



From ‘window dressing’ to ‘door openers’? Freedom of Information legislation, public demand, and state compliance in South East Europe



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ABSTRACT

Strong arguments are made that freedom of information (FOI) laws can be particularly beneficial in young democracies while providing an important tool that safeguards basic rights. Despite the drastic increase of the number and quality of FOI laws adopted during the last few decades, press freedom around the world has fallen to its lowest level in over a decade while abuses of power and corruption continue to ravage societies around the world. This comparative study examines the outcomes of FOI laws in the context of new democracies of South East Europe. It adopts a mix methodological approach to (1) examine citizen demand for access to information and government compliance with FOI laws and (2) explore structural and political conditions that affect demand and compliance. Results from data collected in Albania, Kosovo, and Montenegro suggest that the positive outcomes of the FOI laws are highly dependent on public demand and supervisory institutions. While FOI non-compliance can be attributed to the limited administrative capacities, the failure to put in place access structures also indicates the erosion of leadership political will during the implementation phase as a consequence of the lack of public demand. This article emphasizes the importance of non-political institutions, spotlighting the critical role of civil society and the media.

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1. Introduction

Many advocates have hailed the *freedom of information* (FOI)¹ movement as one that will change the way we define, implement, and judge democratic governance (Blanton, 2002). It is timely to evaluate this enthusiasm, as the United Nations post-2015 Millennium Developmental Goals take effect, where public access to information has been established as part of a larger measure to ensure good governance. The consensus is that freedom of information is essential for the success of the sustainable development (Game, 2014; Global Forum for Media Development, 2014). Following this logic, FOI initiatives and reforms have been high on the agendas of governments, international organizations, and civil society globally producing more than half of FOI laws that exist in the world during the last two decades (Banisar, 2006; Mendel, 2008). Despite this drastic increase in the number and quality of FOI laws, however, press freedom around the world has fallen to its lowest level in over a decade (Karlekar & Dunham, 2014) while abuses of power and corruption continue to ravage societies globally.

The drive behind transparency initiatives is backed up by heady rhetoric surrounding FOI that emphasizes a strong bond between FOI laws, participatory democracy, and accountable governance (Article 19, 1999; Banisar, 2006; James, 2006; Mendel, 2008). Strong arguments

are made that FOI laws can be particularly beneficial in young democracies while providing an important tool that safeguards basic rights (Calland & Bentley, 2013; Darch & Underwood, 2005; Pinto, 2009). Most post-millennium FOI adopters are developing nations that are characterized by less affluence, less political stability, and weaker administrative and legal systems than the initial adopters in the West (Roberts, 2006). Some have inherited systems that do not encourage citizen engagement in decision-making, leading to a culture of passivity. How does the environment in which FOI legislation operates determine its outcomes? Under which conditions do FOI initiatives lead to effectiveness and impact? This paper addresses these largely unexplored questions by examining the implementation of FOI laws in the context of new democracies of South East Europe.

This paper contributes to the drive to move the FOI discourse beyond the “means” of how to address practical problems with governmental transparency towards examining the “end results” of such reforms. The enthusiasm for FOI policy adoption has overshadowed the assessment of its impact. Only a handful of case studies provide such evidence: from India (Relly & Schwalbe, 2013; Roberts, 2010), South Africa (Darch & Underwood, 2005, 2010), and Latin America (Gill & Hughes, 2005; Michener, 2015; Pinto, 2009) with a couple of studies engaging in cross-national comparisons (Islam, 2006; Nam, 2012; Open Society Justice Initiative, 2006; Relly & Cullier, 2010). This research mostly assesses FOI impact on governmental transparency, while we don’t have systematic assessments of the FOI impact on social change — the degree to which FOI laws impact citizens’ information-seeking behavior

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¹ Depending on the context in which it is used, some literature refers to it as Access to Information (ATI).

(Calland & Bentley, 2013; Worthy, 2010). This study adopts a mixed methodological approach to fulfill two goals: (1) examine citizens' demand for access to information and government compliance with FOI laws; and (2) explore structural and political conditions that affect the relationship between FOI demand and supply.

There are two distinct approaches to assessing FOI outcomes: rational assessment of technical measurements and the influence of the political/cultural environment (see Julnes & Holzer, 2001 for an elaboration). Studies that examine the technical aspects of FOI implementation focus on performance data supplied by governments related to the number and patterns of FOI use and compliance (Hazell, 1989; Hazell & Worthy, 2010) or analyze the administrative aspects of FOI implementation (Roberts, 2000, Roberts, 2005; Shepherd et al, 2011). Other studies have taken a political/cultural approach examining wider citizen support for FOI laws (Cullier & Pinkelton, 2011; Worthy, 2010), interest of civil society (Calland & Bentley, 2013) and the media (Lidberg, 2002, 2009), and support among elected officials and administrators (Gill & Hughes, 2005; Worthy, 2010). Building upon scholarship that focuses on the interaction between demand for FOI access and the compliance behavior (Darch & Underwood, 2005), this study takes a dual approach to investigate the outcomes of FOI legislation in Albania, Kosovo, and Montenegro.

