



# ACCESS TO INFORMATION IN AFGHANISTAN

A Preliminary Review



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## About APPRO

Afghanistan Public Policy Research Organization (APPRO) is an independent social research organization promoting social and policy learning to benefit development and reconstruction efforts in Afghanistan. APPRO is a non-profit, non-government organization, headquartered in Kabul, Afghanistan, with regional offices in Bamyan, Herat, Mazar-e Sharif, Jalalabad, and Kandahar. APPRO is also a founding member of APPRO-Europe. APPRO's mission is to provide insights on how to improve performance against the development milestones set by the Afghan government and international donors. APPRO conducts applied research, carries out evaluations, and provides training on policy analysis, Monitoring and Evaluations, advocacy, and research methods. For more information, see: [www.appro.org.af](http://www.appro.org.af)

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## About IWA

IWA was created in October 2005 and established itself as an independent civil society organization in 2006. The mission of Integrity Watch is to put corruption under the spotlight through community monitoring, research, and advocacy. IWA's work has three major components: (1) Community Monitoring, (2) Research, and (3) Advocacy. IWA's research is policy-oriented, measuring trends, perceptions, and experiences of a wide range of corruption-related issues in security and justice sectors, extractive industries, budget and public finance management, and aid effectiveness. IWA's monitoring, research, and advocacy are aimed at developing new, ground-breaking empirical research in order to set anti-corruption agendas, influence decision-makers, and engage public. For more information, see: [www.iwaweb.org](http://www.iwaweb.org)

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## EXECUTIVE SUMMARY

This assessment was carried out to establish the current arrangements for access by the general public to service information from public institutions. The recommendations from this assessment are intended to inform efforts to reform Afghanistan's nascent Access to Information Law. The two service areas assessed were the public health sector and electricity provision in Kabul. The proxy for the health sector was a selected number of hospitals in Kabul. For electricity provision De Afghanistan Breshna Shirkat (DABS) in Kabul was approached directly.

The data for this report were collected through a desk review of available literature including legislation and official reports on access to information, key informant interviews with selected government officials, journalists, rights-based civil society organizations, prominent individuals, and healthcare and energy sector professionals, focus group discussions with community members at the hospitals and DABS, and participatory observation through making requests for information on services at hospitals and DABS by the researchers.

This report finds it is too soon to conclude whether or not the implementation of the Access to Information Law has been a success. However, the report also finds that the main challenge in implementing the Law is one faced by all other forms of legislation in Afghanistan. That is, this Law will be of little or no consequence in practical and immediate terms without effective implementation.

With supplementary measures such as setting up the Oversight Commission on Access to Information this Law calls for, cross-referencing with other related legislation, passage of time, and political stability, the likelihood will increase for the practical utility of the Access to Information Law.

As with most other fundamental legislation, much could be learned by Afghanistan from the experience of other countries such as Sweden with the oldest legislation on freedom of information and the United States having had the Freedom of Information Act for almost five decades, the practical implications of the Act, and the many amendments made to the Act in response to learning from the implementation of the Act. Similarly, India's experience in implementing similar legislation offers a rich source for lessons learned and the role civil society can and must play in successful implementation of the Law.

From a government's perspective, there are valuable lessons to be learned from the Indian experience on the importance of supplementary measures to institutionalize legislation. These measures include mass awareness raising programs by the government on the existence and usefulness of the Law and changes in the educational curricula in primary, secondary, post-secondary, and literacy education to familiarize students with legal provisions on their rights to information. Also in India, some states have introduced dedicated infrastructure such as a toll free phone line for requests for information or texting provisions for mobile phone users to follow up on their requests for information from the government.

Given the number of less developed countries with formal legislation on the right / access to information, the importance of transparency in information flow in all models of good governance, and the debate on how the state should handle and manage information on its citizens, the debate on the role and utility of formal legislation on right / access to information is likely to continue and intensify. Afghanistan, despite the political instability, is no exception to the list of countries that will have this debate in the years to come.

The recourse provision of Afghanistan's Access to Information Law, through the Oversight Commission on Access to Information, has a significant potential role to play in increasing the transparency and accountability of governmental entities charged with service provision for the public. As such, the Law could be used as an effective instrument to eliminate petty corruption in service delivery, for example.

In the Afghan context, as in other contexts, corruption and nepotism are among the main obstacles to access to information. The case of India illustrates that two key elements in successful institutionalization of access / right to information legislation are political stability (and political will) and availability of resources to provide adequate and reliable services. In Afghanistan, continued conflict, insufficient and inadequate infrastructure and resources, widespread institutional authoritarianism, and corruption are likely to remain as major challenges in access to and practicing the right to information.

The most significant finding from this pilot assessment is that right / access to information by the public is undermined by the two main factors of the public lacking awareness of its right, and those in authority, especially in the health sector, showing a tendency to act with hostility toward members of the public seeking help.

The recommendations of this assessment are, necessarily, quite general and intended to draw attention to the preparatory work that will need to be undertaken as a major part of the efforts to implement and revise the Access to Information Law in Afghanistan.

## Recommendations

- An awareness raising campaign will need to be initiated by the government and civil society organizations on the Access to Information Law and its benefits for the public and state interests.
- Particular attention will need to be paid to awareness raising among the illiterate and particularly in rural / remote areas.
- Incorporate awareness of the right / access to information legislation in education curricula from primary to post-secondary education as well as in literacy programs.
- As much as possible, set up specific, clearly identifiable information points or sections in governmental organizations with the main task of assisting the public in its requests for information.
- Ensure that government and semi-government entities have specific provisions for access to information by the public in their strategies, as a specific policy, or a clear section in the communication policy.
- Formalize the citizens' right to approach public and state-related officials and entities for information without having a ministerial authorization letter, the current precondition for release of information by all government, semi-government, and some non-government organizations and entities.
- Make innovative uses of digital technology such use of mobile or smart phones and hotlines to encourage the public to exercise its right.
- Train government and semi-government officials of their responsibilities, rights, and the consequences of failing to operate according to the obligations set out in the Access to Information Law.
- In future reforms of the Access to Information Law, attempts should be made to define the boundaries of the law more precisely on what constitutes national interest or personal freedom in the context of access to information.

