



تِراَنسِپَرانِسي المِغِرب
transparency maroc

IT BELONGS TO YOU:
PUBLIC INFORMATION
IN MOROCCO

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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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of May 2013. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

This report is part of a larger, region-wide project, entitled Addressing Corruption Through Information and Organized Networking (ACTION). As a part of this project, this report analyses the legal and regulatory environment in Morocco for accessing information to enhance public accountability against 10 principles for an access to information law, and undertakes an evaluation of access to information within the justice sector.

Transparency Maroc,¹ researched, prepared and drafted this report. The organisation was established in 1996 to work on issues of corruption and accountability in Morocco. It has established the Corruption Observatory that issues *Transparency News*, as well as Advocacy and Legal Advice Centres (ALACs) in Rabat, Fez and Nador.

Since 2006, Transparency Maroc has been calling for the enactment of a law guaranteeing the right of access to information and outlining the conditions for the exercise of this right. In January 2006, Transparency Maroc proposed 16 procedures as 'Priority Actions for Combating Bribery'.² In December 2008, Transparency Maroc held a workshop on access to information in the Maghreb countries that made a number of recommendations, including calling for constitutional and legal recognition of the right of access to information, greater public body transparency, and narrowly defining any exceptions to access to information. Transparency Maroc's recommendations came within the framework of the United Nations Educational, Scientific and Cultural Organization's (UNESCO) *2004 Policy Guidelines for the Development and Promotion of Governmental Public Domain Information* that include defining the domain of public information produced by public authorities, legalising and implementing access to information, and instituting a comprehensive policy to process and publicise sources of government information.³

As part of an earlier access to information project, in 2009 Transparency Maroc held three workshops for media,⁴ information and communication technology professionals,⁵ and key government officials.⁶ In January 2010, Transparency Maroc issued a 'how-to' guide on using the right of access to information: *A Groundwork for Pleading – The Right of Access to Information, Sector-Based Recommendations*.⁷ In December 2010, the organisation held two study days during which international and Moroccan experts, civil society organisations and a representative of the Ministry of Public Sector Modernisation produced the *Proposals and recommendations for a draft law on access to information*.⁸

In 2011 a referendum confirmed a new Moroccan Constitution, which included the right of access to information. Since then, Transparency Maroc has continued its campaign for an access to information law. In July 2011, Transparency Maroc organised a seminar to discuss preparing a proposed law on the right of access to information in light of Article 27 of Morocco's Constitution. In October 2011 Transparency Maroc issued a report entitled *Justifications and Priorities for a Law on*

¹ Transparency Maroc www.transparencymaroc.ma. Transparency Maroc's headquarters are in Rabat and a branch office is located in Casablanca.

² Transparency Maroc, *Priority Actions for Combating Bribery*, January 2006, <http://www.transparencymaroc.ma/uploads/communiqués/15.pdf> [accessed 7 March 2013] (original text in French).

³ Paul F. Uhler, *Policy Guidelines for the Development and Promotion of Governmental Public Domain Information* (UNESCO: Paris 2004), CI-2004/WS/05 <http://unesdoc.unesco.org/images/0013/001373/137363eo.pdf> [accessed 7 March 2013].

⁴ Transparency Maroc, *Promoting access to information project: Media professionals workshop report*, 17 September 2009 www.transparencymaroc.ma/uploads/projets/Fr/313_1.pdf [accessed 7 March 2013].

⁵ Transparency Maroc, *Promoting access to information project: Information and Communication Technology (ICT) Professionals Workshop Report*, 8 December 2009 http://www.transparencymaroc.ma/uploads/projets/Fr/115_1.pdf [accessed 7 March 2013] (original text in French).

⁶ Transparency Maroc, *Promoting access to information project: Central decision-makers and persons responsible for government departments and public administrative bodies*, 22 December 2009, http://www.transparencymaroc.ma/uploads/projets/Fr/314_1.pdf [accessed 7 March 2013] (original text in French).

⁷ Transparency Maroc, *A Groundwork for Pleading: the Right of Access to Information, Sector-Based Recommendations*, January 2010, www.transparencymaroc.ma/uploads/projets/Fr/493_1.pdf [accessed 7 March 2013] (original text in French).

⁸ Transparency Maroc, *National debate on the right of access to information: Workshop on the right of access to information (10-11 December 2010) – Proposals and recommendations for a draft law on access to information*, December 2010, http://www.transparencymaroc.ma/uploads/projets/Fr/492_1.pdf [accessed 8 March 2013] (original text in French).

*the Right of Access to Information.*⁹ As a part of the *Réseau Marocain pour l'Accès à l'Information* (REMDI), Transparency Maroc has worked with other organisations to define common strategies and advocacy targets for an access to information law. In cooperation with regional associations, Transparency Maroc has convened workshops with participants from Nador, Fes, Kenitra, Tangier and Marrakech on strategic advocacy, access to information and social media. With young bloggers, Transparency Maroc has held workshops on information and communication technology and the right of access to information, and with the Judges' Club Transparency Maroc has held awareness raising workshops with magistrates, prosecutors, notaries, judges and lawyers.

⁹ Transparency Maroc, *Justifications and Priorities for a Law on the Right of Access to Information*, October 2011, <http://www.abhatoo.net.ma/index.php/fre/content/download/24429/453616/file/Priorit%C3%A9s%20et%20id%C3%A9es%20directrices%20pour%20une%20loi%20sur%20l'E2%80%99acc%C3%A8s%20%C3%A0%20l'E2%80%99information%20au%20Maroc.pdf> [accessed 8 March 2013] (original text in French).

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Abbreviations and Acronyms

ACTION	Addressing Corruption through Advocacy and Organised Networking
ALAC	Advocacy and Legal Advice Centre
ATI	Access to Information
CSO	Civil Society Organisation
ICCPR	International Covenant on Civil and Political Rights
REMDI	Réseau Marocain pour l'Accès à l'Information
TI	Transparency International
TM	Transparency Maroc, <i>Association Marocaine de lutte contre la corruption</i>
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNESCO	United Nations Educational, Scientific and Cultural Organization

Executive Summary

Access to information is essential for strengthening transparency and accountability in the management of public affairs. Transparency and accountability are cornerstones of integrity, and in turn are integral to preventing corruption.

Trends

In Morocco, the government has made tangible progress in disseminating information through the websites of many ministries, and central and local departments. Recent laws on the environment, public procurement, electoral lists, and local government have also included obligations to inform the public, allow people to view public information or to obtain copies of original documents. However, other areas such as the financial sector, the police and the judiciary are not covered by access to information provisions.

In 2011, amendments to the Moroccan Constitution made in the wake of the Arab Spring included the right of access to information. The expectation is that the government will follow through in 2013 with a law on general access to information.¹⁰ This is urgently needed to increase transparency and combat corruption.

Challenges

The Civil Service Statute 1958 prevents public officials from disclosing information or delivering administrative documents to third parties without the permission of their superiors, under threat of disciplinary or criminal penalties.

This generalised prohibition has engendered a culture of secrecy, and any reforms towards more increased openness are halting. For example, the Archives Law was promulgated in 2007, but has yet to be implemented due to the state's failure to issue implementing regulations.

Outlook

It is anticipated that a law on access to information will be issued in 2013 in accordance with the amended Constitution. This legislation could usher in a new culture of information sharing, building trust between citizens and the authorities charged with administering public affairs.¹¹

Effective implementation of an access to information law will require, in particular, a reorganised public administration with human resources specialised in receiving and dealing with information requests, as well as independent oversight and dispute resolution arising from such requests. The proper application of this law will also call for wide-ranging awareness raising by civil society organisations, government authorities, the media and academic institutions. The conclusion of this report contains a number of recommendations concerning each of these sectors.

Regional perspective

All states in the region, except Oman, have ratified one or more international standards obliging them to implement the right of access to information.¹² However, only Egypt, Morocco and Sudan have included this right in their constitutions¹³ and only Jordan, Tunisia¹⁴ and Yemen have access

¹⁰ At the international symposium on the right of access to information organised by the National Human Rights Council in Casablanca on 21-22 September 2012, the president of the Council stated in his closing address that the draft law on the exercise of this right would be ready in 2013 and presented it for public debate with civil society participation.

¹¹ Note: The General Secretariat issued a draft law on the right of access to information on 26 March 2013. This draft is open for public debate. http://www.sgg.gov.ma/projets_com/39/Avp_Loi_Al_Ar.pdf [accessed 11 April 2013].

¹² Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Sudan, Syria, Tunisia and Yemen have ratified the International Covenant on Civil and Political Rights; Algeria, Bahrain, Jordan, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates and Yemen have ratified the Arabic Charter on Human Rights.

¹³ Egypt: Constitution of Egypt, Article 47. Nariman Youssef, 'Egypt's draft constitution translated', *Egypt Independent*, 2 December 2012, <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated> [accessed 8 March 2013]; Morocco: Royal Decree on the implementation of the provisions of the Constitution 2011, no. 91.11.1, Official Gazette

to information laws. While Yemen's July 2012 law is recognised as particularly strong by the Centre for Law and Democracy and Access Info,¹⁵ Jordan and Tunisia's laws have both faced criticism for being too restrictive.¹⁶ Civil society and members of parliament have submitted draft laws to the parliaments of Bahrain, Egypt, Kuwait, Lebanon, Morocco, Iraq, Palestine and Sudan.¹⁷

Recommendations

Based on the findings of this report and drawing on the recommendations of a previous Transparency Maroc seminar,¹⁸ participants of which included Perrine Canavaggio,¹⁹ Said Essoulami,²⁰ Toby Mendel,²¹ Abdelaziz Nouaydi,²² and Jamal Eddine Naji,²³ Transparency International makes the following key recommendations for improving access to information in Morocco. (A full list of recommendations can be found at the end of the report.)

no. 5964 bis, 30 July 2011, Article 27, http://www.sgg.gov.ma/Historique_Bo_ar.aspx?id=762 [accessed 13 May 2013] (original text in Arabic); Sudan: Article 39 (1): 'Every citizen shall have an unrestricted right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to order, safety or public morals as determined by law.' Interim National Constitution of the Republic of Sudan 2005, <http://www.sudan-embassy.de/INC%20of%20Sudan.pdf> [accessed 8 March 2013].

