

Access to Information and Security Sector Governance



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the rule of law

Tool

4

Tool 4

Access to Information and Security Sector Governance

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

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the core security and justice providers such as police, judiciary, intelligence agencies, border security services and the military.

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Introduction

The media and the security sector

In established democracies, free and independent media play a crucial role in overseeing the work of core security and justice providers. The media inform citizens about the work of law enforcement and defence institutions. They encourage people to participate in, or dispute decisions made by executive, legislative or judicial authorities on key issues related to public safety and security. The media also fulfil a watchdog function by shedding light on abuses and cases of mismanagement by formal security sector institutions. From the point of view of the authorities, engaging constructively with the media can add to their own legitimacy and that of security and justice providers. In parallel, citizens can enhance their understanding of what the security sector is and how it works thanks to well researched media reporting on related issues.

Journalists and other members of the media often acknowledge the importance of strengthening their role in security sector governance. However, many media practitioners still face various obstacles and tend to encounter special challenges when reporting on security-related topics. These challenges can include: blocked or restricted access to information that is considered sensitive; a lack of trust between security institutions and the media; and an under-developed awareness of their own role and modern definitions of security. Journalists and other members of the media may also lack a sufficient working knowledge of relevant media laws and legislation. They are often not systematically aware of the particular issues to be considered when covering a specific security-related event. In addition, they are often unaware of the impact social media can have on security sector coverage.

As a partial response to the challenges faced by journalists and other members of the media, the

Geneva Centre for the Democratic Control of Armed Forces (DCAF) has produced this toolkit for trainers. While the toolkit has been developed in the Arab region and provides practical examples from this region, it has been designed to be used by media trainers in any region of the world.

Background

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes democratic security sector governance and security sector reform.

As part of its long-term assistance programme to Palestinian security sector reform, DCAF has assisted civil society and media in strengthening their public oversight role in the security sector. In particular, it has fostered an on-going involvement with various Palestinian media organisations since 2008.

During the first phase of its involvement, DCAF conducted a consultative process of conferences, workshops and training needs assessments through which Palestinian media practitioners evaluated their strengths and weaknesses in assuming their oversight role in the security sector. The results of this process have shown that journalists often lack specific training on how to conduct oversight of the security sector.

In the second phase, DCAF has developed this training toolkit to present and discuss the role of journalists in overseeing the security sector and the different skills and methods journalists can use for this purpose. The toolkit aims to build on journalists' existing knowledge and includes sessions on developing an understanding of the security sector, security sector reform and governance, media laws, access to information, planning stories related to security and a session on social media and security sector governance.

In the third phase, DCAF cooperated with the Palestinian satellite TV channel 'Wattan TV' to conduct a first joint pilot training workshop using these materials, in Ramallah. The workshop focused on further enhancing the capacity of Palestinian journalists in reporting on security-related issues. As an integral part of the training workshop, the trainees were given the opportunity to cover meetings of community safety councils at governorate level and in this way apply and test their newly acquired skills.

Since this first pilot training workshop, the sessions in the toolkit have been used and tested many times, both as stand-alone sessions and as a whole course. Feedback from these training workshops and courses has been invaluable in revising and further developing the materials and activities used in this manual.

The training toolkit

The training toolkit has been designed to function as a whole training course or as stand-alone sessions on specific topics.

The training toolkit consists of the following tools:

Tool 1. Using the Toolkit and Acquiring Training Skills

Tool 2. The Media and Security Sector Governance

Tool 3. Media Freedom and Security Sector Governance

Tool 4. Access to Information and Security Sector Governance

Tool 5. Reporting Community Safety

Tool 6. Social Media and Security Sector Governance

It is envisaged that additional sessions may also be developed and added based on further needs.

Tool 1 offers information for the trainer on training skills and also gives information on how to use the training sessions in the toolkit as a cohesive training course, if so desired. It includes introductory and conclusion sessions. Tools 2 to 6

are training sessions. These can be used as stand-alone sessions or used together to form the more comprehensive training course.

Target audience

The materials in the toolkit are intended to be read and used by media trainers with an expertise in security sector governance and reform.

The target audience for the training course itself is mainly journalists and editors/producers, but can be extended to include any member of the media.

DCAF remains available to support trainers, journalists and editors/producers interested in obtaining copies of this training toolkit or advice on how to use it.

Using the session

As specified above, this session can be used as a stand-alone training session on access to information and SSG or as part of the overall course, *The Role of the Media in Security Sector Governance*.

The structure of the session

This training session consists of the following elements:

1. **The introduction** lists the learning objectives and focus questions for the session. It also lists the handouts and trainer resources which are used in the session.
2. **The session plan** gives a full overview of the session. It is a guide for the trainer to get a quick understanding of the session. It is also used as a quick reference to help the trainer to keep track of activities and of timing during the training.
3. **The description of activities** explains in more detail how to carry out the activities listed in the session plan individually.
4. **The handouts** are given to the participants during the activities in the sessions. They are easily photocopied and can include:
 - Worksheets with tasks for the participants to complete
 - Hard copies of PowerPoint presentations
 - Summaries of key information
 - Publications
5. **The trainer resources** provide supporting information for the trainer. They also provide sets of questions to allow the trainer to prepare country-specific activities. They can include:
 - Summaries of international best practices

- Sets of questions from which to construct a country-specific handout
- Examples of the completed activities

The activities in the session are designed to be used in the order suggested in the session plan and one exercise often builds on an exercise before. However, the sessions are a resource from which the trainer can make adaptations and changes as deemed fit. The trainer is expected to adapt the sessions in the light of the objectives that need to be achieved, the country/cultural environment in which the training takes place, and the specific needs and capacities of the participants.

Why is access to information important for journalists?

Public participation of citizens is a key element for well-functioning democracies. In order to contribute to the decision-making process of policies that affect their lives, citizens need to be able to inform themselves. The media play a crucial role in facilitating citizens' access to information.

The right to access information is enshrined in major international human rights treaties and covenants. To date, more than 90 countries worldwide have adopted access to information laws. In principle, these laws regulate citizens' and the media's access to all forms of documents held by public bodies and security sector institutions.

