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AN EVALUATION OF THE FREEDOM OF INFORMATION IN JORDAN

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ABSTRACT

Jordan is the first Arab country to have enacted Legislation on Access to Information. The current study tries to clarify the legal framework of the right to information under Jordanian Constitution and legislations in comparing with the international treaties and standards. It also aims to determine the legal basis for the legitimacy of this right in international law and local legislation, as well as to define the types of information and its classifications under both the State Secret and Documents Law No (50) 1971, and Law Guarantee Access to Information, 2007. The role of information disclosure in economic, social and political progress is focused on, in addition, the study highlights on the most important laws that limit an individual's right to obtain information in Jordan, such multiple and different laws have been mentioned in this study, as well as it clarifies the most important challenges facing the actual application and implementation of the law of 2007.

*Keywords:* Information, Human Rights, Legislation, Constitution, Jordan.

1. INTRODUCTION

The problems of people all around the world are democracy crises, corruption, demolition of human rights, governmental biases and absence of transparency and accountability. Poor public access to information contributes to more complication of those problems and prevents public participation in decision-making on all aspects of life at national levels.<sup>(1)</sup> Hence, access to information is a critical tool for the promotion of democracy and human rights, prevention corruption and increasing accountability.<sup>(2)</sup>

Jordan is not isolated from its global environment, where the political leaders have recognized that the world is changing in the era of globalization and they have realized the need of citizens to access information in order to be enabled to participate in public life and political affairs of the State. The outcome of this recognition was the birth of new legislations based on the international treaties and documents that grant public with the right of access to information, by which the public authorities of state are obliged to submit and disseminate information to public within a suitable and proper time<sup>(3)</sup>.

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<sup>(1)</sup> Laura Neuman, Access to Information: A Key to Democracy, the Carter Center, November 2002, p.5// <http://www.cartercenter.org/documents/1272.pdf> (accessed on March 17, 2013)

<sup>(2)</sup>The Carter Center, the Promotion of Democracy through Access to Information, May 2004, p.8// [www.cartercenter.org/documents/2012.pdf](http://www.cartercenter.org/documents/2012.pdf) (accessed on March 16, 2013)

<sup>(3)</sup> See Jordanian Law Guaranteeing the Right of Access to Information, Official Gazette (2007/47 No.17-06/4831).

The right to knowledge and freedom of access and access to information is the most important pillars of the democratic structure of the modern state, and it is a foundation for press freedom<sup>(4)</sup>, for this Jordan was the first Arab country that recognized the freedom of information by enacting a special law guaranteeing access to information.<sup>(5)</sup> This law was as the result of abolition of the state of emergency and martial law in Jordan, but still the right of access to information should be included in the articles of the Constitution of Jordan, and the law of protection of the state secrets and documents, 1971 should be amended as to be in harmony with new law of information and the provisions of the International Covenant on Civil and Political Rights, especially Article (19) of the International Covenant on Civil and Political Rights, 1966<sup>(6)</sup>. On this context, despite Jordan signed and ratified most of the international treaties, which have embody some rules on access to information, but still is not a party to one of the most important international conventions on access to information that known as the UN Aarhus Covenant, 1998. Here, it can be said that Jordan violates its international obligations by not signing and ratifying Aarhus Convention, which guarantees the right of public to access environmental information and ensures the involvement of citizens in environmental decision-making and access to justice.<sup>(7)</sup>

The right to freedom of information and its circulation is based on the premise that 'public institutions maintain information on behalf of the public' and 'public affairs are matter of public' This principle refers to the need to introduce effective mechanisms that ensure the public access information easily and without that the truth of people's participation in public affairs will be weaken and remain fragmented. The freedom of access to information is not only fundamental human right, but a prerequisite for the participation of the public in governance to achieve democracy.

This Article proposes that the access to information is a vital constitutional right and the base upon which the principles of democratic society is relied on, because of its nature as a guarantee for establishing democracy and rule of law. Such constitutional right has been recognized implicitly within many articles of the Constitution of Jordan and as a foundation for governance in the country such right well be the focus of new Constitutional Court in Jordan, especially with the fact says that it is necessary for openness, transparency and prevention of corruption and mismanagement. Thus, access to information is essential to ensure the exercise and promotion of human rights and democratic principles. This Article deals with information as the key for public participation in decision-making and a movement towards community participation would be seriously endangered unless access to information becomes freely exercised.

In the second section of this Article, the definition of the access to information under national legislations of Jordan and international treaties and documents, especially in the Guaranteeing the Right of Access to Information Law of Jordan No (47) 2007 and the Aarhus Covenant, 1998 will be laid out. The significance of information can be underlined by the truth that the responsibility of the law enforcement to public is an important way which cannot be applied without unopened and unobstructed flow of information. In the third and fourth sections of this Article the legal framework regulating the circulation of information and the rational of right to information will be discussed within the national, comparative and international laws,

<sup>(4)</sup> R. Rikowski, "Globalization, Information and Libraries: The Implications of the World Trade Organization's GATS and TRIPS agreements, (Oxford. UK: Chandos Publishing, 2005), pp.5,11

<sup>(5)</sup> See Jordanian Law Guaranteeing the Right of Access to Information, Supra note No (3).

<sup>(6)</sup> Article 19 (2) of the International Covenant on Civil and Political Rights, 1966, states that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

<sup>(7)</sup> Zeriaih. Net, Ministry of the Environment's Monopoly to the Environmental Protection in Jordan, April 01, 2012// [http://www.zeriaih.net/index.php?option=com\\_content&view](http://www.zeriaih.net/index.php?option=com_content&view) (accessed March 18, 2013)

the right to information has two closely associated aspects, firstly, the right to read, to listen, to see and to otherwise receive communications, and secondly, the right to obtain information as a basis for transmitting ideas or fact to others<sup>(8)</sup>. Collectively these constitute the reverse side of a coin and coin is the system of freedom of expression<sup>(9)</sup>. As a distinct right, it has three aspects namely right to demand information, right to receive information and right to disseminate information. In other words, it includes right to inform others and to be informed oneself<sup>(10)</sup>.

In the fifth, sixth and seventh sections of the present Article, the protection of access to information as a constitutional right under the constitution of Jordan and other comparative constitutional laws, the obstacles for implementation the special Jordanian Law on Access to Information No (47) 2007, as well as the legal guarantees and restrictions under this law in comparing with the Aarhus Covenant, 1998 are focused on, deeply. Finally, the final section of this Article suggests more legal points about the effectiveness of legal mechanism in Jordan for protecting the right of access to information and the ways and procedures for developing it on the light of several rule related to this right under many international documents and treaties, especially as adopted by the Aarhus Covenant, 1998.

### 1.1 DEFINITION AND CONCEPT

Since ancient times the knowledge was described as the real power and the importance of information appears highly when it comes within the legal context, where most of the world legislations provide protection for such information against the breach of public authorities and, therefore, this right comes into the context of the human right to privacy and the right to informatics privacy, which is a right constitutionally gain full protection under the Jordanian legal system<sup>(11)</sup>.

The concept of information has a special focus under Aarhus Covenant, 1998<sup>(12)</sup>. This covenant defines information in specific terms, by dealing only with this concept in terms of access to environmental information under article 4 and its collection and dissemination under article 5 of the same covenant. The Environmental information under Aarhus Covenant is defined as “any information in material form relating to the state of the elements of the environment” and the environmental elements embody “air and atmosphere, water, soil, land, landscape and natural sites, and biological diversity and its components, including genetically modified organisms”<sup>(13)</sup>.

In Jordan, the legislator attempted to take into account the minimum requirement of international definition of information and somehow used border elements for clarifying the essence of information. The Jordanian legislation also differs between classified and non-classified documents in term of the definition of information held by public authorities, which means not all information held by official authorities can be accessible to the public. Jordan is among other states with general access to information, and as it is not party to Aarhus Covenant, 1998 has only a general information law and till this moment there is no a special

<sup>(8)</sup> Thomas, I. Emerson,. “Legal Foundation of the Right to Know Why, Washington University Law Quarterly, Bd. 1, and Nr. 1, (1976): 6.

<sup>(9)</sup> Ibid, p.6.

<sup>(10)</sup> D.R, Mankekar, One Way Free Flow, Neo-Constitutionalism v. News Media, (India: Clarion Books, 1978), p.16.

<sup>(11)</sup> Raed. S.A.Faqir, Protection of the Rights of Accused in India and Jordan, Ph.d thesis, (New Delhi, India: Delhi University, 2004).

<sup>(12)</sup> Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447. (Aarhus Covenant, 1998.)// [www.unece.org/env/pp/documents/cep43e.pdf](http://www.unece.org/env/pp/documents/cep43e.pdf) (accessed March 15, 2013).

<sup>(13)</sup> Stephen Stec, Susan Casey- Lefkowitz and Jerzy Jendroska, The Aarhus Convention: An Implementation Guide, Prepared for the Regional Environmental Center for Central and Eastern Europe with the financial support of the Danish Environmental Protection Agency, United Nations, (New York and Geneva, 2000, p. 36)// <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf> (accessed on 16.03.2013)

legislation on environmental information. The definition of information under the Jordanian Law on the Right to Information No (47) of 2007 has a general feature. Section 2 of this Law defines “information” as “any oral or written data, written or illustrated records or statistics, or documents, which are registered or stored electronically or by in any way fall under the official administration or authorization”<sup>(14)</sup>.

In Jordan, according to the Law of Protection of Secrets and Documents the State of 1971, the information are classified into strictly confidential information that include any information of the type of serious nature related to the internal or external security of stat, all plans and details of the military operations, and any information related to public security or intelligence, any plan related to a general military operations or internal security measures, whether economic, productive, refueling, or urban cases, moreover, any important political documents of a very dangerous nature that related to international relations and agreements or treaties, information and documents concerning the means of military intelligence or public intelligence or any information affect the sources of military intelligence or public intelligence and important information on arms and ammunition or any other source of defensive strength, which its disclosure is deemed as a threat to the internal or external security of the State.