¹⁴ Tunisia's law is not due to come into force before May 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 4 July 2012].

¹⁵ Centre for Law and Democracy, *Yemen Passes Strongest RTI Law in the Arab World*, 10 June 2012, <http://www.law-democracy.org/live/yemen-passes-strongest-rti-law-in-the-arab-world/> [accessed 8 March 2013].

¹⁶ 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 8 March 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 8 March 2013]; 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.2-5, http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/Almadhoun-ATI_in_MNA_Region_ENGLISH.pdf [accessed 13 May 2013].

¹⁷ Said Almadhoun, *Status of Freedom of Information Legislation in the Arab World 2010*, Open Society Justice Initiative, 6 February 2010, <http://www.right2info.org/resources/publications/Overview%20of%20FOI%20legislation%20in%20the%20Arab%20World%20-%20SA%20-%202002-06-2010.doc/view> [accessed 8 March 2013].

¹⁸ Transparency Maroc, *National Debate on the right of access to information: workshop on the right of access to information*, 2010.

¹⁹ Archivist-palaeographer, Honorary Heritage Curator-General (France).

²⁰ Consultant communication researcher, Executive director of the Centre for Media Freedom – MENA <http://www.euromedrights.org/eng/category/countries/regional-members/cmf-mena/> [accessed 21 February 2013].

²¹ Executive director of the Centre for Law and Democracy, <http://www.law-democracy.org/live/> [accessed 21 February 2013].

²² Former law professor and lawyer, former president of the Adala (Justice) Association, <http://www.justicemaroc.org/fr/> [accessed 8 March 2013].

²³ Professor of journalism and communication science, founder and former holder of the UNESCO Chair in Public and Community Communication, currently director-general of Morocco's High Authority of Audio-Visual Communication (HACA).

TABLE 1: Recommendations

KEY RECOMMENDATIONS
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.

About the Report

Objective

This report analyses the current legal status of the right of access to public information from government sources and its implementation in the justice sector. Transparency Maroc considers access to information as a basic right, and an effective means of improving transparency, preventing corruption and supporting the national integrity system.

This report finds that there is a need for an effective general law on the right of access to information and encourages a wide audience of Moroccans to become engaged in and committed to the implementation of this right.

Methodology

Transparency Maroc conducted research for this report between May and September 2012 using legal sources, including Moroccan jurisprudence, and contextual sources, such as reports by entities that the law obliges to publicly disseminate information. International standards on access to information were used as a reference.²⁴ Researchers gathered information on the practical impact of the laws analysed from official reports and those by civil society organisations, as well as press articles.

Transparency Maroc examined the judicial sector as a case study due to the reported high incidence of corruption in the judiciary and its importance for securing citizens' rights. The 2011 amendment to the Constitution also upgraded the judiciary to an authority equal to the executive and legislature and guaranteed its full independence. Current government reform initiatives in the judicial sector have opened the door to advocating for change. The particular case study was chosen in view of the availability of confirmed information, and because of the judiciary's importance in ensuring access to information to combat corruption.

All exchange rates are as of 9 March 2013.²⁵

Structure

The first section of the report provides an overview summarising international principles on access to information. The following section examines the application of these principles within a selection of Moroccan laws, including the Constitution. This legal framework is then measured against 10 principles internationally recognised as necessary for realising the right of access to information. The next section discusses the implementation of this right in Morocco's justice sector demonstrating the tangible impact access to information can have on people's lives. Finally, this report concludes with a summary of its findings and recommendations to different actors for ensuring access to information in Morocco.

Limitations

The report does not consider aspects of the right of access to information other than those related to corruption.

While examining trends to an extent, this report does not provide a chronological analysis of the openness of government departments. The report does not discuss local authorities, some of which now provide websites on which they publish general information.

²⁴ Of particular note here are the lectures and workshops on the right of access to information organised by Transparency Maroc, the embassy of the Netherlands and UNESCO in Rabat on 10 and 11 September 2010, with the participation of international and Moroccan experts of various specialisations. The conclusions of these two study days later formed a base for the rejuvenation and enrichment of Transparency Maroc's literature on the defence of the right to information. UNESCO, *Droit d'accès à l'information: le Maroc en marche*, 10 December 2010, http://portal.unesco.org/ci/fr/ev.php-URL_ID=31056&URL_DO=DO_TOPIC&URL_SECTION=201.html [accessed 8 March 2013] (original text in French).

²⁵ Exchange rates taken from www.oanda.com.

Research for the report itself was limited by the information provided. For example, it was not possible to obtain a copy of the draft access to information law that the Ministry of Public Service and Administration Modernisation is currently preparing during the period of research. Civil society organisations are not directly involved in this process.²⁶

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.²⁷

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.²⁸

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 information²⁹ – 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.³⁰

Exceptions

Exceptions to access to information should be exhaustively listed in the access to information law and subject to a three-part legitimate aim, harm and public interest test.³¹

- **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.³²

- **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.³³

²⁶ The General Secretariat only issued the draft law after this report was written.

²⁷ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, June 1999, <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> [accessed 8 March 2013].

²⁸ As above, p.3.

²⁹ Access Info, <http://www.access-info.org/> [accessed 8 March 2013].

³⁰ 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 8 February 2013], p. 36.

³¹ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, 1999, p.5.

³² As above, p.6.

³³ As above.

- **Public interest test**

Even where disclosure would cause substantial harm to the legitimate aim, information should be weighed against the public interest in disclosing the information and where the public interest outweighs the harm, information should be made available.³⁴

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.³⁵

³⁴ As above.

³⁵ As above.

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.’³⁶

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 Convention on Civil and Political Rights,³⁷ Article 9 of the African Convention on Human and Peoples’ Rights,³⁸ and Article 32 (1) of the Arab Charter on Human Rights,³⁹ 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.⁴⁰

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 information,⁴¹ is required under the UN Convention Against Corruption, as is promoting the active participation of individuals and groups, which can include enhancing transparency and ensuring the public has effective access to information.⁴²

Access to information is a foundation of democratic governance:⁴³

‘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

³⁶ Transparency International, *The Right to Access Information*, http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/right_information [accessed 8 March 2013], Universal Declaration on Human Rights 1949, Article 19.

³⁷ International Covenant on Civil and Political Rights 1966, Article 19 (2) ‘Everyone shall have the right to... receive and impart information’; Transparency International, *The Right to Access Information*.

³⁸ African Charter on Human and Peoples’ Rights 1981, Article 9 (1) ‘Every individual shall have the right to receive information’.

³⁹ Arab Charter for Human Rights 2004, Article 32.

⁴⁰ Human Rights Committee, *General Comment No. 34 on Article 19*, CCPR/C/GC/34 2011.

⁴¹ United Nations Convention Against Corruption 2003, 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’.

⁴² 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 8 March 2013].

⁴³ Transparency International, *Using the Right to Information as an Anti-Corruption Tool*, (Berlin: Transparency International, 2006), p.5.

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.⁴⁴

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.⁴⁵

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.⁴⁶

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 effectively enjoy their right to know.⁴⁷

⁴⁴ As above.

⁴⁵ Transparency International, *Access to Information*, <http://www.transparency.org/topic/detail/accesstoinformation> [accessed 8 March 2013].

⁴⁶ As above.

⁴⁷ As above.

Access to Information in Morocco

This section assesses the right to access information in Morocco in the Constitution and several laws where the public's right to know is critical. Current legislation and practice do not give effect to the 2011 Constitutional right of access to information. Laws only provide limited access to information in specific sectors. Regulations on public sector officials have discouraged disclosure of information since independence in 1956. A comprehensive access to information law would form the basis for overturning decades-old practices and usher in a new era of transparency.

Constitution

The 2011 Constitution included for the first time the right of access to information. The Constitutional amendment came in the context of the Arab Spring's repercussions in Morocco with thousands marching, from 20 February 2011, to demand an end to corruption, separation of powers, good governance and accountability.

Article 27 of the Constitution (contained within Part II: Rights and Freedoms) now states:

'Male and female citizens shall have the right of access to information held by the public administration, the elected institutions and the bodies entrusted with the functions of public service.

The right to information cannot be restricted except pursuant to the law with the aim of protecting all matters relating to national defence, internal and external state security and the private life of individuals, in addition to preventing the infringement of the basic rights and freedoms stipulated in this constitution and protecting sources of information and matters precisely defined in law.⁴⁸

The Constitution furthermore contains other articles that support the publication of information:

- Article 25 guarantees freedom of thought, opinion and expression, in all its forms, and the freedom of innovation and publication.
- Article 28 guarantees freedom of the press, the right of expression for all, and the publication of news, ideas and opinions with complete freedom and without restriction, other than that which is explicitly stipulated in law.
- Article 148 requires the Court of Auditors to publish all of its business, including special reports and judicial decisions.
- Article 158 imposes upon elected representatives and public officials exercising public responsibility an obligation to present a written declaration of the properties and assets in their possession.⁴⁹
- Article 167 obliges the establishment of a National Integrity and Anti-Corruption Commission,⁵⁰ to receive and disseminate information in the area of combating corruption within the framework of its functions.

While the current Constitution recognises the right of access to information, in theory overriding contrary stipulations in other laws, in practice the government continues to act in secrecy contrary to

⁴⁸ Royal Decree on the implementation of the text of the constitution, No. 1.11.91, 29 July 2011, Official gazette edition 5964(b) 30 July 2011.

⁴⁹ Elected representatives and public officials exercising public responsibility must send declarations of properties and assets to the Court of Auditors immediately on the assumption and conclusion of duties, within a deadline specified in the 2008 laws on the compulsory declaration of properties (Official gazette edition 5679, 3 November 2008).

⁵⁰ This commission, established under the new Constitution, will replace the Central Commission for the Prevention of Corruption, created in 2007.

Article 27.⁵¹ This right will remain theoretical unless the government issues and effectively implements a general law regulating this right, and current incompatible legal provisions are repealed.

