

IT BELONGS TO YOU:  
PUBLIC INFORMATION  
IN PALESTINE

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.

Transparency International published this report with the support of the American People.



<http://www.aman-palestine.org/>

ISBN: 978-9950-356-09-2

© 2013 Coalition for Accountability and Integrity - AMAN. All rights reserved.

Cover photo: © Mark Notari - [www.flickr.com/photos/notarim](http://www.flickr.com/photos/notarim)

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 the larger, region-wide Addressing Corruption Through Information and Organised Networking (ACTION) project. In this report, the Coalition for Accountability and Integrity (AMAN) provides an in-depth study into Palestinian access to information laws and regulations for the promotion of integrity, transparency and accountability in the operation of public institutions. AMAN prepared this report in cooperation with Transparency International as part of the ACTION project.

A number of civil society organisations focusing on democracy, human rights and good governance founded AMAN in 2000 to act as a platform for collective efforts to combat corruption and to promote integrity, transparency and accountability in Palestine in order to strengthen the national integrity system.

AMAN joined the Transparency International movement in 2006, at the time the third regional Transparency International Chapter, following Morocco and Lebanon. AMAN researches and advocates for integrity, transparency and accountability in Palestine.

# Contents

- Executive Summary** **4**
  - Trends and challenges 4
  - Outlook 4
  - Regional perspective 4
  - Recommendations 5
- About the Report** **6**
  - Objective 6
  - Methodology 6
  - Structure 6
  - Limitations 6
  - Definitions 6
- Access to Information** **8**
- Access to Information in Palestine** **10**
  - Basic Law 10
  - Access to information law 10
  - Other relevant laws 11
  - Legal analysis of access to information 13
- Conclusions** **27**
- Recommendations** **28**
- References 30
- Annex 1: Overall compliance 31

# Abbreviations and Acronyms

AMAN	Coalition for Accountability and Integrity
ACTION	Addressing Corruption Through Information and Organised Networking
ATI	Access to Information
UN	United Nations

## Executive Summary

The right to access information relates closely to the democratic principles of transparency, integrity, and accountability. AMAN believes that transparency and accountability are mutually reinforcing concepts. Transparency entails public institutions being open in both their operations and their relationship with citizens, and requires them to make their procedures, purposes and objectives public.

Similarly, AMAN believes there can be no accountability without access to information. Accountability dictates that officials provide periodic reports and updates on the results and efficacy of their actions and requires the free flow of information to the public to enable them to access facts, expose errors and irregularities, and to hold officials responsible. AMAN believes access to information is a crosscutting issue required for a strong national integrity system and a key part of a preventive strategy to combat corruption and its effects.

## Trends and challenges

In 2005 Palestinian lawmakers made progress towards realising the right of access to information, when the Palestinian Legislative Council considered a civil society-drafted general access to information law. After the suspension of the work of the Legislative Council in 2007, the process stalled and the parliament is yet to include access to information as either a constitutional right or a general law.

Existing laws – including the laws examined in this report – speak of the right of access to information, yet fail to include the procedures and mechanisms necessary to make it a reality, even in the discrete areas to which they pertain. Other laws require public bodies to proactively disclose information, without including the procedures for enforcement of this obligation, for example through citizens' information requests.

## Outlook

Pending the resumption of the work of the Palestinian Legislative Council, the president of the Palestinian Authority has the authority to pass a general access to information law. Civil society has been advocating for such a law, but the president appears not yet to have mustered the political will to move forward with establishing the legal basis for the exercise of the right to access information.

## 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.<sup>1</sup> Egypt, Morocco and Sudan have included this right in their constitutions<sup>2</sup> and Jordan, Tunisia<sup>3</sup> and Yemen have access to information laws. While the Centre for Law and Democracy and Access Info recognise Yemen's July 2012 law as

---

<sup>1</sup> Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Sudan, Syria, Tunisia and Yemen have ratified the International Covenant on Civil and Political Rights. Palestine has said it would abide by the Covenant's provisions. Algeria, Bahrain, Jordan, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates and Yemen have ratified the Arab Charter on Human Rights.

<sup>2</sup> Egypt: Constitution of Egypt 2012, Article 47; Morocco: Royal Decree on the Implementation of the Provisions of the Constitution 2011, no. 91.11.1, Official Gazette no. 5964 *bis*, 30 July 2011, Article 27, [http://www.sgg.gov.ma/Historique\\_Bo\\_ar.aspx?id=762](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 22 May 2013].

<sup>3</sup> 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 17 March 2013].

particularly strong,<sup>4</sup> Jordan and Tunisia's laws have both faced criticism for being too restrictive.<sup>5</sup> Civil society and members of parliament have submitted draft laws to the parliaments of Bahrain, Egypt, Kuwait, Lebanon, Morocco, Iraq, Palestine and Sudan.<sup>6</sup>

## Recommendations

**TABLE 1: Recommendations**

KEY RECOMMENDATIONS
The Palestinian Authority should revise the draft access to information law in line with international standards and, as long as the Palestinian Legislative Council is inoperative, the president of the Palestinian Authority should pass the law.
The president should ensure that public bodies effectively implement access to information provisions when passed.
The Palestinian Authority should prepare and disseminate a public information guide on procedures for requesting information from official bodies and mechanisms available for enforcing the response.

<sup>4</sup> 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 22 May 2013].