In addition to the above classification, the Law of Protection of Secrets and Documents of 1971 considers all the following information as protected one, such as information harms the interests of the state that its disclosure would lead to administrative or economic difficulties for the country or may give some benefits to foreign countries. Such type of information includes also any documents concerning the fulfillment of administrative or penal trials, bids or financial affairs or general economic, reports of military intelligence, types of reports which may affect the morale feelings of the citizens unless authorized to be published and finally radio waves of the military of the Armed Forces and Public Security and General Intelligence, or any other governmental authority, and any protected information or document that its disclosure may cause damage to the reputation of any person or official prestige of the state.

## 2. THREE MAIN CATEGORIES OF INFORMATION

### *(a) Information On The Secrets Of The Defense*<sup>(15)</sup>

These include military, intelligence and armed forces information<sup>(16)</sup>, it embodies also all types of information related to certain aspects of foreign policy and higher economic interests. This type of information sometimes is referred within the financial terminology to the so-called 'black box', which gain the status of 'strictly confidential'<sup>(17)</sup>. Jordanian legislator acknowledged this type of information under Penal code, where it states if the person found responsible for disclosing the non-circulated information might be punished with an imprisonment for a period not exceeding three years<sup>(18)</sup>, the same punishment has been provided

<sup>(14)</sup> The Right to Information Act of Jordan, Official Gazette (2007, No. 17-06/ 4831), and its amendments (2012, No. 09.09)

<sup>(15)</sup> Alice R. Buchalter, John Gibbs and Marieke Lewis, Laws and Regulations Governing the Protection of Sensitive but Unclassified Information, Report Prepared by the Federal Research Division, Library of Congress under an Interagency Agreement with NASA Office of Inspector General, September 2004, p.1.

<sup>(16)</sup> Morocco. Penal Code (promulgated by Dahir No. 1-59-413 of 26 November 1962, 28 Jumada II 1382), Article 187 defines the secrets of national defense as including 'information of a military or diplomatic, economic or industrial nature, which are available only to qualified persons, and for the interest of national defense require to remain it secret for anyone else.

<sup>(17)</sup> Elizabeth A. Rowe, “Striking a balance: when should trade-secret law shield disclosures to the government”? Iowa L. Rev. Vol. 96, (2011): 793.

<sup>(18)</sup> Penal Code of Jordan, Official Gazette (1960, No. 01-01/1487), Section 355

by Jordanian Penal Code for every army person involved with providing others military documents that under his control by the virtue of his position<sup>(19)</sup>.

*(b) Information Of The Preliminary Investigations*

These are publications leading to the disclosure of confidentiality of the investigation and impedes judicial investigations<sup>(20)</sup> and, consequently, obstruction of justice as well as breach of the presumption of innocence, which says the accused is innocent until proven guilty in a fair and public hearing<sup>(21)</sup>. But the principle of confidentiality of preliminary investigation is subjected to number of exceptions, notably based on the need of public to see on the news related to the judicial and social situations and cases of administrative corruption<sup>(22)</sup>.

*(c) Personal Information Of Individuals*

These include the information of intimate (emotional, family information)<sup>(23)</sup> and medical information, especially the so-called (medical file), which are prohibited to be circulated without the consent of the patient or his guardian as per the rule of professional secrecy imposed on the doctors for the purposes of public order<sup>(24)</sup>. With the exception of infectious diseases where appropriate to inform the health authorities of any infection case with a contagious disease. As an exception to this rule the publication of medical records which may be useful for the progress of medicine creation tools for the treatment of patients<sup>(25)</sup>.

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<sup>(19)</sup> Military Penal Code of Jordan, Official Gazette (2002, No. 0.6-16/4551), Section 28.

<sup>(20)</sup> Press and Publication Law, Official Gazette (1998, No. 09-01/4300), Section 39, authorizes censorship on court proceedings and criminal investigations. It states that publications may not report on “what the investigative authorities or court are assigned if it influences the investigation, the court proceedings, or the status of the people involved.” It also empowers the judiciary to censor news coverage on criminal investigations or trials.

<sup>(21)</sup> Criminal Procedure Code of Jordan, Official Gazette (2009/19 No. 01.09 /4979), Section 64 states that the investigating judge may decide to prevent any kind of contact with the detained accused for a period not exceeding renewable ten days. Section 66 of the same law provides that The accused and his lawyer have the right to attend all the investigative sessions, except to hear witnesses, where the investigating judge may decide to conduct this work without their attendance when he deems it necessary to show the truth, but he has to brief them on this investigation after its compilation up on their request.

<sup>(22)</sup> In Jordan all criminal investigations are conducted in camera, and the exception is given in trial stage investigations, in this regard Criminal Procedure Code of Jordan, Official Gazette (2009/19 No. 01.09 /4979, Section 139 says that the judge may rely only on the evidence presented during the trial, and which has been discussed by all parties in public. The publicity of the trial stage procedures is ensured also under Sections 182, 183 and 199 (1) of the Criminal Procedure Code, 1968 and its amendments of 2009.

<sup>(23)</sup> Bar Association Act of Jordan, Official Gazette (1972, No. 01-01/2357), Section 60 (4), provides that the lawyer shall not, under legal penalty, testify against his client in the case hired for defense, or to or disclose a secret entrusted to him through conducting professional business .... in different circumstances, even after the termination of his agency.

<sup>(24)</sup> Evidence Act of Jordan, Official Gazette (1951, No. 06-16/1071), Section 37 states that lawyers, agents and physicians are obliged to testify in any criminal cases under the obligation not to breach the private laws that insist them not to disclose the secrets of their clients. The Medical Constitution of Jordan, Official Gazette (1982, No. 16-02/3054), Section 23 states that doctor must not disclose information obtained during a professional relationship without the consent of a patient , except in cases required by law, and the patient is not required to aware the physician about maintaining of secrecy. Section 45 of the Medical Association Act of Jordan, Official Gazette (1972, No. 05-06/2357), states that every doctor prejudice his professional duties contrary to the provisions of this Act and any other regulation issued in pursuant thereto, or commits a misdemeanor or exceeds the rights or limits of his obligations, sated in the medical constitution, or refuses to comply with the resolutions of the Council or conduct any behavior, which may affect the ethics or commits in his private life an act demeaning displays himself to disciplinary before the Disciplinary Board.

<sup>(25)</sup> Public Health Act of Jordan, Official Gazette (2002, No. 08-28/4561), Section 22 (a), provides that every licensed physician has supervised or participated in the treatment of any contagious disease shall inform the Directorate in his region about the disease or death within twenty-four hours of its occurrence.

### 3. THE RESTRICTED AND OPENED INFORMATION IN JORDAN

There are types of information may not be published or disclosed unless under some conditions, and perhaps the prohibition of its publication or inaccessibility is linked to the information ownership or nature, which may require a specified time for its release. These types are:

- a) Banking information, its disclosure is prohibited unless it may not lead to the violation of the principle of banking secrecy, which is required by all employees of banks under the legal liability.<sup>(26)</sup> In Jordan, the inside information of the banks or companies have a restricted nature, so all the insiders who possess such information due to their job or position are prohibited from disclosing or exploiting them by the virtue of law, otherwise they can be legally responsible for the disclosure of such secrets<sup>(27)</sup>.
- b) Personal status information includes all types of information which have an individual character<sup>(28)</sup>; such information may not be disclosed without the consent of the concerned person, including information relating to marriage, inheritance, adoption and descent etc<sup>(29)</sup>.
- c) Diplomatic information and correspondences, which include all information abused while doing business of diplomacy, and they are usually associated with the information of the higher interests of the state and national security requirements, such kind of information should not be disclosed unless after the passage tens of years<sup>(30)</sup>.
- d) Open Information for the public: Open information for public includes all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production. The legislation should also apply to records which have been classified, subjecting them to the same test as all other records<sup>(31)</sup>.

In the legal system of Jordan, the National Charter issued on 06/09/1991 emphasis that it is the right of every citizen to seek truth and knowledge through the transmission and publication sources of legitimate inside the country and outside, and this right should not be affected by the censorship of information. Hence, this right became a truth by enacting the new law on the right to information in 2007 and its 2012 amendment, which makes this right applicable not for nationals only but also for citizens of other countries. The definition of information under both the Jordanian Law on the Right to Information No (47) of 2007 and

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If the disease is serious or speared as ...doctor shall report the case immediately and the provisions of this paragraph is applicable also for the official medical laboratory that discovers the disease.

<sup>(26)</sup> Clarence Peter, *Insider Trading in Switzerland*, Published in *Insider Trading*, edited by Emmanuel Gaillard, ( The Netherlands: Kluwer Law International, 1992).

<sup>(27)</sup> Financial Securities Act of Jordan, Official Gazette (2002/76, No. 31-12/4579), Section 2 states that undisclosed information issued by one source or more, or one security or more, which may affect the price of any securities in the event of it advertisement, and it does not include conclusions based on studies and research and financial and economic analysis.

<sup>(28)</sup> Said Seed Rushdie, *The Evidential Power of Modern Means of Communication in the Proof*, ( Egypt: Golden Eagle Publication, 1998), P. 88-89

<sup>(29)</sup> Electronic Transactions Act of Jordan, Official Gazette (2001/85 No. 31-12/4524), section 37 states that any party to be punished with a fine of not less than (50,000) fifty thousand JD in case of providing incorrect information in the registration application or disclosing secrets to clients.

<sup>(30)</sup> Article 27 (2) (3) of Vienna Convention on Diplomatic Relations, 1961, provides that the official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions, the diplomatic bag shall not be opened or detained.

<sup>(31)</sup> International Standards Series, *The Public's Right to Know: Principles on Freedom of Information Legislation*, (London: 1999)// <http://www.article19.org/docimages/512.htm> (accessed August 13, 2011).