## About This Report

This assessment was carried out to establish the current arrangements for access by the general public to service information from public institutions. The research was carried out to generate recommendations to be considered for possible reform to the Access to Information Law. The two service areas where access to information was studied during this assessment were the public health sector and electricity provision in Kabul. Representing the health sector were the hospitals in Kabul while for electricity provision De Afghanistan Breshna Shirkat (DABS) in Kabul was approached directly. The guiding questions for this research are:

1. What is the process of gaining access to information regarding services in public health and electricity provision?
2. What are the legal rights of the citizens to demand for service information from public health and DABS officials?
3. How are citizens' rights granted / realized in public health and electricity provision?
4. What measures could and should be taken to make service delivery more transparent and accountable to the public?

## Objectives

With a focus on health services and electricity provision, this pilot assessment:

- Identifies and documents the formal and informal mechanisms through which the general public accesses information on service provision
- Assesses the effectiveness of these, and
- Makes recommendations for revisions to the Government of Afghanistan's Access to Information Act of December 2014.

## Methodology

The scope and depth of this research were set based on the time and resources allocated to the research. Due to limitations of both time and resources, this research was carried as a pilot study since neither Integrity Watch Afghanistan (IWA) – commissioning this study, nor Afghanistan Public Policy Research Organization (APPRO) – conducting the study, had a clear idea of what would be found by taking a closer look at access to health services and electricity in light of the Access to Information Law. As such, there was a strong exploratory aspect to this research to establish whether or not it would be worthwhile to conduct more thorough and in-depth research as a separate endeavor.

Data were collected through the following activities:

- Desk Review of the available literature including legislation and official reports on access to information.
- Key Informant interviews with selected government officials, journalists, rights-based civil society organizations, prominent individuals, and healthcare and energy sector professionals.
- Focus Group Discussions with community members at the hospitals and DABS, and Participatory observation through making requests for information on services at hospitals and DABS by the researchers.

This rapid assessment was carried out to document the practical ways in which the public accesses information on services. To this end, service provision in health and electricity were mapped based on participatory observation, three focus group discussions with service seeking community members, initiated attempt by research personnel to receive service at one hospital and DABS, and 16 Key Informant interviews. See Appendix 1 for additional details. See Appendix 2 for the guiding questions.

## Limitations

The main limitation of this assessment is the narrow scope for data collection. In cases where data sources were successfully accessed, with some exceptions there was widespread unwillingness by the interviewees to engage or answer the researchers' questions. The main reason for this lack of interest is due, in part, to the lack of knowledge of the interviewees about the existence of the Access to Information Law and the implications of the Law for the interviewees' responsibilities. In addition, some interviewees refused to cooperate because they believed that the subject of the interview did not fall under their responsibility. Conducting interviews inside the Parliament was challenging due to tight security restrictions. The interviewers were not allowed to carry a voice recorder and would take notes while conducting the interview.

## Overview of Report

The introduction provides a summary of the wider context of access or right to information legislation, focusing on Sweden and Turkey as examples while using India's experience as a test case. A separate section provides a summary of the main elements of Afghanistan's Access to Information Law. The data collected through observation visits to hospitals and DABS, interviews with key informants, and focus group discussions are analyzed under the separate headings of Health and Electricity. The last section concludes with some recommendations.

## 1. INTRODUCTION

Afghanistan's Access to Information Law came into effect in December 2014. Based on an assessment of the contents of this Law, the "Global Right to Information Rating" (GRIR) ranks Afghanistan at 63, comparable to Switzerland but better than Portugal, Spain, Turkey, Pakistan, Greece, Denmark, Belgium, Italy, Germany, and Austria (ranked 102).<sup>1</sup>

The world's first freedom of information (in written form) legislation was adopted by the Swedish Parliament in 1766. The first paragraph of "His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press (1766)" reads:

That, having considered the great advantages that flow to the public from a lawful freedom of writing and of the press, and whereas an unrestricted mutual enlightenment in various useful subjects not only promotes the development and dissemination of sciences and useful crafts but also offers greater opportunities to each of Our loyal subjects to gain improved knowledge and appreciation of a wisely ordered system of government; while this freedom should also be regarded as one of the best means of improving morality and promoting obedience to the laws, when abuses and illegalities are revealed to the public through the press; We have graciously decided that the regulations issued previously on this matter require such appropriate amendment and improvement that all ambiguity, as well as any such coerciveness as is incompatible with their intended purpose, may be removed.

The Act was applicable to the Kingdom of Sweden, which, until 1809, included Finland. The Act was suspended from 1772 to 1809, but re-enacted in 1809 as a key part of the new Swedish Constitution. The initial purpose of the Act was to abolish political censorship of the written word by abolishing the "Office of Censor" and limiting the powers of the "Chancellery" in supervising, approving, or disallowing texts for printing. The current version of the Act is one of four fundamental laws within the Swedish Constitution, the other three being the Instrument of Government, the Act of Succession, and the Fundamental Law on Freedom of Expression.