<sup>5</sup> 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 22 May 2013]; Freedominfo.org, 11 July 2011; Said Almadhoun, *Access to information in the Middle East and North Africa Region: An overview of recent developments in Jordan, Lebanon, Morocco and Tunisia* (Washington DC: World Bank Institute: 2012), [http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/Almadhoun-ATI\\_in\\_MNA\\_Region\\_ENGLISH.pdf](http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/Almadhoun-ATI_in_MNA_Region_ENGLISH.pdf) [accessed 22 May 2013], pp.2–5.

<sup>6</sup> 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 22 May 2013].

# About the Report

## Objective

In this report, AMAN analyses the current legal status of the right of access to information held by public bodies. The objective is to identify gaps and weaknesses in Palestine's access to information architecture and to advocate for the Palestinian Authority to pass and effectively implement a law guaranteeing the right of access to information.

## Methodology

AMAN conducted research for this report between September 2012 and March 2013. Researchers used primary and secondary legal sources for the contents of this report. Researchers took international standards on access to information as a reference point.

## Structure

The first section of the report provides an overview summarising international principles on access to information. The second examines the application of these principles within a selection of Palestinian laws, including the Basic Law (Constitution). The third assesses these laws against 10 principles internationally recognised as necessary for realising the right of access to information. Finally, the report concludes with a summary of its findings and recommendations to different actors for ensuring access to information in Palestine.

## Limitations

The report does not consider aspects of the right of access to information other than those related to corruption. This report solely examines the legal environment for accessing information in Palestine and does not address the implementation of these laws in practice. AMAN focuses in this report on three laws and one draft law related to efforts to address corruption, all of which include partially or fully the right of access to information. Researchers did not examine other laws in detail. Difficulties in accessing information at times limited research for this report.

## 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.<sup>7</sup>

### 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.<sup>8</sup>

---

<sup>7</sup> Article 19, *The public's right to know: Principles on freedom of information legislation* (London: Article 19, 1999), <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> [accessed 22 May 2013], pp.2–3.

<sup>8</sup> As above, p.3.

## 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 information<sup>9</sup> – 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.<sup>10</sup>

## 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.<sup>11</sup>

- **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.<sup>12</sup>

- **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.<sup>13</sup>

- **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.<sup>14</sup>

## 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.<sup>15</sup>

---

<sup>9</sup> Access Info, <http://www.access-info.org/> [accessed 22 May 2013].

<sup>10</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations* (Madrid: Access Info, November 2011), p.36.

<sup>11</sup> Article 19, 1999, p.5.

<sup>12</sup> As above, p.6.

<sup>13</sup> As above.

<sup>14</sup> As above.

<sup>15</sup> As above, pp.3–4.

## 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.<sup>16</sup>

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,<sup>17</sup> Article 9 of the African Convention on Human and Peoples' Rights,<sup>18</sup> and Article 32 (1) of the Arab Charter on Human Rights,<sup>19</sup> 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.<sup>20</sup>

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,<sup>21</sup> 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.<sup>22</sup> Access to information is a foundation of democratic governance:<sup>23</sup>

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

---

<sup>16</sup> Universal Declaration on Human Rights 1949, Article 19.

<sup>17</sup> International Covenant on Civil and Political Rights 1966, Article 19 (2): 'Everyone shall have the right to... receive and impart information.'

<sup>18</sup> African Charter on Human and Peoples' Rights 1981, Article 9 (1): 'Every individual shall have the right to receive information.'

<sup>19</sup> Arab Charter on Human Rights 2004, Article 32.

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

<sup>21</sup> United Nations Convention Against Corruption 2003, Article 10: '[E]ach State Party shall... take such measures as may be necessary to enhance transparency in its public administration... Such measures may include... (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.'

<sup>22</sup> 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](http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/conventions/uncac) [accessed 22 May 2013].

<sup>23</sup> Transparency International, *Using the right to information as an anti-corruption tool* (Berlin: Transparency International, 2006), p.5.

the process of transforming a country from one with a closed and authoritarian government to one governed by and for the people.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

---

<sup>24</sup> As above.

<sup>25</sup> Transparency International, *Access to information*, <http://www.transparency.org/topic/detail/accesstoinformation> [accessed 22 May 2013].

<sup>26</sup> As above.

<sup>27</sup> As above.

# Access to Information in Palestine

## Basic Law

The 2002 Basic Law is the *de facto* constitution of Palestine, providing principles and rules governing the functioning of the Palestinian Authority. Other laws must comply with the Basic Law.

The Basic Law does not guarantee the right of access to information and the courts have not read this right into the Basic Law. Other rights under the Basic Law cover some aspects of the right of access to information:

- Article 19 of the Basic Law stipulates that, 'Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and circulate it orally, in writing or in any form of expression or art, with due consideration to the provisions of the law.'
- Article 54 obliges the members of the Palestinian Legislative Council to submit asset declarations for themselves, their children and their spouses.
- Article 80 requires the prime minister and other ministers to submit financial and asset declarations for themselves and their families.

Palestine only became eligible to sign international human rights treaties upon its recognition as a United Nations observer state in December 2012; however, the Palestinian Authority has committed itself to respecting international human rights standards – including the right of access to information.<sup>28</sup>

## Access to information law

The Legislative Council (parliament) has yet to issue a law on the right of access to information. Civil society organisations, organised and coordinated by AMAN, drafted a bill on access to information in 2005. Council member Abdul-Fattah Hamayil was a participant in discussion sessions on this draft law and civil society organisations persuaded him to submit the draft to the Legislative Council, also in 2005.<sup>29</sup> The Legislative Council approved the draft law in a General Assembly debate on 5 April 2005; however, it did not complete all the necessary steps for enactment before the Legislative Council's 2007 suspension.