Aarhus Covenant, 1998 seems to be parallel, because they guarantee access to information any written, visual, aural, electronic or any other material form, and irrespective of its nature either general or environmental. Therefore, it can be said the impact of Aarhus Covenant, 1998 in formulation of the definition of information under the Jordanian Law on Right to information is much clear despite of not focusing on the term of environmental information, but again there is a legislative problem under Jordanian legislations as regard to the restrictions imposed on access to information under other existing of the old national legislations, which may rise the question of its unconstitutionality in future before the new born constitutional court of Jordan.

#### 4. LEGAL FRAMEWORK REGULATING THE CIRCULATION OF INFORMATION

At the level of the United Nations, the question of freedom of access to information has emerged during the meeting of the General Assembly of United Nations by 1946; where there was a failed attempt to sign a special treaty on the freedom to obtain information<sup>(32)</sup>. The right to obtain information has not been effectively recognized under the Universal Declaration of 1948<sup>(33)</sup>, except for brief phrases contained in its article 19 which have been reproduced again in the International Covenant on Civil and Political Rights<sup>(34)</sup>, this Article refers that “to seek, receive and impart information”. The wordings used in the preceding articles impose a positive obligation on states for the implementation of the right of access to information. Accordingly, the provision of Article 19 of the International Covenant on Civil and Political Rights on the Right to receive information is driving from the context of freedom of expression<sup>(35)</sup>.

In 1992, the features of the right of access to information became more pronounced in the The Rio Declaration on Environment and Development, 1992,<sup>(36)</sup> as its Principle 10 embraces clearly public's right to get all the environmental information held by public authorities in the country<sup>(37)</sup>. The direct and most obvious emphasize on the freedom of access to information is contained also in the United Nations Convention against Corruption, 2003<sup>(38)</sup> by insisting on the commitment of States to transparency measures, where its article 10 makes it obligatory for the state's public authorities to take necessary measures to ensure freedom of

<sup>(32)</sup> Carol Binder, Freedom of Information and the United Nations, International Organization, Vol. 6, Issue 02, (May, 1952): 210- 226. DOI: <http://dx.doi.org/10.1017/S0020818300016490>

<sup>(33)</sup> Universal Declaration of Human Rights, General Assembly Resolution, 217A, at 71, U.N. Doc A/810 (Dec. 12, 1948)

<sup>(34)</sup> International Covenant on Civil and Political Rights art. 19, Dec. 19, 1966, 999 U.N.T.S. I-14668.

<sup>(35)</sup> Jamie Kennedy, The Right to Receive Information: The Current State of the Doctrine and the Best Application for the Future, Seton Hall Law Review, Vol. 35, Iss. 2, Article 9, (2005): p.818.

<sup>(36)</sup> The United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 3-14, 1992, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Aug. 12, 1992)// [www.un.org/documents/ga/conf151/aconf15126-1annex1.htm](http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm) (accessed November 11, 2011)

<sup>(37)</sup> The United Nations Conference on Environment and Development, Ibid, Principle 10 provides that “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.

<sup>(38)</sup> United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, // [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf) (accessed December 10, 2011 ).

access to information by the public<sup>(39)</sup> and article 13 of the same Convention entitles effectively public with the right to information.<sup>(40)</sup>

The most important international convention in protecting the right of access to information is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters<sup>(41)</sup>, or what is called the Aarhus Covenant, 1998, which imposes obligations on States parties for the transmission and distribution of the environmental information to the public, such an obligation is applied on all governmental institutions and agencies in the state. This Convention is deemed one of the most important international conventions that include detailed provisions on the freedom of access to information on environmental issues<sup>(42)</sup>.

The importance of the Aarhus Covenant, 1998 emanates from the fact that it is the only international document that gives detailed and obligatory instructions on all covenant's members to ensure the transmission and distribution of information although only related to environmental matters state's officials and public authorities<sup>(43)</sup>. Despite the provisions of the Aarhus Covenant, 1998 on the right to access information are strictly procedural, but they have the possibility to encourage the emanation of the substantive rights and to simplify the same result as substantive rights in context of helping people pursuing and implementing environmental norms<sup>(44)</sup>.

The Aarhus Convention is a unique international treaty, because it is the first document on international level that brings detailed instructions on the right to information in terms of environmental protection, and it is clearly stated under its article 1 that “in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice.”<sup>(45)</sup> Hence, the procedural right to access information, which is guaranteed by this convention aim

<sup>(39)</sup> Ibid., Article 10 (a) states that “Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public”.

<sup>(40)</sup> United Nations Convention against Corruption, Oct. 31, 2003, Ibid, Article 13 (1) (b) through “Participation of Society” instructs states to “Ensuring that the public has effective access to information”.

<sup>(41)</sup> Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447. (Aarhus Covenant, 1998,)// [www.unece.org/env/pp/documents/cep43e.pdf](http://www.unece.org/env/pp/documents/cep43e.pdf) (accessed May 25, 2012).

<sup>(42)</sup> Aarhus Covenant, 1998. Ibid, Article 1 states that “each Party shall guarantee the rights of access to information, public participation in decision-making”, Article 2 (3) clarifies that “Environmental information” means any information in written, visual, aural, electronic or any other material form”, Article 3 (2) provides that: “Each Party shall endeavor to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters” and Article 3 (2) states “Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters.” More details on the right to information has been given under Article 3 (2) ,(3) ,(5) ,(6) and (9). Access to environmental information is guaranteed under Article 4 (1-8). Moreover, Article 5 (1-11) ensures collection and dissemination of environmental information, while Article 5 (7) (c) states “Provide in appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.” Ibid., see also Articles of the Aarhus Covenant, 1998, of (6-11).

<sup>(43)</sup> Roy Peled and Yoram Rabin, The Constitutional Right to Information, Columbia Human Rights Law Review, Vol. 42, No. 2, Winter 2011, p.384// <http://ssrn.com/abstract=1706606> (accessed on March 23, 2013)

<sup>(44)</sup> Ole W. Pedersen, European Environmental Human Rights and Environmental Rights: A Long Time Coming? Georgetown International Environmental Law Review, Vol. 21, No. 1, 2008, p.26// <http://ssrn.com/abstract=1122289> (accessed on March 20, 2013)

<sup>(45)</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, Supra Note No. (12), Article 1.



to achieve the main goal of the covenant for protection a healthy environment. Moreover, the right to access information under this convention is not only preserved for the nationals of the state members, but also guaranteed for the nationals of other states as the outcome of engaging NGOs in all process of drafting and adopting the convention along with governments of the states members<sup>(46)</sup>.

The right to access information is granted under articles 4 and 5 of the Aarhus Convention by setting up the minimum requirements and opening the door for the party states to adopt measures that may go beyond of the scope of these articles<sup>(47)</sup>. Public participation is granted by articles 6, 7 and 8 of the same convention, such participation decision-making process would not be effective without given public concerned ‘ access to all kinds of information, free of charge and as soon as it becomes available.’<sup>(48)</sup> Finally, the right to access justice is guaranteed under article 9 of the convention.

Under article 4 of the Aarhus Convention public authorities of states<sup>(49)</sup> are obliged to release all kind of information upon request of its people without the need to prove the interest in having such information.<sup>(50)</sup> The nature of the information to be transmitted to public under this convention is environmental including any other information “in written, visual, aural, electronic or any other form on the state of the environment”.<sup>(51)</sup>

Article 4 (2) of Aarhus Convention lays down an obligation up on public authorities to provide the requested information at the time framework from one to two months, and paragraphs (4) and (5) of the same article specify the grounds for “ refusing a request for information”, with “ taking into account the public interest in disclosure”.<sup>(52)</sup> Article 4 (7) and (8) of the convention deals with the case when the requested authority does not hold the information, where it has again to redirect the request to proper authority with imposing some charges on the applicant side for doing so. In addition, article 4 and 5 of the convention make it obligatory for public authorities at national levels transparently and effectively to collect, disseminate process and update all forms of environmental information in electronic forms<sup>(53)</sup>. On the national level, Jordan has ratified most of the international charters and conventions on human rights, where it was one of the first states that ratified Universal Declaration of Human Rights and the International Covenants on Human Rights, and the United Nations Convention against Corruption, 1975<sup>(54)</sup>. Despite Jordan is not a party to the Aarhus Convention, 1998, it has already signed the Rio Declaration, 1992<sup>(55)</sup> and has moved on a lot of legislative reforms last of them was the Law on the Right to Information, 2007.

<sup>(46)</sup> Ole W. Pedersen, *European Environmental Human Rights and Environmental Rights*, Supra Note No (44) at 27

<sup>(47)</sup> Jeremy Wates, *The Aarhus Convention: a Driving Force for Environmental Democracy*, 2 JEEPL 2, 2005, p.2.

<sup>(48)</sup> Jonathan Verschuuren, *Public Participation regarding the Elaboration and Approval of Projects in the EU after the Aarhus Convention in: T.F.M. Etty, H. Somsen (eds.), Yearbook of European Environmental Law*, Vol. 4, Oxford University Press, Oxford 2004, ISBN 0-19-026786-3, p. 29-48

<sup>(49)</sup> The obligation of transmitting the requested information to state’s citizen is the responsibility of public authorities of the state, which are identified under article 2 of Aarhus Covenant, 1998 “identified as governments at the national, regional, and local level; natural or legal persons performing public administrative functions under national law; and private entities having public responsibilities relating to the environment”

<sup>(50)</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, Supra Note No. (12) article 4(1)

<sup>(51)</sup> Ibid, article 3(a)

<sup>(52)</sup> Ole W. Pedersen, *European Environmental Human Rights and Environmental Rights*, supra note no. (44) at 28

<sup>(53)</sup> Ole W. Pedersen, Ibid at 29.