In modern times, the United States was the first country to adopt the Freedom of Information Act, in 1966, granting its citizens the right to information held by federal government agencies.<sup>2</sup> The full law with amendments came into effect in 1974. In the decades that followed other countries adopted similar laws awarding their citizens of similar rights. The first countries that followed the example of the United States and adopted such laws were developed countries with stable democracies. However, in the last two decades, a number of developing countries have passed similar laws and the number of countries with access to information legislation has increased significantly. By 2008 more than 70 countries, including China, Jordan and Turkey had specific legal provisions governing the right or access to information by the public.<sup>3</sup>

Sweden, ranked by GRIR at 41 for its right to information legal and institutional provisions, often serves as the benchmark for a wide range of good governance indicators. In part this is because in many areas of good governance Sweden has longstanding and institutionalized legal provisions. The latest edition of Sweden's *Public Access to Information and Secrecy Act* begins with the general principles of public access to information. According to the Act public access to information:

1 Global Right to Information Rating (2015), available from: <http://www.rti-rating.org/country-data>  
 2 See Hogg, P. (2006), His Majesty's Gracious Ordinance Relating to Freedom of Writing and of the Press (1766), in The World's First Freedom of Information Act (Kokkola, Sweden: Anders Chydenius Foundation), available from: [http://www.chydenius.net/pdf/worlds\\_first\\_foia.pdf](http://www.chydenius.net/pdf/worlds_first_foia.pdf)  
 3 Mendel, T (2008): "Freedom of Information: A comparative Legal Survey", UNESCO, Paris (P. 3)

means that the public and the mass media – newspapers, radio and television – are entitled to receive information about state and municipal activities. The principle of public access to information is expressed in various ways:

- Everyone is entitled to read the documents of public authorities: access to official documents;
- Officials and others who work for the state or municipalities are entitled to say what they know to outsiders: freedom of expression for officials and others;
- Officials and others in the service of the state or municipalities are normally entitled to disclose information to newspapers, radio and television for publication or to personally publish information: right to communicate and publish information;
- The public and the mass media are entitled to attend trials: access to court hearings;
- The public and the mass media may attend when the chamber of the Riksdag (the Swedish Parliament), the municipal assembly, county council assembly and other such bodies meet: access to meetings of decision-making assemblies.<sup>4</sup>

The Act holds that “Swedish citizens and aliens in Sweden enjoy certain fundamental rights and freedoms [including] the freedom of expression [which means] ... the freedom to communicate by word, in writing or images or in other ways to communicate information and express ideas, opinions and feelings.” The limitations of the Act are summarized under “duty of confidentiality”<sup>5</sup> and with reference to the Freedom of the Press Act, according to which state entities reserve the right to withhold information if the information relates to:

1. National security or Sweden’s relations with a foreign state or an international organization;
2. The central financial policy, the monetary policy, or the national foreign exchange policy;
3. The inspection, control or other supervisory activities of a public authority;
4. The interest of preventing or prosecuting crime;
5. The public economic interest;
6. The protection of the personal or economic circumstances of private subjects, or
7. The preservation of animal or plant species<sup>6</sup>

The Act places no limitation on any member of the public to attend public court proceedings unless ruled against by the Parliament and based on legal grounds to protect the rights of other citizens.<sup>7</sup> More significantly, the Act references other laws such as the Local Government Act for the right of the public to attend meetings of governmental decision making assemblies.<sup>8</sup> Similarly, the Act grants the right to the members of the public to request information from authorities and obligates the authorities to provide “information from the official documents held by the authority that are not subject to secrecy...[and] without impeding the usual functioning of the authority.”<sup>9</sup>

By way of contrast, the Turkish Right to Information Law No. 4982, ranked 71 by GRIR, has the following specific provisions on access to information and the provision of information to public:

**Article 4 – Right to Information:** Everyone has the right to information. Foreigners domiciled in Turkey and the foreign legal entities operating in Turkey can exercise the right in this law, on the condition that the information that they require is related to them or the field of their activities; and on the basis of the principle of reciprocity. The rights and the obligations of Turkey under the international conventions are reserved.

4 Ministry of Justice, Sweden (2009), *Public Access to Information and Secrecy Act*, page 1, available from: <http://www.government.se/contentassets/2ca7601373824c8395fc1f38516e6e03/public-access-to-information-and-secrecy-act>

5 *Ibid.* p.8.

6 *Ibid.* pp.13-14.

7 *Ibid.* p.9.

8 *Ibid.* p.10.

9 *Ibid.* p.20.

**Article 5 – The Obligation to Provide Information:** [Public] institutions are required to apply administrative and technical measures to provide every kind of information and document, with the exceptions set out in this law, to provide the information for applicants; and to review and decide on the applications for access information promptly, effectively and correctly. The other legal regulations which are incompatible with the provisions contained herein shall cease to be applicable as of the date this Act comes into force.<sup>10</sup>

The exceptions to open access to information are given in Articles 15-19, with a focus on information that could be used to undermine other individual's rights or the security and interests of the Turkish state politically or economically.<sup>11</sup>

There are numerous assessments and reports on access to information laws in different countries. For example, India has made concerted efforts to examine the effectiveness of its own Right to Information Law.<sup>12</sup> Between 2007 and 2009, nine major assessments of India's Right to Information Act were conducted. The constraints in implementing the law appear to be similar to those identified in this pilot research on the impact of Afghanistan's Access to Information Law. Soon after the publication of the first few assessments, the Indian government initiated a program to address the weaknesses in the Law and its implementation.<sup>13</sup>

As a solution for the lack of awareness among the public, the state of Kerala's Information Commission enlisted its literacy authority to provide Right to Information (RTI) classes to almost 300,000 people. The state also ensured that educational curricula for primary, secondary, post-secondary, and literacy education included courses on the Right to Information Law. Similarly, to overcome the challenges of bureaucratic inefficiency the government of the state of Bihar has made it possible for information seekers to make RTI requests through a single, toll free number. Similarly, in the state of Andhra Pradesh, information seekers can obtain an automated update on the status of their request for information by sending text message from a cell phone.

The experience from India and elsewhere strongly suggests that incorporating the Access to Information Law into other laws enhances the institutionalization of the Law.

