

**IT BELONGS TO YOU:
PUBLIC INFORMATION IN THE
MIDDLE EAST AND NORTH AFRICA**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Transparency International and do not necessarily reflect the views of USAID or the United States Government.

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www.transparency.org

ISBN: 978-3-943497-41-0

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This report is part of a larger, region-wide project, entitled 'Addressing Corruption Through Information and Organized Networking' (ACTION). ACTION is a four-country project covering Egypt, Morocco, Palestine and Yemen. Its overall goal is to promote access to information and enhance the capacity of civil society, as the basis for good governance and public accountability in the Middle East and North Africa (MENA).

As part of this project, Transparency International chapters and partners in Egypt, Morocco, Palestine and Yemen carried out research into the potential to access information to the degree necessary to detect and address corruption under existing laws. This report both provides a summary of the findings in the four project countries and an overview of access to information and corruption in the broader Middle East and North Africa region.

Research for the four national reports was carried out by Transparency International's chapters in Morocco (Transparency Maroc) and Palestine (The Coalition for Accountability and Integrity – AMAN), by the chapter in formation in Yemen (The Yemeni Team for Transparency and Integrity), and by the Center for Development Services in Egypt. This regional report was researched, prepared and written by staff from the Middle East and North Africa programme at Transparency International's secretariat in Berlin.

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List of Abbreviations and Acronyms

ACTION	Addressing Corruption Through Information and Organized Networking
ALAC	Advocacy and Legal Advice Centre
AMAN	Coalition for Accountability and Integrity – Transparency International Palestine
TI	Transparency International
YTTI	Yemeni Team for Transparency and Integrity
UN	United Nations
UNCAC	United Nations Convention Against Corruption

Executive Summary

Transparency International believes that the effective implementation of an access to information law is essential for addressing corruption. Information is fundamental to making informed decisions. Information is also power. Where it is not freely accessible, corruption can thrive and basic rights may not be realised. Corruption can be hidden behind a veil of secrecy. Those with privileged access to information can demand bribes from others seeking such information. People may be denied basic health or education services if they lack information about their rights. Governments can hide their actions by controlling or censoring the media, preventing essential information in the public interest from being reported.¹

“Access to information acts are grounded in the recognition ‘that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those public authorities, and that this information is essential to the democratic process’. The purpose of these acts, also known as access to information laws, is to make a government more open and accountable to its people. In transitional democracies, laws that give effect to the right to information are part of the process of transforming a country from one with a closed and authoritarian government to one governed by and for the people”.²

In 2012 and 2013, Transparency International national chapters and partners carried out research into the possibility of accessing information in general and through sector-specific laws in Egypt, Morocco, Palestine and Yemen. They found that in none of the countries assessed were existing laws or their implementation adequate for people and civil society to use in the fight against corruption and that governments across the region should take steps to make access to information a reality, both as a right and as a tool to fight corruption.

Trends

Access to public information remains limited across the Middle East and North Africa. While the countries and territories assessed in this project (Egypt, Morocco, Palestine and Yemen) have committed themselves in international law to the right of access to information, only Yemen has translated this commitment into national law (although the Yemeni law is not yet implemented, as the government has not yet issued implementing regulations).³ Morocco has incorporated it as a specific constitutional right,⁴ which can be a good first step before passing and implementing a law. In the broader region, Jordan⁵ and Tunisia⁶ have access to information laws. However both these laws have faced criticism, and Tunisia’s is yet to be implemented.⁷ Looking beyond the law, access to information provisions that do exist are not implemented in all countries.⁸ In several international

¹ Transparency International, *Access to information*, <http://www.transparency.org/topic/detail/accesstoinformation> [accessed 22 May 2013].

² As above.

³ The Yemeni Team for Transparency and Integrity, *It belongs to you: Public information in Yemen* (Sana’a: YTTI, 2013), p. 9

⁴ Transparency Maroc, *It belongs to you: Public Information in Morocco* (Rabat: Transparency Maroc, 2013), p. 13

⁵ Business Anti-Corruption Portal, 'Jordan Country Profile – Public Anti-Corruption Initiatives', <http://www.business-anti-corruption.com/country-profiles/middle-east-north-africa/jordan/initiatives/public-anti-corruption-initiatives/> [accessed 12 July 2013].

⁶ World Bank, 'Tunisia Acts on Open-Government and Access to Information Reforms' March 29, 2012, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23156519~pagePK:64257043~piPK:437376~theSitePK:4607,00.html> [accessed 12 July 2013], FreedomInfo.org, 'Tunisia Issues Decree on Access to Documents' 11 July 2011, <http://www.freedominfo.org/2011/07/tunisia-issues-decree-on-access-to-documents/> [accessed 15 August 2013].

⁷ Mona Yahia, 'Free speech under threat in Tunisia', Magharebia, 1 July 2013, http://magharebia.com/en_GB/articles/awi/features/2013/07/01/feature-02 [accessed 23 July 2013], Business Anti-Corruption Portal, 'Jordan Country Profile – Public Anti-Corruption Initiatives'.

⁸ The Yemeni Team for Transparency and Integrity, 2013, p. 34, Transparency International, *The good governance challenge: Egypt, Lebanon, Morocco and Palestine* (Berlin: Transparency International, 2010), pp.14-15.

rankings and scorings, Middle East and North African countries rank or score in the lower half, indicating restrictions on transparency and accountability.⁹

Challenges

Transparency International chapters in Morocco, Palestine and Yemen and a partner organisation in Egypt looked in depth into the state of access to information in their countries and identified a number of challenges to the realisation of this right. In the absence of access to information laws (or the lack of an implemented law), existing legislation in all four countries did not meet international principles for access to information and would not enable individuals or civil society organisations to identify possible instances of corruption. Secrecy laws in Egypt and Morocco further hamper the limited rights of access to information that exist in other laws.¹⁰

Case studies conducted in Egypt, Morocco and Yemen illustrated this problem. In sectors with reported high levels of corruption, Transparency International chapters and partners found it was not possible to identify and track resource flows or reasons for decisions through existing laws, severely hampering the ability of civil society and other interested parties to report on instances of possible corruption.¹¹

Outlook

Access to information is on the agenda of governments across the region, and all four governments are making strides to pass and implement access to information provisions. In 2011 Morocco included the right of access to information in its constitution and in 2013 drafted a corresponding law. In 2012 Yemen enacted an access to information law and may yet include it as a constitutional right. Prior to the change in Egypt's government in July 2013, the government had drafted an access to information law and had included the right of access to information in the 2012 constitution.

Civil society participation in drafting the laws and constitutional amendments has improved, especially in Yemen, Egypt and Palestine, but government drafters did not adequately incorporate expert civil society comments. Progress in passing and implementing laws remains inadequate despite civil society pressure. Governments in all Middle East and North African countries should seek the active involvement of civil society in developing access to information laws across the region and should prioritise passing and implementing strong access to information laws as a tool to fight corruption.