Access to information law

The prevailing principle of public administration from 1958 has been to prevent public officials from providing information and documents to third parties. Only the minister in charge can grant exceptions,⁵² a high barrier to accessing information.

Article 18 of the decree establishing the Civil Service Statute,⁵³ issued on 24 February 1958, stipulates:

'Irrespective of the rules prescribed in the Criminal Law as regards professional confidentiality, every official shall be bound to maintain the confidentiality of the profession in all matters pertaining to business and news of which he becomes aware in the course of performing his functions, or on the occasion of the pursuit thereof.

Misappropriation of the agency's papers and documents, or the conveyance thereof to third parties in contravention of the law, is wholly prohibited, other than under the circumstances stipulated in the rules currently in force. The authority of the minister to whom the official is affiliated alone shall free this official from the obligation to maintain confidentiality, or remove from him the prohibition prescribed above.'

In 1999, the National Forum on Support for Ethics in Public Service first attempted to reform Article 18 of the General Civil Service Statute, recommending that 'informing the public shall be the rule and professional confidentiality shall be the exception'.⁵⁴ However, a ministerial committee tasked with following up lacked government political support and did not succeed.

The second attempt, the 2002 First Debate on Administrative Reform organised again by the Ministry of Civil Service and Administrative Reform recommended 'granting beneficiaries the right to view administrative documents'.⁵⁵ Its implementation met with equal failure due to lack of government support.

Despite government failure, others did not give up. In June 2006, the parliamentary Socialist Group presented a draft law 'aimed at guaranteeing the right of access to information'.⁵⁶ However, the speaker of parliament gave priority, as the Constitution requires, to government draft legislation over that proposed by parliamentarians, and did not table the Socialists' draft law.⁵⁷

⁵¹ L'Observatoire de la corruption et du développement de la Transparence au Maroc, *Weekly press review no. 233*, 13-19 October 2012, p. 4, Abdallah Harsi, 'There should be no secrets concerning the use of public funds', *Actuel*, edition 164-165, 19 October 2012, http://www.transparencymaroc.ma/uploads/projets/Fr/5043_1.pdf [accessed 8 March 2013] (original text in French).

⁵² Royal Decree on the General Civil Service Statute, no. 1.58.008, 24 February 1958; Official Gazette edition 2372, 11 April 1958, Article 18.

⁵³ Royal Decree on the General Civil Service Statute, no. 1.58.008, 24 February 1958; Official Gazette edition 2372, 11 April 1958.

⁵⁴ Ministry of Civil Service and Administrative Reform, *Presentation of the Minister of Civil Service and Administrative Reform*, October 1999, <http://www.mmssp.gov.ma/SiteMonadara/siteAra/publication/nadwawataniaaklakit.pdf> [accessed 8 March 2013] (original text in Arabic).

⁵⁵ Ministry of Civil Service and Administrative Reform, *The first national forum on administrative reform*, 8 May 2002, <http://www.mmssp.gov.ma/SiteMonadara/IndexAra.htm> [accessed 8 March 2013] (original text in Arabic).

⁵⁶ The Adala Association distributed a copy of this draft law to Transparency Maroc at their international symposium organised on, 'The right of access to information between the law, the administration and the judiciary', Marrakech, May 2007. The French version of this symposium can be viewed at the following address:

<http://www.justicemaroc.org/fr/images/stories/justice/pdf/docirexfr.pdf> [accessed 8 March 2013] (original text in French).

⁵⁷ As above.

The Moroccan government only renewed its interest in the subject in October 2010 when it approved a programme for preventing and combating corruption that included 'Guaranteeing access to information', by:

- Preparing a law enshrining the right of access to information; and
- Reviewing the requirements of the General Civil Service Statute.

This initiative did not bear fruit, however, and the Ministry of Public Service and Administration Modernisation was operating in secrecy since then and until Spring 2013: to Transparency Maroc's knowledge no interested civil society parties or stakeholders were invited or brought into the discussion on this subject until the draft was published. The draft law was published in March 2013.

Other relevant laws

There are some, limited exceptions to the general prohibition on sharing or publishing information under Article 18 of the General Civil Service Statute. These exceptions occur in specific laws or regulations and are for specific purposes.⁵⁸

Establishment of electoral lists law (no.57.11)

This law of 28 October 2011 pertains to general electoral lists, referendums and the use of public audio-visual means of communication during electoral campaigns.⁵⁹ Relevant for the right of access to information, it obliges the government to publish or deliver specific information for the benefit of voters and political parties on the establishment of electoral lists, including names, addresses and identification numbers of persons registered on the electoral lists and their electoral constituency.

Conditions and forms for ratification of state procurement and rules decree (no.2.06.388)

This decree of February 2007⁶⁰ requires that all necessary information pertaining to open calls for proposals is declared through the state procurement portal,⁶¹ or by any other means of declaration. It obliges the administration to provide clarification or information to all competitors upon request.

⁵⁸ An expanded list of other relevant laws can be found in Annex I.

⁵⁹ Official gazette edition 5991, 31 October 2011.

⁶⁰ Official gazette edition 5518, 19 April 2007.

⁶¹ The electronic state procurements portal is regulated by the First Minister's Resolution No. 3-71-07, 18 September 2007 (published in official gazette edition 5565, 1 October 2007). The aforementioned procedures came into force under the framework of the electronic state procurements portal: www.marchespublics.gov.ma [accessed 8 March 2013].

Archives law (no. 69.99)

This November 2007 law regulates the ways and conditions for viewing public archives held by the state, local authorities, public institutions and facilities, and private bodies entrusted with administering a public service. In the absence of the implementing regulatory texts this law has not yet come into force.

Environmental impact studies law (no. 12.03)

This 2003 law⁶² stipulates that before the administration licenses an industrial or similar project the public shall be informed of the content of the environmental impact study for the project, and a public inquiry shall be opened to enable the public to view the information and main conclusions, with the exception of projects deemed confidential. In that case, the person responsible for the project must notify the administration in writing of the information and data that he or she considers confidential and only information or data whose nature would harm the interests of the project owner if publicly accessible is then deemed confidential. Information related to a project's environmental impact is not considered confidential.

Municipal charter law (no. 78.00)

This 2002 law⁶³ requires sessions of municipal councils to be public, and provides for public review of agendas and summaries of decisions taken, the right of voters to view decisions and obtain copies thereof at their own expense, and requires that resolutions issued by municipal authorities be published in the Official Gazette of the local authorities or brought to public knowledge through electronic means, in accordance with the methods specified in the regulations of the minister of the interior.⁶⁴

⁶² Official gazette edition 5118, 19 June 2003.

⁶³ The law came into force in 2002. The cabinet approved the law in 2000.

⁶⁴ The website of the Official Gazette of Local Authorities was created for this purpose pursuant to Decree No. 2-05-688, 21 April 2006, www.bocl.gov.ma [accessed 8 March 2013] (original text in Arabic).

Legal analysis of access to information

The following 10 access to information principles,⁶⁵ developed by Access Info – a human rights organisation dedicated to promoting and protecting the right of access to information⁶⁶ – in consultation with international experts, draw on international standards, comparative studies on access to information laws in European countries and the European Convention on Access to Official Documents.⁶⁷

TABLE 2: Principles

ACCESS TO INFORMATION PRINCIPLES ⁶⁸
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 time frame.
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.

The compliance of the five Moroccan laws most relevant to accessing information with these 10 principles is analysed below. The laws analysed came close to compliance with three of the principles, but compliance with the remaining seven was limited.

⁶⁵ Access Info Cyprus, *Principles for an Open Cyprus*, <http://www.accessinfocyprus.eu/en/principles-for-an-open-cyprus.html> [accessed 8 March 2013].

⁶⁶ Access Info, <http://www.access-info.org/> [accessed 8 March 2013].

⁶⁷ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 36.

⁶⁸ Access Info Cyprus, *Principles for an Open Cyprus*.

Laws analysed

Transparency Maroc chose the following five laws due to the relevance of access to information in the sectors covered by these laws for fighting corruption.

The **Electoral Lists Law** is important to political participation and in ensuring transparency in the election process. The legislature recently approved the development an electronic system as a response to reported errors in the lists.

The **Public Procurement Decree** is important for the transparent expenditure of large sums of public money through the procurement of contracts for public works, services and goods.

The significance of the **Archives Law** lies in the fact that it is the first of its kind in the history of Morocco, and its passing implemented the recommendations of the Equity and Reconciliation Commission,⁶⁹ issued in November 2007, on how citizens could access historical information.

The **Environment Law** is alone in providing, in part, for the right of access to information on the environment – other, related environmental laws lack provisions on information. This is particularly significant given the positive impact on citizens of environmental preservation.

Finally, the importance of the **Municipal Organisation Law** arises from the dominant role decentralised municipalities play in the daily lives of Moroccans.

TABLE 3: Names of the five laws

FULL NAME	SHORT NAME
Law No. 57.11 pertaining to general electoral lists, referendum operations and the use of public audio-visual means of communication during electoral campaigns (28 October 2011)	Electoral Lists Law
Decree No. 2.06.388 specifying the conditions and forms for ratification of state procurement and also certain rules pertaining to the management and monitoring thereof (5 February 2007)	Public Procurement Decree
Law No. 69.99 pertaining to archives (30 November 2007)	Archives Law
Law No. 12.03 pertaining to environmental impact studies (12 May 2003)	Environment Law
Law No. 78.00 pertaining to the Municipal Charter (3 October 2002)	Municipal Organisation Law

⁶⁹ The Equity and Reconciliation Commission was founded pursuant to the Royal Decree approving a recommendation of the Consultative Council for Human Rights with the intent of settling the human rights violations that occurred in Morocco after independence and until 1999, 6 November 2003.

Principle 1

Everyone has a right, without discrimination, to access information held by public bodies

This principle establishes, in line with international standards, that everyone has the right to access information held by public bodies without discrimination on the grounds of ethnicity, nationality, political opinion, social or professional status, age, gender, disability, or sexual orientation.⁷⁰

TABLE 4: Principle 1

Who may (●) and may not (—) access information under the 5 laws, also indicated is where it is unclear (○).