In practice, states often impose many exceptions to the right to access information, including on national security grounds. In such contexts, the media play a key role in raising citizens' awareness about the right to access information to combat secrecy and misuses of power.

Access to Information and Security Sector Governance: The Training Session

Learning objectives

The session aims to give participants a clear understanding of the objectives, principles and structure of access to information laws. The session also allows participants to better understand how to request access to information held by government bodies and how to deal with authorities' denials to disclose information on grounds of national security. The specific learning objectives include:

- Understanding objectives, principles and structure of access to information legislation
- Understanding international and national regulations and mechanisms for accessing information held by security sector institutions
- Becoming aware of the main obstacles to accessing information held by security sector institutions
- Becoming aware of information legitimately withheld on grounds of national security

- Becoming aware of the ways information can be accessed in the absence of comprehensive access to information legislation
- Sharing experience of field practices and developing solutions to apply in the participants' own practices

Focus questions

The following questions are addressed through the activities in this session:

- What are the objectives, principles and structure of access to information laws?
- What are the international standards concerning access to information?
- What are the exceptions to access to information?
- How can information be accessed in the absence of access to information legislation?
- How can the knowledge acquired in the session be applied in practice?

Overview

Session Plan 4. Access to Information and Security Sector Governance (SSG)

Description of Activities

Handout 4.1 Test : Access to information and security sector governance (SSG)

Handout 4.2 PowerPoint presentation hardcopy: Access to information legislation and security sector governance (SSG)

Handout 4.3 Reading and discussion: Analysing the national access to information law

Handout 4.4 Scenarios and discussion: Refusals to disclose information on national security grounds

Handout 4.5 Information sheet: Principles 9 and 10 of the Open Society Institute's Draft Principles on National Security and the Right to Information

Handout 4.6 Worksheet: Gaining access to information in the case of a refusal

Handout 4.7 Information sheet: Options for accessing information in the absence of an access to information law and/or in case of authorities' refusal to disclose information

Trainer Resource 4.1 Information sheet: Article 19's Model Freedom of Information Law (Extracts)

Trainer Resource 4.2 Answer sheet: Answers to the access to information pre- and post-test

Session Plan

Access to Information and Security Sector Governance					
Learning objectives	<p>Participants will be able to:</p> <ol style="list-style-type: none"> 1. Understand objectives, principles and structure of access to information legislation 2. Understand international and national regulations and mechanisms for accessing information held by security sector institutions 3. Become aware of the main obstacles to accessing information held by security sector institutions 4. Become aware of information that may be legitimately withheld on grounds of national security 5. Become aware of the ways information can be accessed in the absence of comprehensive access to information legislation 6. Share experience of field practices and developing solutions to apply in the participants' own practices 				
Content to be covered	<ul style="list-style-type: none"> • International standards concerning access to information • Structure of the national access to information law • Exceptions to media's access to information • Information that may be legitimately withheld on grounds of national security • Ways of accessing information in the absence of access to information legislation • Practical application of information learnt in the session 				
Time	240 min				
Activity	Time	Description of activity	Grouping and Materials	Session objectives	Comments
1	10 min	Introduction and pre-test	Trainer to whole group Handout 4.1 Test: Access to information and security sector governance	-	The trainer overviews the session (relevance, focus questions addressed, activities and timing). The trainer then gives each participant Handout 4.1 , which is used as a short baseline test to assess the participants pre-existing awareness of access to information issues and to focus them on the contents of the session. (This same test will be used again, but as a post-learning assessment tool, at the end of the session, in Activity 7.) The trainer collects the tests from each participant. The trainer does not discuss the answers to the test now but instead explains to the participants that they will receive the same test at the end of the training session and that these questions will be answered during the session.

Access to Information and Security Sector Governance					
Activity	Time	Description of activity	Grouping and Materials	Session objectives	Comments
2	30 min	<i>Discussion: Access to information legislation: Objectives, principles, and exceptions</i>	Pairs Feedback from selected pairs to whole group Flipchart	Obj. 1	The trainer asks the participants to discuss in pairs what they believe are the main principles and objectives of access to information legislation. On a flipchart, the trainer writes the three following headers: <ul style="list-style-type: none"> • Objectives • Principles • Exceptions The trainer asks the pairs to provide feedback to the whole group. The trainer writes their key points under each of the headers. Alternatively, the trainer can ask group participants to do so. The trainer also encourages participants to comment on each other's points.
3	20 min	<i>PowerPoint presentation: Access to information legislation and security sector governance (SSG)</i>	Trainer to whole group. Handout 4.2 PowerPoint presentation <i>hardcopy: Access to information legislation and security sector governance (SSG)</i> Computer, projector	Obj. 1-2-3	The trainer makes a PowerPoint presentation covering the topic of access to information legislation and security sector governance (Handout 4.2). The trainer makes clear that this presentation will clarify the points discussed above in Activity 2. During the presentation, the trainer encourages questions and remarks from the whole group.
Break					
4	60 min	<i>Reading and discussion: Analysing the national access to information law</i>	Small groups Feedback from selected groups to whole group Handout 4.3 <i>Reading and discussion: Analysing the national access to information law</i> A copy of the national access to information laws or Article 19's <i>Model Freedom of Information Law</i> Trainer Resource 4.1 <i>Information sheet: Article 19's Model Freedom of Information Law (Extracts)</i>	Obj. 1-2	In preparation for the training, the trainer makes several copies of the national access to information law. In case there is no such law, the trainer can choose to use Article 19's <i>Model Freedom of Information Law</i> . The link to this model law is available in Trainer Resource 4.1 . Each group receives a set of questions (Handout 4.3) to investigate the national access to information law. The small groups then provide feedback to the whole group.