Contrary to many of its predecessors, Afghanistan has been in a continuous state of conflict for almost 40 years and politically is less stable, more prone to corruption and violence, and currently has a weak political and judicial system. Because of years of conflict and widespread corruption and patronage, the Afghan bureaucracy has been described as a "messy mix of unsteady formal institutions and powerful informal rules and organizations."<sup>14</sup> The relatively young Afghan democracy has one of the lowest literacy rates in the world at 31 percent.<sup>15</sup> Poverty is widespread with 35 percent of the population living below the poverty line.<sup>16</sup> The GDP per capita is half of India's and one-eightieth of the United States'.<sup>17</sup> An estimated three quarters of the Afghan population, around 24 million people, still live in rural areas.<sup>18</sup>

10 Government of Turkey (1984), Turkish Law On The Right To Information, Law No: 4982, page 2, available from: [http://www.bilgiedinmehakki.org/en/index.php?option=com\\_content&task=view&id=7&Itemid=8](http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=view&id=7&Itemid=8)

11 *Ibid.* Pages 5-6

12 Roberts, A. (2010): "A Great and Revolutionary Law? The First Four Years of India's Right to Information Act", *Public Administration Review*, 70 (6), (925-33)

13 A complete and extensive overview of the solutions can be found in Roberts, A. (2010, 922-25)

14 Mukhopadhyay, D. (2009): "Warlords as Bureaucrats: The Afghan Experience", Published as Carnegie Papers, Carnegie Endowment for International Peace in 'Middle East Program', Number 101, August 2009

15 Matsumoo, N. (2015): "Enhancement of Literacy in Afghanistan Program", Published by UNESCO Kabul. Available at: <http://www.unesco.org/new/en/kabul/education/enhancement-of-literacy-in-afghanistan-ela-program/> (Retrieved: May 25, 2015)

16 World Bank (2015): "Poverty Headcount Ration at National Poverty Lines", Available at: <http://data.worldbank.org/indicator/SI.POV.NAHC/countries/AF?display=graph> (Retrieved: May 25, 2015)

17 World Bank estimated the nominal GDP of Afghanistan at around \$650 (US), which is one eightieth of that of the United States (\$ 53,042) and less than one half of India's GDP (\$ 1,497). Data Available at: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (Retrieved: May 25, 2015)

18 Index Mundi (2015): "Afghanistan Demographics 2014", Available at: [http://www.indexmundi.com/afghanistan/demographics\\_profile.html](http://www.indexmundi.com/afghanistan/demographics_profile.html) (Retrieved: May 25, 2015)

## 2. AFGHANISTAN'S ACCESS TO INFORMATION LAW

The Afghan Access to Information Law is based on the 3<sup>rd</sup> paragraph of Article 50 of the Afghan Constitution, stating that “the citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law”.<sup>19</sup> Article 50 provides for two limitations to the right to information. First, the Law does not apply when access to information is harmful to others’ rights and, second, availability of the information must not risk public security.

The Access to Information Law applies to governmental institutions and non-governmental entities such as NGOs, civil society organizations, and political parties. The law consists of 32 articles, divided into 6 chapters as follows:

1. General Provisions
2. Access to information
3. Providing Information
4. Oversight Commission on Access to Information
5. Addressing Complaints
6. Miscellaneous Provisions

Article 2 lists the objectives of the Law as follows:

1. To ensure the right of access to information for all citizens from the government institutions.
2. To observe Article 19 of the International Covenant on Civil and Political Rights, Article 3 of Afghanistan’s Constitution according to which no law can be in conflict with Islamic Sharia principles, and Article 28 on the responsibility of non-government organizations to provide information.
3. To ensure transparency and accountability in the conduct of governmental and non-government institutions.
4. Structure the process of requesting information by the public and the provision of information by governmental entities.<sup>20</sup>

The Law specifies information as “any type of document, recorded and registered information, models and samples”. The Law also requires that information by public entities be disseminated in a manner “accessible by and usable to the public”.<sup>21</sup> Any individual or organization has the right to ask for information from governmental entities and the entity in question is obliged to comply by providing the requested information.

The application for information is submitted through a “Request for Information” form.<sup>22</sup> The response from the government entity is to be provided in written form within ten days of the request.<sup>23</sup> An additional three days can be granted in cases of unexpected circumstances. If the request is submitted by the media, the information shall be provided within three days without the possibility of extension. If the required information concerns the safety and security of an individual, it shall be provided within 24 hours of the request with no provisions for extensions. The information providing entity determines the costs of preparing and providing the information, payable by the requester. The amount charged by the information providing entity is subject to limits set by the Monitoring Commission.<sup>24</sup>

19 Islamic Republic of Afghanistan (2004), Constitution of Afghanistan, Article 50, p. 13.

20 Islamic Republic of Afghanistan (2014), Access to Information Law, Article 2, p.1.

21 *Ibid.* Article 3, p.2.

22 *Ibid.* Article 5, p. 4.

23 None of the entities visited for this research appeared to have information request forms.

24 No specific date has been set for the establishment of the Oversight Commission.

Each governmental entity should have a department or section in charge of providing information to those who request it. The department or section should provide the requester with the required forms. The information department's responsibility is to ensure that the information request form is delivered to the right department or individual within the governmental entity.<sup>25</sup>

Complaints regarding lack of cooperation or transparency should be submitted, in written form, to the entity in question. If the complaints are not addressed within three days, the applicant can send the complaints to the Oversight Commission.<sup>26</sup> The Oversight Commission is to consist of 13 individuals appointed for a period of three years.<sup>27</sup>

This rapid assessment report focuses on a key purpose of the Access to Information Law – the process of requesting information by the public and the provision of information by governmental entities. While it is too early to conduct a comprehensive assessment of the impact of this law on the flow of and access to information in Afghan society, it is possible to investigate the potential impact of the law in specific areas such as the public's right to know about public services and whether this law could become a useful instrument in effecting structural reform in public service delivery in Afghanistan. To this end, this rapid assessment of the Access to Information Law focuses on public awareness of rights in access to public services in two areas: health and domestic electricity.

25 *Ibid*, Article 11, p. 8.

26 Provisions for complaints are available in Article 13 of the Access to Information Law. Since the Oversight Commission has not yet been appointed, there is no official system of addressing complaints.

27 The Oversight Commission members are to be drawn from Afghanistan Independent Human Rights Commission, Ministry of Commerce and Industry, Ministry of Finance, Ministry of Communications and Information Technology, Afghanistan Independent Bar Association, Afghanistan Jurists Association, Union of Journalists, civil society organizations, political parties, and Afghanistan Chamber of Commerce and Industries. The Oversight Commission has not been set up at the time of writing (June 2015).