The draft law's definition of information includes written, electronic and audio-visual documentation. An information commissioner can expand the scope of this definition (Article 1). The law aims to enable 'citizens and those resident in Palestine to exercise the right of access to information held by public bodies' (Article 2), and deems all information in the possession of public bodies to be accessible, unless included within the scope of an exception (Article 3). It sets out mechanisms for doing so; each public body is required to appoint an official competent to consider and fulfil information requests (Article 4) and the law requires public bodies to provide training for staff on the right of access to information (Article 6). The law also creates a general commissioner for information, who acts as the appellate body for all access to information requests and is responsible for ensuring public body compliance with the law (Article 30). Exceptions to access in the law can

---

<sup>28</sup> Under the Barcelona Declaration of November 1995, the Palestinian Authority undertook to act in accordance with the United Nations Charter and the Universal Declaration of Human Rights. Barcelona Declaration adopted at the Euro-Mediterranean Conference, 27–28 November 1995, [http://trade.ec.europa.eu/doclib/docs/2005/july/tradoc\\_124236.pdf](http://trade.ec.europa.eu/doclib/docs/2005/july/tradoc_124236.pdf) [accessed 15 April 2013].

<sup>29</sup> The draft law was debated by the Legislative Council in the first period of its tenth term (first session/ third meeting), convened in the cities of Ramallah and Gaza on 5 April 2005. At this session Member Abdul-Fattah Hamayil presented the draft access to information law (No. 188/2005/A), which was subject to a general debate. The Legislative Council issued Resolution No. 844/1/10 on the Acceptance of the Draft Access to Information Law. The Legislative Council referred the draft law to the relevant committees (Legal, Public Oversight, Human Rights) for consideration in light of the general debate conducted by the Council, prior to its first reading.

be either discretionary or mandatory (Articles 19–28). Mandatory exceptions to disclosure include information that ‘may affect’ defence and national security (Article 19), professional secrets (Article 24) and the right to a private life (Article 28).<sup>30</sup>

## Other relevant laws

A number of other laws provide some level of access to information, including a number that include a right of access to information. However, none of these provide a general right of access to information with mechanisms and scope in compliance with international standards.

AMAN includes these laws in this report as each either provides a right of access to information or requires public bodies to disclose information. As such, they principally form the legal basis for the right of access to information in Palestine.

## Laws including the right of access to information

- **Press and Publication Law 9/1995**

The 1995 Press and Publication Law establishes the rules relating to licensing, ownership and management of publishing enterprises, and restrictions on the content of publications.<sup>31</sup> The law includes a general right for citizens of access to information from public bodies (Article 4), requires public bodies to assist journalists and researchers (Article 6) and defines material that cannot be published on the grounds of freedom, national responsibility, human rights and respect of the truth (Article 7) and on content, including material harmful to national unity or which is inconsistent with morals (Article 37).

- **Environment Law 7/1999**

The Environment Law<sup>32</sup> aims to regulate pollution, protect public health, address environmental and biodiversity protection, and encourage the collection and publication of environment-related information (Article 2). Under this law, any person ‘may also obtain any necessary official information to discover the environmental impact of any industrial, agricultural, construction or other activity within the development programs, in compliance with the law’ (Article 3).

- **Public Statistics Law 4/2000**

The Public Statistics Law<sup>33</sup> creates a statistics bureau (Article 2) to establish a unified and comprehensive statistics system for Palestine (Article 3). Under this law, all persons have ‘the right to obtain official statistics collected, processed, and disseminated by the Bureau in accordance with the adopted rules and instructions, taking into consideration the honouring of data confidentiality and individuals’ privacy’ (Article 4).

## Laws requiring proactive disclosure

- **Law on the Regulation of the Public Budget 7/1998**

This law requires ministries to provide budgetary-related information to the Public Budget Directorate (Article 24). It requires this body to disseminate the public budget to the media

---

<sup>30</sup> Article 19, *Memorandum on a proposal for a draft Law on Access to Information of Palestine* (London: Article 19, 2005) <http://www.article19.org/data/files/pdfs/analysis/palestine-2005.pdf> [accessed 15 April 2013], p.9.

<sup>31</sup> Article 19 and the Centre for Media Freedom in the Middle East and North Africa, *Memorandum on the 1995 Press Law of the Palestinian National Authority* (London: Article 19 and the Centre for Media Freedom, 1999), <http://www.article19.org/data/files/pdfs/analysis/palestine.prs.99.pdf>, pp.1–2.

<sup>32</sup> Food and Agriculture Organisation’s FAOLEX: Palestinian Environmental Law, <https://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Ffaolex.fao.org%2Fdocs%2Ftexts%2Fpal40426E.doc&ei=nf14UazXl4X2sgbskYCAAQ&usq=AFQjCNF7fSebDe6lDWFXYfcSb1l2FDiJg&bvm=bv.45645796.d.Yms> [accessed 25 April 2013]

<sup>33</sup> UNSTATS, ‘General Statistics Law No. (5) for Year 2000’, <http://unstats.un.org/unsd/dnss/docViewer.aspx?docID=290#start> [accessed 25 April 2013].

and public following Palestinian Legislative Council approval (Article 38). It also requires the Ministry of Finance to prepare and the minister to present to the cabinet and parliament, quarterly reports assessing compliance with the budget, including significant deviations (Article 52). The law further requires ministers to publish their decrees regarding terms of loans and transaction guarantees in the official gazette (Article 58). Other than in Article 58, there is no requirement to publish information.