⁹ Reporters Without Borders, *World Press Freedom Index 2013* (Paris: Reporters Without Borders, 2013), pp. 20-24, International Budget Partnership, *Open Budget Survey 2012* (Washington D. C: International Budget Partnership, 2013), p. 7, World Bank Worldwide Governance Indicators, Statistical Table: Voice and Accountability, comparison across selected countries 2011 http://info.worldbank.org/governance/wgi/mc_chart.asp [accessed 12 July 2013].

¹⁰ Transparency International, *It belongs to you: Public Information in Egypt* (Berlin: Transparency International, 2013), p. 14, Transparency Maroc, 2013, p. 14.

¹¹ Transparency Maroc, 2013, pp. 32-39, Yemeni Team for Transparency and Integrity, pp. 28-33, Transparency International, 2013, pp. 38-43.

Recommendations

Based on the findings of the four national reports and after additional research for the regional overview report, Transparency International makes the following summary recommendations (a full list of recommendations can be found at the end of the report):

TABLE 1: Recommendations

KEY RECOMMENDATIONS
Governments and parliaments should draft and pass access to information laws that comply with international standards. Countries should embed these laws as part of their legislative framework and should consider enshrining access to information as a specific right in their constitutions.
Governments should implement access to information laws effectively, train officials and proactively make information available in accessible, comparable and timely formats online and in government offices.
Governments and parliaments should remove laws preventing or limiting access to information and revise laws with over-broad national security exemptions, in line with international good practice.
Governments and civil society should proactively inform people about access to information laws and encourage their use.

About the report

Objective

Access to information is an essential tool to fight corruption. Drawing on four national studies in Egypt, Morocco, Palestine and Yemen, this report seeks to identify issues common to the four countries – and the Middle East and North Africa more generally – that prevent people and civil society from using access to information to fight corruption. These can be used to advocate for lawmakers to pass and governments to implement access to information laws.

Methodology

Transparency International chapters and partners assessed access to information in Egypt, Morocco, Palestine and Yemen between July 2012 and May 2013. In these assessments, national chapters and partners mapped key laws on access to information and assessed them against 10 access to information principles. Where appropriate, the researchers used case studies to highlight gaps in access to information.

This report is based on the information within the four national reports, with additional desk research into access to information in other Middle East and North African countries.¹³

Limitations

Information within this report on Middle East and North African countries outside of Egypt, Morocco, Palestine and Yemen was exclusively carried out through desk research and therefore relies on information from third parties. Transparency International made every effort to use only reliable sources of information.

Furthermore, the focus of this report was primarily on the four project countries and, as such, information on other countries does not have the same level of detail. The report does not consider aspects of the right of access to information other than those related to corruption.

TABLE 2: ATI Principles

ACCESS TO INFORMATION PRINCIPLES ¹²
1. Everyone has a right, without discrimination, to access information held by public bodies.
2. Filing requests should be simple and free. Requests can be sent by post, email or fax, delivered in person, or questions asked verbally.
3. There is no need to justify why information is needed or what will be done with it.
4. Public officials should have the obligation to help requestors prepare the request or identify the public body to send it to.
5. Responses should be fast, within a maximum 15 working day timeframe.
6. Information can be accessed in paper copy or electronically, and originals can be viewed.
7. Viewing originals is always free of charge. The only charges can be for photocopying or copying material onto a CD or DVD or other format.
8. In principle all information is accessible, subject to limited exceptions. Refusals should be justified according to the exceptions.
9. Everyone should have the right of appeal against refusals or against administrative silence, to an independent body and to the court.
10. Public bodies should make available automatically the main information about their structure, functions, budget and activities.

¹² Access Info Cyprus, *Principles for an Open Cyprus*. <http://www.accessinfocyprus.eu/en/principles-for-an-open-cyprus.html> [accessed 22 May 2013], p. 36.

¹³ Transparency International defines Middle East and North African countries as: Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen.

Access to information in the Middle East and North Africa

Despite moves towards adopting legal frameworks for access to information, the people of Egypt, Morocco, Palestine and Yemen do not yet benefit from solid legal protections of this right.

Egypt, Morocco and Palestine lack access to information laws, reflecting the situation in the broader region. In all four countries, compliance with international commitments and the need to address corruption requires effective implementation of the right of access to information through robust, effectively implemented legislation.

Trends

International commitments

All four countries have ratified either the International Covenant on Civil and Political Rights or the Arab Charter on Human Rights or both.¹⁶ Egypt, Morocco and Yemen are parties to the United Nations Convention Against Corruption (UNCAC).¹⁷

TABLE 3: Ratification of conventions which include the right of access to information¹⁴
Note: Information as of July 2013.

RATIFICATION BY COUNTRY	ICCPR Article 19	Arab Charter Article 32 (1)	ACHPR Article 9	UNCAC Articles 10, 13
ALGERIA	●	●	●	●
BAHRAIN	●	●	■	●
EGYPT	●	○	●	●
IRAN	●	■	■	●
IRAQ	●	—	■	●
JORDAN	●	●	■	●
KUWAIT	●	○	■	●
LEBANON	●	●	■	●
LIBYA	●	●	●	●
MAURITANIA	●	—	●	●
MOROCCO	●	○	■	●
OMAN	—	—	■	—
PALESTINE	■	●	■	■
QATAR	—	●	■	●
SAUDI ARABIA	—	●	■	●
SUDAN	●	○	●	○
SYRIA	●	●	■	○
TUNISIA	●	●	●	●
U.A.E.	—	●	■	●
YEMEN	●	●	■	●

Ratified (●), Signed only (○), Neither signed nor ratified (—). Black squares indicate where a country is not eligible to ratify the treaty.¹⁵

¹⁴ ICCPR: International Covenant on Civil and Political Rights 1966, Arab Charter: Arab Charter on Human Rights 2004, ACHPR: African Charter on Human and Peoples' Rights 1981, UNCAC: United Nations Convention Against Corruption 2003.

¹⁵ Ratification information taken from the UN Treaty Collection, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en [accessed 12 July 2013], the list of state parties to the Arab Convention on Human Rights on the League of Arab States website http://www.lasportal.org/wps/portal/las_ar/inner/!ut/p/c5/vZLLjoJQDIafhSdoC8hlCYrc9MxwODhyNgYylXjDiBMZefqBxMSVupnYP02a_P37bQoS0h2LS1UWP1V9LPYwB2ksRnbCZzrXEMWwHgaEajDgplmu0fn5Yz-iF-kvyF1li-9ukM9W-009jw_KQchBmve8n8Q6hkk6YFH6SY6PIGCO-iLdXk9hu2v5Fht1urNoOvGarpFliEysYzZZNSLDVubVLLwrnb1SpbNNs3HiOUPbNf1QecFS38jS3siif2VFIMt9vexfbAgsqA8b0B2yS8UtukkrHUX5A7Uy5Ik/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=c27e04804955a572a785ef7abaae88c3 [accessed 12 July 2013], and the list of countries which have signed, ratified/accepted to the African Charter on Human and Peoples' Rights, compiled by the African Union <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf> [accessed 12 July 2013].