Access to Information and Security Sector Governance					
Activity	Time	Description of activity	Grouping and Materials	Session objectives	Comments
5	50 min	Scenarios and discussion: Exceptions to access to information on national security grounds	Small groups Feedback from selected groups to whole group Handout 4.4 Scenarios and discussion: Refusals to disclose information on national security grounds Handout 4.5 Information sheet: Principles 9 and 10 of the Open Society Institute's Draft Principles of National Security and the Right to Information	Obj. 3-4	The trainer uses Handout 4.4 to give one scenario to each group. Participants read the scenarios in their groups and answer the three questions in the handout. They discuss their answers and provide feedback to the whole group. Next, the trainer distributes one copy of Handout 4.5 to each group. This handout includes principles 9 and 10 of the Open Society Institute's <i>Principles of National Security and the Right to Information</i> : "Information that legitimately may be withheld on national security grounds, and information that should be disclosed". The participants work in their groups and read the Draft Principles contained in Handout 4.5 and discuss whether the documents highlighted in the scenarios in Handout 4.4 can be legitimately disclosed or not. The small groups then provide feedback to the whole group.
Break					
6	60 min	Discussion: Gaining access to information in the case of a refusal	Small groups Feedback from groups to whole group Handout 4.6 Worksheet: Gaining access to information in the case of a refusal Handout 4.7 Information sheet: Options for accessing information in the absence of an access to information law and/or in case of authorities' refusal to disclose information Blank cards	Obj. 5-6	The trainer puts the participants into small groups and gives each group one copy of Handout 4.6 . Handout 4.6 asks the group to discuss together and list three possible approaches to accessing information in the absence of an access to information law and/or in case of the authorities' refusal to disclose information on national security grounds. The participants give examples where available. The small groups then provide feedback to the whole group. After the feedback, the trainer asks the participants to once again form their small groups if necessary. The trainer gives each participant Handout 4.7 , which provides examples of possible ways for journalists to access information when facing a refusal. The participants read the handout and then discuss together which of these solutions are applicable in their country and how they could use these points in addition to the points they have already raised to improve their access to information. The small groups then give feedback to the whole group.
7	10 min	Conclusion, re-cap and post-test	Trainer to whole group Trainer Resource 4.2 Answer sheet: Answers to the access to information pre- and post-test	-	The trainer distributes the same tests that the participants took in Activity 1. This time the test functions as a short post-learning assessment test. After the participants have completed the test the trainer can check if the participants have changed their answers from the pre-test ones and also give the correct answers to the participants. (The correct answers to the test are available for the trainer in Trainer Resource 4.2 .) The trainer then re-caps activities covered and what key points have been learnt. The trainer can choose to elicit this information from the participants.



Description of Activities

This section describes in more detail the activities listed above.

Activity 1. Introduction

The trainer explains to the whole group why an awareness of principles and standards of access to information is relevant for them as media practitioners who oversee the security sector. Next, the trainer can use the focus questions (on page 11) to frame up the content of the session. Finally, the trainer gives an overview of the kind of activities the participants will be doing and the timing for the day.

The trainer then gives each participant **Handout 4.1**, which is a short baseline test to assess the participants' pre-existing awareness of access to information issues and to introduce them to the contents of this session. Once completed, the trainer collects the tests from each participant. The trainer does not discuss the answers to the test at this point. Instead, the trainer explains that the participants will receive the same test at the end of the training session. The comparison between the results of the pre-session test and the post-session test will allow some assessment of the knowledge the participants have acquired during the session.

Materials:

- **Handout 4.1** Test: Access to information and security sector governance

♣ *Alternative:* The trainer can prepare an agenda of the day based on the session plan, give this as a handout and talk it through with the participants.

Activity 2. Discussion: Access to information legislation: Objectives, principles, and exceptions

Activity 2 is a pair-work discussion. This activity allows the participants to direct their attention to the session's topic, and to begin to bring

in their own experiences and understanding. Participants discuss what they think should be the objectives, principles and exceptions included in access to information legislation.

On a flip chart, the trainer writes the three following headers:

- Objectives
- Principles
- Exceptions

The trainer asks the participants to provide feedback to the whole group and the trainer writes the key points under each of the relevant headers. Alternatively, the trainer can ask the groups to do so themselves.

Materials:

- Flipchart

Activity 3. PowerPoint presentation: Access to information legislation and security sector governance (SSG)

This activity consists of a PowerPoint presentation on the topic of access to information legislation and security sector governance. As with all use of PowerPoint presentations in the sessions, the trainer is encouraged to use a minimum number of slides, use images, and encourage the participants' participation by both addressing questions to them and inviting them to ask questions. The trainer may provide the participants with a hardcopy of the presentation (**Handout 4.2**). This may be handed out before or after the presentation. The trainer may also ask the participants to discuss a question in pairs before asking for feedback.

Materials:

- **Handout 4.2** PowerPoint presentation hardcopy: Access to information legislation and security sector governance (SSG)
- Computer, projector

Activity 4. Reading and discussion: Analysing the national access to information law

This activity allows the participants to become familiar with the national access to information law.

The participants are divided into small groups (for example, groups of three participants) and each group is given one copy of the national access to information law and a set of questions (**Handout 4.3**). The group members answer the questions together by scanning through the law. There are three sets of questions about the laws (if there are more than three groups of participants, then the trainer can give some of the groups the same set of questions). The trainer manages the feedback to make sure that there is feedback that covers all three sets of questions.

Note that this may be the first time that the participants have seen the law. They should each be provided with a copy of the law at the end of this activity. They can then be encouraged to make any personal annotations by allocating time to do so. Prior to the session, the trainer should prepare for this activity by answering all the questions in **Handout 4.3**.

Note: If the country has no access to information law, the trainer can use Article 19's *Model Freedom of Information Law*. The link to this *Model Law* is available in **Trainer Resource 4.1**. This Resource also provides answers to the questions outlined in **Handout 4.3** as applied to Article 19's *Model Law*.

Materials:

- Copies of the national access to information law
- **Handout 4.3** *Reading and discussion: Analysing the national access to information law*
- **Trainer Resource 4.1** *Information sheet: Article 19's Model Freedom of Information Law (Extracts)*

Activity 5. Scenarios and discussion: Exceptions to access to information on national security grounds

This activity allows participants to acquire a better understanding of the documents held by security sector institutions that journalists can seek to obtain. The activity also allows them to know those exceptions to access to information which information officers working in security sector institutions may make on national security grounds.

The trainer divides the participants in three groups and gives to each group one of the three scenarios included in **Handout 4.4**. Each group reads the scenario and answers the three questions outlined in the handout. They share their answers with the whole group.