<sup>(54)</sup> Dated 28/05/1975 and published in the Official Gazette on 15/6/2006

<sup>(55)</sup> Tina Freyburg & Anne Wetzel, *External Governance as Venue-shopping? Framing of Norm Transfer in EU Environmental Cooperation with Neighboring Countries*, draft paper to be presented at the DVPW congress in Kiel, 24.09.2009, p.13 (May 23)//

The Jordanian constitution with all of its various amendments does not provide for the freedom of information, except in Article 15 which concentrates on the right of speech within the limits of law, while the legislator designs many restrictions on this freedom on the behalf of the public interest and for the purposes of national defense. In addition, the Constitution provides in many of its articles some regulatory provisions related to the right to information, which helps to disseminate and exchange information and greater transparency.

Article 33 of the Jordanian Constitution in its second paragraph says that the treaties and agreements which involve any financial expenditure on the State Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the Parliament, and in any case the conditions of confidentiality of the Treaty or agreement shall not be in contrary to the public terms.

In this respect also the Constitution in its article 85 provides that the sessions of both the Houses of Senates and Representatives are in public hearings, and it may be held in camera upon the request of the Government or a request of the five members, then the Council decides to accept or reject the application. Also article 87 of the Constitution of Jordan says that each member of the Senate and the House of Representatives are free to speak and express an opinion within the limits of the rules of internal ordinance of the Council who is a member of it, this member shall not be held responsible on account of any vote, opinion, shown or speech during the Council meetings. In addition, the second paragraph of article 101 of the Constitution of Jordan provides that the court hearings shall be public unless the court decided to make it a secret for the interest of public order or morality. In all cases, the verdict should be in open session.

On the other hand, there are some constitutional provisions that help more financial transparency with respect to the State budget and final account, paragraph IV of article 112 of the Constitution of Jordan provides that house of nation at the debate in the budget bill or in the temporary laws related to decrease of expenditures on according to the public interest without any increasing in those costs in a way of the amendment or proposal made on the separate basis, while it is free after the end of the debate to propose laws making new expenditures.

The legal framework for the protection of citizen's right to information in Jordan is preserved under the new law of right to information that enacted by 2007, where the people before were under the mercy of the states secrets and documents Act of 1971. Therefore the enactment of the new law of the right to information is deemed as a quantum leap for the Jordanian citizens and journalists on the level of exercising the public freedoms. The Jordanian Law Guaranteeing the Right to Obtain Information No (47) 2007 consists twenty sections which ensure the right of Jordanian citizens, whether an ordinary individual or journalist, to access information by the help of state and its departments and agencies.

Despite the granting of this right but still there are exceptions on it, such as the authorization given to the officials to refrain from disclosure of information in some cases already stipulated in section 13 of this law? Section 2 of this Act defines the protected information as any oral or written statements, records or statistics, or documents written or pictorial or electronically recorded or stored or in any way and it is under official management or mandate. Sections 3, 4, 5, 6 of the Law Guaranteeing the Right to Obtain Information number (47) 2007 deal with the membership and function of the information council, while sections 7, 8 and 9 of the same Law explain the limits of the right of citizens and duties of official in accessing and disclosing the information and the legal procedures for accessing the required information.

Section 10 of the law imposes restriction on access to information bearing religious, racial, ethnic discrimination, or any type of discrimination based on sex or color. The most dangerous sections of this law are sections 13 and 14, which impose many restrictions on the right to information, simply by making barriers to access information classified in section 13 as blocked information, while section 14 encourages state's bodies to classify any information as a secret information, which by the pass of time may miscarriage the efforts of liberalizing information in Jordan. Sections 15 and 16 identify the information commissioner and his legal responsibilities and authorization. The conflict regulation of not applying the right to information or preventing people from having access to information is settled as per as section 17 of this law by the High Court of Justice in Jordan. Jordanian Nuclear Energy Act 2007 in its section 5 emphasizes the need to document and disseminate information for the purposes of enabling the public to access them, especially in the field of peaceful uses of nuclear energy.

#### 4.1 THE RATIONAL OF RIGHTS TO INFORMATION

For the importance of the individual's right to obtain information, states were not satisfied only with including this right in its constitutions, but began to adopt it in its national laws, and perhaps Sweden was one of the most leading countries in enacting special legislation for protect the rights of individuals to obtain information, where in 1766, the Parliament passed the Freedom of the Press Act<sup>(56)</sup>. Colombia is the second country in the world begins with protecting freedom of access to information, which in 1888 adopted a law to protect the individual's right to obtain information from different sources, and this law was known as the Code of Political and Municipal Organization<sup>(57)</sup>.

In consistent with international legislation, the right of access to information represents the ability of any individual to access information held by the state, this right is admitted by the international community as it is required by the need to protect the rest of the rights and practices, including the right to freedom of expression, and the perpetuation of the culture of transparency and accountability in the management of public affairs<sup>(58)</sup>. It is an essential component in efforts to fight corruption, and promote citizen participation in public life and development, and integration in society, and enjoyment of their civil and political rights, and it is necessary for the active engagement of civil society in the protection of freedoms and civil rights and for the development of professional media, especially with regard to the journalist investigations<sup>(59)</sup>.

One of most current problems faced by the institutions of democracy in Jordan is lack of popular participation in policy-making of the state, where citizens feel helpless regarding the access to information owned by the institutions of governance. The question here is why Jordan has adopted the right of access to information law comparing with the rest of the Arab countries? In fact, the right of access to information is closely linked to the freedom of expression and opinion, and here it is found that there is variety in the adoption of these laws and regulations by governments. Moreover, individuals are in need for a lot of the governmental information and such information are associated with private life or property of

<sup>(56)</sup> The Sweden Freedom of the Press Act, 1766 (May 22)// [http://www.oefre.unibe.ch/law/icl/sw03000\\_html](http://www.oefre.unibe.ch/law/icl/sw03000_html) (accessed May 22, 2012). Articles 1, 2 and 15. Article 15 the Sweden Freedom of the Press Act, 1766 granted individuals the right to access to information contained in government documents, and in case of objection to the exercise of this right any party may resort to the Court, no authority can prevent that right except on a decision of the court.

<sup>(57)</sup> Toby Mendel, *Freedom of Information: A Comparative Legal Survey* (New Delhi, India: UNESCO, 2003):1.

<sup>(58)</sup> Arab Freedom of Information Network, *the Right of Access to Information in the Arab region*, ( San Diego: Beyster Institute at the University of California, 2009) , p.4..

<sup>(59)</sup> *Ibid*, at P.4.

individuals, including information relating to trade, investment, studies and research, and finally individuals are part of the government<sup>(60)</sup>.

Jordan as the first Arab State to adopt legislation concerning the right of access to information and the question raised here is how was the legal situation of the right of access to information in the Jordan before adopting this legislation? There was a lot of restrictions on the right to information, because most of the information were dealt with as secrets under the Law of Protection of Secrets and Documents the State of 1971, so people either laymen or journalists were not allowed to access all types of the information, for this there was a real need of the enactment of the new law.

The main theme behind the concept of freedom of information is that public organizations have an obligation to disclose information and every member of the public has a corresponding right to receive information. This right is unlimited unless there are legitimate privacy or security concerns. The enactment of the Law Guaranteeing the Right to Information in Jordan by 2007 was as the result of the many significant reasons, such as the increment of the use of information following the evolution of contemporary life, the need of journalists to the information because they were suffering in access to information<sup>(61)</sup>. Moreover, this law preserved the right for all citizens in having the opportunity to obtain information, and at the same time it protects the State's right to maintain confidentiality of some standard documents, especially those relating to national security and public order<sup>(62)</sup>.

The importance of the enactment of a law governing the right of access to information is derived from the truth of dealing with this right as basic human rights, because the right of access to information held by government bodies provides that individuals have a basic human right to demand information held by government bodies. It derives from the right of freedom of expression to "seek and receive information" <sup>(63)</sup>, and therefore, the right of access to information is one of the most important human rights that recognized all over the world <sup>(64)</sup>. The right to information is now widely recognized as a fundamental human right. Resolution 59(1) of the UNGA states that: Freedom of information is a fundamental human right, the touchstone of all the freedoms to which the UN is consecrated. According to this right, it is the right of any citizen to ask the local authorities possessing the documents and information in order to obtain it; the public authorities are legally required to respond and provide such information, unless there is a legally compelling reason for its disclosure.

Information and knowledge are significant for understanding all the human ambitions, such as, enhancement in superiority of living. In the information culture, in which we exist in the present day, attainment of information and its application have a strong and persistent impact on efficiency expands. Citizens who have right to use information and who value how to make use of the obtained knowledge in the progressions of applying their political, economic and legal rights become authorized in order to allow them to put up their power and possessions<sup>(65)</sup>.

The efforts aimed at the dissemination of information and knowledge through all means of communication, have resulted in a positive way. Distribution of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender biases,

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<sup>(60)</sup> Sakhr Al-Khasawneh, Freedom of Access to Information, the Arab Council for Judicial and Legal Studies, Bahrain, 2011. (May 2011)//

[http://www.acjls.org/en/news\\_details.php?news\\_id=40&type=1](http://www.acjls.org/en/news_details.php?news_id=40&type=1) (accessed August 18, 2011).

<sup>(61)</sup> Mustafa Khasawneh, The Relationship between the Executive and Legislative Branches in Jordan, Master Dissertation, Jordan: 2001., p. 71.

<sup>(62)</sup> Yahya Shakir, Press Freedoms in Jordan, (Amman, Jordan: Presses of Al.Daztour, 2001), p. 21.

<sup>(63)</sup> See the Universal Declaration of Human Rights (UDHR) 1948, art. 19.

<sup>(64)</sup> Toby, Freedom of Information: A Comparative Legal Survey, Ibid, at p. 08.

<sup>(65)</sup> Ansari, M. M, Impact of Right to Information on Development: A Perspective on India's Recent Experiences, (New Delhi, India: Central Information Commission, 2008), p.5.

etc., have made significant contributions, where every person requires a wide range of information to be able to effectively function in the knowledge driven economy<sup>(66)</sup>.