¹⁶ Egypt and Morocco have both ratified the ICCPR and signed the Arab Charter, Palestine has ratified the Arab Charter and is ineligible to ratify the ICCPR, and Yemen has ratified both the ICCPR and Arab Charter.

¹⁷ Palestine is not eligible to join.

Regionally, project countries are in line with the broader Middle East and North Africa. With the exception of Oman, all countries within the Middle East and North Africa have ratified at least one of the international human rights legal standards that require them to give effect to the right of access to information. Furthermore, several Middle East and North African countries have ratified both the International Covenant on Civil and Political Rights and the Arab Charter on Human Rights, as well as the African Charter on Human and Peoples' Rights, where applicable. Other states have signed but not yet ratified a treaty, merely obliging them not to defeat its 'object and purpose',¹⁸ meaning that they should not take action which would go against the human rights obligations contained in the treaty, including the right of access to information.

Freedom of expression, under Article 19 of the International Covenant on Civil and Political Rights, includes the right to 'freedom to seek, receive and impart information'.¹⁹ Elaborating on this article, the United Nations Human Rights Committee, which provides authoritative interpretation of the meaning and application of the covenant, stated in 2011 that the right of access to information held by public bodies requires that state parties should proactively release government information of public interest, ensure easy, prompt, effective and practical access to that information, implement necessary procedures (such as an access to information law), process requests in a timely manner, ensure fees do not constitute an unreasonable impediment to access, provide reasons for refusal, and make available appeals for a refusal.²⁰

Almost all countries in the region have ratified the UNCAC; the exceptions are Sudan and Syria, which have only signed, and Oman, which has neither signed nor ratified the convention.²¹ Of those eligible, only Algeria and Libya have ratified the African Convention on Preventing and Combating Corruption.²²

The UNCAC obliges state parties to take measures to enhance transparency in public information, such as adopting and facilitating procedures to allow public access to information relating to the organisation, functioning and decision-making processes of the state, and to publish information.²³ It also obliges state parties to promote the active participation of individuals and groups, which can include enhancing transparency and ensuring the public has effective access to information.²⁴

The Open Government Partnership, a voluntary scheme under which governments pledge to adopt fiscal transparency, promote access to information, subscribe to transparency in public official income and asset disclosure, and engage citizens,²⁵ is also open for all countries in the Middle East

¹⁸ Article 18 of the Vienna Convention on the Law of Treaties 1969.

¹⁹ International Covenant on Civil and Political Rights, Article 19.

²⁰ UN Human Rights Committee, *General Comment No. 34 on Article 19*, CCPR/C/GC/34 2011.

²¹ United Nations Treaty Collection: Convention Against Corruption, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XVIII-14&chapter=18&lang=en [accessed 12 July 2012].

²² African Union, Countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights, <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf> [accessed 12 July 2013].

²³ Article 10 '...each State Party shall... take such measures as may be necessary to enhance transparency in its public administration...Such measures may include...(a) 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'.

²⁴ Article 13, 'Each State Party shall take appropriate measures... to promote the active participation of individuals and groups outside the public sector... This participation should be strengthened by such measures as...(b) Ensuring that the public has effective access to information', Transparency International, *UN Convention Against Corruption*, http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/conventions/uncac [accessed 08 May 2012].

²⁵ Open Government Partnership, 'Open Government Declaration' <http://www.opengovpartnership.org/open-government-declaration> [accessed 12 July 2013].

and North Africa to join once they have become eligible. To date only Jordan has become eligible; it endorsed the declaration on 22 December 2011.²⁶

National situation

All four countries include the right to freedom of expression in their constitutions, of which access to information is a part. To give effect to this constitutional right, governments should pass an access to information law. As of 2011, Morocco has additionally included access to information as a constitutional right. This conforms broadly to the regional situation; apart from Saudi Arabia, all countries in the Middle East and North Africa include freedom of expression or the press in their constitutions.

Transforming this right into a detailed national law is still a priority in Egypt, Morocco and Palestine, and in the Middle East and North Africa more generally. Implementing the law is a priority in Yemen.

In Egypt, the government developed draft information laws throughout 2012, and in March 2013 the Ministry of Justice and Freedoms released a last draft for submission to parliament.²⁷ The draft law contains a number of positive aspects. However, legislators should work to address remaining weaknesses, in particular regarding who has standing to make a request, how to make a request, and the form and cost of information provision. Excepting entire government agencies from disclosing information also fails to comply with international standards.²⁸

Following Morocco's 2011 inclusion of the right of access to information in the constitution, the Ministry of Public Service and Administration Modernisation began drafting an access to information law, largely in isolation of civil society organisations, with which it did not consult before publishing a draft for public debate in March 2013. Transparency Maroc expects parliament to pass the law in 2013.²⁹

In April 2005, the Palestinian Legislative Council approved a draft access to information law. Passage of the law stalled following the suspension of the Legislative Council's work in 2007. The 2005 draft, while a positive step, does not yet meet international standards. These standards

TABLE 4: Implementation in constitutions and national laws
Note: All information correct at the time of going to press.

COUNTRY	Freedom of Expression/ Press in the Constitution	Right to Information in the Constitution	Access to Information Law
ALGERIA	●	—	—
BAHRAIN	●	—	—
EGYPT	○	○	—
IRAN	●	—	—
IRAQ	●	—	—
JORDAN	●	—	●
KUWAIT	●	—	—
LEBANON	●	—	—
LIBYA	●	—	—
MAURITANIA	●	—	—
MOROCCO	●	●	—
OMAN	●	—	—
PALESTINE	●	—	—
QATAR	●	—	—
SAUDI ARABIA	—	—	—
SUDAN	●	●	—
SYRIA	●	—	—
TUNISIA	●	—	●
U.A.E.	●	—	—
YEMEN	●	—	●

Has the provision/law (●), does not have the provision/law (—), unclear/transition (○).

²⁶ Open Government Partnership, 'Jordan', <http://www.opengovpartnership.org/countries/jordan> [accessed 12 July 2013].

²⁷ Transparency International, 2013, p. 12.

²⁸ As above, p. 44.

²⁹ Transparency Maroc, 2013, p.15.

include clear appeal routes and procedures for making requests, a duty on public bodies to assist petitioners with their request, and limited exceptions.³⁰

Of the four project countries, only Yemen has an access to information law, passed in July 2012.³⁴ Despite many strong points, the law contains a number of shortcomings, including lacking the harm and public interest tests (see p. 26). Yemen's president waited almost a year before appointing the information commissioner in May 2013, a requirement under the law, and has yet to issue implementing regulations, without which key procedures of the law remain unspecified.³⁵

TABLE 5: In practice comparison table

Note: All figures listed are the latest version of rankings available at the time of going to press.