WHO MAY ACCESS	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
ALL (INCLUDING FOREIGNERS)	—	—	○	—	—
CITIZENS	—	—	●	—	—
AFFECTED PERSONS / DATA SUBJECT	●	—	●	●	●
ANYONE WHO CAN JUSTIFY THEIR INTEREST	●	●	●	—	—
JOURNALISTS	—	—	●	—	—
RESEARCHERS	—	—	●	—	—

Persons affected by the law or those with justified interests are the most likely to be entitled to access information under the five laws and decree.

- Under Article 13 of the Electoral Lists Law, political parties can obtain paper and electronic copies of electoral lists. Individuals can only view them in person (Article 14).
- Under Article 21 of the Public Procurement Decree, competitors, including foreigners, for public procurement tenders can request clarifications or additional information from the issuing administration.
- The Archives Law permits any citizen to view information. The status of foreigners is not explicitly addressed (Article 15).
- Under the Environment Law, persons entitled to access information are 'the population concerned'; that is those affected by industrial projects required to pass a public inquiry on the project's environmental impact study as a condition of being granted a licence. This potentially includes foreigners.⁷¹
- Under Article 67 of the Municipal Organisation Law, voters can only access the minutes of the meetings of their own local authority. Copies are at their own expense.

⁷⁰ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 43, and partially expanded.

⁷¹ Decree specifying the methods of organising and conducting public inquiries for projects subject to environmental impact studies, no. 2.04.564, 4 November 2008. (Official gazette edition 5682, 13 November 2008, Article 5).

Principle 2

Filing requests should be simple and free. Requests can be sent by post, email or fax, delivered in person, or questions asked verbally

This principle establishes that the formalities of a request should not exceed what is essential for processing the request, the procedure should be as simple as possible and that a variety of methods for accessing information should be permitted.⁷²

TABLE 5: Principle 2

Included forms of access (●) and non-included forms of access (—) under the 5 laws, and where it is unclear (○).

FORM OF ACCESS	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
POST	—	●	—	—	—
EMAIL	—	●	—	—	—
FAX	—	●	—	—	—
IN PERSON	●	—	●	●	●
VERBALLY	—	—	—	—	●
IS FILING FREE OF CHARGE?	●	●	○	●	●

The general principle is that requests must be in person *and* in writing. The Public Procurement Decree and Municipal Organisation Law are exceptions to this.

- The Electoral Lists Law requires requests to be made in person and in writing. Filing requests is free of charge.
- The Public Procurement Decree allows for post, email and fax submissions, but not in person requests. The relevant department furthermore proactively publishes tender documents as required under Article 20 of the decree.⁷³ Filing requests is free of charge.
- The Archives Law requires in person written requests. It is unclear whether a fee is charged, as implementing regulations have not yet been issued.
- The Environment Law requires requests to be in-person and in writing. Filing requests is free of charge.
- The Municipal Organisation Law allows in person and verbal requests. Filing is free of charge.

⁷² Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 47.

⁷³ Decree No. 2.06.388 specifying the conditions and forms for ratification of state procurement and also certain rules pertaining to the management and monitoring thereof, 5 February 2007, Article 19.

Principle 3

There is no need to justify why information is requested or what will be done with it

This principle establishes that the petitioner should not be required to show any personal interest or be required to give a reason or justification for asking for the information, or give an account of what he or she will do with the information, in exercising the right of access to information.⁷⁴

TABLE 6: Principle 3

No duty to justify (●) and justifications required (—) under the 5 laws, and where it is unclear (○).

	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
NO DUTY TO JUSTIFY REQUESTS	—	—	●	—	—

The laws analysed generally require requests to be justified.

- The Electoral Lists Law requires petitioners to provide reasons for their request. Political parties must specify a justified purpose for seeking access to the general electoral lists; the party must then use the information for the specified purpose only.
- Under the Public Procurement Decree only ‘competitors’ – the group affected – can access information, constituting an effective duty to justify requests.
- The Archives Law, as an exception to the other laws does not require justification for viewing archives, obtaining copies and reviewing public administrative documents.
- The Environment Law only allows access to ‘the population concerned’, constituting an effective duty to justify requests.
- The Municipal Organisation Law only allows voters to request information from their own municipality, constituting an effective duty to justify requests.

⁷⁴ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 50.

Principle 4

Public officials should have the obligation to help petitioners prepare the request or identify the public body to send it to

This principle establishes that public authorities must help applicants as far as is reasonably possible to identify the requested official document and that if the public authority requested does not hold the document or is not authorised to process the request, it must refer the applicant to the competent public authority.⁷⁵

TABLE 7: Principle 4

Duty to assist petitioners (●) and no duty to assist (—) under the 5 laws, and where it is unclear (○).

	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
DUTY TO ASSIST PETITIONERS	—	—	—	●	—

Only the Environment Law contains an obligation on public officials or the public authority concerned to assist petitioners.

- Article 10 of the Environment Law states that, ‘the administration shall, during the period of the public inquiry, take all measures necessary to enable the public to view information and the main conclusions of the environmental impact study’. As information requests are not directly permitted under the Environment Law, the impact of this article is limited to assistance in finding publicly available information.
- The Electoral List, Archives, and Municipal Organisation Laws, and the Public Procurement Decree do not oblige public authorities to assist petitioners.

⁷⁵ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 52.

Principle 5

Responses should be fast, within a maximum 15 working day timeframe

The principle comes from the Council of Europe’s Convention on Access to Official Documents that states that ‘a request for access to information shall be dealt with promptly’ and from European states’ practice of responding to requests, on average, in under 15 days.⁷⁶

TABLE 8: Principle 5

Information must be provided within the specified timeframe (●) and no timeframe (—) under the 5 laws, and where it is unclear (○).

TYPE OF RESPONSE	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
INITIAL RESPONSE (MAX. 15 WORKING DAYS RECOMMENDED)	—	○	○	—	—
EXTENSION (MAX. 20 WORKING DAYS RECOMMENDED)	—	—	○	—	—

None of the laws analysed contain a time limit obliging the public body to respond within a maximum of 15 days, with a maximum 20-day extension.

- The Public Procurement Decree specifies a time limit for responding to information requests: petitioners must submit information requests to the person responsible for the project at least seven days prior to the opening of the bid envelopes. Those responsible for the projects must then deliver this information to the petitioner at least three days before the opening of bid envelopes. Response time therefore varies depending on the duration of the tender and does not necessarily fall within maximum time limits.
- The Archives Law cannot be assessed, as it does not have implementing regulations.
- The Electoral Lists Law, Environment Law and Municipal Organisation Law do not include a time limit for responding to requests.

In cases where no deadline is set in law, the general rules for issuing administrative decisions apply: if the administration fails to respond within 60 days, the lack of a response is legally considered a rejection. Rights holders may seek relief against the rejection before the administrative courts.

⁷⁶ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 54.

Principle 6

Information can be accessed in paper copy or electronically, and originals can be viewed

This principle states that petitioners should both have access to original versions of documents and that copies must always be provided, either on paper or electronically. The Council of Europe Convention on Access to Official Documents additionally states that the information must be provided in the format (electronically or on paper) the petitioner asks for.⁷⁷

TABLE 9: Principle 6

Information is available (●) and not available (—) in the specified formats under the 5 laws, and where it is unclear (○).

SPECIFIED FORMAT	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
VIEWING	●	—	●	●	●
PAPER COPIES	●	●	●	—	●
ELECTRONIC ACCESS	●	●	○	—	●

- Under the Electoral Lists Law petitioners can view originals, obtain paper copies and electronically access information.
- The Public Procurement Decree does not allow the viewing of originals, but petitioners can obtain paper and electronic copies.
- The Archives Law allows petitioners to view originals and take paper copies. The implementing regulations, once issued, are expected to include electronic access to information.
- The Environment Law only allows for viewing of originals.
- Under the Municipal Organisation Law petitioners can view originals, obtain paper copies and electronically access information.

⁷⁷ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, pp. 56-57.

Principle 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

This principle states that on-site inspection of official documents must be free of charge (except for minor charges to enter public archives and museums) and that charges for copies must be reasonable and not to make a profit.⁷⁸

TABLE 10: Principle 7

A fee is not charged (●) and is charged (—) for the specified formats under the 5 laws, and where it is unclear (○).

NO FEE CHARGED	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
VIEWING	●	—	○	●	●
PAPER COPIES	●	●	○	—	—
ELECTRONIC ACCESS	●	●	○	—	●

In general viewing information, taking paper copies and electronic access are free of charge where possible under most analysed laws.

- Under the Electoral Lists Law information can be viewed free of charge, paper copies of electoral lists are free, as is electronic access.
- The Public Procurement Decree does not allow petitioners to view originals, but paper copies of and electronic access to procurement documents are both free of charge. An exception is paper copies of designs and technical documents that may incur a fee if they are costly to reproduce.
- Regulations specifying charges under the Archives Law have not yet been issued.
- The Environment Law does not require fees for viewing originals. Paper copies and electronic access are not possible.
- Under the Municipal Organisation Law viewing originals is free of charge. Obtaining paper copies incurs a fee. No guidelines exist for electronic access, but municipality decisions are published electronically on the official gazette website for local authorities.

⁷⁸ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 59.

Principle 8

In principle, all information is accessible, subject to limited exceptions. Refusals should be justified according to exceptions

TABLE 11: Principle 8

Exceptions in compliance with international standards (●) and not in compliance (—) under the 5 laws, and where it is unclear (○).

	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
EXCEPTIONS LIMITED	○	○	●	●	○
REFUSALS JUSTIFIED	○	○	●	●	○
HARM TEST	○	○	—	—	○
PUBLIC INTEREST TEST	○	○	—	—	○

Only the Archives and Environment Laws provide exceptions to access to information.