#### 4.2 THE CONSTITUTIONAL POSITION

In the most of democratic countries, the freedom of access to information is recognized as one of the constitutional rights, which is expressed directly through constitutional provisions or interpretations of the courts. In the United States the Supreme Court recognizes that the human right to obtain information from government sources is part of human freedom for expression of views<sup>(67)</sup>, however, it can be noted that the First Amendment of the U.S. Constitution does not include a clear expression of this right, but it is dealt with the freedom of speech<sup>(68)</sup>.

In Japan, the Supreme Court acknowledged that the freedom of access to information is the same right to know, which is a constitutional right comes within the context of the human right of expression guaranteed under article 21 of the Constitution<sup>(69)</sup>, in the same way the Supreme Court of India recognized that the right to obtain information is a fundamental right enshrined in the Indian Constitution within the context of the freedom of speech and expression under article 19<sup>(70)</sup>.

In countries like South Korea and Zimbabwe, the constitutional courts dealt with the right to information as part of the right of expression, where it can be violated if the state makes some restrictions on obtaining information from protected documents or sources<sup>(71)</sup>. Notwithstanding the foregoing, there are many countries approved the right of access to information explicitly in its constitutions, and the most important of these states, for example, are Nepal<sup>(72)</sup>, and Thailand<sup>(73)</sup>, Philippines<sup>(74)</sup>, South Africa<sup>(75)</sup>, Argentina<sup>(76)</sup>, Peru<sup>(77)</sup>, Bulgaria<sup>(78)</sup> and Russia<sup>(79)</sup> etc.

In Jordan, the legal characterization of the human rights and the extent of agreement with the international standards recognized in the field of human rights is provided in the introduction of the Constitution Jordan, 1952. In order to activate this, many of the competent institutions were created and the issuance of many of the legislation took place in this direction, at the same time the authorities of Jordan ratified have the group of international conventions and treaties related to this issue<sup>(80)</sup>. The right to know and freedom to access information are not

<sup>(66)</sup> Ibid at p.6.

<sup>(67)</sup> *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978), p. 15.

<sup>(68)</sup> The relevant part of the First Amendment states: "Congress shall make no law ... abridging the freedom of speech, or of the press, or of the right of the people to peacefully assemble, and to petition the Government for a redress of grievances."

<sup>(69)</sup> Repeta L., *Local Government Disclosure Systems in Japan*, National Bureau of Asian Research, Paper Number 16, October 1999, p. 3.

<sup>(70)</sup> *S.P. Gupta v. President of India* [1982] AIR (SC) 149, p. 234.

<sup>(71)</sup> Nak-in, Sung, *Korea Country Report, the Asian Conference on Civil Society and Access to Government-Held Information*, Tokyo, Japan, 13-14 April 2001, See also *Zimbabwe Lawyers for Human Rights and Ors v. The President and Ors*, Case No. SC3/1/99.

<sup>(72)</sup> *Constitution of Nepal*, Official Gazette (Part I, Vol. 40, Extra. No. 37 of 9 November 1990), Article 16.

<sup>(73)</sup> *Constitution of Thailand 1997*, Government Gazette, (1998-02, Vol. 52, No. 2, 99 p), Article 58.

<sup>(74)</sup> *Constitution of Philippines*, Official Gazette, (1987-06-08, vol. 83, No. 23, pp. 2703-2705), Article III, Section 7.

<sup>(75)</sup> *Constitution of South Africa*, Government Gazette, (1996-12-18, Vol. 378, No. 17678, p.147), Article 32(2) and Schedule 6, item 23.

<sup>(76)</sup> *Constitution of Argentina*, Official Gazette, (1995, No. 10.01.24, 430), Article 43.

<sup>(77)</sup> *Constitution of Peru*, Official Gazette, (1993, No. 09.01.4567, p. 111902), Article 2(4).

<sup>(78)</sup> *Constitution of Bulgaria*, State Gazette, (1991, No. 13.07/56/13), Article 41.

<sup>(79)</sup> *Constitution of Russian Federation*, Official Gazette, (1993, No. 29), Article 24(2).

<sup>(80)</sup> Raed Suleiman Al.Faqir, Jamil Qasim Al.Amer, *The Role of the National Center for Human Rights in the Consolidation of the Concepts of Human Rights in Jordan*, working paper submitted to the

provided expressly under the constitution of Jordan, but they form part of the freedom of opinion and expression, which is guaranteed under article 15 of the constitution, therefore, in this case, courts are obliged to give due regard to the international conventions and norms while construing the domestic laws, more so when there is no inconsistency or conflict between them and the domestic law<sup>(81)</sup>.

The freedom of opinion and expression forms a pure human right; every person has the right to form his/her beliefs and opinions and has the right to express himself with all the peaceful means. In Jordan, the right to impart and receive information is part of the right to freedom of speech and expression. A citizen has a fundamental right to use the best means of imparting and receiving information, this what is already stipulated under the Jordanian Constitution in article 15 (1), which states that: ' The State shall guarantee freedom of opinion, and every Jordanian is free to express his opinion by speech, writing, photography and other means of expression in ways not exceeding the limits of the law '. Article 17 of the Constitution provides that "Jordanians are entitled to address the public authorities on any personal matters affecting them, or on any matter relative to public affairs, in such a manner and under such conditions as may be prescribed by law." The rights provided in article 17 are also not absolute, but may be limited by the law.

Despite the need for the restriction of freedom of opinion and expression within the limits of law, but that does not mean that the State should make restrictions on the freedom of speech and impede the flow of information, because the State's goal is to liberate the individual from fear in order to live in safety as much as possible and to express his opinions freely, so as not to become a machine citizen or senseless human, therefore blocking the minds of citizens threaten to collapse of the State, because people are one of the pillars of its existence along with the territory and sovereignty. The freedom of access to information is a constitutional and intellectual freedom, which is one of the most important freedoms of the humanitarian needs in life, because it relates to several aspects of life, this right allows persons to configure their views and ideas on various issues, including intellectual freedom, freedom of opinion and expression, freedom of belief, freedom of education and freedom of the press<sup>(82)</sup>. The right to express and opinion includes freedom of access to information, news, and the individual estimates of accidents and things, whether the basis of these information or estimates the mind or feeling<sup>(83)</sup>.

The right to access to information is treated in most of the constitutions of the world within the context of the freedom of opinion and expression, which should be maintained and guaranteed for individuals by all free societies, it includes the person's right to express his ideas and point of view, and the right to access information through any source and the right to publication of newspapers without imposing prior censorship on the media<sup>(84)</sup>. The freedom of access to information is a fundamental human right, which may not be diminished by any authority or government in the world, because it is one of the social freedoms that similar to the right to form associations, unions and political parties<sup>(85)</sup>, where many of studies justify such connection, simply because the concept of human rights is universal, indivisible, interdependent

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International Conference on Human Rights & Protection Mechanisms, (Algeria: Abu Bakr Belkaid University, December 2009).

<sup>(81)</sup>Praveen Dalal & Shruti Gupta, "The new horizons of right to information", ACE (J), Vol.1, 2004, p 1.

<sup>(82)</sup>Faisal Shatanawi, Human Rights and Fundamental Freedoms, (Amman, Jordan: Al.Hamid Publishing House, 1998), p. 289.

<sup>(83)</sup>Ashraf Ramadan, Freedom of the Press, An Analytical Study in the Egyptian Legislation and Common Law, (Cairo, Egypt: The Egyptian Dar Al-Nahda, 2004), p. 27.

<sup>(84)</sup>Laila Abduls Majid, The Freedom of Press and Expression in the Arab countries On the Light of Press Legislation, (Amman, Jordan: Center for Studies of Opinion and Information, 2000), p. 25.

<sup>(85)</sup>Mustafa Abdul-Karim Al.Adwan, , A Study in the Political System In the light of Different Political Systems, (Amman, Jordan: Dar Wa'el for Publishing, 2001), p. 108.

and interrelated, in this sense the international community should treat human rights in a fair and equal manner and on an equal footing with the same degree of focus<sup>(86)</sup>.

#### 4.3 STATUTORY HURDLES

With the outset of democracy era in Jordan by 1989, the country was subjected to the transitional processes in all aspects of the citizen's life, especially on both political and social levels, such reality later resulted in bringing series of legislative reforms, where the passing of Law Guaranteeing the Right to Obtain Information number (47) 2007 was the most step of it. Although the case of legislative interference imposed by the state of transition experienced by Jordan, but the enactment of this law is considered as one of the most significant features of the democratic governance<sup>(87)</sup>.

Despite the passage of a law guaranteeing the right to access information in Jordan by 2007, which is a real shift in terms of reform and modernization of legal and legislative framework in the Kingdom, but there are still many legislative obstacles lead to pre-empt the application of the provisions of this law, and perhaps most important of these restrictions are contained in a series of Jordanian legislation including Penal Code, the law of contempt of court, the law of crimes of Information Systems and Law on the Protection of State Secrets and Documents<sup>(88)</sup>. The anxiety and fears for the freedom of access to information grow with the release of Crimes of Information Systems Act, which is coincided with the government's actions blocking news Web sites from state employees, and the issuance of instructions that prohibit staff to give any information under penalty of law of Secrets and Documents of a State, which constitutes a constraint violation of the freedom of information contrasts even with the law guarantee the right of access to information.

In spite of being the first Arab country to enact a law guaranteeing access to information, but in practice there are still many obstacles that prevent the effective implementation of the law, and perhaps most important of these constraints on the social level is the so-called culture of secrecy that have contributed to the period of applying the martial law which has devoted the roots of this culture in daily life practices of Jordanians<sup>(89)</sup>. The right of citizens to reach the information is still suffering under the aforementioned forms of many of the laws that were produced by a relay of martial stages, hence despite the enactment of a new law to guarantee access to information, 2007, there are many laws imposing restrictions on freedom of access to information, such as the Act for protection secrets and documents of the State No. (50) 1971, the law of the State Security Court No. (17) 1959, law No. (30) 1959, and Law No. (6) 1996, the Jordanian journalists Association Law No. (15) 1998, and the Penal Code No. (61) 1996, and the law of violation of the sanctity of courts (9) 1959<sup>(90)</sup>.