## 3. HEALTH SERVICES

In 2002 Afghanistan was ranked as having one of the worst health care systems in the world with only 9 percent of Afghans living within an hour's walking distance from a health facility and a maternal mortality rate of 1,600/100,000 live births per year.<sup>28</sup> Afghanistan also had infant and under-five mortality rates estimated at 165 and 257 per 1,000 live births per year, respectively.<sup>29</sup> In 2015 an estimated 57 percent of the population has access to some form of health service. Infant mortality and child mortality rates have dropped since 2003 by over 50 percent while there are three times more trained midwives present at birth in 2015 compared to 2003. Despite these significant gains, the availability and quality of health services remain cause for much concern.<sup>30</sup> While additional measures will need to continue to be taken to increase access to basic health services throughout the country, improvements can and should be made in health service provision through the existing facilities. In part, bringing improvements in quality of service provision is a function of awareness of the public of its right to access and receive adequate health services and the fulfillment by health service providers of their legal obligation to provide services to the best of their ability to meet the demand by the service users.

### 3.1. Formal Provisions

This section reviews the formal provisions pertaining to service delivery in the Access to Information Law, followed by documenting the extent to which health services are provided according to the Law and whether and how awareness about, and use of, the Law by service users and providers can improve service provision in health.

The formal procedures may be divided into two categories, the supply side and the demand side. The supply side of information is disclosure, referring to the efforts and formal obligations of public health entities and government institutions to proactively inform the general population as the actual and potential recipients of service. The demand side of information disclosure consists of the need for information by actual and potential users of the service and the barriers and impediments in accessing the information.

#### 3.1.1. Supply Side of Information

On the supply side, the Access to Information Law obliges public organizations including hospitals to proactively provide the public with information on the human resource management, finances, and services they provide and the laws, regulations, and procedures according to which they are expected to operate.<sup>31</sup> In addition, copies of contracts and agreements of the public entity should be available to the public and published. For hospitals and health centers this implies that a database of their employees and the types of services that they provide should be proactively presented to the public. In practice, however, the supply and use of information is constrained by bureaucratic indifference and negligence, poor public awareness, and a form of what has been termed "institutional sadism" and hostility that characterizes large swathes of the public sector in Afghanistan.<sup>32</sup>

#### 3.1.2. Bureaucratic Indifference

The information provided by the Ministry of Public Health (MoPH) is described as confusing, disorganized, and *ad hoc*. Also, the failure by hospitals to provide adequate information to the public about health services is part of a more general trend of laws being made but not enforced. For example:

28 UNICEF (2002)

29 WHO (2002)

30 See, for example, APPRO's five rounds of monitoring on access to services, including health, in 12 provinces of Afghanistan since 2012, titled "Monitoring Women's Security in Transition", available from: <http://appro.org.af/category/publications/>

31 Islamic Republic of Afghanistan (2014), Access to Information Law, Article 14, Sections 1-9, p.10.

32 For some examples of this type of sadism see "The Happy Union of Corruption and Official Sadism in Afghanistan", available from: <http://appro.org.af/the-happy-union-of-corruption-and-official-sadism-in-afghanistan/>

If we rank governmental organizations on their ability to provide information, we will see that [MoPH] is a very difficult organization to obtain information from. ... It has been six months since the Access to Information Law has been passed and no steps have been taken by [MoPH] to implement it. This shows that the government does not implement what it imposes.<sup>33</sup>

Health centers in general do not have measures in place for proactive information disclosure. The most common form of information dissemination about health services is the use of information signs inside health facilities. Also, public dissemination of information on health issues is seen as the responsibility of MoPH and not individual health centers:

We do not have a reception or information desk at the hospital. Nor do we have a department that is in charge of informing the [service users]. However, we do report our operations to the [MoPH] on a monthly basis and the Ministry, through its Department of Information, can then distribute our information to any individual who is interested.<sup>34</sup>

The hospitals visited for this research all lacked sufficient signage on their services and areas of work. For example, one hospital claimed that all the necessary information on services provided and rights of the patients was posted on signs throughout the hospital. The researchers found a single banner on rights of patients written in English, clearly of no utility or consequence for the vast majority of service recipients, most of whom are illiterate in their own language. In addition, the banner on patients' rights was placed about 10 meters behind a fence, making it the reading of the text in small font impossible (Figure 1, Appendix 2).

A women's hospital claimed that it broadcasts rights of patients on the TV screens in waiting rooms. On closer inspection it transpired that the TV screens were turned off. The patients in the waiting room stated that they had never seen TVs working (Figure 2, Appendix 2).

A hospital for infectious diseases lacked appropriate signs not only to inform patients of their general rights, but also urge the patients and visitors for taking precautions against the spread of infectious diseases. At a general hospital, the rights of patients and other informative signs were posted in the main hall in Dari and though there was no information desk or reception available, the janitor was present and seemed relatively well informed about the different departments of the hospital (Figure 3, Appendix 2).

### Poor Public Awareness

A main cause of failure in the application of the Access to Information Law is illiteracy, which prevents access to information in written form, and the absence of any effort by the relevant authorities to compensate for this barrier by, for example, displaying the necessary information through pictures and schematics:

Now the Access to Information Law has been passed and all citizens of Afghanistan have the right to access information ... . But, a large percentage of people is unaware of this right because the vast majority of the population is illiterate. At the same time, the government is not doing much to inform them [through other means].... We can even say that the law is not being implemented at all.<sup>35</sup>

Or

It must be said that the Access to Information Law in Afghanistan has not been institutionalized yet. Hence, the talk about the implementation of such a law and its effect on people can be rather fruitless. ... When the law is not institutionalized and implemented, the level of awareness among people automatically remains low.<sup>36</sup>

33 KI-M-Jou-2

34 KI-M-MoPH-4

35 KI-F-MP-2

36 KI-M-ACFO-1

In hospitals almost all the information for service users is supplied in written form. Similarly, the MoPH informs the public through written media.<sup>37</sup> These methods only serve a minority of the population who are literate and live in urban areas and have access to electricity, Internet, TV, and newspapers. The illiterate majority remains unaware of the availability and the right to information.