PRESS FREEDOM INDEX (rank, where 179 is the least press freedom) ³¹	OPEN BUDGET INDEX (score where 100 is the most open) ³²	VOICE AND ACCOUNTABILITY INDICATORS (rank, where 100 is the highest) ³³
THREE HIGHEST RANKING COUNTRIES		
Mauritania (67)	Jordan (57)	Tunisia (35.7)
Kuwait (77)	Morocco (38)	Lebanon (34.3)
Lebanon (101)	Lebanon (33)	Kuwait (30.5)
THREE LOWEST RANKING COUNTRIES		
Sudan (170)	Iraq (4)	Libya (6.1)
Iran (174)	Saudi Arabia (1)	Syria (3.8)
Syria (176)	Qatar (0)	Saudi Arabia (3.3)

This conforms to the regional picture. Jordan³⁶ and Tunisia³⁷ are the only other countries in the region with access to information laws. At the time of writing, two years after passing the law, the Tunisian president had not issued the governing regulations to allow the law to become operational,³⁸ and both the Jordanian and Tunisian laws have faced criticism: the Jordanian law for failing to address conflicts with secrecy laws,³⁹ and the Tunisian law for lacking effective enforcement mechanisms.⁴⁰ A recent draft law approved by the Council of Ministers to amend the access to information law in Jordan, while moving in the right direction, still does not meet international standards and does not address conflicts with secrecy laws, according to commentators.⁴¹ Governments or parliaments have considered access to information laws in recent years in at least six other Middle East and North African countries; Bahrain, Egypt, Kuwait, Lebanon, Morocco and Palestine.⁴²

Looking beyond the laws, this lack of access to information legislation in both project countries and the region more broadly is reflected in indicators on transparency and participatory governance.

³⁰ The Coalition for Accountability and Integrity - AMAN, *It belongs to you: Public Information in Palestine* (Ramallah: The Coalition for Accountability and Integrity – AMAN, 2013), p. 27.

³¹ Reporters Without Borders, 2013: 20 – 24.

³² International Budget Partnership, 2013: 7.

³³ World Bank Worldwide Governance Indicators, Statistical Table: Voice and Accountability, Comparison across selected countries 2011.

³⁴ The Yemeni Team for Transparency and Integrity, 2013, p. 9.

³⁵ The Yemeni Team for Transparency and Integrity, 2013, pp. 10, 34.

³⁶ Business Anti-Corruption Portal, 'Jordan Country Profile – Public Anti-Corruption Initiatives'.

³⁷ World Bank, 'Tunisia Acts on Open-Government and Access to Information Reforms', FreedomInfo.org, 'Tunisia Issues Decree on Access to Documents'.

³⁸ Mona Yahia, 'Free speech under threat in Tunisia', Magharebia, 1 July 2013, http://magharebia.com/en_GB/articles/awi/features/2013/07/01/feature-02 [accessed 23 July 2013].

³⁹ Business Anti-Corruption Portal, 'Jordan Country Profile – Public Anti-Corruption Initiatives'.

⁴⁰ Said Almadhoun, *Access to Information in the Middle East and North Africa Region: An overview of recent developments in Jordan, Lebanon, Morocco and Tunisia* (World Bank Institute: 2012), pp.2-3, 29-30 http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/Almadhoun-ATI_in_MNA_Region_ENGLISH.pdf [accessed 13 August 2013].

⁴¹ Yahia Shukkeir, *Recent Developments: Jordan* in World Bank, *Regional Dialogue – Advancing Access to Information in MNA: Supporting Coalitions and Networks* (Newsletter No. 5, October 2012), p.14.

⁴² Said Almadhoun, 'Status of Freedom of Information Legislation in the Arab World', 2010 Right2Info 2012, <http://www.right2info.org/resources/publications/Overview%20of%20FOI%20legislation%20in%20the%20Arab%20World%20-%20SA%20-%202002-06-2010.doc/view> [accessed 23 July 2013].

Egypt, Morocco, Palestine and Yemen all fare poorly in terms of open budgeting, press freedom and voice and accountability.⁴³ Morocco provides an exception in open budgeting in falling within the band for 'minimal budget information', rather than the 'scant or no budget information' that Egypt and Yemen fall into.⁴⁴ All four rank in the bottom third on press freedom⁴⁵ and score less than one third of the maximum points on voice and accountability.⁴⁶

Indicators for other countries in the Middle East and North Africa are also poor. Countries tend to rank or score in the bottom half for press freedom, open budgeting and voice and accountability, with some countries approaching the bottom rankings and lowest scores globally.⁴⁷

Challenges

Through research for the four national reports, Transparency International chapters and partners in Egypt, Morocco, Palestine and Yemen found a number of challenges that are impeding people and civil society from using access to information to fight corruption. These challenges are present in all four countries.

Governments and parliaments have not passed access to information laws in any of the countries except Yemen, and in Yemen the government has not issued the implementing regulations for the law. Consequently, in none of four countries assessed in detail is there a general right of access to all areas of public information.

Existing laws in all four countries provide access to information in discrete sectors, for example, regarding the environment or public procurement. However, in addition to the sector-specific focus of these laws, they also fail to comply with international principles on access to information laws. This means that even within the sector they apply to, people and civil society are not able in all circumstances to access the information they may need to fight corruption.

Additionally, in Egypt and Morocco secrecy laws prevent public officials from disclosing information without official or high level approval. This at best could create confusion when public officials receive access to information requests, and at worst could undermine and annul them.

A strong and effectively implemented access to information law enables petitioners not only to make information requests, but obliges public bodies to respond in set formats, establishes clear timeframes for response and prohibits public bodies from charging high fees. It also enables petitioners to appeal refusals and requires public bodies to perform harm and public interest tests before refusing a request, and to provide reasons for doing so.⁴⁸ The United Nations Human Rights Committee in *General Comment 34* stated that to give effect to Article 19 of the International Covenant on Civil and Political Rights, state parties should enact procedures – including freedom of information laws – to enable easy, prompt, effective and practical access to information.⁴⁹

⁴³ Reporters Without Borders, 2013: pp. 20-24, International Budget Partnership, 2013: p. 7, World Bank Worldwide Governance Indicators, Statistical Table: Voice and Accountability, comparison across selected countries 2011.

⁴⁴ International Budget Partnership, 2013: p. 7, Palestine not included.

⁴⁵ Reporters Without Borders, 2013: pp. 20 – 24.

⁴⁶ World Bank Worldwide Governance Indicators, Statistical Table: Voice and Accountability, comparison across selected countries 2011.

⁴⁷ Reporters Without Borders, 2013: pp. 20-24, International Budget Partnership, 2013: p. 7, World Bank Worldwide Governance Indicators, Statistical Table: Voice and Accountability, comparison across selected countries 2011.

⁴⁸ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations* (Madrid: Access Info, November 2011), http://www.accessinfocyprus.eu/images/access-info/final_report/Draft_Report_and_Recommendations_for_Consultation_24_Feb_2011_web.pdf [accessed 22 May 2013], Article 19, *The public's right to know: Principles on freedom of information legislation* (London: Article 19, 1999), <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> [accessed 22 May 2013].

⁴⁹ UN Human Rights Committee, *General Comment No. 34 on Article 19*.