Jordanian Evidence Act, 1952<sup>(91)</sup> in section 35 prohibits a witness from testifying of the information or the content of papers relating to the state's affairs unless if it is published in the legal way or up on the broadcasting authorization of the competent authority. On the same

<sup>(86)</sup> Farouk Abu Zeid, *A Crisis of Democracy in the Egyptian Press*, (Cairo, Egypt: Madbouly Library, 1977), pp: 23-24.

<sup>(87)</sup> Mohammad Kannoush & Nirmin Ghawnmeh, "The Feminist Quota in the Jordanian Election System from Jordanian Women's Perspective", *Researches of Yarmouk, Journal of Humanities and Social Sciences*, Vol. 27, No. 1. C (2011): p. 660.

<sup>(88)</sup> Walid Hosni, *Dialectic of Confidentiality and Disclosure in the Application of the Law Guarantee the Right of Access to Information*, (Amman, Jordan: Center on the Protection Freedoms of Journalists, 2010), P.7.

<sup>(89)</sup> Hani Al.hawrani. *Democratic Experience in Jordan and the Reality and Future*, (Abu Dhabi: The Emirates Center for Strategic Studies and Research, 1997), p.195.

<sup>(90)</sup> National information system, the Jordanian legislation, (March: 2011)// <http://www.lob.gov.jo/ui/main.htm>. (accessed July 15, 2011)

<sup>(91)</sup> Evidence Act of Jordan, Official Gazette (1951, No. 06-16/1071), and its amendments No (37) 2001, and the amendment No. (16) 2005.

context, the Evidence Act embodies many other sections which prohibit the disclosure of the information, especially in the case of marriage relations, professions and public employee's affairs<sup>(92)</sup>.

Notwithstanding the above, it is noted that most of the Jordanian laws made lots of restrictions on the circulation of information, regardless of party or public body, but there are some laws that keep an obligation on the public authorities to make publications and information available for public, such the Central Bank Law, 1971 which stipulates that each bank has to offer for a period of at least three months, in a prominent place of its offices and branches the last annual public budget certified by the legal examiner or auditor, with a list of names of members of its Board of directors, and shall publish this budget in a local newspaper, and if the bank has authorized any branches outside the Kingdom, the bank may publish the figures of its total budget by the annual budget of the Kingdom<sup>(93)</sup>.

The Securities Law, 2002 stipulates each company shall submit to the Commission, and in accordance with the instructions issued by the Board, the annual report, including financial statements certified by the auditor, within ninety days from the date of the end of its fiscal year, and semi-annual report within thirty days from the date of the end of the half of its fiscal year, and report about the results of its preliminary transactions revised by the auditor during the forty-five days from the end of its fiscal year<sup>(94)</sup>.

These examples show that the Jordanian legal legislator was dedicated to the dissemination of information and data in basic large-scale, but such information were all located in the economic field, where there are many other areas regulated by the laws work to ensure the withholding of information and punishing those who publish it. In any case, there are still many laws in Jordan, restrict the right to information, even more than that, they punish every person who leaks the information or discloses it to the public, and perhaps the most important of these laws include: Penal Code, 1960, which imposes a criminal penalty on anyone found to be involved in the disclosure of false or correct information, it provides that the person deserves the penalty set forth in the preceding article for broadcasting news well known as false or exaggerated, which may affect the morale of nation, and if he has broadcasts the news believed to be correct, he shall be punished with imprisonment for not less than three months<sup>(95)</sup>.

Statistics Law 1957, provides that all individual information and data provided to the department of statistics, which regard to any census or count are deemed confidential and may not be informed to any individual or public or private body, and it cannot be communicated or used for any purpose of any kind except the preparation of statistical tables and are excluded from this use of text documents to prove violations against this law or any regulations issued hereunder, as well as in the case of payment or proof of criminal charge<sup>(96)</sup>. It is provided also by the same law that each one prevents intentionally any act of census and statistics, or who declines to give any information or data requested in the manner prescribed or provides knowingly incorrect information and statements; or any person prevents, without a legitimate excuse, delegates of the department of statistics from entering his home or his place to get information for verification in accordance with the provisions of this Act or any regulations or instructions issued under to be punished with imprisonment for a period not exceeding three months or a fine not exceeding fifty diners<sup>(97)</sup>.

The Law of Protection the Secrets of the State, 1971, prohibits taking out any protected document from the official departments unless in case of necessity and it prohibits keeping such documents at houses and public places and it prohibits printing or copying of protected

<sup>(92)</sup> Ibid., Sections, 36, 37, 38.

<sup>(93)</sup> Central Bank Law of Jordan, Official Gazette (1971/23 No. 25-05/2301), Section 15

<sup>(94)</sup> Financial Securities Act of Jordan, Official Gazette (2002/76, No. 31-12/4579), Section 43.

<sup>(95)</sup> Penal Code of Jordan, *Official Gazette* (1960, No. 01-01/1487), Section 131 (A) and (B).

<sup>(96)</sup> Jordanian Public Statistics Law, Official Gazette (2003/08 No.16-02/4586), Section 10 (A).

<sup>(97)</sup> Jordanian Public Statistics Law, Official Gazette (2003/08 No.16-02/4586), Section 13



documents outside official departments<sup>(98)</sup>. This law provides for harsh punishments ranging from the punishment of imprisonment with hard labors not less than ten year to the capital punishment<sup>(99)</sup>.

It can be observed from the above view that some of these laws logically ban the disclosure of secrets and information, such as census data, and protected documents and secrets of the State of Jordan, while other laws are found to be exaggerated. This has led to the turbulent situation of information and data in Jordan, which make a permanent and continuing uncertainty in these data and resulted in widening its scope to include the questioning even of the nature data that we believe, cannot afford any doubt or controversy, such as final accounts data, or monetary data published by the Central Bank.

The right of access to information became the foundation stone in ensuring the freedom of expression and opinion and freedom of the press, where the right of freedom of expression cannot be realized without access to information<sup>(100)</sup>. It is well known that most of the information can be found at the executive authority and its institutions, and to translate the principle of transparency and public participation in decision-making an access to information for the purpose of publication should be made easier for the journalist<sup>(101)</sup>. Despite the provisions of the Jordanian Press law and the law on right of access to information of 2007, it is shown by the special report of the supreme council for the press freedoms in Jordan revealed that “the biggest obstruction to freedom of the press is the difficulty of obtaining information”<sup>(102)</sup>.

Accordingly, the law guaranteeing the right of access to information No. 47 of 2007 can be described as a law denying the access to information, as it considers confidentiality and not publicity as a principle, simply because this new law applies various restrictions wider than the Law to protect the secrets and documents of the state 1971<sup>(103)</sup>. For further guarantees to the confidentiality of information held by the government, the legislator added new restrictions that were not known in the law to protect secrets and documents of the state, such as the prohibition of disclosure of any information related to public prosecutor and judicial police’s investigations or security services, as well as investigations made by the competent authorities to detect financial, custom or banking irregularities<sup>(104)</sup>.

It can be observed that the Law Guaranteeing the Right of Access to Information, 2007 was set up on a very complicated nature of bureaucracy, which appears in this law through two issues<sup>(105)</sup>. Firstly, the issue of information council, where the Jordanian legislator has decided that the formation of the information council under the chairmanship of the Minister of Culture and the membership of the information commissioner, a director of the department of national library and the secretary general of the ministry of Justice and the ministry of Interior and secretary general of the supreme council of information and director general of the department of statistics and director general of national information technology Center and director of counseling in the armed forces and the general commissioner for human rights. This council

<sup>(98)</sup> Law of Protection of State Secret & Documents Law of Jordan, Official Gazette (1971/50 No.01-08/2315), Section 13.

<sup>(99)</sup> Law of Protection of State Secret & Documents Law of Jordan, Official Gazette (1971/50 No.01-08/2315), Section 14 & 15.

<sup>(100)</sup> Walid Hosni, Supra Note No. 56.

<sup>(101)</sup> Issam, the Press in the Laws of the Press and Publication, Researches of Yarmouk, Journal of Humanities and Social Sciences', Vol. 27, No. 1. C (2011), p. 42.

<sup>(102)</sup> Sayed Said Mohammed, Freedom of the Press from the Perspective of Human Rights: A Comparative Study to the Press in European and Non-European Democracies, (Egypt, Cairo: Cairo Center for Human Rights, 1993), p.27.

<sup>(103)</sup> See also Law Guaranteeing the Right of Access to Information, Official Gazette (2007/47 No.17-06/4831). Mohammed Zuhair Qteishat, Opinion in the Law Guaranteeing the Right of Access to Information No. (47) , 2007, (March 2011)//

<http://www.ammonnews.net/article.aspx?articleno=86569> (accessed August 14, 2011).

<sup>(104)</sup> Ibid.

<sup>(105)</sup> Mohammed Zuhair Qteishat, Ibid.

serves as a mediator for the approval of the dissemination of information between the person seeking the information and the institution providing it.

Secondly, it is about the aspect of duration of time for answering the request for information, where it is considered long period of 30 days that does not commensurate with the speed required by the application of interest for accessing the information. One of the main drawbacks of the Law Guaranteeing the Right of Access to Information, 2007 is the empowering public authorities with the decision of classifying information and estimating the degree of its importance, such authorities that holding the information may place the classifications without defining the way of complaining or challenging such classifications, which gives an opportunity to classify the information as part of the protected information by which the administrator can refrain from giving<sup>(106)</sup>.