### **Corruption, Favoritism and Hostility**

Lack of awareness among service users increases the possibility of patients being misinformed, have their rights abused by the service providers, or being mistreated. Previous research by APPRO reports of cases where some midwives and gynaecologists in provinces such as Herat and Bamyán ask women for presents and money (*bakhshish*) while the women are still in labor.<sup>38</sup>

Nepotism is widespread in Afghanistan and the health sector is no exception.<sup>39</sup> For example, in a women's hospital it was observed that patients, including pregnant women, were kept waiting while other patients were able to jump the waiting line, being ushered through by personal contacts.

During the visit at a women's hospital in Kabul, a man was observed complaining that his wife was near death due to a post-caesarian infection. As the husband continued to complain and seek help, the doctor got angry and said: "Stop complaining! This is the way life is, some people live others die".

### **Demand Side of Information**

According to the Access to Information Law the application for information is to be documented through a "Request for Information" form, the response to which should be provided within ten days of the request being submitted.<sup>40</sup> An additional three days can be granted to the information providing public body in cases of unexpected circumstances. The process of obtaining information is constrained by a lack of information centers and request forms, lack of grievance handling mechanisms, and bureaucratic barriers.

## **3.2. Information Centers and Request Forms**

None of the hospitals visited had an information department or desk. The children's hospital did have a reception desk and the researchers were told that the receptionist was not available because it was Thursday. However, later visits and conversations with cleaners and other hospital staff indicated that the desk had been standing idle for at least six months. The registration desk at the hospital, along with the nurses, cleaners and guards provided information to patients in response to their various queries.

Also, none of the hospitals visited possessed the required Request for Information forms. The unavailability of forms, in combination with the absence of functioning information centers or public relations departments makes demanding and obtaining information frustrating and difficult for the general public.

### **Lack of Grievance Handling Mechanisms**

The Complaints Commission, required as part of the Access to Information Law, has not yet been formed. The absence of a formal body to deal with grievances, complaints, or suggestions for improvements undermines the implementation of the legal provisions and enforcing compliance by the regulated entities.

37 KI-M-MoPH-4, KI-M-MoPH-1

38 This was reported during focus group discussions with housewives in Bamyán and Herat provinces during September – December 2014.

39 Much has been written about the extent of nepotism within all sectors in Afghan society, see for example Euroasianet's "Afghanistan: Nepotism, Cronyism Widespread In Government", Available at: <http://www.eurasianet.org/departments/insight/articles/eav051103.shtml>. (Retrieved May 25, 2015)

40 Islamic Republic of Afghanistan (2014), Access to Information Law, Article 5, Section 2, p.4.

**Bureaucratic Barriers**

Government bureaucracy in Afghanistan is, in general, a major impediment in access by the public to information. Gaining information on hospitals requires individuals to seek permission from the relevant MoPH section first and then to present the permission letter to the health facility from which formal information is sought. This is often a time consuming and frustrating task.<sup>41</sup>

**Informal Procedures**

The most common sources for information on access to health services at hospitals are the word of mouth, trial and error by the information seekers, and experiences from own or others' past experiences.<sup>42</sup>

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41 KI-M-JOU-2, KI-M-ACSFO-1

42 KI-M-MOPH-3, FGD-F-H-PA

## 4. ELECTRICITY SERVICES

As with most services in Afghanistan, energy demand far outstrips the supply capacity. Also, as with most situations of supply shortages, the potential for inequities in receiving service, inequalities in providing service, and corruption to secure service increases.

The projected actual capacity for electricity is 1,116 Mega Watt while the estimated demand is 4,212 Mega Watt and increasing at a rapid rate.<sup>43</sup> The percentage of the population with access to electricity (grid-based power, micro-hydro, and solar panel stations) in Afghanistan is among the lowest in the world, at around 30 percent.<sup>44</sup>

### 4.1. Formal Procedures

The supply side of the information flow in electricity services provision consists of efforts by DABS and legal obligation to provide information to the general public. The demand side of the information flow consists of the needs of the electricity services users and the impediments in gaining access to information regarding those needs.

#### 4.1.1. Supply Side of Information

The DABS is obligated by law to proactively provide the public with information on its human resource management, finances, the services they provide, and the manner in which the services are provided. Field visits to DABS centers and the subsequent observations by the researchers in Kabul show that the centers are responsive to the requests for information on services from the members of the public. In addition, DABS has published the names and contact details of its board of directors as well as shareholders along with audited annual financial reports, planning and strategic document, news updates on electricity billing systems, and methods of payment on its website.<sup>45</sup> DABS's LinkedIn page provides access to names and CVs of more 80 DABS employees with links to a LinkedIn account.<sup>46</sup> On its Facebook page, DABS provides the latest news and updates about the activities of the organization and its leadership.<sup>47</sup>

DABS has "Information Request" forms for those seeking information. The main office of DABS has an information desk, accessible through a numbering system for those needing information. Closed circuit TV cameras are used to monitor different waiting rooms and customer services department. According to the unit manager, the purpose of the cameras was to ensure that the customers are not being treated unjustly and unfairly.<sup>48</sup>

Throughout Kabul, there are eight DABS information centers and a helpdesk to provide information to the customers.<sup>49</sup> The researchers contacted the call center (144) on a number of occasions, the waiting time did not exceed three minutes and the questions were answered accordingly.

#### 4.1.2. Demand Side of Information

The interviews and the observations carried out for this research suggest that people's ability to use their right of access to information is constrained by a general lack of awareness about their rights as service users and favoritism practiced in service provision by some DABS officials.