The trainer then distributes hardcopies of **Handout 4.5**, which includes Principles 9 and 10 of the Open Society Institute's *Draft Principles of National Security and the Right to Information*. The resource provides two types of information:

- a) Information that legitimately may be withheld on national security grounds
- b) Categories of information with a high presumption in favour of disclosure

In groups, participants read **Handout 4.5** and debate whether the documents highlighted in **Handout 4.4** can be legitimately withheld or not.

Feedback is provided from selected groups to the whole group.

Materials:

- **Handout 4.4** *Scenarios and discussion: Refusals to disclose information on national security grounds*
- **Handout 4.5** *Information sheet: Principles 9 and 10 of the Open Society Institute's Draft Principles of National Security and the Right to Information.*

Activity 6. Discussion: Gaining access to information in the case of a refusal

This activity allows the participants to discuss how they can gain access to information in the

absence of legislation or in case of a refusal from the authorities.

The trainer puts the participants into small groups and gives each group one copy of **Handout 4.6**. **Handout 4.6** asks the group to discuss and list three possible approaches to accessing information in the absence of an access to information law and/or in case of the authorities' refusal to disclose information on national security grounds. The participants exchange examples where available. The small groups then provide feedback to the whole group.

After the feedback, the trainer asks the participants to once again form their small groups if necessary. The trainer gives each participant **Handout 4.7**, which provides examples of possible ways for journalists to access information when facing a refusal. The participants read the handout and then discuss which of the proposed options are applicable in their country and how they could use these methods in addition to the points they have already raised to improve their access to information. The small groups then again give feedback to the whole group.

Materials:

- Blank cards
- **Handout 4.6** *Worksheet: Gaining access to information in the absence of an access to information law*
- **Handout 4.7** *Information sheet: Obtaining information in the absence of an access to information law and/or in case of authorities' refusal to disclose information*

Activity 7. Conclusion, re-cap and post-learning test

The trainer distributes the same tests that the participants took in Activity 1. This time the test functions as a short post-learning assessment test. After the participants have completed the test the trainer can check if the participants have changed their answers from the pre-test ones and also give the correct answers to the participants. (The correct answers to the test are available for the trainer in **Trainer Resource 4.2**)

The trainer then outlines the activities covered during the session and what key points have been learnt. The outline would include:

- Recapitulating the activities covered
- Discussing key points of what has been learnt
- Giving an overview of the resources the journalists now have (e.g. PowerPoint presentation hardcopy, copies of the national access to information law or Article 19's Model Freedom of Information Law, information sheet on *Draft Principles on National Security and the Right to Information*, information sheet on obtaining access in the case of a refusal).

Alternatively, the trainer can elicit this information from the participants.

Assessment of participant learning

Assessment of participant learning in this session is accomplished through the comparison between the pre-learning baseline test and the post-learning test. Assessment is also accomplished through the trainer assessing the participants' level of achievement in Activities 4, 5 and 6. The trainer may choose to do this by assessing whether the participants' performance in the tasks has been satisfactory or not.



Handout 4.1

Test: Access to information and security sector governance (SSG)

In Activity 2, participants complete a pre-test on access to information and security sector governance. The test will be taken again at the end of the session, during Activity 7.

Name:

1. Is there a law on access to information in your country?

- a) Yes
- b) Yes, but it is outdated
- c) No, there is only a Draft Law
- d) No, there is neither a Law nor a Draft Law

Pre-session answer	Post-session answer

2. Is the right to access information enshrined in the Constitution of your country?

- a) Yes
- b) Yes, in the first article of the Constitution
- c) Yes, in Article 19 of the Constitution
- d) No

Pre-session answer	Post-session answer

3. According to international standards, the right to access to information is conferred to:

- a) Employees of public bodies only
- b) Journalists only
- c) All citizens that are resident in the country where the law is applicable
- d) All citizens without exceptions

Pre-session answer	Post-session answer

Handout 4.1 (Cont.)

4. According to international standards, the right to access to information applies to:

- a) Public institutions only, with the exception of all the security agencies
- b) Public institutions and the police, but not the army nor the intelligence service(s)
- c) Public institutions, the police and the army, but not the intelligence service(s)
- d) Public institutions, including the police, the army and the intelligence service(s)

Pre-session answer	Post-session answer

5. Procedures for accessing information necessitate that:

- a) The requester pays a fee
- b) The requester pays a fee, which should be reimbursed if the information is not found
- c) In principle, the requester doesn't pay a fee, unless the information is found
- d) In principle, there are no fees to be paid

Pre-session answer	Post-session answer

6. The duty for public bodies to publish information applies:

- a) Only in case of a specific request by a citizen
- b) On a permanent basis
- c) Only in case where there is an investigation conducted by a judge
- d) At the beginning and at the end of a government's term

Pre-session answer	Post-session answer

7. National security is an exception to the right of access to information:

- a) Only in times of conflict
- b) Under all circumstances
- c) Only under very limited and well-defined circumstances
- d) Under no circumstance

Pre-session answer	Post-session answer

Handout 4.1 (Cont.)

8. The commissioner general of information is:

- a) An employee of the government who deals with information requests
- b) An independent body in charge of monitoring the application of the law
- c) An elected member of parliament specialised in media affairs
- d) A judge working in an administrative court

Pre-session answer

Post-session answer

9. If a request to access information is denied, citizens and journalists:

- a) Should abandon their request, as the decision is irrevocable
- b) Can appeal the decision to the information commissioner, or to a court
- c) Can appeal the decision to a court, and then to the information commissioner
- d) Cannot appeal the decision, but make a new attempt two years later

Pre-session answer

Post-session answer

10. Open government means:

- a) That government buildings should be accessible 24/7
- b) That government bodies, including security sector institutions, should make public as much information as possible
- c) That government bodies, except security sector institutions, should make public as much information as possible
- d) That at least one citizen and one journalist should participate in government meetings

Pre-session answer

Post-session answer



Handout 4.2

PowerPoint presentation hardcopy: Access to information legislation and security sector governance (SSG)

The following slides provide an example of a PowerPoint presentation for this session. This example presentation includes key elements concerning access to information legislation and security sector governance (SSG).

