

Palestinian Media and Security: Promoting Palestinian Journalists' Access to Information through Legislation

Working Paper

Ramallah and Geneva, October 2012



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The Palestinian Center for Development and Media Freedoms (MADA)

The Palestinian Center for Development and Media Freedoms (MADA) was established in 2006 to support the journalists in the territories who continue to face numerous oppressive constraints in their fight for freedom of expression. The vision of MADA is to end the violations against journalists, support them in their work, reduce practices of self-censorship out of fear of reprisal, and facilitate Palestinian media in reclaiming its role as the fourth authority.

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Design and Layout

Wael Dwaik

Translation Support

Maher Awawdeh

Editing and Proofreading

Fatima Itawi

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Publisher

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Table of Contents

Overview	4
Problem statement	4
Response	4
Main elements missing in the Palestinian <i>Draft Law on the Right to Access Information</i> (2005)	5
Specific findings	5
Principle of freedom of information	5
Definitions and purposes of the Law	6
Public institutions' measures to promote transparency	6
Public institutions' duty to publish	6
Procedures for filing and handling access to information requests	7
Exceptions	7
The Commissioner General of Information	8
Protection of informants (whistleblowers)	8
Recommendations for amending the <i>Draft Law</i>	8
Concerning the principle of freedom of information	8
Concerning the definitions and purposes of the Law	8
Concerning the public institutions' measures to promote transparency	9
Concerning the public institutions' duty to publish	9
Concerning the procedures for filing and handling access to information requests	10
Concerning the exceptions	10
Concerning the Commissioner General of Information	10
Concerning the protection of informants (whistleblowers)	10
Recommendations for further steps	11
Annex 1: Palestinian <i>Draft Law on the Right to Access Information</i> (2005)	12
Annex 2: Palestinian laws and regulations that place restrictions on the right to access information	19
Annex 3: Questionnaire submitted to the participants of the MADA-DCAF consultative process	21
Annex 4: Overview of the MADA-DCAF consultation process	23

Overview

Problem statement

Many Palestinian citizens and journalists consider that the current laws applicable in the West Bank and the Gaza Strip do not provide sufficient guarantees for the freedom of press, expression and opinion. One of the main problems in this regard is the absence of a Palestinian access

to information law.¹ In addition, some laws or specific articles in the Palestinian media and security sector legislation impose restrictions on the citizens and journalists' right to seek, receive and impart information.²

The *Draft Law on the Right to Access Information*, which was presented to the Palestinian Legislative Council (PLC) in 2005, includes many articles that have meanwhile become obsolete. Other Articles of this *Draft Law* are too vague and fail to provide sufficient guarantees and protection for citizens or journalists who seek to access information held by public bodies, including security sector institutions. Hence, the Palestinian *Draft Law on the Right to Access Information* has to be thoroughly reviewed before being submitted again to PLC and PNA decision-makers and enacted into Law.

Between November 2011 and April 2012, MADA and DCAF facilitated nine workshops in six governorates of the West Bank and the Gaza Strip.⁴ During these workshops, the questionnaire was submitted to a total of 146 representatives of the Palestinian media, civil society, executive, legislative and judiciary authorities. The legal team then analysed the participants' answers to the questionnaire and their recommendations for amending the *Draft Law*. The legal team also drafted and reviewed the present working paper. The working paper's main findings and recommendations were presented during a conference, which took place in Ramallah on 09 October 2012.

Response

Between November 2011 and June 2012, the Palestinian Center for Development and Media Freedoms (MADA) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) jointly implemented a project under the title 'Assist the development of Palestinian media legislation which respects democratic standards'.

To that effect, MADA and DCAF gathered a team composed of legal experts representing key Palestinian institutions and civil society organisations. These experts jointly developed a questionnaire³ informed by best international practice. The questionnaire served two main purposes:

- To provide a grid for a detailed analysis of the Palestinian *Draft Law*
- To allow for any recommendations for the amendment of the *Draft Law*

MADA and DCAF jointly submit this working paper to the concerned authorities to present the main findings of the participants in the MADA-DCAF consultation process. The working paper has three objectives:

1. To provide a set of detailed recommendations to the Palestinian legal drafting experts in charge of drafting a new Palestinian *Law on the Right to Access Information*
2. To provide an informed input to PNA and PLC decision-makers in charge of enacting a new Palestinian *Law on the Right to Access Information*
3. To help Palestinian civil society and media representatives understand the challenges related to amending freedom of information legislation, and devise appropriate awareness campaigns for promoting the enactment of such legislation

¹ A Palestinian *Draft Law on the Right to Access Information* was submitted to the PLC in 2005 but never enacted. See Annex 1 for the full text of this *Draft Law*.

² See Annex 2 for an overview of the Palestinian laws and regulations that place restrictions on the right to access information.

³ See Annex 3 for the questionnaire submitted to the participants.

⁴ See Annex 4 for an overview of the MADA-DCAF consultative process.

Main elements missing in the Palestinian Draft Law on the Right to Access Information (2005)

Participants in the MADA-DCAF consultation process recommend that the Palestinian National Authority (PNA) adopts and enacts a *Law on the Right to Access Information*. Since a Palestinian *Draft Law on the Right to Access Information* already exists, they suggest that it should be reviewed. To this end, they have noted that key elements are missing in the *Draft Law*. In their view, due to the absence of these key elements, the *Draft Law* fails to grant minimum standards in terms of access to citizens and media representatives who seek to access information held by public bodies, including security sector institutions. These missing key elements are:

- A definition of the principle of 'freedom of information' informed by best international practice
- A mention of those oversight bodies which have a statutory role in scrutinising the government's work and preventing practices of opacity and secrecy. The following public bodies at least should be mentioned in the law: the Palestinian Legislative Council, the State Audit and Administrative Control Bureau (SAACB), the Anti-Corruption Commission
- Articles reasserting the necessary commitment of public institutions to the principles of transparency, accountability and responsiveness
- A description of the professional background, tasks and mandates of the competent employees in charge of facilitating citizens' and media's access to information within Palestinian public bodies, including security sector institutions
- A description of the mechanisms to be put in place for Palestinian public bodies, including security sector institutions, to respect their duty to publish information and provide access to it
- A list of clear examples of those wrongdoings which public bodies, including security sector institutions, have a duty to disclose to the public,

with due regard to the need to protect the privacy of the individuals involved and the confidentiality of ongoing investigations

- An Article asserting the obligation of public institutions to respond, either positively or negatively, to all requests in writing and within the imparted deadlines, and to justify any decision not to disclose information
- A clause asserting the principle of free access to documents held by public institutions; the law should foresee fees only in exceptional cases that should be clearly defined by the independent Commissioner General of Information
- Clear definitions for the scope of the exceptions, and for key terms such as 'national security' or any other grounds on which information may be declared secret or withheld under the Law
- A clear statement of the independence of the Commissioner General of Information, a description of how he/she should be appointed by parliament and in what shape and timeframe he/she should present his/her reports to the Palestinian public
- Clear references to existing Palestinian anti-corruption laws, which provide protection to whistleblowers

Specific findings

The participants in the MADA-DCAF consultation process have analysed the Palestinian *Draft Law on the Right to Access Information* in detail. They have highlighted the following specific elements that are missing in the existing *Draft Law*:

Principle of freedom of information

The participants underlined that a key element and purpose of access to information legislation is to clearly define the principle of freedom of information. This principle is not defined in the Palestinian *Draft Law on the Right to Access Information* and therefore the law lacks a clear definition of its objective. In addition, the *Draft Law* does not include any reference to Art. 19 of the Palestinian *Amended Basic Law* (2003), which

enshrines the principle of freedom of information. In the view of the participants, providing a clear definition to 'freedom of information' should allow public bodies and security sector institutions to perform their mandate effectively and transparently, while allowing public scrutiny over, and participation in their work.

Definitions and purpose of the Law

The *Draft Law* should provide precise definitions explaining the key terms and institutions falling within the scope of the Law. Art. 1 provides a list of key definitions encompassing those institutions and employees who play a key role in providing citizens and media's access to information. However, it was considered that the definition of 'public institutions' deserves further clarification and detail. The participants expected that the *Draft Law* also mentions those public institutions which have a statutory role of government oversight and legally guaranteed access to all information for the fulfilment of their mandate. For instance, they noted that the Palestinian Legislative Council (PLC), the State Audit and Administrative Control Bureau (SAACB) and the Anti-Corruption Commission were not specifically mentioned among those public institutions falling within the scope of the law.

Furthermore, the participants underlined that Art. 2 of the *Draft Law*, which defines its purpose, limits the right to access information only to "the citizen and resident of Palestine". Participants noted that this definition excludes Palestinian citizens living abroad as well as foreigners. In their view, such individuals might have a stake at accessing relevant information held by Palestinian public bodies for individual or public reasons. For this reason, the participants considered that Art. 2 of the *Draft Law* unnecessarily limits the scope of application of the Law.

Public institutions' measures to promote transparency

The *Draft Law* highlights the measures that Palestinian public institutions are expected to take in order to promote transparency and access to information. Participants found these measures essential to curb the culture of secrecy and opacity within many Palestinian public bodies, including security sector institutions. Articles 4, 5 and 6 outline these measures, including the duty of public institutions to: appoint a "competent employee" who should deal with

access to information requests; maintain effective record-keeping systems; and provide training to their employees regarding management of information. The participants expressed the wish that the function and tasks of these specialised employees be clearly distinguished from those of public relations and media officers.

It was noted that Art. 4 does not specify the profile and professional competencies of the person in charge of handling access to information requests. Furthermore, the *Draft Law* does not require the appointed official to be acquainted with how to deal with requests submitted by media representatives.

As for Art. 5, which deals with record keeping, participants highlighted the absence in the *Draft Law* of clear guidance, or reference to any such guidance, on how to keep and manage documents in the possession of public institutions. Finally, they noted that the *Draft Law* does not stipulate the necessity for public institutions to regularly transfer their records to a central, national archive.

In the view of the participants, Art. 6 of the *Draft Law*, which deals with the public institutions' duty to organise training courses for their employees on dealing with access to information requests, falls short of specifying the role of the competent employee in these trainings and the modalities of his/her participation in them.

Concerning the duties and responsibilities of the competent employee, described in Articles 11 to 18 of the *Draft Law*, participants considered that these articles need to be more specific. For instance, they noted that under the *Draft Law*, public bodies and their specialised employees are not bound to present progress reports about their activities to the public. Participants also thought that the *Draft Law* should give the competent employee additional duties, such as developing guidelines or codes of practices and procedures for citizens or journalists to submit access to information requests and for public institutions' employees to handle such requests under the Law. The employee could develop such guidelines in cooperation with, or under the supervision of the Commissioner General of Information (see below).

Public institutions' duty to publish

Participants stressed that access to information should not be limited to the right of citizens and journalists to request information held by the

public institutions. They insisted on the duty of those public bodies, including security sector institutions, to proactively publish information they hold. Articles 7, 8 and 9 of the *Draft Law* outline the public institutions' duty to publish information. This includes the duty to publish annual reports (Art. 7). However, the *Draft Law* does not mention the mechanisms ensuring that this duty is enforced. In addition, the law does not define in what form, through which means and for which public these annual reports should be published. Participants also acknowledged that Art. 9 of the *Draft Law* fails to identify mechanisms to ensure the public institutions' commitment to organising public meetings to inform the citizens and the media about their work. Finally, the participants underlined the necessity for the Law to include a duty for public institutions to publish evidence of wrongdoings by any of its members, and to provide a list of clear examples of such wrongdoings, with due regard to the need to protect the privacy of the individuals involved and the confidentiality of ongoing investigations.