- **Law on the Financial and Administrative Oversight Bureau 15/2004**

This law gives the Finance and Administrative Oversight Bureau the authority to view all reports, data and information held by the civil service and reports of investigations into financial and administrative law violations (Article 25). It also allows the bureau to request, access and preserve any information from public bodies, including information the public body deems confidential (Article 29). The chair of the bureau is required to submit quarterly and annual reports to the president, cabinet and parliament on its activities, findings and observations (Article 8 and 26). Nothing in the law requires the bureau to publish information.

- **Law for the Election of Local Councils 10/2005**

This law requires the Central Elections Commission to publish the voter rolls and names of lists and candidates in each district and polling station (Articles 11, 21 and 36).

- **Elections Law 9/2005**

This law requires district offices to publish their voter rolls and the Central Election Commission to publish the list of candidates for president (Articles 41 and 45). The final results shall be published in the official gazette and daily local newspapers (Article 96).

- **Anti-Corruption (Amended) Law 1/2005**

The Anti-Corruption Agency under this law has the power to collect information related to corruption, to create a database and information systems on corruption cases and to coordinate with the media in creating a culture of integrity and anti-corruption (Articles 8-9).

## Legal analysis of access to information

The following 10 access to information principles,<sup>34</sup> developed by Access Info – a human rights organisation dedicated to promoting and protecting the right of access to information<sup>35</sup> – 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.<sup>36</sup>

**TABLE 2: Principles**

ACCESS TO INFORMATION PRINCIPLES <sup>37</sup>
1. Everyone has a right, without discrimination, to access information held by public bodies.
2. Filing requests should be simple and free. Requests can be sent by post, email or fax, delivered in person, or questions asked verbally.
3. There is no need to justify why information is needed or what will be done with it.
4. Public officials should have the obligation to help requestors prepare the request or identify the public body to send it to.
5. Responses should be fast, within a maximum 15 working day timeframe.
6. Information can be accessed in paper copy or electronically, and originals can be viewed.
7. Viewing originals is always free of charge. The only charges can be for photocopying or copying material onto a CD or DVD or other format.
8. In principle all information is accessible, subject to limited exceptions. Refusals should be justified according to the exceptions.
9. Everyone should have the right of appeal against refusals or against administrative silence to an independent body and to the court.
10. Public bodies should make available automatically the main information about their structure, functions, budget, and activities.

In this section, AMAN analyses the Environment Law, the Press Law, the Statistics Law and the Draft Access to Information Law against the 10 principles listed above to determine the extent to which these laws already provide access to information and how far the draft law goes in setting-out the legal basis for this right.

AMAN selected these particular laws due to their relevance in the fight against corruption and because each of them includes a right for either a citizen or individual to access information.

AMAN found that while each of the three laws include the right of access to information, none of them includes the mechanisms and procedures necessary to give effect to this right in practice. AMAN also found that while the draft access to information law is a positive step forward, it too fails to comply fully with international standards.

<sup>34</sup> Access Info Cyprus, *Principles for an Open Cyprus*, <http://www.accessinfocyprus.eu/en/principles-for-an-open-cyprus.html> [accessed 8 March 2013].

<sup>35</sup> Access Info, <http://www.access-info.org/> [accessed 8 March 2013].

<sup>36</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p. 36

<sup>37</sup> Access Info Cyprus, *Principles for an Open Cyprus*.

**TABLE 3: Names of the four laws**

FULL NAME	SHORT NAME
Proposed Palestinian Access to Information Law	Draft ATI Law
Press and Publication Law No. 9 of 1995	Press Law
Environment Law No. 7 of 1999	Environment Law
Palestinian Public Statistics Law No. 2 of 2000	Statistics Law

## 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.<sup>38</sup>

**TABLE 4: Principle 1**

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

WHO MAY ACCESS	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
ALL (INCLUDING FOREIGNERS)	—	—	●	○
CITIZENS	●	—	●	○
AFFECTED PERSONS / DATA SUBJECT	●	—	●	○
ANYONE WITH JUSTIFIED INTERESTS	●	—	●	○
JOURNALISTS	●	—	●	○
RESEARCHERS	●	●	●	○

With the exception of the Statistics Law, all laws analysed include a clear right of access to information for citizens or for everyone.

- Article 2 of the Draft ATI Law limits the right of access to information to citizens and residents of Palestine.<sup>39</sup>
- Article 4 of the Press Law includes the right of journalists to access facts, ideas, movements, and information at the local, Arab, Islamic, and international levels. It also allows citizens to publish opinions and research, and to analyse, circulate, publish, and comment on information, news and statistics within the bounds of the law.
- Article 3 of the Environment Law states that every person ‘may also obtain any necessary official information to discover the environmental impact of any industrial, agricultural, constructional or other activity within the development programs, in compliance with the law.’ The article does not explicitly state that persons have a right of access to information from public bodies, but the word ‘official information’ implies that the information is held by public bodies.
- Under Article 4 of the Statistics Law all persons have ‘the right to obtain official statistics collected, processed, and disseminated by the Bureau in accordance with the adopted rules and instructions, taking into consideration the honouring of data confidentiality and individuals’ privacy’.<sup>40</sup> The clause stating ‘and disseminated by the Bureau’ indicates that the right might be limited to access to information already publically disclosed by the statistics bureau.

<sup>38</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p.43, and partially expanded.

<sup>39</sup> Article 19, 2005, p.9

<sup>40</sup> UNSTATS, ‘General Statistics Law No. (5) for Year 2000’, Article 4.