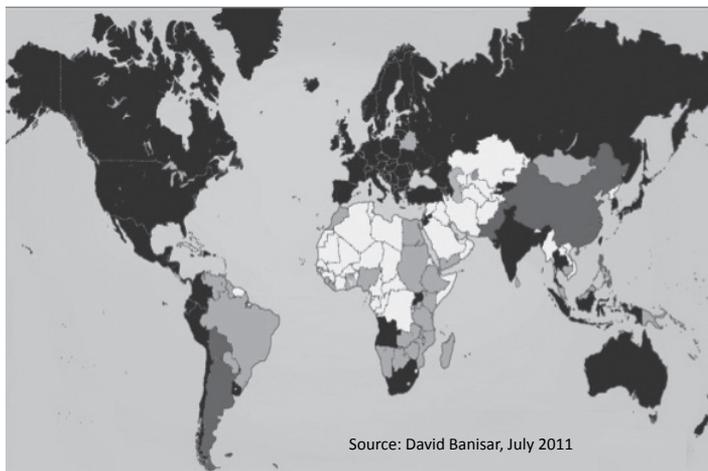
Access to information legislation and security sector governance (SSG)

Why is access to information important in security sector governance?

- Strengthening **transparency, accountability and responsiveness** of security sector institutions
- Combating practices of opacity, secrecy and corruption
- Providing citizens' access to **documents and decisions** produced on the behalf of their security
- Contributing to an **informed and participative society**
- Increasing citizens' **trust** in the authorities, **understanding** and **support** for their policies
- And... what else in your view?

Handout 4.2 (Cont.)

National Right to Information Laws, Regulations and Initiatives (2011)



Dark: Comprehensive national law enacted
Medium: National regulation enacted
Light: Current initiatives to enact a law
White: No law or law not operative

Objectives of Access to Information legislation

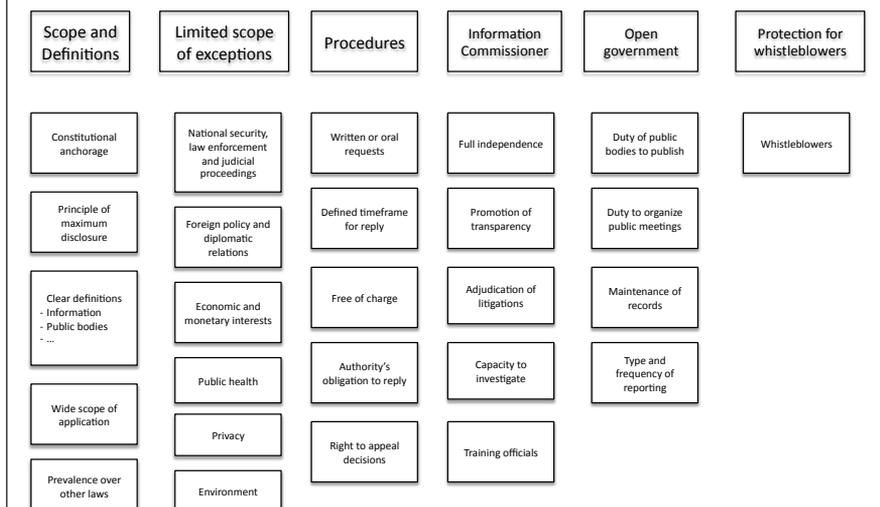
- To provide the public a legal right to seek access to documents in the Government's possession
- To enable the public to participate more effectively in governing the State
- To make the persons and bodies that are responsible for State and Local Government more accountable to the public

Handout 4.2 (Cont.)

Basic principles of access to information laws

- Scope and definitions:
 - Principle of maximum disclosure
 - Wide scope of application (including semi-administrative or semi-private bodies)
 - Prevalence of access to information laws over other laws
- Limited scope of exceptions
- Procedures allowing quick access, and in principle at no cost, for everybody (including people with handicaps or deprived of liberty)
- Creation of an independent information commissioner (with both tasks of promoting transparency and adjudicating litigations)
- Public bodies' promotion of open government
- Protection for whistleblowers

Structure of access to information laws



Handout 4.2 (Cont.)

Scope and definitions

- Constitutional anchorage: reference to a constitutional article granting freedom of information
- Definitions: “public bodies” (include security, defence and law enforcement agencies), “record”, “information commissioner”, “minister”, etc.
- Purpose of the law: safeguarding everyone’s right of access to information under the law
- Maximum disclosure: principle according to which restrictions to access to documents should be limited to those which are strictly necessary (e.g. only parts of a document)
- Prevalence of access to information laws over other laws

Limited scope of exceptions

- National security, law enforcement and judiciary investigations
- Economic and monetary interests
- Foreign policy and international relations
- Public health and safety
- Privacy
- Protection of the environment

Handout 4.2 (Cont.)

Procedures

- Application: oral or written
- Timeframe: as quickly as possible, reasonable amount of time (15 days) to answer the request. No answer after expiry of deadline is deemed a denial (which allows for appeal proceedings)
- Fees: in principle no costs, except where requests require specific amount of research
- Denial: Obligation to motivate a denial based on legal grounds

Information Commissioner

- Fully independent from the executive
- Commissioner appointed by parliament or proposed by government and ratified by parliament
- Budgetary autonomy
- Promotion of transparency
- Capacity to adjudicate conflicts
- Investigative powers

Handout 4.2 (Cont.)

Open government

- Duty of the public bodies: to promote open government, mainly through:
 - Maintenance and archiving of documents
 - Proactive publication of documents, activity reports, news
 - Organisation of public meetings and press conferences
 - Training of officials in charge of providing information to the public

Protection for whistleblowers

- Protective measures for witnesses of wrongdoings and cases of corruption

Handout 4.2 (Cont.)