43 See: <http://eneken.ieej.or.jp/data/3190.pdf>, accessed June 1, 2015.

44 World Bank (2015), Afghanistan Overview, available from: [www.worldbank.org/en/country/afghanistan/overview](http://www.worldbank.org/en/country/afghanistan/overview)

45 Visit Breshna at: <http://www.dabs.af/pages/share/en>. The site has an English, Dari and Pashto version (07-30-2015)

46 Breshna's LinkedIn account details can be found on: <https://www.linkedin.com/company/da-afghanistan-breshna-sherkat> (07-30-2015)

47 Visit Breshna's Facebook page at: <https://www.facebook.com/pages/Da-Afghanistan-Breshna-Sherkat-DABS/244090598970835> (07-30-2015)

48 KI-M-EL-1, the researchers also observed the cameras and the monitors during field visits

49 KI-M-EL-1

### Poor Public Awareness

The access to social media such as Facebook or LinkedIn is limited to very few members of the general public, even in Kabul. DABS does have a TV and radio outreach campaign through which it advertises its services and provides information on access to services. Given the limited access of the population to social media and the high rate of illiteracy, it is crucial that DABS intensifies its outreach efforts through TV and radio. The major constraint in using TV and radio outreach more extensively is the high cost, however.<sup>50</sup> Lack of awareness remains the main obstacle to people's access to information.<sup>51</sup>

### Favoritism and Corruption

Historically there have been two types of favoritism, and related corruption, within governmental entities. The first type consists of individuals using a contact person or freelance commissioners to obtain service in exchange for a gratuity or commission. The second type consists of employees of the entity giving their friends and family members preferential treatment.

The first type of nepotism has been eliminated at DABS since customers are not allowed to send others to demand service on their behalf.<sup>52</sup> Despite the relative abundance of supply of electricity, some favoritism persists though this by no means is a problem specific to DABS. The main recommendation by those engaged for this research was for DABS to create more information centers so the public was clearer on the procedures to follow for receiving service.<sup>53</sup>

## 4.2. Informal Procedures

As with access to information on health services, the most common sources for information on access to electricity services are the word of mouth, trial and error by the information seekers, and experiences from own or others' past experiences.

50 KI-M-EL-4, KI-M-EL-1

51 KI-M-EL-4, KI-F-MoIC-1

52 KI-M-EL-1

53 KI-MoIC-1, FGD-M-EL-Clients

## 5. CONCLUSION AND RECOMMENDATIONS

It is too soon to conclude whether or not the implementation of the Access to Information Law has been a success. However, this report finds that the main challenge in implementing the Law is one faced by all other forms of legislation in Afghanistan. That is, this Law will be of little or no consequence in practical and immediate terms without effective implementation.

Afghanistan's Access to Information Law came into effect in late 2014. As with most laws enacted in Afghanistan since 2001, the contents of this law correspond sufficiently to provisions in legislation by other countries on right / access to information. The fact that Afghanistan compares with Switzerland as far as the contents of its Access to Information Law confirms this. The problem, associated with all forms of legislation in Afghanistan, is that this Law is of little or no consequence in practical terms without adequate resources to implement it. With supplementary measures such as setting up the Complaints Committee this Law calls for, cross-referencing with other related legislation, passage of time, and political stability the likelihood will increase for the practical utility of the Access to Information Law.

As with most other fundamental legislation, much could be learned by Afghanistan from the experience of other countries such as the United States, having had the Freedom of Information Act for almost five decades, the practical implications of the Act, and the many amendments made to the Act in response to learning from the implementation of the Act. Similarly, India's rich track record of implementing similar legislation could be utilized for implementing Afghanistan's Access to Information Law and the future amendments and revisions of this Law.

Given the number of less developed country with formal legislation on the right / access to information, the importance of transparency in information flow in all models of good governance, and the debate on how the state should handle and manage information on its citizens, the debate on the role and utility of formal legislation on the right / access to information is likely to continue and intensify. Afghanistan, despite the political instability, is no exception to the list of countries that will have this debate in the years to come.

The focus of access / right to information legislation in the cases reviewed for this paper is mostly on what the media can and cannot ask for from the government and what the government should and should not provide to ensure the protection of other citizens and the interests of the nation as a whole. Some access / right to information legislation, such as that by Sweden, gives equal weight to availability and secrecy in information flows, for example. All legislation from around the world has specific sections where limitations on the flow of information from the state to citizens are spelled out.

Unless the information being requested undermines the rights of other citizens or the interests of the state, all legislation on access / right to information is clear on the right of the public to ask for most types of information and the state authorities at all levels having the legal obligation to provide it.

Similarly, all provision for recourse by the members of the public in cases where their right to information has not been granted by any state or state-related authority. For example, the Turkish Right to Information Law has two specific articles, Article 4 and 5, on the right to information and the "obligation to provide information".

The recourse provision of Afghanistan's Access to Information Law, through the Complaints Committee, has a significant potential role to play in increasing the transparency and accountability of governmental entities charged with service provision for the public. As such, the Law could be used as an effective instrument to eliminate petty corruption in service delivery.

By far, the most active developing country with legislation on, and assessments of, right / access to information law is India. The constraints identified by India in implementing the legislation through the various assessments by state and non-state actors are similar to the constraints identified in this pilot study of Afghanistan's legislation. For example, in response to the lack of public awareness on India's Right to Information law, some states started a mass awareness raising program and changed the educational curricula in primary, secondary, post-secondary, and literacy education to familiarize students with legal provisions on their rights

to information. Other states introduced dedicated infrastructure, such as a toll free phone line to request for information or made provisions for the use of texting by mobile phones from the public to follow up on requests. This latter measure was particularly practical for members of rural communities with minimal physical access to governmental entities and structures.

In the Afghan context, as in other contexts, corruption and nepotism are major obstacles to access to information. The case of India illustrates that two key elements in successful institutionalization of access / right to information legislation are political stability (and political will) and availability of resources to provide adequate and reliable services. When there is scarcity of resources to provide adequate and reliable service as is the case with Afghanistan, compounded by instability and a lack of political will and/or ability to implement legislation, there is fertile ground for corruption and nepotism in service provision. In Afghanistan, continued conflict, insufficient and inadequate infrastructure and resources, widespread institutional authoritarianism, and corruption are likely to remain as major challenges for access to and practicing the right to information for many years to come.