Egypt

Egypt does not yet have an access to information law. When carrying out research for the national report, the Centre for Development Services found that three laws relevant to access to information and corruption complied only to a very limited extent with international principles: the National Archives Law, the Tenders and Bids Law, and the Information Centres Decree. For example, the laws lacked timeframes for responding to information requests and routes for appealing refusals or official silence. The draft access to information law, also analysed, addressed these problems in a number of respects, but also contained weaknesses. If or when Egypt may adopt such a law remains unclear.⁵⁰

In Egypt, laws also act as a barrier to access to information. The 1978 Civil Servants Law forbids public officials from making public statements and publishing announcements without permission from either the ministry or local government department director, or chairperson of the public body, and prohibits officials from disclosing information which ought to be confidential by its nature or by instruction.⁵³ Article 10 of the Central Body of Public Mobilisation and Statistics Decree gives the Central Body sole authority to publish statistics in Egypt and prohibits all other bodies and individuals from publishing statistical information.⁵⁴

Morocco

In Morocco, there is no access to information law and current laws only partially give effect to the right of access to information. Transparency Maroc found that of the laws it analysed (the Electoral Lists Law, the Public Procurement Decree, the Archives Law, the Environment Law and the Municipal Organisation Law), most did not give the right of access to everyone, they rarely set a timeframe for responding to requests and only one obliged public authorities to assist petitioners.⁵⁵ When

looking at access to information in the justice sector – perceived as the ‘most corrupt’ sector in Transparency International’s 2010/11 *Global Corruption Barometer* – Transparency Maroc found that the lack of a legal requirement to publish court decisions, difficulties in obtaining information

Accessing information to fight injustice in Morocco

A case study

In a case submitted to Transparency Maroc’s Advocacy and Legal Advice Centre (ALAC),⁵¹ a plaintiff suspected family members of misappropriating possessions and money in bank accounts of companies jointly inherited from their late father. Local and general crown prosecutors did not respond to his appeals seeking an investigation, and an investigative judge summarily dismissed without reasons his law suit. The Criminal Affairs Department of the Ministry of Justice did not answer ALAC staff’s written enquiries about the matter.

With a legal right of access to information, the plaintiff could have appealed to an information commissioner or a court against the prosecutor’s unlawful refusal to provide reasons for suspending the case, and the courts’ summary dismissals of it. An access to information law might also have provided the plaintiff with grounds to request information from the Criminal Affairs Department on the status of the complaint.⁵²

⁵⁰ Transparency International, 2013: pp. 12, 44.

⁵¹ Transparency Maroc’s Advocacy and Legal Advice Centres: <http://www.transparencymaroc.ma/ar/projet-2.html> [accessed 13 August 2013].

⁵² Transparency Maroc, 2013: p. 39.

⁵³ Transparency International, 2013: p. 14.

⁵⁴ As above.

⁵⁵ Transparency Maroc, 2013: p. 31.

from the judicial administration, and challenges in appealing refusals to provide information in the judicial sector impeded access to information.⁵⁶

The Moroccan 1958 Civil Service Statute furthermore prohibits public officials from disclosing information or providing administrative documents to third parties without management permission. Those who disclose information without this permission can be subject to disciplinary or criminal penalties.⁵⁷

Palestine

In Palestine there is no access to information law. The three laws the Coalition for Accountability and Integrity – AMAN assessed (the Press Law, the Environment Law and the Statistics Law) predominantly failed to meet international principles on access to information or at best were unclear. Of particular note, none of the three laws assessed included a duty on public authorities to assist petitioners, or clear timeframes for responding to information requests. The draft access to information law, also assessed, represents a step forward. However, it too failed to comply fully with international principles, including by lacking an obligation on public bodies to assist petitioners. The draft law also contains overly broad exceptions.⁵⁸

Yemen

Of the four project countries, only Yemen has an access to information law, enacted in July 2012,⁵⁹ but not yet fully implemented.⁶⁰ Access to information under other laws is patchy; information requests are either limited under those laws, or force petitioners to rely on informal requests.⁶¹

The Yemeni Team for Transparency and Integrity (YTTI) analysed four other laws relevant to access to information and corruption, in addition to the (not yet implemented) access to information law: the Anti-Corruption Law, the Control and Auditing Law, the Information Centre Decree and the Press Law. These were chosen by YTTI for their relevance to the right of access to information, transparency and the fight against corruption. YTTI found that none of the other laws provided access to information in line with international standards. Particularly problematic was the fact that none of the four laws was clear on whether public bodies could disclose information, and no clear appeal routes for refusals to provide information existed.⁶² When YTTI looked at access to information in the diesel sector, researchers lacked legal grounding on which to base their requests to the national petroleum company or the Ministry of Oil and Minerals.⁶³

⁵⁶ As above: pp. 32, 37-38.

⁵⁷ Transparency Maroc, 2013: p. 14.

⁵⁸ The Coalition for Accountability and Integrity, 2013: p. 27.

⁵⁹ The Yemeni Team for Transparency and Integrity, 2013: p. 9.

⁶⁰ As above: p. 10.

⁶¹ As above: p. 27

⁶² As above.

⁶³ As above: p. 33

Testing access to information in Yemen's diesel sector

In Yemen, the diesel sector is important to securing the basic standard of living of much of the population, but has faced multiple claims of corruption in recent years.⁶⁴

The Yemen Team for Transparency and Integrity (YTTI) tested six public authorities as part of its research into access to information in the diesel sector.⁶⁵ It approached these authorities in August and September 2012 and asked them:

- How much diesel was produced during 2011?
- How much diesel was distributed to the governorates?
- What was the total subsidy in the government's budget for diesel?
- How much diesel was allocated to the agriculture sector?
- What was the total amount of diesel given to fishermen?
- What was the total amount of diesel distributed in the market and how was it distributed?

YTTI found that these authorities severely limited access to information, despite the importance of diesel to Yemen's economy and reported levels of corruption in the sector.⁶⁶

In the absence of an implemented access to information law, YTTI concluded that it was not possible for people to obtain information through direct application to the public authorities. Information only became accessible through personal contacts, provided that this was conducted in person and at times confidentially.⁶⁷

YTTI also found that some authorities provided information following approval from senior officials, while others required petitioners to explain how the information would be used. Even when petitioners met these conditions, the authorities provided outdated, unrelated and incomplete information.⁶⁸

⁶⁴ The Yemeni Team for Transparency and Integrity, 2013: p. 28.

⁶⁵ As above: pp.28 - 33.

⁶⁶ As above: p. 33.

⁶⁷ As above.

⁶⁸ As above: pp.28 - 33.

Outlook

In all four project countries, there are positive signs that governments and parliaments are recognising the importance of effective access to information. The road ahead requires lawmakers to prioritise the legislative incorporation of this right as internationally guaranteed. Governments then need to ensure effective implementation of laws.