Categories of documents with a presumption in favour of disclosure

- Documents attesting the existence of all military, police, security and intelligence authorities, and their oversight bodies
- Laws and regulations applicable to these bodies, their surveillance, interrogation and detention policies
- The gross overall budgets of these authorities
- Contracts, procurement policies, infrastructure management and relevant audit reports
- The terms of bilateral agreements by the state on national security matters
- Important decisions or policies, including decisions to commit troops overseas
- Names of units and their commanders implicated in gross human rights violations, identities of their victims, dates and places of events and (if relevant) mortal remains

Source: The Open Society Institute's *Draft Principles of National Security and the Right to Information*:
<http://www.soros.org/initiatives/justice>

Types of security-related documents that are usually not accessible

- Current military or security plans, on-going operations
- Information, including technological data, about weapons, their production, capabilities or use
- Measures to safeguard critical infrastructure
- Intelligence information, incl. analysis collection, operations, sources and methods for intelligence collection
- Information provided by a foreign state or international organisation with an express expectation of confidentiality
- Diplomatic communications
- Information concerning investigation and prosecution processes, including of terrorist acts and national security-related acts

Source: The Open Society Institute's *Draft Principles of National Security and the Right to Information*:
<http://www.soros.org/initiatives/justice>

Handout 4.2 (Cont.)

Reference treaties, texts and documents

- Universal Declaration of Human Rights (1948), Art. 19
- Council of Europe Convention on Access to Official Documents (2009)
- Commonwealth Freedom of Information Principles (1999)
- Article 19's Model Freedom of Information Law

Reference international standards for national security and the right to information

- Article 19: *The Johannesburg Principles national security, freedom of expression and access to information* (1995)
- The Open Society Institute: *Draft Global Principles on National Security and the Right to Information* (2012)



Handout 4.3

Reading and discussion: Analysing the national access to information law

Participants receive a copy of the national access to information law and one set of questions per group. (This is used in Activity 4.)

Group A Questions

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. 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?

Group B Questions

1. Procedures to grant access

1.1 Application

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

1.2 Timeframe

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

1.3 Fees

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

1.4 Review

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

2. Information Commissioner

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

Handout 4.3 (Cont.)

Group C Questions

1. Promotion of open government

1.1 Information officer

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

1.2 Maintenance of records

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

1.3 Obligation to publish

- 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?

1.4 Training of officials

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

2. Protection for whistleblowers

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



Handout 4.4

Scenarios and discussion: Refusals to disclose information on national security grounds

In Activity 5, participants discuss the following scenarios.

Scenario 1

As a journalist, you want to write an article about your country's peacekeeping mission overseas. In particular, you are interested in accessing **the mission's budget document** in order to know how many soldiers are on the mission's payroll. You also want to see **the mission's organisation chart** in order to know the names of the officials who head the mission's units and sub-units.

You approach the information officer working for the Ministry of Defence and ask her to provide you with the relevant documents.

- What documents do you think the officer will grant you access to?
- What documents is the officer likely to keep secret?
- What arguments can you put forward to gain access to these documents?

Scenario 2

As a journalist, you want to write a report about your country's police force. You are interested in obtaining **a copy of the police law and any relevant documents outlining the police's internal accountability mechanisms**. In addition, you would like to access **the bilateral agreements** that the country has signed with major donor countries for the training and equipment of the police force.

You approach the information officer working for the Minister of the Interior and ask her to provide you with the relevant documents.

- What documents do you think the officer will grant you access to?
- What documents is the officer likely to keep secret?
- What arguments can you put forward to gain access to these documents?

Scenario 3

There has been an alleged case of mistreatment in one of the interrogation centres. As a journalist, you want to **gather all laws, regulations and policies concerning detention and treatment of detainees** in the country. In addition, you want to obtain **a map showing the location of all detention places**.

You approach the information officer working for the Ministry of the Interior and ask her to provide you with the relevant documents.

- What documents do you think the officer will grant you access to?
- What documents is the officer likely to keep secret?
- What arguments can you put forward to gain access to these documents?



Handout 4.5

Information sheet: Principles 9 and 10 of the Open Society Institute's *Draft Principles of National Security and the Right to Information*.

This Resource provides Principles 9 and 10 of the Open Society Institute's *Draft Principles of National Security and the Right to Information*. (The full collection of Draft Principles can be accessed at: <http://right2info.org/exceptions-to-access/national-security#>.)

Principle 9: Information That Legitimately May Be Withheld

Public authorities may restrict public access to information on national security grounds, provided that such restrictions comply with the other provisions of these Principles and the information falls within one of the following categories:

- i. Current military plans, on-going operations, and capabilities for the length of time that the information is of operational utility [to the extent that these relate to armed conflicts];

Note[s]: The phrase "for the length of time that the information is of operational utility" is meant to require disclosure of information once the information no longer reveals anything that could be used by enemies to understand the state's readiness, capacity, plans, etc. [The phrase "to the extent that these relate to armed conflicts" was proposed to exclude information related to humanitarian interventions that do not involve armed conflict, civil protection operations or other activities not connected to armed conflict.]

- ii. Information, including technological data and inventions, about weapons, their production, capabilities or use;
- iii. Measures to safeguard critical infrastructure;
- iv. Intelligence information, including analysis collection, operations, sources and methods concerning matters that fall into one of the above categories;
- iv. Information falling into one of the above categories that was supplied by a foreign state or inter-governmental body with an express and written expectation of confidentiality;
- vi. Diplomatic communications; and
- vii. Information concerning the investigation or prosecution of terrorist acts and other national security-related crimes.

Note: The point of this sub-Principle is to make clear that these Principles apply to the withholding of information concerning the investigation or prosecution of terrorist acts and other national security-related crimes, regardless of the grounds on which the information is withheld.

Principle 10: Categories of Information with a High Presumption in Favour of Disclosure

The following categories of information are subject to presumptive disclosure. Information that falls into any of these categories may be withheld only in the most exceptional circumstances, consistent with Principles 3 and 5, and only for a strictly limited period of time.

Note: Exceptional withholding may be permissible, for example, for a period that is strictly necessary to ensure the effective prosecution of those responsible for human rights abuses or national security-related offences, or to protect the dignity and rights of individuals. The categories of information listed below are set forth in greater detail in the Annex to these Principles.

Handout 4.5 (Cont.)