The most significant finding from this pilot assessment is that right / access to information by the public is undermined by the two main factors of the public lacking awareness of its right and those in authority, especially in health sector, showing a tendency to act with hostility toward members of the public seeking help.

The recommendations of this assessment are, necessarily, quite general and intended to draw attention to the preparatory work that will need to be done as a major part of the efforts to implement and revise the Access to Information Law in Afghanistan.

## 5.1. Recommendations

- An awareness raising campaign will need to be initiated by the government and civil society organizations on the Access to Information Law and its benefits for the public and state interests.
- Particular attention will need to be paid to awareness raising among the illiterate and particularly in rural / remote areas.
- Incorporate awareness of the right / access to information legislation in education curricula from primary to post-secondary education as well as in literacy programs.
- As much as possible, set up specific, clearly identifiable information points or sections in governmental organizations with the main task of assisting the public in its requests for information.
- Ensure that government and semi-government entities have specific provisions for access to information by the public in their strategies, as a specific policy, or a clear section in the communication policy.
- Formalize the citizens' right to approach public and state-related officials and entities for information without having a ministerial authorization letter, the current precondition for release of information by all government, semi-government, and some non-government organizations and entities.
- Make innovative uses of digital technology such use of mobile or smart phones and hotlines to encourage the public to exercise its right.
- Train government and semi-government officials of their responsibilities, rights, and the consequences of failing to operate according to the obligations set out in the Access to Information Law.
- In future reforms of the Access to Information Law, attempts should be made to define the boundaries of the law more precisely on what constitutes national interest or personal freedom in the context of access to information.
- The Government and the Parliament should approve amendments to the Access to Information Law so that the Law meets international best practices

- The Government and Parliament must ensure that there are clear definitions and limits to information protected as state secrets.
- The Government should complete the process of establishing the ATI Commission and provide adequate political and financial support so that the ATI Commission can fulfill its mission.
- The Government should establish mechanisms to promote proactive disclosure at all levels of government (including penalties for non-disclosure), to ensure easy access to information for the general public.

## APPENDIX 1: LIST OF INTERVIEWEES

Position	Entity	Type of Interview	Code
Customer Service Manager	DABS	Individual	KI-M-EL-1
Customer Service Field Officer	DABS Dehmazang Center	Individual	KI-M-EL-2
Customer Service Field Officer	DABS Taimani Center	Individual	KI-M-EL-3
Customer Service Field Officer	DABS Ahmad Shah Baba Center	Individual	KI-M-EL-4
Customer Service Field Officer	DABS Khurkhuna Center	Individual	KI-M-EL-5
Customer Service Field Officer	DABS Khurkhuna Center	Male Focus Group	FGD-M-EL-Clients
Chairman of the Commission for Communication and Connectivity	MP	Individual	KI-M-MP-1
Director	Afghanistan Journalists Council	Individual	KI-M-JOU-1
Deputy Director	Bakhtar Information Agency – Ministry of Information & Culture	Individual	KI-F-MoIC-1
Director	Health Promotion Department Ministry of Health	Individual	KI-M-MoPH-1
Deputy Director	Rabi'a Balkhi Hospital	Individual	KI-F-MoPH-2
Head Doctor	Jamhoryat Hospital	Individual	KI-M-MoPH-3
Head Doctor	Antani Hospital	Individual	KI-M-MoPH-4
Head Doctor	Indira Gandhi Hospital	Individual	KI-M-MoPH-5
Head Doctor	Jamhoryat Hospital	Female Focus Group	FGD-F-H-PA
Head Doctor	Jamhoryat Hospital	Male Focus Group	FGD-M-H-PA
Chairman of the Committee of Public Welfare	MP	Individual	KI-F-MP-2
Head	NAI: Supporting open media in Afghanistan	Individual	KI-M-JOU-2
Executive Director	Afghan Civil Society Forum Organization	Individual	KI-M-ACSFo-1

## APPENDIX 2: GUIDING QUESTIONS

### Focus Group Discussions:

1. What are the formal procedures of gaining access to information about the provided services?
2. Do you know what rights do you have with regards to access to information? Please explain.
3. What experience do you or the general public have with regards to gaining access to information?
4. What are the strengths and weaknesses of the process of providing information to public?
5. What new steps could be taken to enhance people's access to information?
6. What challenges do the people face when seeking access to information?
7. Please give us your opinion about access to information.
8. What actions need to take place to enhance transparency and accountability within the process of access to information?
9. What actions could the government take to enhance and improve citizen's access to information?

### Key Informant Interviews:

1. What are the formal procedures of gaining access to information about the provided services?
2. What are the formal procedures of gaining access to information in general?
3. What rights do citizen's have with regards to access to information? Please explain.
4. To what extent have citizens utilized their right of access to information?
5. What experience do you or the general public have with regards to gaining access to information?
6. What are the strengths and weaknesses of the process of providing information to public?
7. What could be a potential solution to the weaknesses in the process of providing citizens access to information?
8. What challenges do the people face when seeking access to information?
9. What is your or general public's opinion about access to information?
10. What actions need to take place to enhance transparency and accountability within the process of access to information?
11. What actions could the government take to enhance and improve citizen's access to information?

## APPENDIX 3: PICTURES FROM THE HOSPITALS

Figure 1: English Banner Describing Rights of Patients in a children's hospital in Kabul



Figure 2: Dysfunctional TVs in the Women's Hospital



Figure 3: Information Signs at the General Hospital



From left to right starting up left: (1) Rights of patients written in Dari and hanging in the main hall. (2) Additional information about the hospital for patients and visitors. (3) Informing patients and visitors of risks of infections. (4) Complaints box intended for patients and visitors.



INTEGRITY  
WATCH  
AFGHANISTAN

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