Country selection for this comparative study was based on *the most similar system design* (Przeworski & Teune, 1970), which compares highly similar cases that still have significant differences. The three countries included in this study – Albania, Kosovo, and Montenegro – are bound by geographical proximity, a shared communist history, post-communist transitional politics, and the joint political context of Europeanization. During the greater part of the twentieth century, Kosovo and Montenegro were both part of Yugoslavia, which (like Albania) was part of the communist Eastern Bloc. In addition, most citizens in modern Kosovo identify as ethnic Albanians, sharing a common language and culture with the majority population in neighboring Albania.

However, Albania, Kosovo, and Montenegro are not completely homogenous; their paths to statehood and democratic transition differed, leading to crucial variations that can affect culturally-bound relationships. Albania gained its statehood following the dismantling of the Ottoman Empire at the beginning of the twentieth century, while both Montenegro and Kosovo established their independence by seceding from Serbia in 2006 and 2008, respectively. Another noteworthy dissimilarity concerns the quality of FOI legislation in place while this study was conducted. The Right to Information Rating organization, which analyses the quality of FOI legislation globally, ranked Albania's FOI law 81th (out of a total of 102 countries), followed by Montenegro ranking 47th, whereas Kosovo FOI law is ranked the highest at 21th (RTI-Rating, 2014, see Appendix 1). According to these characteristics, it makes theoretical sense to include Albania, Kosovo, and Montenegro in the same model.

The data reported in this paper are part of a larger study that examines the implementation of FOI laws in transitional democracies² and is based on a mixed-method case study combining in-depth interviews and document analysis. Semi-structured interviews were conducted with journalists, representatives from local and international non-governmental organizations (NGOs) involved in transparency initiatives, and officials from supervisory institutions in charge of FOI implementation.³ Face-to-face interviews were conducted in Tirana (Albania) and Pristina (Kosovo) during the summer of 2012 and in Podgorica (Montenegro) during summer of 2013. Participants were selected using a combination of purposive and snowball sampling technique.

² Further methodological details about the study have been published elsewhere (Camaj, 2015).

³ Respondents were promised confidentiality in order to facilitate more candid conversations on sensitive topics. See Appendices 2, 3 and 4 for the number and profile of participants interviewed for this study.

First, the author identified all relevant supervisory institutions handling the implementation of FOI laws and all NGOs lobbying for FOI in respective countries. Second, the highest-ranking officials within those institutions were invited to participate in the study. Media representatives included a mix of editors and investigative journalists from the most influential media in their respective countries.⁴ Respondents were asked to provide their perspective on FOI initiatives from governing agencies and recount concrete experiences using FOI laws to access to public information. Further, they were asked to stress facilitating factors and obstacles that affect the implementation of FOI legislation in their respective countries. Responses in Albanian and Montenegrin from the in-depth interviews were tape recorded, professionally transcribed, and translated by the author.⁵ This paper also includes secondary data derived from official government statistics and publications, freedom of information audits, reports by local and international NGOs and activists, and media reports.

2. Freedom of information and democracy: aims, claims, and assumption

Normatively, *Freedom of Information* (FOI) is considered “oxygen to democracy” (Article 19, 1999), and a basic human right within the wider political rights framework (Ackerman & Sandoval-Ballesteros, 2006; Cramer, 2009; Mendel, 2003) due to its potential to reframe the power relationship between the state and citizens (Calland & Bentley, 2013; Stiglitz, 2002). As more countries (not only mature democracies) engaged in freedom of information initiatives worldwide, the conceptualization of this legislation has expanded beyond concerns with human rights and citizen participation into concepts of accountability (Calland & Bentley, 2013). This shift reflects the evolution of the FOI principle from an end in itself towards a tool that leads to instrumental outcomes such as governmental accountability, good governance, and economic development. Based on this theoretical conceptualization, several authors have formulated extended lists of concrete FOI objectives and potential outcomes (Article 19, 2004; Banisar, 2006; Darch & Underwood, 2010; James, 2006; Mendel, 2008). This literature suggests that FOI legislation improves democratic practice by facilitating social and institutional change (Calland & Bentley, 2013). Social change encompasses a more knowledgeable and participatory citizenry; while institutional change envisions increased governmental transparency, accountability, and improved quality of decision-making.

Practical experience suggests that the implementation of FOI law is still evolving, as its ideals remain to be fulfilled. Critics point out that the culture of secrecy has delayed and impeded the implementation of FOI even in mature democracies (Banisar, 2006; Birkinshaw, 2002). The origins of problems with the access regime are explored within: the legal aspects of FOI (Bayne & Rubenstein, 1994; Paterson, 2005; Richelson, 2003; Snell, 2004), attitudes and support for FOI from bureaucrats and citizens (Cullier & Pinkelton, 2011; Kimball, 2012), and material preconditions or bureaucratic capacity (Neuman & Callanda, 2007). Thus, the literature explores two sides of the FOI access process: public demand and official compliance for access to information, and the degree to which ideological orientations and material conditions affect these two elements of access regime.

⁴ Given the oversampling of journalists in the face-to face interviews, the current paper relies on those data only to depict journalists' uses of FOI laws and does not infer on other FOI stakeholders' experiences.

⁵ The author of this study is fluent in Albanian and Montenegrin (native languages of the subjects included in this study) as well as in English language. The author's bilingual upbringing (Albanian–Montenegrin languages) facilitated her judgments of the semantic and syntactic approximations and provided a close understanding of culture-specific concepts and allusions, which increase the validity of translation methods in this cross-cultural study.

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