A. Democratic Participation in Fundamental Decisions

1. Structures and Powers of Government

- (a) The existence of all military, police, security and intelligence authorities, and sub-units;
- (b) The laws and regulations applicable to these authorities and their oversight bodies and internal accountability mechanisms; and the names of the officials who head such authorities.
- (c) The gross overall budgets, major line items and basic expenditure information by such authorities.
- (d) The existence and terms of concluded bilateral and multilateral agreements, and other major international commitments by the state on national security matters.

2. Important Decisions or Policies, including Decisions to Commit Combat Troops Overseas

- (a) Information that shows that the Government has mischaracterized a fact relevant to an important decision or policy.
- (b) [More...]

3. Surveillance

- (a) The laws and primary regulations governing all forms of secret surveillance and systems of secret files and registers.
- (b) For persons who are being or have been subjected to unlawful surveillance, notification of that fact and/or recourse to review of their claims by an independent authority.

4. Detention and Interrogation

- (a) Laws, regulations [and policies] concerning detention, cross-border transfers of detainees, treatment of detainees, including methods and means of interrogation by, or [on behalf of] [in facilitation of the conduct of], the state and its agents.
- (b) The location of all places where persons are deprived of their liberty operated by or on behalf of the state as well as the identity of, and charges against, all persons deprived of their liberty including during armed conflict.

5. Accountability concerning Security Sector Contracts and other Resources

- (a) Information concerning constitutional or statutory violations and other abuses of power, including corruption, by public authorities or officials.
- (b) Basic information regarding the integrity of security sector procurement, financial management of critical infrastructure, and relevant audit reports.

Handout 4.5 (Cont.)

B. Gross Violations of Human Rights and Serious Violations of International Humanitarian Law

- (a) The names of all victims of gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, committed by the State, State agents or people acting with any level of government support, whether in peace time or during an armed conflict, and the dates and circumstances of these violations; and where applicable, the location of mortal remains.
- (b) The names of units and their superiors and commanders present at the time of, or otherwise implicated in, such human rights or international humanitarian law violations.
- (c) Other information concerning gross violations of human rights or serious violations of international humanitarian law committed by agents of the State that holds the information or by other States (...)

Source: See the website of the OSI Justice Initiative for more details, available: <http://www.soros.org/initiatives/justice>



Handout 4.6

Worksheet: Gaining access to information in the case of a refusal

In Activity 6, participants discuss the following question.

List three possible approaches to accessing information in the case of the authorities' refusal to disclose information on national security grounds and/or the absence of an access to information law. Give examples if available.

1. *Proposed Method One:*

2. *Proposed Method Two:*

3. *Proposed Method Three:*



Handout 4.7

Information sheet: Obtaining information in the absence of an access to information law and/or in case of authorities' refusal to disclose information

This resource provides the participants with examples for seeking and obtaining information in the absence of an access to information law, or in case of authorities' refusal to disclose information to journalists or citizens.

Introduction

The absence of access to information legislation is a serious obstacle to citizens' and media's access to official information. However, citizens and journalists can try and invoke certain rights under national and international law in order to access information. They can also approach formal and informal institutions that advocate for promoting the right of access to information. The following offers a list of steps that citizens and journalists can take in the absence of access to information legislation in their country.

A) Invoking constitutional rights

In certain states, the right of access to information is anchored in the constitution but not in a specific law. This is for example the case in a dozen of African states and in the Swiss Canton of St. Gallen.¹ The absence of an access to information law releases the administration from the duty to publish information and make it available to those requesting it. In those contexts, invoking constitutional rights will almost certainly not lead to immediate access to information. However, citizens and journalists can do so in order to:

- encourage the government and its administration to adopt and implement laws that are consistent with the country's constitutional framework
- encourage civil society and media to campaign in favour of the adoption of such a law, and
- raise awareness among citizens and the media about their constitutional rights.

B) Invoking the government's programmes and commitments to transparency

In certain states where access to information legislation is absent, the government has nevertheless publicly underlined its commitment to the principles of transparency and accountability. This is the case for the Republic of the Philippines and the Palestinian Authority. Such political commitments are certainly not sufficient to impose on the state's administration the duty to publish official records. Yet, it provides citizens and journalists with an opportunity to:

- encourage the government and its administration to commit to the stated electoral/political promises
- encourage civil society and media to campaign in favour of the adoption of a law based on the government's commitments, and
- raise awareness among citizens and the media about the government's transparency and accountability commitments.

¹ See: http://www.africafoicentre.org/index.php?option=com_docman&task=doc_download&gid=58&Itemid=572 (for an overview on access to information law in Africa as of 2012) and http://swisstransparency.ch/Joomla/index.php?option=com_content&task=view&id=19&Itemid=34#cant_loi_const (concerning the Canton of St. Gallen)

C) Invoking the 'public interest'

Access to information laws usually make the assumption that disclosure of official records should serve the public interest. However, exceptions to citizens and media's access to information that are made for overriding reasons of privacy, effective operation of government or national security, can also have public interest components. In certain constituencies, the access to information legislation foresees that a 'public interest test' is performed to assess whether there is a public interest against the disclosure of documents.² In countries where access to information legislation is absent, testing the 'public interest' for certain documents to be released might prove impossible. Yet, citizens and journalists can invoke the public interest in order to:

- highlight the key civil-democratic principles and rights which the release of the documents would serve
- encourage civil society and media to campaign in favour of the respect of these civil-democratic principles and rights, and
- raise awareness among citizens and the media about these principles and rights.

D) Approaching formal oversight institutions

In certain states where access to information legislation is absent, formal oversight institutions are nevertheless in place. These institutions include: parliament and its specialised committees, supreme audit institutions, parliamentary or general ombuds institutions, trade unions, etc. Citizens and journalists can approach these institutions in case access to information is denied. They can do so in order to:

- raise awareness among parliamentarians or officials working in those formal oversight institutions about government restrictions on information
- encourage further inquiries and scrutiny by those bodies over government's information management processes, and
- encourage parliamentary and public debates on the advantages of adopting access to information legislation.