## 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.<sup>41</sup>

**TABLE 5: Principle 2**

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

FORM OF ACCESS	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
POST	○	○	○	○
E-MAIL	○	○	○	○
FAX	○	○	○	○
IN PERSON	○	○	○	○
VERBALLY	—	○	○	○
IS FILING FREE OF CHARGE?	○	○	○	○

None of the laws analysed complies with Principle 2. All four in general lack the detail necessary for petitioners to understand clearly how to make an information request.

- Article 11 of the Draft ATI Law requires persons to submit their requests in writing.<sup>42</sup> The law does not mention charges for filing a request or whether petitioners can or should submit the request by post, email, fax or in person.
- None of the other laws include provisions on either how to make an information request or whether public bodies can or must charge fees for filing a request.

<sup>41</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p.47.

<sup>42</sup> Article 19, 2005, p.13.

### 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.<sup>43</sup>

**TABLE 6: Principle 3**

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

	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
NO DUTY TO JUSTIFY REQUESTS	●	●	○	●

None of the laws explicitly requires petitioners to justify requests; however, the Environment Law may contain an implicit duty to do so.

- The use of the term 'necessary official information' in Article 3 of the Environment Law implies that there may be a duty on petitioners to justify why their request is necessary to public bodies. No explicit provision on justification exists in the law.
- The Draft ATI, Statistics and the Press Laws do not require petitioners to justify a request for information.

<sup>43</sup> 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.<sup>44</sup>

**TABLE 7: Principle 4**

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

	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
DUTY TO ASSIST PETITIONERS	○	—	—	—

None of the laws contains an explicit duty to assist petitioners. The Draft ATI Law contains provisions that may encompass a limited duty of assistance.

- Under Article 17 of the Draft ATI Law, public bodies may refer a request to another institution if that institution is 'more relevant in providing the information.' Article 19 indicates that this has the potential for abuse by allowing public bodies to pass requests from one public body to another. They suggest a better formulation would be to allow referrals only when the public body does not hold the information.<sup>45</sup>
- Article 6 of the Press Law obliges public bodies to facilitate the review of their programmes and projects by journalists and researchers. This does not comply with international standards, which require public bodies to assist all petitioners as far as reasonably possible to identify requested documents and the relevant public body.
- Neither the Environment nor the Statistics Law contains any provisions requiring public bodies to assist petitioners in making an access to information request.

<sup>44</sup> Access Info, *The right of access to information in Cyprus: Open Cyprus project*, p. 52.

<sup>45</sup> Article 19, 2005, p.14.

## 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.<sup>46</sup>

**TABLE 8: Principle 5**

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

TYPE OF RESPONSE	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
INITIAL RESPONSE (MAX. 15 WORKING DAYS RECOMMENDED)	●	—	—	—
EXTENSION (MAX. 20 WORKING DAYS RECOMMENDED)	●	—	—	—

Only the Draft ATI Law includes specific time limits for responding to access to information requests.

- Article 13 of the Draft ATI Law requires public bodies to respond within 15 days to a request. Public bodies can extend this by a further 15 days where the request requires collecting a large amount of information, or consultation with a third party or another public body. Article 19 indicates that the law is unclear on whether this refers to calendar or working days.<sup>47</sup>
- The Press, Environment and Statistics Laws do not include time limits for responding to requests.

<sup>46</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p.54.

<sup>47</sup> Article 19, 2005, p.15.

## 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.<sup>48</sup>

**TABLE 9: Principle 6**

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

SPECIFIED FORMAT	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
VIEWING	○	○	○	○
PAPER COPIES	○	○	○	○
ELECTRONIC ACCESS	○	○	○	○

None of the laws analysed is clear on the format in which public bodies can or should provide information.

- Article 14 of the Draft ATI Law states that the public body should provide the information in the format in which the institution keeps it. In case of dispute, it provides that the information commissioner should decide on the form of access. It also states that public bodies should provide information in a format accessible to persons with disabilities, but if this involves extra expense, that the petitioner must cover the cost.<sup>49</sup> The article does not specify that petitioners have an automatic right to obtain paper copies or electronic access from public bodies or that they have a right to view originals.
- The Press, Environment and Statistics Laws do not state the form in which public bodies should provide information.

<sup>48</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, pp.56–57.

<sup>49</sup> Article 19, 2005, pp.13, 14.

## 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.<sup>50</sup>

**TABLE 10: Principle 7**

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

NO FEE CHARGED	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
VIEWING	—	○	○	○
PAPER COPIES	—	○	○	○
ELECTRONIC ACCESS	—	○	○	○

The three laws are not clear on whether public bodies can or must charge a fee for access to information. The Draft ATI Law requires the public body to set a fee, which can be higher than the cost of providing the information.

- Article 14 of the Draft ATI Law requires the public body to set a fee for access to information. Article 42 states that the information commissioner shall set out a fee schedule but fees should not exceed 10 Jordanian dinars. As Article 19 indicates, fees should not exceed the actual cost of providing the information.<sup>51</sup>
- The Press, Environment and Statistics Laws do not state if public bodies should or can charge fees for access to information.

<sup>50</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p.59.

<sup>51</sup> Article 19, 2005, pp.15, 16.

## 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 four laws, and where it is unclear (○).

	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
<b>EXCEPTIONS LIMITED</b>	—	○	○	●
<b>REFUSALS JUSTIFIED</b>	—	○	○	○
<b>HARM TEST</b>	—	—	—	—
<b>PUBLIC INTEREST TEST</b>	—	—	—	—

Only the Statistics Law limits exceptions to information requests. The Draft ATI Law contains broad exceptions, while the Press and Environment Laws do not have clear exceptions to providing access to information. Under the Draft ATI Law, public bodies do not have to justify refusals with sufficient precision; other laws are either not clear or do not specify whether the public body must justify denials of information requests. None of the laws includes the harm or public interest tests.