This law identifies the way of classification of information and its relevance for the purposes of its detecting it or not, these ways as following: Firstly, the Legal classification: where the law deals with all classifications of information set by other legislation as classifications in force, which have priority in the application as the law defining the classified documents in article (2) of it as " any an oral, written, printed or stored electronically or in any manner or printed on paper or waxed burner or tapes or photographs, films, diagrams, drawings, maps or whatever similar to it , are classified according to the provisions of the legislation in force. Secondly, the Administrative Classification: where the law states that the management of the service, which is defined in article II as the ministry, department, authority or official public corporation or company manages public facility, involves with the indexing and organizing and classifying its information and documents in a professional and technical manner for a period not exceeding three months from the date of publication of this law in the Official Gazette. For this it can be said that the legal mechanism designed by the Jordanian legislator for accessing information is a complex one, which would dump the desired information from the real content. Though this law is a new legislation, but it returned to get the right to information to the same status of the seventies of the last century, especially it deals with this right in the same mentality dealt with by the Law for the Protection of State Secrets and the documents, where there were different political and economic and social conditions.

#### 4.4 NATIONAL LEGAL RESTRICTIONS AND THE AARHUS CONVENTION

There are many restrictions imposed by The Jordanian Law Guaranteeing the Right to Obtain Information No (47) 2007 on access to information, such restrictions contradict with the constitutional and international norms that have been designed for facilitating the use of the right to information. Hence, the question of constitutionality of the provisions of this law may take place in future before the new constitutional court of Jordan, on the ground of its contradiction not only with international principles in this regard, but for being unconstitutional and unharmonious with the rules of the Constitution of Jordan in a way that may expose those provisions for abolishing by this court.

Upon the reading of provisions of the above mentioned law and on the light of the international treaties on the right to access information, specially the Aarhus Covenant, 1998, these arbitrary legal restrictions can be outlined as following: Firstly, the condition of a legitimate interest for accessing information, the restriction is imposed by section 7 of the Jordanian Law Guaranteeing the Right to Obtain Information No (47) 2007, which means that no citizen can apply an application for accessing some kind of information unless having a

<sup>(106)</sup>Arab Archives Institute, Report on the draft law of Draft Law on Guarantee of Access to Information, (November, 2005)//www.alarcheef.com/reports/englishFiles/accessToInformation.pdf (accessed July 12, 2011).

direct and legitimate interest in such information. The limits of the interest legitimacy have not been specified by section 7, and in the matter is up to the absolute interpretation of public authorities that holding the information to decide whether the applicant's interest is legitimate or not. The restriction of legitimacy of interest as pre-demand for the permissible access to information under Jordanian law is in contrary to the international norms, and especially against Articles 4-5 of Aarhus Covenant, 1998 which say that "each party shall ensure that, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information: a) without an interest having to be stated; b) in the form requested unless: it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or the information is already publicly available in another form."<sup>(107)</sup>

On this context, it is found that the applicant under Aarhus Covenant is not obliged to state and prove the interest behind seeking the information, while in Jordan it is obligatory to state and prove the legitimacy of the interest in applying for specific kind or form of information, and finally it is upon the discretionary power of the Jordanian public authorities to provide or deny the requested information. Secondly, section 9 (d) of the Jordanian Law No (47) 2007 is criticized because it grants the public officers an arbitrary power to deny and delay information submission. This section gives the public officer the right not provides the requested information at the specified period, where the abstaining from submitting such information within that period may be considered as a disapproval of the information's submission. The absolute discretionary power of public authorities that granted under Jordanian legislation has no harmony with the international treaties on the right to information, for example under the Aarhus Covenant, 1998 the requested environmental information shall be submitted within a possible period of one month from the date of submission of the application, such period can be extended in some circumstances of complexity up to two months<sup>(108)</sup>.

In Jordan, the public officer is not obliged to inform the applicant in case of any extension time or the reasons justifying the disapproval of providing the requested information. However, under the Aarhus Covenant, 1998 the matters and reasons for environmental information refusal are much clearer than stated under Jordanian legislation, where can be happen in one of three cases of not holding the environmental information by public authorities, when the information is unreasonable or formulated in too general a manner; or when the concerns material in the course of completion or concerns internal communications of public authorities."<sup>(109)</sup> Thirdly, section 7 of the Jordanian Law No (47) 2007 stipulates that "every Jordanian has to right to obtain the information he/she requires in accordance with the provisions of this Law, if he/she has a lawful interest or a legitimate reason therefore." Hence, this section grants the right to access information only for Jordanian national and denies it for the nationals of other nationalities, thus it contradicts with all international documents which guarantee this right to all members of general public. Article 19 (2) of the International Convention on Civil and Political Rights, 1966 stipulates that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of

<sup>(107)</sup> Stevan Lilić, *The Aarhus Convention and Access to Environmental Justice in the EU and Serbia* European an Integration Studies. No 1, 2007, p.10. ISSN 1822-8402

<sup>(108)</sup> Stevan Lilić, *Ibid* at 10

<sup>(109)</sup> Section 3 of the Aarhus Convention provides that "a request for environmental information may be refused if: (a) The public authority to which the request is addressed does not hold the environmental information requested; (b) The request is manifestly unreasonable or formulated in too general a manner; or (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure."

art, or through any other media of his/.her choice.”<sup>(110)</sup> Article 32 (1) of the Arab Charter on Human Rights guarantees every person the right to information and “to seek, receive and impart information and ideas through any media, regardless of frontiers.”<sup>(111)</sup> Article 13 (1) of the Convention on the Rights of the child entitles every one the right to “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”<sup>(112)</sup> Article 10 (a) (b) (c) of the United Nations Anti-Corruption Convention grants all the members of the general public the right to access information and makes it the responsibility of public and administrative authorities to provide transparently the requested information<sup>(113)</sup> Finally, Article 4 of the Aarhus Covenant, 1998 makes the right of access to environmental information as open to all general public. It clearly stipulates that “contracting parties must ensure that public authorities make information available in response to a request for environmental information within the frames of national legislation.”<sup>(114)</sup>

The stipulated period within which the Jordanian public authorities shall made information available to the applicant is one month as per the Jordanian Law No (47) 2007. The minimum period of one month is also stipulated under Aarhus Covenant, 1998 for providing the applicant with requested information<sup>(115)</sup>. Here, the period in both the Jordanian Law and Aarhus Covenant is too long, and such period should be reduced into 24 hours in order to gain the benefit behind having and possessing such information, as well as relativity of the purposes of accessing the information for journalists, traders, laymen, businessmen or investors. Section 13 of the Jordanian Law No (47) 2007 brings some restrictions on the complete disclosure of information, it allows public officials to withhold some kind of information related to the protected and secrets documents, classified documents, secret information of national security and defense, secret information of foreign polices, internal governmental information prior to decision-making, personal data, banking data, confined information of governmental departments, secret information for state’s negotiation with other states, investigatory

<sup>(110)</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 and it signed and ratified signed on the 30<sup>th</sup> of June 1972 and ratified on the 28<sup>th</sup> of May 1975. It was published in the *Official Gazette* on the 15<sup>th</sup> of June 200 //http://www.unhcr.org/refworld/docid/3ae6b3aa0.html (accessed March 30, 2013).

<sup>(111)</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008// http://www1.umn.edu/humanrts/instate/loas2005.html. (accessed March 18, 2013)

<sup>(112)</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, and was ratified by Jordan by virtue of Law No 50 (2006), published in the *Official Gazette* (No. 4787) on the 16<sup>th</sup> of October 2006// http://www.unhcr.org/refworld/docid/3ae6b38f0.html (accessed March 28, 2013)

<sup>(113)</sup> . United Nations Convention Against Corruption (UNCAC), 9 December 2003, in *Report of the Ad Hoc Committee for the Negotiation of a Convention Against Corruption on the work of its first to seventh sessions*, G.A. Res. 58/4, U.N. GAOR, 58<sup>th</sup> Sess., 50<sup>th</sup> & 51<sup>st</sup> plen. mtgs., Annex, Agenda Item 108, U.N. Doc. A/58/422 (2003) and entered into effect on the 14<sup>th</sup> of December 2005. It has been ratified by the Government of Jordan by virtue of Law No. 38 (2004), published in the *Official Gazette* (No. 4669) on the 1<sup>st</sup> of August 2004 //

http://www.solusipintar.com/e-library/dir\_dok/UNCAC-Global-Achievement-or-Missed-Opportunity.pdf (accessed March 25, 2013)

<sup>(114)</sup> .Visar Morina, *The Transposition of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention) with the Legislation of Kosovo*, A Report compiled as Part of the Regional Project ‘Improving Public Participation: next Steps in Implementing Aarhus Convention in Albania, Bosnia Herzegovina, FYR Macedonia, Serbia and Montenegro and Kosovo’, The Regional Environmental Center (REC) for Central and Eastern Europe, Field Office Kosovo/a, Pristina, March 2006, p.10 //http://kos.rec.org (accessed on March 18, 2013)

<sup>(115)</sup> . Section 4 (2) of the Aarhus Covenant, 1998 states that “the environmental information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request”.

information made by public prosecutors or judicial police and other information including technological, scientific research, financial, industrial and tender information. Therefore, upon the provisions of section 13 and 7 of the Jordanian Law No (47) 2007 the information disclosure is uncompleted and limited to the discretionary power of public officials to decide whether the disclosure of the requested information would affect the elements of secrecy within section 13 and it depends up to which extent the applicant can approve the legitimacy of accessing some sort of information? However, the situation is totally different under the Aarhus Covenant, 1998 where the scope of available information for public is wider than under the legislation of Jordan. This convention tries control the discretionary power of public officials at national levels, section 4 provides number of procedures and rules for minimizing the arbitrary discretion of public officials in withholding access to environmental information<sup>(116)</sup>.