Egypt's inclusion of the right of access to information in the 2012 constitution, in addition to the right of freedom of expression, was a positive sign, as was the drafting of an access to information law to implement this constitutional right.⁶⁹ With the change in government of July 2013 and the suspension of the constitution, there is now a danger that the transitional and subsequent governments may stall or reverse progress in giving effect to the right of access to information. Any new constitution or constitutional amendments in Egypt should ensure that the right of access to information is included and that the weaknesses of access to information provisions in the 2012 constitution are removed. The government should continue to discuss and amend the draft access to information law in consultation with civil society and other interested parties.

Morocco's government is currently consulting on an access to information law and should continue to consult with civil society and submit an improved version to parliament this year. Morocco would become only the fourth Middle East and North African country to have an access to information law.⁷⁰

Progress in passing an access to information law has currently stalled in Palestine. In 2005, civil society drafted a law and in 2007 lawmakers gave it preliminary approval. Passing of this law, after revision, is now dependent on either a presidential decree or the reconstitution of the parliament.⁷¹

Yemen's adoption of the access to information law in 2012 was a good first step and YTTI assessed that it substantially complied with many of the 10 principles for access to information.⁷² Implementation has been slow, however, and while the president appointed an information commissioner in May 2013, he has not issued implementing regulations in other areas.⁷³ The Yemeni government's constitutional consultations are still ongoing.⁷⁴ Including the right of access to information in the new constitution would help to strengthen the case for implementation of the law.

⁶⁹ Transparency International, 2013: pp. 11-12.

⁷⁰ Transparency Maroc, 2013: p. 15.

⁷¹ The Coalition for Accountability and Integrity, 2013: p.10.

⁷² The Yemeni Team for Transparency and Integrity, 2013: p. 27.

⁷³ As above: pp. 9-10, 34.

⁷⁴ As above: p. 9.

Conclusions

Transparency International believes that the effective implementation of an access to information law is essential for addressing corruption. Information is fundamental to making informed decisions. Information is also power. Where it is not freely accessible, corruption can thrive and basic rights may not be realised. Corruption can be hidden behind a veil of secrecy. Those with privileged access to information can demand bribes from others seeking such information. People may be denied basic health or education services if they lack information about their rights. Governments can hide their actions by controlling or censoring the media, preventing essential information in the public interest from being reported.⁷⁵

Across the Middle East and North Africa, despite international commitments, access to information is not incorporated into general access to information laws enabling people and civil society to approach public bodies and access information that would enable them to address corruption.

In the four project countries, research carried out by the three Transparency International chapters and one partner organisation indicate the difficulties civil society organisations and the general population face without a general access to information law or when one is not effectively implemented. In all four countries, researchers identified weaknesses in sector-specific laws highly relevant to anti-corruption work that prevent people from using these laws as a tool to fight corruption. Researchers in Egypt and Morocco also identified laws that require public officials not to disclose information.

To address these issues and combat corruption, lawmakers should draft and pass access to information laws, which governments should effectively implement. These laws and constitutional articles are on the agenda of governments in all four project countries. When drafting constitutional articles and passing laws, governments should work with civil society to ensure that laws comply and give effect to international principles on access to information. After passing laws, governments should ensure they are effectively implemented.

⁷⁵ Transparency International, *Access to information*, <http://www.transparency.org/topic/detail/accesstoinformation> [accessed 22 May 2013].

Recommendations

Based on the findings of this report, Transparency International makes the following recommendations for addressing corruption through access to information:

To the governments and parliaments

- Government and parliaments should draft and pass access to information laws that comply with international standards. Article 19 of the International Convention on Civil and Political Rights describes fundamental principles, best practice and international standards,⁷⁶ including: adopting a proactive disclosure approach, making information ‘public by default’ in an easily accessible and understandable electronic format, ensuring information is free of charge or with reasonable fees, and stipulating clear and reasonable time limits for how long public bodies can review appeals against refusals for access to information. While freedom of expression includes the right of access to information, drafters of legislation or constitutional provisions should consider including an explicit constitutional provision recognising this right.
- Governments should implement access to information laws effectively, train officials and proactively make information available in accessible, comparable and timely formats online and in government offices.
- Governments and parliaments should remove laws preventing or limiting access to information and revise laws with over-broad national security exemptions, in line with international good practice. Governments should conduct a thorough review of policies and practices on the implementation of access to information rules and resolve problems with effective implementation.
- Governments and parliaments should consult with civil society in drafting laws and constitutional provisions to ensure that international principles are met and adapted to local contexts.
- Governments and civil society should proactively inform people about access to information laws and encourage their use.

To civil society organisations working on access to information

- Civil society should work with governments and advocate for the adoption and implementation of laws that comply with international access to information principles.
- Civil society should test public sector compliance with access to information laws through making test requests of public bodies.
- Civil society should proactively inform people about access to information laws and encourage their use.

⁷⁶ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, 1999.

Egypt

- The government and parliament should pass and implement effectively an access to information law that complies with international standards and best practice, including on the form of request and access, fees and limited exceptions subject to the harm and public interest tests.
- Parliament should remove conflicting laws and overly broad exceptions to disclosure or ensure the access to information law overrides them.
- The government should create a public body responsible for proactively disclosing public information, encouraging citizens to use the right of access to information, and providing a remedy for non-disclosure.
 - See Transparency International, *It belongs to you: Public information in Egypt* for full recommendations.

Morocco

- The government and parliament should enact a general law on the right of access to information that conforms to international standards, and amend existing legislation that does not conform to this general right.
- The government should develop the infrastructure of public departments and utilities necessary to implement this right, including through training public officials in producing, managing and disseminating information, and allocating necessary budgets.
- The government should ensure that public information is accessible, beneficial, usable and relevant, that it is updated when necessary and is free of charge as a point of principle.
- The government should explain to the public the content and means of benefiting from the Archives Law and an anticipated access to information law.
 - See Transparency Maroc, *It belongs to you: Public information in Morocco* for full recommendations.

Palestine

- The Palestinian Authority should revise the draft access to information law in line with international standards and, as long as the Palestinian Legislative Council is inoperative, the President of the Palestinian Authority should pass the law.
- The president should ensure that public bodies implement access to information provisions effectively when passed.
- The Palestinian Authority should prepare and disseminate a public information guide on procedures for requesting information from official bodies and mechanisms available for enforcing the response.
 - See The Coalition for Accountability and Integrity – AMAN, *It belongs to you: Public information in Palestine* for full recommendations.

Yemen

- Parliament should include explicitly the right of access to information in the new constitution.
- The government and parliament should review and amend laws that limit or restrict the right of access to information.
- The government and parliament should give appeal and supervisory bodies the powers and resources necessary to oversee implementation of the right of access to information.
- The government should train public officials in their duties under the access to information law.
- The government should establish sections within ministries responsible for information requests and proactive disclosure.
- The information commissioner should draft the implementing regulations for the access to information law and submit them to the president for issuing.
 - See the Yemeni Team for Transparency and Integrity, *It belongs to you: Public information in Yemen* for full recommendations.

Resource Guide

This resource guide contains selected sources on access to information relevant to the Middle East and North Africa (MENA) region. It has been developed from a number of sources used within the reports and in further work on access to information, but should not be considered exhaustive.