- The Electoral Lists Law, Municipal Organisation Law and the Public Procurement Decree do not provide any exceptions to access to information.
- The Archives Law provides for general, unrestricted access to documents. Only secrets of national defence, state security, and individual safety are exempted, though subject to time limits in classification. Harm and public interest tests are not applied for information held by the National Archives. The general time period for declassification is 30 years, with the following exceptions. Declassification occurs after:
 - 100 years for records pertaining to individual medical information and for employee files and originals and catalogues belonging to notaries, the civil status registries and the Department of Registration.⁷⁹
 - 60 years for records containing secrets of national defence, foreign policy, state security, public safety, individual safety, judicial proceedings, preliminary proceedings and the secrecy of private life, including any records pertaining to details of personal and family life.
- The Environment Law limits access where private interests of the project owner are concerned. Article 10 of this law states that, 'the administration must, during the period of the public inquiry, take all measures necessary to enable the public to view information and the main conclusions of the environmental impact study, with the exception of information and data which may be deemed confidential'.

⁷⁹ The department of registration is a subsidiary of the Ministry of Finance and Economy, and is concerned with the extraction of fees for registering contracts and various transactions necessary for gaining legal authority.

Principle 9

Everyone should have the right of appeal against refusals or against administrative silence to an independent body and to the court

The right to appeal when a petitioner is refused his or her right of access to information or when information is not published proactively is in line with the principle that all human rights should benefit from the protection of the judicial system. This right to appeal should be accessible to all members of the public; it should not be overly complex or costly. Additionally, it should be rapid to be effective, as information can lose its value with the passing of time.⁸⁰

TABLE 12: Principle 9

Forms of appeal allowed (●) and not allowed (—) under the 5 laws, and where it is unclear (○).

MECHANISM	ELECTORAL LISTS LAW	PUBLIC PROCUREMENT DECREE	ARCHIVES LAW	ENVIRONMENT LAW	MUNICIPAL ORGANISATION LAW
ADMINISTRATIVE APPEAL ALLOWED	—	—	—	—	—
APPEAL TO INDEPENDENT BODY ALLOWED (E.G. INFORMATION COMMISSIONER)	—	—	—	—	—
APPEAL TO THE COURTS ALLOWED	—	—	—	—	—

The legislation considered in this report does not provide for appeals against denials of permission to access information. No specialised, independent body entrusted with settling disputes arising from access to information requests exists.

However, Moroccan administrative law⁸¹ allows petitioners to present an administrative grievance against the agency responsible for denying a claim (including silence). Should the agency again fail to respond within 60 days, under Article 22 the petitioner can appeal the denial to the administrative courts, within a further 60 days. Only lawyers have standing to present such appeals, which are free of charge for the petitioner.

While this process provides for redress against denials of information, it is neither rapid, nor are there enforcement mechanisms for court rulings obliging government agencies to disclose information.⁸² This means that even if an access to information appeal is successful, the court cannot force the public authority to disclose the information.

An alternative is for the petitioner to claim compensation for material harm as a result of the inability to access information.⁸³ The petitioner in this case has to show in administrative court that the government agency committed an administrative error, which can include the supply of inaccurate information.⁸⁴

⁸⁰ Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 72.

⁸¹ Creation of the administrative courts law, no. 90-41 (official Gazette edition 4227, 3 November 1993), Articles 20-23.

⁸² A general principle of Moroccan law prohibits the use of coercion against the administration.

⁸³ Creation of the administrative courts law, no. 90-41, Article 8, 'the administrative courts shall be competent to consider claims of compensation for harm caused by the operations and activities of persons of public law'; Obligations and contracts law, 12 August 1913 (in effect the Moroccan civil code, an unofficial Arabic translation of which is published and distributed by the Ministry of Justice and Freedoms); Article 79: 'the State and the municipalities shall be responsible for harm resulting from the conduct of their administration and from the administrative errors of their employees'.

⁸⁴ The rules of administrative responsibility apply to the provision of inaccurate information provided that the department is legally bound to provide this information and that it has been provided by the competent authority. This was upheld by the Moroccan judiciary in the decision of the Supreme Council on 17 June 1963, which related to inaccurate financial assessments provided by the city of Casablanca to a creditor benefiting from a guarantee in a public procurement process.

Principle 10

Public bodies should make available automatically the main information about their structures, functions, budget and activities

Under international standards, public bodies have the duty to proactively make information public.

This study tests five public agencies, twice the Ministry of Interior (once in regard to public electoral rolls, and once in regard to local communities), the Treasury General of the Kingdom, the Archive Morocco Institution, and the Ministry of Energy, Mines, Water and the Environment. These agencies have been selected as they are most closely connected to the five laws analysed in this report.

TABLE 13: Principle 10

Information provided (●) and not provided (—) proactively under ministries most closely associated with the 5 laws, and where it is unclear (○).

CLASSES OF INFORMATION	MINISTRY OF INTERIOR (PUBLIC ELECTORAL ROLLS)	TREASURY GENERAL OF THE KINGDOM (MOROCCAN PORTAL FOR PUBLIC PROCUREMENT)	ARCHIVE MOROCCO INSTITUTION	MINISTRY OF ENERGY, MINES, WATER AND ENVIRONMENT	MINISTRY OF INTERIOR (LOCAL COMMUNITIES OFFICIAL GAZETTE)
IS THERE A WEBSITE?	●	●	—	● (Except for the environment department) ⁸⁵	●
ARE THERE INTERNAL REGULATIONS ON PUBLISHING INFORMATION?	○	●	—	○	●
IS THE ORGANISATIONAL STRUCTURE PUBLISHED?	—	—	● (Board of Directors only by decree)	●	—
IS CONTACT INFORMATION PUBLISHED?	—	●	—	●	—
IS OPERATIONAL INFORMATION PUBLISHED?	—	●	—	●	—
ARE DECISIONS AND POLICIES PUBLISHED?	—	—	—	—	—
IS DECISION-MAKING INFORMATION PUBLISHED?	—	—	—	—	—
ARE EVALUATIONS (E.G. SITUATION EVALUATIONS) PUBLISHED?	—	●	—	—	—
ARE MEETING MINUTES PUBLISHED?	—	—	—	—	—
IS INFORMATION ON SERVICES PUBLISHED?	—	—	—	●	—

⁸⁵ At the time of research this website was not functioning. As of 8 March 2013 it could be accessed at: <http://www.minenv.gov.ma> [accessed 8 March 2013].

IS THERE E-ACCESS TO SERVICES?	—	●	—	●	
IS THE PROJECTED BUDGET PUBLISHED?	—	—	—	—	—
IS SALARY INFORMATION PUBLISHED?	—	—	—	—	—
IS INCOME AND EXPENDITURE PUBLISHED?	—	●	—	—	—
ARE SUBSIDIES INFORMATION PUBLISHED?	—	—	—	—	—
IS INFORMATION ON OPEN MEETINGS PUBLISHED?	—	—	—	—	—
ARE GUIDELINES ON PUBLIC PARTICIPATION PUBLISHED?	—	●	—	—	—
IS INFORMATION ON PUBLIC PROCUREMENT PUBLISHED?	●	●	—	●	●
IS CONTRACTS INFORMATION PUBLISHED?	●	●	—	—	●
ARE REGISTERS AND DATABASES PUBLISHED?	●	●	—	●	●
IS INFORMATION ON INFORMATION HELD BY THE PUBLIC BODY PUBLISHED?	—	●	—	●	—
DOES THE PUBLIC BODY PUBLICLY STATE THERE IS RIGHT TO INFORMATION?	●	●	—	—	—
IS ENVIRONMENTAL INFORMATION PUBLISHED?	—	—	—	—	—

- The Ministry of Interior has created and oversees the website on the General Electoral Lists⁸⁶ that provides four categories of information free of charge: confirmation of registration on the electoral lists, accessing data on the electorate (without providing names), eligibility criteria for registration in the electoral lists, and laws and regulations pertaining to the electoral lists, available for download.
- The General Treasury of the Kingdom has its own website⁸⁷ and also oversees the website containing the public procurement contracts of all state ministries.⁸⁸ The procurement website provides legal information and details calls for bids or tenders and their progress. It

⁸⁶ See http://www.listeselectorales.ma/Espace_infos_fr.html [accessed 8 March 2013].

⁸⁷ See <https://www.tgr.gov.ma/wps/portal> [accessed 8 March 2013]. This website contains a large amount of information, e-services, a database, guidelines and reports on activities.

⁸⁸ See <https://www.marchespublics.gov.ma/pmmp/> [accessed 8 March 2013].

publishes the minutes of the committees examining tender submissions, and allows the user to ask questions and file complaints, among other functions.

- Only the Archive of Morocco, established in 2007, does not have a website. The only publicly available information is the law establishing the archive and an implementing regulation specifying the functional composition of its administrative council, which has no functions relating to access to information.⁸⁹ The names of office holders have not been published.
- The Ministry of Energy, Mines, Water and the Environment has a website, but at the time of research only contained functioning sections on energy and minerals.⁹⁰
- The Official Gazette of Local Authorities⁹¹ is a second Ministry of Interior website. It periodically publishes abstracts of the decisions and contracts adopted by the various local authorities in all areas of their competence.

Transparency Maroc could not determine whether the Ministry of Energy, Mines, Water and the Environment and the Ministry of the Interior's Electoral Rolls Section have internal rules requiring the publication of information.

⁸⁹ Decree no. 543.08.2, 21 May 2009. (Official gazette edition 5744, 18 June 2009, p. 3560).

⁹⁰ See <http://www.mem.gov.ma> [accessed 8 March 2013].

⁹¹ See <http://www.bocl.gov.ma/> [accessed 8 March 2013].

Overall compliance with the 10 Principles

The five laws and decree give only partial effect to the right of access to information. Application of this right is restricted to certain administrative decisions, for example in state licensing of Environment Law regulated industries, or transparency in management under the Municipal Organisation Law. These partial applications fail to satisfy the requirements of Article 27 of the Constitution. A general law on access to information could achieve that aim better than attempts to regulate access to information separately for each agency or issue.