Procedures for filing and handling access to information requests

Participants underlined the need for the *Draft Law* to outline very precise procedures for the filing and handling of access to information requests within reasonable delays. They commended Art. 11 to 18 of the *Draft Law* for describing these procedures in a good level of detail. With regards to Art. 11, which stipulates that the request to access information shall be submitted in writing, participants argued that the Article should not rule out the possibility for citizens or media representatives to submit oral requests as well. Concerning the requests in writing, they noted that the *Draft Law* does not specify the different options for submitting such requests. These missing options should include, for example, electronic requests sent via email.

The participants found that Art. 13 of the *Draft Law* does not guarantee the responsiveness of the public institutions to requests for information lodged by citizens or journalists. They were concerned that Art. 13 leaves too much leeway for public institutions not to respond to the requests within the timeframe of 15 days set by the *Draft Law*. In their view, Art. 13, which states that unanswered requests should be considered as rejected, should also mention that citizens or journalists facing unanswered requests are allowed to appeal and/or initiate

judicial proceedings, since according to the Law of Civil and Commercial Procedures No. (2) of 2001, art. 284, any person who suffers from an administrative decision can present a summons to the high court of justice.

Finally, the participants disagreed with Articles 42 and 43 of the *Draft Law* mentioning the issue of the fees associated with the requests to access information. They believed that the issue of the fees should be associated with the procedures for accessing information and should not be left in a separate section at the end of the law. The participants argued that the law should underscore the principle that access to information should be free of charge. In their view, this would give a strong signal of the transparency and responsiveness of the public institutions. They suggested that the law foresee fees only in exceptional cases, clearly defined by an independent entity such as the Commissioner General of Information.

Exceptions

The participants in the MADA-DCAF project agreed that any exceptions to access information should be narrowly defined and gauged against the public interest in disclosure of the information. Yet, the very notion of 'public interest in disclosure' is not defined, nor even mentioned, in the *Draft Law*.

Articles 19 to 28 of the *Draft Law* include seven types of exceptions for which the competent employee may refuse to disclose information. These are:

- National security and defence (Art. 19)
- International relations (Articles 20-21)
- Criminal investigations and law enforcement operations (Art. 22)
- Economic and commercial secrets (Articles 23-24)
- Internal affairs of public institutions (Art. 25)
- Public health and safety (Articles 26-27)
- Privacy (Art. 28)

The participants noted that most of the exceptions mentioned in Articles 19 to 28 of the *Draft Law* were not sufficiently specific and explicit. For example, the terms used in Articles 19 to 22 relating to issues concerning national security, military and

intelligence operations are too vague. In their view, the very concept of 'national security' would require a clear definition, as it is absent from the *Draft Law*.

The participants also noted that the vague terminology employed throughout the section on exceptions prevents citizens or journalists from identifying and predicting the types of documents and information that may be withheld by the public institutions on national security or other grounds. In their view, the *Draft Law* allows the public institutions and their employees to implement discretionary and abusive measures for withholding information. In fact, the *Draft Law* fails to underline the public institutions' duty – through their competent employee, or any other officials or means – to clearly state the reasons for withholding information. In addition, the *Draft Law* does not allow for government oversight bodies – as defined in Art. 1 (amended) – to review the decision to withhold information.

Art. 21 of the *Draft Law* provides another example of the vagueness of the exceptions to the right to access information. The Article stipulates that classified documents might become accessible after a period of twenty years. The participants noted that the *Draft Law* does not provide a rationale for this twenty-year period. In addition, the *Draft Law* fails to foresee mechanisms for reviewing a decision to withhold information for such a long period.

The Commissioner General of Information

The participants commended Articles 29 to 41 of the *Draft Law* for supporting the creation of a Commissioner General of Information. They underlined that the law should insist on the necessity for the Commissioner to be elected by parliament and be fully independent from all branches of government. The participants also encouraged the Commissioner to establish branches throughout Palestinian governorates, as envisaged in Art. 31. However, the *Draft Law* does not specify how and by whom (the Palestinian Legislative Council, the President of the PNA?) the Commissioner should be appointed. Furthermore, the *Draft Law* fails to establish structured relationships between the Commissioner and the competent employees in the public institutions. In the participants' view, the employees should be compelled by law to regularly submit a report of activities to the Commissioner. As for the Commissioner's reports of activities, the

participants noted that the *Draft Law* limited their distribution to government and the legislature. Instead, they believed that such reports should be made available to the public and the media with no restrictions.

Protection of informants (whistleblowers)

Participants in the MADA-DCAF consultative process underlined that the Palestinian *Draft Law* does not provide enough protection for whistleblowers. They stated that Art. 10 of the *Draft Law*, which stipulates that no penalty may be imposed on informants who reveal contraventions or violations of the Law, does not provide clear definitions of those contraventions or violations. In their view, this vagueness is likely to discourage employees from revealing contraventions or violations. Furthermore, they noted that the *Draft Law* does not specify which oversight institutions have the mandate to review and appeal the decisions made against whistleblowers.

Recommendations for amending the *Draft Law*

Based on their review of the Palestinian *Draft Law on the Right to Access Information* (2005), participants in the MADA-DCAF consultation process have recommended amending the *Draft Law*. To that effect, they have suggested specific recommendations to address the gaps they have identified. Their recommendations are addressed to the experts who will be in charge of amending the *Draft Law* and submitting it to PNA and PLC decision-makers with a view to its enactment into law.