Access to Information Assessments in the MENA region

- ASK YOUR GOVERNMENT! The 6 Question Campaign⁷⁷ (*Algeria, Iraq, Morocco, Yemen*).
- Global Right to Information Rating.⁷⁸
- Open Budget Index.⁷⁹
- Press Freedom Index.⁸⁰
- Right 2 Info.⁸¹

Access to Information Laws in the MENA region

- Jordan.⁸²
- Tunisia.⁸³
- Yemen.⁸⁴

International Law and Declarations

- African Charter on Human and Peoples' Rights.⁸⁵
- African Union Convention on Preventing and Combating Corruption.⁸⁶
- Arab Convention Against Corruption.⁸⁷
- International Covenant on Civil and Political Rights.⁸⁸
- United Nations Convention Against Corruption.⁸⁹
- Windhoek Declaration.⁹⁰

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- Alfonso Hernández-Valdez: *Budgeting Implications for ATI Legislation*.⁹¹
- Álvaro Herrero and Gaspar López: *Access to Information and Transparency in the Judiciary*.⁹²
- Andrew Puddephatt: *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws*.⁹³

⁷⁷ IBP, Centre for Law and Democracy, Access Info Europe, ASK YOUR GOVERNMENT! The 6 Question Campaign, September 2011, http://www.access-info.org/documents/6QC/6QC_Report_Publication_version_September_2011.pdf [accessed 15 August 2013].

⁷⁸ Centre for Law and Democracy and Access Info, *Global Right to Information Rating* <http://rti-rating.org/> [accessed 13 August 2013].

⁷⁹ International Budget Partnership, 2013: p. 7.

⁸⁰ Reporters Without Borders, 2013.

⁸¹ <http://www.right2info.org/> [accessed 13 August 2013].

⁸² http://www.lob.gov.jo/ui/laws/search_no.jsp?no=47&year=2007 [accessed 13 August 2013].

⁸³ OpenData Tunisia, *Publication de la circulaire d'application du décret-loi sur l'Open Data April 5th 2012*, <http://www.opendata.tn/actualites/publication-de-la-circulaire-d%E2%80%99application-du-d%C3%A9cret-loi-sur-l%E2%80%99open-data> [accessed 13 August 2013].

⁸⁴ Centre for Law and Democracy, *Law 13 for the Year 2012*, <http://www.law-democracy.org/wp-content/uploads/2012/07/Yemen-RTI-law.pdf> [accessed 13 August 2013].

⁸⁵ African Charter on Human and Peoples' Rights 1981.

⁸⁶ African Union Convention on Preventing and Combating Corruption 2003.

⁸⁷ World Bank, *Arab Anti-Corruption Convention*, <http://star.worldbank.org/star/sites/star/files/Arab-Convention-Against-Corruption.pdf> [accessed 13 August 2013].

⁸⁸ International Covenant on Civil and Political Rights 1966.

⁸⁹ United Nations Convention against Corruption 2003.

⁹⁰ Declaration of Windhoek on Promoting an Independent and Pluralistic African Press, 1991.

⁹¹ Alfonso Hernández-Valdez, *Budgeting Implications for ATI Legislation: The Mexican Case* (Washington: World Bank Institute, 2009).

⁹² Álvaro Herrero and Gaspar López, *Access to Information and Transparency in the Judiciary* (Washington: World Bank Institute, 2010).

⁹³ Andrew Puddephatt, *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom* (Washington: World Bank Institute, 2009).

- Ezequiel Nino: *Access to Public Information and Citizen Participation in Supreme Audit Institutions (SAI)*.⁹⁴
- Freedom of Information Advocates Network, *Global Right to Information Update: An analysis by region*.⁹⁵
- Helen Darbishire: *Proactive Transparency: The future of the right to information?*⁹⁶
- Laura Neumann: *Enforcement Models: Content and Context*.⁹⁷
- Said Almadhoun: *Status of Freedom of Information Legislation in the Arab World*.⁹⁸
- The World Bank Institute: *Advancing Access to Information in MNA: Supporting Coalitions & Networks*.⁹⁹

Standards for Access to Information Laws

- Article 19 Principles on Freedom of Information Legislation.¹⁰⁰
- Commonwealth Freedom of Information Principles.¹⁰¹
- Commonwealth Model Freedom of Information Bill.¹⁰²
- Draft Model Law for AU Member States on Access to Information.¹⁰³
- Inter-American Declaration of Principles on Freedom of Expression.¹⁰⁴
- Open Government Partnership.¹⁰⁵
- Organization of American States' Model Inter-American Law on Access to Information.¹⁰⁶
- Tshwane Principles on National Security and the Right to Information.¹⁰⁷

⁹⁴ Ezequiel Nino: *Access to Public Information and Citizen Participation in Supreme Audit Institutions (SAI)* (Washington: World Bank Institute, 2010).

⁹⁵ Freedom of Information Advocates Network, *Global right to information update: An analysis by region – July 2013* (Madrid: Freedom of Information Advocates Network, 2013).

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⁹⁹ The World Bank Institute, *Advancing Access to Information in MNA: Supporting Coalitions & Networks – Issue 1* (AR: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks-arabic-version>, EN: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks>), Issue 2 (AR: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks-newsletter-issue-2-arabic-v>, EN: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks-newsletter-issue-2>), Issue 3 (AR: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks-newsletter-issue-3-arabic>, EN: <http://wbi.worldbank.org/wbi/document/advancing-access-information-mna-supporting-coalitions-networks-newsletter-issue-3>) [accessed 13 August 2013].

¹⁰⁰ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, (London: Article 19, 1999).

¹⁰¹ Commonwealth Freedom of Information Principles, 1999, published in 'The Right to Information: International Commonwealth Human Rights Initiative', http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards.htm [accessed 13 August 2013].

¹⁰² Commonwealth Model Freedom of Information Bill LMM (02) 6, 2002 published by the Commonwealth Human Rights Initiative http://www.humanrightsinitiative.org/programs/ai/rti/international/cw_standards/Cth%20model%20law%20-%20FOI%20Act.pdf [accessed 15 August 2013].

¹⁰³ Centre for Human Rights, University of Pretoria and the Special Rapporteur on Freedom of Expression and Access to Information in Africa, *Draft Model Law for AU Member States on Access to Information*. <http://www.chr.up.ac.za/index.php/comments.html> [accessed 13 August 2013].

¹⁰⁴ Inter-American Declaration of Principles on Free Expression 2000.

¹⁰⁵ <http://www.opengovpartnership.org/> [accessed 13 August 2013].

¹⁰⁶ Model Inter-American Law on Access to Information 2010, published by the Organization of American States http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf [accessed 13 August 2013].

¹⁰⁷ Open Society Foundations, 'The Tshwane Principles on National Security and the Right to Information: An Overview in 15 Points', Open Society Justice Initiative, June 2013, <http://www.opensocietyfoundations.org/fact-sheets/tshwane-principles-national-security-and-right-information-overview-15-points> [accessed 23 July 2013].