The analysis of the five laws and decree's compliance with the 10 principles is a case in point. Standards varied widely between laws. For example, information can be viewed for free in person, but only a few laws allow access by mail or electronically, and sometimes this incurs a fee. The Archives Law grants access to information to anyone and does not require justification for the information request, but other laws do and they also restrict access information to certain groups.

The Public Procurement Decree is the only one that specifies a set period within which the government agency has to supply the information requested, and only the Environment Law obliges officials to assist petitioners in obtaining information.

Moroccan administrative law considers an official agency's failure to deliver information requested as a refusal or denial and provides for a two-stage appeal against this denial; first an administrative appeal against the agency, and second a lawsuit. Alternatively, a person denied information could sue for compensation for the harm suffered as a result of an administrative mistake (wrong jurisdiction, misuse of authority or contravention of the law). The process is free and legal aid is available for those without means.

Proactive disclosure varies between agencies, but does not reach a satisfactory level under any of them; none of the public bodies for example publishes policy decisions or information on the policy-making process.

Access to information in Morocco's judiciary

This section examines how the right of access to information is implemented within the justice sector in order to illustrate the tangible impact the provision of information has on the lives of the Moroccan people.

Background to the sector

Effective access to justice and a fair trial are human rights,⁹² confirmed in commitments Morocco has made under international law.⁹³ Access to information held by the judiciary is also a right under international law.

Morocco developed its national judicial system after independence in 1956, aiming at unifying the judiciary. All courts are subject to the jurisdiction of the Court of Cassation. The Judiciary Law, Judicial Regulation Law, Civil and Criminal Procedure Laws and the Legal Profession Law were part of this process.

Litigants pay fees for civil suits, except for alimony cases within the family courts, labour disputes, labour accidents and complaints. Indigent persons are also exempt.⁹⁴

In August 2011, the government passed law no. 42.10 to establish 'close courts'. Close courts are judicial branches in rural areas and municipalities lacking access to courts that deal with minor cases using simple procedures.⁹⁵

According to the Ministry of Justice and Freedoms, Morocco's judiciary suffers from a shortage of resources and a rise in cases, in particular:⁹⁶

- Inflation of the number of judicial units (110 trial courts and 178 resident judges' centres exist, a half of which are unoccupied due to a lack of judges).
- Case backlog (over 13 per cent of cases were not adjudicated in 2011, around 20 per cent of adjudicated cases were not executed).
- Shortage of human resources, in particular judges (12 per 100,000 people).
- Skills and specialisation shortages, especially in information technology, statistics and communication.

According to Transparency International's 2010/11 *Global Corruption Barometer* the Moroccan judiciary suffers from high levels of corruption; in fact higher than any other public sector.⁹⁷

On 28 March 2012, the minister of justice and liberties, Mustafa Ramid, admitted as much in his presentation of the 2012 budget to parliament.⁹⁸ He reported that for the period 2010-2011 six judges had been dismissed and 38 others had been penalised for corruption, 72 disciplinary cases

⁹² Universal Declaration on Human Rights Articles 8 and 10; International Covenant on Civil and Political Rights, Articles 2 and 14.

⁹³ Including ratification of the International Covenant on Civil and Political Rights. Morocco ratified the International Covenant on Civil and Political Rights in 1979 (UN Treaty Collection, *Status of Treaties: International Covenant on Civil and Political Rights*, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en [accessed 8 March 2013]).

⁹⁴ Royal decree on judicial assistance, 1 November 1966. (Official gazette edition 2820, 16 November 1966), Article 1: Judicial assistance can be granted to persons who, owing to a lack of adequate resources, are unable to exercise their rights or defend themselves before the judiciary.

⁹⁵ Close courts law, no. 42.10, 2011. (Official gazette edition 5975, 5 September 2011).

⁹⁶ Address of the Minister of Justice and Liberties before the Legislation Committee, at the Assembly of Representatives' sectorial budget debate on 28 March 2012, http://www.justice.gov.ma/ar/Actualites/Actualite.aspx?actualite=698&_0 [accessed 8 March 2013] (original text in Arabic).

⁹⁷ Transparency International, *Global Corruption Barometer 2010/11: To what extent do you perceive the following institutions in this country to be affected by corruption?* <http://gcb.transparency.org/gcb201011/results/> [accessed 21 March 2013].

⁹⁸ Address of the Minister of Justice and Liberties before the Legislation Committee, 28 March 2012.

had been taken against justice ministry officials and 149 cases were on-going.⁹⁹ In 2012 the General Inspectorate of the Ministry of Justice and Freedoms investigated a judge in the Court of First Instance in Kasba Tadla for receipt of a 8,000 Dirham bribe (US\$936) to reduce a sentence.¹⁰⁰

The press has also published bribery scandals in the judiciary. In one such scandal, it was alleged that a trainee lawyer bribed a judge to obtain a favourable ruling in proving a child's parentage. The authorities arrested and detained the judge pending completion of the Solicitor General's investigation.¹⁰¹ In a further media case allegations were made that three judges in Taza had taken 400,000 dirhams (US\$46,824) from one of the litigants in a property dispute; they ruled against the litigant, who then sued to retrieve his bribe.¹⁰²

The new Moroccan Constitution of 2011 addresses problems in the judiciary by elevating it to a power equal to the executive and legislature. In May 2012, this change sparked a national dialogue, under the King's leadership, discussing reform in the justice system. Furthermore, in May 2012 the Ministry of Justice and Freedoms launched an initiative to reform its structural and regulatory deficiencies.¹⁰³

⁹⁹ 'During the latest sessions of the Supreme Judicial Council (2010-2011) penalties were issued against a number of judges. There were six cases of dismissal, in addition to 38 other penalties including: two referrals to automatic retirement, eight temporary suspensions from work, one postponement of promotion, seven warnings and one reprimand, while the Council delivered a ruling of exoneration in 13 cases. During its current session, the Supreme Judicial Council will consider eight disciplinary cases. As regards civil servants, 72 disciplinary cases were processed during the 2010-2011 period, resulting in the suspension of 13 cases, the rehabilitation of 10 cases, absence of culpability in four cases and the application of disciplinary penalties in 45 files. These ranged from warning to dismissal, and striking from the professional register by discharge. 149 cases are being investigated, among them 98 related to judicial investigations and 51 regarding professional violations. Similarly to the ethics of the judicial professions, during the period 2010-2011 disciplinary and injunctive proceedings were commenced with respect to a number of judicial commissioners (169 disciplinary investigations and 33 injunctive investigations), notaries public (70 disciplinary investigations and 21 injunctive investigations), legal clerks (63 disciplinary investigations and 51 injunctive investigations), lawyers (31 disciplinary investigations and 59 injunctive investigations), transcribers (2 disciplinary investigations and 3 injunctive investigations), experts (37 disciplinary investigations) and translators (2 disciplinary investigations).' Address of the Minister of Justice and Liberties before the Legislation Committee, at the Assembly of Representatives' sectoral budget debate, 28 March 2012.

¹⁰⁰ For more judicial bribery cases in 2012; please see Transparency Maroc, *Annual Report. The fight against corruption in 2012*, http://www.transparencymaroc.ma/uploads/projets/Fr/5066_1.pdf [accessed 8 March 2013].

¹⁰¹ Saddiq Bokazol, *Bayda city judge investigated for receiving bribe*, Assabah newspaper edition 3790, 19 June 2012.

¹⁰² Al-Masaae Newspaper, *Bribery scandal put three judges in the dock*, issue 1852 6 September 2012. For more examples, please see: Transparency Maroc, *Annual Report. The fight against corruption in 2012*.

¹⁰³ The Ministry of Justice and Freedoms has a sub-site dedicated to accessing documents and activities regarding the national dialogue on deep and comprehensive reform of the justice system: <http://hiwar.justice.gov.ma/default.aspx> [accessed 8 March 2013] (in Arabic).

Access to information and justice sector integrity

Access to information in the judicial sector, including both public access to information and transparency in administration are key to preventing and providing redress for corruption.¹⁰⁴

Public access to judicial information, including laws, structure, procedures and judicial rulings, is one safeguard against corruption.

‘Access to information about the laws ensures that the basis for decisions of all judges is clear and generally improves accountability. Disseminating information about the way in which the legal system functions, people’s rights in court, and the way the appeals process works helps to encourage individuals both to use the justice system and to challenge irregularities.’¹⁰⁵

Prosecution services should also inform the public about their roles and responsibilities and work to develop transparency within their profession.¹⁰⁶

Transparent administration can further strengthen integrity. Annual reports of judiciaries and judicial divisions detailing their expenditures, the number of cases processed, backlogs, and the number of judges sitting and appointed, opening up working environments, and income disclosure for judges on appointment, periodically and upon retirement, potentially as part of a broader programme for public officials, are all possible measures to increase transparency and reduce the opportunities for improper behaviour and conflict of interest in the judicial sector.¹⁰⁷

In Morocco, the high levels of corruption in the judiciary make this sector a priority for implementing an effective right to information.

¹⁰⁴ Transparency International, *Enhancing Judicial Transparency*, Policy Position #01/2007, http://archive.transparency.org/publications/publications/policy_positions/pp_judicial_transparency [accessed 8 March 2013], p.1.

¹⁰⁵ As above. p.2.

¹⁰⁶ As above. p.2.

¹⁰⁷ As above.

Accessing information in the justice sector

This section provides an overview over the laws in the justice sector relating to access to information. The laws regulate access to copies of judicial documents, special rights for defence counsel, and the obligation of courts to proactively provide information, such as final rulings, rules of procedures, and some information relating to on-going cases.

Key laws

Of the statutes regulating the judiciary, the most relevant are:

- Judicial Regulation Law
- Judiciary Law
- Civil Procedure Law
- Criminal Procedure Law
- Legal Profession Law

None of these laws contain a general right of access to information. The exception is specific rights of the defence to certain information. Judicial deliberations preceding a ruling are confidential.

Judicial Regulation Law

This law outlines the types of courts in Morocco: courts of first instance, the appeal courts, the administrative courts, the administrative appeal courts, the commercial tribunals, the commercial appeal tribunals and the Court of Cassation.¹⁰⁸ The law further sets out the regulation, procedure, inspection and oversight of the judiciary, as well as criteria for the ineligibility of judges.