Concerning the principle of freedom of information

- To provide a clear definition of the principle of 'freedom of information'
- To take international standards into account when defining this principle
- To ensure that the Law includes a reference to Art. 19 of the Palestinian Amended Basic Law of 2003

Concerning the definitions and purpose of the Law

- To provide precise definitions explaining the key terms and institutions falling within the scope of the law

- To amend Art. 1 of the *Draft Law* in a way that it specifically mentions those oversight institutions which have a statutory role of government oversight and legally guaranteed access to all information for the fulfilment of their mandate (e.g. the Palestinian Legislative Council, the State Audit and Administrative Control Bureau, the Anti-Corruption Commission, the Commissioner General of Information)
- To broaden the scope of Art. 2 in order for the *Draft Law* to also apply to Palestinian citizens living abroad (e.g. refugees) as well as foreigners, who might have a stake at accessing relevant information held by Palestinian public bodies for personal or public reasons

Concerning the public institutions' measures to promote transparency

- To ensure that the Law strongly asserts the public institutions' commitment to the principles of transparency and accountability
- To amend Art. 4 of the *Draft Law* in a way that it clearly specifies the profile and professional competences of the employee in charge of handling access to information requests, particularly when these requests are submitted by media representatives
- To ensure that the Law clearly distinguishes the function and tasks of the employee in charge of handling access to information requests from the function and tasks of public relations and media officers
- To add to Art. 5 a clause according to which public institutions (such as the Commissioner General of Information) should issue guidelines on modalities for their employees to keep and manage documents in the public institution's possession and to handle access to information requests by citizens or journalists
- To ensure that these guidelines are made fully public
- To ensure that the *Draft Law* specifies the modalities for public institutions to preserve and archive documents according to best practice, and to regularly transfer their records to a central, national archive

- To amend Art. 6 in a way that it specifies the role of the employee in charge of handling access to information requests, and the modalities of his/her participation, in the training courses for public institutions' staff
- To add an Article that imposes on the competent employee to publish regular reports on the activities of the public institution in which he/she operates, and to provide sufficient details about the structure and content of such reports

Concerning the public institutions' duty to publish

- To amend Art. 7 of the *Draft Law* by adding a binding requirement for public institutions to publish detailed annual activity reports
- To ensure that the Law clearly stipulates in what form, through which means and for which addressees these annual reports should be published
- To ensure that the Law mentions the accountability mechanisms, which guarantee the public institutions' commitment to publish the abovementioned reports and to organise public meetings to inform the citizens and the media about their work
- To ensure that the Law mentions the duty for public institutions to publish evidence of wrongdoings by any of their members, with due regard to the need to protect the privacy of the individuals involved and the secrecy of ongoing investigations
- To provide a list of clear examples of those wrongdoings and stipulate that members of public bodies, including security sector institutions, should disclose them to the public or to any government oversight institution as defined in Art. 1 (amended)
- To ensure that the following types of wrongdoings are included in the abovementioned list:
 - significant violations of the law, including human rights violations
 - corruption and mismanagement
 - dangers to public health and safety
 - dangers to the environment

Concerning the procedures for filing and handling access to information requests

- To ensure that the Law strongly asserts the public institutions' commitment to the principle of responsiveness
- To amend Art. 11 of the *Draft Law* in a way that clearly stipulates that requests to access information can be lodged orally or in writing, including through electronic mail for instance
- To amend Art. 13 to reassert the public institutions' duty to provide access to information as soon as is reasonably possible
- To amend Art. 13 in such a way that it does not cast any doubt on the public institution's readiness to respond to the request for access to information in good faith and within the required timeframe. In particular, Art. 13, which states that an unanswered request should be considered as rejected, should mention that institutions not responding to requests can be subjected to appeal and legal proceedings
- To add an Article highlighting the duty of the public institution to explain in writing and with sufficient amount of details the reasons for denying a request for information
- To link Articles 42 and 43, which deal with the fees associated with access to information requests, to the Articles dealing with the procedures for filing and handling access to information requests (Articles 11-18)
- To underscore the principle of free access to information

Concerning the exceptions

- To limit the scope of the exceptions to those cases where the harm resulting from disclosure would clearly override the public interest in disclosure of the information
- To provide clear definitions for key terms such as 'national security' or any other ground on which information may be declared secret or withheld under the Law

- To reaffirm that none of the public bodies, including security sector institutions, should be exempt from disclosing information
- To outline effective review mechanisms by government oversight bodies for a decision to withhold information or to declare it secret
- To define a maximum period of secrecy on grounds of national security and other grounds

Concerning the Commissioner General of Information

- To underscore that the Commissioner should be appointed by parliament and be fully independent from all branches of government
- To assert the structural relations, communication and reporting channels between the Commissioner and the competent employees in charge of handling access to information within the public institutions
- To ensure that the Commissioner's annual report be made public through all available means

Concerning the protection of informants (whistleblowers)

- To bring the *Draft Law* in line with Palestinian anti-corruption legislation, which provides protection for informants
- To provide a list of those wrongdoings which public institutions and their personnel have a duty to disclose, with due regard to the need to protect the privacy of the individuals involved and the confidentiality of ongoing investigations

Recommendations for further steps

Based on the review of the Palestinian *Draft Law on the Right to Access Information* (2005) during the MADA-DCAF consultation process, MADA and DCAF recommend the following steps:

To Palestinian organisations and experts in charge of amending the Draft Law:

- Establish a participative working group of legal experts consisting of representatives of the PLC, the PNA public institutions, civil society, academy and the media
- Assist the working group in re-drafting the Palestinian *Draft Law on the Right to Access Information* in light of the recommendations highlighted in this working paper
- Secure political support from the Office of the President, the Council of Ministers, the PLC, and other relevant ministries (such as the Ministries of Information, Justice and Interior) in order to promote the enactment of a Palestinian *Law on the Right to Access Information*

To PNA and PLC decision-makers:

- Review the work of the working group of legal experts in charge of re-drafting the Palestinian *Draft Law on the Right to Access Information*
- Ensure that endorsing a new *Draft Law on the Right to Access Information* becomes part of

the Government's top priorities in order to strengthen transparency and accountability of the Palestinian public bodies, including security sector institutions

- Enact the Palestinian *Law on the Right to Access Information* into law

To Palestinian civil society and media organisations:

- Raise Palestinian citizens and journalists' awareness of the need for a Palestinian *Law on the Right to Access Information* to be enacted
- Encourage donor support to the PLC and PNA in enacting the new *Law* and its provisions
- Support the establishment of a Commissioner General of Information as prescribed by the *Law*, in order to strengthen the citizens and media's right to appeal restrictions to their right to access information
- Promote stronger public oversight of those bodies, including security sector institutions, which hold documents of personal and public interest

MADA and DCAF reiterate the offer of assistance to the Palestinian authorities and all interested parties in developing Palestinian media legislation which respects civil-democratic standards.

Annex 1

Palestinian Draft Law on the Right to Access Information (2005)⁵

In the Name of God, the Most Gracious, the Most Merciful

Chapter I

General Provisions

Article 1

For the purposes of the enforcement of the provisions of this Law, the following words and expressions shall have the meanings designated thereto below unless the context determines otherwise:

The Authority: The Palestinian National Authority.

The Commissioner General: The Commissioner General of Information.

The Office: The Office of the Commissioner General of Information.

The public institution: All Ministries, departments, agencies, legislative, judicial and executive authorities, local bodies, and private institutions which manage a public facility or perform public works or possess information pertaining to the environment or public health and safety, or any other institution which the Commissioner General deems to be a public institution for the purposes of the enforcement of this Law.

The competent functionary: The functionary who is appointed by the public institution to view the requests to access information.

The piece of information: The piece of information which is available in any of the registers and written or electronically-saved documents, or drawings, maps, tables, pictures, films, microfilms, sound recordings, video tapes, charts, or any data read with special devices, or any other forms which the Commissioner General deems that they fall under the scope of the piece of information in accordance with this Law.

The alternative formula: The formula which enables the persons with special needs to view the required piece of information.

Article 2

This Law shall aim to:

1. Enable the citizen and resident in Palestine to exercise the right to access information which is available at the public institutions in accordance with the provisions of this Law.
2. Promote the spirit of transparency and accountability at the Palestinian public institutions and encourage openness with the people.

Article 3

All information which is in the possession of public institutions shall be deemed to be subject

⁵ This Draft Law was submitted to the PLC plenary in 2005 but was never adopted.

to be accessed, except for those which fall within the scope of the exceptions set forth in this Law.

Article 4

The public institution must appoint a competent functionary to examine the requests to access information and shall grant him or her the powers necessary to search for and access the requested piece of information.

Article 5

Public institutions must keep the information which is in their possession in a regulated manner and in an arrangement which makes it easy for the competent functionary to extract it. Public institutions must also keep the information electronically when possible.

Article 6

Public institutions must organise training courses for their functionaries that are related to the importance of the right to access [information] and enable the citizen to exercise it, along with the manner of the keeping of information and the best and fastest methods to extract them.

Chapter Two

Principles of the Right of Access

Obligation of Publication

Article 7

Public institutions must publish annual reports entailing at least:

1. Administrative information about the mechanism of the function of the public institution, to include the costs, objectives, audited accounts, rules and accomplishments.
2. The procedures on the basis of which the individuals can be familiar with the public policy and projects of the public institution.
3. The types of information which the public institution keeps and the circumstances under which it is kept.
4. The content of any decision or policy that may affect the people and the reasons behind the taking of the decision and the objectives anticipated therefrom.
5. Any other information which the Commissioner General deems to be necessary to be published.

Article 8

The industrial institution, both public and private, must publish semi-annual reports in which they state at least the following information:

1. The locations of the utilised toxic materials as well as their nature and risks.
2. The quantity of the discharges resulting from manufacturing.
3. The manner of the disposal of wastes.

The Opening of Public Meetings to the Public

Article 9

Each public institution, which intends to hold a public meeting, must announce the date and venue of such meeting and the objective therefrom. The public may not be prohibited from attending such meeting except in accordance with the exceptions set forth in this Law.

Protection of the Informant

Article 10

No penalty may be imposed upon the functionary who reveals information about contraventions or violations that are perpetrated against the Law.

Chapter Three

The Request to Access Information

Article 11

The request to access information shall be submitted in writing to the institution which possesses the piece of information. Such request must include sufficient details that enable the competent functionary to extract the piece of information with minimum effort.

Article 12

The competent functionary, immediately after he or she receives the request, give a notice to the person submitting the request, in which he or she states the date on which the request has been submitted, the type of the requested piece of information and the period of time required for responding to the request.

Article 13

The competent functionary must respond to the request within 15 days from the date on which it was submitted. The competent functionary may

extend such period once for a period of time not exceeding 15 days in the event the request entails a large number of pieces of information, or because the accessing of the piece of information requires the consulting with a third party or another public institution. Non-response within that period shall be deemed to be a rejection of the request.

Article 14

In case the request is approved, the competent functionary must enable the person submitting the request to access the information which he or she detailed in the request and define for him or her the cost associated with the accessing of the required piece of information. In the event the request includes more than one piece of information, the competent functionary may allow the person submitting the request to view a portion of the information if the other information fall within the scope of exceptions defined in this Law.

Article 15

Upon approval of the request, the competent functionary must present the piece of information to the person submitting the request in accordance with the formula which is available at the public institutions. The functionary may not only inform the person submitting the request with the piece of information verbally without presenting to him or her the document containing such piece of information. The instructions to be issued forth by the Commissioner General shall define the manner by which the person submitting the request can obtain copies of the required information.