- Under the Draft ATI Law exceptions are not limited, refusals have to be justified but leave scope for manipulation, and there is no harm or public interest test.

Articles 19 and 20 include mandatory exceptions on the grounds that providing information that ‘may affect’ defence capabilities and national security or that it is related to a foreign state or organisation and is agreed with them as being confidential. The exceptions are only applicable to information less than 20 years old, unless the information commissioner determines older information should remain confidential. Articles 24 and 28 include mandatory exceptions without time limitations for professional secrets and the right to a private life.<sup>52</sup>

Public bodies can make discretionary exceptions on the grounds that information:

- ‘may cause damage’ to on-going police investigations or would harm the reputation of non-convicted persons (Article 22)<sup>53</sup>
- contains commercial or professional secrets which may inflict material damage or the ability to manage the national economy (Article 23)<sup>54</sup>
- relates to public bodies’ internal affairs, orders, employees, discussions and preliminary proposals and suggestions (Article 25)<sup>55</sup>
- relates to unconfirmed indications of natural disasters or of non-epidemic outbreaks of contagious diseases (Article 26)<sup>56</sup>
- ‘might affect or inflict damage to the safety of individuals’ (Article 27)<sup>57</sup>

<sup>52</sup> Article 19, 2005, pp.11–12.

<sup>53</sup> Article 19, 2005, p.11

<sup>54</sup> As above.

<sup>55</sup> As above.

<sup>56</sup> As above.

Article 14 gives the public body a discretionary power to release partial information if an exception covers part of a document.<sup>58</sup>

Article 19 considers Article 25 particularly problematic, as it allows public bodies to restrict access to information on their expenses regarding issues such as foreign trips and hospitality. While refusals have to be justified under the law (Article 18), Article 19 points out that the provision is not clear enough that public bodies must give detailed reasons and that they cannot solely state either that they do not have the information or that it falls within the scope of exceptions.<sup>59</sup>

- The Press Law does not include any express limitations to the disclosure of information by public bodies. However, Articles 7 and 37 set out material that the press cannot publish in print and therefore may act as a barrier to disclosure by public authorities. These include confidential material about the police or general security forces, articles likely to harm national unity, and secret proceedings of the National Council and cabinet. There is no harm or public interest test.
- The Environment Law does not include any details on exceptions to disclosure of information.
- The Statistics Law requires public bodies to restrict information whenever it relates to the right to privacy or when it contains individual information provided for statistical purposes (Articles 16 and 17). Public bodies can release individual data provided for statistical purposes under Article 18, whenever it relates to a government department, when a legal organ has already published the data, or where the concerned party agrees to the release in writing. There is no harm or public interest test.

---

<sup>57</sup> As above.

<sup>58</sup> Article 19, 2005, p. 15.

<sup>59</sup> Article 19, 2005, pp.11, 14.

## 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 public body denies a petitioner 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.<sup>60</sup>

**TABLE 12: Principle 9**

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

MECHANISM	DRAFT ATI LAW	PRESS LAW	ENVIRONMENT LAW	STATISTICS LAW
ADMINISTRATIVE APPEAL ALLOWED	—	—	—	—
APPEAL TO INDEPENDENT BODY ALLOWED (E.G. INFORMATION COMMISSIONER)	●	—	—	—
APPEAL TO THE COURTS ALLOWED	—	—	—	—

Only the Draft ATI Law has clear procedures for appealing denial of a request for access to information.

- Under Article 32 of the Draft ATI Law, petitioners can submit an appeal to the information commissioner on the grounds that:
  - a public body has denied a request for information
  - a public body has charged an unlawful fee
  - a public body has rejected providing information in an alternative format
  - a public body has unlawfully exceed the time limit for response
  - a public body has referred the request to more than one other institution

Petitioners have 30 days to submit an appeal and the information commissioner must respond to a complaint within three months of receipt. The law does not include a right for petitioners to appeal the information commissioner's decision to a court of law.<sup>61</sup>

- The Press, Environment and Statistics Laws do not include mechanisms for appealing administrative denial of or lack of response (silence) to information requests.

<sup>60</sup> Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations*, p.72.

<sup>61</sup> Article 19, 2005, pp.17,18.

## 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.

**TABLE 13: Principle 10**

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

CLASSES OF INFORMATION	MINISTRY OF SOCIAL AFFAIRS	MINISTRY OF HEALTH	PALESTINIAN CENTRAL BUREAU OF STATISTICS
IS THERE A WEBSITE?	●	●	●
ARE THERE INTERNAL REGULATIONS ON PUBLISHING INFORMATION?	●	●	●
IS THE ORGANISATIONAL STRUCTURE PUBLISHED?	●	●	●
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?	●	●	●
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	—	—	—

<b>RIGHT TO INFORMATION?</b>			
<b>IS ENVIRONMENTAL INFORMATION PUBLISHED?</b>	—	—	—

In general, public bodies under this law only proactively publish information relating to their structure, contacts, services and guidelines for public participation in the work of the public body. Public bodies surveyed did not proactively publish information on budgets, salaries, income and expenditure.

Under the three laws and one draft law analysed, only the Draft ATI law requires public bodies to proactively disclose information.