There is no obligation to publish, or rights to access information under the Judicial Regulation Law.

Judiciary Law

This law sets out procedures for appointing and regulating the judiciary. Article 19 of this law states that:¹⁰⁹

‘The judge – in addition to complying with preservation of the confidentiality of the deliberations as a result of his oath – must not give any person, other than in the circumstances stipulated in law, access to copies or abstracts of documents or information related to the files of the case.’

This limits the information judges can provide to the public to non-substantive information.

Civil Procedure Law and Criminal Procedure Law

The Civil Procedure Law and the Criminal Procedure Law regulate court procedures in civil and criminal cases respectively. Parties to a case, either as litigants in civil suits, or defendants in criminal suits, have the right to view and access case-relevant information from the moment a case is opened until the execution of the judgment. The Criminal Procedure Law does not oblige the prosecution to provide reasons for its decisions (see below).

¹⁰⁸ Royal decree regarding the judicial system of the Kingdom, no. 1.74.388, 15 July 1974. (Official gazette edition 3220, 17 July 1974, p. 2027) (as updated on 26 October 2011).

¹⁰⁹ Royal decree on the judiciary law, no. 1.74.467, 11 November 1974., (Official gazette edition 3237, 13 November 1974).

- **Civil Procedure Law**

Information required to be provided to the parties to a law suit includes the place, date and subject of the court session, any petition by either party and any responses thereto. Parties may view and copy all information in the case file, including expert reports. In addition, the law¹¹⁰ specifies the method of notification (Articles 36, 37 and 38). Furthermore, the law states that court sessions and issuing judgements are public (Articles 43 and 50).

- **Criminal Procedure Law**

The Criminal Procedure Law of 2003¹¹¹ replaced the earlier law of 1959 and enshrined the principles that ‘every person [in a criminal case] shall have the right to know and debate all evidence presented against him’, and that ‘the judicial authorities shall ensure notification and the guaranteeing of rights of victims throughout the stages of criminal proceedings’.

Article 66 further spells out the practical steps of information about the case: ‘judicial police officers are required to notify every person arrested or placed in custody, immediately and by a method he understands, of the reasons for his arrest, and of his rights, among them his right to remain silent’.¹¹²

Judges must also inform defendants of their right to choose an attorney. Similarly, they must also alert victims of alleged crimes to their right to claim civil compensation. Judgments must be pronounced in public, and include the reasoning behind them (Article 364).

If the crown (public) prosecutor discontinues a case, Article 40 of the law obliges him or her to notify the plaintiff or his or her legal counsel within 15 days. Following a criminal complaint from an injured party or a report from a witness to a crime, the public prosecution has discretion over whether to move a public action forward based on the instruction of the Minister of Justice and Freedom.

Legal Profession Law

The Legal Profession Law¹¹³ contains important elements for accessing information.¹¹⁴ The courts certify lawyers who are then entitled to view records and documents of a particular case, and to monitor proceedings and obtain a copy of the judgment. Articles 43 and 44 of the law stipulate that a lawyer shall guide and inform his or her client of the cost, as well as the stages and procedures of the case and any judgment rendered and means of appeal. Lawyer-client confidentiality prohibits the lawyer from divulging unauthorised information, and he or she must maintain respect for the confidentiality of investigations into preventative legal actions, such as injunctions. Lawyers have access to their clients’ files and other court documents.

¹¹⁰ Royal decree on approval of the text of the civil procedure law, no. 1.74.447, 28 September 1974, as amended. (Official gazette edition 2303 (b), 30 September, 1974).

¹¹¹ Criminal procedure law, no. 22.01, 3 October 2003. (Official gazette edition 5078, 30 January 2003).

¹¹² This rule was enshrined in the 2011 Constitution. Under Article 23 (3): ‘Each person arrested must be informed immediately, and by a means he understands, of the reasons for his arrest, and of his rights, among them his right to remain silent...’.

¹¹³ Legal profession (amendment) law, no. 28.08. (Official gazette edition 5680, 6 November 2008).

¹¹⁴ The law guarantees persons who do not have resources at their disposal to, in any case, use the system of judicial aid to benefit from the assistance of a lawyer free of charge, according to the conditions specified in royal decree on judicial aid, no. 514.65, 1 November 1966. (Official gazette edition 2820, 16 November 1966).

Challenges

Across the Moroccan judicial sector, three key challenges of access to information arise: accessing information on court decisions, accessing information on the court administration, and appealing refusals to provide information.

- ***Court decisions***

Access to court decisions is essential for detecting and addressing bribery of judicial officials. While access is legally possible, it is limited in practice.

After a ruling is issued, parties to a case and their lawyers automatically receive a copy of the ruling, free of charge. Paper copies of judgements can also be obtained of cases unrelated to the requester for a fee based on the number of pages, but can only be requested from the court through a lawyer.¹¹⁵ There is no requirement under Moroccan law for the publication of judicial rulings publicly, which remains at the discretion of the Ministry.¹¹⁶ This means that for persons unrelated to a case, access to the ruling is only possible by paying both a fee for the services of a lawyer and through paying a fee for the copy of the ruling.

- ***Court administration***

The Ministry of Justice and Freedoms website contains information on its organisational structure, statistics, a number of laws and documents with links to the websites of the courts providing information on procedures in pending cases. The website does not contain budgetary information. An internal study found that Moroccan citizens find it difficult to access judicial information and services.¹¹⁷ The study details that court administrative staff often inadequately communicate with litigants, staff lack expertise in the use of information technology to provide judicial services, in person contact is difficult due to inadequate reception facilities in more than half of the existing courts,¹¹⁸ and legal aid for indigent and other qualifying litigants is non-existent.¹¹⁹ The study recommends increasing the budget, restructuring the court administration, increasing staff numbers, education and training, and improving court infrastructure. In 2013, the Ministry of Justice and Freedoms plans to hold a national dialogue and regional seminars to set recommendations for judicial reform.¹²⁰

- ***Appealing refusals***

Moroccans also have difficulty using the judiciary to appeal bureaucratic refusals to provide information to which they have a right. Accountability relies on the ability to access mechanisms of redress, in particular the judiciary. Where the appeal is aimed at redressing a failure by a member of the judiciary to heed legal obligations to provide information, the difficulty is compounded, as members of the judiciary in such cases are being asked to judge colleagues.

In fact, where judges fail to provide legal reasoning for their decisions, persons concerned can only appeal the entire verdict to a higher court.

¹¹⁵ Royal decree regarding the judicial system of the Kingdom, no. 1.74.388, 15 July 1974. (Official gazette edition 3220, 17 July 1974), p. 2027, (as updated on 26 October 2011), Article 19.

¹¹⁶ As above, does not require the courts to publish details of cases.

¹¹⁷ Address of the Minister of Justice and Liberties before the Legislation Committee, at the Assembly of Representatives' sectoral budget debate on 28 March 2012.

¹¹⁸ Only 50 courts – fewer than a half – provide modern reception facilities. Address of the Minister of Justice and Liberties before the Legislation Committee, at the Assembly of Representatives' sectoral budget debate.

¹¹⁹ Address of the Minister of Justice and Liberties before the Legislation Committee, at the Assembly of Representatives' sectoral budget debate.

¹²⁰ As above.

The Ministry of Justice and Freedoms' website provides a link for submitting complaints and another to check on the status of a complaint.¹²¹ However, the site offers no statistical information on the number of complaints or their resolution.

Morocco has an Ombudsman Institution¹²² that accepts and follows up on complaints from citizens against government departments, including the judiciary. However, complaining to the Ombudsman is only possible once all judicial appeals have been exhausted. A special delegate within the Ombudsman Institution is tasked with facilitating access to administrative information.¹²³ The Institution's 2011 annual report lists instances of complaints against the judiciary for failing to execute a judgement against the executive branch of government, but not about its role in providing redress for refusals of information requests in the judiciary.¹²⁴

The Central Authority for the Prevention of Corruption also accepts complaints.¹²⁵ The authority's 2009 report lists numerous complaints of bribery in the judiciary, with varying degrees of detail, but no information on their outcomes. Some cases listed describe a complainant's inability to obtain the information necessary to assist them in their case. The authority's 2010/2011 report states that it received 34 complaints of corruption in the judiciary; the second-highest number of complaints against a government department.¹²⁶

¹²¹ e-Plainte, <http://www.justice.gov.ma/plaintes> [accessed 8 March 2013].

¹²² Royal decree on the creation of the ombudsman institution, no. 1.11.25, 17 March 2011. (Official gazette edition 5926, 17 March 2011). The ombudsman replaced the board of grievances.

¹²³ Rules of procedure of the ombudsman institution, 14 November 2011. (Official gazette edition 6033, 26 March 2012).

¹²⁴ Matters of this type represent six per cent of all matters presented to the Ombudsman. Royal Ombudsman Institution, *Activity report of the Royal Ombudsman Institution 2011 (summary)*, 2011, <http://www.mediateur.ma/index.php/fr/publication/rapports/rapports-soumis-a-sm-le-roi>, [accessed 8 March 2013] (original text in French).

¹²⁵ Decree on the creation of the central authority for the prevention of corruption, no. 2.05.1228, 13 March 2007. (Official gazette edition 5513, 2 April 2007).

¹²⁶ Central Authority for the Prevention of Corruption, *Summary of the Central Authority for the Prevention of Corruption's 2010-2011 report*, <http://www.icpc.ma/wps/wcm/connect/48f467804d4dfb528987af3f624bc886/+R%C3%A9sum%C3%A9+fr.pdf?MOD=AJPERES&CACHEID=48f467804d4dfb528987af3f624bc886> [accessed 8 March 2013] (original text in French).

Accessing information to fight injustice

A case study

Corruption in the Moroccan justice system thrives on complacent secrecy. This is evident from this case submitted to Transparency Maroc's Anti-Corruption Legal Advice Centre.¹²⁷

The case was against the plaintiff's brothers for misappropriating possessions and money in bank accounts of companies jointly inherited from their late father. The plaintiff had presented his case to the crown prosecutor at the local Tangier court; eventually, the crown prosecutor applied to Tangier's appeals court in the case.

