anyone “obstructing” through “writings, publications or photos” of those decisions. Apart from prosecuting more than 90,000 people for breaking the law and other crimes, authorities have used it to prosecute several human rights activists and citizen journalists, accusing them of “incitement to violate the authorities’ decisions during the health emergency,” when in fact they criticized the “cronyism” and unequal distribution of aid by local authorities during the COVID-19 crisis.

The continued crackdown on journalists and opposing voices stands in stark contrast to the government’s recent efforts aimed at increasing citizens’ trust in the government and responding to calls for transparency. Such trust is arguably a pre-condition for citizens to invoke the law and make use of its provisions. In the meantime, disenchanting citizens would rather mobilize collectively and in the streets of major cities, as in May 2020, when protestors gathered to contest their exclusion from the COVID-19 fund. In short, while the Right to Information Law is a potentially powerful tool in the hands of citizens and civil society organizations, its application and enforcement largely relies on the government’s political will and commitment to genuine reforms.

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¹ Seventy-eight countries and a growing number of local governments—representing more than two billion people—along with thousands of civil society organizations are members of the Open Government Partnership.

² A recent report by the OECD points out that most MENA countries lacked access to information laws prior to the Arab uprisings. In the few MENA cases that promulgated such laws before the uprisings, many provisions penalized the sharing and communication of information without prior authorization by the relevant authorities.

³ The law states that officials who fail to provide citizens/legal residents with requested information will be subject to disciplinary actions, however, the specifics of such penalties remain unclear.

⁴ According to Article 1 of the 2011 amended constitution, “the territorial organization of Morocco is decentralized, and based on an advanced degree of regionalization.”

⁵ OL #113.14 outlines the authorities and responsibilities of the different local governance units (i.e., regions/provinces/municipalities) and it puts in place participatory mechanisms for citizens (Article 119).

⁶ Tafra Association is a research center in Rabat whose mission is to improve the understanding of Moroccan institutions to participate in the consolidation of the rule of law in Morocco.

⁷ Interview conducted by the author (Marwa Shalaby) in Rabat, February 2020 and follow-up email in June, 2020.

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¹⁰ Getting access to this fund is even more important given the fact that 46 percent of the active population has no health insurance and 4.3 million households are employed in the informal sector

without social security benefits.

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