Article 16

In case the person submitting the request is with special needs, the competent functionary must present the piece of information with an alternative formula that is suitable to the disability of the person submitting the request, if such formula is available at the institution. The competent functionary may convert the piece of information into an alternative formula in case he or she deems it necessary. He or she must conduct the conversion in the event the person submitting the request accepts that the conversion is conducted at his or her own expense.

Article 17

The competent functionary may refer the request to another institution, after having notified the person submitting the request thereof, in case he or

she finds that the relation of such institution to the piece of information is closer. This covers the fact that the other institution has prepared the piece of information or that it possesses alternative formulas of the piece of information. In such case, the request shall be deemed as if having been submitted to the public institution to which the request has been referred.

Article 18

In the event the request is rejected, the competent functionary must state in a written response which he or she shall hand to the person submitting the request the reason behind the rejection of the request. The reason may not be beyond [the following]:

1. That the piece of information is not in the possession of the institution.
2. That the required piece of information falls within the scope of the exceptions set forth in this Law.

Chapter Four

The Exceptions

National Security and Public Order

Article 19

The competent functionary must refuse to reveal any piece of information in the event such revealing is proved to cause damage to the defence capabilities and national security of the state. This includes:

1. Weapons, tactics, strategies and military forces as well as the military operations which aim to protect the homeland.
2. The intelligence information which pertains to the blocking of aggressive acts and crimes perpetrated against the internal and external security of the state in pursuance of the Laws in force.
3. The international communications and correspondences which are related to the defence affairs and military alliances.
4. Any piece of information which the Commissioner General is convinced that it causes damage to the public security and order.

Article 20

The competent functionary must refuse to reveal any piece of information that is related to a state or international organisation with which it has been agreed to keep such piece of information classified.

Article 21

The competent functionary may not refuse to disclose information in the cases mentioned under Articles (19 and 20) above in the event such information is still in the possession of the institution and date back to more than twenty years, except in cases in which the Commissioner General is convinced of the necessity to keep such information classified for another renewable period of time.

Article 22

The competent functionary at the institutions which assume the task of investigation in crimes and control of contraventions and performance of Police functions shall be entitled to refuse to disclose information in the event such disclosure causes damage to the investigations and implementation of required tasks, or in the event such disclosure jeopardises the reputation of persons whose conviction is not proved yet.

Issues of Economic Security

Article 23

The competent functionary may refuse to reveal any piece of information containing:

1. Professional or commercial secrets that pertain to the institution.
2. Secrets the revealing of which leads to causing material damages to the economic interests of the state or its ability to manage the national economy, or results in personal gains for a person or body. This includes:
 - A. The prices of the currency in circulation in Palestine.
 - B. The anticipated changes in the fees of the customs tariff, taxes, fees and any other sources of revenues.
 - C. The anticipated changes in the rates of interest related to governmental loans.
 - D. The anticipated changes in the prices of governmental properties, including

shares, movable properties and real estate.

- E. Transactions which the public institution intends to conclude in regard of a merchandise, the revealing of which may lead to the influencing of the prices of such merchandise in the market.

Article 24 Commercial Secrets

The competent functionary must refuse to disclose any piece of information that feature professional secrets of a third party, or the disclosing of which leads to the weakening of the competitive status of a third party unless the third party agrees to the disclosure.

Article 25 The Internal Affairs of the Institution

The competent functionary may refuse to disclose the piece of information in the event it is related to the internal affairs of the institution and its functionaries as well as the internal orders, discussions and preliminary proposals.

Article 26 Public Health and Safety

The competent functionary may refuse to disclose the piece of information in the event it pertains to unconfirmed anticipations about natural disasters or epidemic diseases the possibility for the occurrence of which is weak.

Article 27

The competent functionary may refuse to reveal any piece of information the revealing of which may harm or cause damage to the safety of individuals.

Article 28 Privacy

The competent functionary must refuse to disclose any piece of information that pertains to a third party and which is related to his or her private life except in the following cases:

1. If the concerned person agrees to such disclosure.
2. If such piece of information is publicly disseminated.
3. If such disclosure has been requested by a judicial judgement or under an approval from the Commissioner General.
4. If the person submitting the request is a custodian of the third party.

5. If the person submitting the request is a relative to the third party and submits the request following his or her death by at least twenty years.

Chapter Five

The Commissioner General of Information

Article 29

In pursuance of the provisions of this Law, an office for the Commissioner General of Information shall be established. It shall enjoy the judicial character and the independence necessary to exercise its functions. The Office shall be allocated a special budget within the public budget of the Palestinian National Authority.

Article 30

The Office shall be deemed to an authority of appeal for each person whose request to access information has been rejected. The Office shall aim to the ensuring of the enforcement of the provisions of this Law and accomplish the goals anticipated therefrom. Thus, it shall be entitled to exercise the following powers:

1. Put forward, regulate and implement the programmes, plans and policies pertaining to the defence of the right of the individual to access and view information.
2. Educate and raise awareness of the citizen about the importance of the right of access and the positive results of the exercising of it on the level of the individual, the society and the state.
3. Contribute to the training of functionaries and officials at the public institutions on the manner and significance of the enabling of individuals to access information.
4. Monitor the contraventions and publish the reports and studies which entail the impediments to the exercise of the right of access and how to overcome them.

Article 31

The main headquarters of the Office shall be in Jerusalem. It may establish branches throughout governorates.

Article 32

The Office shall be deemed to an authority of appeal for each person:

1. whose request to access information has been rejected;
2. on whose request high charges have been imposed;
3. whose request to access the piece of information in an alternative formula has been rejected;
4. the period of time required to respond to his or her request has been extended in a manner contravening the provisions of Article (13) above;
5. whose request has been referred to more than one institution without approval thereof; and
6. any other cases which the Commissioner General of Information admits.