Neither court responded to the complaint, however. The plaintiff alleged that his brothers bought the judges' dismissal of the case through influence and bribery and he proceeded to sue his brothers for fraud, dishonesty, theft and exploitation of joint funds in bad faith, presenting his suit to the investigative judge (*juge d'investigation*). This suit, too, was summarily dismissed without reason.

On 6 March 2012, the ALAC alerted the General Inspectorate of the Ministry of Justice and Freedom to the case, and inspectorate officials replied on 27 March 2012 that they had examined and referred the matter to the Ministry's Criminal Affairs Department.

On 17 May 2012, the ALAC contacted the Criminal Affairs Department requesting information regarding the status of the complaint. As of 3 September 2012 the department had yet to respond.

Moroccan law gives prosecutors discretionary power to pursue individual complaints. Article 40 (1) of the Criminal Procedure Law stipulates that 'the crown prosecutor shall receive records, complaints and denunciations and shall undertake with regard thereto the actions he deems appropriate', and, if he or she decides to suspend the complaint, 'the crown prosecutor must inform the plaintiff of his reasons therefore within 15 days commencing with the date of taking the decision to suspend the case'. In this case, however, the prosecutor provided no information as to why he suspended the case, in contravention of the law.

If an access to information law were in place, the complainant 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 Tangier courts' summary dismissals of it. An access to information law might also have provided the complainant with grounds to request information from the Criminal Affairs Department on the status of the complaint.

¹²⁷ Transparency Maroc, *Transparency Maroc's Advocacy and Legal Advice Centres*, <http://www.transparencymaroc.ma/ar/projet-2.html> [accessed 8 March 2013] (original text in Arabic).

Conclusions

Access to information is a right that the 2011 amendments to Morocco's Constitution now recognise, but it does not exist in practice. Moroccan legislators have not yet passed a general law on access to information and only a limited number of existing laws recognise such a right for specific areas, such as public tenders, the environment, and elections. Even in these limited areas, the information provided or those who may request it, as well as the means of obtaining it, remain restrictive and are not in line with international standards.

The four laws – the Electoral Lists Law, Environment Law, Archive Law and Municipal Organisation Law – and the Public Procurement Decree analysed in this report most closely complied with international standards in the area of format of information (Principle 6), fees for access (Principle 7) and limits on exceptions to publicly accessible information (Principle 8).

In other areas compliance with international standards is more mixed. For example, Moroccan law recognises the right to appeal refusals of information requests, as required under the international principle, but considers such refusals as any other administrative act without any specialised procedures or bodies. As a result, appeals take a long time and Moroccan law lacks enforcement mechanisms even when an appeal is won.

In most cases, Moroccan authorities proactively publish general information, but the environment sector is an important exception and information published in all sectors is limited; for example none of the authorities proactively publish policy decisions.

Similarly, in the justice system, litigants have the right to obtain specific information, verdicts are public and must be reasoned. However, when judges fail to comply with these rules, redress is difficult, because fellow judges who may be reluctant to find fault with colleagues hear appeals and enforcement mechanisms for successful appeals are missing. The right of the public, rather than litigants, to access information remains limited and there is no duty to systematically publish court decisions.

The analysis shows that who can access information and what kind of information can be obtained remains limited as long as the country lacks a general law on access to information. Combating corruption requires transparency that current legal conditions in Morocco do not satisfy. The access to information law currently being drafted by the government therefore should provide rules for accessing public information that extend to all people in Morocco and to all government activities, in compliance with international standards.

Recommendations

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

To the government

- Enact and implement a law granting the right to access to information in line with international standards and guided by the best comparative examples.
- Explain effectively to the public the content and the benefits of the Archives Law and the anticipated access to information law.
- Mobilise adequate financial resources for the provision of information and appoint competent human resources to do so.

To the public sector

- Develop the infrastructure for and knowledge of the production, management and dissemination of information within the public sector.
- Ensure that public information is accessible, useful, usable, appropriate, updated when necessary and free in principle.

To the private sector

- Develop a comprehensive guide to the sources of available information that directly concern public-private contracting and complete an assessment of these sources.
- Call on all private sector stakeholders to develop of an ethics charter, putting information owned by the private sector at the disposal of the public among its objectives.

To civil society

- Conduct further studies on the status of e-governance, online services and the needs of citizens, professionals and people with special needs.
- Allocate resources to electronic training and education, both for social development and a means of the enjoyment of rights.

To the media

- Engage strongly in demanding the right of the media, and all citizens, to access public information.
- Focus on advocating for the right of access to information for all persons.
- Call for the implementation of the Archives Law, and necessary amendments to improve its utility.
- Work with civil society to coordinate joint work on the right of access to information.

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- Public Procurement Portal: www.marchespublics.gov.ma [accessed 8 March 2013] (original text in French).

Annex I: Other Relevant Laws

List of other relevant laws providing a degree of access to information in Morocco

Real-Estate Registration Decree, 12 August 1913

This law provides all persons with the right to access a statement from the vendor of entities recorded on the real estate register and a copy or summary of documents filed in the property records.¹²⁸

Control of Health-Damaging, Disturbing and Dangerous Venues Decree, 25 August 1914

This law requires authorities to disclose information as part of a public inquiry when persons and companies apply for a licence under this law.¹²⁹

Construction and public expropriation laws

A number of laws require disclosure of information relating to construction and expropriation.

- **Expansion of Rural Buildings Decree, 25 June 1960**
Article 3 requires that when developing special designs to expand rural communities the project design is to be made available to the public for comment.¹³⁰
- **Construction Law 90-12, 17 June 1992**
Design drafts under this law must be available for public study for one month, the purpose of which is to inform the public about the project and enable them to comment.¹³¹
- **Real Estate Divisions, Residential Groups and Property Division Law, 90-25, 17 June 1992**
This law requires information on property divisions to be made publicly available.¹³²
- **Public Expropriation and Temporary Seizure Law 81-7, 6 May 1982**
Article 8 of this law requires public authorities to publish the full decision to make a property publicly owned in the official gazette and in one or more newspapers.¹³³

Code of Commerce Law 95-15, 3 October 1996

Procedures to access information recorded in local and national commercial registries are listed under this law.¹³⁴

Delegated Management of Public Services Law 54-05, 14 February 2006

Under this law, public authorities must publish an extract of all delegated management contracts, including the name of the contractors, their capacity, the subject of delegation, its duration and content, as well as user-related terms and financial information related to the contract.¹³⁵

Press Law: Decree of 15 November 1958 regarding the Press and Publication Law, as amended by Law 77-00, 3 October 2002

This law states that 'citizens have the right to information' and that the 'media has the right of access to news sources and information unless this information is confidential under the law'.

¹²⁸ Official gazette edition 46, 12 September 1913 (original text in French).

¹²⁹ Official gazette edition 70, 4 September 1914 (original text in French).

¹³⁰ Official gazette edition 2489, 8 July 1960 (original text in French).

¹³¹ Official gazette edition 4159, 15 July 1992 (original text in French).

¹³² Official gazette edition 4159, 15 June 1992 (original text in French).

¹³³ Official gazette edition 3685, 15 June 1983 (original text in French).

¹³⁴ Official gazette edition 4418, 3 October 1996 (original text in French).

¹³⁵ Official gazette edition 5404, 16 March 2006 (original text in French).

Publishing, Viewing and Commenting on Legislation and Draft Regulatory Provisions Decree 2.08.229, 21 May 2009

This law establishes procedures to publish legislation and draft regulatory provision on the secretariat general of the government website.¹³⁶

Decisions of Public Administration, Local Communities and Public Institutions Law 03.01, 12 August 2002

This law requires these public authorities to explain administrative decisions. Decisions relating to internal and external security are exempt.¹³⁷

¹³⁶ Official gazette edition 5744, 18 November 2009 (original text in French).
¹³⁷ Official gazette edition 5029, 12 August 2002 (original text in French).

Annex II: Overall Compliance

Overall compliance

Table providing narrative information on overall compliance of each of the five laws with the 10 ATI principles.

PRINCIPLE	NARRATIVE
<i>Principle 1: Non-discrimination in accessing public information</i>	Under the laws surveyed in this report, it is apparent that access to information in most cases is only open to persons acting in a particular capacity, except the Archives Law, which allows access to any individual. None of the laws exclude foreigners, although the Constitution only mentions citizens (men and women).
<i>Principle 2: Free requests, by post, email, fax, or verbally</i>	Requests are submitted free of charge and in person under all laws, except the Public Procurement Decree, which requires requests to be made by post.
<i>Principle 3: No need to justify requests</i>	Under all laws, requests must be justified as they are associated with a particular capacity or interest, except for the Archives Law, which does not establish specific conditions.
<i>Principle 4: Obligation to help petitioners</i>	An obligation to assist petitioners only exists under the Environment Law.
<i>Principle 5: Timely responses</i>	There is no deadline for responding to requests. General rules therefore apply in this area; 60 days from the date of submission of the request.
<i>Principle 6: Paper or electronic copies available, access to originals</i>	With certain exceptions, under all five laws access to originals and obtaining paper and electronic copies is possible.
<i>Principle 7: Viewing originals free of charge, charges for cost of copies only</i>	Viewing originals is free of charge; no expenses are paid except for copies under the Municipal Organisation Law (minutes of sessions), and for designs and technical documents for public procurement, the reproduction of which requires special technical apparatus.
<i>Principle 8: Limited exceptions, refusals only for these exceptions</i>	The Archives Law stipulates a limited list of exceptions and the Environment Law establishes a single exception. Under the other three laws no exceptions exist.
<i>Principle 9: Effective right of appeal against refusals or silence</i>	Appeal is always possible, whether the rejection is explicit or a result of administrative silence and is possible before the department concerned or before the judiciary.
<i>Principle 10: Proactive disclosure</i>	Information ordinarily made available to the public is published proactively on the websites of the ministries and certain other departments related to all five laws.

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