Under section 4 the Aarhus Convention, there is a general obligation upon the public authorities to provide any type of the requested environmental information as soon as possible and without delay, and in contrary to section 13 of the Jordanian Law No (47) 2007 no exceptions are made under Aarhus Convention for withholding information. Public authorities under this convention are obliged, as provided in section 5 (3) and (4) to disseminate environmental information to the public to the widest extent and scope possible, by all mean including “ on the basis of public lists, electronic databases, registers, giving active support by officials to those seeking access to information and provide points of contacts etc.”<sup>(117)</sup>

Section 14 of the Jordanian Law No (47) 2007 devotes the principle of confidentiality of information and restricts access of citizens to information, it demands all official and governmental departments in the country to classify its informative documents in professional and technical ways in order to index all the inaccessible secret and protected information as provided in force legislations<sup>(118)</sup>. The rule of prohibition over accessibility of the secret and protected information, which is imposed by section 14 of this law and the interim Protection of the State’s Secrets and Documents Law No. 50 (1971), is one of the most legal obstacles against the right of public to access information in Jordan. In contrary to the United Nation’s efforts to make all other legislation in harmony with the special laws on access to information, the situation in Jordan is topsy-turvy because of section 14 of the Jordanian Law No (47) 2007 subjects all its provisions to be suitable with the old and out dated legislation preventing access to protected and secret classified information<sup>(119)</sup>.

In Aarhus Covenant, 1998 the scope of the accessible information are not restricted only to the environmental information but it includes other information. Moreover, the idea of secret and protected information is not explicit under any provision of this convention, where all available information in the holding and possession of public authorities must be provided and disseminated to public upon their request or upon the self initiation of these authorities at a proper time and within prescribed periods<sup>(120)</sup>. Therefore, there is a real need to modify section 14 of the Jordanian Law No (47) 2007 in order to remove or reduce the range of inaccessible

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<sup>(116)</sup> Section 3 of the Aarhus Convention provides that a request for environmental information may be refused if: (a) The public authority to which the request is addressed does not hold the environmental information requested; (b) The request is manifestly unreasonable or formulated in too general a manner; or

(c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

<sup>(117)</sup> Visar Morina, *The Transposition of the Convention on Access to Information*, Supra note No (114) at p. 11.

<sup>(118)</sup> Ali Al-Dabbas, *Right to Access to Information in the Hashemite Kingdom of Jordan*, National Center for Human Rights, Amman-Jordan, May 2008, Pp. 17-18.

<sup>(119)</sup> *Ibid.*

<sup>(120)</sup> Stevan Lilić, *The Aarhus Convention and Access to Environmental Justice in the EU and Serbia* European an Integration Studies, Supra note No (107).

information and to pave the way before abolishing the unconstitutional the interim Protection of the State's Secrets and Documents Law No. 50 (1971) by the Jordanian Parliament.

## 5. CONCLUSION

The constitutional democracy and philosophy is based on certain fundamental principles of governmental accountability, transparency and public participation in national decision-making, such principles would not be achieved either in Jordan or other countries without ensuring the right of persons to access information held by public authorities. The right to information, however, has not matured as it should have under current constitution of Jordan, simply because there is no clear and direct article provides for protection of the right to information and hopefully the present visions about the constitutional reforms in Jordan to take this right into its direct meaning within the constitution.

The judicial interpretation in Jordan recognized the right to information as part of the right to expression provided clearly under Article 15 of the Jordanian constitution, but still this right needs to be clearly mentioned under the constitution, especially after the enactment of the Law of Guaranteeing Access to Information in 2007. Despite the ratification of the international treaties and documents related to right to access information by Jordan, but still the most important Convention on access to information that known as the Aarhus Covenant, 1998 still is not signed or ratified. This convention is considered as an actual legal foundation for the right to access information; hence its absence may cost a lot within the legal system of Jordan not only for justice agencies but also for the freedoms and liberties of people.

People's awareness is increasing about their right to demand and receive information and the result of this awareness was the enactment of the Law Guaranteeing the Right of Access to Information (47) 2007, which gives hope for Jordanian to practice their right to access official information and documents easily, but still this right needs to be catalyzed in more modern way in order to have harmony with international treaties, especially the Aarhus Covenant, 1998. There are many negative observations on the existing law of 2007, and the present study recommends various legal reforms to the wake sections of this law.

Therefore, to ensure freedom of information, suitable amendments to the Constitution of Jordan and the Law of Guaranteeing Access to Information, 2007 is needed. Right to information can be included under Article 15 of the constitution in clear terms and some reasonable restrictions can be included under a separate paragraph of the same Article, which *inter alia* covers right of privacy as well. After making freedom of information, a fundamental right, the existing the Law of 2007 should be amended in order to cover the right to information and privacy, especially to supply the detailed manner and procedure of obtaining information with a legal forum for redresses.

On the light of the above discussion and analysis of the situation of the right to information under Jordanian legislation, the present study recommends various suggestions in order to enhance the freedoms of information in Jordan, these as following:

- The Government of Hashemite Kingdom of Jordan have to adopt the Aarhus Covenant, 1998 in order to devote the legal foundation for protection access to information and upon the ratification of this convention a constitutional amendments should take place to ensure access to information clearly as a constitutional right.
- The Law Guaranteeing the Right to Access to Information, 2007 should be also amended totally in order to be in harmony with provisions of the Aarhus Covenant, 1998 and to avoid problems and irregularities contained in this law and delay in providing information, which hinder the access to information, in addition all measures relating access to information should be characterized with simplicity and convenience.

- The need to reform the State Secret and Documents Law No (50) 1971, which violates internationally recognized principles on access to information and contradicts much of the new draft Law on Guaranteeing Access to Information.
- There is a real need to open channels of communication effectively between the representatives of media and the other three authorities in the country, where the freedom of access to information or access more important than any other things because the journalists still suffer from the closure of the channels of communication of officials.
- The Jordanian Law Guaranteeing the Right of Access to Information No (47) 2007 should be amended for the purpose of enabling the Council of Information to send its reports directly to the House of Representatives and independent bodies, such as anti-corruption body and the Office of the Ombudsman.
- Section 3 of the Law Guaranteeing the Right of Access to Information No (47) 2007, should be amended in order to make the membership of the Council of information open to representatives of both civil society and the Council of Representatives.
- Section 10 of the law guaranteeing the right of access to information should be amended in order to make a clear definition of the concept of information, which can be measurable within definite limits for disallowing any excuse to withhold information. Moreover, section 13 of the same law is recommended to be abolished and replaced with new provisions, which may narrow the scope of exceptions on the information disclosure.
- It is suggested also that the phrases of 'legitimate interest' and 'legitimate reason' used in section 7 of the law should be defined in a clear way in order to determine citizen's right to access to information, a new provision is suggested to be inserted into the existing law of access to information in order to criminalize the act of withholding or destruction of the requested information, where a harsh punishment can be imposed for such offenses.

## 6. THE WAY FORWARD

Jordan witnesses a constant state of the legal and constitutional reforms, which covers all aspects of life for Jordanian citizens in order to save their dignity, rights and freedoms. On the level of the protection of the rights of citizens to access information held by the state and governmental agencies, Jordan was the first Arab state to enact a law guaranteeing the right of access to information in 2007. Despite criticisms made by some of the civil society institutions in Jordan to the law guaranteeing the right of access to information, 2007, because it does not live up to the minimum limits of what determined in the international treaties protecting the right of access to information, but this law is a glimmer of hope, which can be used to enhance a strong legal protection system for this right in the future.

Jordan has taken a serious step by issuing a special law to guarantee the right of access to information in 2007, so this development was in line with the global trend for legitimating of this right, since this law is the first law enacted in the Arab countries, it imposes on the Jordan and its civil society more responsibilities for ensuring the optimal legislative practices, including the responsibility of stopping the old legislation, which limit the right of access to information and requirement for development of the law No. 47 of 2007 in order to be in harmony with the international standards and best practices in democratic countries.

A new law is making it compulsory for Jordanian government institutions to disclose information to journalists and citizens, failure to do so means they can complain to a government body called the Information Council (IC).

The law encourages citizens to report to the IC if a public institution refuses to disclose information within 30 days. It is a unique law in the Arab world. But the Access to Information Law has been in force since June 2007 and no one – journalist or otherwise – has approached the council to complain.

The laws guaranteeing access to information provided a good template for fulfilling the people of Jordan's right to know, but the existence of at least 13 laws, related to freedom of media and freedom of information, obstructing the enjoyment of those freedoms<sup>(121)</sup>. Despite the extensive and growing lip service paid to liberalization, many government officials at all levels broadly do not subscribe to the concept that the press has a guaranteed right of access to public information and the problems with knowledge and data and its application complicate the difficulties of the country's reform process in many aspects of life<sup>(122)</sup>.

The implementation of the Jordanian Law of Access to Information No (47), 2007, has not been satisfactory, despite the lapse of more than five years; the law has not yet been properly disseminated. On this context, "government departments have not been adequately informed of the requirements of the law and civil society organizations have to help explain the law, promote its use, and facilitate the flow of information to journalists and citizens"<sup>(123)</sup>. Therefore, any future amendments to these laws should take into consideration the main principles on the right to information, these internationally, recognized principles include the following :<sup>(124)</sup>

- ✚ Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
- ✚ The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
  - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - Secrecy laws shall be amended as necessary to comply with freedom of information principles. Everyone should have the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

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<sup>(121)</sup> Arab Archives Institute, Report on the law guaranteeing the right of access to information, Amman, (June, 2005)//

[www.alarcheef.com/studies/files/free/.pdf](http://www.alarcheef.com/studies/files/free/.pdf) (accessed July 12, 2011)

<sup>(122)</sup> Al Khouri , Riad & Kardoosh, Marwan A., The Role of Information in the Process of Economic Reform: the Case of Jordan, (January, 2005)//

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<sup>(123)</sup> Asia-Pacific Human Rights Information Center, Right to Information in West Asia, FOCUS , Volume Vol. 63 (March, 2011)//

<http://www.hurights.or.jp/archives/focus/section2/2011/03/rights-to-information-in-west-asia.html> (accessed July 21, 2011).

<sup>(124)</sup> Article 19 Global Campaign for Free Expression, Memorandum on the Draft Freedom of Information Bill of Botswana, Free Word Centre · 60 Farringdon Road · London EC1R 3GA · United Kingdom, // [www.allafrica.com](http://www.allafrica.com) (accessed August 23, 2011).



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