E) Approaching civil society organisations

In addition to the above-mentioned steps, citizens and journalists can also approach informal oversight bodies. These bodies include: civil society organisations, human rights centres, established media institutions and academia. Some international NGOs are also specialised in promoting citizens and media's access to information.³ These bodies can:

- launch campaigns in order to raise public awareness about the importance of access to information legislation
- lobby and put pressure on government and/or parliament for the adoption of access to information legislation
- engage in drafting access to information as a contribution from civil society, or provide expertise to the drafting committee
- help document cases of abusive restriction to access information.

² This is for example the case in the Australian state of New South Wales. See http://www.begavalley.nsw.gov.au/Your_Council/gipa/test.htm

³ For a list of these organisations and their urls, see *Additional Resources* (on page 41).



Trainer Resource 4.1

Information sheet: Article 19's Model Freedom of Information Law (Extracts)

This resource allows the trainer to check the answers given by the groups of participants in Activity 4.

The full text of Article 19's *Model Freedom of Information Law* is available at the following address: <http://www.article19.org/data/files/pdfs/standards/modelfoilaw.pdf>

Note that the trainer can choose to hand out the full version of Article 19's *Model Law* in case there is no national access to information law available for the training.

1. Scope and definitions

1.1. Constitutional anchorage

"The Parliament, on the basis of Article XX of the Constitution, decrees as follows:"

1.2. Principle of maximum disclosure

"A law to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access information, and to provide for effective mechanisms to secure that right."

1.3. Definition of 'Information'

"Any information, which is available in any of the registers and written or electronically-saved documents, or drawings, maps, tables, pictures, films, microfilms, sound recordings, tapes, or any data read with special devices, or any other forms which are deemed that they fall under the scope of the piece of information in accordance with this law."

1.4. Definition of 'Public Body'

"For purposes of this Act, a public body includes any body:

- (a) established by or under the Constitution;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by Government or the State; or
- (e) carrying out a statutory or public function."

2. Limited Scope of Exceptions

"A public body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the interest of the state overrides the public interest in disclosure."

3. Procedures to facilitate access

3.1. Application

"A request for information is a request in writing to any official of a public body that is detailed enough to enable the official to identify, with reasonable effort, whether or not the body holds a record with that information."

Trainer Resource 4.1 (Cont.)

3.2. Timeframe

"A public body must respond to a request for information as soon as is reasonably possible and in any event within twenty working days of receipt of the request."

3.3. Fees

"The communication of information by a public body may be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information."

3.4. Appeal

"The complainant, or the relevant public or private body, may, within 45 days, appeal to the court for a full review of a decision of the Commissioner."

4. Information commissioner

"An information commissioner shall be established and aim at ensuring the enforcement of the provisions of the law, in particular to implement the programmes, plans and policies pertaining to the defence of the right of the individual to access information."

5. Promotion of open government

5.1. Information officer

"Every public body shall appoint an Information Officer and ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details."

5.2. Maintenance of records

"Every public body is under an obligation to maintain its records in a manner which facilitates the right to information, as provided for in this Law."

5.3. Obligation to publish

"Every public body shall, in the public interest, publish and disseminate in an accessible form, at least annually, key information."

5.4. Training of officials

"Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Law."

6. Protection for whistleblowers

"No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing."



Trainer Resource 4.2

Answer sheet: Answers to the access to information pre- and post-test

This resource gives the trainer the answers to the access to information test for use in Activity 7 (see also **Handout 4.1**).

1. Is there a law on access to information in your country?

Trainer supplies answer, dependent on country

2. Is the right to access information enshrined in the Constitution of your country?

Trainer supplies answer, dependent on country

3. According to international standards, the right to access to information is conferred to:

d) All citizens without exceptions

4. According to international standards, the right to access to information applies to:

d) Public institutions, including the police, the army and the intelligence

5. Procedures for accessing information necessitate that:

d) In principle, there are no fees to be paid

6. The duty for public bodies to publish information applies:

b) On a permanent basis

7. National security is an exception to the right of access to information:

c) Only under very limited and well-defined circumstances

8. The commissioner general of information is:

b) An independent body in charge of monitoring the application of the law

9. If a request to access information is denied, citizens and journalists:

b) Can appeal the decision to the information commissioner, or to a court

10. Open government means:

b) That government bodies, including security sector institutions, should make public as much information as possible



Additional Resources

International NGOs promoting citizens' and media's access to information:

- Access Info Europe www.access-info.org
- American Civil Liberties Union www.aclu.org
- Article 19 www.article19.org
- The Open Society Institute www.osi.org
- Right2info www.right2info.org
- Transparency International www.transparency.org

NGOs and initiatives promoting citizens' and media's access to information in the Arab region:

- Palestinian Center for Development and Media Freedoms (MADA) www.madacenter.org
- The Yemeni Human Rights Network <http://yhrn.org/>
- National Network for the Right of Access to Information <http://www.a2ilebanon.org/index.php>
- Open Data Tunisia <http://opendata.tn>
- Study Center for Human Rights and Democracy (CEDHD) <http://www.cedhd.org/>

Publications by international organisations:

A Model Freedom of Information Law, Article 19, available:

<http://www.article19.org/data/files/pdfs/standards/modelfoilaw.pdf>

Freedom of Information Training Manual for Public Officials, Article 19, 2004, available:

https://www.iprs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblastencev/Article_19_foitainersmanual.pdf

DCAF's media and security sector governance publications:

The Palestinian Media and Security Sector Governance, 2009, available:

<http://www.dcaf.ch/Publications/The-Palestinian-Media-and-Security-Sector-Governance>

Access to Information and Security Sector Governance, 2010, available:

<http://www.dcaf.ch/Publications/Access-to-Information-and-Security-Sector-Governance-Reference-Text-Reader>

Palestinian Media Legislation and Security Sector Governance, 2011, available:

<http://www.dcaf.ch/Publications/Compilation-of-Reference-Texts-Palestinian-Media-Legislation-and-Security-Sector-Governance>

Palestinian Media and Security: Promoting Palestinian Journalists Access to Information through Legislation, Working Paper, 2012, available:

<http://www.dcaf.ch/Publications/Working-Paper-Palestinian-Media-and-Security-Promoting-Palestinian-Journalists-Access-to-Information-through-Legislation>