- Article 7 of the Draft ATI Law requires public bodies to publish annual reports containing:
  - documents on internal matters such as audited accounts
  - regulations and activities
  - procedures by which individuals can find out about the institution's policies and projects
  - an explanation of the types of information kept by the institution
  - contents of decisions made by the institution
  - any information the information commissioner deems necessary

Article 8 requires public and private 'industrial institutions' to publish semi-annual reports containing information on the location, nature, and associated hazards of toxic materials they use, the volume of materials released into the environment as a result of their manufacturing processes, and waste disposal methods and mechanisms they use.

Article 9 requires any public institution that wishes to hold a 'general meeting' to announce the location, time and objective of the meeting and open it to the public.<sup>62</sup> Article 19 indicates that legislators need to clarify in the law when public bodies should hold open meetings and when they can hold closed meetings.<sup>63</sup>

- The Press, Environment and Statistics Laws do not require public bodies to proactively disclose information.

---

<sup>62</sup> Article 19, 2005, pp.10, 20.

<sup>63</sup> As above, p.20.

## Conclusions

Access to information is a human right that the Palestinian Authority has committed to recognise. Palestine's Basic Law (Constitution) does not yet include this right and the Palestinian Authority has not passed a general access to information law. A limited number of existing laws do include a right of access to information, but those laws do not substantively comply with international standards in this field.

The three laws AMAN analysed in this study partially fulfil Principles 1 and 3 stating, respectively, that all persons should have access to information and that requests should not require justification. Both the Press and Environment Laws allow for access to information either for citizens or for everyone, while the Statistics Law is unclear (Principle 1). Both the Press and Statistics Laws do not include duties to justify requests, while the Environment Law is unclear on this issue (Principle 3).

For the majority of the principles, however, the three laws either do not meet these standards or remain unclear. All three laws are unclear on how petitioners should submit a request (Principle 2), on the format public authorities should provide information (Principle 6) and on whether public bodies should or can charge a fee (Principle 7). None of the three laws includes a duty on the public authority to assist petitioners (Principle 4), nor do they include mandatory response times for requests (Principle 5). Appeal processes for refusals and silence (Principle 9) are lacking in all three laws, as are obligations on public authorities to proactively disclose certain forms of information (Principle 10). Exceptions to disclosure are only listed under the Statistics Law and none of the laws requires public bodies to justify refusals or include the harm and public interest tests (Principle 8).

The draft access to information law provides a starting point for the realisation of this right through generalised rules about access to information. The Palestinian Authority should work with civil society to revise the draft law to ensure it fully complies with all 10 principles. As it stands, the draft law complies with the principles on public bodies not requiring justification for requests (Principle 3) and on time limits for responding to requests (Principle 5). It also complies substantively with the principle stating that all persons should have the right to access information (Principle 1), but does not apply to non-resident non-citizens. The Palestinian Authority should more clearly extend this right to all persons, and establish clear appeal routes for denials of access, including administrative appeals (Principle 9). The draft law does not meet the international standards the remaining principles posit. Procedures for requesting information are not sufficiently clear and do not allow verbal requests (Principle 2). The law does not establish a clear duty on public bodies to assist petitioners (Principle 4) or specify the format in which public bodies should provide information (Principle 6). Furthermore, the draft law gives scope for public bodies to set fees in excess of the cost of the copy (Principle 7), allows for broad exceptions without requiring public bodies to give reasons or perform the harm and public interest tests (Principle 8) and does not oblige public authorities to proactively disclose detailed financial information (Principle 10).

This analysis demonstrates that access to information remains limited in Palestine and will remain so as long as the Palestinian Authority does not include the right of access to information in the Basic Law and does not pass a general access to information law compliant with international standards. The Draft Access to Information Law provides a basis for doing so, but the Palestinian Authority should revise it to ensure its full compliance with the 10 principles.

## Recommendations

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

### To the government

- The Palestinian Authority should strengthen the draft access to information law by:<sup>64</sup>
  - Extending the right of access to every person
  - More clearly defining the public bodies covered by the law and considering including private bodies whenever necessary to enforce a right
  - Allowing requests for access to be made by email or verbally, as well as in writing, and requiring public bodies to provide reasonable assistance to applicants, in particular for those less well able to lodge a request in a specified form
  - Including a provision that fees should not exceed the actual cost of providing the information and that public bodies should provide a certain amount of material for free
  - Modifying the timeframe to require the public body to respond as soon as possible, within a maximum of 15 working days, which public bodies can only extend if the request requires a large amount of documents, an extensive search or complying within the timeframe would unreasonably interfere with the work of the institution
  - Only allowing a public body to refer a petitioner to another institution when it does not hold the information
  - More narrowly and precisely defining exceptions and requiring public bodies to grant partial access to information not falling under an exception
  - Requiring public bodies to give full reasons for a refusal
  - Only allowing public bodies to refuse disclosure when it would cause substantial harm to a legitimate protected interest and including a public interest override, for when public interest in disclosure outweighs the harm to the protect interest
  - More clearly defining the role of the commissioner in receiving complaints, including minimal procedural provisions, and explicitly stating that the commissioners decisions are subject to appeal to the courts
  - Clarifying which organisations are subject to the open meeting requirement, clearly listing exceptions to this principle, ensuring public bodies make public any decision to close a meeting and allowing persons to challenge this decision
  - Extending the proactive disclosure requirements to include information on access procedures, including on how to complain about violations of access to information, information relating to imminent environmental threats or disasters, information regarding the way members of the public can make representations or otherwise influence policies, and annual statistics on information released, including on requests received, refused and granted

---

<sup>64</sup> Taken from Article 19, 2005, pp.10–20.