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- United Nations Treaty Collection, <http://treaties.un.org/>.
- World Bank Worldwide Governance Indicators, 'Statistical Table: Voice and Accountability, comparison across selected countries 2011', http://info.worldbank.org/governance/wgi/mc_chart.asp.

Annex I: Access to Information

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.”¹⁰⁸

In addition to the Universal Declaration of Human Rights, the right of access to information has been included in major human rights conventions, including in Article 19 of the International Covenant on Civil and Political Rights,¹⁰⁹ Article 9 of the African Convention on Human and Peoples’ Rights,¹¹⁰ and Article 32 (1) of the Arab Charter on Human Rights,¹¹¹ which states that:

“The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries”.

Elaborating on Article 19 of the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee, which provides authoritative interpretation of the meaning and application of the covenant, stated in 2011 that the right of access to information held by public bodies requires that state parties should proactively release government information of public interest, ensure easy, prompt, effective and practical access to that information, implement necessary procedures (such as an access to information law), process requests in a timely manner, ensure fees do not constitute an unreasonable impediment to access, provide reasons for refusal, and make available appeals for a refusal.¹¹²

Taking measures to enhance transparency in public information – such as adopting and facilitating procedures to allow public access to information relating to the organisation, functioning and decision-making processes of the state, and publishing information¹¹³ – is required under the UN Convention Against Corruption (UNCAC). It also requires promotion of the active participation of individuals and groups, which can include enhancing transparency and ensuring the public has effective access to information.¹¹⁴ Access to information is a foundation of democratic governance:¹¹⁵

“Access to information acts are grounded in the recognition ‘that information in the control of public authorities is a valuable public resource and that public access to such information promotes greater transparency and accountability of those public authorities, and that this information is essential to the democratic process’. The purpose of these acts, also known as access to information laws, is to make a government more open and accountable to its people. In transitional democracies, laws that give effect to the right to information are part of

¹⁰⁸ Universal Declaration on Human Rights 1949, Article 19.

¹⁰⁹ International Covenant on Civil and Political Rights 1966, Article 19 (2): ‘Everyone shall have the right to... receive and impart information’.

¹¹⁰ African Charter on Human and Peoples’ Rights 1981, Article 9 (1): ‘Every individual shall have the right to receive information’.

¹¹¹ Arab Charter on Human Rights 2004, Article 32.

¹¹² UN Human Rights Committee, *General Comment No. 34 on Article 19*, CCPR/C/GC/34 2011.

¹¹³ United Nations Convention Against Corruption 2003, Article 10: ‘[E]ach State Party shall... take such measures as may be necessary to enhance transparency in its public administration... Such measures may include... (a) 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’.

¹¹⁴ United Nations Convention Against Corruption 2003, Article 13: ‘Each State Party shall take appropriate measures... to promote the active participation of individuals and groups outside the public sector... This participation should be strengthened by such measures as... (b) Ensuring that the public has effective access to information’, Transparency International, *United Nations Convention Against Corruption*, http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/conventions/uncac [accessed 22 May 2013].

¹¹⁵ Transparency International, *Using the right to information as an anti-corruption tool*, (Berlin: Transparency International, 2006), p. 5.

the process of transforming a country from one with a closed and authoritarian government to one governed by and for the people.”¹¹⁶

Transparency International believes that the effective implementation of an access to information law is essential for addressing corruption. Information is fundamental to making informed decisions. Information is also power. Where it is not freely accessible, corruption can thrive and basic rights may not be realised. Corruption can be hidden behind a veil of secrecy. Those with privileged access to information can demand bribes from others seeking such information. People may be denied basic health or education services if they lack information about their rights. Governments can hide their actions by controlling or censoring the media, preventing essential information in the public interest from being reported.¹¹⁷

When the right to know is denied, the public will find it difficult to hold decision-makers or institutions to account for their actions or to make informed electoral choices. Without public information a culture of empowered citizens informed about their rights is hard to imagine.¹¹⁸

More than 90 countries have passed access to information legislation over the past 15 years, but implementation is patchy. Global anti-corruption treaties stress the value of access to information and governments have their work cut out for them to ensure that people can enjoy their right to know effectively.¹¹⁹

¹¹⁶ As above.

¹¹⁷ Transparency International, *Access to information*, <http://www.transparency.org/topic/detail/accesstoinformation> [accessed 22 May 2013].

¹¹⁸ As above.

¹¹⁹ As above.

Annex II: Definitions

Information

All records held by a public body, regardless of the form in which the information is stored, its source (produced by the public body or another body) and the date of production. Classified records should be subject to the same test as other records.¹²⁰

Public body

The term public body focuses on the type of service provided rather than the formal title. It should include all branches and levels of government, including local government, elected bodies, bodies that operate under a statutory mandate, nationalised industries and public corporations, non-departmental bodies, judicial bodies and private bodies which carry out public functions (such as maintaining roads or operating rail lines). Private bodies themselves should also be included if they hold information whose disclosure is likely to diminish the risk of harm to key public interests, such as the environment and health. Inter-governmental organisations should also be subject to access to information regimes.¹²¹

10 principles

The 10 principles embody international standards on access to information and were developed by Access Info – a human rights organisation dedicated to promoting and protecting the right of access to information¹²² – in consultation with international experts. They draw on international standards, comparative studies on access to information laws in European countries and the European Convention on Access to Official Documents.¹²³

Exceptions

Exceptions to access to information should be exhaustively listed in the access to information law and subject to a three-part test for legitimate aim, harm and public interest.¹²⁴

- **Legitimate aim**

The law should provide a complete list of legitimate aims that justify non-disclosure. Exceptions should be narrowly worded, based on content of information and not form, and should be time-limited where appropriate.¹²⁵

- **Harm test**

When information falls within a legitimate aim, the public body seeking to exclude the information should show that disclosure would cause substantial harm to the legitimate aim.¹²⁶

- **Public interest test**

Even where disclosure would cause substantial harm to the legitimate aim, the withholding of information should be weighed against the public interest in disclosing the information. Where the public interest outweighs the harm, information should be made available.¹²⁷

¹²⁰ Article 19, *The public's right to know: Principles on freedom of information legislation* (London: Article 19, 1999), <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> [accessed 22 May 2013], pp. 2 - 3.

¹²¹ As above, p. 3.

¹²² Access Info, <http://www.access-info.org/> [accessed 8 March 2013].

¹²³ Access Info, 2011, p. 36.

¹²⁴ Article 19, 1999, p. 5.

¹²⁵ As above, p. 6.

¹²⁶ As above.

¹²⁷ As above.

Proactive disclosure

As well as acceding to requests for information, public bodies should publish and widely disseminate documents of significant public interest, subject only to reasonable limits based on resources and capacity. Information published depends on the public body concerned, but laws should include a general obligation to publish and should specify key categories of information that must be published. These should include: operational information, information on requests, complaints or other direct actions, guidance for public input into processes, the type and form of information held by the body, and the content, reasons and background to any decision or policy affecting the public.¹²⁸

¹²⁸ As above, pp.3-4.

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