Article 33

The appeal must be submitted to the Office within 30 days from the date on which the request was rejected, or from the date on which the institution took the measure which the person submitting the request wishes to appeal.

Article 34

The Office must respond to the appeal within a period of time not exceeding three months from the date on which it was submitted thereto. The Office must, immediately after it receives and admits the appeal, send a letter to the competent functionary at the institution which rejected the request to access information, in which it notifies him or her of the appeal and requires that the reasons behind rejection be made clear.

Article 35

The Commissioner General of Information shall preside over the Office. He or she shall be appointed by a decision from the Council of Ministers and approval of the Palestinian Legislative Council for a period of four years that is renewable for one time only. His or her salary and other financial entitlements shall be defined in the decision.

Article 36

The Commissioner General shall be responsible for the following up with and issuing forth of the decisions pertaining to the appeals to the Office, the appointing of functionaries at the Office and setting forth of a regulation thereto.

Article 37

The Commissioner General of Information must be devoted to his or her work at the Office. He or she may not, during the assumption of his or her function, perform any work or occupy any position or function with or without pay.

Article 38

The services of the Commissioner shall, legally, expire in the following cases:

1. In case he or she is convicted with a crime or misdemeanour which involves moral or trust turpitude.
2. In case he or she exercises the acts of any other function or position.
3. In case he or he is confined or he or she is declared bankrupt.

Article 39

The recommendations issued forth by the Commissioner General shall be deemed to be binding to all public institutions.

Article 40

For the purposes of the implementation by the Commissioner General of his or her tasks, the following powers shall be bestowed upon him or her:

1. The right to enter any public institution and inspect its registers and papers and any documents that are connected to the required information.
2. Investigate any functionary in private in order to access the required information.
3. Refer to the judiciary the persons responsible for the concealing or damaging of the information or modifying it in a manner that contravenes its truth with the intention to evade from presenting it.
4. Inquire the senior state officials such as Ministers and those alike about the reason behind their concealing of the information in the event such concealing is resultant from orders issued forth by them directly. The Commissioner General, in this case and as he or she is not convinced of the submitted justifications, shall be entitled to submit an immediate report to the President of the

Authority or the Chairman of the Council of Ministers or the Legislative Council to take the appropriate measures.

Article 41

The Commissioner General shall adhere to the submitting of regular reports every six months to each one of: the President of the National Authority, the Chairman of the Council of Ministers and the Palestinian Legislative Council. The reports must entail the following:

1. The cases of unjustified abstention from the submitting of information.
2. The executive problems which he or she faces during the implementation of his or her tasks.
3. Any other recommendations which the Commissioner deems fit.

Chapter Six

The Fees

Article 42

The fees associated with the requests to access information shall be defined in a bylaw to be developed by the Commissioner General and issued forth by the Council of Ministers. The fee must not exceed ten Jordanian Dinars or its equivalent of the currency in circulation, with the exception of the following cases:

1. The covering of the cost of photocopying or required copies as per their market value.
2. The covering of the alternative formulas of the information as per their market value.
3. In the event the request incorporates more than one piece of information.

Article 43

The fees associated with the appeal must not exceed ten Jordanian Dinars or its equivalent of the currency in circulation.

Chapter Seven

Conclusive Provisions

Article 44

Each provision which contradicts the provisions of this Law shall be repealed.

Article 45

The Council of Ministers must issue forth the bylaws necessary for the enforcement of this Law within a period of time not exceeding six months from the date on which it is published.

Article 46

All competent authorities – each one within its sphere of jurisdiction – shall implement the provisions of this Law which shall enter into force one year following its publication.

Annex 2

Palestinian laws and regulations that place restrictions on the right to access information⁶

Many Laws applicable in the Palestinian Territories place restrictions on the right to access information. These laws include:

1. The **Law on Printed Materials and Publication No. 9 of 1995** (Article 37) which prohibits the press from publishing a set of information, including:
 - Articles that may jeopardise national unity; incitement to commit crimes; spread of malice; dissemination of hatred, discord and dispute; and arousal of sectarianism among members of the society.
 - Minutes of in camera sessions of the National Council and Council of Ministers of the Authority.
 - Articles or news that are meant to undermine trust in the national currency.
 - Articles or news that may degrade the dignity or personal freedoms of individuals or cause harm to their reputation.

This provision prohibits circulation of a broad set of information that is not precisely specified or clarified. Because its wording is loose, it allows much room to prevent a proper flow of information.

2. The **Jordanian Penal Law No. 16 of 1960** still in force in the West Bank includes several articles which penalise any person who attempts to access information that must remain confidential in order to preserve the safety of the State. The Law aggravates the penalty in the event the purpose of collecting information is in favour of a foreign state. To this avail, Article 126(1) provides that “[a] person who has in his possession some documents or information, such as those mentioned under Article 124, and reports or

divulges it without a legitimate reason shall be punished with temporary hard labour for a term of not less than ten years.” This provision is problematic because it does not provide a clear and specific definition of the information, which must remain confidential. Accordingly, a broad set of information can be included under this heading.