- After revising the Draft ATI Law and consulting with civil society, as the Palestinian Legislative Council is currently inoperative, the president of the Palestinian Authority should issue the law. As part of this process, the government should review all Palestinian laws and regulations that obstruct the application of the right of access to information and remove incompatible provisions.
- The president should instruct all public bodies to facilitate access to information and to provide training for public officials on the right of access to information.
- The Palestinian Authority should prepare and disseminate a public information guide on procedures for requesting information from official bodies and mechanisms available for enforcing the response.

### **To the private sector**

- Company boards of directors should commit to the publication of transparent reporting on their operations.

### **To civil society**

- Civil society organisations should commit to raising awareness of the right of access to information and to supporting individuals' access to information requests.
- Civil society organisations should participate in government efforts to strengthen the draft access to information law and test its implementation once passed.

# References

## Reports and studies

- Access Info Europe, KAB and IKME, *Access Info Cyprus Report & Recommendations* (Madrid: Access Info, November 2011).
- Article 19 and the Centre for Media Freedom in the Middle East and North Africa, *Memorandum on the 1995 Press Law of the Palestinian National Authority* (London: Article 19 and the Centre for Media Freedom, 1999).
- Article 19, *The public's right to know: Principles on freedom of information legislation* (London: Article 19, 1999).
- Said Almadhoun, *Access to information in the Middle East and North Africa Region: An overview of recent developments in Jordan, Lebanon, Morocco and Tunisia* (Washington DC: World Bank Institute, 2012).
- Transparency International, *Using the right to information as an anti-corruption tool* (Berlin: Transparency International, 2006).

## Periodicals and press releases

- Centre for Law and Democracy, 'Yemen passes strongest RTI Law in the Arab World', 10 June 2012.
- Freedominfo.org, 'Tunisia issues decree on access to documents', 11 July 2011.
- Said Almadhoun, 'Status of freedom of information legislation in the Arab world 2010', *Open Society Justice Initiative*, 6 February 2010.

## Websites

- Access Info, *Principles for an Open Cyprus*, <http://www.accessinfocyprus.eu/en/principles-for-an-open-cyprus.html>.
- 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/>.
- Food and Agriculture Organisation's FAOLEX: Palestinian Environmental Law, <https://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Ffaolex.fao.org%2Fdocs%2Ftexts%2Fpal40426E.doc&ei=nf14UazXI4X2sgbskYCAAQ&usq=AFQjCNF7fSebDe6IDWFXXYfcSb1I2FDiJg&bvm=bv.45645796,d.Yms>.
- Transparency International, *Access to Information*, <http://www.transparency.org/topic/detail/accesstoinformation>.
- Transparency International, *The right to access information*, [http://archive.transparency.org/global\\_priorities/other\\_thematic\\_issues/access\\_information/right\\_information](http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/right_information).
- Transparency International, *United Nations Convention Against Corruption*, [http://archive.transparency.org/global\\_priorities/other\\_thematic\\_issues/access\\_information/conventions/uncac](http://archive.transparency.org/global_priorities/other_thematic_issues/access_information/conventions/uncac).

## Annex I: Overall Compliance

### Overall compliance

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

PRINCIPLE	NARRATIVE
<b>Principle One: <i>Non-discrimination in accessing public information</i></b>	Only the Environment Law fully complies with the first principle. The Draft ATI only allows citizens and residents the right of access, the Press Law only allows citizens and the Statistics Law is unclear on who can access.
<b>Principle Two: <i>Free requests, by post, e-mail, fax, post or verbally</i></b>	None of the laws are clear on the form in which petitioners should submit an information request. The Draft ATI Law only allows requests in writing.
<b>Principle Three: <i>No need to justify requests</i></b>	The Draft ATI, Press and Statistics Laws do not require justifications for an information request. The Environment Law is unclear.
<b>Principle Four: <i>Obligation to help petitioners</i></b>	None of the laws includes an explicit obligation to assist petitioners.
<b>Principle Five: <i>Timely responses</i></b>	Only the Draft ATI Law includes specific time limits for public body responses: 15 days, extendable by a further 15 days.
<b>Principle Six: <i>Paper or electronic copies available, access to originals</i></b>	None of the laws is clear on the format in which public bodies should provide information.
<b>Principle Seven: <i>Viewing originals free of charge, charges for cost of copies only</i></b>	The Draft ATI Law may allow for fees in excess of the cost of the copy to access information. None of the other laws specify if public bodies can or must impose fees.
<b>Principle Eight: <i>Limited exceptions, refusals only for these exceptions</i></b>	Only the Statistics Law includes limited exceptions, none of the laws require public bodies to issue reasons for refusals or to perform the harm and public interest tests.
<b>Principle Nine: <i>Effective right of appeal against refusals or silence</i></b>	Only the Draft ATI Law includes an appeal route for request denials and only to the information commissioner.
<b>Principle Ten: <i>Proactive disclosure</i></b>	None of the public bodies analysed proactively disclose all the information necessary to comply with international standards. Only the Draft ATI Law includes provisions requiring public bodies to proactively disclose information.

Coalition for Accountability and Integrity - AMAN  
Al - Rimawi Building  
Al-Irsal Street  
Ramallah

Phone: +972-298-9506 / +972-297-4949  
Fax: +972-297-4948

info@aman-palestine.org  
www.aman-palestine.org

www.facebook.com/AmanCoalition  
twitter.com/AmanCoalition