3. The **Law of Civil Service No. 4 of 1998** (Article 67) provides that a public functionary is prevented from “disclosing any matters of which he has become aware by virtue of his function other than in those fields permissible by law, even after he has left the post.” This article considers that information, which an employee in a public institution possesses, is principally secret unless the law provides otherwise. However, this is entirely contradictory to Principle 1 of the Right to Access Information, which envisions that information of public interest is subject to access unless the law prescribes otherwise.
4. The **Law on Local Bodies No. 1 of 1997** (Article 8(5)) prescribes that the “Council may invite any person to attend any of its sessions and to take part in discussing specific issues if such invitation is made by a majority of the members present. At any rate, decisions of the Council shall be made in presence of members only.” This provision considers that sessions of Councils of Local Bodies should be closed unless the majority of members decide to make them open to the public. As such, the article contravenes the principle of open meetings – one of the nine principles on which the right to access information rests.
5. The **Law of General Intelligence No. 17 of 2005** (Article 30) provides that the “information regarding the regulation of the Intelligence and its activities, functions, documents, headquarters and properties and the data of the members shall be deemed to be from among the secrets of

⁶ Source: Barghouthi, Bilal, *Research Paper. The Right to Access Information in Palestine*, Ramallah, 2011.

national security, the revealing of which shall be prohibited. Such shall be applicable to all members of the Intelligence and those employed under special contracts even following the expiration of their service.” Deeming that all functions performed by the General Intelligence agency are of a confidential nature, this provision clearly violates the principles of maximum disclosure and limited scope of exceptions, which state that not a single public body should be excluded from the scope of the law even if the majority of its functions fall within the scope of exceptions.

6. The **Decree Law No. 11 of 2007 Concerning the Preventive Security** (Article 10) prescribes that “(1) The investigations and information of the Directorate General of the Preventive Security may not be viewed except upon a special permission from the competent Minister or in execution of a judicial judgement. (2) Without prejudice to the provisions of Paragraph (1) above, the information, activities and documents pertaining to the work of the Preventive Security shall be deemed to be confidential and may not be disclosed.” The observation about the Law of General Intelligence (Item 5 above) is applicable to this Decree Law.

7. The **Draft Law of the National Archive** (Article 23) provides that:

1. Public documents and registers in possession of the institution may not be accessed except following the elapse of twenty years from the date of its establishment, with the exception of the following:

(a) Documents collected in the course of statistical investigations within the framework of government bodies, which include information on individuals’ personal or family life and generally relate to their actions and conduct, the duration shall be sixty years starting from the date of the enumeration or investigation.

(b) Cases examined by the judiciary, which are relevant to the personal or family life of individuals, the duration shall be sixty years from the date on which a final judgement thereon was entered.

(c) Civil status documents and files, as well as the documents and files that

contain information on individuals’ private life or individual information of a medical nature, the duration shall be one hundred years starting from the date on which the person was born.

2. It shall be allowable, by a decision from the President of the Authority, to identify the kinds of documents that may be accessed prior to the expiration of twenty years as an exception from the provisions of Paragraph 1, upon a recommendation from the head of the institution (...)

3. The institution may allow access to public documents and registers kept thereby prior to the expiration of the durations provided under Paragraph 1 of this Article for requirements of scientific research, following approval of the body that created such documents and registers, and without prejudice to the confidential nature of personal life or safety of the homeland.

Annex 3

Questionnaire submitted to the participants of the MADA-DCAF consultative process

1. Scope and definitions

1.1. Constitutional anchorage

- Does the law refer to an article in the Constitution, which guarantees the right to access information?

1.2. Principle of maximum disclosure

- Does the law include the principle of "maximum disclosure"?

1.3 Definition of 'information' and 'public bodies'

- What do the definitions of 'information' and 'public bodies' encompass?
- What other relevant definitions can be found in the law?

2. Obligation to publish

- Does the law mention the obligation for public institutions to disclose information?
- What types of documents do the public institutions have to publish regularly?
- Does the law mention the obligation for public institutions to hold public meetings?

3. Promotion of open government

3.1 Information officer

- Does the law foresee the appointment of an information officer?

3.2 Maintenance of records

- Does the law specify the obligation for public institutions to maintain records?

3.3. Training of officials

- Does the law specify the obligation for public institutions to train officials in dealing with access to information requests?

3.4 Information commissioner

- Does the law foresee the establishment of an information commissioner's office?
- What duties does the law specify for the information commissioner?

4. Procedures to grant access

4.1 Application

- Does the law specify the procedures for the requester's application?

4.2 Timeframe

- Does the law specify the timeframe within which public institutions have to provide the information to the requester?

4.3 Fees

- Does the law specify the fees to be paid by the requester?

4.4 Review

- Does the law foresee an independent review of refusals to provide access to information?

5. Limited scope of exceptions

- Does the law entail a list of exceptions to the right of access to information?
- What are these exceptions?
- What do the exceptions related to national security include?

6. Protection for whistleblowers

- Does the law specify measures for the protection of whistleblowers?

Annex 4

Overview of the MADA-DCAF Consultation Process

	Date	Place	Session	Nr of Participants
1	04.12.2011	Ramallah	Meeting of the MADA-DCAF legal experts' team, including representatives of the media, civil society, security forces, the PLC and the judiciary	7
2	12.12.2011	Gaza	Workshop with media and civil society representatives	20
3	13.12.2011	Gaza	Workshop with media and civil society representatives	25
4	14.12.2011	Nablus	Workshop with media and civil society representatives	10
5	24.01.2012	Bethlehem	Workshop with media and civil society representatives	18
6	14.03.2012	Hebron	Workshop with media and civil society representatives	17
7	19.03.2012	Gaza	Workshop with media and civil society representatives	19
8	04.04.2012	Tulkarem	Workshop with media and civil society representatives	19
9	18.07.2012	Ramallah	Meeting of the MADA-DCAF legal experts' team, including representatives of the media, civil society, security forces, the PLC and the judiciary	11
Total number of participants:				146

The Geneva Centre for the Democratic Control of Armed Forces (DCAF)

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DCAF Head Office, Geneva

Geneva Centre for the Democratic Control of Armed Forces (DCAF)
P.O. Box 1360
CH-1211 Geneva 1
Switzerland
www.dcaf.ch

DCAF Ramallah

Al-Maaref Street 34
Ramallah / Al-Bireh
West Bank
Palestine
Tel: +972 (2) 295 6297
Fax: +972 (2) 295 6295